

COMMENT DUE DATE: February 16, 2021

Date: January 15, 2021

Laura Brown, AFS, CCS	405-521-4396
Nancy Kelly, Policy Specialist, Legal Services – Policy	405-522-6703
Dena Thayer, Programs Administrator, Legal Services - Policy	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 amendment is **permanent**.

SUBJECT: CHAPTER 40. CHILD CARE SUBSIDY PROGRAM

Subchapter 3. Initial Application

340:40-3-1 [AMENDED]

Subchapter 7. Eligibility

340:40-7-9 [AMENDED]

340:40-7-11 [AMENDED]

340:40-7-12 [AMENDED]

Subchapter 15. Overpayments

340:40-15-2 [AMENDED]

(Reference WF 21-40)

SUMMARY:

The proposed amendments to Chapter 40, Subchapter 3 amend the rules to: (1) remove good cause for refusal to cooperate in pursuing child support as a reason to presumptively approve child care; and (2) update terminology.

The proposed amendments to Chapter 40, Subchapter 7 amend the rules to: (1) change the Section name; (2) remove child support cooperation as a factor of eligibility for child care subsidy and the consequences of non-cooperation; (3) add child support as a source of potential income to voluntarily be explored by the client; (4) update sources of earned and unearned income to align with Supplemental Nutrition Assistance Program (SNAP) rules; and (5) update terminology.

The proposed amendments to Chapter 40, Subchapter 15 amend rules to: (1) update the definition of fraud to match the current state statute; (2) remove fraud penalties and instead refer to state statutes; (3) add who determines and imposes fraud penalties; and (4) remove outdated state statute language regarding fraud.

PERMANENT APPROVAL: Permanent rulemaking is requested.

LEGAL AUTHORITY: Director of Human Services; Sections 162 and 185 of Title 56 of the Oklahoma Statutes and Sections 98.10 and 98.11 of Title 45 of the Code of Federal Regulations.

Rule Impact Statement

To: Programs Administrator
Office of Intergovernmental Relations and Policy

From: Patrick Klein, Director
Adult and Family Services

Date: December 18, 2020

Re: **CHAPTER 40. CHILD CARE SUBSIDY PROGRAM**
Subchapter 3. Initial Application
340:40-3-1 [AMENDED]
Subchapter 7. Eligibility
340:40-7-9 [AMENDED]
340:40-7-11 [AMENDED]
340:40-7-12 [AMENDED]
Subchapter 15. Overpayments
340:40-15-2 [AMENDED]
(WF 21-40)

Contact: Laura Brown 405-521-4396

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

Purpose.

The proposed amendments to Chapter 40, Subchapter 3 amend the rules to: (1) remove good cause for refusal to cooperate in pursuing child support as a reason to presumptively approve child care; and (2) update terminology.

The proposed amendments to Chapter 40, Subchapter 7 amend the rules to: (1) change the Section name; (2) remove child support cooperation as a factor of eligibility for child care subsidy and the consequences of non-cooperation; (3) add child support as a source of potential income to voluntarily be explored by the client; (4) update sources of earned and unearned income to align with Supplemental Nutrition Assistance Program (SNAP) rules; and (5) update terminology.

The proposed amendments to Chapter 40, Subchapter 15 amend rules to: (1) update the definition of fraud to match the current state statute; (2) remove fraud penalties and instead refer to state statutes; (3) add who determines and imposes fraud penalties; and (4) remove outdated state statute language regarding fraud.

Strategic Plan impact. The proposed rules achieve Oklahoma Human Services (OKDHS) goals of providing a hope-centered culture to move families out of poverty and have a culture of continuous improvement.

Substantive changes.

Subchapter 3. Application Process

Oklahoma Administrative Code (OAC) 340:40-3-1 is amended to: (1) remove good cause for refusal to cooperate in pursuing child support as a reason to presumptively approve child care; and (2) update and add terminology.

Subchapter 7. Eligibility

OAC 340:40-7-9 is amended to: (1) change the Section name; (2) remove child support cooperation as a factor of eligibility for child care subsidy and the consequences of non-cooperation; and (3) add child support as a source of potential income to voluntarily be explored by the client.

OAC 340:40-7-11 is amended to update sources of earned income to align with SNAP rules.

OAC 340:40-7-12 is amended to: (1) update sources of unearned income to align with SNAP rules; and (2) update terminology.

Subchapter 15. Overpayments

OAC 340:40-15-2 is amended to: (1) update the definition of fraud to match the current state statute; (2) remove fraud penalties and instead refer to state statutes; (3) add who determines and imposes fraud penalties; and (4) remove outdated state statute language regarding fraud.

Reasons.

The proposed amendment to remove child support cooperation as a factor of eligibility is made to increase access to child care subsidy benefits as this requirement is a barrier to some families in applying for or maintaining eligibility for child care subsidies. Removing this barrier is consistent with the OKDHS goal of providing a hope-centered culture to move families out of poverty. Families are still able to voluntarily pursue child support receipt with Child Support Services.

The proposed amendments to update earned and unearned income sources are made to align with SNAP rule changes.

The proposed amendment to update information regarding fraud is made to align Child Care Subsidy rules with the current Oklahoma State Statute and simplify information.

Repercussions.

If the proposed amendment to no longer require child support cooperation as a factor of eligibility is not implemented, the client may not apply for or be determined eligible for subsidies for which they would otherwise be eligible. Failure to receive eligible subsidies may lead to family instability and children being placed in unsafe or low-quality child care environments that hinder the child's development.

If the proposed amendments to update earned and unearned income are not implemented, Child Care Subsidy and SNAP rules may not align, which may lead to staff confusion and errors.

If the proposed amendment to update fraud information is not implemented, Child Care Subsidy will not align with the current Oklahoma State Statute.

Legal authority. Director of Human Services; Sections 162 and 185 of Title 56 of the Oklahoma Statutes and Sections 98.10 and 98.11 of Title 45 of the Code of Federal Regulations.

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 and clients applying for or receiving subsidized child care benefits.
- 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 to no longer require child support cooperation as a factor of eligibility will allow more families to be eligible for child care subsidies.
- 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 amendments 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 do not have an economic impact on any political subdivision, nor will the cooperation of any political subdivisions be required 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:** The proposed amendments to no longer require child support cooperation as a factor of eligibility may increase access to child care subsidy benefits for certain clients and reduce the safety risks that occur if they leave their children home alone or in lower quality care because they were not cooperating with the child support requirement.
- 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 June 4, 2020; modified December 18, 2020.

SUBCHAPTER 3. INITIAL APPLICATION

340:40-3-1. Application process

Revised 3-1-199-15-21

(a) **Application process.** The application process for subsidized child care benefits begins with a request for benefits and ends with an eligibility determination. Application approval is subject to available funding. Subsidized child care benefits must be synchronized with the client's food benefits or SoonerCare (Medicaid) benefits, per Oklahoma Administrative Code (OAC) 340:40-9-1(f). Child Welfare Services or Adult and Family Services (AFS) staff processes the application. ■ 1

(1) **When an application is required.** An application is required, when:

- (A) an applicant initially applies for subsidized child care benefits. Refer to (c)(2) of this Section when an application is denied;
- (B) the client's subsidized child care benefits are closed for more than 30-calendar days;
- (C) the payee for the subsidized child care benefits changes; or ■ 2
- (D) the family income was not considered because OAC 340:40-7-12(6) policy applied and one or more of the affected adopted children turns 6 years of age unless there is already a separate open income eligible case and the child can be added to that case, per OAC 340:40-9-2(d). ■ 3

(2) **Who can apply.** An applicant or the applicant's authorized representative may apply for subsidized child care benefits. When an authorized representative applies on behalf of an applicant, he or she must bring a signed statement from the applicant giving the person permission to act on behalf of the applicant or the applicant must have designated the person as his or her authorized representative on the signed application. ■ 4

- (A) When the natural or adoptive parent or stepparent lives with the child, he or she is considered the applicant and eligibility is based on the parent's situation regardless of whether he or she has custody of the child.
 - (B) When both the natural and adoptive parent of the child live in the same household and the adoption is final, the adoptive parent is considered the applicant and eligibility is based on the adoptive parent's situation.
 - (C) When the natural or adoptive parent or stepparent is not in the home, the person acting in the role of the parent, referred to as the caretaker, is the applicant. The caretaker may or may not be related to the child. ■ 5
 - (D) When the child's parent is a minor, either the minor parent or the responsible adult the minor lives with can be considered the applicant for the subsidized child care benefits. Eligibility is based on the minor parent's situation. ■ 6
 - (E) When the natural or adoptive parent lives in the home but is too incapacitated to apply, another person living in the home may apply for the natural or adoptive parent. The other person must provide proof of the parent's inability to apply. ■ 7
- (3) **Application.** An applicant or the applicant's authorized representative completes and signs an application to apply for subsidized child care benefits. ■ 8 When the applicant requests child care for a child with disabilities, the worker gives Form

08AD006E, Certification for Special Needs Rate for Licensed Child Care Homes and Centers, to the applicant. ■ 9

(4) **Request date.** The request date, known as the application date for other Adult and Family Services programs, is the date the applicant requests subsidized child care benefits verbally or in writing. ■ 10

(5) **Certification date.** The certification date is the date the applicant or the applicant's authorized representative completes the child care interview and provides all necessary verification to the county office, including the name of the child care provider the client chooses to use. ■ 11

(A) The provider must have a valid Oklahoma Department of Human Services (DHS) OKDHS child care provider contract.

(B) Refer to OAC 340:40-5-1(7) for reasons an applicant cannot choose certain child care providers.

(C) For applicants choosing an in-home provider, refer to OAC 340:40-13-1 and 340:40-13-2.

(6) **Child care interview.** Child care interviews may be completed face-to-face or over the phone with the applicant or authorized representative. ■ 12

(7) **Explanation of eligibility factors.** At the time of the initial interview, the worker informs the applicant or authorized representative of: ■ 13

(A) his or her rights and responsibilities;

(B) all factors of eligibility including the requirement that the chosen child care provider be contracted with DHS OKDHS;

(C) the child care plan and reason child care may be approved based on the applicant's statements at interview;

(D) the applicant's electronic benefit transfer (EBT) responsibilities including viewing the client training video; ■ 14

(E) the earliest date child care can be approved;

(F) the requirement to cooperate with the DHS OKDHS Office of Inspector General during any audit or investigation of the applicant or the provider the applicant uses for child care; and

(G) the requirement to report within 10-calendar days when household income exceeds the income eligibility threshold per DHS OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart. At certification and renewal, a computer-generated notice issues to inform the client of the current income eligibility threshold for his or her family size.

(8) **Timeliness.** To be considered timely, the worker must determine eligibility within two-business days of receiving all necessary verification to certify or deny the application.

(A) When the applicant does not provide requested verification, the worker denies the request within 30-calendar days of the request date.

(B) When eligibility is not determined within 30-calendar days, the worker sends Form 08MP038E, Client Notice of Action Taken, explaining the reason for delay.

(9) **Right to appeal.** The applicant has the right to appeal the untimely processing of a child care request or the decision of eligibility or ineligibility, per OAC 340:2-5.

