

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 an Permanent Rule. The proposed policy will be 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 18-14

SUMMARY:

Countable income and resources policy change – The proposed revisions amend countable income and resources policy, specifically the policy on resource disregards.

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; 20 C.F.R. § 416.1210; 20 C.F.R. § 416.1222; 20 C.F.R. § 416.1224; 20 C.F.R. § 416.1236; 20 C.F.R. § 416.1235; 20 C.F.R. § 416.1245

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 # 18-14

A. Brief description of the purpose of the rule:

The proposed revisions to the countable income and resources policy will amend policy on resources that are disregarded by Federal law due to Oklahoma transitioning from a 209(b) state to a SSI criteria state for determination of eligibility for SSI related eligibility groups such as the Aged, Blind, and Disabled.

- 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:

SoonerCare members who are receiving services from the ABD program and who receive one of the resources that are to be disregarded will be affected by the proposed 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 change will benefit some SoonerCare members of Oklahoma who are receiving ABD services by disregarding certain resources that are disregarded by Federal law.

- 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:

Agency staff has determined that the proposed rule change will be 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 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 and 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 effects 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: September 27, 2018

RULE TEXT:

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

SUBCHAPTER 5. ELIGIBILITY AND COUNTABLE INCOME

PART 5. COUNTABLE INCOME AND RESOURCES

317:35-5-41. Determination of capital resources for individuals categorically related to aged, blind and disabled

(a) **General.** The term capital resources is a general term representing any form of real and/or personal property which has an available money value. All available capital resources, except those required to be disregarded by law or by policies of the ~~OHCA~~Oklahoma Health Care Authority (OHCA) or ~~OKDHS~~Oklahoma Department of Human Services (DHS) are considered in determining need. DHS Appendix C-1, Schedule VIII establishes the allowable limit for nonexcludable resources. Available resources are those resources which are in hand or under the control of the individual.

(1) In defining need, OHCA and ~~OKDHS~~DHS recognize the importance of a member retaining a small amount of resources for emergencies or special need and has established a maximum resource standard a member or family may hold and be considered in need.

(2) Capital resources are evaluated on a monthly basis in determining eligibility for an applicant for medical services. An applicant is determined ineligible for any month resources exceed the resource standard at any time during that month. When a member has resources which exceed the resource standard, case closure action is taken for the next possible effective date.

(3) State law is specific on the mutual responsibility of spouses for each other. Therefore, if husband and wife are living together, a capital resource and/or income available to one spouse constitutes a resource and/or income to the other. When there is a break in the family relationship and the husband and wife are separated, but not divorced or legally separated, they constitute a possible resource to each other and this possible resource is explored to determine what, if any, resource can be made available. When a spouse is in a nursing facility, see ~~Subchapter~~Subchapters 9 and 19 of this Chapter.

(4) Only the resources of the child determined eligible for ~~TEFRA~~Tax Equity Fiscal Responsibility Act (TEFRA) are considered in determining eligibility.

(5) ~~Household equipment used for daily living is not considered a resource.~~Household goods and personal effects are not considered capital resources. Household goods and personal effects are defined as follows:

(A) Household goods are:

(i) Items of personal property, found in or near the home, that are used on a regular basis; or

(ii) Items needed by the householder for maintenance, use, and occupancy of the premises as a home.

(B) Personal effects are:

(i) Items of personal property ordinarily worn or carried by the individual; or

(ii) Articles otherwise having an intimate relation to the individual.

(C) Personal effects do not include items that were acquired or are held for their value or as an investment. Such items can include but are not limited to gems, jewelry that is not worn or held for family significance, or collectibles.

(6) Each time that need is determined, gross income and the equity of each capital resource are established. Equity equals current market value minus indebtedness. The member may change the form of capital resources from time to time without affecting eligibility so long as the equity is not decreased in doing so or increased in excess of the allowable maximum resource standard. In the event the equity is decreased as the result of a sale or transfer, the reduction in the equity is evaluated in relation to policy applicable to resources disposed of while receiving assistance.

(b) **Eligibility.** In determining eligibility based on resources, only those resources available for current use or those which the member can convert for current use (no legal impediment involved) are considered as countable resources. Examples of legal impediments include, but are not limited to, clearing an estate, probate, petition to sell, or appointment of legal guardian.

(1) Generally, a resource is considered unavailable if there is a legal impediment to overcome. However, the member must agree to pursue all reasonable steps to initiate legal action within ~~30~~thirty (30) days. While the legal action is in process, the resource is considered unavailable.

(2) If a determination is made and documented that the cost of making a resource available exceeds the gain, the member will not be required to pursue action to make it available.

(3) Determination of available and unavailable resources must be well documented in the case record.

(4) The major types of capital resources are listed in Sections ~~OAC 317:35-5-41.1 through 317:35-5-41.7~~ Oklahoma Administrative Code (OAC) 317:35-5-41.1 through 317:35-5-41.7, as well as OAC 317:35-5-41.12. The list is not intended to be all inclusive and consideration must be given to all resources.

317:35-5-41.1. Home/real property

(a) Home property is excluded from resources regardless of value unless the individual is applying for long-term care services. [See Oklahoma Administrative Code (OAC) 317:35-5-41.8(a) (relating to eligibility for long-term care services)] For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile.

(1) Home property includes all property which is adjacent to the home. Land is considered adjacent even if separated by a boundary line, street, alley, highway, or waterway.

(2) Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered. Mineral rights and wind rights associated with the home property are not valued separate from the surface.

(3) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the member is making an effort to make the resource available, a reasonable period of time is given (not to exceed ninety (90) days) to convert the resource. He/she is advised in writing that the ninety-day (90-day) period begins with the determination that the property be considered in relation to the resource. The ninety-day (90-day) period is given only if efforts are in progress to make the resource available. Any extension beyond the initial ninety-day (90-day) period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.

(4) If the member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs,

continuing eligibility cannot be established and the member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum allowable resources provided other conditions of eligibility continue to be met.

(5) When a member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a ninety-day (90-day) period. Extensions beyond the ninety (90) days may be justified only after interviewing the member, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.

(6) At the point a member decides not to reinvest the proceeds from the sale of his/her home in another home, the member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.

(7) A home traded for another home of equal value does not affect the member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.

(8) Absences from home for up to ninety (90) days for trips or visits or six (6) months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.

(9) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource.

(b) For purposes of the home property resource exclusion, a home is defined as any shelter in which the individual has an ownership interest and which is used by the individual as his/her principal place of residence. The home may be either real or personal property, fixed or mobile. Home property includes all property which is adjacent to the home. Property has a value regardless of whether there is an actual offer to purchase. Verification of home/real property value is established by collateral contacts with specialized individuals knowledgeable in the type and location of property being considered.

