



**Kevin Corbett** | Chief Executive Officer

**J. Kevin Stitt** | Governor

I/T/U Public Notice 2022-09

December 23, 2022

**RE: Oklahoma Health Care Authority Proposed Rule, State Plan and Waiver Amendments**

Dear Tribal Representative:

The purpose of this letter is to notify you of proposed changes that will be reviewed at the tribal consultation meeting on **January 3<sup>rd</sup>, 2023, at 11 a.m.** OHCA invites you to attend this meeting via webinar, and we welcome any comments regarding the proposed changes. The agency is committed to active communication with tribal governments during the decision-making and priority-setting process to keep you apprised of all proposed changes.

Enclosed are summaries of the current proposed rules, state plan and waiver amendments for your review. The summaries describe the purpose of each change.

Please note that these are only proposed changes and have not yet taken effect. Before implementation, proposed changes must obtain budget authorization and approval by the OHCA board, and when applicable, federal and governor approval must be obtained.

Additionally, OHCA posts all proposed changes on the agency's [Policy Change Blog](#) and the [Native American Consultation Page](#). These public website pages are designed to give all constituents and stakeholders an opportunity to review and make comments regarding upcoming policy changes. To ensure that you stay informed of proposed policy changes, you may sign up for web alerts to be automatically notified when any new proposed policy changes are posted for comment.

OHCA values consultation with tribal governments and will provide your representatives a reasonable amount of time to respond to this notification. If you have any questions or comments about the proposed policy changes, please use the online comment system found on the [Policy Change Blog](#) and/or the [Native American Consultation Page](#).

Sincerely,

Dana Miller  
Director, Tribal Government Relations



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## **Proposed Rule, State Plan, and Waiver Amendments**

### **POLICY UPDATES:**

To further the agency's commitment to meaningful consultation with Tribal partners, all proposed policy revisions will be provided at the start of the consultation when they are available. An I/T/U public notice advised of the below proposed rule, state plan, and waiver revisions was issued at least 60 days prior to their submission, but no less than 14 days (limited to abnormal circumstances). The agency will strive to keep Tribal partners abreast of any exigent circumstances that may arise and cause timeframes to be updated or shortened.

In addition, the agency's website houses a policy changes blog that is dedicated to Native American Consultation. This blog page allows for comments/questions from providers and members to be submitted to the Agency and become part of the official record. All comments received are considered during the policy making process. The policy updates that are presented during this Tribal Consultation meeting will be officially posted for I/T/U provider and member review during the consultation period. To ensure that you stay informed of proposed policy changes, please sign up for the web alert option. These alerts will be sent out to all subscribers whenever any new proposed policy changes are posted for public comment.

### **EMERGENCY RULEMAKING ACTIONS:**

**Insure Oklahoma Self-Funded/Self-Insured Plans** — The proposed rules will update Insure Oklahoma policy to comply with Oklahoma Senate Bill 1323, which added language to Title 56 Oklahoma Statutes § 1010.1. The policy additions mirror the bill's language regarding self-funded/self-insured plans to address that qualified benefit plans may become a self-funded or self-insured benefit plan if certain criteria are met.

**Anticipated Tribal Impact:** Indirect; AI/ANs are exempted from co-insurance payments

**Proposed Emergency Rule Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

15-day Public Comment Period: Jan. 3, 2023 – Jan. 18, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

OHCA Board Meeting: Mar. 22, 2023



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Requested Effective Date: Upon Governor's signature or the 45<sup>th</sup> day post submission of the rules (May 8, 2023)

**Notification of Date of Service (NODOS)** — The proposed rules will update policy regarding application procedures during the NODOS process. The current 5-day requirement for the hospital to file the electronic NODOS will remain in effect; however, after the electronic NODOS is filed, the applicant or someone acting on behalf of the applicant will have 40 days to submit a completed SoonerCare application instead of the current 15 days.

**Anticipated Tribal Impact:** Direct; ITU patient benefit coordinators will have more time to submit the completed application

**Proposed Emergency Rule Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

15-day Public Comment Period: Jan. 3, 2023 – Jan. 18, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

OHCA Board Meeting: Mar. 22, 2023

Requested Effective Date: Upon Governor's signature or the 45<sup>th</sup> day post submission of the rules (May 8, 2023)

**Transition to Managed Care** — The Oklahoma Health Care Authority (OHCA) will seek approval to transition to a new health care model following the passage of SB 1337, the delivery system reform bill. SB 1337 codifies the system design for a transformed Medicaid program, which utilizes a value-based payment system and prioritizes health outcomes for SoonerCare members.

