

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: October 12, 2016

The proposed policy is an Emergency Rule. This proposal is scheduled to be presented to the Medical Advisory Committee (MAC) on September 15, 2016 and the (OHCA) Board of Directors on October 13, 2016.

Reference: APA WF 16-08

SUMMARY:

Screening Procedures and Fitness Plan for Certain Providers and Owners Designated High Risk – The proposed revisions are added to establish screening procedures and fitness criteria for newly enrolling providers, re-enrolling providers and owners of businesses who pose an increased financial risk of fraud, waste or abuse to the SoonerCare program.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Section 6401(a) and (b) of the Affordable Care Act; 42 U.S.C. 1320a-7; 42 CFR 455.405 – 455.470 and 42 CFR 457.990

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

TO: Tywanda Cox
Federal and State Policy

FROM: Harvey Reynolds
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 16-08

A. Brief description of the purpose of the rule:

Proposed rule revisions outline screening procedures for providers who pose an increased financial risk of fraud,

waste or abuse to the SoonerCare program. Rules add information regarding applicants who are seeking new or renewed contract enrollment as being subject to a fingerprint-based criminal background check if they are designated as high risk in accordance with Federal law. Rules also specify types of criminal convictions for which an applicant shall (regarding felonies) or may (regarding misdemeanors) be denied enrollment. Rules also state that there is no right to appeal an OHCA decision denying an application for contract enrollment based on the applicant's criminal history.

- 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:

Newly enrolling and re-enrolling home health agencies and durable medical equipment providers are affected by the proposed rule because they have been designated as high categorical risk for fraud, waste and abuse. Any provider who is otherwise designated as a high categorical risk is also affected. Those providers who have an active Medicare contract and have been successfully screened are exempt as are those providers who have been successfully screened by another state Medicaid agency.

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

Members, providers and taxpayers will benefit from the proposed rule which is designed to lower the risk for fraud, waste and abuse in the Medicaid program.

- 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 is 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 will not have an economic impact on any political subdivision 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 agency does not anticipate that the proposed rule will have an adverse effect on small businesses that furnish home health services or durable medical equipment.

- 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 have a positive effect on the public safety by tightening the credentialing process in order to more carefully screen certain enrolling and re-enrolling

providers designated as high categorical risk for fraud, waste and abuse.

- 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: August 8, 2016

Modified date: September 13, 2016

RULE TEXT

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 30. MEDICAL PROVIDERS-FEE FOR SERVICE

SUBCHAPTER 3. GENERAL PROVIDER POLICIES

PART 1. GENERAL SCOPE AND ADMINISTRATION

317:30-3-19.2. Denial of application for new or renewed provider enrollment contract based on criminal history

(a) **Definitions.** The following words and terms, when used in this section, shall have the following meaning:

(1) **"Applicant"** means providers, persons with a five percent or more direct or indirect ownership interest therein, as well as providers' officers, directors, and managing employees.

(2) **"Criminal conviction"** means an individual or entity has been convicted of a criminal offense pursuant to 42 U.S.C. § 1320a-7(i).

(b) Applicants designated as "high" risk in accordance with Federal law, including, but not limited to, 42 C.F.R. § 424.518 and 42 C.F.R. Part 455, Subpart E, or if otherwise required by State and/or Federal law, shall be subject to a fingerprint-based criminal background check as a condition of new or renewed contract enrollment.

(c) Any applicant shall be denied enrollment if he/she has a felonious criminal conviction and may be denied enrollment for a misdemeanor criminal conviction relating, but not limited, to:

(1) The provision of services under Medicare, Medicaid, or any other Federal or State health care program;

- (2) Homicide, murder, or non-negligent manslaughter;
 - (3) Aggravated assault;
 - (4) Kidnapping;
 - (5) Robbery;
 - (6) Abandonment, abuse, or negligence of a child;
 - (7) Human trafficking;
 - (8) Negligence and/or abuse of a patient;
 - (9) Forcible rape and/or sexual assault;
 - (10) Terrorism;
 - (11) Embezzlement, fraud, theft, breach of fiduciary duty, or other financial misconduct; and/or
 - (12) Controlled Substances.
- (d) There is no right to appeal any OHCA decision denying an application for contract enrollment based on the applicant's criminal history. However, nothing in this section shall preclude an applicant whose criminal conviction has been overturned on final appeal, and for whom no other appeals are pending or may be brought, from reapplying for enrollment.