(b) **Presumptive eligibility processing.** The worker may presumptively approve a maximum of 30-calendar days of child care prior to making a complete eligibility determination when a reason described in (1) of this paragraph subsection applies. ■ 15

(1) Reasons include, when the applicant:

(A) is in danger of losing a job or cannot start a new job unless child care is immediately approved. In this circumstance it must be out of the applicant's control to provide required verification and the applicant does not have the money to pay toward the cost of child care; ■ 16

(B) is employed but has not received pay from the job and is not guaranteed a wage because he or she is self-employed or works on a commission-only basis. Further care is not approved until the applicant provides proof he or she received earnings from the job; or ■ 17

(C) requests protective or preventive child care, per OAC 340:40-7-8(f); or

~~(D) requests good cause for refusal to cooperate in pursuing child support with Child Support Services per OAC 340:40-7-9 and has not provided good cause proof yet. Further care is not approved until the applicant provides good cause proof that supports the good cause claim.~~ ■ 18

(2) The worker gives or sends the applicant Form 08AD092E, Client Contact and Information Request, to inform the applicant what he or she needs to provide before further care is approved. ■ 1918

(c) **Eligibility determination.** The worker determines the applicant's eligibility to receive child care subsidy benefits based on eligibility conditions, per OAC 340:40-7. The applicant must meet a need factor within 30-calendar days of the request date. After calculating family income, the worker uses DHS OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart, to determine if when the household meets the income eligibility threshold. ■ 2019 Refer to OAC 340:40-5-1(8) and 340:40-7-10 through 340:40-7-13 for information regarding income determination.

(1) **Applicant determined eligible.** The earliest date the worker approves subsidized child care benefits is the date the applicant completes the child care interview and provides all necessary verification to determine eligibility. The worker certifies the applicant for a 12-month eligibility period, per Section 98.21 of Title 45 of the Code of Federal Regulations. The applicant is responsible for child care used before the certification date.

(A) The client swipes attendance with his or her EBT card through a point-of-service machine at the child care facility.

(B) DHS OKDHS does not pay for care for any day the child attends child care when the client fails to swipe attendance, unless extenuating circumstances exist beyond the control of the client or provider. ■ 2120

(C) When the client fails to swipe attendance, he or she is responsible for any care provided that day and may be responsible for any absent day payment DHS OKDHS pays, when all of the days the child attended were recorded.

(2) **Applicant determined ineligible.** The worker denies the child care request or application when the applicant completes the application process and is determined ineligible, does not provide needed verification, or fails to cooperate in determining eligibility. ■ 2221

- (A) When the applicant is determined ineligible after completing the application process and providing necessary verification, a new application is required regardless of the original request date. ■ 2322
- (B) When the worker denies the application because the applicant did not provide required verification, including choice of provider, a new application is not needed when the applicant completes the application process and provides necessary verification within 60-calendar days of the original request date.
- (C) When the worker denies the application because the applicant fails to cooperate in determining eligibility, a new application is not required when the applicant cooperates within 30-calendar days of the original request date. ■ 2423

INSTRUCTIONS TO STAFF 340:40-3-1

Revised 3-1-199-15-21

- 1. (a) Child welfare specialists process applications made by:**
 - (1) a foster parent whether or not a payment is made. Refer to Oklahoma Administrative Code (OAC) 340:75-7-65 for Child Welfare Services (CWS) foster care child care requirements;**
 - (2) a foster parent of a child in tribal custody with an open resource in the Child Abuse and Neglect Information System also known as KIDS;**
 - (3) foster parents in the process of a trial adoption of the foster child in their care;**
 - (4) clients requesting protective/preventive care when CWS is working with the family and recommending protective or preventive child care; and**
 - (5) clients requesting care for a child placed in their home due to an Immediate Protection Plan or a Safety Plan.**
- (b) CWS adoption specialists process applications for trial adoptive families who are adopting a child in Oklahoma Department of Human Services (DHS) (OKDHS) custody that did not previously serve as the child's foster home.**
- (c) Adult and Family Services (AFS) workers process all applications for:**
 - (1) clients when a copayment must be determined;**
 - (2) children under Interstate Compact on the Placement of Children (ICPC). When a child is under an ICPC with another state, the local ICPC worker informs AFS staff when the foster family receives funds for child care from the other state. When funds are available for child care from the other state, the worker denies the application;**
 - (3) a tribal foster family when there is not an open resource in KIDS. The worker sends an email to daycare@okdhs.org notifying AFS Child Care Subsidy Unit staff of the approval. The email includes the case number, foster parent's name, and child's name. AFS Child Care Subsidy Unit staff then asks CWS resource program staff to determine why there is not an open resource in KIDS;**
 - (4) protective/preventive child care as long as there is not an open CWS case. This may occur when the family is not court involved but CWS staff contracts with an outside agency for Comprehensive Home-Based Services (CHBS). Refer to OAC 340:40-7-8(f) for information about processing AFS protective or preventive child care requests; and**

(5) clients whose children are in DHS OKDHS custody and on trial reunification with their parents. When children are in DHS OKDHS custody but on trial reunification with their parents, the parent's income is considered in determining the amount of the family share copayment.

2. When a change of payee is reported, the worker asks the client if the payee change is due to a temporary absence, per OAC 340:40-7-6(c). When the parent's absence is temporary, he or she is considered a household member and remains the payee. When the change is not considered temporary, the new payee must complete a new application.
3. When an adoptive child turns 6 years of age during an eligibility period, the child remains eligible until the next renewal. At renewal, a new application is required for the child.
4. (a) An authorized representative is a person who is knowledgeable of the household circumstances. The child care provider or a person working for the child care provider cannot be the authorized representative. The worker contacts the applicant to determine, if the:
 - (1) household freely requested the assistance of the authorized representative;
 - (2) household circumstances are correctly reported; and
 - (3) applicant understands that he or she is held liable for any overpayment resulting from erroneous information given by the authorized representative.

(b) The worker must enter information about the authorized representative in the Information Management System (IMS) using the computer transaction EBTU before an electronic benefit transfer (EBT) card can be issued.
5. Refer to OAC 340:40-7-6(c) when the ~~parent's absence of the parent~~ is temporary.
6. Only the minor parent's income and need factor is used to determine the child's eligibility for subsidized child care benefits. Refer to OAC 340:40-7-6(b).
7. The person acting on the parent's behalf must provide documentation from a professional, who is working with the parent, stating why the parent is incapable of completing the application or designating an authorized representative.
8. (a) A signature may be submitted in person, through a scanned document via email, fax, or okdhslive.org.
(b) An application submitted online through okdhslive.org is automatically copied to DislImage and is considered to have an electronic signature. A paper application is not required.
9. When approving a child with disabilities for child care, refer to OAC 340:40-7-3.1 for information on the approval process for the higher special needs rate at the chosen facility.
10. (a) Child care subsidy benefits may be requested verbally, in writing, or through okdhslive.org.
(b) The date of request is entered in the Family Assistance/Client Services (FACS) Eligibility Notebook, Child Care tab in the "Request Date" field E1 before an EBT card can be issued. When the worker certifies or denies benefits, the date of request is also entered in the FACS Eligibility Notebook, Auth. Daycare tab in the "Child Care Req Date" field K9.

- (c) When the child care request is mailed or left at the local county office or submitted through okdhslive.org, staff contacts the applicant the same day to explain that a child care interview must be completed and to advise what verification must be provided before care is approved. A phone interview is appropriate when it best meets the applicant's needs. When the worker cannot reach the client by phone, he or she sends Form 08AD092E, Client Contact and Information Request, to inform the applicant of the scheduled interview date and required verification. The worker documents all attempts to contact the client by phone in case notes.
- (d) The need for child care must be met within 30-calendar days of the request date.
- 11.(a) The only time the date of request and the date of certification are the same date is when the applicant completes a child care application, is interviewed, and provides all necessary verification on the same day. Refer to OAC 340:40-7 for eligibility factors the worker must verify before approving subsidized child care benefits. The applicant must also provide the name of the child care provider he or she plans to use before the certification date is determined.
- (b) When the applicant chooses an ineligible provider, the worker is responsible for immediately informing the applicant of the provider's ineligibility and that he or she must choose a contracted provider.
- (1) When the applicant chooses a child care provider with a pending **DHS OKDHS** contract, the worker must inform the applicant that:
- (A) the earliest date **DHS OKDHS** approves child care and payment to the provider is the day the provider's contract is granted; and
- (B) payment for any child care used prior to that date is the applicant's responsibility to pay.
- (2) The worker determines when a new contract is granted by entering in IMS: PCI, space, and the contract number. The date shown under "contract begin date" is the earliest date services may be approved.
- (c) The worker enters the date of certification in the FACS Eligibility Notebook in the Child Care tab, "Cert Date" field E2 and in the Auth. Daycare tab, "Begin/Change Date" field K45 when the applicant needs care on this date. When the applicant does not need care until a future date, the worker enters the future date in the "Begin/Change Date" field K45.
- (d) When the applicant provides all requested verification and the worker determines more verification is needed, the certification date entered is the date the applicant provides the initially requested verification.
- 12.(a) The worker completes the interview with the person who signs the application or the household's authorized representative. The applicant must designate the authorized representative in writing prior to the interview. The worker explores the applicant's eligibility for child care and informs the applicant of other **DHS OKDHS** programs for which the applicant may be eligible. The worker also arranges for the client to view the video, "EBT Child Care," explaining the EBT system.

(b) Local county staff makes every effort to interview the applicant on the date of request to inform the applicant what he or she must provide before child care is approved.

(1) When the applicant mails in or leaves Form 08MP001E, Request for Benefits, at the local county office without staying for an interview, staff attempts to contact the applicant that same day by phone to explain that a child care interview must be completed and to inform the applicant what verification must be provided before care is approved.

(2) When the worker reaches the applicant by phone and the applicant consents to the interview, the worker completes the interview, informs the applicant what verification is required to make an eligibility decision, and sends the applicant Form 08AD092E to request the verification.

(3) When the worker cannot reach the client by phone, he or she sends Form 08AD092E to inform the applicant of the scheduled interview date and required verification.

13.(a) The worker advises the applicant the child care plan may change depending on the documentation the applicant provides to verify the applicant's need for child care.

(b) The worker secures the applicant's signature and images the application. At the end of the interview upon request, the worker gives or mails a copy of the application to the applicant or the authorized representative.

(c) Refer to OAC 340:40-7 for information regarding conditions of eligibility, including need, and OAC 340:40-5 for information regarding completing a child care plan and which child care providers cannot be approved for subsidy payment.

(d) The worker gives or mails Form 08AD092E to the applicant when verification must be provided before subsidized child care benefits are approved. When Form 08AD092E must be mailed because the interview is conducted over the phone, the worker tells the applicant what verification is needed before mailing the form.

14. The video explains the:

(1) proper care and use of the client's EBT card;
(2) client's responsibility to swipe accurate attendance before DHS OKDHS helps pay for the child's care; and
(3) need to contact the worker immediately when a problem occurs so it may be resolved within 10-calendar days.

15. Refer to Presumptive Eligibility Coding | Quest for instructions on how to code the 30-calendar days.

16.(a) An example of verification that is beyond the applicant's control to provide includes instances when an employer refuses to verify income for an employee or DHS OKDHS until a paycheck is received. In instances such as this, the applicant must provide all other verification that is within his or her control. The worker uses the applicant's statement for the verification that is out of the applicant's control to provide.

(b) The applicant is not automatically assigned a zero, family share copayment because the presumptive eligibility process is used. The worker uses the

income processes in OAC 340:40-7-10 through 340:40-7-13 to determine what income counts and when. In the case of two-parent families, when one parent has worked for some time and the other parent is starting a new job, the worker counts the income of the parent who has been working to determine the family share copayment.