The legislation authorizes OHCA to award at least three statewide capitated contracts for both medical and dental managed care programs for pregnant women, children, deemed newborns, parent-caretaker relatives, and the expansion population for physical health services, dental, behavioral health services, and prescription drug services. It also authorizes OHCA to award a capitated contract for the Children's Specialty Plan for children in foster care, juvenile-justice involved children and children receiving adoption assistance. SB1337 allows OHCA to award an urban-region contract to a provider-led entity (PLE) if it otherwise meets all the Request for Proposal (RFP) requirements and agrees to expand to statewide coverage within five years. The American Indian/Alaska



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Native population is considered voluntary and will have the option of receiving services through a managed care plan or through the fee-for-service program operated by OHCA.

Following the request for proposals and in order to obtain authority to establish the managed care organization, the agency will seek to revise/add federal and state policy including: 1115(c) and 1915(b) waiver requests, Title XIX and XXI state plan amendments, and state rules.

The rule additions/revisions will include State-sanctions and complementary non-compliance remedies required of the medical contracted entities (CEs), inclusive of PLEs, and dental benefit managers (DBMs) and will define terms, processes, and regulations that were outlined in the SB1337 and the published RFP/Model Contract. Other rule additions will include, but are not limited to, managed care mandatory and voluntary populations (American Indian/Alaskan Native (AI/AN) members), processes for network adequacy, provider requirements, termination of contracts, transition of care policies, medical necessity, required notices and grievances and appeals. Revisions will also update the timeframe for the continuation of benefits pending appeals for all SoonerCare members.

**Anticipated Tribal Impact:** Direct; while AI/AN members are considered optional and ITUs will continue to bill through OHCA, there will be some members that will choose the new model and ITUs that may choose to contract with the managed care entities.

**Proposed 1115(c) and/or 1915(b) Waiver Requests Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

30-day Public Comment Start Date: on or before Jan. 29, 2023

30-day Public Comment End Date: on or before Feb. 28, 2023

Requested Effective Date: Oct. 1, 2023

**Proposed State Plan Amendment(s) Timeline:**

**60-day Tribal Consultation Period:** TBD

*Tribal partners will be provided a draft of the SPA(s) to begin the 60-day tribal consultation period at a future date.*

Public Comment Period: TBD

Requested Effective Date: Oct. 1, 2023



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**Proposed Emergency Rule Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

30-day Public Comment Start Date: on or before Jan. 29, 2023

30-day Public Comment End Date: on or before Feb. 28, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

OHCA Board Meeting: Mar. 22, 2023

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**1115(c) SoonerCare Choice Demonstration** — The State will request the Centers for Medicare and Medicaid Services (CMS) approval to update the 1115(c) Freedom of Choice waiver to include pregnant women with incomes between 134% and 185% of the federal poverty level (FPL). After Jan. 1, 2023, these members will no longer be excluded from the Demonstration since the State is expanding the income limit for the Title XIX pregnant women coverage group to 185% FPL (effectively 210% FPL once converted to MAGI with applicable disregards). The Agency will also request a modification to the Retroactive Eligibility waiver, extending the exclusion for pregnant women from a 60-day period beginning on the last day of pregnancy to 12 months beginning on the last day of pregnancy. After Jan. 1, 2023, these members will be afforded continuous coverage for 12 months postpartum. Further updates are to align with current practice which allows for tribal members covered by Indian Health Services (IHS) creditable health care to participate in the Demonstration. The Oklahoma Health Care Authority (OHCA) will request to remove this exclusion from the Demonstration's Special Terms and Conditions.

**Anticipated Tribal Impact:** Direct; more AI/AN pregnant members will be eligible with the new income limit, and IHS eligible AI/ANs will continue to participate in the demonstration.

