

**COMMENT DUE DATE: February 16, 2021**

**Date: January 15, 2021**

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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](mailto:STO.LegalServices.Policy@okdhs.org). The proposed amendment is **permanent**.

**SUBJECT: CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES**

Subchapter 3. Administration  
Part 1. General Administration  
340:100-3-2 [AMENDED]  
340:100-3-4 [AMENDED]  
340:100-3-13 [AMENDED]  
Part 3. Administration  
340:100-3-34 [AMENDED]  
340:100-3-39 [AMENDED]  
Subchapter 5. Client Services  
Part 3. Service Provisions  
340:100-5-22.5 [AMENDED]  
340:100-5-26 [AMENDED]  
340:100-5-26.2 [AMENDED]  
340:100-5-35 [AMENDED]  
340:100-5-35.1 [NEW]  
Part 5. Individual Planning  
340:100-5-52 [AMENDED]  
Subchapter 17. Employment Services  
Part 3. State-Funded Employment (Sheltered Workshop) Services  
340:100-17-10 [AMENDED]  
340:100-17-17 [REVOKED]  
Part 4. Community Integrated Employment Services  
340:100-17-25 [AMENDED]  
**(WF 21-100)**

**SUMMARY:**

The proposed amendments to Chapter 100, Subchapters 3, 5, and 17 amend rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process.

**PERMANENT APPROVAL:** Permanent rulemaking is requested.

**LEGAL AUTHORITY:** Director of Human Services; Section 162 and 1025.1 et seq. of Title 56 of the Oklahoma Statutes, and the 21st Century Cares Act.

## Rule Impact Statement

**To:** Programs Administrator  
Legal Services Policy

**From:** Beth Scrutchins, Director  
Developmental Disabilities Services (DDS)

**Date:** December 18, 2020

**Re: CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES**

Subchapter 3. Administration

Part 1. General Administration

340:100-3-2 [AMENDED]

340:100-3-4 [AMENDED]

340:100-3-13 [AMENDED]

Part 3. Administration

340:100-3-34 [AMENDED]

340:100-3-39 [AMENDED]

Subchapter 5. Client Services

Part 3. Service Provisions

340:100-5-22.5 [AMENDED]

340:100-5-26 [AMENDED]

340:100-5-26.2 [AMENDED]

340:100-5-35 [AMENDED]

340:100-5-35.1 [NEW]

Part 5. Individual Planning

340:100-5-52 [AMENDED]

Subchapter 17. Employment Services

Part 3. State-Funded Employment (Sheltered Workshop) Services

340:100-17-10 [AMENDED]

340:100-17-17 [REVOKED]

Part 4. Community Integrated Employment Services

340:100-17-25 [AMENDED]

**(WF 21-100)**

**Contact:** Ray Hester 405-802-9146

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

**Purpose.** The proposed amendments to Chapter 100, Subchapters 3, 5, and 17 amend rules to implement changes recommended during the annual Developmental Disabilities Services (DDS) rule review process.

**Strategic Plan Impact.**

The proposed amendments: (1) position Oklahoma Human Services (OKDHS) DDS to improve services to individuals with intellectual and developmental

disabilities; (2) support DDS goals of improving the quality of life of vulnerable Oklahomans by increasing individuals' abilities to lead safer, healthier, and more independent, productive lives; and (3) comply with federal requirements.

### **Substantive changes.**

#### Subchapter 3. Administration

##### Part 1. General Administration

Oklahoma Administrative Code (OAC) 340:100-3-2 is amended to: (1) revise area office record requirements from the area office to case management electronic records; and (2) update terminology to current usage.

OAC 340:100-3-4 is amended to: (1) clarify room and board costs do not include medications, and co-pays not provided by Medicare, Medicaid, or other health insurance; and (2) update terminology to current usage.

OAC 340:100-3-13 is amended to update terminology to current usage.

##### Part 3. Administration

OAC 340:100-3-34 is amended to: (1) define critical and non-critical incidents; (2) move emergency room visits to the critical category; (3) add a requirement that all admissions to psychiatric facilities are reported as a critical incident; (4) add a requirement that suspected maltreatment of a child by a service recipient is a critical incident; (5) revise (d) to add language that contract provider staff report incidents after observing or discovering an occurrence; (6) clarify the appropriate reporting authority for suspected maltreatment; and (7) set forth case manager responsibilities for reviewing and responding to incident reports to ensure DDS meets Centers for Medicare and Medicaid Services (CMS) assurances to continue to receive approval for Home and Community-Based Services (HCBS) Waivers.

OAC 340:100-3-39 is amended to: (1) clarify provider duties during an investigation; (2) clarify the usage of official forms used to explain community services workers' rights and responsibilities; and (3) the procedures for maltreatment investigations and the registry are removed because they are defined in the Office Of Client Advocacy's permanent rules.

#### Subchapter 5. Client Services

##### Part 3. Service Provisions

OAC 340:100-5-22.5 is amended to update the room and board provider payment amount.

OAC 340:100-5-26 is amended to: (1) clarify contract providers initiate first aid and cardio pulmonary resuscitation (CPR) unless a Do-Not-Resuscitate Consent Form is signed; (2) remove the requirement that the Health Care Coordinator (HCC) completes and submits the Health Status and Monthly Medication Review form monthly; (3) define an invasive procedure; (4) add a requirement for waiver recipients who receive community residential supports or group home services that the Personal Support Team (Team) holds a discharge planning meeting for all hospital admissions prior to discharge to assess service and support needs; and (5) add the requirement that the Team meets to review pharmacy recommendations within 30 business days of receipt of a completed pharmacy review.

OAC 340:100-5-26.2 is amended to: (1) specify when a person is diagnosed by a physician with a terminal illness, referred to hospice, or a Do-Not-Resuscitate Consent Form is signed the case manager holds a Team meeting with five working

days to review the person's support needs; and (2) align the text with current statute per Section 3131.1 et seq of Title 63 of the Oklahoma Statutes.

OAC 340:100-5-35 is amended to: (1) clarify that non-residential habilitation training specialist (HTS) services are not authorized for services provided by the legal guardian, biological or adoptive parent of a minor child per OAC 340:100-3-33.2; (2) clarify that the 40 hours per week HTS limit applies to the entire household and not per person; (3) remove hospital settings as a prohibited service location; and (4) update terminology to current usage.

OAC 340:100-5-35.1 is created to allow the provision of services in acute care hospitals per the 21st Century Cares Act.

#### Part 5. Individual Planning

OAC 340:100-5-52 is amended to: (1) include provisions for electronic notices for Individual Plan meetings; and (2) increase the meeting notification requirements from two weeks to 30 calendar days in order to provide better customer service by providing an increased notice for Plan meetings.

#### Subchapter 17. Employment Services

##### Part 3. State-Funded Employment (Sheltered Workshop) Services

OAC 340:100-17-10 is amended to: (1) remove an inaccurate policy cite that was revoked; and (2) update terminology to current usage.

OAC 340:100-17-17 is revoked because it describes a billing process. The instructions for this process will be created in OAC 340:100-17-10 instructions to staff.

##### Part 4. Community Integrated Employment Services

OAC 340:100-17-25 is amended to: (1) clarify that provider agencies submit claims to DDS state office instead of the area office; and (2) the usage of terminology is updated to current usage.

#### **Reasons.**

The proposed amendments update and clarify DDS rules, per Section 1020 of Title 56 of the Oklahoma Statutes.

#### **Repercussions.**

The proposed amendments contribute to the health and safety of vulnerable Oklahomans and position Oklahoma to continue to improve service provision.

#### **Legal authority.**

Director of Human Services; Section 162 and 1025.1 et seq. of Title 56 of the Oklahoma Statutes, and the 21st Century Cares Act.

#### **Permanent rulemaking approval is requested.**

- 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 classes of persons affected by the proposed amendments

are individuals receiving DDS services, who bear no costs associated with the implementation of the rules.