17. Refer to OAC 340:40-7-8(a) for information on self-employed individuals.
18. ~~The worker gives the client Form 08AD092E requesting proof of good cause and approves the child care request for 30-calendar days when the client provides all other required verification. When the client provides good cause proof, the worker and supervisor must agree with the good cause claim before approving further care.~~
19. (a) When the client provides verification within the 30-calendar day approval period or within 30-calendar days of closure, the worker reopens the child care. Refer to Presumptive Eligibility Coding | Quest for instructions on how to reopen care following a 30-calendar day presumptive eligibility approval.
(b) When the client does not provide required verification within 60-calendar days, child care remains closed.
(c) The worker does not approve a new presumptive eligibility period unless the client provides all requested verification from the last presumptive eligibility approval.
(d) After the worker receives income proof and realizes the family share copayment should have been higher for the presumptive eligibility period, he or she does not complete an overpayment unless the worker and supervisor believe the client intentionally provided incorrect information. In those instances, the worker sends an overpayment memo to AFS Benefit Integrity and Recovery.
20. (a) When a new application is required because of a payee change or when an adopted child turns 6 years of age per (a)(1)(C) or (D), the household must meet the income eligibility threshold per DHS OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart, even when the child received subsidized child care in the prior month.
(b) When the applicant is eligible for child care for the month of application because income from a new source is not considered, but is not eligible for the next month when income is considered, the worker uses the unfinished issuance process to approve child care benefits for the application month and closes child care benefits for the next month. For unfinished issuance coding instructions, refer to the Unfinished Issuance Examples & Coding article in Quest.
21. Circumstances beyond the control of the client or provider include, but are not limited to, some type of worker or system error.
22. (a) When the applicant is determined ineligible, the worker provides information and referral services that may help the family develop alternative arrangements, when requested.
(b) Refer to OAC 340:40-9-3 for notice requirements. The worker denies the child care request in the FACS Eligibility Notebook, Auth. Daycare tab by entering:

- (1) "Person Number" field K4;
- (2) "Action Taken" field K12;
- (3) "Reason" field K16;
- (4) "Child Care Req Date" field K9;
- (5) "Begin/Change Date" field K45; and
- (6) "Adult Day Services" field K95.

(c) When the child care provider's contract number is known and entered in "Contract Number" field K40, a notice computer-generates to both the applicant and the child care provider. When the contract number is unknown, a notice is computer-generated to the applicant only.

2322. Examples include when the applicant's income exceeds agency standards or the applicant does not meet a need factor within 30-calendar days of the request date.

2423. Examples include when the applicant misses the scheduled interview, refuses to cooperate with child support requirements, or requests cancellation of the application.

SUBCHAPTER 7. ELIGIBILITY

340:40-7-9. Mandatory pursuit Exploration and development of child support and other potential income

Revised 9-15-209-15-21

(a) Mandatory referral to Child Support Services (CSS). When one or both of the child's parents are absent from the home, the client must agree to pursue child support through CSS for all children who must be included in the same household, per Oklahoma Administrative Code (OAC) 340:40-7-6 before subsidized child care benefits are approved. ■■1

(1) When a CSS referral is required. The client is required to pursue child support for all children living in the home when one or both parents are absent, unless good cause exists per (2) or (6) of this subsection, including when:

- (A) the parent or caretaker is not requesting subsidized child care benefits for every child living in the home;
- (B) the client receives court-ordered child support; ■■2
- (C) there is a joint custody agreement and neither parent is ordered to pay support; ■■3
- (D) parental rights are terminated, except in the case of adoption, per Section 1-4-906 of Title 10A of the Oklahoma Statutes; ■■4
- (E) an additional child, whose parent is absent, is added to the household after certification; ■■5 or
- (F) one or both parents leave the home after certification. ■■6

(2) When a CSS referral is not required. The client is not required to complete child support forms when:

- (A) he or she is a foster parent to the child and the CSS referral was completed in the child's SoonerCare (Medicaid) case; ■■7
- (B) the client is an adoptive parent and provides proof of a single-parent adoption;

- (C) a parent is temporarily out of the home, per OAC 340:40-7-6(c) and is considered part of the household;
- (D) a child is not required to be considered part of the household, per OAC 340:40-7-6; ■ 8 or
- (E) the client is a minor parent; ■ 9

(3) **Required forms.** The worker makes the referral to CSS by completing with the client Form 08TA001E, Absent Parent (AP) Information Sheet, for each absent parent. ■ 10 The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, per (6) of this subsection. The worker gives the Oklahoma Department of Human Services (DHS) Appendix C-16, Child Support Services and Responsibilities, to the client. The form explains CSS services and client expectations. The worker sends copies of legal documents concerning custody or child support to the appropriate CSS district office.

(4) **Oklahoma Centralized Support Registry (CSR).** After approval, the client must send all future child support payments to the CSR. DHS Appendix C-16 contains the CSR address. CSR returns the child support payments to the client unless the client receives Temporary Assistance for Needy Families, per OAC 340:10-10-7.

(5) **Paternity establishment.** When the worker is able to contact the alleged father, the worker asks him if he is willing to acknowledge paternity. When the alleged father agrees to acknowledge paternity, the worker gives or sends him Form 03PA209E, Acknowledgment of Paternity, to review. The worker advises him to contact CSS at the phone number on the back of the form when, after review, he is willing to sign the form.

(6) **Good cause.** Good cause for refusal to cooperate in pursuing child support may be granted when cooperation is not in the child's or parent's best interest. DHS may continue to pursue child support when CSS determines child support activities may be safely conducted without the client's cooperation.

- (A) The client must sign Form 08TA012E, Cooperation Agreement and Request for Good Cause, and state if he or she wants to request good cause:
 - (i) at the time of the initial application;
 - (ii) at the time of an additional child request; or
 - (iii) when the recipient wants to request for good cause after certification.

(B) The worker does not deny, delay, or discontinue subsidized child care benefits pending a good cause determination when the applicant or recipient furnishes evidence or information supporting the good cause claim. ■ 11

(C) DHS determines the client has good cause for refusing to cooperate only when:

- (i) there is possible physical or emotional harm to the child;
- (ii) there is possible physical or emotional harm to the parent or caretaker;
- (iii) the child was conceived as a result of incest or forcible rape;
- (iv) legal proceedings for adoption of the child are pending before a court; or
- (v) the client is currently being assisted by an attorney or a public or licensed private social agency to decide whether to keep the child or relinquish the child for adoption.

(D) The applicant or recipient claiming good cause is responsible for supplying documentary evidence to establish the claim or furnishing sufficient information to permit DHS to investigate the good cause claim. Uncorroborated statements of

~~the applicant or recipient are not acceptable documentation. The evidence must be of probative value and supported by written statements to the extent possible. Acceptable documentation may include:~~

- ~~(i) a birth certificate or a medical, or law enforcement report that indicates the child was conceived as a result of incest or forcible rape;~~
- ~~(ii) court documents or other records indicating legal adoption proceedings are pending before a court of competent jurisdiction;~~
- ~~(iii) court, medical, child protective services, social services, psychological, or law enforcement records indicating the alleged father or non-custodial parent might inflict physical or emotional harm on the child or caretaker;~~
- ~~(iv) medical records or a written statement from a licensed mental health professional indicating that the parent or caretaker or the child suffered emotional harm due to the non-custodial parent's actions. A licensed mental health professional is a person who possesses the training, qualifications, and professional recognition in a mental health related field and has a license issued by the appropriate state board;~~
- ~~(v) a written statement from an attorney or a public or licensed private social agency that states the applicant or recipient is being assisted to decide whether to keep the child or give the child up for adoption; and~~
- ~~(vi) statements from persons other than the client with knowledge of the circumstances that provide the basis for the good cause claim, except in the case of adoption.~~

~~(E) Upon request, the worker helps the client obtain applicable documentary evidence listed in (D)(i) through (vi) of this subsection. The client must specify the type of document or record needed and provide sufficient identifying information to make it possible for the worker to obtain the documents.~~

~~(b) Failure to cooperate in the pursuit of child support.~~ ~~Failure to cooperate in pursuit of child support without good cause may be indicated at the time of application or at any time further action by the client is necessary.~~

- ~~(1) Actions indicating failure to cooperate include refusals to:~~
 - ~~(A) identify and assist in locating a known parent;~~
 - ~~(B) establish paternity; or~~
 - ~~(C) establish, modify, or enforce a support order.~~
 - ~~(2) When at application the client refuses to cooperate, the worker denies the child care subsidy application.~~
 - ~~(3) When an applicant applies for subsidized child care and is in non-cooperation status with CSS, the applicant must verify cooperation with CSS before the worker approves subsidized child care benefits.~~
 - ~~(4) When, after certification, CSS informs the worker the client is not cooperating, the subsidized child care benefits remain open until the child care renewal is due. At renewal, the worker reviews the client's cooperation with CSS. When the client is not cooperating, further care is not approved. ■ 12~~
- ~~(c) Cooperation with CSS following denial or closure of the subsidized child care benefits.~~** ~~The client must verify that he or she is cooperating with CSS before the worker approves subsidized child care benefits following a denial or closure based on non-cooperation with CSS. ■ 13~~

~~(1) When the client cooperates with CSS and notifies the worker of the cooperation within 30 calendar days of the:~~

- ~~(A) denial of subsidized child care benefits, the client is not required to file a new application before benefits may be approved; or~~
- ~~(B) closure of the subsidized child care benefits, the worker reopens the benefits back to the closure date. ■ 14~~

~~(2) When the client does not cooperate with CSS or cooperates, but waits to inform the worker of the cooperation for more than 30 calendar days from the denial or closure date, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification, per OAC 340:40-3-1.~~

(d) Exploration and development of potential income other than child support.

The worker explores potential sources of income, such as Social Security benefits, Supplemental Security Income (SSI), child support, unemployment benefits, veteran's benefits, and increased wages with the client at the time of application and each renewal for all members of the household whose income must be considered, per Oklahoma Administrative Code (OAC) 340:40-7-6. ■ 151 The client must apply for, or continue to pursue, all potential sources of income for which it appears likely he or she may be eligible, except for SSI and child support, before the next child care renewal is due. The client is encouraged, but not required, to apply for SSI when the client indicates a household member has a disability. Similarly, the client is encouraged, but not required, to pursue child support when a parent is absent from the home.

(1) When the client refuses to pursue available income at the time of request, the worker denies the child care request.

(2) When the client agrees to pursue all potential income and fails to do so within the 12-month eligibility period, further care is not approved at renewal. ■ 162

(3) When the client is approved for the potential income or offered a pay raise within the 12-month eligibility period and refuses to accept it, further care is not approved at renewal.

(4) When the client's rate of pay or number of hours worked decreases, the worker explores why the decrease occurred. When the client requested the decrease to avoid a family share copayment increase or to maintain eligibility, the worker closes the subsidized child care benefits at renewal. ■ 173

(5) At each renewal, the worker determines whether the client continues to pursue potential income.

(A) When the client begins receiving previously identified potential income, the worker adds the income to the case although the system does not decrease the benefit until renewal.

(B) When the client was not approved for the income, the client must verify this. The worker records in the case record the verification provided and stops exploring this potential income with the client.

(C) When the client stops pursuing potential income and was not determined ineligible for the income, further care is not approved at renewal.

(6) When the client's subsidized child care benefits close at renewal because of failure to pursue potential income, the client must verify receipt or pursuit of such income or that such income is no longer potentially available before child care may be approved.

(A) When the client verifies cooperation within 30-calendar days of the closure of subsidized child care benefits, the worker may reopen the benefits back to the date they were closed without imposing a penalty. ■12

(B) When the client does not cooperate or waits to verify cooperation for more than 30-calendar days from the date the subsidized child care benefits close, the client must complete a new application before care is approved. The earliest date subsidized child care benefits may be approved is the date the client completes a child care interview and provides all necessary verification, per OAC 340:40-3-1.

