

COMMENT DUE DATE: February 3, 2023

Date: January 3, 2023

Miranda Kieffer, Programs Administrator

405-209-7054

Holli Kyker, Programs Administrator

405-982-2217

Brandi Smith, Policy Specialist

405-693-6542

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to *STO.LegalServices.Policy@okdhs.org. The proposed policy is **PERMANENT**.

SUBJECT:

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 7. Program Standards for Services Funded Under Title III of the Older Americans Act of 1965, as Amended

340:105-10-77 [AMENDED]

340:105-10-86 [AMENDED]

340:105-10-89 [AMENDED]

Subchapter 12. Senior Community Service Employment Program (SCSEP)

Part 4. Fiscal and Administrative Policies for Title V Sub-grantees

340:105-12-30 [AMENDED]

(Reference WF 23-105)

SUMMARY:

The proposed amendments to Chapter 105, Subchapter 10: (1) update Oklahoma Administrative Code (OAC) citations to match revisions; (2) remove confusing language and simplify processes; (3) establish information required for temporary emergency status changes; and (4) cleanup language for improved clarity and readability.

The proposed amendments to Chapter 105, Subchapter 12 reflect a federal responsibility change related to grievance appeals.

Permanent rulemaking approval is requested

LEGAL AUTHORITY:

Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).



Rule Impact Statement

To: Programs administrator
Legal Services - Policy

From: Jeromy Buchanan, Director
Community Living, Aging and Protective Services

Date: May 18, 2022

Re: CHAPTER 105. AGING SERVICES

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 7. Program Standards for Services Funded Under Title III of the Older Americans Act of 1965, as Amended

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Part 4. Fiscal and Administrative Policies for Title V Sub-grantees

340:105-12-30 [AMENDED]

(Reference WF 23-105)

Contact: Miranda Kieffer 405-209-7054

A. Brief description of the purpose of the proposed rule:

Purpose.

The proposed amendments to Chapter 105, Subchapter 10: (1) update Oklahoma Administrative Code (OAC) citations to match revisions; (2) remove confusing language and simplify processes; (3) establish information required for temporary emergency status changes; and (4) cleanup language for improved clarity and readability.

The proposed amendments to Chapter 105, Subchapter 12 reflect a federal responsibility change related to grievance appeals.

Strategic Plan Impact.

The proposed amendments to Chapter 105 support continuous improvement efforts in efficiency and effectiveness and strengthen partnerships and promote quality services.

Substantive changes.

Subchapter 10. Policies and Procedures Manual for Title III of the Older Americans Act of 1965, as Amended

Part 7. Program Standards for Services Funded Under Title III of the Older Americans Act of 1965, as Amended.

OAC 340:105-10-77 is amended to update the authority subsection and to remove confusing language around time and temperature requirements, pointing instead to the Oklahoma State Department of Health Food Service Establishment Regulations.

OAC 340:105-10-86 is amended to: (1) clarify the information required for any status change of a nutrition site including a streamlined process for notification and separates scenario examples; and (2) establish the information required for temporary emergency status changes.

OAC 340:105-10-89 is amended to correct the cross-reference to OAC 340:105-10-50.1(a)(15) and (16) to match revisions and clean up language.

Subchapter 12. Senior Community Service Employment Program (SCSEP)

Part 4. Fiscal and Administrative Policies for Title V Sub-grantees

OAC 340:105-12-30 is amended to reflect a change in the receiving division within U.S. Department of Labor (DOL) for appeals of non-Civil Rights grievance decisions and further clarifies DOL expectations for these appeals.

Reasons.

All revisions clarify text to address common questions and reflect current processes in Chapter 105 including updates for alignment with federal guidance or changes.

Repercussions.

If the amendments to Chapter 105 are not accepted, misinterpretation could result in less or inconsistent services to older adults. Without revision, participants seeking grievance appeal at the federal level may send to an incorrect entity and experience delays.

Legal authority.

Director of Oklahoma Human Services (OKDHS); Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162).

Permanent rulemaking approval is requested.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule,

and any information on cost impacts received by the Agency from any private or public entities: The classes of persons affected by the proposed amendments include individuals receiving aging services from OKDHS and our partners.

- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons affected by the proposed amendments are individuals receiving aging services from OKDHS and our partners.
- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:** There is no anticipated economic impact of the proposed amendments.
- E. The probable costs and benefits to the Agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the Agency:** OKDHS includes the cost of printing and distributing the rules, which is estimated to be less than \$20. The proposed amendments will result in enhanced delivery of services to positively impact providers, families, and OKDHS staff.
- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendments do not have an impact on any political subdivisions or require their cooperation in enforcing the rules.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** The proposed amendments do not have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.
- H. An explanation of the measures the Agency has taken to minimize compliance costs and a determination whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are no less costly, non-regulatory, or less intrusive methods for achieving the purpose of the proposed amendments. The proposed amendments do not increase compliance costs.
- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:** The proposed amendments do not have an effect on public health, safety, or

environment, expect to support services to older adults that promote health, safety and independence.

