

## **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:** May 13, 2020

**Reference:** APA WF 20-05 Emergency Rule

### **SUMMARY:**

**Continuation of Services Pending Appeals** – The proposed new rule will describe under what conditions Medicaid benefits will continue or be reinstated pending an appeal to comply with Section 431.230 of Title 42 of the Code of Federal Regulations. Additionally, the proposed new rule will describe the application, obligations, and implications for the appellant when Medicaid benefits are continued or reinstated pending an appeal.

### **LEGAL AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 42 C.F.R. Section 431.230

### **RULE IMPACT STATEMENT:**

#### **STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY**

**SUBJECT:** Rule Impact Statement  
APA WF # 20-05

#### **A. Brief description of the purpose of the rule:**

The proposed new rule will describe under what conditions Medicaid benefits will continue or be reinstated pending an appeal to comply with Section 431.230 of Title 42 of the Code of Federal Regulations. Additionally, the proposed new rule will describe the application, obligations, and implications for the appellant when Medicaid benefits are continued or reinstated pending an appeal.

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

entities:

SoonerCare members who submit a written request for a hearing within ten (10) days of the notice will be positively affected by the rule change. This will allow the member to keep continuation of services through the appeal. This rule 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 changes will benefit those SoonerCare members who file a written request for a hearing within ten (10) days of the notice. This will allow the member to keep his/her benefits throughout the 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 impact of the proposed rule changes upon 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:

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 change. 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 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: March 26, 2020

## **RULE TEXT**

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

#### **317:2-1-2.6. Continuation of benefits or services pending appeal**

(a) In accordance with Section 431.230 of Title 42 of the Code of Federal Regulations, if an Appellant submits a written request for

a hearing within ten (10) days of the notice of the adverse agency action, the Appellant may also request that benefits or services (hereinafter, collectively referred to as "services") be continued or reinstated until the earlier of dismissal of the appeal, Appellant's withdrawal of the appeal, or an initial hearing decision adverse to the Appellant.

(b) If the Appellant fails to indicate a preference as to continuation or reinstatement of services in a written request for hearing made within ten (10) days of the notice of the adverse agency action, services shall be continued or reinstated. Provided, however, that a SoonerCare member shall not be entitled to continuation or reinstatement of services pending an appeal related to the following:

(1) When a service is denied because the member has exceeded the limit applicable to that service;

(2) When a request for a prior authorization is denied for a prescription drug. However:

(A) The Oklahoma Health Care Authority (OHCA) may authorize a single seventy-two (72) hour emergency supply of the drug, in accordance with Oklahoma Administrative Code (OAC) 317:30-5-77.2;

(B) A SoonerCare provider may initiate a step therapy exception request on behalf of a member, in accordance with OAC 317:30-5-77.4;

(3) When coverage of a prescription drug or service is denied because the requested drug or service is not a category or class of drugs or services covered by OHCA;

(4) When coverage for a prescription drug is denied because the enrollee has been locked into one (1) pharmacy and the member seeks to fill a prescription at another pharmacy; or

(5) When a physician or other licensed health care practitioner has failed to prescribe or order the service or level of service for which continuation or reinstatement is requested.

(c) If services are continued or reinstated during the appeals process and the hearing is not decided in the Appellant's favor, OHCA may seek to recover reimbursement of all services received pending the hearing decision.