

COMMENT DUE DATE: January 02, 2025

Date: December 02, 2024

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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:

Chapter 40. Child Care Subsidy Program
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 [AMENDED]
(Reference WF 25-40)

SUMMARY:

The proposed amendments to Chapter 40, Subchapter 13 amend the rules to: (1) update acronyms; and (2) require that in-home caregivers provide current CPR verification annually.

Permanent rulemaking approval is requested.

LEGAL AUTHORITY:

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



Rule Impact Statement

To: Programs administrator
Legal Services - Policy

From: Deborah Smith, Child Care Services (CCS) Interim Director
Child Care Services

Date: May 15, 2024

Re: Chapter 40. Child Care Subsidy Program
Subchapter 13. Child Care Rates and Provider Issues
340:40-13-2 [AMENDED]
(Reference WF 25-40)

Contact: Joshua Edwards, Program Manager, (580)362-7188

A. Brief description of the purpose of the proposed rule

Purpose.

The proposed amendments to Chapter 40, Subchapter 13 amend the rules to: (1) update acronyms; and (2) require that in-home caregivers provide current CPR verification annually.

Strategic Plan Impact.

The proposed amendments achieve OKDHS goals by communicating updated eligibility information to OKDHS clients and staff and ensuring efficient, accurate, and nondiscriminatory program administration.

Substantive changes.

Subchapter 13. Child Care Rates and Provider Issues

Oklahoma Administrative Code (OAC) 340:40-13-2 is amended to: (1) add clarifying language regarding the approval process of an in-home provider; (2) update the division name and acronym; (3) add that the in-home caregiver must provide current CPR verification annually; (4) remove the responsibility of the caregiver to arrange for a substitute caregiver in his or her absence; and (5) add that the parent or caretaker is responsible for arranging a substitute caregiver in the absence of the approved caregiver.

Reasons.

The amendments to clarify the in-home provider approval process removes the responsibility from the Adult and Family Services (AFS) worker and supervisor to Child Care Services subsidy staff. This lessens the burden on AFS staff and makes the process more seamless.

Repercussions.

If the amendment to change the in-home provider approval process is not approved, in-home providers will experience longer delays in the approval process.

Legal authority.

Director of Human Services; 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 class of persons most likely to be affected by the proposed amendments are OKDHS staff, clients applying for or receiving subsidized child care benefits, and child care providers.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit are OKDHS staff and clients applying for or receiving subsidized child care benefits.
- 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:** The proposed amendment does not have an economic impact on the affected persons or political subdivisions. There are no fee changes associated with the revised rules.
- 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:** The proposed rules will result in enhanced delivery of services to positively impact children and families. The probable OKDHS cost of printing and distributing the rules is estimated to be less than \$20.
- 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 neither have an economic impact on any political subdivision nor require the cooperation of any political subdivisions in implementation or enforcement of 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:** There are no anticipated adverse effects 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 or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed amendments.

- 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:** OKDHS does not anticipate the rules to reduce significant risks to the public health, safety, and environment.
- 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 no detrimental effect on public health, safety, and environment is expected.
- K. **The date the rule impact statement was prepared and, if modified, the date modified:**
Prepared 05/15/2024; modified

SUBCHAPTER 13. CHILD CARE RATES AND PROVIDER ISSUES

340:40-13-2. Approving in-home child care

Revised ~~9-15-23~~ 09-15-25

(a) **Purpose.** In-home child care is care given to a child ~~by~~ when a relative ~~coming~~ comes into the child's own home. A parent may choose an in-home provider even when an out-of-home provider is available. The purpose of standards for in-home care is to help ensure the safety of children cared for in their own home when the usual, responsible adult is temporarily absent due to employment, training, illness, or other valid reason. ■

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(b) **Qualifications of caregiver.** The caregiver:

(1) must be related to the child. "Related to" means an aunt, uncle, grandparent, great grandparent, or sibling not living in the home;

(2) must be at least 18 years of age;

(3) demonstrates the vitality and flexibility needed to care for children and the ability to exercise good judgment and appropriate authority; ■ 4 2

(4) may not be a member of the child's household;

(5) may only care for the child of one family at a time. ■ 2 3 The provider may provide care to more than one family as long as the hours do not overlap, and the child of each family is cared for in his or her own home; and

(6) must not be under the effects of alcohol, illegal drugs, or medication that impairs functioning when caring for children.

(c) **Requirements prior to approval of the caregiver for subsidy payment.** After a parent or caretaker selects a caregiver, requirements in (1) through (3) of this subsection must be met before the caregiver may be approved as an in-home provider.

