

## 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:** January 2, 2024

The proposed policy changes are currently in effect as Emergency Rules and must be promulgated as Permanent Rules. The proposal was presented at the Tribal Consultation held on September 5, 2023, and the Medical Advisory Committee held on November 2, 2023. Additionally, the proposed policy will be presented at a Public Hearing scheduled for January 8, 2024, and are scheduled to be presented as Permanent Rules to the OHCA Board of Directors on January 17, 2024.

**SUMMARY: Tax Equity and Fiscal Responsibility Act (TEFRA) Psychological Evaluations and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) Level of Care Reevaluations** — The proposed rule changes will help alleviate wait times for TEFRA approval by adding additional provider types to conduct psychological evaluations for TEFRA applicants as well as lowering the frequency of level of care redeterminations for ICF/IID level of care from annually to biennially.

### LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; the Oklahoma Health Care Authority Board; and the Tax Equity and Fiscal Responsibility (TEFRA) Act of 1982 [P.L. 97-248]

### RULE IMPACT STATEMENT:

#### STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement  
APA WF # 23-20A

A. Brief description of the purpose of the rule:

The proposed rule changes will help alleviate wait times for TEFRA approval by adding additional provider types to conduct psychological evaluations for TEFRA applicants. In addition to licensed psychologists or school psychologists as currently outlined in policy, certified psychometrists, psychological technicians of a psychologist, and licensed behavioral health professionals will be added to policy. Additionally, policy will be revised to reflect a new business process of conducting ICF/IID level of care reevaluations biennially rather than annually.

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 proposed rule changes will affect individuals who have applied for TEFRA program services and are awaiting a required psychological evaluation before being approved. Additionally, proposed rule changes will affect individuals who have been determined to meet ICF/IID level of care. This rule change should not place any cost burden on private or public entities. 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:

The proposed rule changes will benefit individuals who have applied for TEFRA program services and are awaiting a required psychological evaluation before being approved. Additionally, proposed rule changes will benefit individuals who have been determined to meet ICF/IID level of care by requiring an ICF/IID level of care reevaluation biennially rather than annually.

- 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 subdivisions.

- 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:

The proposed rule changes are estimated to 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 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 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 no adverse effect on 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 and safety if the proposed rule is not passed.

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

Prepared date: August 11, 2023

Modified: December 18, 2023

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

**SUBCHAPTER 7. MEDICAL SERVICES**

**PART 7. CERTIFICATION, REDETERMINATION AND NOTIFICATION**

**317:35-7-61.1. Special redetermination procedures for Tax Equity and Fiscal Responsibility Act (TEFRA)**

In addition to redetermining the level of care ~~annually~~, the OHCA also conducts an annual cost effectiveness review for all active TEFRA children. If OHCA determines the child does not meet any level of care, is no longer disabled, or the estimated cost of care in the home is greater than the estimated cost of care in an institution, at the appropriate level of care, the case is closed.

**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/IID,  
AND INDIVIDUALS AGE 65 OR OLDER IN MENTAL HEALTH HOSPITALS**

**317:35-9-45. Determination of medical eligibility for care in a private Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID)**

(a) **Pre-approval of medical eligibility.** Pre-approval of medical eligibility for private ICF/IID care is based on level of care requirements per OAC 317:30-5-122. Pre-approval is not necessary

for individuals with a severe or profound intellectual disability. Pre-approval is made by Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU) analysts.

**(b) Application for ICF/IID services.** Within 30 calendar days after services begin, the facility must submit:

(1) The original of the ICF/IID Level of Care Assessment form (LTC-300) to LOCEU. Required attachments include:

(A) Current (within 90 days of requested approval date) medical information signed by a physician.

(B) A current (within 12 months of requested approval date) psychological evaluation by a licensed Psychologist or State staff supervised by a licensed Psychologist. The evaluation must include intelligence testing that yields a full-scale intelligence quotient (unless the child is under six [6] years of age), a full-scale functional or adaptive assessment, as well as the age of onset.

(C) A copy of the pertinent section of the Individual Plan or other appropriate documentation relative to the ICF/IID admission and the need for ICF/IID level of care.

(D) A statement that the member is not an imminent threat of harm to self or others (i.e., suicidal or homicidal).

(2) If pre-approval was determined by LOCEU and the above information is received, medical approval will be entered on an electronic medical case list known as MEDATS. Pre-approval is not needed for individuals with a severe or profound intellectual disability.

**(c) Categorical relationship.** Categorical relationship must be established for determination of eligibility for long-term medical care. If categorical relationship has not already been established, the proper forms and medical information are submitted to LOCEU. (Refer to OAC 317:35-5-4). In such instances LOCEU will render a decision on categorical relationship using the same definition as used by the SSA. A follow-up is required by the OKDHS social worker with the SSA to be sure that their disability decision agrees with the decision of LOCEU.

