

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: September 25, 2023

The proposed policy is an Emergency Rule. The proposed policy will be presented at the September 5, 2023 Tribal Consultation. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on November 2, 2023 and the OHCA Board of Directors on December 7, 2023.

SUMMARY: TEFRA Psychological Evaluations and 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 lower 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 # 23-20

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

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

**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**

317:35-9-48.1. 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 ~~48~~ 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, and a full-scale functional or adaptive assessment that yields a composite functional age. Eligibility for TEFRA ICF/IID level of institutional care requires 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 (3), age six (6), 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~~Level of Care Evaluation Unit no later than ~~90~~ninety (90) days following the child's third (3rd) and sixth (6th) birthday, and, if medically necessary, thereafter.