

## 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, 2023

The proposed policy changes are Permanent Rules. The proposed policy changes were presented at the January 3, 2023, Tribal Consultation. The proposed rule changes will be presented at a Public Hearing on March 7, 2023. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on March 2, 2023, and the OHCA Board of Directors on March 22, 2023.

### **SUMMARY:**

**OKDHS ADvantage Waiver** - The proposed revisions will align policy with the recently approved 1915(c) ADvantage waiver amendment which will add Assistive Technology and Remote Support services to the "Services provided through the ADvantage waiver" list. Additional revisions will correct grammatical errors

### **LEGAL AUTHORITY:**

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; 1915c ADvantage Waiver

### **RULE IMPACT STATEMENT:**

#### **STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY**

**SUBJECT:** Rule Impact Statement  
APA WF #22-23B

#### **A. Brief description of the purpose of the rule:**

The proposed revisions will align policy with the recently approved 1915(c) ADvantage waiver amendment, which added Assistive Technology and Remote Support services. Assistive Technology services include devices, controls and appliances specified in the member's person-centered service plan which enables them to increase their abilities to perform activities of daily living or to perceive, control or communicate with the environment in which they live. Remote Supports services involves monitoring of a waiver member by remote staff using audio or video equipment, allowing for live, two-way communication with them in their residence. Remote Supports allow for a member to choose the method of service delivery which best suits their needs. These two new services will be added to the "Services provided through the ADvantage waiver" list. Final revisions will correct formatting and grammatical errors.

- 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 classes of persons most likely to be affected by the proposed amendments are ADvantage waiver participants who will have access to increased services.

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

The classes of persons who will benefit from the proposed amendments are ADvantage members and providers.

- 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 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:

The estimated total cost for SFY 2023 \$3,486,316. The estimated total cost for SFY 2024 \$7,362,576 total. Oklahoma Human Services (OKDHS) is responsible for the projected cost of services.

- 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 subdivisions 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 proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- 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 have no effect on the public health, safety, and 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 changes are not implemented.

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

Prepared: July 31, 2023

## **RULE TEXT**

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

#### **SUBCHAPTER 17. ADVANTAGE WAIVER SERVICES**

##### **317:35-17-3. ADvantage program services**

(a) The ADvantage program is a Medicaid Home and Community-Based waiver used to finance non-institutional, long-term care services for the elderly and a targeted group of physically disabled adults when there is a reasonable expectation that within a thirty (30) calendar day period, the person's health, due to disease process or disability, would without appropriate services, deteriorate and require long-term care (LTC) facility care to arrest the deterioration. Individuals may not be enrolled in ADvantage for the sole purpose of enabling them to obtain Medicaid eligibility. Eligibility for ADvantage program services is contingent on an individual requiring one (1) or more of the services offered in the waiver, at least monthly, to avoid institutionalization.

(b) The number of individuals who may receive ADvantage services is limited.

(1) To receive ADvantage program services, individuals must meet one of ~~the categories~~ the categories in (A) ~~through~~ (D) of this paragraph. He or she must:

(A) Be sixty-five (65) years of age ~~and~~ or older; or

(B) Be twenty-one (21) to sixty-four (64) years of age, physically disabled and not developmentally disabled; or

(C) When developmentally disabled, and twenty-one (21) to sixty-four (64) years of age; and does not have an intellectual disability or a cognitive impairment related to the developmental disability; or

(D) Be twenty-one (21) to sixty-four (64) years of age, not physically disabled but has clinically documented, progressive, degenerative disease process that responds to

treatment and previously required hospital or LTC facility level of care services to maintain the treatment regimen to prevent health deterioration.

(2) In addition, the individual must meet criteria in (A) through (C) of this paragraph. He or she must:

(A) ~~Require long-term~~ Require long-term care facility level of care, per Oklahoma Administrative Code (OAC) 317:35-17-2;

(B) Meet service eligibility criteria, per OAC 317:35-17-3(f); and

(C) Meet program eligibility criteria, per OAC 317:35-17-3(g).

(c) ADvantage members are eligible for limited types of living arrangements. The specific living arrangements are set forth in (1) ~~through~~ through (5) of this subsection.

(1) ADvantage program members are not eligible to receive services while residing in an unlicensed institutional living arrangement, such as a room and board home ~~and/or~~ facility; an institutional setting including, but not limited to, licensed facilities, such as a hospital, a LTC facility, licensed residential care facility, or licensed assisted living facility, unless the facility is an ADvantage assisted living center.