J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented: If the proposed amendments are not implemented, there is no detrimental effect on public health, safety, and environment. However, the amendments resolve existing confusing text and align with federal program requirements; if not implemented, programs are at risk of noncompliance.

K. The date the rule impact statement was prepared and, if modified, the date modified: Prepared May 18, 2022 modified December 15, 2022

SUBCHAPTER 10. POLICIES AND PROCEDURES MANUAL FOR TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

PART 7. PROGRAM STANDARDS FOR SERVICES FUNDED UNDER TITLE III OF THE OLDER AMERICANS ACT OF 1965, AS AMENDED

340:105-10-77. Congregate meals food preparation and service

Revised ~~9-15-15~~ 9-15-23

(a) **Policy.** All preparation and ~~servicing~~ service for the Congregate Meals Program meet all applicable state and local fire, health, sanitation, and safety regulations. Food preparation and delivery is performed in the most cost-efficient manner possible.

(b) **Authority.** The authority for this Section is Section 339 of the Older Americans Act of 1965, as amended and the Oklahoma State Department of Health Food Service Establishment Regulations ~~found at per~~ Oklahoma Administrative Code (OAC) ~~310:257-5-9, 310:257-5-52, and 310:257-5-62~~ 310:257.

(c) **Procedures.**

(1) Projects with multiple serving sites make every effort to consolidate all meal preparation at one facility. Such consolidation is undertaken only when delivery distances and holding times make it feasible.

(2) The project director or designee arranges for all appropriate fire, health, safety, and sanitation inspections and responds appropriately to all identified deficiencies.

(3) A certified food handler supervises ~~All~~ all food preparation staff ~~work under the supervision of a certified food handler who~~ and ensures the application of hygienic techniques and practices in food preparation and service.

(4) Tested, quality recipes, adjusted to yield the number of servings needed, ~~must be~~ are used to achieve the consistent and desirable quality and quantity of meals. Uniform, standardized recipes that provide for required amounts per serving are used when feasible.

(5) Meal service is designed so that hot food is available for at least one-half hour after serving begins to enable ~~individuals~~ participants who arrive late to receive a meal.

(6) ~~Holding time from the completion of food preparation until all meals are served at each site shall not exceed four hours~~ Time and temperature control guidelines are followed per OAC 310:257-5-59 through 310:257-5-62.

(7) Temperatures are taken and documented daily before foods are removed from the stove or oven. Satellite nutrition sites record food temperatures immediately upon arrival at the site.

(8) ~~Temperatures of hot and cold foods are taken and documented daily after food is placed on the steam table or immediately before serving. If temperatures fall below the recommended level, foods are heated to the proper temperature. Foods are not reheated on a steam table as they may reach temperatures that are too hot to be eaten safely and may suffer in quality and consistency.~~

(9) Daily temperatures of hot and cold foods are documented in writing and kept at the Title III senior nutrition site and made available for random review by the project director, site manager, Area Agency on Aging staff, consulting dietitian, and state dietitian.

(d) **Cross references.** Refer to OAC 340:105-10-50.1(a)(4) and (7), 340:105-10-51, 340:105-10-68 through 340:105-10-76, 340:105-10-78 through 340:105-10-80, and 340:105-10-86.

340:105-10-86. Congregate and home delivered meals site change of status

Revised 6-1-07 9-15-23

(a) **Policy.** Any site ~~status~~ change of status, such as a permanent site opening, closing, or relocating, or a temporary emergency status change in the congregate and home delivered meals programs is based upon objective, quantifiable, sociodemographic, and needs assessment data.

(b) **Authority.** The authority for this Section is Section 1321.11 of Title 45 of the Code of Federal Regulations.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection.

(1) ~~Thirty 30-calendar~~ days prior to the change of status of a nutrition site ~~site's status change~~, the Area Agency on Aging (AAA) submits required documentation outlined in (A) through (E) of this paragraph to Community Living, Aging and Protective Services Division (ASD) (CAP) a letter of request for change of site status, with ~~current health department and fire inspection reports, and an analysis of data considered by the project in recommending each proposed change.~~ ■ 1

(A) When a new site is opened, the AAA submits a completed Change of Status Request and new, approved health and fire inspections for the site analysis includes an evaluation of sociodemographic data for the entire planning and service area (PSA).