- C. A description of the classes of persons who will benefit from the proposed rule:** The classes of persons who benefit are individuals receiving DDS services.
- 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 on individuals who receive DDS services.
- 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 OKDHS cost includes the cost of printing and distributing the rules, estimated less than \$20.
- 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 amendments do not have an impact on any political subdivisions or require their cooperation in enforcing the rules.
- 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 proposed amendments do not have an adverse effect 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:** The proposed amendments do not increase compliance costs. There are no less costly, non-regulatory, or less intrusive methods.
- 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 amendments bring the rules into compliance with federal and state law, thereby increasing program effectiveness positively impacting the health, safety, and well-being of affected individuals.
- 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 rules will not comply with federal regulations and state laws. Therefore, the proposed amendments comply with federal regulations and state laws, thereby contributing to the health, safety, and well-being of vulnerable Oklahomans.

**K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared July 28, 2020; modified December 18, 2020.

## SUBCHAPTER 3. ADMINISTRATION

### PART 1. GENERAL ADMINISTRATION

#### **340:100-3-2. Client records, confidentiality, and security**

Issued 5-18-92 Revised 9-15-21

~~Each DDS area office shall maintain~~ DDS case managers maintain an official ~~Client Office Record~~ electronic service-recipient record for each ~~client~~ service recipient receiving ~~DDS waiver services in their respective areas~~ on his or her caseload.

(1) All service recipient information and records and information regarding a client are confidential and shall be released only to individuals or provider agencies who have proper authorization from the ~~client/legal representative~~ service recipient or his or her legal representative.

(2) It is the legal responsibility of ~~Department~~ Oklahoma Human Services (OKDHS) employees and contract providers to protect the clients' privacy ~~of clients~~, and to ensure the protection of confidential information.

(3) ~~Each facility/service area shall ensure that the client's~~ DDS ensures service-recipient records are protected from loss, defacement, tampering, destruction, and violation of confidentiality.

(4) ~~DDS~~ DDS personnel shall ~~obtain~~ obtains individualized, time-limited, informed consent, prior to securing ~~client records/information~~ service recipient information or records from provider agencies that are neither part of nor under contract with the DHS who do not have a current OKDHS contract.

#### **340:100-3-4. Service recipient personal funds**

Revised 7-1-129-15-21

(a) **General information.** Each service recipient receiving services from Developmental Disabilities Services Division (~~DDS~~) (DDS) is ensured access to his or her personal funds.

(1) Personal funds include income from all sources, earned or unearned, and assets.

(A) Income is money received in the current month.

(B) Any income not used to meet the service recipient's needs during the current month is a resource or asset of the service recipient in the following month(s).

(2) Services do not include the provision of room and board or personal spending. Each service recipient is responsible for meeting his or her room and board and personal spending needs including, but not limited to:

(A) healthcare;

(B) medications and co-pays not provided by Medicare, Medicaid (SoonerCare) or other health insurance;

(C) ~~Medicaid or other health insurance~~ legal fees;

(D) ~~legal fees~~ vacation costs;

(E) ~~vacation costs~~ recreation and social expenses;

(F) ~~recreation and social expenses~~ educational expenses;

(G) ~~educational expenses~~ clothing; and

(H) ~~clothing~~ furniture or household items; and

(I) ~~furniture or household items~~.



(3) After the service recipient's day-to-day needs for food and shelter are met, personal funds may be used for the service recipient's needs, such as recreation, clothing, and other expenses. The provider agency staff and DDS Personal Support Team (Team) members work with the service recipient to ensure that all needs are met.

**(b) Prohibited transactions.**

(1) Provider agency and ~~DDSD~~ DDS employees are prohibited from engaging in any financial transaction with a service recipient, including:

(A) giving gifts to a service recipient with a cumulative annual value of more than \$100;

(B) accepting gifts from a service recipient with a cumulative annual value of more than \$20;

(C) selling, purchasing, leasing, or trading any item except:

(i) as part of an established business in which fair market value is received; or

(ii) when approved in advance and in writing by the Team;

(D) borrowing personal funds or any item of value from the service recipient; and

(E) loaning funds to a service recipient, except:

(i) small amounts, such as money for a meal or a recreational activity, for periods of time less than 24 hours; or

(ii) as part of a program authorized in advance and in writing by the Team.

(2) Except for client trust accounts managed, per Oklahoma Administrative Code (OAC) 340:2-11-86, ~~DDSD~~ DDS employees are prohibited from assisting service recipients in conducting financial transactions or being listed on a service recipient's bank account; although case managers may monitor service recipient expenditures through financial record reviews.

**(c) Living expenses.** The provider agency:

(1) may lend funds to a service recipient to cover the service recipient's living expenses in expectation that funds will be available in the future enabling the service recipient to repay the loan; and

(2) must submit ongoing written reports to the Team regarding the status of the service recipient's financial condition of the loan and repayment.

**(d) Protection of personal funds.**

(1) Per OAC 340:100-3-1.2 each service recipient, when not in conflict with a guardianship order or representative payee agreement, has the right to:

(A) manage his or her financial affairs;

(B) be taught to manage his or her financial affairs;

(C) receive assistance in managing his or her financial affairs; and

(D) access all financial records regarding his or her personal funds.

(2) When a provider agency serves as representative payee, or when provider agency staff provides assistance in managing, or have access to personal funds for service recipients receiving community residential supports or group home services:

(A) the provider agency retains, safeguards, and accounts for the service recipient's personal funds when determined necessary by the service recipient's Team and as authorized by the service recipient, applicable guardian, or when the provider agency is the representative payee; and

(B) spending programs may be implemented on an individual basis, provided they are requested by the service recipient, guardian, or parent of a minor service recipient and reviewed by the service recipient's Team. A portion of the service recipient's funds may be designated for personal use when the exact amount of the spending program is documented in the service recipient's Individual Plan (Plan). A spending program consists of a fixed amount of money regularly given to the service recipient to spend as he or she wishes chooses.

(3) Staff Provider agency staff who have access to, or assist the service recipient with personal funds, ensures:

(A) the service recipient's personal funds are not co-mingled with provider agency funds;

(B) a separate financial record is maintained for each service recipient including receipts for all expenditures that are:

(i) more than \$5; and

(ii) made with provider agency staff involvement;

(C) a written accounting of the service recipient's personal funds is maintained;

(D) a summary of financial transactions is available to the service recipient, guardian, ~~DDSD~~ DDS case manager, and the Office of Client Advocacy (OCA) advocate, when involved:

(i) monthly; and

(ii) when the service recipient ceases receiving service from the provider agency;

(E) ~~upon request~~, copies of the written accounting and summary of financial transactions are provided to the service recipient, guardian, case manager upon request, and OCA advocate when involved;

(F) the service recipient's personal funds account is reconciled at least monthly by provider agency staff who does not have authority to disburse funds from, or responsibility to, deposit funds to the account;

(G) documentation is maintained to support all transactions involving the service recipient's personal funds that are not independently controlled by the service recipient;

(H) the service recipient's income is deposited to the service recipient's personal account within ~~seven~~ seven-calendar days of receipt;

(I) when the service recipient's income is held in an interest bearing account, the interest accrues to the service recipient;

(J) any personal cash not in the service recipient's possession is properly protected against theft;

(K) the service recipient receives requested funds within one banking day of request;

(L) the service recipient, ~~parent of a minor service recipient~~ recipient's parent, guardian, or representative payee, as applicable, and ~~DDSD~~ DDS case manager are advised of eligibility requirements when the service recipient's account accumulates \$1100; unless the Plan includes specific provisions to maintain Medicaid (SoonerCare) eligibility;

(M) the service recipient's personal funds are not used to supplement service rates or to purchase items that are part of the services that the service recipient is currently authorized to receive;

(N) prior to receiving services from a provider agency, a written agreement is executed between the service recipient or guardian as applicable, and provider agency. Copies of the agreement are provided to each party and filed in the service recipient's record. The agreement includes the:

(i) ~~responsibilities of the provider agency~~ agency's responsibilities to the service recipient in handling ~~the service recipient's~~ his or her personal funds;

(ii) service recipient's fiscal responsibilities; and

(iii) services for which the service recipient's personal funds must be used;

(O) all requested financial information necessary for the maintenance of the service recipient's financial eligibility is provided in a timely manner to Oklahoma Department of Human Services and the Social Security Administration;

(P) the service recipient receives choices in the selection of stores for the purchase of food, clothing, and personal items; and

(Q) except for minor repairs, the service recipient's personal funds are not used to make permanent modifications to a home not owned by the service recipient.