INSTRUCTIONS TO STAFF 340:40-7-9

Revised 9-15-209-15-21

- 1. When the child is a sibling to other children that must be included in the child care household, the client must be willing to pursue child support for all children in order to be eligible for subsidized child care benefits for some of the children.**
- 2. When the client receives court ordered child support, he or she must complete required child support forms. Once the electronic referral is sent to Child Support Services (CSS), the client may call CSS and request the child support case be closed because he or she is receiving court ordered child support. CSS staff decides whether the child support case may be closed without penalty to the client. When CSS staff decides no penalty is required, CSS staff closes the child support case.**
- 3. When there is a court order stating child support was not ordered, CSS staff determines whether the order is being followed as written and if it is feasible to pursue support. CSS closes the child support case when staff determines it is not feasible to pursue child support.**
- 4. The termination of parental rights does not eliminate the obligation of either parent to provide financial support for his or her minor child. Per Section 14-906 of Title 10A of the Oklahoma Statutes, termination of parental rights affects the parent's rights, not his or her responsibility to support the child except in the case of adoption.**
- 5. When one or both of the child's parents is absent from the home, the worker informs the client that he or she must complete the required child support forms prior to adding the child to the child care benefits. When the client does not complete the required forms, the worker closes child care benefits for all siblings of this child at renewal.**
- 6. When one parent leaves the home, Form 08AD092E, Client Contact and Information Request, is sent to schedule an appointment to complete required child support forms. When both parents leave the home, a new child care application is required that would include completion of child support forms.**
- 7. The worker documents in Family Assistance/Client Services (FACS) Case Notes the case number where child support is being pursued and cross references that case number on the system.**

8. When a client's household consists of his or her own children and other children, such as nieces, nephews, or grandchildren and the client only wants child care for the other children, the client is not required to pursue child support for his or her own children.
9. When the minor parent turns 18 years of age, he or she must pursue child support at the next renewal.
10. The worker enters information from Form 08TA001E, Absent Parent (AP) Information Sheet, in the Deprivation tab of the FACS Interview Notebook. The client must give enough information so that the electronic referral crosses over to CSS. Required entries in the Deprivation tab include:

 - (1) the "name of the absent parent" field I4. This may be shown as unknown;
 - (2) "sex" field I13;
 - (3) "deprivation factor" field F48;
 - (4) "client assignment of child support" field I25. This is marked "refused to assign support" for child care;
 - (5) "cooperation" field I26. This is marked as "agreed to cooperate" or "pending determination of good cause";
 - (6) "person number for the child" field I61; and
 - (7) "absent parent legal status" field I64.
11. (a) When the client requests good cause, the worker:

 - (1) clicks on the "absent parent information" button within the Deprivation tab in the Interview Notebook of FACS and updates the "cooperation" field to indicate good cause is pending;
 - (2) documents the circumstances in case notes;
 - (3) gives the client Form 08AD092E requesting proof of good cause; and
 - (4) approves the child care request for 30 calendar days pending receipt of proof of good cause when the client provided all other required verifications.
 - (i) When the client provides good cause proof within the 30 calendar day approval period or within 30 calendar days of closure, the worker reopens the child care.
 - (ii) When the client provides good cause proof more than 30 calendar days following closure, the client must complete a new application.
- (b) After the client provides proof, the worker and supervisor evaluate all evidence to determine whether good cause is justified. The worker completes Sections I, II, and III of Form 08TA009E, Good Cause Report, checks whether good cause claim is valid, and forwards Form 08TA009E and documentation supporting the good cause claim to the appropriate CSS district office.
- (c) CSS staff reviews the evidence and the worker's recommendation, completes Section IV giving his or her recommendation, and returns the form to the local county office.

 - (1) When local county staff and CSS district office staff agree with the client's claim for good cause, the worker updates the appropriate entries in the "absent parent information" button located within the Deprivation tab of FACS to indicate good cause approval.
 - (2) When local county staff and CSS district office staff do not agree with the client's claim of good cause, the worker informs the client good cause is not

~~approved. When the client continues to refuse to cooperate, the worker closes the child care benefit at renewal. The worker updates the "cooperation" field located within the "absent parent information" button of the FACS Deprivation tab to indicate the client refuses to cooperate.~~

~~(3) When the client agrees to cooperate at this point, the worker and client sign a new Form 08TA012E, Cooperation Agreement and Request for Good Cause, and the worker updates the "cooperation" field located within the "absent parent information" button of the FACS Deprivation tab to indicate the client agrees to cooperate.~~

~~(4) When local county staff and CSS district office staff do not agree on the determination of good cause, CSS staff submits all pertinent information including Form 08TA009E to Adult and Family Services (AFS) Child Care Subsidy where a final determination regarding good cause is made. CSS and AFS staff make every effort to reconcile decisions before referring the decision to AFS Child Care Subsidy. AFS Child Care Subsidy staff returns Form 08TA009E with Section V completed to the worker for appropriate action and sends a copy to the CSS district office.~~

~~(d) When the client reapplys for child care and good cause was previously approved, the worker interviews the client to determine if any changes have occurred from the circumstances that resulted in the previous good cause determination.~~

~~(1) When there are no changes, the worker completes Sections I, II, and III of Form 08TA009E and forwards it to the CSS district office.~~

~~(2) When changes occurred that may affect the good cause determination, the worker asks the client to furnish sufficient documentary evidence to substantiate the reported changes. Upon receipt of the documentation, the worker completes Sections I, II, and III of Form 08TA009E, attaches a copy of the documentation, and forwards it to the CSS district office.~~

~~(e) At each child care renewal, the worker asks the client whether any circumstances have changed regarding good cause.~~

~~(1) When circumstances have not changed, the worker takes no further action regarding good cause.~~

~~(2) When it appears circumstances have changed and good cause may no longer exist, the worker completes the AFS portion of Section VI of the original Form 08TA009E, attaches documentation of the change(s) to Form 08TA009E, and sends the information to the CSS district office for concurrence of the good cause consideration.~~

~~(3) When there is no Form 08TA009E in the case record, the worker completes Sections I and VI of a new Form 08TA009E. The CSS district office completes the CSS portion of Section VI and returns the form to the worker.~~

~~(4) When local county staff and CSS staff jointly agree that good cause no longer exists, the client is informed he or she must pursue child support through CSS or the child care benefit will be closed at renewal. When the client:~~

- ~~(A) agrees to cooperate, refer to (c)(2)(A) of this Instruction; or~~
- ~~(B) refuses to cooperate, refer to (c)(2)(B) of this Instruction.~~

~~(f) When the client requests child care for an additional child, the worker and client complete and sign Form 08TA012E for the additional child.~~

~~(1) When the client requests good cause and it is already approved for the additional child's non-custodial parent, the worker does not submit Form 08TA009E to CSS unless good cause circumstances changed. The worker updates the "cooperation" field located within the "absent parent information" button of the FACS Deprivation tab to indicate good cause for not cooperating was determined.~~

~~(2) When the client does not request good cause, but it was previously approved for this non-custodial parent, the worker follows appropriate procedures per (e)(2) of this Instruction.~~

~~(3) When the client requests good cause and it was not previously requested for the non-custodial, the worker follows procedures per (a) through (c) of this Instruction.~~

12.(a) The worker checks the client's current cooperation status at renewal by:

~~(1) first finding the client's family group number (FGN) by entering PY space and the clients Social Security number; ;~~

~~2) then entering CSML space FGN to locate the appropriate custodial parent (CP) for the case; and~~

~~(3) tabbing down to the appropriate CP, accessing the CCPI transaction by typing CCPI next to the FGN for the appropriate CP, and hitting enter. When the "cooperation" field is marked:~~

~~(A) Y, the client is cooperating; or~~

~~(B) O, the client is not cooperating and the subsidized child care benefits are closed.~~

~~(b) When the client is in non-cooperation status at renewal, no further care is authorized.~~

~~(1) When the worker:~~

~~(A) completes the renewal before negative action deadline in the renewal month, the worker closes the child care effective the last day of the current month using the reason code "failure to cooperate with child support requirements"; or~~

~~(B) does not complete the renewal until after negative action deadline, the child care benefit automatically closes on a 36S reason code. The worker sends the client Form 08MP038E, Client Notice of Action Taken, to inform the client of his or her ineligibility.~~

~~(2) The worker enters a FACS Case Note documenting the reason the subsidized child care benefits closed.~~

13. The worker checks the CCPI transaction to confirm cooperation before reopening the subsidized child care benefits. The "cooperation" field must show a Y before the penalty is lifted. If When CSS staff contacts the worker to confirm cooperation, but CCPI was not updated, the worker asks CSS staff to update the CCPI transaction before subsidized child care benefits are approved.

14. When the worker reopens the subsidized child care benefits more than 10 calendar days from the date of the closure action, the provider must submit a

~~manual claim. Refer to Oklahoma Administrative Code (OAC) 340:40-10-4(e) for information regarding the manual claim process.~~

- 151.** (a) The worker and the client jointly determine which sources of income may be available to the client and develop a plan to pursue identified potential income. The worker records the plan in the FACS Interview Notebook under the Child Care tab and in FACS case notes.
(b) Refer to OAC 340:40-7-8(a)(3) when the client is not making at least minimum wage and Instructions to Staff # 5 for information about counseling with the client to increase income.
- 162.** When the client does not provide verification that he or she is pursuing potential income at renewal, the worker closes the child care benefit. The only exception is when a person outside of the household receives Social Security benefits as the payee for a minor in the household. When the parent or caretaker does not take action to become the payee, the worker counts the total Social Security benefit as income rather than closing the child care benefit, per OAC 340:40-7-11(c)(2).
- 173.** When the client tells the worker he or she decreased pay to reduce the family share copayment or to remain eligible for child care, the child care benefit is closed at renewal. When the client tells the worker that pay was decreased for other reasons, the worker contacts the employer to confirm why the client's pay was decreased. The worker consults with his or her supervisor prior to closing the client's subsidized child care benefits for this reason. FACS Case Notes must clearly document why subsidized child care benefits were closed at renewal.

340:40-7-11. Sources of income considered

Revised 9-15-209-15-21

(a) Sources of income considered. Income may be received periodically or at irregular intervals. All income, unless specifically excluded, per Oklahoma Administrative Code (OAC) 340:40-7-12, is considered in determining monthly gross income. Income is classified as earned or unearned income. ■ 1

(b) Earned income. Earned income means total money earned by a person through the receipt of wages, salary, commission, or profit from activities in which the person is engaged as self-employed or as an employee. ■ 2 ~~Temporary disability insurance payment(s) and temporary workers' compensation payments are considered earned income when payments are employer funded and the person remains employed.~~

(1) **Wages.** Wages include total money earned for work performed as an employee including armed forces pay, commissions, tips, piece-rate payments, longevity payments, and cash bonuses before deductions, such as taxes, bonds, pensions, union dues, credit union payments, or cafeteria plans are subtracted. ■ 3

(A) Countable wages for military personnel include any allowance included on the earnings statement, such as the Basic Allowance for Housing (BAH) or Basic Allowance for Subsistence (BAS).

(B) Only the portion of the cafeteria plan the client controls, including any excess benefit allowance payments, is counted as income. ■ 4

(C) Reimbursements for expenses, such as a uniform allowance or transportation costs, other than daily commuting, are subtracted from the gross income.

(D) Payments made for annual leave, sick leave, or severance pay are considered earned income during the month such income is received whether paid during employment or at termination of employment.

(E) Wages that are garnished or diverted and paid to a third party are also counted as income.

(2) **S corporations.** When a household member is a shareholder in an S corporation, he or she may receive profits from the business in two ways; as a salary and/or as a profit share of the business. Both types of income are reported on the household member's personal income tax return. Salary income is considered as earned income and profit share income is considered as unearned income, per (c)(11) of this Section.