(2) Additional living arrangements in which members may receive ADvantage services are the member's own home, apartment, or independent-living apartment, or a family or friend's home or apartment. A ~~home/apartment~~ home or apartment unit is defined as a self-contained living space having a lockable entrance to the unit and including a bathroom, ~~and~~ food storage ~~and/or~~ and preparation amenities in addition to the bedroom ~~and/or~~ living space.

(3) ADvantage program members may receive services in a shelter or similar temporary-housing arrangement that may or may not meet the definition of home ~~and/or~~ apartment in emergency situations, for a period not to exceed sixty (60) calendar days during which location and transition to permanent housing is sought.

(4) For ADvantage members who are full-time students, a dormitory room qualifies as an allowable living arrangement in which to receive ADvantage services while the member is a student.

(5) Members may receive ADvantage respite services in an LTC facility for a continuous period not to exceed thirty (30) calendar days.

(d) Home and Community-Based waiver services are outside of the scope of Medicaid State Plan services. The Medicaid waiver allows the Oklahoma Health Care Authority (~~OHCA~~) to offer certain Home and Community-Based services to an annually capped number of persons, who are categorically needy, per Oklahoma ~~Department of~~ Human Services (OKDHS) Appendix C-1, Schedule VIII. B. 1., and without such services would be institutionalized. The estimated cost of providing an individual's care outside of the LTC facility cannot exceed the annual cost of caring for that individual in ~~an~~ LTC facility. When determining the ADvantage service plan cost cap for an individual, the comparable ~~SoonerCare~~ Medicaid cost to serve that individual in ~~an~~ LTC facility is estimated.

(e) Services provided through the ADvantage waiver are:

(1) Case management;

(2) Respite;

(3) Adult day health care;

(4) Environmental modifications;

(5) Specialized medical equipment and supplies;

(6) Physical, occupational, or speech therapy or consultation;

(7) Advanced supportive and/or restorative assistance;

- (8) Nursing;
  - (9) Skilled nursing;
  - (10) Home-delivered meals;
  - (11) Hospice care;
  - (12) Medically necessary prescription drugs, within the limits of the ADvantage waiver;
  - (13) Personal care, State Plan, or ADvantage personal care;
  - (14) A Personal Emergency Response System (PERS);
  - (15) ~~Consumer Directed~~ Consumer Directed Personal Assistance Services and Supports (CD-PASS);
  - (16) Institution Transition Services (Transitional Case Management);
  - (17) Assisted living; ~~and~~
  - (18) Remote Supports;
  - (19) Assistive technology; and
  - ~~(18)~~(20) SoonerCare medical services for individuals, twenty-one (21) years of age and over, within the State Plan scope.
- (f) The OKDHS area nurse or nurse designee ~~makes a determination of~~ determines service eligibility prior to evaluating the Uniform Comprehensive Assessment Tool (UCAT) assessment for long-term care facility level of care. The criteria in (1) through (5) of this subsection are used to make the service eligibility determination, which includes:
- (1) An open ADvantage program waiver slot, as authorized by the Centers for Medicare and Medicaid Services (CMS), ~~which is available to ensure federal participation in payment for services to the individual. When the Oklahoma Department of Human Services/Aging Services (OKDHS/AS)~~ Services Community Living, Aging and Protective Services (CAP) determines all slots are filled, the individual cannot be certified by OKDHS as eligible for ADvantage services, and his or her name is placed on a waiting list for entry when an open slot becomes available;
  - (2) The ADvantage waiver-targeted service ~~group. The target group is~~ groups are individuals, who:
    - (A) Are frail and sixty-five (65) years of age and older; or
    - (B) ~~are~~ Are Twenty-one (21) to sixty-four (64) years of age and physically disabled; or
    - (C) When developmentally disabled, ~~and are~~ are twenty-one (21) to sixty-four (64) years of age and do not have an intellectual disability or cognitive impairment related to the developmental disability; or
    - (D) Are twenty-one (21) to sixty-four (64) years of age, and not physically disabled but have a clinically documented, progressive, degenerative disease process that responds to treatment and previously required hospital or long-term care facility level of care services to maintain the treatment regimen to prevent health deterioration. The individual must meet criteria, per OAC ~~317:35-174-3(b)(2)(A through C)~~ 317:35-17-3(b)(2)(A) through (C).
  - (3) An ~~ineligible~~ individual ~~because he or she poses~~ is ineligible when posing a physical threat to ~~himself or herself~~ self or others, as supported by professional documentation.
  - (4) ~~Members~~ An individual is ineligible when members of the household or persons who routinely visit the household, ~~as supported by professional documentation that do not pose a threat of harm or injury to the individual or other household visitors, as supported by professional documentation.~~
  - (5) An ~~ineligible~~ individual is ineligible when his or her living environment poses a physical

threat to ~~himself or herself~~ or others, as supported by professional documentation where applicable, and measures to correct hazardous conditions or assist the individual to move are unsuccessful or not feasible.