(1) The client and caregiver ~~must complete~~ completes and ~~sign~~ signs forms described in (A) through (C) of this paragraph.

(A) Form 08CC003E, In-Home Mutual Agreement and Notification to Provide Child Care Services, notifies the caregiver of the eligibility and child care plan for the child requiring care and the intent of the parent or caretaker to receive care from the caregiver. When Form 08CC003E is approved, it also serves as the in-home provider's authorization to bill Oklahoma Human Services (OKDHS) for services provided on or after approval.

(B) Form 08CC004E, Mutual Agreement Regarding the Plan of Care, serves as a basis for discussion between the parent or caretaker and the in-home provider of the plan of care for the child, duties of the in-home provider, how to handle emergencies, and the family rules.

(C) Form 08CC005E, In-Home Provider Health and Safety Checklist, serves as a basis for discussion between the parent or caretaker and the in-home provider of adequate safety precautions and possible safety hazards in the child's home. ■

3 4 The parent or caretaker is also responsible for informing the provider of known risks of a contagious condition of one or more persons in the household. The disclosure allows for training in the universal precautions against exposure. ■ 4

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(2) The caregiver ~~must provide~~ provides a copy of the caregiver's photo identification and Social Security card.

(3) The caregiver must provide proof of the results of an Oklahoma State Bureau of Investigation (OSBI) criminal history investigation as described in (A) of this paragraph and not be guilty of crimes or enter a plea of guilty or nolo contendere, no contest, to crimes described in (B) of this paragraph.

(A) Criminal history investigations:

(i) are required and must be provided by each caregiver and substitute caregiver prior to caring for children; ■ 5 6

(ii) are not required for persons who have documentation of a criminal history investigation within the last 12 months;

(iii) must be obtained from:

(I) OSBI; and

(II) the authorized agency in the previous state of residence when the individual has resided in Oklahoma less than one year; and

(iv) must include a search of the Oklahoma Department of Corrections files OSBI maintains per the Sex Offenders Registration Act; and

(v) must include a computer check the worker completes using the potential caregiver's Social Security number. When a Child Welfare Services (CWS) case number appears, the worker consults with CWS staff to determine if concerns exist about the potential in-home provider's ability to care for children.

■ 6 7

(B) When a caregiver's criminal history report includes a conviction of fiscal mismanagement, such as embezzlement or fraud, or repeated convictions that indicate a pattern of criminal activity, the in-home provider is not approved. Persons who are convicted of or enter a plea of guilty or nolo contendere, no contest, to certain crimes are not approved to care for children or be substitute caregivers. These crimes include:

(i) violence against a person;

(ii) child abuse or neglect;

(iii) possession, sale, or distribution of illegal drugs;

(iv) sexual misconduct; or

(v) gross irresponsibility or disregard for the safety of others.

(4) After requirements described in (1) through (3) of this subsection are met, ~~the worker scans the supporting documentation into imaging and consults a supervisor. The supervisor sends an email to Adult and Family Services (AFS) Child Care Services (CCS) Child Care Subsidy Unit staff requesting approval~~ approves or denies the caregiver. ■ 7 8

(A) When the chosen caregiver is approved as an in-home provider, the approval is valid for a maximum of one year from the date AFS CCS Child Care Subsidy Unit staff signs Form 08CC003E. This form must be renewed annually. ■ 8 9 When approved, AFS CCS Child Care Subsidy Unit staff ~~mails~~ sends the in-home provider a copy of Form 08CC003E advising the in-home provider of the assigned contract number.

(B) When the chosen caregiver is not approved as an in-home provider, AFS CCS Child Care Subsidy Unit staff sends a letter to the ~~caregiver~~ client advising of the denial and need to choose another caregiver. ~~The worker sends Form 08MP038E, Client Notice of Action Taken, to inform the client of the denial of benefits and~~

~~need to choose another caregiver.~~

(5) The caregiver must be currently certified in first aid and infant and child cardiopulmonary resuscitation (CPR) from an OKDHS-approved source. Verification of current certification is provided annually.