■ 5

(3) **Self-employment.** Self-employment income is calculated based on procedures listed in this subsection. ■ 6

(A) **Persons considered self-employed.** A person is considered self-employed when:

- (i) he or she declares himself or herself to be self-employed;
- (ii) there is an employer/employee relationship and the employer does not withhold income taxes or Federal Insurance Contributions Act (FICA), even when required to do so by law; or
- (iii) the employer withholds taxes and the person provides proof he or she files taxes as self-employed.

(B) **Records used and income calculation.** The worker uses the records described in (i) through (iii) of this subparagraph to calculate income. When the person reports a loss instead of a profit on the business, the worker does not deduct the loss from other household income.

(i) When the person filed a federal income tax return for self-employment income for the most recent year, whether the person's income is derived from his or her own business or from working for an employer, the worker uses the gross self-employment income shown on the person's federal income tax return, subtracts 50 percent of the income for claimed business expenses, and divides the income by 12 or the number of months the business has existed or the person started working for the employer, when less than 12 months. The worker verifies the person's start date with the employer when the person states he or she has not worked for the employer for at least 12 months.

(ii) When the person did not file an income tax return for the most recent tax year for his or her own business, the worker calculates self-employment income using the person's business records for the last 12 months or the number of months the business has existed when less than 12 months. When the client declares business expenses, the worker subtracts 50 percent of the gross self-employment income to arrive at the net profit.

(iii) When the person works for an employer, did not file a federal tax return as self-employed, and receives earnings from an employer, the person must provide proof of the last 12 months of income from the employer. The worker divides the gross income by 12 or the number of months the person worked for

the employer to determine monthly income. When the person declares business expenses, the worker subtracts 50 percent of the gross self-employment income before dividing the income by the applicable number of months to determine monthly income.

(C) **Profit sharing.** Households who operate S corporations, general or limited partnerships, or limited liability companies (LLC) may receive profit sharing that is reported on the household's personal income tax return.

(i) S corporation profit sharing is considered unearned profit sharing income. Refer to Oklahoma Administrative Code (OAC) 340:40-7-11(b)(2) and (c)(11) for information regarding S corporations.

(ii) Partnerships are unincorporated businesses with two or more partners. When a household member is a partner in a business, he or she is considered self-employed and not an employee of the business. Each partner receives a profit share from the business. When a business is considered a: ■ 7

(I) general partnership or LLC with a member-manager, each partner's share of the business income is shown as self-employment income on his or her federal income tax form; or ■ 8

(II) limited partnership or other LLC member, each partner's share of the business income is shown as self-employment income or unearned profit sharing income on his or her federal income tax form. ■ 9

(D) **Monthly self-employment income.** Self-employment income received on a monthly basis is normally averaged over a 12-month period. When the averaged amount does not accurately reflect the household's actual monthly circumstances because the household experienced a substantial increase or decrease in income, the worker calculates the self-employment income based on anticipated earnings. ■ 10

(E) **Seasonal self-employment.** Self-employment income intended to meet the household's needs for only part of the year is averaged over the period of time it is intended to cover. ■ 11

(F) **Annualized self-employment income.** Self-employment income that represents a household's annual support is averaged and annualized over a 12-month period, even when the income is received in a short time period.

(i) When the average annualized amount does not accurately reflect the person's actual monthly circumstances because the person experienced a substantial increase or decrease in income, the worker calculates the self-employment income on anticipated earnings.

(ii) The worker does not calculate self-employment income on the basis of prior earnings, such as income tax returns, when an increase or decrease of business has occurred. ■ 10

(iii) When the person received the self-employment income for less than 12 months, the worker averages the income over the applicable number of months and projects the monthly amount for the coming year. ■ 12

(G) **Rental property income.** Rental property is considered self-employment income. ■ 13

(H) **Room and board income.** Payments from roomers or boarders are considered self-employment when the roomer or boarder pays a reasonable amount.

(4) **On-the-job (OJT) training.** Earned income from regular employment for OJT is considered earned income. This includes OJT provided, per Section 3(44) of the Workforce Innovation and Opportunity Act (WIOA), for persons 19 years of age and older. This does not include classroom or institutional training or WIOA-sponsored intern assignments, even when an hourly amount is paid for such training, per OAC 340:40-7-12(25)(G). ■ 14

(5) **Title I payments of Domestic Volunteer Services Act (DVSA).** Payments under Title I of the ~~Domestic Volunteer Services Act~~ DVSA of 1973 as amended, per Public Law 93-113, are considered income unless excluded, per OAC 340:40-7-12.

(6) **Children's earnings.** A minor parent's earned income is treated as adult earned income. Earnings of other children 17 years of age and younger who are under the parental control of an adult household member are excluded, per OAC 340:40-7-12.

■ 15

(7) **Sale of whole blood or plasma.** The sale of whole blood or blood plasma is considered as earned income.

(8) **Training allowances.** Training allowances from vocational or rehabilitative programs recognized by federal, state, or local governments, such as the work incentive program, to the extent they are not a reimbursement. Training allowances received under WIOA are excluded.

(c) **Unearned income.** Unearned income is income a person receives for which the person does not put forth any daily, physical labor. Types of income listed in paragraphs (1) through (10)(11) of this subsection are considered unearned income. ■ 16

(1) **Assistance payments.** Assistance payments include state means-tested programs, such as Temporary Assistance for Needy Families (TANF), including Supported Permanency benefits, State Supplemental Payment (SSP) to the aged, blind, or disabled, and Refugee Resettlement Program (RRP) cash assistance. ■ 17

(2) **Pensions, disability, and Social Security benefits.** Annuities, pensions, retirement benefits, disability benefits from either government or private sources, or Social Security survivor benefits are considered unearned income.

(A) When a minor child receiving Social Security benefits no longer lives with the payee receiving the Social Security benefits, only the portion of the child's Social Security benefit used to meet the minor child's needs is considered income. This may include cash given directly to the minor child or money paid to a third party for room and board for the minor child.

(B) The parent or caretaker or, when appropriate, the minor child must take action to become the payee within the 12 month eligibility period, per OAC 340:40-7-9(d). When the parent, caretaker, or minor child does not take action by renewal, the worker counts the total Social Security benefit as income.

(3) **Supplemental Security Income (SSI).** SSI is considered unearned income. ■ 18

(4) **Unemployment and workers' compensation.** Income from unemployment insurance benefits or workers' compensation is counted as unearned income.

(5) Child support, court-ordered or third party paid child care, and alimony. Child support, child care payments, and alimony payments, whether court-ordered or voluntary, made directly to the household from non-household members are counted as unearned income. ■ 19

(A) When a child care payment is paid directly to the child care provider, it is not considered income for the client.

(B) When the absent parent reports he or she is paying a portion of the client's family share copayment to the child care provider, the only action taken by the worker is to record this in the case record.

(C) When the absent parent or another third party, such as an employer, is making a payment to the provider in addition to the client's copayment, it is considered an additional copayment that must be met before the Oklahoma Department of Human Services (DHS) makes a subsidy payment to the provider. ■ 20

(D) Any other payment made to a third party for a household expense must be considered as income when a court order directs the payment be made to the household. Payments for medical support are excluded.

(6) Veterans' compensation, pensions, or military allotments. Disability compensation, military allotments, servicemen dependent allowances, and similar payments are considered unearned income. ■ 21

(7) Contributions. Appreciable contributions recurrently received in cash are considered unearned income except when the contribution is not made directly to the client. To be appreciable, a contribution must exceed \$30 per calendar quarter per person.

(8) Dividends, interest, minerals, and royalties. Dividends, interest income, income from minerals, royalties, and similar sources are considered unearned income. When income from these sources is received irregularly or in varied amounts, it is averaged over 12 months. Income from royalties is treated as unearned, self-employment income, subject to (b)(2) of this Section.

(9) Lump sum payments. Recurring lump sum payments, including income from earnings, are averaged over the period they are intended to cover. ■ 22

(10) Irregular income. Income received irregularly but in excess of \$30 per quarter is considered income unless it is from an excluded income source specifically mentioned at OAC 340:40-7-12. Countable irregular income is averaged over 12 months. ■ 23

(11) Profit sharing. When a household member is a shareholder in an S corporation or a partner in a limited partnership or an LLC, he or she may receive a distribution or profit share of the business. This is considered as unearned income. ■ 24

INSTRUCTIONS TO STAFF 340:40-7-11

Revised 9-15-209-15-21

1. (a) When a child is adopted through the Oklahoma Department of Human Services (DHS) (OKDHS), refer to Oklahoma Administrative Code (OAC) 340:40-7-12(6) to determine whether to exempt household income for the child.
(b) When a child attends an Early Head Start-Child Care Partnership grant program or an Oklahoma Early Childhood Program, refer to OAC 340:40-7-12(7) to determine whether to exempt household income.

- (1) All sources of income must be considered and the client determined eligible, per DHS OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart, prior to exempting the household income.
- (2) To exempt income when determined eligible, the worker enters all household income in the "total diverted income" field E47 on the Family Assistance/Client Services (FACS) Child Care Tab.
2. When the client does not earn at least minimum wage, refer to OAC 340:40-7-8(a)(3) to determine if the client meets the need factor for employment.
 3. The worker averages wages over a minimum of the last 30-calendar days unless wages are not indicative of future earnings. Refer to OAC 340:40-7-13 for information on computing income. The worker records income information in the FACS Interview Notebook under the Income tab.
 4. When the employer adds money to the employee's gross income as a benefit allowance to pay for a reimbursable expense, such as insurance, the worker counts the regular gross earnings plus excess money left after deducting the insurance or other reimbursable expense from the benefit allowance. For example, when a person:
 - (1) receives a \$300 benefit allowance to purchase insurance and uses the entire amount to purchase the insurance, none of the benefit allowance is counted as income;
 - (2) receives a \$300 benefit allowance but only purchases \$280 in insurance, the worker counts the remaining \$20 as income;
 - (3) has an option of purchasing insurance with a \$300 benefit allowance when purchasing insurance or receiving \$150 of the \$300 benefit allowance as cash when not purchasing insurance, the worker counts the \$150 as an excess benefit allowance, when the person chooses not to purchase insurance; or
 - (4) receives any excess benefit allowance at the end of the year instead of monthly, the worker excludes the one-time payment as income as it is considered a non-recurring lump sum payment, per OAC 340:40-7-12(1).
 5. Shareholders of S corporations complete Form 1120-S, U.S. Income Tax Return for an S Corporation with Schedule K-1, Shareholder's Share of Income. When the household member is a shareholder and receives a salary from the business, the household member must supply a copy of his or her W-2, Wage and Tax Statement. Line 1 on Form W-2 shows the household member's annual wages for the tax year. To calculate the household member's monthly income, the worker divides the income shown on line 1 by 12 or the number of months the S corporation existed during the tax year.
 6. (a) Capital gains income is excluded as income for subsidized child care benefits. Refer to OAC 340:50-7-30(b)(1) for food benefits.
(b) Persons who own an interest in a corporation do not qualify for the business expense deduction as they do not have individual business expenses.
(c) Income tax documents provide acceptable documentation of self-employment income and expenses. Income tax return forms include, but are not limited to:

