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 was presented at the November 3, 2015 Tribal Consultation. The proposed policy was submitted to the Medical Advisory Committee on November 17, 2016. The proposed Permanent rule change is scheduled to be presented to the OHCA Board of Directors on March 23, 2017.

Reference: APA WF # 16-16A

SUMMARY:
Nursing Facility Supplemental Payment Program — The proposed revisions add guidelines for the nursing facility supplemental payment 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 30-101 of Title 11 of Oklahoma Statutes; Section 790.1 of Title 19 of Oklahoma Statutes; Section 176 of Title 60 of Oklahoma Statutes; Sections 1-1902 and 1-1905 of Title 63 of Oklahoma Statutes.

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

TO: Tywanda Cox
Federal and State Policy

FROM: Demetria Bennett
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 16-16A

A. Brief description of the purpose of the rule:

The proposed policy outlines grievance procedures and processes for the supplemental payment program for nursing facilities owned as applicable operated by non-state government owned (NSGO) entities.

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:

Nursing facilities owned and as applicable operated by NSGOs and nursing facility residents will be affected by the proposed rule. The program will leverage federal dollars governed under federal policy. The federal dollars are in addition to the current nursing facility reimbursement. The additional dollars will be available by leveraging the gap between Medicaid and Medicare payments up to the UPL. The effect to nursing facilities will be additional funding that could help sustain financially challenged urban and rural nursing facilities. The effect to nursing home residents, as a result of the funding, will be an enhancement in the quality of care. The NSGOs will bear the cost of providing the state share match for the program.

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

Nursing facilities, NSGOs, and nursing home residents 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:

The probable impact for the proposed rule change is a positive impact as the additional funds are critical to financial sustainability of financially challenged urban and rural nursing facilities. NSGOs will be required to fund the state share and may be required to modify business practices to be sure program requirements are met.

In addition, this change could result in a negative economic impact for school districts if an NSGO purchases the real estate from the nursing home owner, as NSGOs are exempt from ad valorem taxes which assist with funding to school district.

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:

There is no cost to the OHCA as the state share will be financed by the NSGO and will be transferred to the state by way of an intergovernmental transfer for claiming of federal financial participation.

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 additional funding for successful program participation may provide stability for institutions owned by a government other than the state and will require the cooperation of NSGOs for implementation.

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:

There is no adverse economic impact on small businesses as a result of this rule. Please refer to item D listed above.

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. Opportunities for public input are provided throughout the rulemaking process, in addition to formal public comment periods and tribal consultations.

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 is intended to improve the public health, safety and environment for nursing home residents.

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

Without the additional funds and sustainability for financially challenged nursing facilities, the detrimental effect on the public health and safety of SoonerCare members may be impacted. Financially challenged facilities may continue to struggle with keeping their doors open.

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

Prepared date: November 7, 2016
Revised date: December 2, 2016.

RULE TEXT

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 2. GRIEVANCE PROCEDURES AND PROCESS

<u>317:2-1-16. Nursing Facility Supplemental Payment Program Appeals</u>

<u>In accordance with OAC 317:30-5-136, OHCA is authorized to promulgate rules for appeals of the Nursing Facility Supplemental Payment Program (NFSPP). The rules in this Section describe those appeal rights.</u>

<u>(1) The following are appealable issues of the program: program eligibility determination, the assessed amount for each component of the Intergovernmental transfer, the Upper Payment Limit (UPL) payment, the Upper Payment Limit Gap payment, and penalties for the providers. This is the final and only process for appeals regarding NFSPP. Suspensions or terminations from the program are not appealable in the administrative process.</u>

(2) Appeals are heard by the OHCA Administrative Law Judge (ALJ).
(3) To file an appeal, the provider (Appellant is the provider who files an appeal) shall file an LD-2 form within twenty (20) days from the date of the OHCA letter which advises the provider of the program eligibility determination, component of intergovernmental transfer (IGT), UPL payment, UPL GAP and/or a penalty. An IGT that is not received by the date specified by OHCA, or that is not the total indicated on the NPR shall be subject to penalty and suspension from the program. Any applicable penalties must also be deducted from the UPL payment regardless of any appeal action requested by the facility. Any change in the payment amount resulting from an appeals decision in which a recoupment or additional allocation is necessary will be adjusted in the future from any Medicaid payments.
(4) Consistent with Oklahoma rules of practice, the non-state government owned (NSGO) entity must be represented by an attorney licensed to practice within the State of Oklahoma. Attorneys not licensed to practice in Oklahoma must comply with 5 O.S. Art II, Sec. 5, and rules of the Oklahoma Bar Association.
(5) The hearing will be conducted in an informal manner, without formal rules of evidence or procedure. However parties who fail to appear at a hearing, after notification of said hearing date, will have their cases dismissed for failure to prosecute.
(6) The provider has the burden of proof by the preponderance of the evidence standard as defined by the Oklahoma Supreme Court.
(7) The docket clerk will send the Appellant and any other necessary party a notice which states the hearing location, date, and time.
(8) The ALJ may:

(A) Identify and rule on issues being appealed which will be determined at the administrative hearing;

(B) Require the parties to state their positions concerning appeal issue(s);

(C) Require the parties to produce for examination those relevant witnesses and documents under their control;

(D) Rule on whether witnesses have knowledge of the facts at issue;

(E) Establish time limits for the submission of motions or memoranda;

(F) Rule on relevant motions, requests and other procedural items, limiting all decisions to procedure matters and issues directly related to the contested determination resulting from OAC 317:30-5-136;

(G) Rule on whether discovery requests are relevant;

(H) Strike or deny witnesses, documents, exhibits, discovery requests, and other requests or motions which are cumulative, not relevant, not material, used as a means of harassment, unduly burdensome, or not timely filed;

(I) Schedule pre-hearing conferences to settle, simplify, or identify issues in a proceeding or to consider other matters that may end the appeal;

(J) Impose appropriate sanctions against any party failing to obey an order of the ALJ;

(K) Rule on any requests for extension of time;

(L) Dismiss an issue or appeal if:

(i) it is not timely filed or is not within the OHCA's jurisdiction or authority;

(ii) it is moot or there is insufficient evidence to support the allegations;

(iii) the appellant fails or refuses to appear for a scheduled meeting; or

(iv) the appellant refuses to accept a settlement offer which affords the relief the party could reasonably expect if the party prevailed in the appeal;

(M) Set and/or limit the time frame for the hearing.

(9) After the hearing:

(A) The ALJ should attempt to make the final hearing decision within ninety (90) days from the date of the hearing and send a copy of the ALJ's decision to both parties outlining their rights to appeal the decision. Any appeal of the final order pursuant to 12 O.S. § 951 must be filed with the District Court of Oklahoma County within 30 days.

(B) It shall be the duty of the Appellant in any District Court appeal to order a written transcript of proceedings to be used on appeal. The transcript must be ordered within thirty (30) days of the filing of an appeal in the District Court and any costs associated with the preparation of the transcript shall be borne by the Appellant.

(10) All orders and settlements are non-precedential decisions.

(11) The hearing shall be digitally recorded and closed to the public.

(12) The case file and any audio recordings shall remain confidential.