(1) The home may be retained without affecting eligibility during periods when it is necessary to be absent for illness or other necessity. When it is determined that the member does not have a feasible plan for and cannot be expected to return to his/her home, the market value of the property is considered in

~~relation to the resource. The member is responsible for taking all steps necessary to convert the resource for use in meeting current needs. If the member is making an effort to make the resource available, a reasonable period of time is given (not to exceed 90 days) to convert the resource. He/she is advised in writing that the 90-day period begins with the determination that the property be considered in relation to the resource. The 90-day period is given only if efforts are in progress to make the resource available. Any extension beyond the initial 90-day period is justified only after interviewing the member, determining that a good faith effort to sell is still being made and failure to sell is due to circumstances beyond the control of the member. A written notification is also provided to the member at any time an extension is allowed. Detailed documentation in the case record is required.~~

~~(2) If the member fails or is unwilling to take steps necessary to convert the resource for use in meeting current needs, continuing eligibility cannot be established and the member is advised as to the effective date of closure and of the right to receive assistance when the resources are within the maximum allowable resources provided other conditions of eligibility continue to be met.~~

~~(3) When a member sells his/her home with the intention of purchasing another home or when an insurance payment for damage to the home is received, a reasonable period of time is given to reinvest the money in another home. A reasonable period of time is considered to be not in excess of a 90-day period. Extensions beyond the 90 days may be justified only after interviewing the member, determining that a good faith effort is still being made and that completion of the transaction is beyond his/her control. This must be documented in the case record.~~

~~(4) At the point a member decides not to reinvest the proceeds from the sale of his/her home in another home, the member's plan for use of the proceeds is evaluated in relation to rules on resources disposed of while receiving assistance.~~

~~(5) A home traded for another home of equal value does not affect the member's eligibility status. If the home is traded for a home of lesser value, the difference may be invested in improvement of the new home.~~

~~(6) Absences from home for up to 90 days for trips or visits or six months for medical care (other than nursing facilities) do not affect receipt of assistance or the home exclusion as long as the individual intends to return home. Such absences, if they extend beyond those limits, may indicate the home no longer serves as the principal place of residence.~~

~~(7) Mineral rights associated with the home property are considered along with the surface rights and are excluded as a resource. However, mineral rights which are not associated with the home property are considered as a resource. Since evaluation and scalability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to (11)(B) of this subsection for treatment of mineral rights as non-trade or non-business property.~~

~~(8) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand and counsel with persons who have specialized knowledge about this kind of resource. Refer to (11) of this subsection for exclusion of real estate that produces income.~~

~~(9) Land which is held by an enrolled member of an Indian tribe is excluded from resources as it cannot be sold or transferred without the permission of other individuals, the tribe, or a federal agency. If permission is needed, the land is excluded as a resource.~~

~~(10) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.~~

~~(A) When a life estate in property is not used as the member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.~~

~~(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.~~

~~(C) In the event the member does not accept as valid the value of the life estate as established through this method, the member must secure written appraisal by two persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the member will jointly arrange for the market value to be established by an appraisal made by a third person who is familiar with current market values and who is acceptable to both the member and the worker.~~

~~(11) Real and/or personal property which produces income is excluded if it meets the following conditions.~~

~~(A) **Trade or business property.** The existence of a trade or business may be established through business tax returns that would be used to compute self-employment earnings. If the current business tax return is unavailable, the existence of the business may be determined through other business forms, records, partnership, a detailed description of the business and its activities, etc. Once it is established that a trade or business exists, any property (real or personal) connected to it and in current use is excluded. This exclusion includes liquid assets, such as a bank account(s) necessary for the business operation. All property used by a trade or business and all property used by an employee in connection with employment is excluded as property essential to self support. The income from the trade or business is determined as any other self-employment income.~~

~~(B) **Non-trade or non-business property.** Property which produces income but is not used in a trade or business is excluded if the total equity value does not exceed \$6000, and the net return equals at least 6% of the equity annually. An equity value in excess of \$6000 is a countable resource. If the equity exceeds \$6000 and 6% return is received on the total equity, only the amount in excess of \$6000 is a countable resource. An annual return of less than 6% is acceptable if it is beyond the individual's control, and there is a reasonable expectation of a future 6% return. Liquid resources cannot be excluded as income producing property or meeting the \$6000/6% rule (mortgages, including contract for deed, and notes which are income producing are considered as liquid resources). The \$6000/6% rule applies to all resources in total, and not separately. Examples of non-business income producing property are rental property, timber rights, mineral rights, etc.~~

(b) Real property other than home property shall be treated as follows:

(1) Mineral rights which are not associated with the home property are considered as a resource. Since evaluation and scalability of mineral rights fluctuate, the establishment of the value of mineral rights are established based on the opinion of collateral sources. Actual offers of purchase are used when established as a legitimate offer through a collateral source. Mineral rights not associated with home property which are income producing are considered in the same way as income producing property. Refer to OAC 317:35-5-41.12(c)(3) for treatment of mineral rights as non-trade or non-business property.

(2) The market value of real estate other than home property owned by the member or legal dependent and encumbrances against such property are ascertained in determining the equity (including the cost to the member of a merchantable title to be determined when the resource approaches the maximum). The market value of real estate other than the home owned by the applicant is established on the basis of oral or written information which the applicant has on hand and counsel with persons who have specialized knowledge about this kind of resource. Refer to OAC 317:35-5-41.12(c) for exclusion of real estate that produces income.

(3) For any individual (and spouse, if any) who is of Indian descent from a federally recognized Indian tribe, any interest in land which is held in trust by the United States for an individual Indian or tribe, or which is held by an individual Indian or tribe and which can only be sold, transferred, or otherwise disposed of with the approval of other individuals, his or her tribe, or an agency of the federal government, shall be excluded from resource determinations, in accordance with 20 C.F.R. § 416.1234.

(4) A life estate conveys upon an individual or individuals for his/her lifetime, certain rights in property. Its duration is measured by the lifetime of the tenant or of another person; or by the occurrence of some specific event, such as remarriage of the tenant. The owner of a life estate has the right of possession, the right to use the property, the right to obtain profits from the property and the right to sell his/her life estate interest. However, the contract establishing the life estate may restrain one or more rights of the individual. The individual does not have title to all interest in the property and does not have the right to sell the property other than the interest owned during his/her lifetime. He/she may not usually pass it on to heirs in the form of an inheritance.

(A) When a life estate in property is not used as the member's home, it is necessary to establish the value. A computer procedure is available to compute the value of a life estate by input of the current market value of the property and the age of the life estate owner.

(B) The value of a life estate on mortgaged property is based on equity rather than market value and the age of the individual.

(C) In the event the member does not accept as valid the value of the life estate as established through this method, the member must secure written appraisal by two (2) persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals, the worker and the member will jointly arrange for the market value to be established by an appraisal made by a third (3rd) person who is familiar with current market values and who is acceptable to both the member and the worker.

(5) Real and/or personal property which produces income is excluded if it meets the following conditions established in OAC 317:35-5-41.12.

317:35-5-41.2. Miscellaneous Personal property

~~(a) **Property used to produce goods and services.** Personal property necessary to perform daily activities or to produce goods for home consumption is excluded if the equity value does not exceed \$6,000. An equity value in excess of \$6,000 is a countable resource. The property does not have to produce a 6% annual return. The \$6,000 equity maximum includes all such resources in total and does not pertain to each item separately. Examples of property used to produce goods and services are tractors, wildcatting tools, mechanized equipment for gardening, livestock grown for home consumption, etc.~~

~~(b)(a) **Cash savings and bank accounts.** Money on hand or in a savings account is considered as a countable resource.~~Pursuant to Section 416.1208 of Title 20 of the Code of Federal Regulations (C.F.R.), funds held in a financial institution account (including savings, checking, and time deposits, also known as certificates of deposit) are an individual's resource if the individual has an ownership interest in the account and can use the funds for his or her support and maintenance. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an Asset Verification System (AVS). Title 56, O.S., Section 1671Section 1671 of Title 56 of the Oklahoma Statutes provides that financial records obtained for the purpose of establishing eligibility for assistance or services must be furnished without cost to the member or the Agency. If an individual is designated as sole owner by

the account title and can withdraw funds and use them for his or her support and maintenance, all of the funds, regardless of their source, are that individual's resource. For as long as these conditions are met, it is presumed that the individual owns one-hundred percent (100%) of the funds in the account. This presumption is non-rebuttable.

