Oklahoma Health Care Authority

It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments are directed to Oklahoma Health Care Authority (OHCA) Health Policy Unit http://www.okhca.org/proposed-rule-changes.aspx

OHCA COMMENT DUE DATE: March 31, 2016

The proposed policy is a Permanent Rule. This proposal was presented to the Medical Advisory Committee (MAC) on January 21, 2016 and is scheduled to be presented to the (OHCA) Board of Directors on April 1, 2016.
Reference: APA WF 16-01

SUMMARY:
Reimbursement for Licensed Behavioral Health Professionals in Independent Practice – The Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) is proposing revisions to SoonerCare rules regarding coverage and reimbursement for services provided by Licensed Behavioral Health Professionals in independent practice. The proposed revisions revoke all coverage and reimbursement guidelines for this specific provider type, as ODMHSAS is requesting that independently contracted providers in private practice no longer be reimbursed for SoonerCare services. LBHP services will remain available to all SoonerCare members through SoonerCare contracted outpatient behavioral health agencies. Changes are necessary to reduce the Agency's spending to balance the state budget in accordance with Article 10, Section 23 of the Oklahoma Constitution, which prohibits a state agency from spending more money than is allocated.

LEGAL AUTHORITY
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes;

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

TO: Tywanda Cox
Health Policy

FROM: Traylor Rains-Sims

Oklahoma Department of Mental Health & Substance Abuse Services

SUBJECT: Rule Impact Statement
APA WF #16-01

A. Brief description of the purpose of the rule:

The Oklahoma Department of Mental Health and Substance Abuse Services(ODMHSAS) is proposing revisions to SoonerCare Rules regarding coverage and reimbursement for services provided by Licensed behavioral health professionals (LBHP) in independent practice. The proposed revisions revoke all coverage and reimbursement guidelines for this specific provider type, as ODMHSAS is requesting that independently contracted providers in private practice no longer be reimbursed for SoonerCare services. LBHP services will remain available to all SoonerCare members through SoonerCare contracted outpatient behavioral health agencies. Changes are necessary to reduce the Agency's spending to balance the state budget in accordance with Article 10, Section 23 of the Oklahoma Constitution, which prohibits a state agency from spending more money than is allocated.

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 classes of persons affected by this rule change are independently contracted licensed behavioral health professionals (LBHP) providing SoonerCare services in private practice. There have been no cost impacts received by any public or private entities.

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

By implementing these proposed rules, ODMHSAS is able to file a balanced budget and maintain critical essential services for SoonerCare members most in need of behavioral health services. This class of persons will benefit the most from the proposed rule.

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:

The proposed rule is expected to result in a savings to ODMHSAS of $6,682,229 state dollars for SFY2017. With federal share for Medicaid expenditures from CMS, the total annual economic impact is an estimated annual reduction of $17,129,528 in SoonerCare reimbursement to contracted providers.

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:

The Agency has determined that there are no probable costs to OHCA or other agencies as a result of the proposed rules, nor is there an anticipated effect on state revenues.

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:

There is no economic impact on political subdivisions

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 has determined that there will be a potential adverse effect on small business in Oklahoma. Eliminating reimbursement for independent contractors will result in a loss of the individuals total revenues. The affected individuals however, will have opportunities to contract with and/or become employed by outpatient behavioral health agencies in order to continue to provide and be reimbursed for SoonerCare behavioral health services. This should mitigate potential adverse effects 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:

Throughout the year Agency staff gather relevant information via contract compliance verification, performance improvement activities and public forums. Additionally, staff meets regularly with stakeholders in order to communicate the planned actions of the Agency concerning rulemaking, as well as other issues. While it is difficult to balance the needs of SoonerCare members with those of the various contracted service providers, the Agency proposes rules with each of these issues and interests considered.

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 Agency anticipates that eliminating reimbursement to independent contracted LBHPs in private practice will allow the Agency to continue the SoonerCare behavioral health program without drastically reducing the provider reimbursement rates for all behavioral health services which would have a detrimental impact on access to behavioral health services. SoonerCare members currently receiving services from an affected provider will still have access to the same services through a SoonerCare contracted outpatient behavioral health agency if they wish to continue services and meet medical necessity criteria.

