

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 the [Oklahoma Health Care Authority \(OHCA\) Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: February 17, 2017

The proposed policy is a Permanent Rule. The proposed policy was presented at the January 3, 2017 Tribal Consultation and is scheduled to be presented to the Medical Advisory Committee on March 9, 2017 and the OHCA Board of Directors on March 23, 2017.

Reference: APA WF 16-19

SUMMARY:

Additional TEFRA Developmental Evaluation Options – The proposed Tax Equity and Fiscal Responsibility Act (TEFRA) revisions allow providers other than those providers in the SoonerStart Early Intervention Program to evaluate applicants under the age of three for the measurement of developmental milestones in order to determine institutional level of care for TEFRA children.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; §134 of the Tax Equity and Fiscal Responsibility Act of 1982 (P.L. 97-248); §1902 of the Social Security Act; 42 CFR 435.225

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 # 16-19

A. Brief description of the purpose of the rule:

The proposed revisions allow additional providers to evaluate Tax Equity and Fiscal Responsibility Act (TEFRA) applicants

under age three for the measurement of developmental milestones to determine Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) institutional level of care. Current rules only allow for an evaluation by providers within the SoonerStart Early Intervention Program. This policy revision allows for flexibility when determining level of care as there are other appropriate providers and evaluation tools that can be utilized to evaluate developmental milestones. Please note that other criteria for severe dysfunctional deficiencies in at least two total domain areas remain in effect.

- 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 most likely be children under age three who are being evaluated for the measurement of developmental milestones in order to determine ICF/IID institutional level of care for TEFRA eligibility. 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:

Children 18 years or younger who will have the opportunity to be evaluated for the measurement of developmental milestones by providers other than the SoonerStart Early Intervention Program will benefit from the proposed rule. Also children found eligible for TEFRA in another state and have now moved to Oklahoma will benefit 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:

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.

- 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 12, 2016

RULE TEXT:

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

**SUBCHAPTER 9. ICF/IID, HCBW/IID, AND INDIVIDUALS
AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS**

**PART 5. DETERMINATION OF MEDICAL ELIGIBILITY FOR
ICF/IID, HCBW/MR, AND INDIVIDUALS AGE 65 OR OLDER
IN MENTAL HEALTH HOSPITALS**

**317:35-9-48.1 Determining ICF/IID institutional level of care
for TEFRA children**

In order to determine ICF/IID level of care for TEFRA children:

(1) The child must be age 18 years or younger and expected to meet the following criteria for at least 30 days.

(A) Applicants under age three must:

(i) have a diagnosis of a developmental disability; and
(ii) have been evaluated by the SoonerStart Early Intervention Program or other appropriate healthcare provider, and found to have severe dysfunctional deficiencies with findings of at least two standard deviations in at least two total domain areas.

(B) Applicants age three years and older must:

(i) have a diagnosis of intellectual disability or a developmental disability; and
(ii) have received a psychological evaluation by a licensed psychologist or school psychologist certified by the Oklahoma Department of Education (ODE) within the last 12 months. The evaluation must include intelligence testing that yields a full-scale

intelligence quotient, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ICF/IID level of institutional care requires an IQ of 70 or less, or a full-scale functional assessment indicating a functional age composite that does not exceed 50%fifty percent of the child's chronological age. In no case shall eligibility be granted for a functional age greater than eight years.

(2) Psychological evaluations are required for children who are approved for TEFRA under ICF/IID level of care. Children under evaluation, including both intelligence testing and adaptive/functional assessment, by a licensed psychologist or school psychologist certified by the ODE, at age three, age six, and, if medically necessary, thereafter to ascertain continued eligibility for TEFRA under the ICF/IID level of institutional care. The psychological evaluation must be completed and submitted to the LOCEU no later than 90 days following the child's third and sixth birthday, and, if medically necessary, thereafter.