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 18-15A

SUMMARY:
Change Timeframes for Appeals – The proposed revisions change all of the appeals rules to extend the length of time that appeals can be submitted from twenty days to thirty days of the date of an adverse agency action.

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. § 431.200 to 431.246 and 455.422; 12 O.S. § 951; 56 O.S. § 1011.9; 63 O.S. § 5030.3; 68 O.S. § 205.2; 75 O.S. §§ 305 and 309

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 # 18-15A

A. Brief description of the purpose of the rule:

The proposed revisions change all of the agency's appeals rules, to extend the length of time that appeals can be submitted from twenty days to thirty days of the date of an adverse agency action. Additionally, the revisions add Supplemental Hospital Offset Payment Program (SHOPP) Appeals to the list of other grievance procedures and processes.

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 and providers who wish to file an appeal will be positively 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 will benefit SoonerCare members and providers by giving them an additional ten days within which to file an appeal.

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 estimates 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 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.

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: November 1, 2018

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

317:2-1-2. Appeals

(a) **Request for Appeal.**

(1) For the purpose of calculating the timeframe for requesting an administrative appeal of an agency action, the date on the written notice shall not be included. The last day of the thirty-day (30-day) timeframe shall be included, unless it is a legal holiday as defined by 25 Oklahoma Statutes (O.S.) § 82.1, or any other day the Oklahoma Health Care Authority (OHCA) is closed or closes early, in which case, the timeframe runs until the close of the next full business day.

(2) An appeals request that an aggrieved member or provider sends via mail is deemed filed on the date that the agency receives it.

~~(a)~~(b) **Member Process Overview.**

(1) The appeals process allows a member to appeal a decision relating to program benefits. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to ~~file~~initiate an appeal, the member ~~files~~must file a LD-1 (Member Complaint/Grievance Form) within ~~twenty (20)~~thirty (30) calendar days of the ~~triggering event. The triggering event occurs at the time when the member (the "Appellant") knew or should have known the facts or circumstances serving as the basis for an appeal~~date the OHCA sends written notice of its action, in accordance with Oklahoma Administrative Code (OAC) 317:2-1-2(a), above, or, in matters in which a formal notice is not sent by the agency, within thirty (30) days of the date on which the member knew or should have known the facts or circumstances serving as the basis for appeal.

(3) If the LD-1 form is not received ~~within twenty (20) days of the triggering event~~timely, ~~OHCA~~the Administrative Law Judge (ALJ) will cause to be issued a letter stating the appeal will not be heard ~~because it is untimely~~. In the case of tax warrant intercept appeals, if the LD-1 form is not received by OHCA within the timeframe pursuant to ~~Title 68 Oklahoma Statutes, Sec. 205.2~~68 O.S. § 205.2, OHCA similarly will cause to be issued a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out or if necessary documentation is not included, then the appeal will not be heard.
(5) OHCA will advise members that if assistance is needed in reading or completing the grievance form, arrangements will be made to provide such assistance.
(6) Upon receipt of the member's appeal, a fair hearing before the ~~Administrative Law Judge (ALJ)~~ALJ will be scheduled. The member will be notified in writing of the date and time of the hearing. The member must appear at the hearing, either in person or telephonically. Requests for a telephone hearing must be received in writing on OHCA's LD-4(Request for ~~Telephonic Hearing~~telephonic hearing) form no later than ten (10) calendar days prior to the scheduled hearing date. Telephonic hearing requests will only be granted by the OHCA's Chief Executive Officer (CEO) or his/her designee, at his/her sole discretion, for good cause shown, including, for example, the member's physical condition, travel distances, or other limitations that either preclude an in-person appearance or would impose a substantial hardship on the member.
(7) The hearing shall be conducted according to OAC 317:2-1-5. The ALJ's decision may be appealed to the CEO of the OHCA, which is a record review at which the parties do not appear (OAC 317:2-1-13).
(8) Member appeals are ordinarily decided within ninety (90) days from the date on which the member's timely request for a fair hearing is received, unless, in accordance with ~~42 Code of Federal Regulations, Sec. 431.244(f)~~Section 431.244(f) of Title 42 of the Code of Federal Regulations:
(A) The Appellant was granted an expedited appeal pursuant to ~~OAC 317:2-1-2.4~~OAC 317:2-1-2.5;
(B) OHCA cannot reach a decision because the Appellant requests a delay or fails to take a required action, as reflected in the record; or
(C) There is an administrative or other emergency beyond OHCA's control, as reflected in the record.
(9) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within twenty (20) days of the hearing before the ALJ.