(4) For service recipients not receiving community residential supports or group home services that do not meet the criteria established in ~~paragraph~~ (2) of this subsection; the Team discusses and documents the party responsible for maintaining and planning for continued participation in Medicaid (SoonerCare) and other benefit programs for which the service recipient is eligible.

(5) Allegations of exploitation must be reported in accordance with OAC 340:2-3-33. When a provider agency is a service recipient's representative payee, it must fulfill its duties per applicable federal regulations defining those duties.

**(e) Team planning and assistance to manage personal funds.** The Team may limit, but not totally deny a service recipient without a guardian access to or use of his or her personal funds only when a determination is made, per OAC 340:100-3-4, ~~that~~ when the limitation is essential to prevent the service recipient from unreasonably or significantly dissipating his or her personal funds.

(1) The Team follows rules, per OAC 340:100-3-1.2.

(2) Justification for limiting access to and use of personal funds is documented in the service recipient's Plan. The Team develops a Plan to remove the restriction and includes specific dates to review the Plan.

(3) The Team ensures the service recipient is afforded due process prior to implementation of any financial restrictions.

(4) When determining whether to limit a service recipient's access to personal funds, the Team addresses ~~whether~~ if the service recipient:

(A) recognizes currency, coins, and ~~value~~ values of such;

(B) does not lose money regularly;

(C) does not leave money unattended;

(D) does not give money away;

- (E) has the ability to make change or knows when to wait for change;
- (F) shows responsible behavior regarding his or her money, such as paying bills on time, writing checks only when he or she has sufficient funds, ~~and~~ or saving or planning for special items;
- (G) understands his or her responsibility to pay room and board expenses; and
- (H) understands budgeting so money will last all month.

(f) **Payee responsibilities.** In addition to the requirements of OAC 340:100-3-4, persons ~~and~~ or organizations serving as representative payee for a service recipient's personal funds are responsible for obtaining a copy of the dispersing agency's regulations regarding representative payee responsibilities and adhering to the dispersing agency's requirements.

- (1) The service recipient, guardian, or representative payee is responsible for paying for room and board from the service recipient's income.
- (2) A provider agency serving as payee uses direct deposit of benefits, when available.

### **340:100-3-13. Fair hearings**

~~Issued 5-18-92~~ Revised 9-15-21

Refer to Oklahoma Administrative Code (OAC) 340:2, Subchapter 5.

## **PART 3. ADMINISTRATION**

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

~~Revised 9-1-15~~

(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 are events that have the potential to cause significant risk or serious harm to the service recipient's safety or well-being. Critical incidents include a service recipient who:

- (1) is a suspected victim of 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 a child, per 10A O.S. § 1-1-105;
- (2) threatened or attempted suicide by a service recipient;
- (3) death has died;
- (4) has an unplanned hospital admission of a service recipient;
- (5) a medication event resulting in emergency medical treatment for a service recipient requires treatment in an emergency room;
- (6) has law enforcement involvement in a situation concerning a service recipient due to challenging behaviors, per OAC 340:100-1-2;
- (7) property loss of more than \$500 involving a service recipient is admitted to a psychiatric facility or a hospital behavioral unit;

- (8) ~~a service recipient who is missing; and~~
- (9) ~~has a highly restrictive procedure used on a service recipient that limits his or her rights, such as including:~~
  - (A) ~~p.r.n. medication for behavioral control; or~~
  - (B) ~~physical hold;~~
- (10) ~~is suspected of fire setting; and~~
- (11) ~~is suspected of maltreatment of a child, including abuse, neglect, sexual abuse, or sexual exploitation, per 10A O.S. § 1-1-105.~~

(c) **Non-critical incidents.** Non-critical incidents are events that have the potential to cause risk to the service recipient's safety and well-being, but do not rise to the level of a critical incident. Non-critical incidents include a service recipient:

- (1) ~~an injury or an unplanned health-related event involving a service recipient, that does not require emergency room treatment;~~
- (2) ~~displaying physical aggression by a service recipient;~~
- (3) ~~fire setting by a service recipient who has a loss of property of \$25 or greater;~~
- (4) ~~deliberate harm to suspected of animal abuse an animal by a service recipient;~~
- (5) ~~property loss of less than \$500 involving a service recipient is suspended, removed, or terminated from employment or Adult Day Services;~~

and

(6) ~~a vehicle accident involving a service recipient; medication event, including:~~

- (A) ~~a dose at the wrong time;~~
- (B) ~~a missed dose;~~
- (C) ~~a wrong dose;~~
- (D) ~~the wrong medicine;~~
- (E) ~~the wrong route; or~~
- (F) ~~medication refusal.~~

(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 service recipients receiving Waiver funded ~~service recipients, contract provider staff services:~~

- (A) ~~report contract provider staff reports~~ incidents electronically via the DDS Provider Reporting System for all critical and non-critical incidents; ■ 2
- (B) program ~~coordination~~ coordinator or agency representative staff:

- (i) review reviews and submit submits reports of all critical incidents incident reports, per OAC 340:100-3-34(b), within ~~one business~~ one-business day of contract provider staff observing or discovering the incident; and
  - (ii) review reviews and submit submits reports of all non-critical incidents incident reports, per OAC 340:100-3-34(c) within ~~three business~~ three-business days of contract provider staff observing or discovering the occurrence.
- (C) notify contract provider staff notifies the service recipient's family or guardian, in accordance with provider policies; and
- (D) notify contract provider staff notifies 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, as applicable, including:
    - (I) the Office of Client Advocacy when there is reason to believe a vulnerable adult receiving Home and Community-Based Services (HCBS) is suffering maltreatment and the alleged perpetrator is a community service worker, per OAC 340:2-3-33; ~~■ 3~~
    - (II) Adult Protective Services when there is reason to believe a vulnerable adult is suffering maltreatment and the alleged perpetrator is not a community service worker through the HCBS, per 43A O.S. § 10-104; or
    - (III) Child Protective Services when there is reason to believe a child under 18 years of age is suffering maltreatment, per 10A O.S. § 1-1-105.
- (2) For critical incidents involving ~~state-funded~~ state-funded service recipients, contract provider staff submits Form 06MP046E, Incident Report, to DDS State Office within ~~one business~~ one-business day of observing or discovering the incident. For non-critical incidents, contract provider staff maintains a copy of Form 06MP046E, per OAC 340:100-3-40.
- (e) DDS case manager responsibilities.** For service recipients receiving Waiver-funded services:
- (1) the case manager, when notified of an incident, reviews the incident report and documents action taken to ensure:
    - (A) the service recipient is safe;
    - (B) the service recipient's needs are met; and
    - (C) measures are implemented to reduce the likelihood of similar incidents; ■ 3
  - (2) the case manager holds a Team meeting to assess the service recipient's needs, services, and supports in the event of losing:
    - (A) Adult Day Services; or
    - (B) employment services, per OAC 317:40-7-15; or
  - (3) community-residential supports or group home services, the Team holds a discharge planning meeting for all hospital admissions, prior to discharge, to assess service and support needs, per OAC 340:100-5-26.