**Proposed 1115(c) and/or 1915(b) Waiver Requests Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

30-day Public Comment Start Date: on or before Jan. 29, 2023

30-day Public Comment End Date: on or before Feb. 28, 2023

Requested Effective Date: Jan. 1, 2023 or upon CMS approval

**State Plan Personal Care Services for Expansion Adults, TEFRA Eligible Children and Certain MAGI Populations** — The proposed rules will add new policy to delineate



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eligibility requirements, definitions, medical eligibility criteria for personal care, and the process for medical eligibility determinations. Additionally, rules will be added to reflect the current business practice for approving the TEFRA population and any EPSDT members who meet medical necessity to receive personal care services.

**Anticipated Tribal Impact:** Direct; AI/ANs receiving these services will be impacted.

**Proposed Emergency Rule Timeline:**

60-day Tribal Consultation Period: Dec. 30, 2022 – Feb. 28, 2023

15-day Public Comment Period: Jan. 3, 2023 – Jan. 18, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

OHCA Board Meeting: Mar. 22, 2023

Requested Effective Date: Upon Governor's signature or the 45<sup>th</sup> day post submission of the rules (May 8, 2023)

#### PERMANENT RULEMAKING ACTIONS:

The below timeline applies to all proposed permanent rulemaking actions:

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

Public Hearing: Mar. 7, 2023

OHCA Board Meeting: Mar. 22, 2023

Proposed Effective Date: Sept. 14, 2023

**Behavioral Health Services** — The proposed rules seek to revise inpatient behavioral health and residential substance use disorder (SUD) policy to clarify timely completion of the placement tool for SUD admission or extension request. The proposed revisions will also update service plan, documentation, and signature requirements. Furthermore, the proposed revisions will require providers to report to the Oklahoma Department of Human Services instances of child abuse/neglect in residential settings in accordance with state law. Lastly, revisions will make grammatical and formatting changes as needed.

**Anticipated Tribal Impact:** Direct; ITUs are reimbursed for SUD services



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**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

Public Hearing: Mar. 7, 2023

OHCA Board Meeting: Mar. 22, 2023

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**Crisis Intervention Services (CIS)** — The proposed rule changes seek to clarify CIS as the provision of these services is expanding in the State. The proposed changes will clearly define mobile versus on-site CIS and make other grammatical and formatting changes as needed.

**Anticipated Tribal Impact:** Direct; if ITUs provide this service then the clarification of service site will be applicable

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

Public Hearing: Mar. 7, 2023

OHCA Board Meeting: Mar. 22, 2023

Proposed Effective Date: Sept. 14, 2023

**Physician Assistant (PA) Services** — The proposed rule changes seek to review PA rule sections to ensure previous amendments to the Physician Assistant Practice Act made by the Legislature in 2020 are reflected in the rules. The proposed revisions will update the term "supervising" physician to "delegating" physician; remove the application to practice requirements and replace it with the practice agreement requirement; as well as, provide a timeframe of ten (10) business days for providers to submit any updated copy of the practice agreement due to changes. Other revisions will involve limited rewriting aimed at improving readability and overall flow of policy language.



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**Anticipated Tribal Impact:** Direct; ITUs that seek reimbursement for this provider type

**Proposed Permanent Rule Timeline:**

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60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

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**Opioid Treatment Program (OTP) Services** — The proposed rule changes seek to revise OTP policy to update the phase requirements to align with federal regulations. Furthermore, revisions will clarify service plan signature requirements according to the member's age.

**Anticipated Tribal Impact:** Direct; ITUs that claim for this service

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

Public Hearing: Mar. 7, 2023

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Proposed Effective Date: Sept. 14, 2023

**Eliminate the Certificate of Medical Necessity (CMN) Form Requirement for Prior Authorization (PA) of Medical Supplies, Equipment, and Appliances** — The Centers for Medicare and Medicaid Services (CMS) is discontinuing CMNs effective Jan. 1, 2023, for providers, suppliers, billers, and vendors who bill medical supplies, equipment, and appliances to Medicare. The Oklahoma Health Care Authority (OHCA) is following the lead of Medicare and eliminating the requirement to include a CMN form when requesting PAs of most medical supplies, equipment, and appliances covered by SoonerCare. All the other required documentation, which is listed in the PA guidelines for that service, will still be required to be submitted by the provider.



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**Anticipated Tribal Impact:** Direct; ITUs that claim for this service

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

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**Outdated/Obsolete Policy Language Cleanup** — The proposed rule changes will amend language to remove or update obsolete references. Additional revisions will combine sections of policy to remove the overabundant number of sections that are currently in Title 317. These changes are necessary to comply with Oklahoma Executive Order 2020-03.