~~(b)~~(c) **Provider Process Overview.**

(1) The proceedings as described in this subsection contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in ~~OAC 317:2-1-2(c)(2)~~OAC 317:2-1-2(d)(2).
(2) All provider appeals are initially heard by the OHCA ALJ under ~~OAC 317:2-1-2(c)(2)~~OAC 317:2-1-2(d)(2).

(A) In order to initiate an appeal, ~~A~~a provider ~~who wants to contest an adverse OHCA determination (the "Appellant") must initiate an appeal by filing with OHCA the proper~~must file the appropriate LD form within ~~twenty (20)~~thirty (30) calendar days of the date ~~of~~the OHCA sends written notice of ~~an adverse determination or other~~its action ~~taken by OHCA~~, in accordance with OAC 317:2-1-2(a), above. LD-2 forms should be used for Program Integrity audit appeals; LD-3 forms are to be used for all other provider appeals.

(B) Except for OHCA Program Integrity audit appeals, ~~I~~if the appropriate LD form is not received ~~within twenty (20) days of the date of notice~~timely, ~~OHCA~~the ALJ will cause a letter to be issued stating that the appeal will not be heard ~~because it is untimely~~.

(C) A decision ordinarily will be issued by the ALJ within forty-five (45) days of the close of all evidence in the appeal.

(D) Unless otherwise limited by OAC 317:2-1-7 or 317:2-1-13, the ALJ's decision is appealable to OHCA's CEO.

~~(c)~~(d) **ALJ jurisdiction.** The ALJ has jurisdiction of the following matters:

(1) **Member Appeals.**

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the OHCA. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the ALJ within twenty (20) days of the hearing;

(E) Proposed administrative sanction appeals pursuant to OAC 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within twenty (20) days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(F) Appeals which relate to eligibility determinations made by OHCA; and

(G) Appeals of insureds participating in Insure Oklahoma which are authorized by OAC 317:45-9-8~~(a); and~~.

(2) **Provider Appeals.**

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;
(C) Appeals by Long Term Care facilities for administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5)(B) and (d)(8);
(D) Appeals of Professional Service Contract awards and other matters related to the Central Purchasing Act pursuant to ~~Title 74 O. S. § 85.1~~Title 74 O.S. § 85.1 et seq.;
(E) Drug rebate appeals;
(F) Provider appeals of OHCA Program Integrity audit findings pursuant to OAC 317:2-1-7. This is the final and only appeals process for appeals of OHCA Program Integrity audit findings;
(G) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives;
(H) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, Supplemental Payment, fees or penalties as specifically provided in OAC 317:2-1-15; and
(I) The Nursing Facility Supplemental Payment Program (NFSPP) and its issues consisting of the amount of each component of the Intergovernmental transfer, the Upper Payment Limit payment, the Upper Payment Limit gap, and the penalties specifically provided in OAC 317:30-5-136. This is the final and only process for appeals regarding NFSPP.

317:2-1-6. Other grievance procedures and processes

Other grievance procedures and processes include those set out in Oklahoma Administrative Code (OAC) 317:2-1-7 ~~(Provider Appeals of OHCA Audit Findings)~~(Program Integrity Audit Appeals); ~~317:2-1-8 (Nursing Home Provider Contract Appeals);~~ OAC 317:2-1-9 (OHCA's Designated Agent's Appeal Process for QIO Services); OAC 317:2-1-10 (Drug Rebate Appeal Process); OAC 317:2-1-11 [Medicaid Drug Utilization Review Board (DUR) Appeal Process]; OAC 317:2-1-12 ~~(For Cause Provider Contract Suspension/Termination Appeals Process)~~(For Cause and Immediate Provider Contract Termination Appeals Process); ~~and~~ OAC 317:2-1-14 (Contract Award Protest Process)~~.~~; and OAC 317:2-1-15 (Supplemental Hospital Offset Payment Program (SHOPP) Appeals).

317:2-1-7. Program Integrity Audit Appeals

All appeals related to audits originating from Program Integrity resulting in overpayments are heard by an Administrative Law Judge (ALJ) pursuant to ~~56 O.S. § 1011.9~~56 Oklahoma Statutes (O.S.) § 1011.9.

