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: February 15, 2019

The proposed policy is a Permanent Rule. The proposed policy was presented at the January 8, 2019 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for February 20, 2019. This proposal is scheduled to be presented to the Medical Advisory Committee on March 14, 2019 and to the OHCA Board of Directors on March 21, 2019.
Reference: APA WF 18-13

SUMMARY:
Application Fees and Provider Screening – The proposed revisions to the general provider policies are added to establish provider enrollment application fees and other provider screening and enrollment requirements mandated by federal regulation.

LEGAL AUTHORITY
The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 C.F.R. §§ 424.514 and 424.518; 42 C.F.R. §§ 455.436 and 455.450

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

TO: Nicole Nantois
Legal Services

FROM: Harvey Reynolds
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 18-13

A. Brief description of the purpose of the rule:

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The proposed revisions to the general provider policies are added to establish application fees required by Federal law for providers enrolling or re-enrolling in Medicaid. Revisions define providers who are excepted from the application fee as individual physician or non-physician practitioners, providers who enrolled with and paid the fee to Medicare, and providers who enrolled with and paid the fee to another state Medicaid agency. Revisions also outline provider screening and enrollment requirements designed to help defend against Medicaid provider fraud, waste, or abuse. Provider screening requirements are outlined according to three categorical screening levels: limited-risk, moderate-risk, and high-risk. Examples of screening requirements are licensure verification, on-site visits, and fingerprinting-based background checks.

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 will affect a limited number of providers who are newly enrolling or re-enrolling and who have not previously met the screening requirements, either by enrolling and paying an application fee with Medicare or by enrolling and paying an application fee with another State's Medicaid Agency. These rule changes could potentially place a cost burden on newly enrolling providers who are required to submit an application fee. The application fee is $569.00 for calendar year 2018, as is established by 42 U.S.C. § 1395cc(j)(2)(C)(i), adjusted for inflation. 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 will benefit members, providers, and the taxpayers of Oklahoma by helping to defend against the risk for fraud, waste, or abuse in the Medicaid program.

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:

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There is no estimated economic impact associated with the proposed rule. The proposed rule reflects a federally-mandated application fee of $569.00 (for calendar year 2018) for providers who do not meet one of the exceptions. The application fee is required by the Patient Protection and Affordable Care Act of 2011 (42 U.S.C. § 1395cc (j)(2)(C)(i), and will be required to be paid by newly enrolling providers and at re-enrollment, unless an exception applies.

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:

Agency staff estimates that the proposed rule change will generate revenue due to the application/screening fees. Per Federal law, the collected fees shall be used for the cost of conducting screenings.

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

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 changes. Measures included a formal public comment period and tribal consultation.

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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 changes should not have any effect on the public health, safety, or environment. The proposed rule changes are not designed to reduce significant risks to 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, safety or environment if the proposed rule is not implemented.

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

Prepared date: August 22, 2018

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-19.4. ~~Applicants subject to a fingerprint-based criminal background check~~Application fee, provider screening, and applicants subject to a fingerprint-based criminal background check

~~(a) Applicants designated as "'high' categorical risk" in accordance with Federal law, including, but not limited to, 42 C.F.R. § 424.518 and 42 C.F.R. Part 455, Subpart E, or if otherwise required by State and/or Federal law, shall be subject to a fingerprint-based criminal background check as a condition of new or renewed contract enrollment.~~

~~(b) Any applicant subject to a fingerprint-based criminal background check as provided in subsection (a) of this Section, shall be denied enrollment if he/she has a felonious criminal conviction and may be denied enrollment for a misdemeanor criminal conviction relating, but not limited, to:~~

~~(1) The provision of services under Medicare, Medicaid, or any other Federal or State health care program;~~

~~(2) Homicide, murder, or non-negligent manslaughter;~~
~~(3) Aggravated assault;~~
~~(4) Kidnapping;~~
~~(5) Robbery;~~
~~(6) Abuse, neglect, or exploitation of a child or vulnerable adult;~~
~~(7) Human trafficking;~~
~~(8) Negligence and/or abuse of a patient;~~
~~(9) Forcible rape and/or sexual assault;~~
~~(10) Terrorism;~~
~~(11) Embezzlement, fraud, theft, breach of fiduciary duty, or other financial misconduct; and/or~~
~~(12) Controlled substances, provided the conviction was entered within the preceding ten-year period.~~

~~(c) Any OHCA decision denying an application for contract enrollment based on the applicant's criminal history pursuant to OAC 317:30-3-19.4 shall be a final agency decision that is not administratively appealable. However, nothing in this section shall preclude an applicant whose criminal conviction has been overturned on final appeal, and for whom no other appeals are pending or may be brought, from reapplying for enrollment.~~

Pursuant to Subpart E of Part 455 of Title 42 of the Code of Federal Regulations (C.F.R.), an enrolling or re-enrolling SoonerCare provider must meet the screening requirements described in this rule and pay an application fee if required in the appendix to this rule. See Appendix A at the end of this chapter.

