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 18, 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 February 19, 2020. This proposed change will also be presented to the Medical Advisory Committee on March 12, 2020 and the OHCA Board of Directors on March 18, 2020.

Reference: APA WF 19-34

SUMMARY:
ADvantage Waiver — The proposed policy changes to the ADvantage Waiver policy will add new language addressing State Plan Personal Care provider eligibility exception criteria. Policy changes will clarify the criteria that an applicant must meet to receive ADvantage services and the type of living arrangements that are not eligible for ADvantage members.

LEGAL AUTHORITY
The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Director of Human Services; 56 O.S. §§ 162 and 1020

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

TO: Maria Maule
Legal Services

FROM: Carmen Johnson
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 19-34

A. Brief description of the purpose of the rule:

The proposed changes to the ADvantage waiver policy will add new language addressing the State Plan Personal Care (SPPC) provider eligibility exception criteria, which allows for a spouse and legal guardian to be a program paid personal care assistant. Policy changes will also clarify the criteria that an applicant must meet to receive ADvantage services and the type of living arrangements that are not eligible for ADvantage members.

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

The class of persons most affected by the proposed rule will likely be individuals receiving Department of Human Services Aging Services, ADvantage waiver services, and SPPC services. No information on any cost impacts were received from any entity.

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

The proposed rule changes will likely benefit both SPPC providers and ADvantage members as the rule provides clarity to existing ADvantage rules. The proposed rule changes will also clarify the settings that are not eligible living arrangements for ADvantage members for the receipt of services. The changes will clarify policy and will lessen the confusion as to who qualifies for ADvantage waiver services, in addition to giving PCA providers and potential providers specific guidelines that must be met.

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 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 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 is 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: October 29, 2019
Modified date: January 14, 2020

RULE TEXT:

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

SUBCHAPTER 15. PERSONAL CARE SERVICES

317:35-15-8.2. State Plan Personal Care Eligible Provider Exception

The Oklahoma Department of Human Services (OKDHS) Aging Services (AS) may authorize a member's legal guardian to be eligible for SoonerCare (Medicaid) reimbursement when he or she is hired by a home care provider agency as a personal care service provider. Authorization for a legal guardian as a provider requires the criteria in (1) though (4) of this Section and monitoring provisions to be met.

(1) Authorization for a legal guardian to be the member's care provider may occur only when the member is offered a choice of providers and documentation demonstrates:

(A) Another provider is not available; or

(B) The member's needs are so extensive that the legal guardian providing the care is prohibited from obtaining employment.

(2) The service must:

(A) Fall under the State Plan Personal Care (SPPC) program guidelines;

(B) Be necessary to avoid institutionalization;

(C) Be a service and/or support specified in the person-centered service plan;

(D) Be provided by a person who meets provider qualifications;

(E) Be paid at a rate that does not exceed what would be paid to a provider of a similar service and does not exceed what is allowed by Medicaid (SoonerCare)for the payment of personal care or personal assistance services; and

(F) Not be an activity the legal guardian would ordinarily perform or is responsible to perform.

(3) The legal guardian service provider complies with:

(A) Providing no more that forty (40) hours of services in a seven (7) calendar day period;

(B) Planned work schedules that must be available in advance for the member's home care agency. Variations to the schedule must be noted and supplied to the home care agency two (2) weeks in advance unless the change is due to an emergency;

(C) Utilization of the Electronic Visit Verification System (EVV) also known as the Interactive Voice Response Authentication (IVRA) system; and

(D) Being identified and monitored by the home care agency.

(4) The home care agency is required to submit a request and obtain approval for eligible provider exceptions to OKDHS AS prior to employing a legal guardian as a member's personal care assistant (PCA). Eligible provider exceptions require the home care agency to:

(A) Provide monitoring and complete the Eligible Provider Exception Six Month Review document, when in the member's home completing the six-month Nurse Evaluation document in the Medicaid waiver information system; and

(B) Annually complete the Eligible Provider Exception Request and submit it with the annual Service Authorization Model (SAM) documentation no later than forty-five (45) calendar days prior to the previous eligible provider exception service authorization end date.

SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES

317:35-17-1. Overview of long-term medical care services; relationship to Qualified Medicare Beneficiary Plus (QMBP), Specified Low-Income Medicare Beneficiary (SLMB), and other Medicaid (SoonerCare) services eligibility

(a) Long-term medical care for the categorically needy includes:

(1) ~~care~~Care in a ~~nursing facility. Refer to~~long-term care facility per Oklahoma Administrative Code (OAC) 317:35-19;

(2) ~~care~~Care in a public or private intermediate care facility for the intellectually disabled~~. Refer to~~ (ICF/IID), per OAC 317:35-9;

(3) ~~care~~Care of persons ~~age 65 years and~~sixty-five (65) years of age and older in mental health hospitals~~. Refer to~~, per OAC 317:35-9;

(4) Home and ~~Community Based Services Waivers~~Community-Based waiver services for persons with intellectual disabilities~~. Refer to~~, per OAC 317:35-9;

(5) Personal Care services~~. Refer to~~, per OAC 317:35-15; and

(6) ~~the~~ Home and ~~Community Based Services Waiver (ADvantage Waiver)~~Community-Based waiver services (ADvantage waiver) for frail elderly, ~~(65 years of age or older),~~sixty-five (65) years of age and older; and a targeted group of adults with physical disabilities, ~~21 to 64~~twenty-one (21) to sixty-four (64) years of age and older, who do not have an intellectual disability or a cognitive impairment related to a developmental disability~~.~~ per OAC 317:35-17-3.

(b) When an individual is certified as eligible for SoonerCare coverage of long-term care, he or she is also eligible for other SoonerCare services. ADvantage ~~Waiver~~waiver members do not have a copayment for ADvantage services except for prescription drugs. For members residing in an ADvantage ~~Assisted Living Center,~~assisted living center, any income beyond ~~150~~one-hundred and fifty percent (150%) of the federal benefit rate is available to defray the cost of the assisted living services received. The member is responsible for payment to the assisted living services center provider for days of service, from the first day of each full-month in which services were received, until the vendor pay obligation is met. When an individual is aged, blind, or disabled and is determined eligible for long-term care, a separate eligibility determination must be made for QMBP or SLMB benefits. An ADvantage program member may reside in a licensed assisted living services center only when the assisted living services center is a certified ADvantage assisted living services center provider from whom the member is receiving ADvantage assisted living services.

317:35-17-3. ADvantage program services

(a) The ADvantage program is a Medicaid Home and ~~Community Based Waiver~~Community-Based waiver used to finance non-institutional, long-term care services for the elderly and a targeted group of physically disabled adults when there is a reasonable expectation that within a ~~30-calendar~~thirty (30) calendar day period, the person's health, due to disease process or disability, would~~,~~ without appropriate services, deteriorate and require ~~nursing~~long-term care (LTC) facility care to arrest the deterioration. Individuals may not be enrolled in ADvantage for the sole purpose of enabling them to obtain Medicaid eligibility. Eligibility for ADvantage program services is contingent on an individual requiring one (1) or more of the services offered in the ~~Waiver~~waiver, at least monthly, ~~in order~~ to avoid institutionalization.

(b) The number of individuals who may receive ADvantage services is limited.

(1) To receive ADvantage program services, individuals must meet one of the ~~following~~ categories~~.~~ in (A) though (D) of this

paragraph. He or she must:

(A) ~~be 65~~Be sixty-five (65) years of age and older; or

(B) ~~be 21 to 64~~Be twenty-one (21) to sixty-four (64) years of age, ~~when~~ physically disabled and not developmentally disabled~~ or when 21 to 64 years of age and not physically disabled, the person has a clinically documented, progressive degenerative disease process that responds to treatment and previously required hospital or nursing facility (NF) level of care services for treatment related to the condition; and requires ADvantage services to maintain the treatment regimen to prevent health deterioration~~; or

(C) ~~when~~When developmentally disabled, and ~~21 to 64~~twenty-one (21) to sixty-four (64) years of age; and does not have an intellectual disability or a cognitive impairment related to the developmental disability~~.~~;

(D) Be twenty-one (21) to sixty-four (64) years of age, not physically disabled but has clinically documented, progressive, degenerative disease process that responds to treatment and previously required hospital or LTC facility level of care services to maintain the treatment regimen to prevent health deterioration.