(1) If the ~~OHCA~~Oklahoma Health Care Authority (OHCA) determines a provider received an overpayment based upon audit ~~findings~~findings/report issued pursuant to ~~OAC~~Oklahoma Administrative Code (OAC) 317:30-3-2.1, the provider may appeal the audit ~~findings~~findings/report. If a provider elects to appeal the audit ~~findings~~findings/report, the provider must file its appeal with the OHCA's Legal Docket Clerk, using Form LD-2. The LD-2 must be received by the OHCA Legal Docket Clerk within ~~20~~thirty (30) calendar days of the date of the initial audit ~~findings~~findings/report or within ~~20~~thirty (30) calendar days of the date of the reconsideration audit ~~findings following reconsideration~~findings/report. The computation of time shall be calculated in accordance with ~~12 O.S. § 2006~~OAC 317:2-1-2(a).

(2) The provider must attach a statement to the LD-2 that specifies what findings and/or claims are being appealed, as well as all factual and legal bases for the appeal. The provider shall attach the following to the LD-2 form:

(A) Citations for any statute or rule that the provider contends has been violated;

(B) The provider's name, address, e-mail address, and telephone number;

(C) The name, address, e-mail address, and telephone number of the provider's authorized representative, if any; and

(D) The LD-2 must be signed by the provider or provider's authorized representative.

(i) For purposes of this section, "provider" means the person or entity against whom the overpayment is sought.

(ii) Consistent with Oklahoma rules of practice, an individual provider may appear on his/her own behalf or may be represented by an attorney licensed to practice law within the State of Oklahoma. In the case of an entity, the provider entity must be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must comply with 5 O.S. Art II, Sec. 5, and rules of the Oklahoma Bar Association.

(3) A provider or the provider's authorized representative shall immediately report any change in contact information during the course of the appeal to the OHCA Legal Docket Clerk.

(4) The OHCA, on its own initiative or upon written request of a party, may consolidate or join appeals if to do so will expedite the processing of the appeals and not adversely affect the interest of the parties.

(5) The provider has the burden of proof to prove that the overpayment determination and the errors identified in the audit ~~findings~~findings/report are inaccurate. The provider must

prove the relief sought by a preponderance of the evidence standard, as defined by the Oklahoma Supreme Court. In adjudicating an appeal under the preponderance of the evidence standard, the ALJ will examine each piece of evidence for relevance, probative value, and credibility, to determine whether the fact to be proven is proved by the greater weight of the evidence.

(6) Within approximately ~~45~~forty-five (45) days of receiving the LD-2, the Legal Docket Clerk will schedule a prehearing conference before an ALJ. This period of time is intended to provide the parties an opportunity to settle the dispute prior to the prehearing. Settlement of audit appeals is encouraged and can begin at any time of the audit appeal process between the provider and OHCA's Legal Division. If a settlement is reached, the terms shall be set out in writing and signed by both parties and/or their authorized representatives. Unless otherwise warranted, an Agreed Order setting out the terms of the settlement shall be presented to the ALJ for approval. In limited situations, a settlement may be agreed to be a confidential settlement by the parties and will not be submitted as an Agreed Order to the ALJ. In the case of confidential settlements, the Appellant shall file a motion to dismiss the appeal with prejudice which informs the ALJ that the matter has been settled and that the audit appeal is moot.

(7) Audit appeals which are not settled will commence with a prehearing conference before the assigned ALJ as follows:

(A) The prehearing conference shall be informal, structured by the ALJ, and not open to the public. The ALJ shall record the prehearing conference by digital recording.

(i) Each party shall be notified of the date of the prehearing conference at least ~~30~~thirty (30) calendar days prior to the scheduled prehearing conference.

(ii) Each party shall appear in person or through their authorized representative.

(iii) Witnesses, not including a named party, shall not appear at the prehearing conference. Nor shall any witness testimony be presented at the prehearing conference.

(B) A request for continuance of a prehearing conference can be made up to three (3) business days prior to the scheduled prehearing conference date. A lesser period of time may be permitted for good cause shown. The ALJ shall rule on the request and in no case shall a combination of continuance exceed a total of ~~30~~thirty (30) calendar days except for good cause shown.

(C) Within ~~20~~twenty (20) days prior to the prehearing conference, the Appellant provider shall file a prehearing

conference statement with the Legal Docket Clerk and provide a copy to the other party; and within ~~10~~ten (10) days prior to the prehearing conference, the OHCA shall file a prehearing conference statement with the docket clerk and provide a copy to the other party. Each party's prehearing conference statement shall include:

(i) A brief statement of its case, including a list of stipulations and legal and factual issues to be heard;

(ii) A list of any witnesses who have direct knowledge of the facts surrounding the issues of the appeal and who are expected to be called at the hearing. The list shall include a brief statement of the testimony each witness will offer;

(iii) A list of all exhibits, together with a copy thereof, which each party intends to offer into evidence at the hearing; and

(iv) Any requests for discovery.

