

## **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 January 7, 2020 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for February 19, 2020. This proposal is scheduled to be presented to the Medical Advisory Committee on March 12, 2020 and to the OHCA Board of Directors on March 18, 2020.

**Reference: APA WF# 19-43B**

### **SUMMARY:**

**Coverage Definitions for Children and Adults** – The proposed rule changes will add definitions to clarify what the OHCA views as a child and an adult, unless otherwise specified by federal and/or state law. Additional revisions will involve limited rewriting aimed at clarifying text; fixing any grammatical errors; and aligning rules with the current business practice.

### **LEGAL AUTHORITY**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) 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:** Josh Bouye  
Federal and State Authorities

**SUBJECT:** Rule Impact Statement  
APA WF # 19-43B

A. Brief description of the purpose of the rule:

The proposed rule changes will add definitions to clarify what the Oklahoma Health Care Authority (OHCA) views as a child and an adult, unless otherwise specified by federal and/or state law. Additional revisions will involve limited rewriting aimed at clarifying text; fixing any grammatical errors; and aligning rules with the current business practice.

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 persons will be affected by this proposed rule.

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

No classes of persons will benefit from the new language. The language is simply adding definitions that will reflect current business practices.

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

This rule is budget neutral and will not have an impact on the OHCA budget.

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 will not have an economic impact on any political subdivisions or require their cooperation 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 proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- 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 proposed rule.

- 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 have no 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:

The agency 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: January 16, 2020

**RULE TEXT:**

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

**SUBCHAPTER 1. GENERAL PROVISIONS**

**317:35-1-2. Definitions**

The following words and terms, when used in this Chapter, have the following meaning, unless the context clearly indicates otherwise:

**"Acute Care Hospital"** means an institution that meets the requirements of ~~42 CFR, Section 440.10 and~~ defined in Section (§) 440.10 of Title 42 of the Code of Federal Regulations (C.F.R.) and:

(A) is maintained primarily for the care and treatment of patients with disorders other than mental diseases;

(B) is formally licensed or formally approved as a hospital by an officially designated authority for state standard setting; and

(C) meets the requirements for participation in Medicare as a hospital.

**"Adult"** means an individual twenty-one (21) years of age or older, unless otherwise specified by statute, regulation, and/or policy adopted by the Oklahoma Health Care Authority (OHCA). For eligibility criteria policy for children and adults, please refer to Oklahoma Administrative Code (OAC) 317:35-5-2.

**"ADvantage Administration (AA)"** means the Oklahoma Department of Human Services ~~(OKDHS)~~ (DHS) which performs certain administrative functions related to the ADvantage Waiver.

**"Aged"** means an individual whose age is established as ~~65~~sixty-five (65) years or older.

**"Agency partner"** means an agency or organization contracted with the OHCA that will assist those applying for services.

**"Aid to Families with Dependent Children (AFDC)"** means the group of low income families with children described in Section 1931 of the Social Security Act. The Personal Responsibility and Work Opportunity Act of 1996 established the new eligibility group of low income families with children and linked eligibility income and resource standards and methodologies and the requirement for deprivation for the new group to the State plan for ~~Aid to Families with Dependent Children~~ AFDC in effect on July 16, 1996. Oklahoma has elected to be less restrictive for all SoonerCare members related to AFDC. Effective January 1,

2014, children covered under Section 1931 are related to the children's group, and adults covered under Section 1931 are related to the parent and caretaker relative group. The Modified Adjusted Gross Income (MAGI) methodology is used to determine eligibility for these groups.

**"Area nurse"** means a registered nurse in the ~~OKDHS~~DHS Aging Services Division, designated according to geographic areas who evaluates the ~~UCAT~~Uniform Comprehensive Assessment Tool (UCAT) and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services. The area nurse also approves care plan and service plan implementation for Personal Care services.

**"Area nurse designee"** means a registered nurse selected by the area nurse who evaluates the UCAT and determines medical eligibility for Personal Care, ADvantage Waiver, and Nursing Facility services.

**"Authority"** means the ~~Oklahoma Health Care Authority~~OHCA.

**"Blind"** means an individual who has central visual acuity of 20/200 or less in the better eye with the use of a correcting lens.

**"Board"** means the ~~Oklahoma Health Care Authority~~OHCA Board.

**"Buy-in"** means the procedure whereby the OHCA pays the member's Medicare premium.

(A) **"Part A Buy-in"** means the procedure whereby the OHCA pays the Medicare Part A premium for individuals determined eligible as Qualified Medicare Beneficiaries Plus (QMBP) who are enrolled in Part A and are not eligible for premium free enrollment as explained under Medicare Part A. This also includes individuals determined to be eligible as Qualified Disabled and Working Individuals (QDWI).