**INSTRUCTIONS TO STAFF 340:100-3-34**  
**Revised ~~9-15-15~~ 9-15-21**

1. ~~The Developmental~~ **Developmental Disabilities Services (DDS) case manager or local administrator notifies ensures the provider notifies the Office of Client Advocacy of all critical incidents involving** 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 agency 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~~ **completes and documents a review that includes a discussion on how to prevent further occurrence, per Oklahoma Administrative Code (OAC) 340:100-5-57, when:**
  - (1) the service recipient is admitted to a psychiatric facility;**
  - (2) law enforcement is involved due to service recipient's challenging behavior; or**
  - (3) a highly restrictive procedure, per OAC 340:100-3-34(b)(9), is used on a service recipient.**

### **340:100-3-39. Pre-employment screening for community services workers**

Revised 9-15-15 ~~9-15-21~~

(a) **Legal basis.** Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes (56 O.S. § ~~§§~~1025.1 et seq.) requires Oklahoma Department of Human Services (~~DHS~~) (OKDHS) to establish and maintain a registry listing the names of community services workers against whom a final investigative finding of maltreatment involving a service recipient, was made by ~~DHS~~ OKDHS or an administrative law judge. Providers of community services:

- (1) are required to conduct ~~a search of~~ criminal history records and ~~the DHS OKDHS~~ Community Services Worker Registry (Registry) searches prior to any community services worker's permanent employment of ~~any community services worker~~; and
- (2) must not hire, contract with, or use as a volunteer, a person whose name is listed in the Registry or who has a criminal background, per Oklahoma Administrative Code (OAC) 340:100-3-39(e)(1)(G).

(b) **Applicability.** The requirements set forth in OAC 340:100-3-39 apply to all community services providers who contract with, are licensed or funded by ~~DHS~~ OKDHS, or who contract with the Oklahoma Health Care Authority (OHCA) to provide residential or employment services to service recipients through Developmental Disabilities Services (DDS) Home and Community-Based Services (HCBS) Waivers.

(c) **Definitions.** The following words and terms when used in this Section shall have the following meanings, unless the context clearly indicates otherwise:

(1) **"Community services provider"** means a community-based program, corporation, or person who contracts with, is licensed or funded by ~~DHS~~ OKDHS, or who contracts with OHCA to provide residential or employment services to a service recipient through DDS HCBS Waivers.

(2) **"Community services worker"** means any person who:

(A) contracts with OHCA to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities; or

(B) is not a licensed health professional; and

(C) is employed by, or under contract with a community services provider, for compensation or as a volunteer, to provide:

(i) health-related services;

(ii) training; or

(iii) supportive assistance.

(3) **"Good cause"** means the failure of a community services worker to make a timely response for reconsideration of a confirmed finding of maltreatment due to:

(A) a death within the community services worker's immediate family;

(B) hospitalization of the community services worker; or

(C) an equally meritorious reason, determined within the sound discretion of the administrative law judge or other ~~DHS~~ OKDHS staff as authorized, per OAC 340:100-3-39 and 340:2-3-39, as applicable, to determine such cause.

(4) **"Habilitation training specialist services"** means the HCBS as defined in the 1915(c) Waiver approved by the Centers for Medicare and Medicaid Services (CMS).

(45) **"Health related services"** means assistance provided to a service recipient that includes, but is not limited to:

(A) personal hygiene;

(B) transferring;

(C) range of motion;

(D) supervision or assistance in activities of daily living; or

(E) basic nursing care, such as:

(i) taking temperature, pulse, or respiration;

(ii) positioning;

(iii) incontinent care; or

(iv) identification of signs and symptoms of disease; and

(F) certain tasks that may be performed as basic nursing care by community services workers and require appropriate training provided or approved by ~~DHS~~ OKDHS, written agreement by the service recipient's Personal Support Team, and the primary care physician's acknowledgement and specific order related to the task. Under such circumstances, basic nursing care may include, but is not limited to:

(i) nutrition, including meals by gastrostomy tube or jejunostomy tube;

(ii) blood glucose monitoring;

(iii) ostomy bag care;

(iv) oral suctioning; and

(v) administration of oral metered dose inhalers and nebulizers.



(6) **"Homemaker services"** means the HCBS as defined in the 1915(c) Waiver approved by CMS.

(7) **"Maltreatment"** means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of vulnerable adults, 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.

(8) **"Specialized foster care"** means the HCBS as defined in the 1915(c) Waiver approved by the CMS.

(59) **"Supportive assistance"** means service rendered sufficient to enable the service recipient to meet an adequate level of daily living including, but not limited to:

- (A) training;
- (B) supervision;
- (C) assistance in housekeeping;
- (D) assistance in meal preparation; and
- (E) assistance in personal care and activities of daily living necessary for the health and comfort of the service recipient.

~~(6) "Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of vulnerable adults 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 10 O.S. § 7102.~~

~~(7) "Specialized foster care" means the home and community-based service as defined in the 1915(c) Waiver approved by the Centers for Medicare and Medicaid Services.~~

~~(8) "Habilitation training specialist services" means the home and community-based service as defined in the 1915(c) Waiver approved by the Centers for Medicare and Medicaid Services.~~

~~(9) "Homemaker services" means the home and community-based service as defined in the 1915(c) Waiver approved by the Centers for Medicare and Medicaid Services.~~

(d) **DHS OKDHS duties.** When OHCA contracts directly with a specialized foster care provider, habilitation training specialist services provider, or a homemaker services provider to provide services through DDS HCBS Waivers, DHS OKDHS follows the screening procedures required for community services providers.

(e) **Community services provider duties.**

(1) **Provider pre-employment responsibilities.** Each community services provider conducts a search of criminal history records and the Registry for ~~each~~ every potential employee who is not a licensed health professional and who will provide, for compensation or as a volunteer, on a full- or part-time basis, health-related services, training, or supportive assistance to a service recipient. This requirement also applies to applicants for supervisory, management, or administrative positions, when the applicant is to provide, on a full- or part-time basis, supportive assistance, health-related services, or training to a service recipient. The provider:

(A) uses Form 06PE039E, Employment Application Supplement, to formally advise each applicant of the:

(i) required search of criminal history records search, and the Registry, and Restricted Registry, as applicable, per 10 O.S. § 405.3;

- (ii) potential consequences of background checks, including the provider's prohibition from hiring any person whose name appears in the Registry, or who has a prohibited criminal conviction, per OAC 340:100-3-39(e)(1)(G);
  - (iii) requirement that the community services worker's employment must be terminated if his or her name appears in the Registry, even though the applicant's name may not have appeared in the Registry at the time of application or hiring;
  - (iv) requirement to report all current and previous employers who provide services to children or to vulnerable adults; ~~and~~
  - (v) fact that giving false information regarding current and previous employers results in termination of employment; and
  - (vi) requirement of criminal prosecution for having sexual contact with a person in his or her care, per 10 O.S. § 1430.3 and 43A O.S. § 10-113.
- (B) contacts all previous employers engaged in delivery of services to children or vulnerable adults, per 43A O.S. § 10-103, requesting information on investigations or findings of maltreatment;
- (C) when contacted by a potential employer, gives accurate information regarding investigations of maltreatment reported to Adult Protective Services (APS), Office of Client Advocacy (OCA), or Child Protective Services (CPS) ~~and are pending or confirmed;~~
- (D) requests a criminal history records search from the Oklahoma State Bureau of Investigation (OSBI) prior to employment of, or offer of employment to, any applicant, except as provided in OAC 340:100-3-39(e)(1)(F) and (G).
- (i) The provider must secure the criminal history records search and cannot accept documents provided by the applicant.
  - (ii) When the provider uses a contractor to secure the criminal history records search, the contractor attaches the document received from OSBI to any report given to the provider;
- (E) investigates discrepancies in the criminal record information received from OSBI.
- (i) ~~If~~ When discrepancies exist between criminal history information and information reported by the applicant, such as convictions not reported by the applicant, the provider secures ~~from the applicant~~ a written explanation of the discrepancy from the applicant, ~~that~~ which ~~is then~~ sent to ~~DHS~~ OKDHS when the provider is requesting a waiver, per OAC 340:100-3-39(f).
  - (ii) ~~If~~ When OSBI information reports inconclusive data, such as reporting the case was referred to another law enforcement agency, the provider secures documentary evidence of the outcome;
- (F) may choose to make an offer of temporary employment to an applicant, pending the results of the OSBI criminal history records search.
- (i) The provider submits a request for a criminal history records search to OSBI within 72 hours of the applicant's acceptance of any offer of temporary employment.
  - (ii) Temporary employment of any applicant does not extend longer than the time necessary to receive the results of the criminal history records search and ~~registry~~ Registry review, not to exceed ~~30-calendar~~ 30-calendar days.