(D) At the prehearing conference, the parties shall clarify and isolate the legal and factual issues involved in the audit appeal.

(E) Each party shall be present, on time, and prepared. Failure to do so may result in dismissal of the appeal or other sanctions unless good cause is shown. A prehearing conference shall not be continued if a party fails to be prepared to identify issues, propose witnesses, or provide exhibits, unless the ALJ finds good cause is shown.

(F) Following the prehearing conference, the ALJ shall issue a Scheduling Order setting forth deadlines for parties to complete discovery, submit briefs as directed by the ALJ, submit prehearing motions, and other deadlines as may be needed. The ALJ should attempt to issue the Scheduling Order within two (2) weeks of the prehearing conference. Upon completion of discovery and the submission of any motions or briefs, the ALJ shall issue a Prehearing Order that shall identify all issues to be presented at the hearing; a final list of witnesses to be called by each party; a final list of exhibits to be used by each party; and the hearing date and anticipated duration of the hearing. The Prehearing Order should be filed by the ALJ no later than ~~10~~ten (10) days prior to the hearing.

(8) The ALJ shall:

(A) Limit all decisions, rulings, and orders to matters directly related to the contested overpayment determination resulting from the audit findings issued pursuant to OAC 317:30-3-2.1 and procedural matters set forth within OAC 317:2-1-7;

(B) Hear and rule on pending requests or motions as expeditiously as possible. This includes setting filing and responsive deadlines in accordance with Title 12 of the Oklahoma Statutes and the Rules for District Courts of Oklahoma. To preserve judicial efficiency, a reply to a response to a motion shall not be filed by a party without leave of Court to do so and such permission shall not be routinely granted;

(C) Rule on whether witnesses have knowledge of the facts at issue;

(D) Rule on whether discovery requests and other motions and requests are relevant;

(E) Rule on whether to grant a party's request to depose a witness. To preserve judicial efficiency, depositions shall not be routinely permitted and shall only be permitted by order of the ALJ;

(F) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed; and

(G) Identify and rule on ~~errors~~the specific audit findings being appealed and~~ issues~~ to be heard at the administrative hearing.

(9) As the purpose of the administrative process is to expedite a limited appellate review of the audit findings, the ALJ shall ensure a timely resolution of the appeal. The ALJ shall schedule a hearing within ~~90~~ninety (90) days of the prehearing conference. A party may request a continuance of the hearing by motion, which shall only be permitted if the ALJ finds good cause exists and neither party shall be prejudiced by the continuation.

(10) At the hearing:

(A) Each party shall appear in person or through their authorized representative.

(B) All witnesses must appear in person to provide testimony.

(C) All relevant exhibits provided with and specifically identified in each party's prehearing conference statement or final exhibit list, that have not been objected to or stricken by the ALJ, shall be deemed admissible at the hearing.

(D) Each party ~~is responsible to~~shall provide a sufficient number of copies of its own exhibits at the hearing. This is in addition to any other copies of exhibits that were previously produced prior to the hearing unless otherwise ordered by the ALJ.

(E) The hearing will be limited to one (1) day. Each side will be allowed four (4) hours to present its case-in-chief,

which is inclusive of any time needed for cross-examination of witnesses by the opposing party. For good cause shown, the ALJ may increase or decrease the time limit for each party to present its case-in-chief, taking into account the time limits of the entire appeal process.

(11) The ALJ should attempt to make the final hearing decision within 90 days from the date of the hearing. Any appeal of the final order pursuant to 12 O.S. § 951 must be filed with the District Court of Oklahoma County within ~~30~~thirty (30) days.

(A) The following items shall constitute the record on appeal:

(i) all motions and orders filed with the Legal Docket Clerk;

(ii) all exhibits admitted during the hearing; and

(iii) the transcripts of proceedings, if any.

(B) It shall be the duty of the Appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within 30 days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the Appellant.

(12) All orders and settlements are non-precedential decisions.

(13) The prehearing conference, the hearing, and any supplementary hearings or conferences shall be digitally recorded and closed to the public.

(14) The record of the appeal, confidential settlements, and any audio recordings shall remain confidential.

