

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: March 3, 2022

The proposed policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The proposed policy was presented at the July 6, 2021, Tribal Consultation. Additionally, this proposal was presented to the Medical Advisory Committee on September 9, 2021. Furthermore, this proposal will be presented at a Public Hearing scheduled for March 8, 2022. Finally, the proposed changes are scheduled to be presented as permanent rules to the OHCA Board of Directors on March 16, 2022.

REFERENCE: APA WF 21-10

Transitioning Developmental Disabilities Services Division (DDSD) Members back into the Money Follows the Person (MFP) Program – The proposed revisions will add language that allows the DDSD to transition members, who have been a resident in a public or private Medicaid Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or qualified long term care facility, into a community setting through the Living Choice MFP program. The proposed revisions also change the required amount of consecutive time an individual must be in the long term care institution prior to being eligible for transition into the community setting from “at least ninety (90) consecutive days” to sixty (60) consecutive days. Additionally, proposed revision will be removing language that pertained to a pilot program involving the PRTF population, which was not successful and will no longer be implemented. Finally, revisions will remove outdated language to reflect current business practices.

LEGAL AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes;
The Oklahoma Health Care Authority Board

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 21-10

A. Brief description of the purpose of the rule:

The proposed revisions will add language that allows the DDSD to transition members, who have been a resident in a public or private Medicaid Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or qualified long term care facility, into a community

setting through the Living Choice, an MFP program. The proposed revisions also change the required amount of consecutive time an individual must be in the long term care institution prior to being eligible for transition into the community setting from “at least ninety (90) consecutive days” to sixty (60) consecutive days. Additionally, proposed revision will be removing language that pertained to a pilot program involving the PRTF population, which was not successful and will no longer be implemented. Finally, revisions will remove outdated language to reflect current business practices.

- 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:

Persons most affected by the proposed rule will be DDS members who have been a resident in a public or private Medicaid Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID), or qualified long term care facility and are eligible to transition into a community setting. This rule should not place any cost or burden on private or public entities through the MFP program. The private or public entities will not be impacted by any costs associated with transitioning members.

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

Persons who will benefit from this proposed rule change will be qualified members who are eligible to transition from an ICF/IID facility or qualified long term care facility back into a community setting.

- 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 effect 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 change will be 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 changes will not have any economic impact on any political subdivisions. The proposed rule changes will not have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule changes.

- 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 changes 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 is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- 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 believe there is a detrimental effect on the public health and safety if the rule is not passed. However, the Agency believes that the approval of this rule change will have a positive effect for members to have easier access to job placement.

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

Prepared: July 27, 2021

Modified: August 17, 2021

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY

CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND CHILDREN- ELIGIBILITY

SUBCHAPTER 23. LIVING CHOICE PROGRAM

317:35-23-2. Eligibility criteria

(a) Adults with disabilities or long-term illnesses, members with intellectual disabilities and members with physical disabilities are eligible to transition into the community through the Living Choice program if they meet all of the criteria in paragraphs (1) through (7) of this subsection.

- (1) He/she must be at least nineteen (19) years of age.
 - (2) He/she must reside in a nursing facility or a qualified long term care facility, or a public or private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) for at least ~~ninety (90)~~sixty (60) consecutive days prior to the proposed transition date. If any portion of the ~~ninety (90)~~sixty (60) days includes time in a skilled nursing facility, those days cannot be counted toward the ~~ninety (90)~~sixty (60) day requirement, if the member received Medicare post-hospital extended care rehabilitative services.
 - (3) He/she must have at least one (1) day of Medicaid paid long-term care services prior to transition.
 - (4) If transitioning from an out of state institution, he/she must be SoonerCare eligible.
 - (5) He/she requires at least the same level of care that necessitated admission to the institution.
 - (6) He/she must reside in a qualified residence after leaving the institution. A qualified residence is defined in (A) through (C) of this paragraph.
 - (A) a home owned or leased by the individual or the individual's family member;
 - (B) an apartment with an individual lease, with a locking entrance/exit, and which includes living, sleeping, bathing, and cooking areas over which the individual or the individual's family has domain and control; and
 - (C) a residence, in a community-based residential setting, in which no more than four (4) unrelated individuals reside.
 - (7) His/her needs can be met by the Living Choice program while living in the community.
 - (8) He/she must not be a resident of a nursing facility or ICF/IID in lieu of incarceration.
- (b) ~~Youth ages sixteen (16) through eighteen (18) are eligible to transition back into the community from a psychiatric residential treatment facility (PRTF) through the Living Choice program if they meet the following criteria:~~
- ~~(1) Have been in a PRTF facility for ninety (90) or more days during an episode of care; and~~
 - ~~(2) Meet Level 3 criteria on the Individual Client Assessment Record; or~~
 - ~~(3) Meet the criteria for Serious Emotional Disturbance as defined in OAC 317:30-5-240.1;~~
 - ~~or~~
 - ~~(4) Show critical impairment on a caregiver rated Ohio Scales (score of 25 and above on the Problems Subscale or a score of 44 and below on the Functioning Subscales).~~