**Anticipated Tribal Impact:** none

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023

60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

Public Hearing: Mar. 7, 2023

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Proposed Effective Date: Sept. 14, 2023

**Laboratory Services** — The proposed rule changes will reorganize the existing laboratory policies and combine them into one centralized location. This will allow for better access to the policies and an easier understanding of services covered under the laboratory benefit. Furthermore, language will be put into policy that will clarify coverage of reference (outside) laboratories when an independent or hospital laboratory refers a service to another laboratory.

**Anticipated Tribal Impact:** Direct; ITUs that claim for this service

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023



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**Oklahoma Department of Human Services ADvantage Program** — The proposed rule changes 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 support 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. Additionally, remote support allows for a member to choose the method of service delivery which best suits their needs.

**Anticipated Tribal Impact:** Direct; AI/ANs enrolled in the Advantage waiver

**Proposed Permanent Rule Timeline:**

Tribal Consultation Meeting: Jan. 3, 2023  
60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023  
Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023  
Medical Advisory Committee Meeting: Mar. 2, 2023  
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Proposed Effective Date: Sept. 14, 2023

**Developmental Disability Services (DDS)** — The proposed rule changes to the DDS policy will reflect amendments made to the Community Waiver, Homeward Bound Waiver, and In-Home Supports for Children and Adults Waivers. These amendments were recently approved by CMS and made effective Oct. 1, 2022.

Proposed revisions to the family support services policy will update coverage limitations for individual family training and group family training from \$5,500 to \$6,500, as well as, revoke outdated documentation requirements language. Other revisions will add new



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language to outline criteria for respite care providers and homemaker services providers. Additional revisions will add new language to clarify the termination process of remote support services as well as provide new criteria and explain the exceptions allowed when agency companion services are provided.

Revisions to the specialized foster care (SFC) section will add new language to outline new SFC standards and criteria. Other revisions will add optometry benefits, which will allow routine eye examination and purchase of corrective lenses. Further revisions add language to support the increase of the public transportation limit from \$5,000 to \$25,000. Additionally, revisions provide a new residential service option, Extensive Residential Supports (ERS) for members with the most extensive behavioral support needs.

Moreover, revisions will correct formatting and grammatical errors, as well as align policy with current business practices. Finally, revisions will update and remove outdated language and definitions, remove obsolete references, and revoke/combine sections to comply with Executive Order 2020-03, which requires state agencies to reduce unnecessary and outdated rules.

**Anticipated Tribal Impact:** Direct; AI/AN members enrolled in these waivers

**Proposed Permanent Rule Timeline:**

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60-day Tribal Consultation Period: Jan. 20, 2023 – Mar. 21, 2023

Public Comment Period: Feb. 1, 2023 – Mar. 3, 2023

Medical Advisory Committee Meeting: Mar. 2, 2023

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OHCA Board Meeting: Mar. 22, 2023

Proposed Effective Date: Sept. 14, 2023

### **1915C HCBS WAIVER UPDATES:**

**Homeward Bound Waiver** — The Oklahoma Department of Human Services is seeking to amend the Homeward Bound Waiver by updating the incident management process to detail requirements for electronically reporting for four tiers of incidents. Other changes include allowing providers to obtain an FBI national background check instead of the OSBI



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report, updating language to reflect the new Developmental Disability Services (DDS) software, and adding the agency model for physical therapy (PT), occupational therapy (OT), and speech and nutrition services.

**Anticipated Tribal Impact:** none; there are no ITUs contracted as Homeward Bound waiver providers.

**Proposed Waiver Amendment Timeline:**

60-day Tribal Consultation Period: Dec. 23, 2022 – Feb. 21, 2023

Public Comment Period: Jan. 5, 2023 – Feb. 6, 2023

Requested Effective Date: Jun. 19, 2023

**Community Waiver** — The Oklahoma Department of Human Services is seeking to amend the Community Waiver which serves individuals (ages 3 and up) with Intellectual Disabilities. The specific changes include increasing the number of individuals served in waiver years 2 through 5. Changes also include the addition of a new residential service, the Extensive Residential Supports service. This new service is designed to meet the needs of waiver members with significant challenging behavioral issues in a community setting. Furthermore, the incident management process will be updated to detail requirements for electronic reporting requirements for four tiers of incidents. Other changes include allowing providers to obtain an FBI national background check instead of the OSBI report, updating language to reflect the new Developmental Disability Services (DDS) software, increasing the number of people who can be served in the waiver, and adding the agency model for physical therapy (PT), occupational therapy (OT), and speech and nutrition services.