J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

If the rule is not implemented, ODMHSAS would have to rely on provider reimbursement rate reductions for all behavioral health services in order to meet its constitutional requirement of filing a balanced budget. Reducing rates to the extent necessary to fulfill this obligation would have a detrimental effect on access to behavioral health services for all SoonerCare members, as the Agency would anticipate a reduction in its contracted behavioral health provider network that serves individuals most in need of behavioral health services.

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

The rule impact statement was prepared February 8, 2016.

RULE TEXT

TITLE 317. OKLAHOMA HEALHT CARE AUTHORITY
CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE
SUBCHAPTER 5. INDIVIDUAL PROVIDERS AND SPECIALTIES
PART 26. LICENSED BEHAVIORAL HEALTH PROVIDERS

317:30-5-280 Eligible Providers [REVOKED]

~~Licensed Behavioral Health Professionals (LBHP) are defined as follows:~~

~~(1) Allopathic or Osteopathic Physicians with a current license and board certification in psychiatry or board eligible in the state in which services are provided, or a current resident in psychiatry practicing as described in OAC 317:30-5-2.~~

~~(2) Practitioners with a license to practice in the state in which services are provided.~~

~~(A) Social Worker (clinical specialty only),~~
~~(B) Professional Counselor,~~
~~(C) Marriage and Family Therapist,~~
~~(D) Behavioral Practitioner, or~~
~~(E) Alcohol and Drug Counselor.~~

~~(3) Advanced Practice Nurse (certified in psychiatric mental health specialty), licensed as a registered nurse with a current certification of recognition from the board of nursing in the state in which services are provided.~~

~~(4) A Physician Assistant who is licensed in good standing in this state and has received specific training for and is experienced in performing mental health therapeutic, diagnostic, or counseling functions.~~

317:30-5-281. Coverage by Category [REVOKED]

~~(a) **Outpatient Behavioral Health Services.** Outpatient behavioral health services are covered as set forth in this Section, and when provided in accordance with a documented individualized service plan and/or medical record, developed to treat the identified behavioral health and/or substance use disorder(s), unless specified otherwise.~~

~~(1) All services are to be for the goal of improvement of functioning, independence, or wellbeing of the member. The~~

~~services and treatment plans are to be recovery focused, trauma and co-occurring specific. The member must be able to actively participate in the treatment. Active participation means that the member must have sufficient cognitive abilities, communication skills, and short-term memory to derive a reasonable benefit from the treatment.~~

~~(2) In order to be reimbursed for services, providers must submit a completed Customer Data Core (CDC) to OHCA or its designated agent. The CDC must be reviewed, updated and resubmitted by the provider every six months. Reimbursement is made only for services provided while a current CDC is on file with OHCA or its designated agent. For further information and instructions regarding the CDC, refer to the Prior Authorization Manual.~~

~~(3) Some outpatient behavioral health services may require authorization. For information regarding services requiring authorization and the process for obtaining them, refer to the Prior Authorization Manual. Authorization of services is not a guarantee of payment. The provider is responsible for ensuring that the eligibility, medical necessity, procedural, coding, claims submission, and all other state and federal requirements are met. OHCA does retain the final administrative review over both authorization and review of services as required by 42 CFR 431.10.~~

~~(b) **Adults.** Coverage for adults by a LBHP is limited to Bio-Psycho-Social Assessments when required by OHCA as part of a preoperative prior authorization protocol for organ transplant or bariatric surgical procedures.~~

~~(1) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary. The pre-op evaluation should aim to assess the member's psychological well-being, ability to make informed decisions, and willingness to participate actively in postoperative treatment.(2) For bariatric preoperative assessments, issues to address include, but are not limited to: depression, self-esteem, stress management, coping skills, binge eating, change in eating habits, other eating disorders, change in social roles, changes associated with return to work/school, body image, sexual function, lifestyle issues, personality factors that may affect treatment and recovery, alcohol or substance use disorders, ability to make lasting behavior changes, and need for further support and counseling.~~

(c) **Children.** Coverage for children includes the following services:

(1) Bio-Psycho-Social and Level of Care Assessments.