(2) In addition, the individual must meet criteria in (A) through (C)~~.~~ of this paragraph. He or she must:

(A) ~~require~~Require ~~nursing~~long-term care facility level of care~~. Refer to~~, per Oklahoma Administrative Code (OAC) 317:35-17-2;

(B) ~~meet~~Meet service eligibility criteria~~. Refer to~~, per OAC 317:35-17-3(f); and

(C) ~~meet~~Meet program eligibility criteria~~. Refer to~~, per OAC 317:35-17-3(g).

(c) ADvantage members are eligible for limited types of living arrangements. The specific living arrangements are set forth ~~below.~~in (1) though (5) of this subsection.

(1) ADvantage program members are not eligible to receive services while residing in an unlicensed institutional living arrangement, such as a room and board home and/or facility; an institutional setting including, but not limited to, licensed facilities, such as a hospital, a ~~nursing~~LTC facility, licensed residential care facility, or licensed assisted living facility, unless the facility is an ADvantage ~~Assisted Living Center or in an unlicensed institutional living arrangement, such as a room and board home/facility.~~assisted living center.

(2) Additional living arrangements in which members may receive ADvantage services are the member's own home, apartment, or independent-living apartment, or a family or friend's home or apartment. A home/apartment unit is defined as a self-contained

living space having a lockable entrance to the unit and including a bathroom and ~~food storage/preparation~~food storage and/or preparation amenities in addition to ~~bedroom/living~~bedroom and/or living space.

(3) ADvantage program members may receive services in a shelter or similar temporary-housing arrangement that may or may not meet the definition of ~~home/apartment,~~home and/or apartment in emergency situations, for a period not to exceed ~~60-calendar~~sixty (60) calendar days during which location and transition to permanent housing is sought.

(4) For ADvantage members who are full-time students, a dormitory room qualifies as an allowable living arrangement in which to receive ADvantage services ~~for the period during which~~while the member is a student.

(5) Members may receive ADvantage respite services in a ~~nursing facility~~an LTC facility for a continuous period not to exceed ~~30-calendar~~thirty (30) calendar days.

(d) Home and ~~Community Based Waiver Services~~Community-Based waiver services are outside of the scope of Medicaid State Plan services. The Medicaid ~~Waiver~~waiver allows ~~OHCA~~the Oklahoma Health Care Authority (OHCA) to offer certain Home and ~~Community Based~~Community-Based services to an annually capped number of persons, who are categorically needy, ~~refer to DHS Form~~per Oklahoma Department of Human Services (OKDHS) Appendix C-1, Schedule VIII. B. 1., and without such services would be institutionalized. The estimated cost of providing an individual's care outside the ~~nursing facility~~LTC facility cannot exceed the annual cost of caring for that individual in ~~a nursing facility.~~an LTC facility. When determining the ADvantage service plan cost cap for an individual, the comparable SoonerCare cost to serve that individual in ~~a NF~~an LTC facility is estimated.

