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: October 26, 2017

The proposed policy is an Emergency Rule. The proposed policy was presented at the September 5, 2017 Tribal Consultation. This proposal is scheduled to be presented to the Medical Advisory Committee on November 16, 2017 and the OHCA Board of Directors on December 14, 2017.
Reference: APA WF 17-10A

SUMMARY:
Expedited Appeals – The proposed revisions to the appeals policy are necessary to comply with federal regulation requiring expedited appeals as well as to remove language referring to nursing home wage enhancement due to changes in state statute.

LEGAL AUTHORITY
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; 42 CFR 431.224

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 # 17-10A

A. Brief description of the purpose of the rule:

The proposed appeals policy revisions clarify timelines for appeal decisions and add a new section outlining expedited appeals which are required by new regulations in cases when an Appellant's life or health could be in jeopardy. The

timelines and process for expedited appeals are outlined in the new section of policy. Also, language referring to nursing home wage enhancement is being deleted due to changes in state statute that resulted in the policy being obsolete.

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 members who have appealed a decision which adversely affected their rights and those who have appealed a decision whose life or health might be jeopardized.

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

The class of persons who will benefit from the proposed rule will be members who have appealed a decision which adversely affected their rights and those who have appealed a decision whose life or health might be jeopardized.

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: July 12, 2017

RULE TEXT

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

317:2-1-2. Appeals

(a) **Member Process Overview.**

(1) The appeals process allows a member to appeal a decision which adversely affects their rights. Examples are decisions involving medical services, prior authorizations for medical services, or discrimination complaints.

(2) In order to file an appeal, the member files a LD-1 (Member Complaint/Grievance Form) ~~form~~ within ~~20~~twenty (20) days of the triggering event. The triggering event occurs at the time when the Appellant (Appellant is the person who files a grievance) knew or should have known of such condition or circumstance for appeal.

(3) If the LD-1 form is not received within ~~20~~twenty (20) days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely. In the case of tax warrant intercept appeals, if the LD-1 form is not received by OHCA within the timeframe pursuant to Title 68 O.S. § 205.2, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(4) If the LD-1 form is not completely filled out or if necessary documentation is not included, then the appeal will not be heard.

(5) The staff advises the Appellant that if there is a need for assistance in reading or completing the grievance form that arrangements will be made.

(6) Upon receipt of the member's appeal, a fair hearing before the Administrative Law Judge (ALJ) will be scheduled. The member will be notified in writing of the date and time for this procedure. ~~The member must appear at this hearing and it is conducted according to OAC 317:2-1-5. The ALJ's decision may be appealed to the Chief Executive Officer of the OHCA, which is a record review at which the parties do not appear (OAC 317:2-1-13).~~ The member must appear at this hearing, either in person or telephonically. Requests for a telephone hearing must be received in writing on OHCA's LD-4(Request for Telephonic Hearing) form no later than ten (10) calendar days prior to the hearing date. Telephonic hearing

requests will only be granted by the OHCA's Chief Executive Officer (CEO) or his/her designee, at his/her sole discretion, for good cause shown, including, for example, the member's physical condition, travel distances, or other limitations that either preclude an in-person appearance or would impose a substantial hardship on the member.

(7) The hearing shall be conducted according to OAC 317:2-1-5. The ALJ's decision may be appealed to the CEO of the OHCA, which is a record review at which the parties do not appear (OAC 317:2-1-13).

~~(7)~~(8) Member appeals are ordinarily decided within ~~90~~ninety (90) days from the date OHCA receives the member's timely request for a fair hearing unless~~ the member waives this requirement. [Title 42 CFR 431.244(f)]~~, in accordance with 42 CFR § 431.244(f):

(A) The Appellant was granted an expedited appeal pursuant to OAC 317:2-1-2.4;

(B) OHCA cannot reach a decision because the Appellant requests a delay or fails to take a required action, as reflected in the record; or

(C) There is an administrative or other emergency beyond OHCA's control, as reflected in the record.

~~(8)~~(9) Tax warrant intercept appeals will be heard directly by the ALJ. A decision is normally rendered by the ALJ within ~~20~~twenty (20) days of the hearing before the ALJ.

(b) **Provider Process Overview.**

(1) The proceedings as described in this subsection contain the hearing process for those appeals filed by providers. These appeals encompass all subject matter cases contained in OAC 317:2-1-2(c)(2).

(2) All provider appeals are initially heard by the OHCA ~~Administrative Law Judge~~ALJ under OAC 317:2-1-2(c)(2).