(B) When an existing site is closed, AAA submits a completed Change of Status Request.

(C) When an existing site experiences a temporary emergency, AAA submits a completed Change of Status Request, documentation of the type of emergency, and a plan of action within three-business days.

(D) When an existing site is relocated within the local area or closed, the AAA submits a completed Change of Status Request and new, approved health and fire inspections for the site evaluation of sociodemographic data may be limited to the local area of potential impact.

(E) When an existing site is relocated to another county, AAA submits a completed Change of Status Request, including sociodemographic data for both locations and new, approved health and fire inspections for the new site.

(2) The analysis Change of Status Request for new site requests, relocation requests, and closure requests includes for each proposed change:

(A) ~~reason(s) for each proposed change~~ justifications;

(B) existing meal services for older persons in the planning and service area (PSA) or local area, ~~for each change;~~

(C) all potentially eligible unserved areas within the PSA ~~with no current services, for when~~ opening or relocating outside the local area;

(D) a list and ranking of all unserved areas in the priority order of their ~~priority~~ for future funding, ~~for when~~ opening or relocating outside the local area;

- (E) the number and proportion of minority, low income, and older persons in greatest economic or social need for each currently served and currently unserved area, ~~for each change~~;
- (F) the total number of persons ~~age~~ 60 years or older in the total PSA, and in each current and prospective service area, ~~for each change~~;
- (G) a revised grant ~~to include the~~ including budget justification ~~for each change~~. The budget justification includes, at a minimum, the number of meals funded and served, a thorough explanation regarding substantial over or under serving of meals, and a meal cost evaluation;
- (H) the proposed date of each change;
- (I) transportation services available for older persons affected ~~by each change~~;
- (J) nutrition project advisory council and governing board recommendations ~~for each change~~; and
- (K) any other information ~~ASD deems~~ necessary to evaluate the proposed expansion status change.

(3) ~~Upon review of~~ After reviewing the analysis, ASD CAP may disapprove or conditionally approve the request for site change. When a site is conditionally approved, the new site ~~must pass~~ passes an Americans with Disabilities Act (ADA) inspection, conducted by an AAA or ASD CAP, to complete the approval process. AAA provides a copy of the ADA inspections to CAP prior to approval.

(4) The Change of Status Request for temporary emergency status changes includes for each proposed change:

- (A) justification(s);
- (B) existing meal services for qualified older participants in the PSA or local area;
- (C) all potentially eligible unserved areas within the PSA, when opening or relocating outside of the local area;
- (D) the number and proportion of minority, low income, and older persons in greatest economic or social need for each currently served and currently unserved area;
- (E) the proposed date of each change;
- (F) transportation services available for older persons affected by each change;
and
- (G) any other information necessary to evaluate the proposed status change.

(5) Temporary emergency status changes are only approved for 30-calendar days. Prior to the end of the approved 30-calendar days, participants may submit a written extension request to CAP for up to an additional 30-calendar days. The written request includes an update regarding efforts taken to resolve the issue causing the temporary emergency status change. No more than two extensions of the original approval are permitted for a total of 90-calendar days, with the exceptions in (A) and (B) of this paragraph.

- (A) When additional time is needed, a new Change of Status Request is completed and submitted for consideration.
- (B) When an approved temporary emergency status change needs to change to a permanent status change, a new Change of Status Request is completed and submitted.

(d) **Cross references.** See ~~OAG~~ Oklahoma Administrative Code 340:105-10-50.1(a)(4) and (7), 340:105-10-51 through 340:105-10-52, 340:105-10-68, 340:105-10-71, 340:105-10-74 through 340:105-10-79, and 340:105-10-82 through 340:105-10-85.

INSTRUCTIONS TO STAFF 340:105-10-86

Revised ~~6-1-07~~ 9-15-23

1. When immediate action is required under unusual circumstances, the Area Agency on Aging contacts Community Living, Aging and Protective Services Division (ASD) as soon as a plan of action is in place to negotiate deadlines for proposed changes.