**Anticipated Tribal Impact:** none; there are no ITUs contracted as Community waiver providers.

**Proposed Waiver Amendment Timeline:**

60-day Tribal Consultation Period: Dec. 23, 2022 – Feb. 21, 2023

Public Comment Period: Jan. 5, 2023 – Feb. 6, 2023

Requested Effective Date: Jun. 19, 2023

**In-Home Supports Waiver for Adults (IHSW-A) and In-Home Supports Waiver for Children (IHSW-C)** — The Oklahoma Department of Human Services is seeking an amendment to the In-Home Supports Waiver for Adults which serves individuals with intellectual disabilities ages 18 and over and the In-Home Supports Waiver for Children



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which serves individuals with intellectual disabilities ages 3 through 17. The specific changes include increasing the number served in waiver years 1 through 5. Furthermore, the incident management process will be updated to detail requirements for electronic reporting requirements for four tiers of incidents. Other changes include allowing providers to obtain an FBI national background check instead of the OSBI report, updating language to reflect the new Developmental Disability Services (DDS) software, and adding the agency model for physical therapy (PT), occupational therapy (OT), and speech and nutrition services.

**Anticipated Tribal Impact:** none; there are no ITUs contracted for these waivers.

**Proposed Waiver Amendment Timeline:**

60-day Tribal Consultation Period: Dec. 23, 2022 – Feb. 21, 2023

Public Comment Period: Jan. 5, 2023 – Feb. 6, 2023

Requested Effective Date: Jun. 19, 2023

**In-Home Supports Waiver for Children (IHSW-C)** — The Oklahoma Department of Human Services is seeking an amendment to the In-Home Supports Waiver for Children which serves individuals with intellectual disabilities ages 3 through 17. The specific changes include increasing the number served in waiver years 1 through 5. Furthermore, the incident management process will be updated to detail requirements for electronic reporting requirements for four tiers of incidents. Other changes include allowing providers to obtain an FBI national background check instead of the OSBI report, updating language to reflect the new Developmental Disability Services (DDS) software, and adding the agency model for physical therapy (PT) and occupational therapy (OT) services.

**Anticipated Tribal Impact:** none; there are no ITUs contracted as IHSW-C waiver providers.

**Proposed Waiver Amendment Timeline:**

60-day Tribal Consultation Period: Dec. 23, 2022 – Feb. 21, 2023

Public Comment Period: Jan. 5, 2023 – Feb. 6, 2023

Requested Effective Date: Jun. 19, 2023

**Medically Fragile Program Renewal** — The Oklahoma Health Care Authority (OHCA) is seeking to renew the Medically Fragile Waiver. The Medically Fragile program is a 1915(c) home and community-based alternative to placement in a hospital or skilled nursing facility to receive Medicaid-funded assistance for care. This program allows Medicaid



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eligible persons who meet the institutional level of care requirements to remain at home or in the residential setting of their choosing while receiving the necessary care. In the renewal request, the Medically Fragile Waiver will adopt several Appendix K flexibilities such as allowing case management and nursing services to be conducted via HIPAA compliant teleconference or video conference and allowing legal guardian, power of attorney, spouse, or authorized representative to provide personal care services as needed.

Additional revisions will include rewriting several performance measures to adequately meet the Centers for Medicare and Medicaid (CMS) compliance with Health and Welfare, Electronic Visit Verification and the HCBS Settings rule detailed in the Statewide Transition Plan.

Finally, language will be updated to reflect the current workflow practices of the Medically Fragile Waiver.

**Anticipated Tribal Impacts:** none; there are no ITUs contracted as Medically Fragile waiver providers.

**Proposed Waiver Renewal Timeline:**

60-day Tribal Consultation Period: Dec. 23, 2022 – Feb. 21, 2023

Public Comment Period: Jan. 5, 2023 – Feb. 6, 2023

Requested Effective Date: Jul. 1, 2023



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