- (1) Form 1040 with Schedule C, Profit or Loss From Business (Sole Proprietorship), for sole proprietors and some limited liability companies. The worker uses the gross income shown on line 3 of Schedule C as the household's annual self-employment income. The worker divides the income by 12 or the number of months the business existed in the tax year to arrive at the monthly gross income and allows a 50 percent deduction for claimed business expenses;
- (2) Form 1065, Partnership Return of Income, with Schedule K-1. Refer to Instructions 7 through 9 of this Section for calculation information; and
- (3) Form 1040 with Schedule F for farmers. The worker uses the gross income shown on line 9 of Schedule F to determine farm income and line 34 to determine the net loss or profit of the farm. When line 34 shows a profit, the worker uses line 9 and determines net monthly income the same as all other self-employment income.
- (d) The worker subtracts the 50 percent business expense deduction before entering the net self-employment income in the "Monthly Self-Emp Income" field of the FACS Income tab. No entry is made in the "Monthly Business Expense" field.
- (e) The worker documents in FACS Case Notes how the countable income was calculated.
7. The worker looks at line G on Schedule K-1 (Form 1065), Partner's Share of Income, to determine if a partnership is a general partnership/limited liability company (LLC) member-manager or a limited partnership/other LLC member.
8. When the household member is a partner in a general partnership or LLC member-manager, the worker adds together the income shown on lines 1, 4, and 14C of Schedule K-1 (Form 1065) to determine his or her annual gross self-employment income. The worker subtracts 50 percent of the income for business expenses and divides the remaining income by 12 or the number of months the business existed in the tax year to arrive at the household member's gross monthly self-employment income. The worker codes the income in the Income Tab of the Family Assistance/Client Services (FACS) as self-employment and documents income calculations in FACS case notes.
9. (a) When the household member is a partner in a limited partnership or other LLC member, the worker adds together the income shown on line 4 and line 14C of Schedule K-1 (Form 1065) to determine his or her annual gross self-employment income. The worker subtracts 50 percent of the income for business expenses and divides the remaining income by 12 or the number of months the business existed in the tax year to arrive at the household member's gross monthly self-employment income. The worker codes the income in the Income tab of FACS as self-employment and documents income calculations in FACS case notes.
- (b) The worker uses the 'ordinary business income' shown on line 1 of Schedule K-1 and divides the income by 12 or the number of months the business existed in the tax year to arrive at the household member's monthly gross unearned income from profit sharing.

- 10.(a)** When the client states that his or her income increased or decreased, the worker uses whatever income is representative of future earnings to determine the family share copayment.
- (b)** When the client has not received income from the self-employment income source, no income is considered, per OAC 340:40-7-10, until the client receives income. When the client has not received income, refer to OAC 340:40-3-1(b) for 30-calendar day presumptive eligibility processing.
- (c)** To average the income and expenses for self-employment income received for less than a full year, the worker divides the total income by the number of months received. For example, when the client receives self-employment income from February 18 to the application month of November, the worker averages the income for nine months, from February through October. It is correct to count the first month the client receives income through the last complete month when computing an annualized figure for a new self-employment income.
- (d)** The worker documents in FACS Case Notes how income was calculated and why the full 12-month average was not used.
- 11.(a)** This may occur when a person is self-employed only during the summer months and works as an employee for someone else during the rest of the year, the worker averages the self-employment income only for the summer months.
- (b)** When this income is from a new source and no income has been received, income is not counted from this source until income is received. When the client had this same seasonal business the prior year, the worker anticipates income for the first month based on the prior year's income records unless it is not representative. The worker records documentation about how income is calculated in FACS Case Notes.
- 12.(a)** When the person is considered self-employed as a contract laborer, receives a set salary that does not vary, and has been employed for a period of time where sufficient data is available from the employer to make a reasonable income projection, but not sufficient to annualize income, earnings are anticipated by multiplying the amount received by the appropriate conversion factor. For example, the client starts a new self-employment contract labor job and he or she works 40 hours per week at \$10 per hour, and received two weekly checks in the amount of \$400 each. The month is not over, but the employer states the person will continue to be paid \$400 per week. It is correct to use $\$400 \times 4.3$ to anticipate the person's monthly income.
- (b)** At renewal, the worker averages the income over the number of months received until a full year's information is available.
- 13.** Income from rental property is considered self-employment income whether the client or an outside source manages the property. There is no minimum number of hours the client must manage the property for the income to be considered self-employment. The client is eligible for a 50 percent business expense when the client claims expenses, such as the mortgage of the rental property. Example: A client collects rent of \$900 per month from a rental property and pays a \$650 mortgage payment on the property. Since the client has business expenses, the worker considered 50 percent of the \$900 as countable income

and enters self-employment earned income of \$450 in the 'self-employment' field in the Income tab of the FACS Interview Notebook. The worker also enters a FACS case note explaining income calculations.

14. This provision does not apply to household members 18 years of age and younger under the parental control of another adult household member, regardless of school attendance. For the purpose of this provision, earnings include monies paid under the Workforce Innovation and Opportunity Act and monies paid by the employer.
15. A child turning 18 years of age is considered an adult for child care purposes. When the child is a sibling to the child needing subsidized child care benefits, the 18 year old sibling's income is not counted. Refer to OAC 340:40-7-6 regarding household composition and income consideration, and OAC 340:50-5-1 regarding who must be included in a household for food benefits.
16. Refer to OAC 340:65-3-4 regarding ways to verify and document unearned income.
17. Recipients of these assistance programs are predetermined eligible with a zero family share copayment for the subsidized child care benefits, per OAC 340:40-7-1.
18. (a) A recipient of Supplemental Security Income (SSI) is predetermined eligible with a zero family share copayment for subsidized child care benefits, per OAC 340:40-7-1.
(b) The worker considers the SSI income and counts the child in the family size when determining the family share copayment for other household members.
19. (a) The worker obtains copies of any established court orders.
 - (1) When the client states he or she receives any of these types of income, the worker speaks to the person providing this assistance or obtains a written statement from the person regarding dates and amounts of all payments made within the last 60-calendar days.
 - (2) When the client receives sporadic or varying amounts of support, the worker may average income over a longer period of time and document his or her reasoning in FACS Case Notes.
(b) To determine if these payments are paid through Child Support Services, the worker uses the Information Management System (IMS) and enters Social Security number (SSN) space and the client's SSN to find the family group number (FGN). The worker enters CSML space FGN to display the "case status monitoring list." The worker tabs down to the custodial parent (CP) who is the payee for the child care benefit, types KI1 next to the CPs name, and presses enter to view a list of payments received. For an explanation of the FGN enter M space CSMLDATA; and for information on using transaction KI1, enter M space KI1.
(c) The worker codes child support income on the child for whom it is received when the child is considered a household member. When the client receives child support for a child not included in the household, it is coded as a contribution to the client. When child support income is received for the care and maintenance of a third party, refer to OAC 340:40-7-12(12).

- (d) When the non-custodial parent pays a portion of the client's family share copayment and the client receives food benefits, the portion the non-custodial parent pays is not considered a dependent care cost for the Supplemental Nutrition Assistance Program (SNAP), per OAC 340:50-7-31(b)(4).
- (e) The worker excludes money paid directly to household expenses that are not court-ordered. For information on how this income is considered for SNAP, refer to OAC 340:50-7-29(c)(3).
- 20.(a) When someone outside of the client's home pays a portion of the child care cost directly to the child care provider and states this money is in addition to the client's family share copayment, the worker enters this additional copayment in the FACS Eligibility Notebook under the Child Care tab, "Court-ordered" field E55. When a dollar amount is entered in field E55, DHS OKDHS does not make a payment to the child care provider until the family share copayment and the additional copayment is first applied to the cost of care.
- (b) The worker sends Form 08MP038E, Client Notice of Action Taken, to the client and the provider notifying them that an additional copayment is being paid by someone other than the client in addition to the client's family share copayment.
- (c) When the person stops paying the additional copayment, the worker removes the additional copayment from the "Court-ordered" field E55 and emails Form 10EB004E, Report of Electronic Benefits Transfer (EBT) Child Care Payment Adjustments, to the email address on the form to request an adjustment to the provider's pay.
21. Military benefits considered educational assistance are excluded.
- 22.(a) Non-recurring lump sum payments are excluded as income, per OAC 340:40-7-12.
- (b) Examples of recurring countable lump sum payments include gambling winnings received on a consistent basis where the client has an established gambling pattern, earnings received less often than monthly, sporadic payments of child support, or dividend payments.
23. An example of irregular income is gambling winnings that are received on a consistent basis where the client has an established gambling pattern.
- 24.(a) To calculate the household's profit sharing income from an S corporation, the worker uses the 'ordinary business income' shown on line 1 of the Schedule K-1, Shareholder's Share of Income, and divides the income by 12 or the number of months the business existed in the tax year to arrive at the monthly gross unearned income.
- (b) When a household member is a partner, the worker looks at line G on Schedule K-1, Partner's Share of Income that accompanies Form 1065, Partnership Return of Income, to determine the type of partnership. When it shows the business is a limited partnership or limited liability company, the worker uses the 'ordinary business income' shown on line 1 of Schedule K-1 and divides the income by 12 or the number of months the business existed in the tax year to arrive at the monthly gross unearned income. When line G shows the business is a general partnership, refer to OAC 340:40-7-11(b)(3)(C) to calculate the income as self-employment income.

(c) The worker codes the profit sharing income in the FACS Income tab and enters a FACS case note to document income calculations.

340:40-7-12. Sources of excluded income

Revised 3-1-199-15-21

Only the income listed in this Section is excluded in determining a household's eligibility for a child care benefit. No other income is excluded.

(1) Lump sum payments. One-time lump sum payments are excluded as income. Recurring lump sum payments are excluded as a countable income source unless specifically mentioned, per Oklahoma Administrative Code (OAC) 340:40-7-11.

(2) In-kind income. In-kind income is excluded as income. In-kind income is defined as any gain or benefit that is not in the form of money paid directly to the household. This includes non-monetary or in-kind benefits, such as meals, clothing, public housing, or produce from a garden. ■ 1

(3) Money received from the sale of property. Money received from the sale of property, such as stocks, bonds, or a house or car is excluded. This exclusion does not apply when the person is engaged in the business of selling such property. ■ 2

(4) Bank or trust account withdrawals. Money withdrawn from a bank or trust account is excluded as income even when used to meet current living expenses.

(5) Capital gains. The proceeds from the sale of capital goods or equipment are excluded.

(6) Household income for certain children adopted through Oklahoma Department of Human Services (DHS) (OKDHS). The income of all household members is exempt for a child only when conditions in (A) through (E) of this paragraph are met. ■ 3 The:

(A) child was adopted through DHS OKDHS or a federally-recognized Indian tribe, as defined by the Federal and Oklahoma Indian Child Welfare Acts, by the parent applying for benefits; ■ 4

(B) adoptive parent applying for benefits must provide: ■ 5

- (i) a fully executed Form 04AN002E, Adoption Assistance Agreement, listing child care as an adoption assistance benefit for the child;
- (ii) Form 04AN033E, Post Adoption Child Care Referral;
- (iii) the Final Decree of Adoption; and
- (iv) a form of identity;

(C) adoptive parent and child are Oklahoma residents;

(D) child is 5 years of age or and younger. When a child turns 6 years of age during the 12-month eligibility period, household income remains exempt until the next renewal; and

(E) adoptive parent meets an allowable need factor and provides proof, per OAC 340:40-7-7 and OAC 340:40-7-8. ■ 6 In a two-parent family, both parents must meet an allowable need factor.

(7) Household income when at least one child attends an Early Head Start-Child Care Partnership (EHS-CCP) grant program or an Oklahoma Early Childhood Program (OECP). The household income is exempt for all children in care when at least one child attends an EHS-CCP grant program or an OECP and the household

meets the income threshold, per DHS OKDHS Appendix C-4, Child Care Eligibility/Copayment Chart. ■ 7

(8) **Earnings of children.** The earnings of a person 17 years of age and younger who is considered a child in the case are excluded as long as the child attends school regularly. The exclusion continues to apply during temporary interruptions in school attendance due to semester or vacation breaks, provided the child's enrollment resumes following the break. When the child is a minor parent and the payee, the minor parent's earnings are treated as adult income. ■ 8

(9) **Irregular income.** Any income received too infrequently or irregularly to be reasonably anticipated is not counted unless it is in excess of \$30 per calendar quarter.