340:105-10-89. Disease prevention and health promotion services

Revised ~~5-12-05~~ 9-15-23

(a) **Policy.** The Area Agency on Aging (AAA) ~~makes~~ awards grants to local entities to provide disease prevention and health promotion services and information at multipurpose senior centers, congregate meal sites, through home delivered meals programs, or other appropriate sites. Disease prevention and health promotion services include:

- (1) health risk assessments;
- (2) routine health screening, such as hypertension, glaucoma, cholesterol, cancer, vision, hearing, diabetes, bone density, oral health, and nutrition screening;
- (3) nutritional counseling and educational services for older persons and their primary caregivers;
- (4) health promotion programs, including programs relating to ~~prevention and reduction of preventing and reducing~~ the effects of chronic disabling conditions, such as osteoporosis; or cardiovascular disease; and promoting dental care; alcohol and substance abuse reduction; smoking cessation; weight loss and control; and stress management;
- (5) programs regarding physical fitness, group exercise, and music, art, and dance movement therapy, including ~~programs for~~ multigenerational participation programs provided by a:
 - (A) ~~an higher education~~ institution of higher education;
 - (B) a local educational agency, as defined in Section 1471 of the Elementary and Secondary Education Act of 1965; or
 - (C) a community-based organization; and
- (6) home injury control services, including ~~screening of high-risk~~ high-risk home environments environment screenings and ~~provision of~~ educational programs on fall, fracture, or other injury prevention, ~~such as fall and fracture prevention~~;
- (7) depression prevention screening for the ~~prevention of depression~~, community mental health services coordination of ~~community mental health services~~, provision of educational activities, and ~~referral to~~ psychiatric and psychological services referral;
- (8) educational programs on the availability, benefits, and appropriate use of preventive health services covered under Title XVIII of the Social Security Act;
- (9) medication management screening and education to prevent incorrect medication and adverse drug reactions;

(10) information concerning diagnosis, prevention, treatment, and rehabilitation concerning age related diseases and chronic disabling conditions, including osteoporosis, cardiovascular diseases, diabetes, and Alzheimer's disease and related disorders with neurological and organic brain dysfunction;

(11) gerontological counseling; and

(12) social services counseling ~~regarding social services~~ and follow-up health services based on any of the services described in (1) through (11) of this subsection.

(b) **Authority.** The authority for this Section is Sections 102(12), 361, and 362 of the Older Americans Act of 1965, as ~~amended~~ Amended.

(c) **Procedures.** The requirements for implementing this Section are outlined in this subsection. ~~The AAA:~~

(1) receives input from other entities in the planning and service area (PSA) involved with disease prevention and health promotion regarding targeting of AAA funds;

(2) considers ~~use of~~ using funds to expand successful disease prevention and health promotion activities currently funded by Title III-B or other sources in the community, such as annual health fairs or periodic health screenings at nutrition sites;

(3) seeks technical assistance, as appropriate, from ~~the State Agency~~ Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (CAP) staff; and

(4) submits a plan to ~~the State Agency~~ OKDHS CAP to include:

(A) services funded. Services funded do not include those for which payment ~~may be~~ is made under Titles XVIII and XIX of the Social Security Act;

(B) projected expenditures for each service; and

(C) specific objectives to target services to the medically underserved older persons in the ~~planning and service area (PSA)~~. The definition of medically underserved, which is used to allocate the funding, is stated in the ~~Area Plan~~ area plan and chosen from:

(i) the definition outlined by the Public Health Service Bureau of Health Care Delivery, Department of Health and Human Services;

(ii) a definition developed by the Oklahoma State Department of Health; or

(iii) any other definition in keeping with the intent of assisting medically underserved older persons.

(d) **Cross references.** See ~~OAC~~ Oklahoma Administrative Code 340:105-10-50.1(a)(15)(C) ~~340:105-10-50.1(a)(15-16)~~ and 340:105-10-51.

SUBCHAPTER 12. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM (SCSEP)

PART 4. FISCAL AND ADMINISTRATIVE POLICIES FOR TITLE V SUB-GRANTEES

340:105-12-30. Grievance procedures

~~Issued 9-15-21~~ Revised 9-15-23

(a) **General.** Senior Community Service Employment Program (SCSEP) sub-grantee employees, participants, and applicants are provided the opportunity to make complaints involving alleged violations of federal law or SCSEP operating procedures to the sub-

grantee and Oklahoma Human Services (OKDHS) Community Living, Aging and Protective Services (AS) (CAP). SCSEP grievance policy is based on the principle that, when possible, appropriate complaints are resolution resolved of complaints will, whenever possible, be accomplished at the lowest level possible. This policy includes three components described as requirements of, and actions ~~to be~~ taken by:

- (1) AS CAP as the grantee;
- (2) sub-grantees; and
- (3) the United States (U.S.) Department of Labor (DOL).

(b) **Sub-grantee requirements and actions.** All sub-grantee employees, participants, and applicants ~~must be~~ are informed of their rights to file complaints directly with the sub-grantee and the OKDHS AS CAP, and their ~~right of~~ right of appeal rights.