(iii) During any period of temporary employment the temporary employee may not work alone nor work solely with other temporary employees; and  
(G) when the OSBI search reveals the applicant ~~has been~~ was convicted, pled guilty or nolo contendere to misdemeanor assault and battery or a felony, the provider does not hire or contract with the person, and immediately cancels any temporary employment arrangement. When a waiver is requested, per OAC 340:100-3-39(f), the community services worker is relieved of responsibilities working directly with service recipients until the provider receives a written ~~DHS~~ OKDHS decision.

(2) **Provider duties during an investigation.** Upon receiving notification of an investigation of an allegation of maltreatment involving an employee, the provider chief executive officer or designee:

(A) ensures protection and the health and safety for any and all persons receiving services from the provider;

(B) notifies the community services worker, in a face-to-face conference, of the upcoming investigation; and

(C) explains the rights and responsibilities of the community services worker, using Form ~~06PE059E~~ 15IV015E, Rights and Responsibilities of Accused Caretakers, Community Services Workers, and Persons Responsible for the Childs' Health, Safety, and Welfare of Interest (PRFCI) Worker in an Investigation of Maltreatment, before the community services worker is interviewed by the investigator, including:

(i) the investigation outcome notice ~~of the outcome of the investigation~~ is mailed to the community services worker's address on Form ~~06PE059E~~ 15IV015E; and

(ii) the community services worker's right to request due process per procedures provided in the notice ~~mailed~~.

(3) **Provider responsibilities regarding due process procedures.** When an employee of a provider is called as a witness in a hearing, the provider:

(A) directs the employee to attend the hearing to give testimony;

(B) accommodates his or her work schedule; and

(C) when written records are required, submits the required records or certified copies. Failure to comply with these responsibilities may result in sanctions, per OAC 340:100-3-27.2.

(f) **Waiver of requirement not to hire based on criminal history records search.** When the criminal history records search reveals a criminal background the provider believes will not place a service recipient at risk of harm and will not affect the quality of services provided by the applicant, the provider may request a waiver from ~~DHS~~ OKDHS.

(1) The provider sends a written request for a waiver to the DDS director. The request includes:

(A) the applicant's:

(i) full name;

(ii) Social Security number; and

(iii) date of birth;

- (B) a legible copy of the criminal history records search that ~~must be~~ is no more than ~~30-calendar~~ 30-calendar days old;
- (C) the criminal history record information request; and
- (D) an explanation of all factors or circumstances the provider wants to be considered.

(2) A waiver is not granted, under any circumstance, for employment of an applicant who was convicted of, pled guilty, or nolo contendere to:

- (A) a felony count of:
  - (i) aggravated assault and battery;
  - (ii) homicide;
  - (iii) murder;
  - (iv) attempted murder;
  - (v) rape;
  - (vi) incest; or
  - (vii) sodomy; or

(B) abuse, neglect, or exploitation of any person entrusted to the applicant's care.

(3) No waiver is granted for offenses resulting in a conviction, plea of guilty, or plea of nolo contendere to a felony that occurred less than ~~five-calendar~~ five-calendar years from the date of the request.

(4) Factors considered in the ~~DHS~~ OKDHS decision to grant or deny a waiver include:

- (A) ~~his or her other convictions of the person;~~
- (B) responsibility evidenced by ~~the person~~ since conviction;
- (C) time lapse since the ~~person's~~ conviction;
- (D) ~~person's~~ his or her age upon conviction;
- (E) nature and underlying circumstances of ~~the person's~~ his or her offense;
- (F) evidence of efforts made by ~~the person~~ him or her toward rehabilitation, including job training or educational programs in which ~~the person~~ he or she participated;
- (G) ~~person's~~ his or her prior employment record; and
- (H) the nature and location of the position ~~the person~~ he or she seeks.

(5) ~~DHS~~ OKDHS:

- (A) may grant a ~~waiver~~ Waiver for applicants who will provide services through DDS HCBS Waivers only upon concurrence by OHCA; and
- (B) assumes no responsibility for the actions of a person employed by a provider subsequent to a ~~waiver~~ Waiver. The provider indemnifies and holds ~~DHS~~ OKDHS harmless for any damages or attorney fees resulting from a claim an employee of the provider subsequently abused, neglected, exploited, or otherwise injured a service recipient.

~~(g) **Rights of community services worker.** During investigation of an allegation of maltreatment, any community services worker who is accused of maltreatment is entitled to:~~

- ~~(1) be advised of the nature of any allegation against such worker;~~
- ~~(2) be interviewed by the investigator and allowed to give his or her position in relation to the allegation;~~

~~(3) be advised of the substance of the evidence against him or her prior to making a statement to the investigator. The identity of persons reporting alleged maltreatment is not released during the investigation;~~  
~~(4) refuse, without penalty, to take a polygraph examination;~~  
~~(5) submit or supplement a written statement relating to the allegation;~~  
~~(6) seek and receive advice concerning his or her rights and responsibilities in the investigation and review process; and~~  
~~(7) receive DHS notice of the outcome of the investigation. The community services worker:~~

~~(A) provides a correct address to receive notice; and~~

~~(B) is responsible to notify CPS, APS, or OCA, as applicable, of any address change.~~

~~(h) **Responsibilities of community services worker.** Any community services worker who is involved, either as a witness or as an accused caretaker, in the investigation of alleged maltreatment has the responsibility to:~~

~~(1) prepare a written incident report;~~

~~(2) be available for scheduled interviews;~~

~~(3) respond fully and truthfully to the investigator's questions. A community services worker who believes that his or her answers to official inquiries concerning alleged maltreatment may incriminate him or her in a criminal prosecution may discontinue the interview for that reason;~~

~~(4) refrain from any action that may interfere with the investigation, including any action that may intimidate, threaten, or harass any person who has or may provide information relating to alleged maltreatment; and~~

~~(5) appear at any hearing as requested by DHS per OAC 340:100-3-39(i)(6)(D).~~

~~(i) **Procedures for notice and due process.** The procedures for maltreatment investigations and the Registry are found at OAC 340:2-3-36 and OAC 340:2-3-39.1.~~

~~(1) **Determination not to place in Registry.** At any time during the notice and due process, DHS may determine the placement of a community services worker's name in the Registry is not warranted, despite a confirmed finding of maltreatment by APS, CPS, or OCA, as applicable.~~

~~(A) DHS may determine that the community services worker's name will not be placed in the Registry when the wrongful conduct:~~

~~(i) does not warrant placement in the Registry using the clear and convincing evidence standard applicable at the administrative hearing;~~

~~(ii) did not result in, or create a substantial risk of, serious physical or emotional injury to a service recipient; or~~

~~(iii) is not the result of intentional, willful, or reckless disregard for the health or safety of a service recipient.~~

~~(B) When a determination is made that a community services worker's name is not to be placed in the Registry, DHS sends a notice to the community services worker informing the worker that his or her name will not be placed in the Registry. A copy of the notice is sent to the community services provider who employed the community services worker at the time of the incident that resulted in the confirmed finding.~~