(10) **Reimbursements.** Reimbursements for past or future expenses not exceeding actual expenses are excluded. ■ 9

(11) **Tax refunds.** Exclude federal or state income tax refunds including Earned Income Tax Credit (EITC) payments. ■ 10

(12) **Money received for third parties.** Money received and used for the care and maintenance of a third party who is not a household member is excluded.

(13) **Loans.** All loans, including loans from private as well as commercial institutions, are excluded as income. When the household states someone is loaning the household money to meet expenses, a statement signed by both parties is required indicating the payment is a loan and must be repaid. When the household states it receives loans on a recurrent or regular basis from the same source, the lender must sign an affidavit stating the payments are loans that must be repaid or that payments will be made in accordance with an established repayment schedule.

(14) **Grants.** Grants obtained and used under conditions that preclude their use for current living costs are excluded.

(15) **Educational assistance.** Educational assistance is excluded as income and includes, but is not limited to:

- (A) work study;
- (B) scholarships;
- (C) fellowships;
- (D) educational loans when payment is deferred; and
- (E) veterans' education benefits.

(16) **Stipends.** Stipends paid to students participating in the Indian Vocational Education Program through the Carl D. Perkins Vocational and Applied Technology Education Act are excluded as income.

(17) **Service Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE).** Payment for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as foster grandparents, senior health aides, senior companions, and to persons serving in SCORE and ACE is excluded as income.

(18) **Government rent or housing subsidies.** Government rent or housing subsidies by government agencies received in-kind or in cash for rent, mortgage payments, or utilities are excluded as income.

(19) **Foster care payments.** Foster care payments received for a foster child in state or tribal custody are excluded as income.

(20) **Title IV E of the Social Security Act or State Adoption Subsidy.** Federal Federal- or state funded state-funded adoption subsidy payments made to adoptive parents are excluded as income.

(21) **Victims of Crime Act of 1984.** Payments made from the crime victims' compensation program as amended in Section 1402 of the Victims of Crime Act of 1984 and Section 10602 of Title 42 of the United States Code (42 U.S.C § 10602) are excluded as income.

(22) **Family Support Assistance Payment Program.** Family Support Assistance Payment Program payments paid to persons by DHS OKDHS Developmental Disabilities Services are excluded as income.

(23) **Vendor payments.** Vendor payments made directly to the household's creditors, a person, or an organization providing a service to the household, are excluded as income unless a court order or other legally binding agreement specifies the money is to be paid directly to the client. ■ 11

(24) **Money received by another household for a household member.**

(A) When a child spends part of the month in two separate households and receives countable income, the worker considers the portion of the income received by the household applying for or receiving a child care benefit as income and excludes the remainder. ■ 12

(B) When a minor parent is the payee and lives with a parent or caretaker, child support received for the minor parent is considered income for the parent or caretaker and not considered for the minor parent's child care benefit.

(25) **Money deposited into or withdrawn from a qualified Oklahoma Achieving a Better Life Experience (ABLE) Program account.** Money deposited into or withdrawn from a qualified ABLE Program account or an ABLE account in any other state owned by the designated beneficiary of the account and established to pay for qualified disability expenses (QDE) is excluded from income or resource consideration, per Sections 4001.1 through 4001.5 of Title 56 of the Oklahoma Statutes, or a qualified ABLE Program account set up in any other state, per and the ABLE Act of 2014 (26 U.S.C. § 529A), is excluded as income when the client. ■ 13
A person may have only one ABLE account.

(A) provides The client must provide documents to verify the account meets exemption criteria before the funds are excluded; Once the client verifies that the savings or trust account is a valid ABLE account, no further account information is required. ■ 13

(B) verifies money deposited in the A contribution to an ABLE account does not exceed by another individual is excluded unless the contribution exceeds the annual federal gift tax exclusion amount, per 26 U.S.C. § 2503(b). Any money deposited in the account in the calendar year that is in excess of the annual federal gift tax exclusion amount is considered as a countable income resource in the amount deposited; and

(C) verifies withdrawals from the account were used to pay qualified disability expenses A distribution from an ABLE account that is retained after the month of receipt is excluded in any month when spent on a QDE. Money withdrawn for reasons other than to pay qualified disability expenses a QDE is considered as income a countable resource for the month of withdrawal.

(D) A QDE is any expense related to the individual's blindness or disability and made for his or her benefit. QDEs include, but are not limited to:

- (i) education;
- (ii) housing;
- (iii) transportation;
- (iv) employment, training, and support;
- (v) assistive technology;
- (vi) health;
- (vii) prevention and wellness;
- (viii) financial management and administrative services;
- (ix) legal fees;
- (x) ABLE account oversight and monitoring;
- (xi) funeral and burial; and
- (xii) basic living.

(26) Income excluded by federal law. Income excluded by federal law is defined as:

- (A) payments received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (B) payments received:
 - (i) under the Alaska Native Claims Settlement Act, Public Law (P. L.) 92-203, § 21(a);
 - (ii) under the Sac and Fox Indian Claims Agreement, P.L. 94-189;
 - (iii) from the disposition of funds to the Grand River Band of Ottawa Indians, per P.L. 94-540;
 - (iv) by members of from the Indian Claims Commission to the Confederated Tribes and Bands of the Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation, per P.L. 95-433;
 - (v) under the Maine Indian Claims Settlement Act of 1980 to members of the Passamaquoddy and the Penobscot Nation, P.L. 96-420; or
 - (vi) by an individual as a lump sum or a periodic payment via the Cobell Settlement, per the Claims Resolution Act of 2010, P.L. 111-291; or
 - (vii) by members of the Navajo and Hopi Tribes for relocation assistance, per P.L. 93-531;
- (C) any payment to volunteers under Title II, Retired and Senior Volunteer Program, Foster Grandparents and others, of the Domestic Volunteer Services Act of 1973, P.L. 93-113 as amended. Payments under Title I of that Act, Volunteers in Service To America, University Year for Action, and Urban Crime Prevention Program, to volunteers are excluded only when the monthly amount, converted to an hourly rate, is less than the Oklahoma minimum wage; ■ 14
- (D) income derived from submarginal land of the United States held in trust for certain Indian tribes, per P.L. 94-114, Section 6;
- (E) Indian per capita payments distributed from judgment awards and trust funds made, per Section 2 of P.L. 98-64, 25 U.S.C. §§ 117b and 1407. For purposes of this paragraph, per capita is defined as each tribal member receiving an equal amount. Interest or investment income accrued on such funds while held in trust or any purchases made with judgment funds, trust funds, interest, or investment

income accrued on such funds is excluded. Any per capita payments, headrights of the Osage tribe, income from mineral leases or other tribal business ventures are excluded as long as the payments are paid per capita. Any interest or income derived from the funds after distribution is considered as any other income. The per capita exclusion applies per person rather than per family;

(F) income up to \$2,000 per year received by individual Indians derived from leases or other uses of individually-owned trust or restricted lands, is not counted as income. The income exclusion applies to calendar years beginning January 1, 1994. Any remaining disbursements from the trust or restricted lands are considered income;

(G) allowances, stipends, earnings, compensation in lieu of wages, grants, and other payments made for participation in the Workforce Innovation and Opportunity Act (WIOA) or other federally-funded workforce training program to persons of all ages and student status with the exception of income paid to persons 19 years of age and older for on-the-job training. This income is treated as any other earned income, per OAC 340:40-7-11(b)(4); ■ 15

(H) payments, allowances, or earnings to persons participating in ~~programs the AmeriCorps State and National program or the AmeriCorps National Civilian Community Corps program authorized under Title I of the National and Community Service Trust Act, of 1993.~~ Title I includes three Acts: Serve-America, The Community Service, Schools and Service Learning Act of 1990; the American Conservation and Youth Service Corps Act of 1990; and the National and Community Service Act. Most of the payments are made as a weekly stipend or for educational assistance. The Higher Education Service Learning Program and the AmeriCorps Umbrella Program come under this Title. This includes AmeriCorps income ~~42 U.S.C. § 12637(d), and other payments to volunteers authorized by the National and Community Service Trust Act of 1993, P. L. 103-82, 42 U.S.C. §§ 12571, et seq., and administered by the Corporation for National and Community Service;~~

(I) payments or allowances made under any federal law for the purpose of energy assistance, Low Income Home Energy Assistance Program (LIHEAP), and utility payments and reimbursements made by the Department of Housing and Urban Development (HUD) and the Farmers Home Administration (FmHA);

(J) the amount of the mandatory salary reduction of military service personnel used to fund the G.I. Bill;

(K) benefits from State and Community Programs on Aging, per Title III and Title V of the Older Americans Act of 1965 as amended by P.L. 114-144, Older Americans Act Reauthorization Act of 2016. Each state and various organizations receive Title V funds. ■ 16 These organizations include:

- (i) Experience Works;
- (ii) National Council on Aging;
- (iii) National Council of Senior Citizens;
- (iv) American Association of Retired Persons Foundation;
- (v) United States (U.S.) Forest Service;
- (vi) National Association for Spanish Speaking Elderly;
- (vii) National Urban League;

- (viii) National Council on Black Aging; and
 - (ix) National Council on Indian Aging;
 - (x) Asociación Nacional Pro Personas Mayores;
 - (xi) Associates for Training and Development, Inc.;
 - (xii) American Samoa;
 - (xiii) Easter Seals, Inc.;
 - (xiv) Goodwill Industries International, Inc.;
 - (xv) Institute for Indian Development;
 - (xvi) National Able Network;
 - (xvii) National Asian Pacific Center on Aging;
 - (xviii) National Caucus and Center on Black Aged, Inc.;
 - (xix) National Older Worker Career Center;
 - (xx) Operation A.B.L.E. of Greater Boston, Inc.;
 - (xxi) Senior Service America, Inc.;
 - (xxii) SER-Jobs for Progress National, Inc.;
 - (xxiii) Workplace, Inc.; and
 - (xxiv) VANTAGE Aging;
- (L) payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement In Re Agent Orange Product Liability Litigation, M.D.L. No. 381 (E.D.N.Y.);
- (M) payments received under the Civil Liberties Act of 1988. These payments are made to persons of Japanese ancestry who were detained in internment camps during World War II;
- (N) payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from exposure to radiation from nuclear testing and uranium mining;
- (O) payments received by a Supplemental Security Income recipient necessary for the fulfillment of a Plan for Achieving Self-Support approved under Title XVI Section 1612(b)(4)(A)(iii) or 1612(b)(4)(B)(iv) of the Social Security Act;
- (P) payments made to persons because of their status as victims of Nazi persecution under P.L. 103-286;
- (Q) payments made for the Experimental Housing Allowance Program under Annual Contributions Contracts entered into prior to January 1, 1975, per Section 23 of the U.S. Housing Act of 1937 as amended;
- (R) monetary allowances provided to certain children of Vietnam War veterans, per Chapter 18 of Title 38 of the United States Code;
- (S) federal funds distributed by Federal Emergency Management Assistance (FEMA) due to a disaster or emergency to persons directly affected by the event, per the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93-288 as amended, 42 U.S.C. § 5155(d). This exclusion also applies to comparable disaster assistance provided by states, local governments, and disaster assistance organizations. For payments to be excluded, the disaster or emergency must be declared by the President of the United States;
- (T) the value of the food benefit allotment under the Food and Nutrition Act of 2008;
- (U) the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food services program for children under the National School

Lunch Act of 1970, both as amended, per Omnibus Budget Reconciliation Act of 1981; and

(V) income received by a member of the United States Armed Forces, per 37 U.S.C. Chapter 5 and, per 273.9(c)(20) of Title 7 of the Code of Federal Regulations that is:

- (i) received in addition to the service member's basic pay during combat deployment;
- (ii) received as a result of the service member's deployment or service in an area designated as a combat zone as determined per Executive Order or P.L.; and
- (iii) not received by the service member prior to the service member's deployment to or service in a federally designated combat zone.