(d) **Duties of the caregiver.** The caregiver:

(1) provides adequate care and supervision of children at all times, including frequent observations of children in cribs or playpens. The ~~caregiver~~ parent or caretaker must arrange to have a competent adult provide consistent supervision during the caregiver's absence from the home;

(2) is responsible only for children specified on Form 08CC003E;

(3) is aware of adequate safety precautions and takes action to correct hazards to children's safety, both indoors and outdoors;

(4) provides opportunities for learning, indoor and outdoor play, rest periods, and meals. The caregiver ensures the use of television is age-appropriate and suitable for children;

(5) gives understanding, consistent, and loving guidance. Discipline is constructive, educational in nature, and appropriate to the child's age and circumstances. Loud, profane, and abusive language, corporal punishment, or any technique that is either humiliating or frightening to children is not used. Discipline is not associated with rest, toilet training, or loss of food;

(6) seeks emergency medical attention in case of sudden illness or accident. The parent or guardian stipulates who to call in case of an emergency by entering this information on Form 07LC038E, Child Information. The caregiver has emergency phone numbers readily available at all times. Emergency phone numbers include 911, the fire department, police department, ambulance service, and physician or clinic;

(7) prepares and serves food. The child's family provides the food used to prepare snacks and meals. The caregiver consults with the child's parent(s) or guardian to ensure a balanced diet suitable to the age and physical development of the child is provided; and

(8) ensures the child's school attendance in accordance with the requirements of the Oklahoma State Department of Education.

(e) **In-home provider training requirements.** The in-home provider must read "The Good Health Handbook - A Guide For Those Caring For Children" within 90-calendar days of the approval date of the in-home provider shown on Form 08CC003E. ■ ~~9~~ 10 The in-home provider signs and completes Form 08CC008E, In-Home Child Care Provider Training Declaration of Completion, and returns it to the AFS CCS Child Care Subsidy Unit staff. ■ ~~10~~ 11 The signature and completion of Form 08CC008E meets the in-home provider training requirement for the first year of approval.

(1) After the first year of approval, the in-home provider must annually receive and declare six clock-hours of training. The provider may meet the training requirement by attending workshops, formal training programs, viewing videos, or through individual job-related readings. The declaration is valid for one year from the date the provider signs the document. ■ 11

(2) Training hours the in-home provider earns may transfer from one family to another during the year the declaration is in force.

(f) **Requirement to renew the in-home provider agreement.** Form 08CC003E is

completed annually. ■ 42 13

(g) Requirements prior to approval for a special needs child care rate for a child with disabilities. When an in-home child care provider cares for a child with disabilities, the provider may be approved for the special needs rate in addition to the applicable daily rate. Prior to receiving this additional rate, the:

(1) client, provider, and worker must complete Form 08CC006E, In-home Child Care Certification for Special Needs, per Oklahoma Administrative Code 340:40-7-3.1;

(2) provider must receive on-site consultation regarding the nature of the child's disability and the development of the child care plan including how to operate equipment the child needs and any specialized training needs. ■ 43 14 The consultant provides available resource materials that may aid the provider for the child. This consultation may be provided by a:

(A) health care professional;

(B) child guidance specialist;

(C) SoonerStart provider when the child is younger than 3 years of age;

(D) public school teacher who is familiar with the child; or

(E) consultant through the Center for Early Childhood Professional Development; and

(3) provider must agree to obtain six additional hours of training in areas that address the care of children with disabilities within six months of approval. This training is documented on Form 08CC008E. ■ 44 15

(A) First aid, CPR, or informal training is not counted to meet the special training requirement.

(B) Countable formal training must be from an OKDHS-approved sponsor.

INSTRUCTIONS TO STAFF 340:40-13-2

Revised 9-15-23 09-15-25

- 1. When a client requests an in-home provider the Adult and Family Services (AFS) worker determines eligibility and sends an email to inhomechildcare@okdhs.org advising of the request.**
- 2. How the potential caregiver responds to the duties outlined in Oklahoma Administrative Code (OAC) 340:40-13-2(d) and what the caregiver and the client write on Form 08CC004E, In-home Child Care Mutual Agreement Regarding Plan of Care, helps the worker determine if the caregiver meets this qualification. The worker scans the form into imaging.**
- 23. The caregiver may bring the caregiver's child into the client's home when the client agrees.**
- 34. Form 08CC005E, In-Home Provider Health and Safety Checklist, serves to make the client and provider aware of adequate safety precautions, so they can take action to correct any hazards to the child's safety. Child Care Services (CCS) local licensing staff are a good resource to provide suggestions when the client and provider are unsure how to correct potential hazards. When the client refuses to make recommended changes, the in-home provider may be approved to care for the child in the home, since it is the child's natural environment. Depending on the nature of the potential hazard, the worker determines if a Child Welfare Services (CWS) referral is indicated. The worker scans the form**

into imaging.

