

**COMMENT DUE DATE: August 15, 2024**

**Date: August 15, 2024**

<b>Darrin Thompson, Programs Manager</b>	<b>405-301-2895</b>
<b>Holli Kyker, Programs Administrator</b>	<b>405-982-2217</b>
<b>Brandi Smith, Policy Specialist</b>	<b>405-521-3638</b>

It is important that you provide your comments regarding the **draft copy** of policy by the comment due date. Comments are directed to \*STO.LegalServices.Policy@okdhs.org. The proposed policy is **EMERGENCY**.

**SUBJECT:**

Subchapter 3. Administration  
Part 3. Administration  
340:100-3-34 [AMENDED]  
**(Reference WF 24-11)**

**SUMMARY:**

The proposed amendment achieves Oklahoma Human Services (OKDHS) goals by: (1) removing references to the Office of Client Advocacy (OCA) which will be transferred to and become a part of the Oklahoma State Department of Health (OSDH); (2) removing references to the State Long-Term Care Ombudsman while will be transferred to and become a part of the Office of the Attorney General (OAG) pursuant to the governor approval of State Bill 1709; and (3) ensuring accurate program administration.

**Emergency rulemaking approval is requested.**

**LEGAL AUTHORITY:**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Section 1-2211 *et seq.* of Title 63 (63 O.S. §1-2211 *et seq.*); and Section 6103 of Title 26 of the United State Code (26 U.S.C. § 6103).



OKLAHOMA DEPARTMENT OF HUMAN  
SERVICES



Rule Impact Statement

**To:** Programs administrator  
Legal Services - Policy

**From:** Beth Scrutchin, Director  
Developmental Disabilities Services

**Date:** July 16, 2024

**Re:** **Chapter 100. Developmental Disabilities Services**  
Subchapter 3. Administration  
Part 3. Administration  
340:100-3-34 [AMENDED]  
**(Reference WF 24-11)**

**Contact:** Darrin Thompson, Programs Manager, 405-301-2895

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

**Purpose.**

The proposed amendment to Chapter 100, Subchapter 3, is to comply with approval of State Bill 1709.

**Strategic Plan Impact.**

The proposed amendment achieves Oklahoma Human Services (OKDHS) goals by: (1) removing references to the Office of Client Advocacy (OCA) which will be transferred to and become a part of the Oklahoma State Department of Health (OSDH); (2) removing references to the State Long-Term Care Ombudsman while will be transferred to and become a part of the Office of the Attorney General (OAG) pursuant to the governor approval of State Bill 1709; and (3) ensuring accurate program administration.

**Substantive changes.**

Subchapter 3. Administration

Oklahoma Administrative Code 340:100-3-34 is amended to eliminate reference to OCA and designate other appropriate OKDHS employees or programs to fulfill the duties previously assumed by OCA.

**Reasons.**

Developmental Disabilities Services seeks emergency rulemaking approval to address the Governor's approval of State Bill 1709 in which OCA will transfer to and become a part of the OSDH, and the State Long-Term Care Ombudsman which will also transfer to and become a part of the OAG, effective November 1, 2024.

**Repercussions.**

If the proposed amendment is not implemented: (1) OKDHS rules will conflict with state law; and (2) program rules will inaccurately reflect OCA and State Long-Term Care Ombudsman as active representative(s) of OKDHS programs.

**Legal authority.**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes (56 O.S. § 162); Section 1-2211 *et seq.* of Title 63 (63 O.S. §1-2211 *et seq.*); and Section 6103 of Title 26 of the United State Code (26 U.S.C. § 6103).

**Emergency rulemaking approval is requested.**

Per 75 O.S. § 253, OKDHS requests the Governor grant emergency rulemaking approval to avoid violation of state law or regulation. The emergency rulemaking process is necessary to implement changes due to governor approval of State Bill 1709.

- B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the Agency from any private or public entities:** The persons most likely to be affected are individuals receiving services from the Office of Client Advocacy and State Long-Term Care Ombudsman. The affected classes of persons will bear no costs associated with implementation of the rule.
- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who will benefit are individuals receiving services from the Office of Client Advocacy and State Long-Term Care Ombudsman.
- 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:** The proposed amendment does not have an economic impact on the affected entities. There are no fee changes associated with the revised rule.
- 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 probable cost to

OKDHS includes the cost of printing and distributing the rule, which is estimated to be less than \$20. The proposed amendment will keep OKDHS in compliance with state law and regulations and program rules will accurately reflect active representative(s) of OKDHS programs.