(e) Services provided through the ADvantage ~~Waiver~~waiver are:

(1) ~~case~~Case management;

(2) ~~respite;~~Respite;

(3) ~~adult~~Adult day health care;

(4) ~~environmental~~Environmental modifications;

(5) ~~specialized~~Specialized medical equipment and supplies;

(6) ~~physical,~~Physical, occupational, or speech therapy or consultation;

(7) ~~advanced supportive/restorative assistance;~~Advanced supportive and/or restorative assistance;

(8) ~~nursing;~~Nursing

(9) ~~skilled~~Skilled nursing;

(10) ~~home-delivered~~Home-delivered meals;

(11) ~~hospice~~Hospice care;

(12) ~~medically~~Medically necessary prescription drugs, within the limits of the ADvantage ~~Waiver;~~waiver;

(13) ~~personal~~Personal care, State Plan, or ADvantage personal care;
(14) A Personal Emergency Response System (PERS);
(15) Consumer-Directed Personal Assistance Services and Supports (CD-PASS);
(16) Institution ~~Transition Services;~~
(17) ~~assisted~~Assisted living; and
(18) SoonerCare medical services for individuals, ~~21~~twenty-one (21) years of age and over, within the State Plan scope ~~of the State Plan~~.

(f) The ~~DHS~~OKDHS area nurse or nurse designee makes a determination of service eligibility prior to evaluating the Uniform Comprehensive Assessment Tool (UCAT) assessment for ~~nursing~~long-term care facility level of care. The ~~following~~ criteria in (1) through (5) of this subsection are used to make the service eligibility determination~~:~~, which includes:

(1) ~~an~~An open ADvantage ~~Program Waiver~~program waiver slot, as authorized ~~by the Waiver document approved~~ by the Centers for Medicare and Medicaid Services (CMS), which is available to ensure federal participation in payment for services to the individual. When the Oklahoma Department of Human Services/Aging Services ~~(DHS/AS)~~(OKDHS/AS) determines all ~~ADvantage Waiver~~ slots are filled, the individual cannot be certified by ~~DHS~~OKDHS as eligible for ADvantage services~~, the individual's~~and his or her name is placed on a waiting list for entry when an open slot becomes available;

(2) ~~the individual is in the~~The ADvantage ~~targeted~~waiver-targeted service group. The target group ~~are~~is individuals, who:

(A) ~~are~~Are frail and ~~65~~sixty-five (65) years of age and older; or

(B) ~~have a physical disability,~~ are ~~between 21 and 64~~Twenty-one to sixty-four years of age~~,~~ and ~~do not have an intellectual disability or a cognitive impairment;~~ ~~or~~physically disabled; or

(C) ~~have developmental disability, are 21 and 64 years of age, and does~~When developmentally disabled, and are twenty-one (21) to sixty-four (64) years of age and do not have an intellectual disability or cognitive impairment related to the developmental disability; or

(D) Are twenty-one (21) to sixty-four (64) years of age, not physically disabled but have a clinically documented, progressive, degenerative disease process that responds to treatment and previously required hospital or long-term care facility level of care services to maintain the treatment regimen to prevent health deterioration. The individual must meet criteria, per OAC 317:35-174-3(b)(2)(A through C).

(3) ~~the~~An ineligible individual ~~is not eligible~~ because he or she poses a physical threat to himself or herself or others as supported by professional documentation~~;~~.

(4) ~~members~~Members of the household or persons who routinely visit the household, as supported by professional documentation~~,~~ that do not pose a threat of harm or injury to the individual or other household visitors~~;~~.

(5) ~~the~~An ineligible individual ~~is not eligible~~ when his or her living environment poses a physical threat to himself or herself or others as supported by professional documentation where applicable, and measures to correct hazardous conditions or assist ~~individuals~~the individual move are unsuccessful or not feasible.

(g) The State, as part of the ~~Waiver~~ADvantage waiver program approval authorization, ensures ~~Centers for Medicare and Medicaid Services (CMS)~~CMS that each member's health, safety, or welfare can be maintained in his or her home. When a member's identified needs cannot be met through provision of ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety, or welfare in ~~their~~his or her home cannot be ensured. The ADvantage Administration (AA) determines ADvantage program eligibility through the service plan approval process. An individual is deemed ineligible for the ADvantage program based on ~~the following~~ criteria~~:~~ (1) through (8) of this subsection.