(B) **"Part B Buy-in"** means the procedure whereby the OHCA pays the Medicare Part B premium for categorically needy individuals who are eligible for Part B Medicare. This includes individuals who receive TANF or the State Supplemental Payment to the Aged, Blind or Disabled, and those determined to be Qualified Medicare Beneficiary Plus (QMBP), Specified Low Income Medicare Beneficiaries (SLMB) or Qualifying Individual-1 (QI-1). Also included are individuals who continue to be categorically needy under the PICKLE amendment and those who retain eligibility after becoming employed.

**"Caretaker relative"** means a person other than the biological or adoptive parent with whom the child resides who meets the specified degree of relationship within the fifth degree of kinship.

**"Case management"** means the activities performed for members to assist them in accessing services, advocacy and problem solving related to service delivery.

**"Categorically needy"** means that income and, when applicable, resources are within the standards for the category to which the individual is related.

**"Categorically related" or "related"** means the individual meets basic eligibility requirements for an eligibility group.

**"Certification period"** means the period of eligibility extending from the effective date of certification to the date of termination of eligibility or the date of the next periodic redetermination of eligibility.

**"Child"** means an individual under twenty-one (21) years of age, unless otherwise specified by statute, regulation, and/or policy adopted by the OHCA. For eligibility criteria policy for children and adults, please refer to OAC 317:35-5-2.

**"County"** means the Oklahoma Department of Human Services DHS office or offices located in each county within the State.

**"Custody"** means the custodial status, as reported by the Oklahoma Department of Human Services DHS.

**"Deductible/Coinsurance"** means the payment that must be made by or on behalf of an individual eligible for Medicare before Medicare payment is made. The coinsurance is that part of the allowable medical expense not met by Medicare, which must be paid by or on behalf of an individual after the deductible has been met.

(A) For Medicare Part A (Hospital Insurance), the deductible relates to benefits for inpatient services while the patient is in a hospital or nursing facility. After the deductible is met, Medicare pays the remainder of the allowable cost.

(B) For Medicare Part B (Medical Insurance), the deductible is an annual payment that must be made before Medicare payment for medical services. After the deductible is met, Medicare pays ~~80%~~eighty percent (80%) of the allowable charge. The remaining ~~20%~~twenty percent (20%) is the coinsurance.

**"Disabled"** means an individual who is unable to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death, or which has lasted (or can be expected to last) for a continuous period of not less than ~~12~~twelve (12) months.

**"Disabled child"** means for purposes of Medicaid Recovery a child of any age who is blind, or permanently and totally disabled according to standards set by the Social Security Administration.

**"Estate"** means all real and personal property and other assets included in the member's estate as defined in Title 58 of the Oklahoma Statutes.

**"Gatekeeping"** means the performance of a comprehensive assessment by the ~~OKDHS~~DHS nurse utilizing the ~~Uniform Comprehensive Assessment Tool (UCAT)~~UCAT for the determination of Medical eligibility, care plan development, and the determination of Level of Care for Personal Care, ADvantage Waiver and Nursing Facility services.

**"Ineligible Spouse"** means an individual who is not eligible for ~~SSI~~Supplemental Security Income (SSI) but is the husband or wife of someone who is receiving SSI.

**"Local office"** means the Oklahoma ~~Department of Human Services~~DHS' office or offices located in each county within the State.

**"LOCEU"** means the Oklahoma Health Care Authority's Level of Care Evaluation Unit.

**"MAGI eligibility group"** means an eligibility group whose financial eligibility is determined through the Modified Adjusted Gross Income (MAGI) methodology. The groups subject to MAGI are defined in ~~42 CFR 435.603~~42 C.F.R. § 436.603 and listed in OAC 317:35-6-1.

**"Modified Adjusted Gross Income (MAGI)"** means the financial eligibility determination methodology established by the Patient Protection and Affordable Care Act (PPACA) in 2009.

**"Medicare"** means the federally funded health insurance program also known as Title XVIII of the Social Security Act. It consists of four (4) separate programs. Part A is Hospital Insurance, Part B is Medical Insurance, Part C is Medicare Advantage Plans, and Part D is Prescription Drug Coverage.