~~(2) **DDS notification.** DHS divisions responsible for investigating allegations of maltreatment, per OAC 340:2-3, OAC 340:5, or OAC 340:75-3, send reports of investigations to the DDS director or designee.~~

~~(3) **Notification to provider.** The DHS program responsible for the investigation notifies the provider, or appropriate DHS representative, when the investigative report reveals systemic administrative issues regarding:~~

~~(A) protection or safety of the service recipient; or~~

~~(B) provider agency shortcomings.~~

~~(4) **Notification to community services worker.** DHS sends written notice of the results of the investigation to the community services worker alleged to have committed maltreatment. The name of the community services worker who has a confirmed finding of maltreatment is added to the Registry when DHS has sent proper notice to the last known address of the community services worker, and the notice was returned as unclaimed or undeliverable. The notice:~~

~~(A) is sent within three business days of receipt by OCA of the DHS determination to proceed with the Registry process. If the allegation is ruled out, the provider is also notified;~~

~~(B) is sent by certified mail, return receipt requested, if the investigation resulted in a finding of maltreatment;~~

~~(C) contains a summary of the evidence supporting the finding of maltreatment without identifying the complainant;~~

~~(D) specifies that, if the community services worker desires to contest the finding, he or she submits a detailed written statement with a request that DHS issue a reconsideration decision reversing the finding;~~

~~(E) advises the community services worker that a reconsideration decision must be requested in writing, postmarked within 10 calendar days of receipt of the notice; and~~

~~(F) notifies the community services worker that failure, absent good cause, to request a reconsideration decision within 10 calendar days, as evidenced by the date of his or her signature on the United States (U.S.) Postal Service return receipt card:~~

~~(i) results in the finding becoming final;~~

~~(ii) waives the right to further administrative or judicial review; and~~

~~(iii) authorizes:~~

~~(I) entry of the community services worker's name in the Registry; and~~

~~(II) disclosure per OAC 340:100-3-39(j) to any person requesting such information per OAC 340:100-3-39(j).~~

~~(5) **Reconsideration decision.** If the community services worker submits a timely request for a reconsideration decision, or if DHS determines good cause for untimely filing, DHS issues a reconsideration decision.~~

~~(A) The reconsideration decision:~~

~~(i) affirms the investigative report;~~

~~(ii) modifies the investigative report;~~

~~(iii) reverses the investigative report; or~~

~~(iv) remands the investigative report for further investigation; and~~

~~(v) is issued within 10 business days of receipt of the request, or if applicable, the date of any determination of good cause.~~

~~(I) If the decision is to remand for further investigation, the investigation is completed within 15 business days of the decision to remand.~~

~~(II) Upon completion of the supplemental investigation, DHS notifies the community services worker within three business days;~~

~~(vi) states the basis for the determination including, but not limited to, any investigative report, DHS records, or provider records deemed relevant;~~

~~(vii) specifically evaluates and comments upon the contents of the community services worker's written request; and~~

~~(viii) is mailed to the community services worker by certified mail, return receipt requested, postage prepaid.~~

~~(B) When the reconsideration decision affirms or modifies the investigative report, DHS:~~

~~(i) if the community services worker is aggrieved by the decision, notifies the community services worker that he or she may request an administrative hearing;~~

~~(ii) states a written request for hearing must be submitted by the community services worker to DHS at a specified address and postmarked within 10 calendar days of receipt of the reconsideration decision, unless good cause is established. Receipt is deemed to occur on the date the community services worker signs the U.S. Postal Service return receipt card; and~~

~~(iii) states failure to timely request a hearing, absent a finding of good cause by an administrative law judge:~~

~~(I) results in the reconsideration decision becoming final;~~

~~(II) waives any right to either an administrative hearing or judicial review; and~~

~~(III) authorizes entry of the community services worker's name in the Registry, and disclosure to any person requesting the information per OAC 340:100-3-39(j).~~

~~(6) **Notice of hearing.** When the community services worker submits a timely written request for hearing, or upon the administrative law judge finding of good cause for a request that was not timely, DHS sends a notice of hearing by certified mail, return receipt requested, postage prepaid within 10 business days of receipt of the request. The notice is dated and states:~~

~~(A) name of administrative law judge;~~

~~(B) time and date of hearing, that must be held no earlier than 15 calendar days and no later than 60 calendar days after the date of mailing of the notice;~~

~~(C) street and city address, and room number where the hearing will be held;~~

~~(D) failure of the community services worker to attend the hearing, absent a finding of good cause by an administrative law judge:~~

~~(i) results in the reconsideration decision becoming final;~~

~~(ii) waives any right to either an administrative hearing or judicial appeal; and~~

~~(iii) authorizes entry of the community services worker's name in the Registry, and disclosure to any person requesting the information per OAC 340:100-3-39(j);~~

- ~~(E) the community services worker may be represented by an attorney;~~
- ~~(F) requests by the community services worker or his or her attorney for witnesses, records, or both, relevant to the proceeding must be directed to DHS. DHS sends requests to the relevant provider, per OAC 340:100-3-39(e), persons, and appropriate DHS programs;~~
- ~~(G) a final proposed list of witnesses and summary of anticipated testimony must be submitted to the administrative law judge designated on the notice of hearing at least 10 calendar days prior to any hearing;~~
- ~~(H) any final decision on the specific persons allowed to testify, the scope of direct testimony and cross-examination, and admissibility of exhibits will be within the sound discretion of the administrative law judge, except all DHS and provider records pertaining to a finding of confirmed maltreatment are admissible;~~
- ~~(I) the community services worker or his or her attorney is allowed to cross examine witnesses called by the DHS attorney, who is allowed to cross examine any witnesses called by the community services worker or his or her attorney; and~~
- ~~(J) although the formal rules of evidence and procedure under Oklahoma law are not controlling, the burden of persuasion and initially coming forward with evidence is on DHS through its attorney, and the standard of proof is clear and convincing evidence.~~

**(7) Hearing.**

- ~~(A) The hearing is:
  - ~~(i) closed and all information presented therein is confidential; and~~
  - ~~(ii) tape recorded.~~~~
- ~~(B) The administrative law judge affirms, modifies, or reverses the reconsideration decision, or determines the name of the community services worker, who has been confirmed as having engaged in maltreatment, must not be added to the Registry when the act or omission that is the basis for the confirmed finding:
  - ~~(i) did not result in, or create a substantial risk of, serious physical or emotional injury to a service recipient; or~~
  - ~~(ii) was not the result of intentional, willful, or reckless disregard for the health or safety of a service recipient.~~~~
- ~~(C) A written decision by the administrative law judge affirming, modifying, or reversing the reconsideration decision, or determining, per OAC 340:100-3-39, the community services worker's name is not to be placed in the Registry:
  - ~~(i) is issued within 30 calendar days of the hearing;~~
  - ~~(ii) is mailed to the community services worker by certified mail, return receipt requested, no later than the first business day following the date the decision is signed by the administrative law judge;~~
  - ~~(iii) contains findings of fact and conclusions of law;~~
  - ~~(iv) notifies the community services worker that, if he or she is aggrieved by the decision, a judicial appeal, solely on the administrative record, may be initiated by filing a petition in the Oklahoma district court with jurisdiction within 30 calendar days from the date the decision is signed by the~~~~



~~administrative law judge, pursuant to 56 O.S. § 1025.3 and 75 O.S. § 318;  
and  
(v) states a copy of any petition and summons filed in district court must be served on DHS Legal Services.~~

~~(j)~~**(h) Disclosure requirements for Registry.**

(1) The Registry information includes, but is not limited to the:

(A) community services worker's:

(i) full name;

(ii) Social Security number; and

(iii) date of birth;

(B) date the community services worker's name was placed in the Registry; and

(C) ~~information on the final investigative finding or administrative law judge finding~~ regarding the community services worker.