- F. A determination whether implementation of the proposed rule will have an impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:** The proposed amendment neither has an economic impact on any political subdivision nor requires the cooperation of any political subdivisions to implement or enforce the rule.
- G. A determination whether implementation of the proposed rule will have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:** The rule places no additional burden not already imposed by federal or state law and regulations. There are no additional, anticipated adverse effects on small business 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 whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:** There are no less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed amendment.
- 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:** Implementation of the proposed amendment will keep OKDHS in compliance with state law. OKDHS does not anticipate the rule to significantly reduce any other public health, safety, or environmental risks.
- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:** If the proposed amendments are not implemented the public health, safety, and environment will not be negatively affected.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared July 16, 2024.

## SUBCHAPTER 3. ADMINISTRATION

### PART 3. ADMINISTRATION

#### **340:100-3-34. Incident reporting**

Revised 9-4-15

(a) **Reporting requirement.** Contract provider staff and Developmental Disabilities Services (DDS) staff must report critical and non-critical incidents involving the health and welfare of any person receiving DDS services, excluding Family Support Assistance Payment Program recipients per Oklahoma Administrative Code (OAC) 340:100-13. ■

1

(b) **Critical incidents.** Critical incidents include:

- (1) suspected maltreatment including abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of a vulnerable adult per Section 10-103 of Title 43A of the Oklahoma Statutes (43A O.S. § 10-103) or abuse, neglect, sexual abuse, or sexual exploitation of children per 10A O.S. § 1-1-105;
- (2) threatened or attempted suicide by a service recipient;
- (3) death of a service recipient;
- (4) an unplanned hospital admission of a service recipient;
- (5) a medication event resulting in emergency medical treatment for a service recipient;
- (6) law enforcement involvement in a situation concerning a service recipient;
- (7) property loss of more than \$500 involving a service recipient;
- (8) a service recipient who is missing; and
- (9) a highly restrictive procedure used on a service recipient, such as:
  - (A) p.r.n. medication for behavioral control; or
  - (B) physical hold.

(c) **Non-critical incidents.** Non-critical incidents include:

- (1) an injury or an unplanned health-related event involving a service recipient;
- (2) physical aggression by a service recipient;
- (3) fire setting by a service recipient;
- (4) deliberate harm to an animal by a service recipient;
- (5) property loss of less than \$500 involving a service recipient;
- (6) a vehicle accident involving a service recipient;
- (7) the suspension, termination, or removal of a service recipient's program, including employment; and
- (8) a medication event involving a service recipient, including:
  - (A) a dose at the wrong time;
  - (B) a missed dose;
  - (C) a wrong dose;
  - (D) the wrong medicine;
  - (E) the wrong route;
  - (F) an incorrect medicine label or instructions;
  - (G) a medication refused by the service recipient;
  - (H) incorrect medication documentation; or
  - (I) any other significant occurrence involving medication.

**(d) Incident notification requirements.**

- (1) For Waiver funded service recipients, contract provider staff:
  - (A) report incidents electronically via the DDS Provider Reporting System for all critical and non-critical incidents; ■ 2
  - (B) program coordination staff:
    - (i) review and submit reports of all critical incidents per OAC 340:100-3-34(b) within one business day of the incident; and
    - (ii) review and submit reports of all non-critical incidents per OAC 340:100-3-34(c) within three business days of the occurrence.
  - (C) notify the service recipient's family or guardian, in accordance with provider policies;
  - (D) notify other persons or entities as required by law or regulation, including:
    - (i) when a service recipient dies per OAC 340:100-3-35; and
    - (ii) investigative authorities immediately in cases of suspected maltreatment, including:
      - (I) Office of Client Advocacy ~~per OAC 340:2-3-33~~; ■ 3
      - (II) Adult Protective Services per 43A O.S. § 10-104; or
      - (III) Child Protective Services per 10A O.S. § 1-1-105.
- (2) For critical incidents involving state funded service recipients, contract provider staff submits Form 06MP046E, Incident Report, to DDS State Office within one business day of the incident. For non-critical incidents, contract provider staff maintains a copy of Form 06MP046E per OAC 340:100-3-40.

**INSTRUCTIONS TO STAFF 340:100-3-34**

**Revised 9-15-15**

- 1. The Developmental Disabilities Services (DDS) case manager or local administrator notifies the Office of Client Advocacy when a member of the Homeward Bound class:**
  - (1) is admitted or is to be admitted to a psychiatric facility or other temporary placement;**
  - (2) is injured and requires emergency room treatment or hospitalization;**
  - (3) dies; or**
  - (4) when law enforcement is contacted or involved.**
- 2. When the provider program coordination staff submits the incident report, the DDS Provider Reporting System automatically sends the incident report to the assigned case manager. The case manager reviews the incident report and completes the DDS Action Taken portion of the report within five business days of receipt.**
- 3. The DDS case manager forwards a copy of Form 06MP046E, Incident Report, to the Office of Client Advocacy for members of the Homeward Bound class.**