45. The worker is prohibited from disclosing information regarding a contagious condition unless written consent to disclose this information is obtained from the parent or caretaker.
56. (a) Oklahoma State Bureau of Investigation (OSBI) background check Form OSBI CHRU, OSBI Criminal History Record Information Request, is available on the OSBI website. ~~The link to the OSBI website is available at the Adult and Family Services (AFS) Child Care Subsidy website. The worker prints the form for the provider and in the Type of Search Requested box, checkmarks The caregiver must check the following in the Type of Search Requested box:~~
- (1) Name base;
 - (2) Sex Offender Registry; and
 - (3) Mary Rippy Violent Offender.
- (b) The cost of the OSBI search is shown on the form. Oklahoma Human Services (OKDHS) does not pay for the cost of the search.
- (c) The provider is responsible for mailing the form to the address listed on the form. After the inquiry is complete, the provider returns it to the worker.
- ~~(d) The AFS worker scans a copy of the results of the inquiry into imaging.~~
67. (a) The prefix of a CWS case number is KK.
- (b) The computer check is run by name and Social Security number. The findings are kept confidential and not released to the client. When concern exists about the caregiver's ability to safely care for the child, AFS CCS Child Care Subsidy Unit staff makes the final decision regarding whether to contract with this caregiver.
78. (a) ~~The AFS CCS Child Care Subsidy Unit staff worker scans saves copies of Form 08CC003E, In-home Mutual Agreement and Notification to Provide Child Care Services, Form 08CC004E, Form 08CC005E, Form OSBI CHRU, and copies of the provider's photo identification and Social Security card into imaging and labels this documentation as "in-home provider request." into the in-home provider contract file. The worker CCS Child Care Subsidy Unit staff gives copies of Forms 08CC003E, 08CC004E, and 08CC005E to the parent or caretaker and the in-home provider.~~
- ~~(b) The AFS worker consults a supervisor, and the supervisor emails AFS.ChildCare@okdhs.org to inform AFS Child Care Subsidy Unit staff:~~
- ~~(1) if the provider meets the requirements per OAC 340:40-13-2(c);~~
 - ~~(2) of the worker's opinion of the person's suitability to provide child care;~~
 - ~~(3) of the parent's or caretaker's approved child care plan;~~
 - ~~(4) of the computer check findings regarding CWS involvement; and~~
 - ~~(5) that supporting documentation was scanned into imaging.~~
- ~~(c) When CWS staff initiates the in-home request for children in custody, the CWS worker must send an email to daycare@okdhs.org and attach supporting documentation.~~
89. The earliest date child care is approved with an in-home provider is the date AFS CCS Child Care Subsidy Unit staff signs Form 08CC003E and assigns a contract number. The AFS worker must certify or deny the application within two-business days of the date of the approval and the in-home provider's

contract number when all necessary verification needed to determine eligibility is provided. AFS CCS Child Care Subsidy Unit staff completes the in-home provider renewal process with the provider.

910. AFS CCS Child Care Subsidy Unit staff provides "The Good Health Handbook - A Guide For Those Caring For Children" to the in-home provider within two-business days of the approval date on Form 08CC003E.

4011. AFS CCS Child Care Subsidy Unit staff sends Form 08CC008E, In-Home Provider Declaration of Completion of Training, ~~with a self-addressed envelope~~ to the provider. The in-home provider sends the completed Form 08CC008E to AFS CCS Child Care Subsidy Unit staff and ~~the original~~ the form is filed in the in-home provider contract file. Form 08CC008E serves as:

(1) the in-home provider's declaration that the provider completed the minimum caregiver training requirements;

(2) case documentation of compliance with the training requirements as set forth in the Child Care Development Fund State Plan for federal financial participation; and

(3) certification the in-home provider has a sufficient knowledge base that ensures the care setting provides for the health and safety of the child, thereby enhancing the quality of child care.

4112. AFS CCS Child Care Subsidy Unit staff sends a new Form 08CC008E each year to the in-home provider for completion. The in-home provider sends the completed Form 08CC008E to AFS CCS Child Care Subsidy Unit staff. AFS CCS Child Care Subsidy Unit staff files the completed Form 08CC008Es in the in-home provider contract file to document the training received each year. When the provider is unsure about training opportunities, CCS local licensing staff may help them choose appropriate training.

4213. AFS CCS Child Care Subsidy Unit staff completes the in-home provider renewal process.

4314. When the on-site consultation will delay the approval for certification by more than 30-calendar days, the provider may be approved for certification prior to fulfilling the on-site consultation requirement when AFS CCS Child Care Subsidy Unit staff documents the provider's attempts to schedule the on-site consultation and a reasonable correction plan in the provider's contract file and Family Assistance/Client Services case notes in the client's case record.

4415. CCS local licensing staff may help in-home providers find and choose any of these training opportunities.