~~(2) The information disclosed includes only whether the person is listed in the Registry. No other information related to the allegation, investigation, or evidence is disclosed.~~

~~(3)~~ The provider requesting Registry information on an applicant or employing a community services worker alleged to have committed maltreatment is notified when the community services worker's or applicant's name is entered in the Registry. When more than one community services worker is named as an accused caretaker, a separate letter is sent to the provider for each community services worker.

~~(k)~~**(i) Public access to Registry.** Access to the Registry is available to the public at [www.OKDHS.org](http://www.OKDHS.org).

## SUBCHAPTER 5. CLIENT SERVICES

### PART 3. SERVICE PROVISIONS

#### **340:100-5-22.5. Supported living services**

Revised ~~6-1-109-15-21~~

(a) **Eligibility.** ~~To assure that~~ ensure the daily living requirements of the class members are met, the Oklahoma Department of Human Services (OKDHS) provides a payment to the contract residential provider agency serving each person who:

(1) is a member of the class certified in Case Number 85-C-437-E, United States District Court for the Northern District of Oklahoma; and

(2) receives Daily Living Supports services, per Oklahoma Administrative Code (OAC) 317:40-5-153.

(b) **Service expectations.** The provider agency ensures that:

(1) all applicable ~~rules of OKDHS and the Oklahoma Health Care Authority (OHCA)~~ rules are met, including:

(A) ~~Community Residential Supports~~ community residential supports, per OAC 340:100-5-22.1;

(B) ~~Daily Living Supports~~ daily living supports, per OAC 317:40-5-153;

(C) the Developmental Disabilities Services Division (~~DDSD~~) (DDS) mission statement and guiding principles, per OAC 340:100-1-3.1;

(D) community records rules, per OAC 340:100-3-40;

(E) ~~Individual Plan~~ individual plan rules, per OAC 340:100-5-50 through ~~100-5-58~~ 340:100-5-58; and

(F) health services rules, per OAC 340:100-5-26; and

(2) the class member's expenses for housing, food, clothing, recreation, utilities, medical services, property replacement, and transportation, ~~are met~~ per OAC 340:100-5-22.5.

(c) **Room and board payment.** The room and board payments support the class member's housing, food, clothing, recreation, and utility costs ~~in accordance with~~ per this subsection.

(1) Each class member contributes an amount determined annually by ~~DDSD~~ DDS, not to exceed ~~90%~~ 90 percent of his or her income, up to a maximum of ~~90%~~ 90 percent of the current Supplemental Security Income (SSI) monthly payment for a single individual.

(A) The maximum SSI monthly payment may be exceeded by prior written agreement between the individual served or his or her guardian and the provider agency with the written approval of the ~~director of DDSD~~ DDS director or designee.

(B) OKDHS pays a supplement, equal to ~~90%~~ 90 percent of the SSI monthly payment for a single individual minus ~~90%~~ 90 percent of the class member's income, on behalf of each class member whose income and resources are insufficient for the person to contribute the maximum room and board payment explained in this paragraph.

(2) To supplement the individual's funds for meeting daily living requirements, OKDHS provides: a room and board provider payment per the supported living contract. ■ 1

~~(A) a room and board provider payment at \$14 per day; and~~

~~(B) a residence size supplement provider payment to support the cost of a home, based on the number of individuals living in the home.~~

~~(i) For an individual with no roommate, the residence size supplement is \$10 per day.~~

~~(ii) For an individual who has one roommate, the residence size supplement is \$6 per day.~~

~~(iii) There is no residence size supplement for an individual living with more than one roommate.~~

~~(iv) For the purposes of this subparagraph, an individual not listed in Case Number 85-C-437-E is not considered a roommate.~~

(3) The provider agency completes a written financial agreement with the class member and chosen advocate(s) or the legal guardian, per OAC 340:100-5-22.1.

(4) Room and board revenues must be accounted for separately from other provider agency funds.

(A) Room and board revenues from OKDHS are managed by the provider to meet the needs of all individuals living in supported living arrangements.

(B) Payments from {OKDHS} mentioned in ~~paragraph~~ (2) of this subsection are provider payments. They are not income to the class member and must not be deposited in the class member's bank account; nor is the provider required to

account to the class member or Personal Support Team (Team) regarding their use.

(C) Room and board payments from individuals served are used only to meet the needs of that individual.

(5) ~~Room and board revenues must be used, unless~~ Unless written approval is secured in advance from the ~~DDSD programs administrator for community services~~ DDS director or designee, room and board revenues are, solely used for:

- (A) housing costs and utilities;
- (B) groceries;
- (C) household maintenance;
- (D) recreation;
- (E) personal items and clothing;
- (F) household property insurance;
- (G) yard care; and
- (H) furnishings and appliances.

(6) Room and board payments are authorized as long as the provider agency supports the individual to maintain a household.

(7) Room and board payments cannot be used to support a roommate who does not receive ~~DDSD~~ DDS services, nor can the payment be used to modify or improve the home for the use or comfort of an existing or potential roommate ~~that~~ who is not a ~~recipient of DDSD DDS services recipient~~. Any roommate must contribute a fair share to the cost of operating the household.

(8) Room and board payments are used only to support a service recipient in one household and residence at any given time, except for a transition with a timeframe not to exceed 45 45-calendar days ~~for a transition~~.

(d) **Medical supplement.** OKDHS reimburses the provider agency for the cost of necessary medical services ~~that are not covered through Medicaid (SoonerCare), Medicare, or other insurance; or for persons who are not Medicaid or Medicare eligible for any individual listed in Case Number 85-C-437-E, who are not Medicaid or Medicare eligible~~. The medical supplement is not paid at a rate higher than allowed through the Oklahoma Medicaid Fee-for-Service Program unless approved by the ~~DDSD~~ area manager DDS field administrator in writing.

(1) Co-payments for medical services are not covered by the medical supplement. Co-payments are the responsibility of the class member.

(2) ~~Non-prescription (over the counter)~~ Over-the-counter medications are not covered by the medical supplement. These are the responsibility of the class member.

(e) **Property replacement supplement.** ~~A maximum of \$850~~ DDS provider agencies are per class member per fiscal year is reimbursed for replacement of unusable furnishings or necessary furnishings or appliances for class members per the supported living contract addendum. Necessary furnishings and appliances include: refrigerators, stoves, washers, dryers, dining tables and chairs, sofas or love seats, recliners, lamps when there is no fixed lighting in the room, beds, dressers or chests of drawers, bookshelves, ~~telephones~~ phones, and safety items, per OAC 340:100-5-22.1.

(1) The provider agency submits a written property replacement request to the case manager that includes the:

- (A) ~~the~~ furnishing or appliance to be purchased;
  - (B) ~~the~~ reason the item is necessary; and
  - (C) ~~the~~ age of the furnishing or appliance to be replaced.
- (2) The case manager reviews the written request, and submits it to the area manager field administrator or designee within ~~44~~ 14-calendar days with ~~a statement of their~~ the case manager's assessment of the need for the furnishing or appliance.
- (3) The area manager field administrator or designee reviews and responds to the request and assessment, within ~~five~~ five-calendar days after considering:
- (A) whether the request includes necessary information;
  - (B) whether the case manager assessment indicates need;
  - (C) whether the household has or ~~has~~ disposed of usable items to meet the need; and
  - (D) that items less than five years old are repaired whenever feasible; with the exception of lamps, ~~telephones~~ phones, or safety items.
- (4) Expenditures for property purchased with the property replacement supplement must not be reported as expenses against the room and board payment.
- (5) No reimbursement for replacement of worn out furnishings may occur during the first year of service.
- (6) The disposal of any furnishings purchased for class members under this supplement meets the requirements of this paragraph.
- (A) Any furnishings purchased through this supplement become the property of the class member.
  - (B) Any funds received from the disposal of property belong to the class member.
  - (C) The provider must document the disposal of furnishings in detail.
  - (D) When the provider believes that the disposal of property is not in the class member's best interest of ~~the class member~~, the issue is referred to the Personal Support Team for resolution.
  - (E) The replacement of usable appliances and furnishings ~~that have been~~ disposed of is the class member's responsibility.
- (f) **Transportation supplement.** OKDHS pays a transportation supplement only when the provider agency supplies a vehicle for the exclusive use of each household and the combined mileage for all persons residing in the household totals less than 30 miles per day, per the supported living addendum to the contract for services.
- ~~(1) To calculate the authorization for the transportation supplement:~~
- ~~(A) for a class member who does not require adapted transportation, subtract from 30 the number of authorized miles per day supplied to the individual, and multiply by \$0.25; or~~
  - ~~(B) for an individual who requires adapted transportation, subtract from 30 the number of authorized miles per day supplied to the individual, and multiply by \$0.70.~~
- ~~(2) Waiver transportation is authorized, per OAC 317:40-5-103. ■ 2~~
- (g) **Fiscal accountability.** The provider agency follows fiscal accountability standards established in this subsection.
- (1) The provider agency expends all payment supplied, per OAC 340:100-5-22.5, on the specific activities for which the payment was provided.

