



GENTNER DRUMMOND
ATTORNEY GENERAL

February 24, 2026

Via Email

Clay Bullard
Director, Oklahoma Health Care Authority
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Dear Director Bullard:

This letter follows my shared concerns regarding the Oklahoma Health Care Authority's ("OHCA") proposed permanent rules affecting Oklahoma dentists and SoonerCare members, as well as your February 6, 2026, response to those concerns. I continue to receive questions about whether the OHCA's rulemaking is lawful under the Oklahoma Administrative Procedures Act ("APA"). For the reasons set forth below, the proposed rule does not comply with the APA. Accordingly, consider this a forewarning that if the OHCA does not withdraw the proposal, it is likely only a matter of time before the Legislature disapproves it or my office receives a request for an Opinion and formally determines the proposal to be invalid and unenforceable.¹

As an initial matter, you state in your February 6 correspondence that the proposed rule is based on concerns brought to your attention by the OHCA's managed care entities. In October 2025, I reminded you that Governor Stitt led the effort to bring out-of-state, for-profit managed care entities into Oklahoma, promising to reduce costs and strengthen preventive care. Clearly, this has been yet another of the Governor's failures. It is no secret to Oklahomans that insurance premiums are increasing across the board, including medical and homeowners, while benefits are decreasing. So, it is no surprise that the dental MCOs are behind a proposal that would create more bureaucracy and red tape. Insurance companies are good at denying claims. That said, the policy underlying the proposed rule is irrelevant to whether it is valid or invalid under the APA.

There is no doubt that the OHCA has authority to adopt administrative rules, but such rules must be promulgated as required by the APA and substantially comply with its requirements. 75 O.S. §§ 303(E) (requiring substantial compliance with procedural requirements), 308.2 (requiring promulgation as required by the APA). A review of the administrative record reveals that the process employed by the OHCA was inherently flawed. *See Spring Creek Conservation Coalition*

¹ See 75 O.S. §§ 250.2 (authorizing the Legislature to disapprove rules) and 308; see also 74 O.S. § 18b (duties of the Attorney General include responding to questions of law) and *State ex rel. York v. Turpen*, 1984 OK 26, ¶ 5, 681 P.2d 763, 765 (acknowledging the binding effect of Attorney General Opinions on state officials affected by them), and 2020 OK AG 13 (an Opinion determining that a State Board of Education rule was improperly promulgated and was, therefore, invalid and unenforceable).

v. *Oklahoma Dep't of Wildlife*, 2007 OK CIV APP 26, 156 P.3d 55. Fundamentally, the APA establishes that before adopting, amending, or revoking a rule, an agency must publish notice of the intended rulemaking and include the following:

1. In simple language, a brief summary of *the rule*;
2. The circumstances which created the need for *the rule*;
3. The specific legal authority authorizing *the proposed rule*;
4. The intended effect of *the rule*;
5. If the agency determines *the rule* affects business entities, a request that the entities provide comments, in dollar amounts if possible, the increase in direct and indirect costs expected due to compliance with *the proposed rule*;
6. The time, place, and manner in which persons may present their views and may demand a hearing on *the proposed rule*; and,
7. Where the public can obtain copies of *the proposed rule*.

75 O.S. § 303(B).

Furthering the public notice requirements, prior to adopting a rule, the agency must provide a public comment period for all interested persons to provide their views or arguments on *the proposed rule* and must consider them. 75 O.S. § 303(A). The comment period provides a structured opportunity for those affected by the proposed rule to participate in its development before the agency adopts it. Additionally, the comment requirements promote transparency by making the entire process open to the public, allowing affected parties to understand the proposal and its potential impacts, and creating a record that can be reviewed if the rule's validity is later challenged.

Here, the OHCA published notice of proposed amendments to rules affecting dentists and SoonerCare members on December 15, 2025. See Notice of Rulemaking Intent ("NRI"), attached as Exhibit "A." The NRI expressly "requests that business entities affected by *these* proposed rules" provide comments on anticipated direct and indirect costs, informs the public how to obtain copies of *the proposed rules*, and establishes a public comment period ending on January 15, 2026. *Id.* Fatally, the OHCA significantly and substantively changed the text of *the proposed rule*. To illustrate just one example, the proposed rule provided in part:

(8) Surgical extractions and removals. Medically necessary extractions, as defined in OAC 317:30-5-695, that require surgical techniques.

See OHCA Proposed Rule, attached as Exhibit "B."

However, after publishing the text of the proposed rule and before the public comment period closed, the OHCA changed the language:

(8) Complex extractions. Extractions that require sectioning of the tooth, cutting of bone, and/or flap reflection. Medical necessity criteria for extractions is described in OAC 317:30-5-695.

See OHCA rule amendment, dated January 8, 2026, attached as Exhibit "C."

Then, the OHCA changed the proposed rule amendment again:

(8) Complex extractions. Complex extractions are those that require sectioning of tooth, cutting of bone, or flap reflection. Complex extractions of more than two (2) teeth performed on the same date of service by a qualified provider other than an oral surgeon require prior authorization. Medical necessity criteria for extractions is described in OAC 317:30-5-695.

See OHCA adopted rule amendment, attached as Exhibit "D."

The APA does not authorize a state agency to amend a proposed rule after publishing the rulemaking intent but before the public comment period ends. *Compare* 75 O.S. § 303(D)(1) (permitting an agency to modify a *rule impact statement after any hearing or comment period*); *see also* *Beirne v. Secretary of Dept. of Agr.*, 645 F.2d 862, 865 (10th Cir. 1981) (recognizing a "well settled and sound rule which permits administrative agencies to make changes in the proposed rule *after* the comment period") (Emphasis added). Furthermore, interested parties and affected entities were likely commenting on the text of the proposed rule as published on December 15, 2025. However, it is clear that the OHCA pulled the rug from under those individuals and, all the while, intended to adopt the rules it and the out-of-state for-profit MCOs wanted. Indeed, the OHCA website reflects the public comments submitted, and they overwhelmingly oppose the rule changes the OHCA ultimately adopted. *See* Public Comments, attached as Exhibit "E." Moreover, given that the OHCA Board did not meet between December 15, 2025, and January 15, 2026, it is readily apparent that OHCA staff were changing the rules. However, the law provides the OHCA Board with the authority to promulgate rules. Accordingly, and in light of the matter detailed above, the OHCA's actions and conduct "render[] the hearings for public comment a nullity" and that the process and rules are "inherently defective under the APA." *Spring Creek Conservation Coalition* at ¶ 9.

Accordingly, in light of the foregoing, the OHCA must withdraw the proposed rule as authorized under 75 O.S. § 308(F).

Respectfully,



GENTNER DRUMMOND

Oklahoma Attorney General