INSTRUCTIONS TO STAFF 340:40-7-12

Revised 3-1-199-15-21

1. Refer to Oklahoma Administrative Code (OAC) 340:40-7-11(c)(5) for court-ordered benefits.
2. Refer to OAC 340:40-7-11(b)(2) to address self-employment income.
3. (a) When all five conditions required, per OAC 340:40-7-12(6) are met, no income is considered for the child. The worker codes the adoptive parent in the Family Assistance/Client Services (FACS) Household Tab as 'Income and Resources not Considered for Benefit Computation – Individual not Included.' The worker must document in Family Assistance/Client Services FACS Case Notes why the income is excluded.
(b) When all five conditions required, per OAC 340:40-7-12(6) are not met, all household income is considered for the child, per OAC 340:40-7-6, and care may be approved for any need factor met in OAC 340:40-7-7 and 340:40-7-8.
(c) When the adopted child meets all five conditions required, per OAC 340:40-7-12(6), and other children in need of care are in the home that do not meet the conditions, separate cases must be established. Refer to OAC 340:40-5-1 Instructions to Staff (ITS) # 17 for separate case coding instructions.
4. The parent meets this condition by providing a copy of the Final Decree of Adoption.
5. When the parent does not have Form 04AN002E, Adoption Assistance Agreement, or Form 04AN033E, Post Adoption Child Care Referral, the parent contacts Child Welfare Services Post Adoption Services to obtain the forms.
6. OAC 340:40-7-8 describes type of proof required for each need factor. The worker must document proof provided and hours approved in FACS Case Notes.
7. (a) The household must be determined income eligible prior to exempting the income. The worker enters the entire household income in the "total diverted income" field E47 on the FACS Child Care tab to exclude the income. Refer to Quest article "Early Head Start – CCP Grant Facilities" for a list of EHS-CCP grant programs.
(b) When the child stops attending an Early Head Start-Child Care Partnership grant program or an Oklahoma Early Childhood Program, the worker removes

household income from the "total diverted income" field E47 on the FACS Child Care tab per Appendix B-2, Deadlines for Case Actions, advance notice deadlines.

8. For purposes of this provision, an elementary or secondary student also includes someone attending high school equivalency classes, provided the program is recognized, operated, or supervised by the student's state or local school district.
9. (a) Examples are reimbursements for:
 - (1) job or training related expenses, such as travel, per diem, uniforms, and transportation to and from the job or training site. When these expenses are not reimbursements, they are not deductible;
 - (2) out-of-pocket expenses incurred by volunteers in the course of volunteer activity;
 - (3) medical or dependent care; and
 - (4) services provided by Title XX of the Social Security Act.
- (b) When a reimbursement including a flat allowance covers multiple expenses, it is not necessary to identify each expense as long as none of the reimbursement covers normal living expenses. The worker counts the amount of the reimbursement that exceeds the actual incurred expenses. The worker does not consider a reimbursement to exceed actual expenses unless the provider or household indicates the amount is excessive.
- 10.(a) When the client receives advance payments of the federal earned income tax credit (EITC) in his or her payment, the advanced payment is excluded as income.
(b) Effective November 1, 2016, Section 2357.43 of Title 68 of the Oklahoma Statutes is revised to eliminate the Oklahoma EITC.
- 11.(a) To be considered an excluded vendor payment, the payment must not be made in lieu of directly paying the household back for money owed. Examples of vendor payments excluded as income are payments:
 - (1) made by a friend, employer, agency, church, relative, or former spouse directly to a vendor for household expenses, such as writing a check to the landlord for rent;
 - (2) made by an employer directly to the landlord or financial institution for the household's rent or mortgage, in addition to paying regular wages;
 - (3) made to a third party instead of the household when the payment arrangement is specified in a court order or other legally binding agreement; or
 - (4) allowances made by the Department of Housing and Urban Development (HUD) or by the Farmers Home Administration (FmHA) directly to mortgage holders, landlords, or utility providers.
- (b) An example of a vendor payment considered as income occurs when a court directs a non-custodial parent to pay \$400 in child support to the client, but the non-custodial parent pays \$200 to the client and \$200 directly to the landlord for rent. The worker counts \$400 as unearned income because the payment to the landlord was made using money owed to the household. When the court order

directs the non-custodial parent to make a payment directly to a vendor, the payment is excluded as income.

12. This may occur in certain joint or shared custody situations. When one parent receives the child's Temporary Assistance for Needy Families (TANF) benefit or a Supplemental Security Income (SSI) payment and does not give a portion of the income to the other parent, it is not counted as income for the other parent. When the parent gives a portion of the income to the other parent, only the portion available to each parent is considered as income for that parent.

13. (a) The Oklahoma State Treasurer is responsible for certifying an achieving a better life experience (ABLE) account. The program is Oklahoma STABLE and is administered through a partnership with Ohio's STABLE Accounts, backed by Intuition ABLE Solutions, LLC. Rules regarding an ABLE account include rules state:

(1) only persons whose disability was established before 26 years of age can set up ABLE accounts and one account is allowed per person;

(2) there is no limit to the number of persons who can contribute to the ABLE account; and

(3) upon the death of an ABLE participant, every dollar remaining in the account must qualified disability expenses (QDE) and funeral expenses may be paid from the account. All remaining funds in the account must be paid to the state Medicaid agency to repay costs of care received by the participant during life up to the amount of Medicaid paid after establishment of the ABLE account.

(b) Once the client provides documents that verify the account is a valid ABLE account, no further account verification is required. At application and renewal, the worker asks the client must provide proof from the financial institution of the dates and amounts of money deposited into and withdrawn from if the ABLE account in the last 12 months is still open and if he or she believes the deposits in, and expenditures from the account, are in compliance with the terms and requirements of that particular 529 account. Any amount in excess of the annual federal gift tax exclusion amount is countable income in the month deposited and as a resource for the following month. The current gift tax exclusion amount is \$15,000 per calendar year. The maximum balance allowed in the ABLE account is \$300,000. The client must verify, preferably from the financial institution, that any funds withdrawn were used for qualified disability expenses. Funds withdrawn and not used for qualified disability expenses are considered as income for the month of withdrawal. When the client answers yes, no further inquiry is needed.

(c) Qualified disability expenses means any expenses related to the eligible individual's blindness or disability and approved under Internal Revenue Code, Section 529A of Title 26 of the United States Code, that are made for the benefit of an eligible individual who is the designated beneficiary including, but not limited to, expenses for:

(1) education;

(2) housing;

(3) transportation;

- ~~(4) employment, training, and support;~~
- ~~(5) assistive technology and personal support services;~~
- ~~(6) health, prevention and wellness, and financial management and administrative expenses;~~
- ~~(7) legal fees;~~
- ~~(8) oversight and monitoring; and~~
- ~~(9) funeral and burial expenses.~~

14. Income from this source is excluded in determining food benefit eligibility even when the volunteer receives payment equal to or more than minimum wage, per OAC 340:50-7-22(5)(H).
15. Examples include, but are not limited to, income received from Youthbuild, Summer Youth, Job Corps, and paid classroom training. For the income to be excluded, it must be paid by a federally-funded workforce training program.
16. In Oklahoma, Title V funds for older Americans are administered by:
 - (1) the Oklahoma Department of Human Services Aging Services through the Senior Community Service Employment Program (SCSEP). SCSEP is a community service and work-based job training program for older Americans. Services are provided by the:
 - (A) Association of South Central Oklahoma Governments;
 - (B) Oklahoma Economic Development Authority; and
 - (C) Grand Gateway Economic Development Association; and
 - (2) National Grantee Easter Seals. Services are provided by the American Association of Retired Persons project sites in Oklahoma City, Tulsa, and McAlester.

340:40-15-2. Fraud

Revised 6-1-009-15-21

(a) **Fraud definition.** The term "fraud" is legally defined as an intentional false representation of a truth or matter of fact whether by words or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, for the purpose of inducing another in reliance upon it to part with some valuable thing or surrender a legal right. Fraud may be indicated in a client or provider overpayment. Per Section 185 of Title 56 of the Oklahoma Statutes (56 O.S. § 185), fraud in obtaining public assistance occurs when a person:

- (1) obtains or attempts to obtain, or aids, abets, or assists any person to obtain, by means of a false statement or representation, by false impersonation, by a fictitious transfer, conveyance or encumbrance of property or income, by a knowing and willful failure to report to Oklahoma Human Services (OKDHS) income, personal property, real property, household members, or other material eligibility factors at the time of application or during the receipt of assistance, or by other fraudulent device, assistance to which an applicant is not entitled or assistance greater than that to which an applicant is justly entitled; or
- (2) by sale, barter, purchase, theft, acquisition, possession or use of any electronic benefits or debit card, or any other device authorizing participation in the Temporary Assistance for Needy Families (TANF) or other OKDHS program, knowingly obtains,

aids, abets, or assists any person to obtain or attempt to obtain assistance to which a person is not entitled.

(b) Fraud may be indicated in a client or a provider overpayment. **Fraud penalty.** The penalty for fraud is set forth in 56 O.S. § 185. Per statutes, only courts can determine guilt and impose a legal penalty for fraud. ■ 1

(c) The Oklahoma Social Security Act [56 O.S. Supp. 1981, Sec. 185 as amended at H.B. 1187, November 1, 1985] provides: *Whoever obtains or attempts to obtain, or aids, abets, or assists any person to obtain, by means of a false statement or representation, or by false impersonation, or by a fictitious transfer, conveyance or encumbrance of property or income, or other fraudulent device, assistance to which an applicant is not entitled or assistance greater than that to which an applicant is justly entitled shall be guilty of a misdemeanor, if the aggregate amount of assistance received as a result thereof is Five Hundred Dollars, \$500, or less, and upon conviction thereof shall be fined not more than Five Hundred Dollars, \$500.00, or be imprisoned in the discretion of the court, or shall be guilty of a felony, if the aggregate amount of assistance received as a result thereof is in excess of Five Hundred Dollars, \$500.00, and upon conviction thereof shall be fined not more than Five Thousand Dollars, \$5,000.00, or be imprisoned in the penitentiary for a term not more than two (2) years or both such fined and imprisonment in the discretion of the court.* ■ 1

INSTRUCTIONS TO STAFF 340:40-15-2

Revised 6-10-099-15-21

1. (a) Under Oklahoma Statutes, only courts determine guilt and impose a legal penalty. The worker determines whether there is an indication of fraud on the part of the client or provider, and then enters these findings in the Oklahoma Program Integrity (OPI) System. The Family Support Services Division (FSSD) then decides whether to refer the case to the Oklahoma Department of Human Services (OKDHS) Office of Inspector General for court action.

(b) Adult and Family Services Benefit Integrity and Recovery (BIR) Unit staff may refer household error overpayments of \$500 or more to the Office of the Inspector General (OIG) to determine if a referral for judicial court action is warranted.

(c) Workers use Form 19MP001E, OIG Referral Form, to make an investigative referral to OIG when fraudulent intent is suspected, but there is insufficient information to calculate an overpayment, or the referral involves a state employee or his or her relatives.