(1) ~~Checking accounts may or may not represent savings. Current bank statements are evaluated with the member to establish what, if any, portion of the account represents savings. Any income which has been deposited during the current month is not considered unless it exceeds what is considered as ordinary maintenance expense for the month.~~ If there is only one applicant or recipient account holder on a jointly held account, it is presumed that all of the funds in the account belong to that individual. If there is more than one (1) applicant or recipient account holder, it is presumed that all the funds in the account belong to those individuals in equal shares.

(2) ~~Accounts which are owned jointly by the member and a person not receiving SoonerCare are considered available to the member in their entirety unless it can be established what part of the account actually belongs to each of the owners and the money is actually separated and the joint account dissolved. When the member is in a nursing facility and the spouse is in the home or if both are institutionalized, a joint bank account may be maintained with one-half of the account considered available to each.~~ If none of the account holders is an applicant or recipient, it is presumed that all of the funds in a jointly-held account belong to the deemor(s), in equal shares if there is more than one (1) deemor. A deemor is a person whose income and resources are required to be considered when determining eligibility and computing the SoonerCare benefit for an eligible individual.

(3) The presumption of ownership, as is established in Oklahoma Administrative Code (OAC) 317:35-5-41.2(a)(1) and (a)(2), above, may be rebutted, as follows, in accordance with 20 C.F.R. § 416.1208. Successful rebuttal may be retroactive as well as prospective.

(A) The individual must submit his/her statement, along with corroborating statements from other account holders, regarding who owns the funds in the joint account, why there is a joint account, who has made deposits to and withdrawals from the account, and how withdrawals have been spent;

(B) The individual must submit account records showing deposits, withdrawals, and interest (if any) in the months for which ownership of funds is at issue; and

(C) The individual must correct the account title to show that the individual is no longer a co-owner if the individual

owns none of the funds; or, if the individual owns only a portion of the funds, separate the funds owned by the other account holder(s) from his/her own funds and correct the account title on the individual's own funds to show they are solely-owned by the individual.

~~(c)(b) Life insurance policies. If the total face value of all life insurance policies owned by an individual is \$1,500 or less, the policies (both face value and cash surrender value) are excluded as resources. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS. Life insurance owned by an individual (and spouse, if any) will be considered a resource to the extent of its cash surrender value. The cash surrender value is the amount which the insurer will pay upon cancellation of the policy before death of the insured or before maturity of the policy.~~

~~(1) If the total face value of all policies owned by an individual exceeds \$1,500, the net cash surrender value of such policies must be counted as resources. Life insurance policies which do not provide a cash surrender value (e.g., term insurance) are not used in determining whether the total face value of all policies is over \$1,500. If the total face value of all life insurance policies on any person does not exceed \$1,500, no part of the cash surrender value of such life insurance will be taken into account in determining the resources of the individual (and spouse, if any).~~

~~(2) The face value of a life insurance policy which has been assigned to fund a prepaid burial contract must be evaluated and counted according to the policy on burial funds or, if applicable, the policy on the irrevocable burial contract. In determining the face value of life insurance on the individual (and spouse, if any), term insurance and burial insurance, as defined in 20 C.F.R. § 416.1230, will not be taken into account.~~

~~(3) The net cash surrender value of insurance (i.e., cash surrender value less any loans or unpaid interest thereon) usually can be verified by inspection of the insurance policies and documents in the member's possession or by use of the OKDHS Form 08MP061E, Request to Insurance Company.~~

~~(4) Dividends which accrue and which remain with the insurance company increase the amount of resource. Dividends which are paid to the member are considered as income if the life insurance policy is not an excluded resource.~~

~~(5) If an individual has a life insurance policy which allows death benefits to be received while living, and the individual meets the insurance company's requirements for receiving such proceeds, the individual is not required to file for such proceeds. However, if the individual does file for and receive~~

~~the benefits, the payment will be considered as income in the month it is received and countable as a resource in the following months to the extent it is available. The payment of such benefits is not considered a conversion of a resource because the cash surrender value of the insurance policy is still available to the individual. The individual is in effect, receiving the death benefits and not the cash surrender value.~~

~~(d)(c) **Burial spaces.** The value of burial spaces for an individual, the individual's spouse or any member of the individual's immediate family will be excluded from resources. "Burial spaces" means conventional grave sites, crypts, mausoleums, urns, and other repositories which are customarily and traditionally used for the remains of deceased persons. "Immediate family" means the individual's minor and adult children, including adopted children and step-children; and the individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.~~

~~(1) "Burial spaces" include burial plots, gravesites, crypts, mausoleums, urns, niches and other repositories which are customarily and traditionally used for the remains of deceased persons. Additionally, the term includes necessary and reasonable improvements or additions to or upon such burial spaces, including, but not limited to, vaults, headstones, markers, plaques, or burial containers and arrangements for opening and closing the gravesite for burial of the deceased.~~

~~(2) "Immediate family" means the individual's minor and adult children, including adopted children and step-children; and the individual's brothers, sisters, parents, adoptive parents, and the spouse of these individuals. Neither dependency nor living in the same household will be a factor in determining whether a person is an immediate family member.~~

~~(e)(d) **Burial funds.** Revocable burial funds not in excess of \$1,500 are excluded as a resource if the funds are specifically set aside for the burial arrangements of the individual or the individual's spouse. Any amount in excess of \$1,500 is considered as a resource. Burial policies which require premium payments and do not accumulate cash value are not considered to be prepaid burial policies. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through the AVS. In accordance with 20 C.F.R. § 416.1231, up to \$1,500 each of funds specifically set aside for the burial expenses of the individual or the individual's spouse is excluded from resources. This exclusion applies only if the~~

funds set aside for burial expenses are kept separate from all other resources not intended for burial of the individual (or spouse) and are clearly designated as set aside for the individual's (or spouses) burial expenses. This exclusion is in addition to the burial space exclusion.

