

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 11, 2025

The proposed policy is an Emergency Rule. The proposed policy will be presented at the January 7, 2025 Tribal Consultation. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on March 6, 2025 and the OHCA Board of Directors on March 26, 2025.

Reference: APA WF # 25-02B

SUMMARY: ADvantage Waiver Policy Revisions - These policy revisions align Agency rules for the *Advantage*, Program with the 1915(c) Home and Community Based Waiver amendments that were approved by CMS, effective October 16, 2024, with a retroactive date of October 1, 2023.

LEGAL AUTHORITY

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

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 25-02B

A. Brief description of the purpose of the rule:

The OHCA is seeking to revise the ADvantage Waiver policy to align with the ADvantage Waiver amendments approved on October 16, 2024, with a retroactive effective date of October 1, 2023. Revisions clarify ADvantage capacity. Additional revisions include reformatting and removing outdated language.

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:

No classes of persons will be affected by this rule change. This rule change should not place any cost burden on private or public entities. No information on any cost impacts were received from any entity.

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

The proposed rule changes will benefit ADvantage Waiver recipients and providers. These proposed changes will improve clarity of policy and a cleaner format, making the rules easier to understand.

- 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 changes are budget neutral.

Budget impacts are not anticipated for these amendments as the changes reflect an extension of temporary waiver services to increase the maximum amount of meals, and the maximum number of members allowed did not change.

- 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: December 27, 2024

Revised date: December 30, 2024

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

**SUBCHAPTER 9. ICF/IID, HCBW/IID, AND INDIVIDUALS AGE 65 OR OLDER IN
MENTAL HEALTH HOSPITALS**

PART 1. SERVICES

317:35-9-1. Overview of long-term medical care services; relationship to Qualified Medicare Beneficiary (QMB), Specified Low-Income Medicare Beneficiary (SLMB), and other Medicaid services eligibility, and spenddown calculation

~~(a) **Long Term Medical Care Services.** Long term medical care for the categorically needy includes care in a nursing facility (refer to OAC 317:35-19), public and private intermediate care facility for the mentally retarded (refer to this subchapter), persons age 65 years or older in mental health hospitals (refer to this subchapter), Home and Community Based Waiver Services for the Intellectually Disabled (refer to this subchapter), and Home and Community Based Waiver Services for frail elderly and a targeted group of adults with physical disabilities age 21 and over who have not been determined to have a developmental disability, an intellectual disability or a related condition (refer to OAC 317:35-17). Personal Care provides services in the own home for categorically needy individuals (refer to OAC 317:35-15). Any time an individual is certified as eligible for Medicaid coverage of long term care, the individual is also eligible for other Medicaid services. Another application or additional spenddown computation is not required. Spenddown is applied to the first long term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required. Any spenddown computed for long term care is not applicable to QMB or SLMB coverage. Long-term medical care for the categorically needy includes:~~

- ~~(1) Care in a nursing facility, per Oklahoma Administrative Code (OAC) 317:35-19;~~

- (2) Public and private intermediate care facility for individuals with intellectual disabilities, per OAC 317:35-9;
- (3) Persons age sixty-five (65) years or older in mental health hospitals, per OAC 317:35-9;
- (4) Home and Community Based Waiver Services for the Intellectually Disabled, per OAC 317:35-9;
- (5) Home and Community Based Waiver Services for the ADvantage program, per OAC 317:35-17; and
- (6) State Plan Personal Care provides services, per OAC 317:35-15.

(b) Any time an individual is certified as eligible for Medicaid coverage of long-term care SoonerCare coverage, the individual is also eligible for other Medicaid SoonerCare services. Another application or additional spenddown computation is not required. Spenddown is applied to the first long-term care claim filed. Any time an aged, blind or disabled individual is determined eligible for long-term care, a separate determination must be made to see if eligibility conditions as a Qualified Medicare Beneficiary (QMB) or Specified Low-Income Medicare Beneficiary (SLMB) are met. Another application for QMB or SLMB benefits is not required. Any spenddown computed for long-term care is not applicable to QMB or SLMB coverage.

~~(b)(c) Medicaid recovery.~~ The State of Oklahoma operates a Medicaid Recovery program to recover costs for services identified in OAC 317:35-9-15. ~~Recovery can be accomplished in two ways: liens against real property or claims made against estates.~~

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-4. Application for ADvantage services

(a) **Application procedures for ADvantage services.** If waiver slots are available, the application process initiates when an online application is completed for ADvantage services. A written financial application is not required for an individual who has an active Medicaid case. A financial application for ADvantage services consists of the Medical Assistance Application form. The form is signed by the applicant, parent, spouse, guardian, or someone else acting on the applicant's behalf.

(1) All conditions of financial eligibility must be verified and documented in the case record. When current information already available in the local office establishes financial eligibility, such information may be used by recording source and date of information. If the applicant also wishes to apply for a State Supplemental Payment, either the applicant or his/her guardian must sign the application form.

(2) When Medicaid application is being made, an assessment of resources must be completed. For applicants of the ADvantage waiver, those resources owned by the couple the month the application was made determines the spousal share of resources.

(3) When an application is received from an individual residing in a nursing facility, the applicant is referred to the ~~Oklahoma Health Care Authority (OHCA)~~ Living Choice program as ~~the appropriate entity~~ to assist individuals from nursing facility care.

(A) If ~~OHCA~~ Living Choice determines the applicant is ineligible for services due to the inability to assure health and welfare in a community setting, the individual is also ineligible for ADvantage waiver services.

(B) If ~~OHCA~~ Living Choice determines the applicant does not meet Living Choice eligibility criteria for reasons unrelated to health and welfare, the individual is eligible for the ADvantage waiver if medically and financially approved.

(b) Date of application.

(1) The date of application is:

(A) the date the applicant or someone acting in his/her behalf signs the application in the county office; or

(B) the date the application is stamped into the county office when the application is initiated outside the county office; or

(C) the date when the request for Medicaid is made orally and the financial application form is signed later. The date of the oral request is entered in "red" above the date the form is signed.

(2) An exception is when OKDHS has contracts with certain providers to take applications and obtain documentation. After the documentation is obtained, the contracted provider forwards the application and documentation to the OKDHS county office of the applicant's county of residence for Medicaid eligibility determination. The application date is the date the applicant signed the application form for the provider.

(c) ~~ADvantage waiting list procedures.capacity.~~ ADvantage Program "available capacity" is the number of members that may be enrolled in the Program without exceeding, on an annualized basis, the maximum number authorized by the waiver to be served in the waiver year. ~~Upon notification from the AA that 90% of the available capacity has been exceeded, OKDHS Community Living, Aging and Protective Services notifies OKDHS county offices and contract agencies approved to complete the UCAT that, until further notice, requests for ADvantage services are not to be processed as applications but referred to AA to be placed on a waiting list of requests for ADvantage services. As available capacity permits, but remaining in compliance with waiver limits of maximum capacity, and until an increase in ADvantage available capacity occurs, the AA selects in chronological order (first on, first off) requests for ADvantage from the waiting list to forward to the appropriate OKDHS county office for processing the application. When the waiver capacity exceeds the number on the waiting list and after all persons on the waiting list have been processed, waiting list procedures are suspended. Waitlist procedures are implemented when the maximum number authorized by the waiver to be served in the waiver year is met.~~