

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 6, 2025

The proposed policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The proposal was presented at the Tribal Consultation held on January 2, 2024, and the Medical Advisory Committee held on January 4, 2024. Additionally, the proposed policy will be presented at a Public Hearing scheduled for January 6, 2025, and is scheduled to be presented as Permanent Rules to the OHCA Board of Directors on January 15, 2025.

SUMMARY: The proposed revisions clarify that time a member spends within a skilled nursing facility will be considered when assessing timeline requirements for applications to the Living Choice program. Current policy requires a member to live in a qualifying facility for at least 60 days before applying for Living Choice, but excludes time spent in a skilled nursing facility (SNF) from this 60-day period. This change also aligns OHCA policy with current federal requirements.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; Section 1915(c) of the Social Security Act; Section 2403 of the Affordable Care Act

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 24-06

A. Brief description of the purpose of the rule:

The proposed revisions clarify that time a member spends within a skilled nursing facility will be considered when assessing timeline requirements for applications to the Living Choice program. Current policy requires a member to live in a qualifying facility for at least 60 days before applying for Living Choice, but excludes time spent in a skilled nursing facility (SNF) from this 60-day period. This change also aligns OHCA policy with current federal requirements and eases transitions between facilities.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

The proposed rule changes may affect individuals who apply for the Living Choice program.

- C. A description of the classes of persons who will benefit from the proposed rule:

SoonerCare members eligible for the Living Choice program may benefit from the proposed rule.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no probable economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivisions.

- 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 affect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

The proposed rule is budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The agency does not anticipate that the proposed rule changes will have an adverse effect on small businesses.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency has taken measures to determine that there are no other legal methods to achieve the purpose of the proposed rule. Measures included a formal public comment period and tribal consultation.

- 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 rule should have no adverse effect on the public health, safety or environment.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

The agency does not anticipate any detrimental effect on the public health and safety if the proposed rule is not passed.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared date: November 22, 2024

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN-
ELIGIBILITY**

SUBCHAPTER 23. LIVING CHOICE PROGRAM

317:35-23-2. Eligibility criteria

Adults with disabilities or long-term illnesses, members with intellectual disabilities and members with physical disabilities are eligible to transition into the community through the Living Choice program if they meet all of the criteria in paragraphs (1) through (7) of this subsection.

- (1) He/she must be at least nineteen (19) years of age.
- (2) He/she must reside in a nursing facility, skilled nursing facility, ~~or a~~ qualified long term care facility, or a public or private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) for at least sixty (60) consecutive days prior to the proposed transition date. ~~If any portion of the sixty (60) days includes time in a skilled nursing facility, those days cannot be counted toward the sixty (60) day requirement, if the member received Medicare post hospital extended care rehabilitative services.~~
- (3) He/she must have at least one (1) day of Medicaid paid long-term care services prior to transition.
- (4) If transitioning from an out of state institution, he/she must be SoonerCare eligible.
- (5) He/she requires at least the same level of care that necessitated admission to the institution.
- (6) He/she must reside in a qualified residence after leaving the institution. A qualified residence is defined in (A) through (C) of this paragraph.
 - (A) a home owned or leased by the individual or the individual's family member;
 - (B) an apartment with an individual lease, with a locking entrance/exit, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and
 - (C) a residence, in a community-based residential setting, in which no more than four (4) unrelated individuals reside.
- (7) His/her needs can be met by the Living Choice program while living in the community.
- (8) He/she must not be a resident of a nursing facility or ICF/IID in lieu of incarceration.