~~(1) "Burial funds" means a prepaid funeral contract or burial trust with a funeral home or burial association which is for the individual's or spouse's burial expenses.~~

~~(2) The face value of a life insurance policy, when properly assigned by the owner to a funeral home or burial association, may be used for purchasing "burial funds" as described in (1) of this subsection. The \$1,500 burial fund exclusion must also be reduced by the face value of a life insurance policy for which a funeral provider has been made the irrevocable beneficiary, if the life insurance policy owner has irrevocably waived his or her right to, and cannot obtain, any cash surrender value the life insurance policy may generate.~~

~~(3) The burial fund exclusion must be reduced by the face value of life insurance policies owned by the individual or spouse; and amounts in an irrevocable trust or other irrevocable arrangement.~~

~~(4) Interest earned or appreciation on the value of any excluded burial funds is excluded if left to accumulate and become a part of the burial fund.~~

~~(5) If the member did not purchase his/her own prepaid burial, even if his/her money was used for the purchase, the member is not the "owner" and the prepaid burial funds cannot be considered a resource to him/her. However, if the member's money was used by another to purchase the prepaid burial, the rules on transfer of property must be applied since the purchaser (owner) could withdraw the funds any time.~~

(1) Each person's \$1,500 exclusion shall be reduced by:

(A) The face value of insurance policies on the life of an individual owned by the individual or spouse (if any), if the cash surrender value of those policies has been excluded from resources; and

(B) Amounts in an irrevocable trust (or other irrevocable arrangement) available to meet the burial expenses.

~~(f)(e) **Irrevocable burial contract.** Oklahoma law provides that a purchaser (buyer) of a prepaid funeral contract may elect to make the contract irrevocable.—The irrevocability cannot become effective until 30 days after purchase. For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner). In instances where the OKDHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a~~

~~power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member. Verification of the member's countable income or resources held in bank accounts or at other financial institutions can be established through an AVS.~~

~~(1) The irrevocable contract shall not be considered a countable resource.~~

~~(2) Effective October 1, 2015, the cash value of any life insurance policies and/or designated accounts shall be excluded as a resource up to a maximum of \$1,500. This exclusion shall be reduced dollar for dollar by the face value amount of any irrevocable prepaid burial contract.~~

~~(1) The irrevocability cannot become effective until thirty (30) days after purchase.~~

~~(2) For an irrevocable contract to be valid, the election to make it irrevocable must be made by the purchaser (owner) or the purchaser's guardian or an individual with power of attorney for the purchaser (owner). In instances where the DHS Form 08MA084E, Management of Recipient's Funds, is on file in the nursing facility, the form serves as a power of attorney for the administrator to purchase and/or elect to make irrevocable the burial funds for the member.~~

~~(3) The assignment of an insurance policy used to fund an irrevocable contract must also be made irrevocable.~~

~~(4) The irrevocable contract shall not be considered a countable resource.~~

~~(g)~~(f) **Medical insurance.** If a member is covered by insurance other than SoonerCare, then SoonerCare is the payer of last resort and should not be billed until all other payers have paid. If payment is made directly to the member, the member must reimburse OHCA up to the amount paid by SoonerCare. Any amount remaining after payment to OHCA is considered as an available resource.

317:35-5-41.3. Automobiles, pickups, and trucks

~~Automobiles, pickups, and trucks are considered in the eligibility determination for SoonerCare benefits. Verification of the member's countable resources held in bank accounts or at other financial institutions can be established through an AVS. In accordance with Section 416.1218 of Title 20 of the Code of Federal Regulations (C.F.R.), "automobile" includes cars, pickups, trucks, and other vehicles used to provide necessary transportation.~~

~~(1) **Exempt automobiles.** One automobile is totally excluded from counting as a resource, regardless of its value, if it is used for transportation of the individual or a member of the individual's household.~~

~~(2) **Other automobiles.** Any other automobiles are considered to be nonliquid resources. The equity in other automobiles,~~

~~pickups, and trucks~~ is considered as a countable resource. The current market value, less encumbrances on the vehicle, is the equity, per 20 C.F.R. § 416.1201(c). Only encumbrances that can be verified are considered in computing equity.

(A) The market value of each year's make and model is established on the basis of the "Avg. Trade In" value as shown in the current publication of the National Automobile Dealers Association (NADA) on "Cars, Trucks, and Imports".

(B) If a vehicle's listing has been discontinued in the NADA book, the household's estimate of the value of the vehicle is accepted unless the worker has reason to believe the estimate is incorrect.

(C) The market value of a vehicle that is no longer operable is ~~the~~its verified salvage value.

(D) In the event the member and worker cannot agree on the value of the vehicle, the member secures written appraisal by two (2) persons who are familiar with current values. If there is substantial unexplained divergence between these appraisals or between the book value and one (1) or more of these appraisals, the worker and the member jointly arrange for the market value to be established by an appraisal made by a third (3rd) person who is familiar with current values and who is acceptable to both the member and the worker.

317:35-5-41.8. Eligibility regarding long-term care services

(a) **Home Property.** In determining eligibility for long-term care services for applications filed on or after January 1, 2006, home property is excluded from resources unless the individual's equity interest in his or her home exceeds ~~\$500,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning in 2011, rounded to the nearest \$1,000)~~the amount at Oklahoma Department of Human Services (DHS) Appendix C-1, Schedule VIII(D)(2).

(1) Long-term care services include nursing facility services and other long-term care services. For purposes of this Section, other long-term care services include:

(A) A level of care in any institution equivalent to nursing facility services; and

(B) Home and community-based services furnished under a waiver.

(2) An individual whose equity interest exceeds ~~\$500,000 (increased by the annual percentage increase in the urban component of the consumer price index beginning in 2011, rounded to the nearest \$1,000)~~the amount at DHS Appendix C-1, Schedule VIII(D)(2) is not eligible for long-term care services unless one of the following circumstances applies:

(A) The individual has a spouse who is lawfully residing in the individual's home;

(B) The individual has a child under the age of twenty-one (21) who is lawfully residing in the individual's home;

(C) The individual has a child of any age who is blind or permanently and totally disabled who is lawfully residing in the individual's home; or

(D) The denial would result in undue hardship. Undue hardship exists when denial of SoonerCare long-term care services based on an individual's home equity exceeding ~~\$500,000~~ the amount at DHS Appendix C-1, Schedule VIII(D)(2) would deprive the individual of medical care such that the individual's health or life would be endangered; or of food, clothing, shelter, or other necessities of life.

(E) An individual may reduce their total equity interest in the home through the use of a reverse mortgage or home equity loan.

(3) Absence from home due to nursing facility care does not affect the home exclusion as long as the individual intends to return home within ~~12~~twelve (12) months from the time he/she entered the facility. The ~~OKDHS~~DHS Form 08MA010E, Acknowledgment of Temporary Absence/Home Property Policy, is completed at the time of application for nursing facility care when the applicant has home property. After an explanation of temporary absence, the member, guardian, or responsible person indicates whether there is or is not intent to return to the home and signs the form.

(A) If at the time of application the applicant states he/she does not have plans to return to the home, the home property is considered a countable resource. For members in nursing facilities, a lien may be filed in accordance with ~~OAC~~Oklahoma Administrative Code (OAC) 317:35-9-15 and OAC 317:35-19-4 on any real property owned by the member when it has been determined, after notice and opportunity for a hearing, that the member cannot reasonably be expected to be discharged and return home. However, a lien is not filed on the home property of the member while any of the persons described in OAC 317:35-9-15(b)(1) and OAC 317:35-19-4(b)(1) are lawfully residing in the home:

(B) If the individual intends to return home, he/she is advised that:

(i) the ~~12~~twelve (12) months of home exemption begins effective with the date of entry into the nursing home regardless of when application is made for SoonerCare benefits, and

(ii) after ~~12~~twelve (12) months of nursing care, it is assumed there is no reasonable expectation the member

will be discharged from the facility and return home and a lien may be filed against real property owned by the member for the cost of medical services received.