(g) The State, as part of the ADvantage waiver program approval ~~authorization~~ process, ensures CMS that each member's health, safety, or welfare can be maintained in his or her home. When a member's identified needs cannot be met through provision of the ADvantage program or Medicaid State Plan services and other formal or informal services are not in place or immediately available to meet those needs, the individual's health, safety, or welfare in his or her home cannot be ensured. The ADvantage Administration (AA) determines ADvantage program eligibility through the service plan approval process. An individual is deemed ineligible for the ADvantage program based on criteria (1) through (8) of this subsection.

(1) The individual's needs, as identified by the UCAT and other professional assessments, cannot be met through ADvantage program services, Medicaid State Plan services, or other formal or informal services.

(2) One (1) or more members of the individual's household pose a physical threat to themselves, or others as supported by professional documentation.

(3) The individual or other household members use threatening, intimidating, degrading, or use sexually inappropriate language ~~and/or~~ or innuendo or behavior towards service providers, ~~either~~ in the home or through other contact or communications, and significant efforts were attempted to correct such behavior, as supported by professional documentation or other credible documentation.

(4) The individual, or the individual's authorized agent, is uncooperative or refuses to participate in service development or service delivery and these actions result in unacceptable increases of risk to the individual's health, safety, or welfare in his or her home, as determined by the individual, the interdisciplinary team, or the AA.

(5) The individual's living environment poses a physical threat to self or others, as supported by professional documentation, and measures to correct hazardous conditions or assist the person to move are unsuccessful or are not feasible.

(6) The individual provides false or materially inaccurate information necessary to determine program eligibility or withholds information necessary to determine program eligibility.

(7) The individual does not require at least one ADvantage service monthly.

(8) The individual, his or her family member(s), associate(s), or any other person(s) or circumstances as relates to care and coordination in ~~his or her~~ the living environment produces evidence of illegal drug activity or substances used illegally as intoxicants. This includes:

(A) The use, possession, or distribution of illegal drugs;

(B) The abusive use of other drugs, such as medication prescribed by a doctor;

(C) The use of substances, such as inhalants including, but not limited to:

(i) Typewriter correction fluid;

(ii) Air conditioning coolant;

(iii) Gasoline;

(iv) Propane;

(v) Felt-tip markers;

(vi) Spray paint;

(vii) Air freshener;

(viii) Butane;

(ix) Cooking spray;

(x) Paint; and

(xi) Glue;

(D) The observed intoxication, consumption, or sensory indicators, such as smell of the use of any drug or intoxicant by the individual, family members, associates, or any other person(s) present at the time care is provided may be construed as evidence indicative of illegal drug activity or intoxication. This includes drug use or intoxicated activity that is menacing to the member or staff providing services;

(E) The observance of drug paraphernalia or any instrument used in the manufacturing, production, distribution, sale, or consumption of drugs or substances including, but not limited to:

(i) Smoking pipes used to consume substances other than tobacco;

(ii) Roach clips containing marijuana cigarettes;

(iii) Needles and other implements used for injecting drugs into the body;

(iv) Plastic bags or other containers used to package drugs;

(v) Miniature spoons used to prepare drugs; or

(vi) Kits used in the production of synthetic controlled substances including descriptive materials that accompany the item, describing or depicting its use.

(F) Instructions, verbal or written, concerning the item or device including, but not limited to, the manner in which the object is labeled and displayed for sale;

(G) The typical use of such items in the community; ~~and/or~~

(H) Testimony of an expert witness regarding use of the item.

(h) The case manager provides the AA with professional documentation or other credible documentation to support the recommendation for redetermination of program eligibility. The service providers continue providing services according to the person-centered service plan as provider safety permits until the individual is removed from the ADvantage program. As a part of the procedures requesting redetermination of program eligibility, ~~OKDHS-ASCAP~~ provides technical assistance to the provider for transitioning the individual to other services.

(i) Individuals determined ineligible for ADvantage program services are notified in writing by ~~OKDHS-ASCAP~~ of the determination and of the right to appeal the decision.