**(d) Medical eligibility for ICF/IID services.**

(1) Individuals must require active treatment per 42 CFR 483.440.

(2) Individuals must have a diagnosis of an intellectual disability or a related condition based on level of care requirements per OAC 317:30-5-122 and results of a current comprehensive psychological evaluation by a licensed Psychologist or State staff supervised by a licensed Psychologist.

(A) Per the Diagnostic and Statistical Manual of Mental Disorders, intellectual disability is a condition characterized by a significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating before 18 years of age.

(B) Per 42 CFR 435.1010, persons with related conditions means individuals who have a severe, chronic disability that meets the following conditions:

(i) It is attributable to cerebral palsy or epilepsy.

(ii) It is attributable to any other condition, other than mental illness, found to be closely related to intellectual disability because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with intellectual disability and requires treatment or services similar to those required for these persons.

(iii) It is manifested before the person reaches age 22.

(iv) It is likely to continue indefinitely.

- (v) It results in substantial functional limitations in three or more areas of major life activity per OAC 317:30-5-122.
- (C) Conditions closely related to intellectual disability include, but are not limited to the following:
  - (i) autism or autistic disorder, childhood disintegrative disorder, Rett syndrome and pervasive developmental disorder, not otherwise specified (only if "typical autism");
  - (ii) severe brain injury (acquired brain injury, traumatic brain injury, stroke, anoxia, meningitis);
  - (iii) fetal alcohol syndrome;
  - (iv) chromosomal disorders (Down syndrome, fragile x syndrome, Prader-Willi syndrome);and
  - (v) other genetic disorders (Williams syndrome, spina bifida, phenylketonuria).
- (D) The following diagnoses do not qualify as conditions related to intellectual disability. Nevertheless, a person with any of these conditions is not disqualified if there is a simultaneous occurrence of a qualifying condition:
  - (i) learning disability;
  - (ii) behavior or conduct disorders;
  - (iii) substance abuse;
  - (iv) hearing impairment or vision impairment;
  - (v) mental illness that includes psychotic disorders, adjustment disorders, reactive attachment disorders, impulse control disorders, and paraphilias;
  - (vi) borderline intellectual functioning, developmental disability that does not result in an intellectual impairment, developmental delay or "at risk" designations;
  - (vii) physical problems (such as multiple sclerosis, muscular dystrophy, spinal cord injuries and amputations);
  - (viii) medical health problems (such as cancer, acquired immune deficiency syndrome and terminal illnesses);
  - (ix) milder autism spectrum disorders (such as Asperger's disorder and pervasive developmental disorder not otherwise specified if not "atypical autism");
  - (x) neurological problems not associated with intellectual deficits (such as Tourette's syndrome, fetal alcohol effects and non-verbal learning disability);or
  - (xi) mild traumatic brain injury (such as minimal brain injury and post-concussion syndrome).

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

In order to determine ~~ICF/IID~~Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF/IID) level of care for ~~TEFRA~~Tax Equity and Fiscal Responsibility Act (TEFRA) children:

- (1) The child must be age ~~18~~eighteen (18) years or younger and expected to meet the following criteria for at least ~~30~~thirty (30) days.
  - (A) Applicants under age three (3) must:
    - (i) ~~have~~Have a diagnosis of a developmental disability; and
    - (ii) ~~have~~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 (2) standard deviations in at least two (2) total domain areas.
  - (B) Applicants age three (3) years and older must:

(i) ~~have~~Have a diagnosis of intellectual disability or a developmental disability; and  
(ii) ~~have~~Have received a psychological evaluation by a licensed psychologist, ~~or~~ school psychologist certified by the Oklahoma Department of Education (ODE) within the last ~~12~~twelve (12) months, certified psychometrist, psychological technician of a psychologist, or licensed behavioral health professional (LBHP). The evaluation must include intelligence testing that yields a full-scale intelligence quotient, as determined appropriate by the provider, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ICF/IID level of institutional care requires either an IQ of ~~70~~seventy (70) or less, or a full-scale functional assessment indicating a functional age composite that does not exceed fifty (50) percent of the child's chronological age. In no case shall eligibility be granted for a functional age greater than eight (8) 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, certified psychometrist, psychological technician of a psychologist, or licensed behavioral health professional (LBHP) at ~~age three, age six,~~application, at two (2) years (but no later than three (3) years) after the initial psychological evaluation, and at two (2) years (but no later than three (3) years) after the second psychological evaluation 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 (3<sup>rd</sup>) and sixth (6<sup>th</sup>) birthday, and, if medically necessary, thereafter.~~