

Oklahoma Health Care Authority

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

OHCA COMMENT DUE DATE: January 15, 2020

The proposed policy is a Permanent Rule. The proposed policy was presented at the November 5, 2019 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for January 15, 2020. This proposal is scheduled to be presented to the Medical Advisory Committee on January 9, 2019 and to the OHCA Board of Directors on January 22, 2019.

Reference: APA WF #19-39A

SUMMARY:

Nursing Home Supplemental Payment Program Revocation - The proposed revocation of rules will remove rule sections that were created for the nursing home supplemental payment program, a program that was never implemented; the Centers for Medicare and Medicaid Services (CMS) did not ultimately approve the proposal.

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

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA

OKLAHOMA HEALTH CARE AUTHORITY

TO: Maria Maule
Legal Services

FROM: Sasha Teel
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF #19-39A

A. Brief description of the purpose of the rule:

The proposed revocation of rules will remove rule sections that were created for the nursing home supplemental payment program, a program that was never implemented; the Centers for Medicare and Medicaid Services (CMS) did not ultimately approve the proposal.

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

No classes of person will be affected by the by the proposed revocation of rules.

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

No classes of person will benefit by the proposed revocation of rules.

- 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 economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

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

There are no probable costs or benefits to the agency or to any other agency for the implementation and enforcement of the by the proposed revocation of rules.

- 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 by the proposed revocation of rules will not have an economic impact on any political subdivision nor will it require the cooperation of any political subdivision in implementing or enforcing the rule.

- 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 by the proposed revocation of rules will not have an adverse impact on small business.

- 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 is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the by the proposed revocation of rules.

- 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 by the proposed revocation of rules should have no adverse effect on 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:

OHCA does not believe there is a detrimental effect on the public health and safety if the rule is not passed.

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

Prepared: December 16, 2019

RULE TEXT:

**TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY
CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS**

**317:2-1-16. Nursing Facility Supplemental Payment Program appeals
[REVOKED]**

~~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 Cap 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 thirty (30) days from the date of the OHCA letter which advises the NSGO of component of IGT, UPL payment, UPL Cap 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 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 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.~~

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