(A) The interview and assessment is defined as a face-to-face interaction with the member. Assessment includes a history, mental status, full bio-psycho-social evaluation, a disposition, communications with family or other sources, review of laboratory or other pertinent medical information, and medical/clinical consultations as necessary.

(B) Assessments for Children's Level of Care determination of medical necessity must follow a specified assessment process through OHCA or their designated agent. Only one assessment is allowable per provider per member. If there has been a break in service over a six month period, or the assessment is conducted for the purpose of determining a child's need for inpatient psychiatric admission, then an additional unit can be authorized by OHCA, or their designated agent.

(2) Psychotherapy in an outpatient setting including an office, clinic, or other confidential setting. The services may be performed at the residence of the member if it is demonstrated that it is clinically beneficial, or if the member is unable to go to a clinic or office. Individual psychotherapy is defined as a one to one treatment using a widely accepted modality or treatment framework suited to the individual's age, developmental abilities and diagnosis. It may include specialized techniques such as biofeedback or hypnosis. Psychotherapy is considered to involve "interactive complexity" when there are communication factors during a visit that complicate delivery of the psychotherapy by the LBHP. Sessions typically involve members who have other individuals legally responsible for their care (i.e. minors or adults with guardians); members who request others to be involved in their care during the session (i.e. adults accompanied by one or more participating family members or interpreter or language translator); or members that require involvement of other third parties (i.e. child welfare, juvenile justice, parole/probation officers, schools, etc.). Psychotherapy should only be reported as involving interactive complexity when at least one of the following communication factors is present:

(A) The need to manage maladaptive communication (i.e. related to high anxiety, high reactivity, repeated questions, or disagreement) among participants that complicate delivery of care.

(B) Caregiver emotions/behavior that interfere with

~~implementation of the treatment plan.~~

~~(C) Evidence/disclosure of a sentinel event and mandated report to a third party (i.e. abuse or neglect with report to state agency) with initiation of discussion of the sentinel event and/or report with patient and other visit participants.~~

~~(D) Use of play equipment, physical devices, interpreter or translator to overcome barriers to therapeutic interaction with a patient who is not fluent in the same language or who has not developed or lost expressive or receptive language skills to use or understand typical language.~~

~~(3) Family Psychotherapy is performed in an outpatient setting limited to an office, clinic, or other confidential setting. Family therapy is a face-to-face interaction between a therapist and the patient/family to facilitate emotional, psychological or behavioral changes and promote communication and understanding. Family therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan.~~

~~(4) Group and/or Interactive Group psychotherapy in an outpatient setting must be performed in an office, clinic, or other confidential setting. Group therapy is a face-to-face interaction between a therapist and two or more unrelated patients (though there may be siblings in the same group, just not siblings only) to facilitate emotional, psychological, or behavioral changes. All group therapy records must indicate group size. Maximum total group size is six for ages four up to 18. Groups 18-20 year olds can include eight individuals. Group therapy must be provided for the benefit of the member as a specifically identified component of an individual treatment plan. Multi-family group therapy size is limited to eight family units.~~

~~(5) Assessment/Evaluation and testing is provided by a psychologist, certified psychometrist, psychological technician of a psychologist or a LBHP utilizing tests selected from currently accepted assessment test batteries. For assessments conducted in a school setting, the Oklahoma State Department of Education requires that a licensed supervisor sign the assessment. Eight hours/units of testing per patient (over the age of three), per provider is allowed every 12 months. There may be instances when further testing is appropriate based on established medical necessity criteria found in the Prior Authorization Manual. Justification for additional testing beyond allowed amount as specified in this section must be clearly explained and documented in the medical record. Test results must be~~

reflected in the service plan or medical record. The service plan must clearly document the need for the testing and what the testing is expected to achieve. Testing units must be billed on the date the testing, interpretation, scoring, and/or reporting was performed and supported by documentation.

(6) Crisis intervention services for the purpose of stabilization and hospitalization diversion as clinically appropriate.

(7) Payment for therapy services provided by a LBHP to any one member is limited to eight sessions/units per month. A maximum of 12 sessions/units of therapy and testing services per day per provider are allowed. A maximum of 35 hours of therapy per week per provider are allowed. The weekly service hour limitation will be calculated using a rolling four week average. Case Management services are considered an integral component of the behavioral health services listed above.