317:2-1-10. Drug Rebate appeal process

The purpose of this Section is to afford a process to both the manufacturer and the state to administratively resolve drug rebate discrepancies. These rules anticipate discrepancies between the manufacturer and ~~OHCA~~the Oklahoma Health Care Authority (OHCA) which would require the manufacturer to pay a higher rebate or a lower rebate. These regulations provide a mechanism for both informal dispute resolution of drug rebate discrepancies between the manufacturer and OHCA and a mechanism for appeals of drug rebate discrepancies between the manufacturer and OHCA.

(1) The process begins at the end of each calendar quarter when the OHCA mails a copy of the State's past quarter's utilization data to the manufacturer. Utilization data and a billing for rebates will be mailed to the manufacturer within ~~60~~sixty (60) days after the end of each quarter. It is this data which dictates the application of the federal drug rebate formula.

(2) Within ~~30~~thirty (30) days from the date utilization data is sent to the manufacturer, the manufacturer may edit state data and resolve data inconsistencies with the state. The

manufacturer may utilize telephone conferences, letters and any other mechanism to resolve data inconsistencies in mutual agreement with the state.

(3) Within ~~30~~thirty (30) days after the utilization data is mailed to the manufacturer, the manufacturer may:

(A) pay the same amount as billed by the state with the quarterly utilization date;

(B) pay an amount which differs from the amount billed by the state with the utilization data and send disputed data information;

(C) pay nothing and send no disputed data information;

(D) pay nothing and send disputed data information.

(4) In the event the state receives the rebate amount billed by the 30th day, the dispute ends.

(5) If after ~~30~~thirty (30) days one of the following events occurs, the state will acknowledge the receipt of the correspondence and review the disputed data:

(A) the receipt of an amount lower than that billed to the manufacturer;

(B) the receipt of disputed data.

(6) In the event no disputed data is received and no payment is received, interest will be computed in accordance with the provisions of federal law found at ~~42 U.S.C. Section 1396b(d)(5)~~42 United States Code (U.S.C.) § 1396b(d)(5) and will be compounded upon the amount billed from ~~38~~thirty-eight days after the date utilization data is sent.

(7) In the event a lower amount than billed is paid or in the event disputed data is sent, and no money is received, interest will be computed in accordance with 42 U.S.C. Section 1396b(d)(5) and will be computed from ~~38~~thirty-eight days from the date utilization data is sent to the manufacturer.

(8) Within ~~70~~seventy (70) days from the date utilization data is sent to the manufacturer, the state will make its final informal review of the disputed data. OHCA will mail a second notice to the manufacturer which will include:

(A) receipt of the rebate, if any;

(B) receipt of the dispute;

(C) a statement regarding the interest amount; and

(D) a statement regarding the appeal rights of the manufacturer with a copy of the appeal form.

(9) Within ~~90~~ninety (90) days of the date utilization data is sent to the manufacturer or within ~~20~~thirty (30) days of the date a second notice is mailed to the manufacturer, whichever is sooner, the state or the manufacturer may request a hearing to administratively resolve the matter.

(10) The administrative appeal of drug rebate discrepancies includes:

(A) The appeal process will begin by the filing of a form LD-2 by the manufacturer or OHCA.
(B) The process afforded the parties will be the process found at ~~OAC 317:2-1-2(b) and (c)~~OAC 317:2-1-2(c) and (d).
(C) With respect to the computation of interest, interest will continue to be computed from the ~~38~~thirty-eight (38) day based upon the policy contained in the informal dispute resolution rules above.
(D) The ~~ALJ's~~Administrative Law Judge's (ALJ) decision will constitute the final administrative decision of the OHCA.
(E) If the decision of the ALJ affirms the decision of OHCA in whole or in part, payment from the manufacturer must be made within ~~30~~thirty (30) days of the decision. If the decision of the ALJ reverses the decision of the OHCA, the OHCA will make such credit or action within ~~30~~(30) days of the decision of the ALJ.
(F) The nonpayment of the rebate by the manufacturer within ~~30~~thirty (30) days after the ALJ's decision will be reported to the Centers for Medicare and Medicaid Services and may be the basis of an exclusion action by the OHCA.