(1) Sub-grantees have written grievance procedures, compliant with this policy, for complaint resolution that ~~comply with this policy, and~~ are used to resolve SCSEP employees, participants, and applicant grievances.

(2) Procedures ~~must be~~ are consistently and fairly applied. Complaints ~~must be dealt with~~ are addressed in a timely manner.

(3) Sub-grantee procedures provide a definition of grievance, ~~and~~ specify any complaints that do not constitute a grievance under its procedures, and include an appeals process.

(4) A copy of the grievance procedures is included in the participant handbook and receipt of these procedures is documented with the *Participant Handbook Acknowledgement*.

(5) Sub-grantee grievance procedures include: (A) and (B) of this paragraph.

(A) **Informal meeting.** The grievant is given an opportunity to meet with the SCSEP ~~Project Coordinator~~ project coordinator, immediate supervisor, or other appropriate sub-grantee-designated personnel to present the grievance informally to resolve the problem. The grievant ~~must present~~ presents the ~~his or her~~ complaint within 30-calendar days of the incident or occurrence.

(i) An informal meeting is scheduled and conducted with the parties within 15-calendar days of receipt of the complaint. Proceedings are documented in writing and copies are submitted to both parties.

(ii) A supervisor, coordinator, or designated personnel provides a written grievance response to participants within 10-calendar days of the informal meeting.

(iii) The written response advises the grievant that if he or she is not satisfied with the informal meeting decision, he or she has the right to appeal it in writing to the sub-grantee's executive director within five-calendar days.

(iv) The sub-grantee's executive director's contact information is provided to the grievant with the written response to the informal meeting.

(B) **Formal meeting.** When the informal meeting does not resolve the issue, a formal process ~~must be~~ is followed. The formal meeting must occur within 15-calendar days after the receipt of the grievant's written appeal.

(6) Procedure requirements for implementing this Section are that the:

(A) grievance is presented in writing to the sub-grantee's executive director. The sub-grantee documents the receipt of a written grievance. Copies of written statements relevant to the grievance are made available to both parties;

(B) sub-grantee's executive director, or a panel designated by the executive director, such as the board of directors, hear from representatives of each party. Minutes are made of the hearing;

(C) sub-grantee's executive director or grievance panel render a decision and submit it in writing to the parties involved within 15-calendar days of the formal meeting by certified mail;

(D) minutes, along with written statements and other documentation presented at the hearing, ~~and be~~ are maintained in the sub-grantee's files for at least five years after the final disposition of the grievance; and

(E) decision of the sub-grantee's executive director or panel may be appealed to AS CAP.

(c) **Time limit for resolution of sub-grantee level grievance resolution.** ~~Sub-grantee level~~ Sub-grantee level grievances ~~must be~~ are resolved within 60-calendar days of the sub-grantee receiving the complaint.

(d) **Filing grievances directly to OKDHS AS CAP and sub-grantee grievance resolution appeals to OKDHS AS CAP.** Grievances filed directly to OKDHS AS CAP or sub-grantee grievance resolution appeals are in accordance with OKDHS per Oklahoma Administrative Code 340:2-5-43 and 340:2-5-44.

(e) **U.S. DOL requirements and actions.** Grievants, who are dissatisfied with AS CAP grievance resolution and appeals process results, may appeal to DOL. ~~Per 20 C.F.R. Part 641 § Section 641.910(b) of Title 20 Part 641 of the Code of Federal Regulations,~~ DOL does not review final determinations made under OKDHS AS CAP SCSEP grievance procedures, except to determine if procedures were followed; or to review alleged federal law investigation violations other than those related to nondiscrimination requirements of Title VI of the Civil Rights Act of 1964; Rehabilitation Act of 1974 § 504; Workforce Investment Act of 1998 § 188, or their implementing regulations. ~~DOL appeals must be filed with the Chief, Division of Adult Services, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.~~ When a participant is not satisfied with the final grievance determination and the alleged violation does not relate to the Civil Rights Act, he or she may file an appeal within 30 days of the determination. Appeals are directed to Director, Division of National Programs, Tools & Technical Assistance, Employment and Training Administration, U.S. Department of Labor 200 Constitution Avenue NW, Washington DC 20210.

(f) **Civil Rights Act or Rehabilitation Act questions or complaints.** Questions about, or complaints alleging a violation of, the administrative requirements of Title VI of the Civil Rights Act of 1964; the Rehabilitation Act of 1973 § 504; or their implementing regulations ~~may be~~ are directed or mailed to the Director, Civil Rights Center, U.S. Department of Labor, Room N-4123, 200 Constitution Avenue, NW., Washington, DC 20210.