(C) "Intent" in regard to absence from the home is defined as a clear statement of plans in addition to other evidence and/or corroborative statements of others.

(D) At the end of the ~~12-month~~ twelve-month (12-month) period the home property becomes a countable resource unless medical evidence is provided to support the feasibility of the member to return to the home within a reasonable period of time (~~90~~ ninety (90) days). This ~~90-day~~ ninety-day (90-day) period is allowed only if sufficient medical evidence is presented with an actual date for return to the home.

(E) A member who leaves the nursing facility must remain in the home at least three (3) months for the home exemption to apply if he/she has to re-enter the facility.

(F) However, if the spouse, minor child under ~~21~~ twenty-one (21), or child who is blind or permanently disabled resides in the home during the individual's absence, the home continues to be exempt as a resource so long as the spouse, minor child, or child who is blind or permanently disabled lives there (regardless of whether the absence is temporary).

(G) Once a lien has been filed against the property of an NF resident, the property is no longer considered as a countable resource.

(b) **Promissory notes, loans, or mortgages.** The rules regarding the treatment of funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are found in (1) through (2) of this subsection.

(1) Funds used to purchase a promissory note, loan, or mortgage on or after February 8, 2006, are treated as assets transferred, and the value of such note, loan, or mortgage shall be the amount of the outstanding balance due on the note, loan, or mortgage as of the date of the individual's application for medical assistance unless the note, loan, or mortgage meets all of the conditions in paragraphs (A) through (C) of this paragraph.

(A) The note, loan, or mortgage has a repayment term that is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration).

(B) The note, loan, or mortgage provides for payments to be made in equal amounts during the term of the loan, with no deferral and no balloon payments made.

(C) The note, loan, or mortgage prohibits the cancellation of the balance upon the death of the lender.

(2) Funds used to purchase a promissory note, loan, or mortgage for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The note, loan, or mortgage was purchased before February 8, 2006; or

(B) The note, loan, or mortgage was purchased on or after February 8, 2006, and the conditions described in paragraph (1) of this subsection were met.

(c) **Annuities.** Treatment of annuities purchased on or after February 8, 2006.

(1) The purchase of an annuity shall be treated as the disposal of an asset for less than fair market value unless the Oklahoma Health Care Authority is named as the remainder beneficiary:—

(A) ~~in~~In the first position for at least the total amount of medical assistance paid on behalf of the institutionalized individual; or

(B) ~~in~~In the second position after the community spouse, child under ~~21~~twenty-one (21) years of age, or disabled child and is named in the first position if the spouse or a representative of the child disposes of any such remainder for less than fair market value.

(2) For purposes of determining financial eligibility for long-term care services under this chapter, the term "assets" shall include an annuity purchased by or on behalf of an annuitant who has applied for SoonerCare nursing facility services or other long-term care services unless the annuity meets one (1) of the following conditions.

(A) The annuity is an annuity described in subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986; or

(B) The annuity is purchased with proceeds from:

(i) An account or trust described in subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

(ii) A simplified employee pension as defined in Section 408(k) of the United States Internal Revenue Service Code of 1986;

(iii) A Roth IRA described in Section 408A of the United States Internal Revenue Service Code of 1986; or

(C) The annuity:

(i) is irrevocable and nonassignable;

(ii) is actuarially sound as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration; and

(iii) provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(d) **Life Estates.** This subsection pertains to the purchase of a life estate in another individual's home.

(1) The entire amount used to purchase a life estate in another individual's home on or after February 8, 2006, is treated as assets transferred for less than fair market value, unless the purchaser resides in the home for at least one (1) year after the date of the purchase.

(2) Funds used to purchase a life estate in another individual's home for less than its fair market value are treated as assets transferred for less than fair market value regardless of whether:

(A) The life estate was purchased before February 8, 2006; or

(B) The life estate was purchased on or after February, 8, 2006, and the purchaser resided in the home for one (1) year after the date of purchase.

(e) **Oklahoma Long-Term Care Partnership (LTCP) Program.** This subsection pertains to individuals with Oklahoma Long-Term Care Partnership policies. The Oklahoma Insurance Department approves long-term care insurance policies as Long-term Care Partnership Program policies. The face page of the policy document will indicate if the insurance qualifies as a Long-Term Care Partnership Program policy.

(1) Benefits from the LTCP policy must be exhausted before the individual can be eligible for long-term care under the SoonerCare program.

(2) Assets in an amount equal to the amount paid out under the LTCP policy can be protected for the insured individual once the LTCP policy benefits are exhausted. Protected assets are disregarded when determining eligibility for the SoonerCare program per ~~317:35-5-41.9(26)~~ OAC 317:35-5-41.9(b)(26). A record of the amount paid on behalf of the policy holder is available through the ~~OHCA~~ Oklahoma Health Care Authority or insurance company holding the LTCP policy.

(A) At the time of application for SoonerCare the individual must determine the asset(s) to be protected. The protected asset(s) cannot be changed. If the value of the protected asset(s) decreases, the individual does not have the option to select additional assets to bring the total up to the protected amount.

(B) If the protected asset(s) are income-producing, the income earned while on SoonerCare is counted in accordance with 317:35-5-42.

(C) The individual can choose to transfer the protected asset without incurring a transfer of assets penalty.

(D) When determining resource eligibility for a couple when one of them enters the nursing home or applies for a HCBS waiver, the LTCP protected asset(s) are disregarded in determining the total amount of the couple's resources.

317:35-5-41.9. Resource ~~disregards~~Exclusions from resources

~~In determining need, the following are not considered as resources:~~

- ~~(1) The coupon allotment under the Food Stamp Act of 1977;~~
- ~~(2) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;~~
- ~~(3) Education grants (excluding Work Study) scholarships, etc., that are contingent upon the student regularly attending school. The student's classification (graduate or undergraduate) is not a factor;~~
- ~~(4) Loans (regardless of use) if a bona fide debt or obligation to pay can be established. Criteria to establish a loan as bona fide includes:~~
 - ~~(A) An acknowledgment of obligation to repay or evidence that the loan was from an individual or financial institution in the loan business. If the loan agreement is not written, an OKDHS Loan Verification form is completed by the borrower attesting that the loan is bona fide and signed by the lender verifying the date and amount of loan. When copies of written agreements or OKDHS Loan Verification form are not available, detailed case documentation must include information that the loan is bona fide and how the debt amount and date of receipt was verified;~~
 - ~~(B) If the loan was from a person(s) not in the loan business, the borrower's acknowledgment of obligation to repay (with or without interest) and the lender's verification of the loan are required to indicate that the loan is bona fide;~~
 - ~~(C) Proceeds of a loan secured by an exempt asset are not an asset;~~
- ~~(5) Indian payments or items purchased from Indian payments (including judgment funds or funds held in trust) distributed by the Secretary of the Interior (BIA) or distributed by the tribe subject to approval by the Secretary of the Interior. Also, any 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. Any income from mineral leases, from tribal business investments, etc. However, any interest or income derived from~~

~~the principal or produced by purchases made with the funds after distribution is considered as any other income. Funds and property held in Individual Indian Money (IIM) Accounts are treated as a converted resource and disregarded for purposes of eligibility. Disbursements of funds from IIM accounts are to be disregarded as a resource in the month in which the disbursement was made. However, any retained disbursed funds are counted as a resource for purposes of eligibility on the first of the month following the month of disbursement;~~