(8) A child receiving Residential Behavioral Management in a foster home, also known as therapeutic foster care, or a child receiving Residential Behavioral Management in a group home, also known as therapeutic group home, may not receive individual, group or family counseling or testing unless allowed by the OHCA or their designated agent.

(d) **Home and Community Based Waiver Services for the Intellectually Disabled.** All providers participating in the Home and Community Based Waiver Services for the intellectually disabled program must have a separate contract with this Authority to provide services under this program. All services are specified in the individual's plan of care.

(e) **Individuals eligible for Part B of Medicare**. Payment is made utilizing the Medicaid allowable for comparable services.

(f) **Nursing Facilities.** Services provided to members residing in nursing facilities may not be billed to SoonerCare.

317:30-5-282. Non-covered procedures [REVOKED]

The following procedures by LBHPs are not covered:

(1) sensitivity training

(2) encounter

(3) workshops

(4) sexual competency training

(5) marathons or retreats for mental disorders

(6) strictly education training

(7) psychotherapy to persons under three years of age unless specifically approved by OHCA, or its designated agent.

317:30-5-283. Documentation of records [REVOKED]

All behavioral health services will be reflected by

~~documentation in the patient records.~~

~~(1) All assessment, testing, and treatment services/units billed must include the following:~~

~~(A) date;~~

~~(B) start and stop time for each session/unit billed;~~

~~(C) signature of the provider;~~

~~(D) credentials of provider;~~

~~(E) specific problem(s), goals, and/or objectives addressed;~~

~~(F) methods used to address problem(s), goals and objectives;~~

~~(G) progress made toward goals and objectives;~~

~~(H) patient response to the session or intervention; and~~

~~(I) any new problem(s), goals and/or objectives identified during the session.~~

~~(2) For each Group psychotherapy session, a separate list of participants must be maintained.~~

~~(3) Testing will be documented for each date of service performed which should include at a minimum, the objectives for testing, the test administered, the results/conclusions and interpretation of the tests, and recommendations for treatment and/or care based on testing and analysis.~~

PART 75. FEDERALLY QUALIFIED HEALTH CENTERS

317:30-5-661.4. Behavioral health professional services provided at Health Centers and other settings

(a) Medically necessary behavioral health services that are primary, preventive, and therapeutic and that would be covered if provided in another setting may be provided by Health Centers. Services provided by a Health Center (refer to OAC 317:30-5-240.3 for a description of services) must meet the same requirements as services provided by other behavioral health providers. Rendering providers must be eligible to individually enroll or meet the requirements as an agency/organization provider specified in OAC 317:30-5-240.2, 317:30-5-280 and 317:30-5-595.

(1) Behavioral Health services include:

(A) Assessment/Evaluation;

(B) Crisis Intervention Services;

(C) Individual/Interactive Psychotherapy;

(D) Group Psychotherapy;

(E) Family Psychotherapy;

(F) Psychological Testing; and

(G) Case Management (as an integral component of services 1-6 above).

(b) Medically necessary behavioral health professional therapy

services are covered when provided in accordance with a documented individualized treatment plan, developed to treat the identified behavioral health disorder(s). A minimum of a 45 to 50 minute one-on-one standard clinical session must be completed by an health care professional authorized in the approved FQHC State Plan pages in order to bill the PPS encounter rate for the session. Services rendered by providers not authorized under the approved FQHC state plan pages to bill the PPS encounter rate will be reimbursed pursuant to the SoonerCare fee-for-service fee schedule and must comply with rules found at OAC ~~317:30-5-280~~317:30-5-240 through ~~317:30-5-283~~317:30-5-249.

(c) Centers are reimbursed the PPS rate for services when rendered by approved health care professionals, as authorized under FQHC state plan pages, if the Health Center receives funding pursuant to Section 330 or is otherwise funded under Public Law to provide primary health care services at locations off-site (not including satellite or mobile locations) to Health Center patients on a temporary or intermittent basis, unless otherwise limited by Federal law.

(d) Health Centers that operate day treatment programs in school settings must meet the requirements found at OAC 317:30-5-240.2(7).

(e) In order to support the member's access to behavioral health services, these services may take place in settings away from the Health Center. Off-site behavioral health services must take place in a confidential setting.