(A) The Appellant (Appellant is the provider who files an appeal) files an LD form requesting an appeal hearing within ~~20~~twenty (20) days of the triggering event. The triggering event occurs at the time when the Appellant knew or should have known of such condition or circumstance for appeal.~~ (LD-2 forms are for provider appeals and LD-3 forms are for nursing home wage enhancement grievances.)~~

(B) If the LD form is not received within ~~20~~twenty (20) days of the triggering event, OHCA sends the Appellant a letter stating the appeal will not be heard because it is untimely.

(C) A decision will be rendered by the ALJ ordinarily within ~~45~~forty-five (45) days of the close of all evidence in the case.

(D) Unless an exception is provided in OAC 317:2-1-13, the ~~Administrative Law Judge's~~ALJ's decision is appealable to OHCA's CEO under 317:2-1-13.

(c) **ALJ jurisdiction.** The ~~Administrative Law Judge~~ALJ has jurisdiction of the following matters:

(1) ~~Member Appeals:~~**Member Appeals.**

(A) Discrimination complaints regarding the SoonerCare program;

(B) Appeals which relate to the scope of services, covered services, complaints regarding service or care, enrollment, disenrollment, and reenrollment in the SoonerCare Program;

(C) Fee for Service appeals regarding the furnishing of services, including prior authorizations;

(D) Appeals which relate to the tax warrant intercept system through the Oklahoma Health Care Authority. Tax warrant intercept appeals will be heard directly by the ALJ. A decision will be rendered by the Administrative Law Judge within ~~20~~twenty (20) days of the hearing before the ALJ;

(E) Proposed administrative sanction appeals pursuant to 317:35-13-7. Proposed administrative sanction appeals will be heard directly by the ALJ. A decision by the ALJ will ordinarily be rendered within ~~20~~twenty (20) days of the hearing before the ALJ. This is the final and only appeals process for proposed administrative sanctions;

(F) Appeals which relate to eligibility determinations made by OHCA;

(G) Appeals of insureds participating in Insure Oklahoma which are authorized by OAC 317:45-9-8(a); and

(2) ~~Provider Appeals:~~**Provider Appeals.**

(A) Whether Pre-admission Screening and Resident Review (PASRR) was completed as required by law;

(B) Denial of request to disenroll member from provider's SoonerCare Choice panel;

(C) Appeals by Long Term Care facilities for nonpayment of wage enhancements, determinations of overpayment or underpayment of wage enhancements, and administrative penalty determinations as a result of findings made under OAC 317:30-5-131.2(b)(5), (e)(8), and (e)(12);

(D) Appeals of Professional Service Contract awards and other matters related to the Central Purchasing Act pursuant to Title 74 O. S. § 85.1;

(E) Drug rebate appeals;

(F) Provider appeals of OHCA audit findings pursuant to OAC 317:2-1-7. This is the final and only appeals process for appeals of OHCA audits; and

(G) Oklahoma Electronic Health Records Incentive program appeals related only to incentive payments, incentive payment amounts, provider eligibility determinations, and demonstration of adopting, implementing, upgrading, and meaningful use eligibility for incentives.
(H) Supplemental Hospital Offset Payment Program (SHOPP) annual assessment, Supplemental Payment, fees or penalties as specifically provided in OAC 317:2-1-15.
(I) Nursing Facility Supplemental Payment Program (NFSPP) eligibility determinations, the assessed amount for each component of the Intergovernmental transfer, Upper Payment Limit payments, the Upper Payment Limit Gap, and penalties specifically provided in OAC 317:30-5-136. This is the final and only process for appeals regarding NFSPP.

317:2-1-2.4 Expedited appeals [NEW]

(a) An expedited hearing request may be granted within three (3) working days of the request for hearing, if the time otherwise permitted for a hearing as described in OAC 317:2-1-2(a)(8) could jeopardize the Appellant's life or health or ability to attain, maintain, or regain maximum function.

(b) If OHCA determines that the request meets the criteria for an expedited hearing, it shall:

(1) Initiate the hearing process as described in OAC 317:2-1-5; and

(2) All matters relating to the hearing must be heard and disposed of as expeditiously as possible, but no later than three (3) working days after OHCA has received the request for an expedited hearing.

(c) If OHCA determines that the request does not meet the criteria for an expedited hearing, it shall:

(1) Initiate the ordinary hearing process timeframe, in accordance with OAC 317:2-1-2(a)(8); and

(2) Notify the Appellant of the denial orally or through an electronic notice as described in OAC 317:35-5-66. If oral notification is provided, OHCA will follow up with a written notice within three (3) calendar days of the denial.