(A) **"Part A Medicare"** means Hospital Insurance that covers services for inpatient services while the patient is in a hospital or nursing facility. Premium free enrollment is provided for all persons receiving OASDI or Railroad Retirement income who are age ~~65~~sixty-five (65) or older and for those under age ~~65~~sixty-five (65) who have been receiving disability benefits under these programs for at least ~~24~~twenty-four (24) months.

(i) Persons with end stage renal disease who require dialysis treatment or a kidney transplant may also be covered.

(ii) Those who do not receive OASDI or Railroad Retirement income must be age ~~65~~sixty-five (65) or over and pay a large premium for this coverage. Under Authority rules, these individuals are not required to enroll for Part A to be eligible for SoonerCare benefits as categorically needy. They must, however,

enroll for Medicare Part B. Individuals eligible as a QMBP or as a ~~Qualified Disabled and Working Individual (QDWI)~~ QDWI under Medicaid are required to enroll for Medicare Part A. The Authority will pay Part A premiums for QMBP individuals who do not qualify for premium free Part A and for all QDWI's.

(B) **"Part B Medicare"** means Supplemental Medical Insurance that covers physician and related medical services other than inpatient or nursing facility care. Individuals eligible to enroll in Medicare Part B are required to do so under OHCA policy. A monthly premium is required to keep this coverage in effect.

**"Minor child"** means a child under the age of ~~18~~ eighteen (18).

**"Nursing Care"** for the purpose of Medicaid Recovery is care received in a nursing facility, an intermediate care facility for individuals with intellectual disabilities (ICF/IIDs) or other medical institution providing nursing and convalescent care, on a continuing basis, by professional personnel who are responsible to the institution for professional medical services.

**"OCSS"** means the Oklahoma ~~Department of Human Services~~ DHS' Oklahoma Child Support Services (formerly Child Support Enforcement Division).

**"OHCA"** means the Oklahoma Health Care Authority.

**"OHCA Eligibility Unit"** means the group within the ~~Oklahoma Health Care Authority~~ OHCA that assists with the eligibility determination process.

~~"OKDHS"~~ **"DHS"** means the Oklahoma Department of Human Services.

~~"OKDHS"~~ **"nurse"** means a registered nurse in the ~~OKDHS~~ Aging Services Division who meets the certification requirements for UCAT Assessor and case manager, and who conducts the uniform assessment of individuals utilizing the ~~Uniform Comprehensive Assessment Tool (UCAT)~~ UCAT for the purpose of medical eligibility determination. The ~~OKDHS~~ nurse also develops care plans and service plans for Personal Care services based on the UCAT.

**"Qualified Disabled and Working Individual (QDWI)"** means individuals who have lost their Title II OASDI benefits due to excess earnings, but have been allowed to retain Medicare coverage.

**"Qualified Medicare Beneficiary Plus (QMBP)"** means certain aged, blind or disabled individuals who may or may not be enrolled in Medicare Part A, meet the Medicaid QMBP income and resource standards and meet all other Medicaid eligibility requirements.

**"Qualifying Individual"** means certain aged, blind or disabled individuals who are enrolled in Medicare Part A, meet the



Medicaid Qualifying Individual income and resource standards and meet all other Medicaid eligibility requirements.

**"Qualifying Individual-1"** means a Qualified Individual who meets the Qualifying Individual-1 income and resource standards.

**"Reasonably compatible"** means that there is no significant discrepancy between information declared by a member or applicant and other information available to the agency. More specific policies and procedures for determining whether a declaration is reasonably compatible are detailed in Oklahoma's Verification Plan.

**"Recipient lock-in"** means when a member is restricted to one primary physician and/or one pharmacy. It occurs when the OHCA determines that a SoonerCare member has used multiple physicians and/or pharmacies in an excessive manner over a ~~12-month~~twelve (12) month period.

**"Scope"** means the covered medical services for which payment is made to providers on behalf of eligible individuals. The Oklahoma Health Care Authority Provider Manual (OAC 317:30) contains information on covered medical services.

**"Specified Low Income Medicare Beneficiaries (SLMB)"** means individuals who, except for income, meet all of the eligibility requirements for QMBP eligibility and are enrolled in Medicare Part A.

**"TEFRA"** means the Tax Equity and Fiscal Responsibility Act of 1982 (Public Law 97-248). TEFRA provides coverage to certain disabled children living in the home who would qualify for SoonerCare if residents of nursing facilities, ICF/IIDs, or inpatient acute care hospital stays are expected to last not less than ~~60~~sixty (60) days.

**"Worker"** means the OHCA or OKDHS worker responsible for assisting in eligibility determinations.