317:2-1-11. Medicaid Drug Utilization Review Board (DUR) appeal process

This Section explains the appeal process, pursuant to 63 ~~O.S.~~Oklahoma Statutes (O.S.) §5030.3(B)~~(Supp. 1999)~~, accorded any party aggrieved by a decision of the ~~OHCA~~Oklahoma Health Care Authority (OHCA) Board or ~~Administrator (CEO)~~Chief Executive Officer (CEO) concerning a proposed recommendation of the Medicaid Drug Utilization Review Board (DUR).

(1) The aggrieved party may appeal pursuant to ~~OAC~~Oklahoma Administrative Code (OAC) 317:2-1-2 et seq. (OHCA Appeals).
(2) The Board finds that the prescription of Title 63 O.S. § 5030.3(B) is somewhat contradictory with the functions of the DUR Board. More specifically, in most instances, the DUR Board suggests policies that must be rule made. Rules promulgated by the OHCA Board do not lend to an "individual proceeding notice" as contemplated by Article II of the Oklahoma Administrative Procedures Act, specifically, ~~Title 75 O.S. §309~~Title 75 O.S. § 309. Thus, in instances where the OHCA Board promulgates rules as a result of policy recommendations by the ~~DUR~~Drug Utilization Review (DUR) Board, this Board will consider a party aggrieved by these rules to have filed a Petition for Rulemaking under ~~75 O.S. §305~~75 O.S. § 305. In making this interpretation of ~~63 O.S. §5030.1~~63 O.S. § 5030, the Board will not enforce the last sentence of ~~75 O.S. §305~~75 O.S. § 305. In making this interpretation, the Board finds that it is taking two somewhat conflicting provisions, and combining them to effectuate the

intent of the legislature - to provide a hearing to those aggrieved by recommendations by the DUR Board and accepted by the OHCA Board.

(3) In instances where the DUR Board makes a recommendation accepted by the Board against an individual provider [for example, a recommendation under 42 ~~U.S.C.~~United States Code (U.S.C.) 1396r-8(g)(3)(C)(iii)(IV)], OHCA will provide an individual proceeding under the Oklahoma Administrative Procedures Act.

(4) In any appeal under (1) and (2) of this subsection, the OHCA Board delegates the OHCA ALJ to preside over the above hearing and present the Board with proposed findings of fact and conclusions of law in accordance with Article II of the Administrative Procedures Act. The OHCA Board may accept the ALJ's written decision, reject it, or amend the recommendations.

(5) Appeals filed pursuant to (1) and (2) of this subsection, will be made within ~~20~~thirty (30) days of the OHCA Board's acceptance of the recommendation by the DUR Board.

(6) After Proposed Findings of Fact and Conclusions of Law are presented to the OHCA Board, the Board will have a period of 120 days to issue a final administrative order.

(7) The Agency's Legal Services Division will construct a form called the LD-3, which will be used for parties to file an action under (1) and (2) of this subsection.

317:2-1-12. For cause and immediate provider contract termination appeals process

This section explains the appeals process for providers whose SoonerCare contracts have been terminated by the ~~OHCA~~Oklahoma Health Care Authority (OHCA) for cause.

(1) **~~30~~Thirty (30) day for cause termination.** Pursuant to the terms of all provider contracts with the OHCA, either party may terminate the contract for cause with a ~~30~~thirty (30) day written notice to the other party.

(A) **Notice of proposed termination.** The OHCA will provide notice to the provider of the proposed termination of the provider's contract. The written notice of termination will state:

(i) the reasons for the proposed termination;

(ii) the date upon which the termination will be effective; and

(iii) a statement that the provider has a right to OHCA review prior to the termination of the provider's contract.

(B) **Right to OHCA review prior to termination of provider contract.** Before the provider's contract is terminated, the

OHCA will give the provider the opportunity to submit documents and written arguments against the termination of the provider's contract. The provider's written response requesting a review must be submitted within ~~20~~thirty (30) days from the date of the notice. If a written response is not received within ~~20~~thirty (30) days, the notice of termination will become final and there will be no further right to review or appeal post-termination.

(C) **Notice of termination.**

(i) After the OHCA review of the provider's written response, the OHCA will make a final administrative decision regarding the contract termination.

(ii) Should the OHCA decide that the provider's contract should not be terminated, the provider will be notified in writing of the reasons for the OHCA's decision.

(iii) Should the OHCA make a decision to terminate the provider's contract, the OHCA will send a subsequent notice stating:

(I) the reasons for the decision;

(II) the effective date of the termination of the contract; and

(III) the provider's right to request a post termination panel committee desk review within ~~20~~thirty (30) days of the date of the termination letter.