(1) Application fees. The amount of the application fee is the amount established by the Center for Medicare & Medicaid Services (CMS) in accordance with 42 United States Code (U.S.C.) § 1395cc (j)(2)(C)(i), adjusted for inflation.

(A) Per 42 C.F.R. § 455.460, the application fee shall not apply to the following providers:

(i) Individual physician or non-physician practitioners;

(ii) Providers who have enrolled or re-enrolled in Medicare, and have met the provider screening requirements and paid an application fee to CMS or its designee; and

(iii) Providers who have enrolled or re-enrolled in another state's Medicaid or CHIP program, and have met the provider screening requirements and paid an application fee to the State Medicaid Agency or its designee.

(iv) A provider must submit documentation to support any claim that it meets the exemption(s) described in paragraph (1)(A)(ii) and/or (1)(A)(iii) of this rule.

(B) The application fee will not be refunded if:

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(i) Enrollment or re-enrollment is denied as a result of failure to meet the provider screening requirements described in this rule; or

(ii) Enrollment or re-enrollment is denied based on the results of the provider screening.

(2) Risk categories. Federal law requires the OHCA to screen all providers based on a categorical risk level of "limited," "moderate," or "high." If more than one risk level applies to a provider, the highest level of screening is required.

(A) Limited-risk screens include:

(i) Verification that the provider meets any applicable federal regulations, or state requirements for the provider type;

(ii) License verification, including state licensure verification in states other than Oklahoma; and

(iii) Database checks, including, but not limited to, those required by 42 C.F.R. § 455.436.

(B) Moderate-risk screens include:

(i) All limited-risk screening requirements; and

(ii) Pre- and post-enrollment site visits by OHCA Provider Enrollment staff to confirm the accuracy of the provider's application and to determine compliance with federal and state enrollment requirements.

(iii) Enrolled providers must permit the CMS, its agents, its designated contractors, or OHCA to conduct unannounced on-site inspections of any and all provider locations.

(C) High-risk screens include:

(i) All limited-risk screening requirements;

(ii) All moderate-risk screening requirements; and

(iii) A fingerprint-based criminal background check of the provider, or of any person with a five percent (5%) or more direct or indirect ownership interest in the provider.

(3) OHCA's risk categories. OHCA has adopted the same risk categories as have been established for Medicare providers in 42 C.F.R. § 424.518. For certain Medicaid providers that are not recognized under Medicare, risk categories have been set forth in OHCA's "Appendix A. Risk Levels for Providers," using criteria similar to that used for Medicare providers, in determining the risk of fraud, waste or abuse.

(4) Changes in risk categories. In accordance with 42 C.F.R. § 455.450(e), limited- and moderate-risk providers are moved to the high-risk category whenever:

(A) OHCA imposes a payment suspension on a provider based on a credible allegation of fraud, waste or abuse;

(B) The provider has an existing Medicaid overpayment;

(C) The provider has been excluded by the Office of the Inspector General for the Department of Health and Human Services or any other state's Medicaid program within the previous ten (10) years; or

(D) OHCA or CMS lifted a temporary moratorium for the particular provider type in the previous six (6) months and a provider that was prevented from enrolling based on the moratorium applies for enrollment within six (6) months from the date the moratorium was lifted.

(5) Fingerprint-based criminal background check. Any applicant subject to a fingerprint-based criminal background check as provided in subsection (2)(C)(iii) of this rule, shall be denied enrollment if he/she has a felonious criminal conviction and may be denied enrollment for a misdemeanor criminal conviction relating, but not limited, to:

(A) The provision of services under Medicare, Medicaid, or any other Federal or State health care program;

(B) Homicide, murder, or non-negligent manslaughter;

(C) Aggravated assault;

(D) Kidnapping;

(E) Robbery;

(F) Abuse, neglect, or exploitation of a child or vulnerable adult;

(G) Human trafficking;

(H) Negligence and/or abuse of a patient;

(I) Forcible rape and/or sexual assault;

(J) Terrorism;

(K) Embezzlement, fraud, theft, breach of fiduciary duty, or other financial misconduct; and/or

(L) Controlled substances, provided the conviction was entered within the preceding ten-year period.

(6) The appropriate screening based on screening risk level must be given to all service locations of an enrolled provider. Providers must disclose all service locations at time of enrollment and notify the agency of changes or additional service locations.

(7) In accordance with 42 C.F.R. § 455.452, the OHCA reserves the right to conduct additional screenings and background checks as is determined necessary.

(8) Any OHCA decision denying an application for contract enrollment based on the applicant's criminal history pursuant to Oklahoma Administrative Code 317:30-3-19.4 shall be a final agency decision that is not administratively appealable. However, nothing in this section shall preclude an applicant whose criminal conviction has been overturned on final appeal, and for whom no other appeals are pending or may be brought, from reapplying for enrollment.

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