~~(6) Special allowance for school expenses made available upon petitions (in writing) from funds held in trust for the student;~~

~~(7) Benefits from State and Community Programs on Aging (Title III) are disregarded. Income from the Older American Community Service Employment Act (Title V), including AARP and Green Thumb organizations as well as employment positions allocated at the discretion of the Governor of Oklahoma, is counted as earned income. Both Title III and Title V are under the Older Americans Act of 1965 amended by PL 100-175 to become the Older Americans Act amendments of 1987;~~

~~(8) Payments for supportive services or reimbursement of out-of-pocket expenses made to individual volunteers serving as foster grandparents, senior health aides, or senior companions, and to persons serving in the Services Corps of Retired Executives (SCORE) and Active Corps of Executives (ACE);~~

~~(9) Payment to volunteers under the Domestic Volunteer Services Act of 1973 (VISTA), unless the gross amount of VISTA payments equals or exceeds the state or federal minimum wage, whichever is greater;~~

~~(10) The value of supplemental food assistance received under the Child Nutrition Act or the special food services program for children under the National School Lunch Act;~~

~~(11) Any portion of payments made under the Alaska Native Claims Settlement Act to an Alaska Native which are exempt from taxation under the Settlement Act;~~

~~(12) Experimental Housing Allowance Program (EHAP) payments made under Annual Contributions Contracts entered into prior to January 1, 1975, under Section 23 of the U.S. Housing Act of 1937, as amended;~~

~~(13) Payments made from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.);~~

~~(14) Payments made from the Radiation Exposure Compensation Trust Fund as compensation for injuries or deaths resulting from the exposure to radiation from nuclear testing and uranium mining;~~

~~(15) Federal major disaster and emergency assistance provided under the Disaster Relief Act of 1974, and comparable disaster assistance provided by States, local governments and disaster assistance organizations;~~

~~(16) Interests of individual Indians in trust or restricted lands;~~

~~(17) Resources set aside under an approved Plan for Achieving Self-Support for Blind or Disabled People (PASS). The Social Security Administration approves the plan, the amount of resources excluded and the period of time approved. A plan can be approved for an initial period of 18 months. The plan may be extended for an additional 18 months if needed, and an additional 12 months (total 48 months) when the objective involves a lengthy educational or training program;~~

~~(18) Payments made to individuals because of their status as victims of Nazi persecution (PL 103-286);~~

~~(19) A migratory farm worker's out of state homestead is disregarded if the farm worker's intent is to return to the homestead after the temporary absence;~~

~~(20) Payments received under the Civil Liberties Act of 1988. These payments are to be made to individuals of Japanese ancestry who were detained in internment camps during World War II;~~

~~(21) Dedicated bank accounts established by representative payees to receive and maintain retroactive SSI benefits for disabled/blind children up to the legal age of 18. The dedicated bank account must be in a financial institution, the sole purpose of which is to receive and maintain SSI underpayments which are required or allowed to be deposited into such an account. The account must be set up and verification provided to SSA before the underpayment can be released;~~

~~(22) Payments received as a result of participation in a class action lawsuit entitled "Factor VIII or IX Concentrate Blood Products Litigation". These payments are made to hemophilia patients who are infected with HIV. Payments are not considered as income or resources. A penalty cannot be assessed against the individual if he/she disposes of part or all of the payment. The rules at OAC 317:35-5-41.6 regarding the availability of a trust do not apply if an individual establishes a trust using the settlement payment;~~

~~(23) Payments made to certain Vietnam veterans' children with spina bifida (PL 104-204);~~

~~(24) Payments made to certain Korea service veterans' children with spina bifida (PL 108-183);~~

~~(25) Payments made to the children of women Vietnam veterans who suffer from certain birth defects (PL 106-419);~~

~~(26) For individuals with an Oklahoma Long-Term Care Partnership Program approved policy, resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer are disregarded at the time of application for long-term care services provided by SoonerCare. The Oklahoma Insurance Department approves policies as Long-term Care Partnership Program policies;~~

~~(27) Workers' Compensation Medicare Set Aside Arrangements (WCMSAs), which allocate a portion of the workers' compensation settlement for future medical expenses; and~~

~~(28) Additional payments of regular unemployment compensation in the amount of \$25 per week ending June 30, 2010 and any amount of emergency unemployment compensation paid through May 31, 2010, as authorized under the American Recovery and Reinvestment Tax Act of 2009.~~

(a) The following are excluded resources. In order for payments and benefits listed in paragraph (b) and (c) to be excluded from resources, such funds must be segregated and not commingled with other countable resources so that the excludable funds are identifiable.

(b) Resources excluded by the Social Security Act, in accordance with Section 416.1210 of Title 20 of the Code of Federal Regulations (C.F.R.), unless otherwise noted:

(1) The home that is the principal place of residence, as described at Oklahoma Administrative Code (OAC) 317:35-5-41.1;

(2) Household goods and personal effects, as described at OAC 317:35-5-41(a)(5);

(3) One automobile, as described at OAC 317:35-5-41.3;

(4) Property essential to self-support:

(A) Property of a trade or business which is essential to the means of self-support, as described at OAC 317:35-5-41.12(c);

(B) Nonbusiness property used to produce goods or services essential to self-support, as described at OAC 317:35-5-41.12(c);

(C) Nonbusiness income producing property, as described at OAC 317:35-5-41.12(c);

(5) Resources of a blind or disabled individual which are necessary to fulfill an approved plan for achieving self-support;

(6) Stock in regional or village corporations held by natives of Alaska during the twenty-year period in which the stock is inalienable pursuant to the Alaska Native Claims Settlement Act;

(7) Life insurance policies, as described at OAC 317:35-5-41.2(b);

(8) Restricted allotted Indian lands;

- (9) Disaster relief assistance provided under Federal law or by state or local government;
- (10) Burial spaces, as described at OAC 317:35-5-41.2(c);
- (11) Burial funds, as described at OAC 317:35-5-41.2(d);
- (12) Irrevocable burial contracts as described at OAC 317:35-5-41.2(e);
- (13) Supplemental Security Income (SSI) and Social Security retroactive payments for nine (9) months following the month of receipt;
- (14) Housing assistance paid pursuant to:
 - (A) The United States Housing Act of 1937;
 - (B) The National Housing Act;
 - (C) Section 101 of the Housing and Urban Development Act of 1965;
 - (D) Title V of the Housing Act of 1949;
 - (E) Section 202(h) of the Housing Act of 1959;
- (15) Refunds of Federal income taxes and advances made by an employer relating to an earned income tax credit for nine (9) months following the month of receipt;
- (16) Payments received as compensation for expenses incurred or losses suffered as a result of a crime;
- (17) Relocation assistance for nine (9) months beginning with the month following the month of receipt. The assistance must be provided by a State or local government that is comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 that is subject to the treatment required by Section 216 of that Act;
- (18) Money in a dedicated account for SSI-eligible individuals under age eighteen (18) that is required by 20 C.F.R. § 416.640(e);
- (19) Gifts to children under age eighteen (18) with life-threatening conditions from an organization described at 26 U.S.C. § 501(c)(3) that is exempt from taxation under 26 U.S.C. § 501(a);
- (20) Restitution of Social Security, SSI, or a Special Benefit for World War II Veterans made because of misuse by a representative payee, for nine (9) months following the month of receipt;
- (21) Any portion of a grant, scholarship, fellowship, or gift used or set aside for paying tuition, fees, or other necessary educational expenses, for nine (9) months beginning the month after the month of receipt;
- (22) Payment of a refundable child tax credit for nine (9) months following the month of receipt;
- (23) Any annuity paid by a State to a person (or his or her spouse) based on the State's determination that the person is:

- (A) A veteran (as defined in 38 U.S.C. § 101); and
 - (B) Blind, disabled, or aged;
- (24) The principal and income of trusts complying with OAC 317:35-5-41.6(6). See also 42 U.S.C. § 1396p(d)(4);
- (25) Workers' Compensation Medicare Set Aside Arrangements (WCMSAs) which allocate a portion of the workers' compensation settlement for future medical expenses; and/or
- (26) For individuals with an Oklahoma Long-Term Care Partnership Program approved policy, resources equal to the amount of benefits paid on the insured's behalf by the long-term care insurer. Said disregard is made at the time of application for long-term care services provided by SoonerCare. The Oklahoma Insurance Department approves policies as Long-term Care Partnership Program policies.
- (c) Resources excluded by federal laws other than the Social Security Act, in accordance with 20 C.F.R. § 416.1236, unless otherwise noted:
 - (1) Funds and interest held in an Achieving a Better Life Experience (ABLE) account, pursuant to 26 U.S.C. § 529A:
 - (A) A contribution to an ABLE account by another individual is neither income nor a resource to the individual with the ABLE account, unless such contribution exceeds the annual federal gift tax exclusion established by 26 U.S.C. § 2503(b), in which case, any contribution in excess of the annual federal gift tax exclusion is a countable resource and income in the month deposited.
 - (B) A distribution from an ABLE account that is retained after the month of receipt is neither income nor a resource to the individual in any month when spent on a qualified disability expense (QDE).
 - (C) A QDE is any expense related to the blindness or disability of the individual and made for the benefit of the individual. QDE's 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) Expenses for ABLE account oversight and monitoring;
 - (xi) Funeral and burial; and
 - (xii) Basic living expenses.
 - (D) A distribution, or portion of a distribution, from an ABLE account that is retained after the month of receipt,

and used for a non-QDE in the next or subsequent month, is a countable resource to the individual in the month in which the funds were spent. Any unspent portion of the distribution the individual continues to retain is not a countable resource.

(E) A distribution, or portion of a distribution, from an ABLE account that is received and used for a non-QDE in the same month, is considered unearned income to the individual in the month of receipt. Any unspent portion of the distribution the individual retains after the month of receipt is not a countable resource;

(2) Payments made under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (84 Stat. 1902, 42 U.S.C. § 4636);

(3) Payments made to Native Americans as listed in paragraphs (b) and (c) of section IV of the Appendix to Subpart K of Part 416 of C.F.R. Title 20;

(4) Indian judgment funds held in trust by the Secretary of the Interior or distributed per capita pursuant to a plan prepared by the Secretary of the Interior and not disapproved by a joint resolution of the Congress under Public Law 93-134, as amended by Public Law (Pub.L.) 97-458 (25 U.S.C. § 1407). Indian judgment funds include interest and investment income accrued while the funds are so held in trust. This exclusion extends to initial purchases made with Indian judgment funds, but will not apply to proceeds from sales or conversions of initial purchases or to subsequent purchases;

(5) Supplemental Nutrition Assistance Program benefits;

(6) The value of assistance to children under the National School Lunch Act (60 Stat. 230, 42 U.S.C. §§ 1751 et seq.) as amended by Pub.L. 90-302 (82 Stat. 117, 42 U.S.C. § 1761 (h)(3));

(7) The value of assistance to children under the Child Nutrition Act of 1966 (80 Stat. 889, 42 U.S.C. § 1780(b));

(8) Any grant or loan to any undergraduate student for educational purposes made or insured under any program administered by the Commissioner of Education as provided by section 507 of the Higher Education Amendments of 1968, Pub.L. 90-575 (82 Stat. 1063);

(9) Incentive allowances received under Title I of the Comprehensive Employment and Training Act of 1973 (87 Stat. 849, 29 U.S.C. § 821(a));

(10) Compensation provided to volunteers by the Corporation for National and Community Service (CNCS), unless determined by the CNCS to constitute the minimum wage in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. §§ 201 et seq.) or

applicable State law, pursuant to 42 U.S.C. § 5044(f)(1).
Programs include:

- (A) AmeriCorps;
- (B) Special and demonstration volunteer programs;
- (C) University year for ACTION;
- (D) Retired senior volunteer program;
- (E) Foster grandparents program; and
- (F) Senior companion program;

(11) Distributions received by an individual Alaska Native or descendant of an Alaska Native from an Alaska Native Regional and Village Corporation pursuant to the Alaska Native Claims Settlement Act, as follows: cash, including cash dividends on stock received from a Native Corporation, is disregarded to the extent that it does not, in the aggregate, exceed \$2,000 per individual each year (the \$2,000 limit is applied separately each year, and cash distributions up to \$2,000 which an individual received in a prior year and retained into subsequent years will not be counted as resources in those years); stock, including stock issued or distributed by a Native Corporation as a dividend or distribution on stock; a partnership interest; land or an interest in land, including land or an interest in land received from a Native Corporation as a dividend or distribution on stock; and an interest in a settlement trust. This exclusion is pursuant to the exclusion under section 15 of the Alaska Native Claims Settlement Act Amendments of 1987, Pub.L. 100-241 (43 U.S.C. § 1626(c)), effective February 3, 1988;

(12) Value of Federally donated foods distributed pursuant to section 32 of Pub.L. 74-320 or section 416 of the Agriculture Act of 1949 (7 C.F.R. § 250.6(e)(9) as authorized by 5 U.S.C. § 301);

(13) All funds held in trust by the Secretary of the Interior for an Indian tribe and distributed per capita to a member of that tribe under Pub.L. 98-64;

(14) Home energy assistance payments or allowances under the Low-Income Home Energy Assistance Act of 1981, as added by Title XXVI of the Omnibus Budget Reconciliation Act of 1981, Pub.L. 97-35 (42 U.S.C. § 8624(f));

(15) Student financial assistance for attendance costs received from a program funded in whole or in part under Title IV of the Higher Education Act of 1965, as amended, or under Bureau of Indian Affairs (BIA) Student assistance programs if it is made available for tuition and fees normally assessed a student carrying the same academic workload, as determined by the institution, including costs for rental or purchase of any equipment, materials, or supplies required of all students in the same course of study; and an allowance for books, supplies,

transportation, and miscellaneous personal expenses for a student attending the institution on at least a half-time basis, as determined by the institution, under section 14(27) of Pub.L. 100-50, the Higher Education Technical Amendments Act of 1987 (20 U.S.C. § 1087uu) or under BIA student assistance programs. This includes, but is not limited to:

- (A) Pell grants;
- (B) Student services incentives;
- (C) Academic achievement incentive scholarships;
- (D) Byrd scholars;
- (E) Federal supplemental education opportunity grants;
- (F) Federal educational loans (federal PLUS loans, Perkins loans, Stafford loans, Ford loans, etc.);
- (G) Upward Bound;
- (H) GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs);
- (I) State educational assistance programs funded by the leveraging educational assistance programs; and
- (J) Work-study programs;

(16) Amounts paid as restitution to certain individuals of Japanese ancestry and Aleuts under the Civil Liberties Act of 1988 and the Aleutian and Pribilof Islands Restitution Act, sections 105(f) and 206(d) of Pub.L. 100-383 (50 U.S.C. app. 1989 b and c);

(17) Payments made on or after January 1, 1989, from the Agent Orange Settlement Fund or any other fund established pursuant to the settlement in the In Re Agent Orange product liability litigation, M.D.L. No. 381 (E.D.N.Y.) under Pub.L. 101-201 (103 Stat. 1795) and section 10405 of Pub.L. 101-239 (103 Stat. 2489);

(18) Payments made under section 6 of the Radiation Exposure Compensation Act, Pub.L. 101-426 (104 Stat. 925, 42 U.S.C. § 2210);

(19) Payments made to individuals because of their status as victims of Nazi persecution excluded pursuant to section 1(a) of the Victims of Nazi Persecution Act of 1994, Pub.L. 103-286 (108 Stat. 1450);

(20) Any matching funds and interest earned on matching funds from a demonstration project authorized by Pub.L. 105-285 that are retained in an Individual Development Account, pursuant to section 415 of Pub.L. 105-285 (112 Stat. 2771);

(21) Any earnings, Temporary Assistance for Needy Families matching funds, and accrued interest retained in an Individual Development Account, pursuant to section 103 of Pub.L. 104-193 (42 U.S.C. § 604(h)(4));

(22) Payments made to individuals who were captured and interned by the Democratic Republic of Vietnam as a result of

participation in certain military operations, pursuant to section 606 of Pub.L. 105-78 and section 657 of Pub.L. 104-201 (110 Stat. 2584);

(23) Payments made to certain Vietnam veteran's children with spina bifida, pursuant to section 421 of Pub.L. 104-204 (38 U.S.C. § 1805(d));

(24) Payments made to the children of women Vietnam veterans who suffer from certain birth defects, pursuant to section 401 of Pub.L. 106-419, (38 U.S.C. § 1833(c));

(25) Assistance provided for flood mitigation activities under section 1324 of the National Flood Insurance Act of 1968, pursuant to section 1 of Public Law 109-64 (119 Stat. 1997, 42 U.S.C. § 4031); and/or

(26) Payments made to individuals under the Energy Employees Occupational Illness Compensation Program Act of 2000, pursuant to section 1, app. [Div. C. Title XXXVI section 3646] of Public Law 106-398 (114 Stat. 1654A-510, 42 U.S.C. § 7385e).

317:35-5-41.12. Real or personal property essential to self-support

(a) This rule describes exclusions when real or personal property is essential to an individual's means of self-support.

(b) Categories of property essential to self-support.

(1) Property used in a trade or business; property used by an individual as an employee for work; or government permits that represent authority granted by a government agency to engage in an income-producing activity.

(A) Are excluded as a resource regardless of value or rate of return.

(B) Government permits includes any permit, license, or similar instrument issued by a federal, state, or local government agency.

(C) Personal property used by an employee for work includes farm machinery, tools, safety equipment, uniforms, etc.

(2) Nonbusiness real or personal property used to produce goods or services essential to basic daily living needs

(A) Up to six-thousand dollars (\$6,000) of the equity value is excluded, regardless of rate of return.

(B) Any portion of the property's equity value in excess of six-thousand dollars (\$6,000) is a countable resource.

(C) Nonbusiness property used to produce goods or services includes, but is not limited to:

(i) Growing produce or livestock solely for personal consumption in the individual's household or performing activities essential to the production of food solely for home consumption.

(ii) Timber lots, wood splitters, and other tools used to produce firewood solely for use in the applicant's or recipient's home.

(3) Nonbusiness income-producing property.

(A) Up to six-thousand dollars (\$6,000) of the equity value is excluded as a resource if the property produces a net annual return equal to at least six percent (6%) of the excluded equity.

(B) Any portion of the property's equity value in excess of six-thousand dollars (\$6,000) is a countable resource.

(C) If the property produces less than a six percent (6%) return, the exclusion can only apply if the lower return is for reasons beyond the individual's control and there is a reasonable expectation that the property will again produce a six percent (6%) return. Otherwise, none of the equity value is excluded under this section.

(D) If the earnings decline was for reasons beyond the individual's control, up to twenty-four (24) months can be allowed for the property to resume producing a six percent (6%) return. The twenty-four (24) month period begins with the first day of the tax year following the one in which the return dropped to below six percent (6%).

(E) If the tax return shows that the activity has operated at a loss for the two (2) most recent years or longer, the property cannot be excluded unless the individual submits current receipts and records to show that it currently is producing a six percent (6%) return.

(F) If an individual owns more than one (1) piece of income-producing property, the six percent (6%) return requirement applies individually to each property and the six-thousand dollar (\$6,000) equity value limit applies to the total equity value of all the properties meeting the six percent (6%) return requirement.

(G) If all properties meet the six percent (6%) test but the total equity value exceeds six-thousand dollars (\$6,000), that portion of the total equity value in excess of six-thousand dollars (\$6,000) is a countable resource.

(c) For any of the exclusions to apply, the property must be in current use in the type of activity that qualifies it as essential.

(d) Property not in current use. If the property is not in current use, it must be for reasons beyond the individual's control and there must be a reasonable expectation that the use will resume within twelve (12) months of last use.

(1) Property not in current use can be excluded for twelve (12) months as essential for self-support if it has been in use and there is reasonable expectation that the use will resume. The individual must provide a signed statement of last date of use,

reason the property is not in use, and when the individual expects to resume the self-support activity.

(2) If an individual alleges that self-support property is not in current use because of a disabling condition of the individual, the individual must provide a signed statement of the nature of the condition, the date the individual ceased the self-support activity, and when the individual intends to resume activity to receive up to an additional twelve (12) months.

(3) If the individual does not intend to resume the self-support activity, the property is a countable resource in the month after the month of last use.

(4) If, after property has been excluded because an individual intends to resume self-support activity, the individual decides not to resume such activity, the exclusion ceases to apply as of the date of the change of intent. The property is a resource in the following month.

(e) Individual responsibilities. The individual shall:

(1) Provide a copy of the tax return for the tax year prior to application or renewal to be used to determine the net income earned for the individual from the income-producing property.

(2) Provide pertinent documents and a signed statement if the individual alleges owning a government license, permit, or other property that represents government authority to engage in an income-producing activity, and has value as a resource. The statement shall include:

(A) The type of license, permit, or other property;

(B) The name of the issuing agency, if appropriate;

(C) Whether the law requires such license, permit, or property for engaging in the income-producing activity at issue; and

(D) How the license, permit, or other property is being used; or

(E) Why it is not being used.

(3) Provide a signed statement if the individual alleges owning items used in his or her work as an employee. The statement shall include:

(A) The name, address, and telephone number of the employer;

(B) A general description of the items;

(C) A general description of the individual's duties; and

(D) Whether the items are currently being used.