(2) **Immediate termination.** The OHCA will provide notice to the provider of the termination of the provider's contract. The written notice of termination will state:

(A) the reasons for the proposed termination;

(B) the date upon which the termination will be effective; and

(C) a statement that the provider has a right to appeal the termination of the provider's contract in a post-termination panel committee desk review within ~~20~~thirty (30) days of the date of the termination letter.

(3) **Post-termination panel committee desk review**. After the effective date of the termination of the provider's contract, the provider is entitled to receive a post-termination panel committee desk review. The panel review committee for the OHCA will be comprised of three (3) employees of the OHCA as designated by the Chief Executive Officer or his/her designee. Any OHCA employee who was involved with the underlying investigation of the provider's case for purpose of the termination will not be a panel review committee member. The purpose and scope of the panel committee desk review will be limited to issues raised in the OHCA's letter of termination as the basis of terminating the provider's contract. The panel

committee does not have jurisdiction to hear issues not addressed in the termination notice.

(A) The provider must request a panel committee desk review within ~~20~~thirty (30) days of the date of the termination letter. The provider must submit a brief written statement detailing the facts which are refuted by the provider. Any documentation the provider requests consideration of by the panel review committee must also be submitted with the written statement.

(B) The OHCA may submit any additional documents to the panel committee for the desk review that may contradict the documents submitted by the provider for the purposes of the desk review. Any additional information that OHCA submits to the panel review committee will also be provided to the provider.

(C) The panel review committee will issue a written decision regarding the provider's contract termination approximately ~~60~~sixty (60) days from receipt of the provider's written statement and documentation.

(4) **~~60~~Sixty (60) day without cause termination**. Pursuant to the terms of all provider contracts with the OHCA, either party may terminate the contract without cause with a ~~60~~sixty (60) day written notice to the other party. As such, there is no right to appeal or review of a ~~60~~sixty (60) day contract termination.

317:2-1-13. Appeal to the Chief Executive Officer

(a) The Oklahoma Health Care Authority offers approximately ~~40~~forty (40) different types of administrative appeals. Some of the appeals are appealable to the Chief Executive Officer (CEO) and some are not. The following appeals may be heard by the ~~Chief Executive Officer~~CEO following the decision of an Administrative Law Judge:

(1) Appeals under ~~317:2-1-2(c)(1)(A)~~Oklahoma Administrative Code (OAC)317:2-1-2(d)(1)(A) to ~~(c)(1)(G)~~(d)(1)(G), with the exception of subsection ~~(c)(1)(E)~~(d)(1)(E);

(2) Appeals under ~~317:2-1-2(c)(2)(A)~~OAC 317:2-1-2(d)(2)(A) to ~~(c)(2)(I)~~(d)(2)(I), with the exceptions of subsections ~~(c)(2)(F) and(G)~~(d)(2)(F) and (G); and

(3) Appeals under ~~317:2-1-8 and~~ 317:2-1-10.

(b) Appeals to the Chief Executive Officer must be filed with the OHCA within ~~20~~thirty (30) days of the date of the Order, or decision by OHCA.

(c) No new evidence may be presented to the ~~Chief Executive Officer~~CEO.

(d) Appeals to the ~~Chief Executive Officer~~CEO under (a) of this Section may be filed by the provider, member, or agency. The ~~Chief~~

~~Executive Officer~~CEO will ordinarily render decisions within ~~60~~sixty (60) days of the receipt of the appeal.

317:2-1-14. Contract award protest process

Suppliers who respond to a solicitation issued and awarded by the Authority pursuant to ~~74 Okla. Stat. 85.5 T~~74 Oklahoma Statutes(O.S.) § 85.5 (T) may protest the award of a contract under such solicitation.

(1) A supplier shall submit written notice to the ~~Director of Legal Operations~~OHCA Legal Division of a protest of an award of a contract by OHCA ~~pursuant to 74 Okla. Stat. 85.5 T~~ within ten (10) business days of contract award. The protest shall state supplier facts and reasons for protest.

(2) The ~~Legal Operations Director~~OHCA Legal Division shall review the supplier's protest and contract award documents. Written notice of the decision ~~by the Legal Operations Director~~ to sustain or deny the supplier's protest will be sent to the supplier within ten (10) business days of receipt of supplier's written notice.

(3) If the ~~Legal Operations Director~~OHCA Legal Division denies the supplier's protest, the supplier may request a hearing to administratively resolve the matter within ~~twenty (20)~~thirty (30) ~~business~~calendar days of receipt of the ~~Legal Operations Director's~~ written denial by filing a form LD-2 with the Docket Clerk.