(1) ~~the~~The individual's needs, as identified by UCAT and other professional assessments, cannot be met through ADvantage program services, Medicaid State Plan services, ~~and~~or other formal or informal services~~;~~.

(2) ~~one~~One (1) or more members of the individual's household pose a physical threat to ~~self~~themselves or others as supported by professional documentation~~;~~.

(3) ~~the~~The individual or other household members use threatening, intimidating, degrading, or use sexually inappropriate ~~language/innuendo~~language and/or innuendo or behavior towards service providers, either in the home or through other contact or communications, and significant efforts were attempted to correct such behavior, as supported by professional documentation or other credible documentation.

(4) ~~the~~The individual or the individual's authorized agent is uncooperative or refuses to participate in service development or service delivery and these actions result in unacceptable increases of risk to the individual's health, safety, or welfare in his or her home, as determined by the individual, the interdisciplinary team, or the AA~~;~~.

(5) ~~the~~The individual's living environment poses a physical

threat to self or others as supported by professional documentation and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible~~;~~.

(6) ~~the~~The individual provides false or materially inaccurate information necessary to determine program eligibility or withholds information necessary to determine program eligibility~~;~~.

(7) ~~the~~The individual does not require at least one ADvantage service monthly~~; and~~.

(8) ~~the~~The individual, his or her family member(s), associate(s), or any other person(s) or circumstances as relates to care and coordination in ~~the individual's~~his or her living environment produces evidence of illegal drug activity or substances used illegally as intoxicants. This includes:

(A) The use, possession, or distribution of illegal drugs;

(B) The abusive use of other drugs, such as medication prescribed by a doctor; ~~or~~

(C) The use of substances, such as inhalants including, but not limited to:

(i) ~~typewriter~~Typewriter correction fluid;

(ii) ~~air~~Air conditioning coolant;

(iii) ~~gasoline;~~Gasoline;

(iv) ~~propane;~~Propane

(v) ~~felt tip~~Felt-tip markers;

(vi) ~~spray~~Spray paint;

(vii) ~~air~~Air freshener;

(viii) ~~butane;~~Butane;

(ix) ~~cooking~~Cooking spray;

(x) ~~paint;~~Paint and

(xi) ~~glue;~~Glue;

(D) The observed intoxication, consumption or sensory indicators, such as smell of the use of ~~an~~any drug or intoxicant by the individual, family members, associates, or any other person(s) present at the time care is provided may be construed as evidence indicative of illegal drug activity or intoxication. This includes drug use or intoxicated activity that is menacing to the member or staff providing services;

(E) ~~the~~The observance of drug paraphernalia or any instrument used in the manufacturing, production, distribution, sale, or consumption of drugs or substances including, but not limited to:

(i) ~~smoking~~Smoking pipes used to consume substances other than tobacco;

(ii) ~~roach~~Roach clips containing marijuana cigarettes;

(iii) ~~needles~~Needles and other implements used for injecting drugs into the body;

(iv) ~~plastic~~Plastic bags or other containers used to package drugs;

(v) ~~miniature~~Miniature spoons used to prepare drugs; or

(vi) ~~kits~~Kits used in the production of synthetic controlled substances including descriptive materials that accompany the item, describing or depicting its use~~;~~.

(F) ~~instructions, oral~~Instructions, verbal or written, concerning the item or device including, but not limited to, the manner in which the object is labeled and displayed for sale;

(G) ~~the~~The typical use of such items in the community; and/or

(H) ~~testimony~~Testimony of an expert witness regarding use of the item.

(h) ~~the~~The case manager provides the AA with professional documentation or other credible documentation to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the person-centered service plan as provider safety permits until the individual is removed from the ADvantage program. As a part of the procedures requesting redetermination of program eligibility, ~~DHS~~OKDHS AS provides technical assistance to the provider for transitioning the individual to other services~~, and~~.

(i) ~~individuals~~Individuals determined ineligible for ADvantage program services are notified in writing by ~~DHS~~OKDHS AS of the determination and of the right to appeal the decision.