(4) The process afforded the supplier will be the process found at ~~OAC 317:2-1-2(b)(1)~~Oklahoma Administrative Code 317:2-1-2(c) ~~through (2)(D)~~.

(5) The ~~ALJ's~~Administrative Law Judge's decision will constitute the final administrative decision of the ~~OHCA~~Oklahoma Health Care Authority.

317:2-1-16. Nursing Facility Supplemental Payment Program appeals

In accordance with Oklahoma Administrative Code (OAC) 317:30-5-136, the Oklahoma Health Care Authority (OHCA) is authorized to promulgate rules for appeals of the Nursing Facility Supplemental Payment Program (NFSPP). The rules in this section describe those appeal rights.

(1) The following are appealable issues of the program: the assessed amount for each component of the intergovernmental transfer (IGT), the Upper Payment Limit (UPL) payment, the UPL Gap payment, and penalties for the non-state government-owned entity (NSGO). This is the final and only process for appeals regarding NFSPP. Suspensions or terminations from the program are not appealable in the administrative process.

(2) Appeals are heard by the OHCA Administrative Law Judge (ALJ).

(3) To file an appeal, the NSGO (appellant is the NSGO who files an appeal) shall file an LD-2 form within ~~twenty (20)~~thirty (30) days from the date of the OHCA letter which advises the NSGO of component of IGT, UPL payment, UPL Gap payment and/or a penalty. An IGT that is not received by the date specified by OHCA, or that is not in the total amount indicated on the notice of program reimbursement (NPR) shall be subject to penalty and suspension from the program. Any applicable penalties shall also be deducted from the UPL payment regardless of any appeal action requested by the facility. Any change in the payment amount resulting from an appeals decision in which a recoupment or additional allocation is necessary will be adjusted in the future from any SoonerCare payments.
(4) The LD-2 shall only be filed by the NSGO or the NSGO's attorney in accordance with (5) below.
(5) Consistent with Oklahoma rules of practice, the non-state government-owned (NSGO) entity shall be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma shall comply with Article II, Section ~~(§)~~ 5 of Title 5 of the Oklahoma Statutes (O.S.), and rules of the Oklahoma Bar Association.
(6) The hearing will be conducted in an informal manner, without formal rules of evidence or procedure. However, parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.
(7) The appellant has the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.
(8) The docket clerk will send the appellant and any other necessary party a notice which states the hearing location, date, and time.
(9) The ALJ may:
(A) Identify and rule on issues being appealed which will be determined at the administrative hearing;
(B) Require the parties to state their positions concerning appeal issue(s);
(C) Require the parties to produce for examination those relevant witnesses and documents under their control;
(D) Rule on whether witnesses have knowledge of the facts at issue;
(E) Establish time limits for the submission of motions or memoranda;
(F) Rule on relevant motions, requests, and other procedural items; limiting all decisions to procedure matters and issues directly related to the contested determination resulting from ~~Oklahoma Administrative Code 317:30-5-136~~OAC 317:30-5-136;

(G) Rule on whether discovery requests are relevant;
(H) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, or used as a means of harassment, unduly burdensome, or not timely filed;
(I) Schedule pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end the appeal;
(J) Impose appropriate sanctions against any party failing to obey an order of the ALJ;
(K) Rule on any requests for extension of time;
(L) Dismiss an issue or appeal if:
(i) it is not timely filed or is not within the OHCA's jurisdiction or authority;
(ii) it is moot or there is insufficient evidence to support the allegations;
(iii) the appellant fails or refuses to appear for a scheduled meeting, conference or hearing; or
(iv) the appellant refuses to accept a settlement offer which affords the relief the party could reasonably expect if the party prevailed in the appeal;
(M) Set and/or limit the time frame for the hearing.

(10) After the hearing:
(A) The ALJ should attempt to make the final hearing decision within ninety (90) days from the date of the hearing and send a copy of the ALJ's decision to both parties outlining their rights to appeal the decision. Any appeal of the final order pursuant to 12 O.S. § 951 shall be filed with the District Court of Oklahoma County within ~~30~~thirty (30) days.
(B) It shall be the duty of the appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within thirty (30) days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the appellant.

(11) All orders and settlements are non-precedential decisions.
(12) The hearing shall be digitally recorded and closed to the public.
(13) The case file and any audio recordings shall remain confidential.