- (A) Any funds expended for purposes other than the authorized activities are repaid to OKDHS.
- (B) The room and board fund balance at the end of the fiscal year cannot exceed five percent of the total supported living revenues. Any fund balance in excess of five percent is repaid to OKDHS.
- (2) The provider agency maintains copies of all claims, substantiating documents, and records regarding provider agency fiscal status within corporate offices in Oklahoma.
- (3) Supported living expenditures must:
  - (A) be documented;
  - (B) not include administrative costs of the provider agency; and
  - (C) be audited annually, per OAC 340:100-3-27.5.

**INSTRUCTIONS TO STAFF 340:100-5-22.5**

**Issued 9-15-21**

**1. Room and board. To supplement the class members funds for meeting daily living requirements, Oklahoma Human Services provides a:**

**(1) room and board provider payment at \$23 per day; and**

**(2) residence-size supplement provider payment to support the cost of a home, based on the number of individuals living in the home.**

**(A) For an individual with no roommate, the residence-size supplement is \$16 per day.**

**(B) For an individual who has one roommate, the residence-size supplement is \$9.50 per day.**

**(C) There is no residence-size supplement for an individual living with more than one roommate.**

**(D) For the purposes of this Instruction, an individual not listed in Case Number 85-C-437-E is not considered a roommate.**

**2. Transportation supplement. To calculate the authorization for a class member who:**

**(1) does not require adapted transportation, subtract from 30 the number of authorized miles per day supplied to the household, and multiply by \$0.25;**

**or**

**(2) requires adapted transportation, subtract from 30 the number of authorized miles per day supplied to the household, and multiply by \$0.70.**

**340:100-5-26. Health and wellness**

Revised ~~9-15-15~~9-15-21

(a) ~~Purpose.~~ ~~Services and supports promote health and well-being.~~

(b) **Scope and applicability.** Oklahoma Administrative Code (OAC) 340:100-5-26 applies to service recipients receiving services funded by Developmental Disabilities Services (DDS) or Home and Community-Based Services (HCBS) Waivers that promote health and well-being.

- (1) Oklahoma State Department of Health (OSDH) guidelines for universal precautions, and infection control practices are used to prevent the transmission of communicable diseases.

(2) DDS staff and contract providers implement procedures to promote the health and wellness of each service recipient, including procedures related to:

- (A) accessing emergency medical intervention;
- (B) initiating first aid and cardio pulmonary resuscitation (CPR), unless a Do-Not-Resuscitate Consent Form is signed, per Section 3131.1 et. seq. of Title 63 of the Oklahoma Statutes;
- (C) promoting disease prevention;
- (D) addressing issues associated with aging;
- (E) medication administration, per OAC 340:100-5-32;
- (F) health related services, per OAC 340:100-5-26.3;
- (G) assisting the service recipient to access medical and dental services when needed; and
- (H) identifying and addressing service recipient needs, per OAC 340:100-5-50 through 340:100-5-58.

~~(e)~~(b) **Service recipient responsibilities.**

(1) The right of a service recipient to refuse service is respected, per OAC 340:100-3-11. However the:

- (A) Personal Support Team (Team) meets to discuss the service recipient's decision;
- (B) service recipient must cooperate with eligibility assessments and provide documents necessary to continue ~~eligibility to receive~~ HCBS Waiver services;
- (C) service recipient must cooperate with the case manager and provider to obtain necessary assessments and ~~physician~~ health care provider orders if when assistance by a paid HCBS Waiver provider is identified in the Individual Plan (Plan); and
- (D) except as provided for in OAC 340:100-5-22.5, the service recipient is responsible for health and medical costs including:
  - (i) over-the-counter medications and other medications not covered by insurance;
  - (ii) health insurance co-payments;
  - (iii) dental treatments and appliances not covered by dental insurance or within the allowable annual limits of the HCBS Waiver, when eligible;
  - (iv) medical treatments not covered by health insurance;
  - (v) dietary supplements including, but not limited to:
    - (I) vitamins; and
    - (II) herbal and dietary treatments;
  - (vi) treatment supplies not medically necessary for:
    - (I) nutrition;
    - (II) incontinence;
    - (III) respirator or ventilator care;
    - (IV) ~~decubitis~~ decubitus care;
    - (V) catheterization;
    - (VI) health conditions; or
    - (VII) infection control; ~~or~~ and
    - (VIII) ~~not within the allowable limits of the HCBS Waiver.~~
  - (vii) treatments and supplies outside the allowable limits of the HCBS Waiver.

(2) The service recipient or his or her family assumes the responsibility for making appointments when residing in his or her own home or family home, unless a health care coordinator (HCC), per OAC 340:100-5-26(e)(3)(F), is required and identified in the Plan.

~~(d)~~(c) **Assessment of needs.** The DDS case manager ensures an individual assessment is completed for each service recipient, per OAC 340:100-5-51.

~~(e)~~(d) **Planning and implementation requirements.**

(1) Health and wellness support and services and the roles of various individuals are specifically noted in the service recipient's Plan, per OAC 340:100-5-50 through 340:100-5-58.

(2) For a service recipient who receives minimal services to maintain residence in his or her own home, or family home, or to maintain employment, the service recipient and his or her Team determines the appropriate roles for members of the Team per applicable policy.

(3) For a service recipient who receives residential, group home, or extensive health supports to remain in ~~their~~ his or her own home, or family home, or maintain employment, the ~~team~~ Team identifies specific roles and protocols necessary to provide support as listed in (A) – ~~(H)~~ (I) of this paragraph.

(A) The Team identifies desired health care outcomes or necessary supports through the Team process.

(B) Health issues identified through health care evaluations and assessments that impact the service recipient's life are incorporated and integrated by the Team into the Plan ~~through goals and objectives.~~

~~(C) Health care services are addressed in terms of individual outcomes, not units of clinically specific service~~ When assessing health care services or implementation strategies involving discipline-specific services, a representative from that discipline participates in a consulting role.

~~(D) When assessing health care services or implementation strategies involving discipline-specific services, a representative from that discipline participates in at least a consulting role~~ For service recipients who receive HCBS Waiver community residential supports or group home services, invasive procedures are reviewed by the Team, including participation from any other service provider as appropriate. Consent is assessed, per OAC 340:100-3-5.

(i) An invasive procedure is a procedure or surgery that requires moderate to deep sedation or general anesthesia, changes the service recipient's functional level following the procedure, or requires changes to the Plan.

(ii) Invasive procedures reviewed by the Team comprise both scheduled and emergency procedures.

(iii) Team review of a scheduled invasive procedure occurs prior to implementation of the proposed procedure and includes, but is not limited to, a discussion of risk, benefit, and possible alternatives. For both scheduled and emergency invasive procedures the Team assesses service and support needs to promote healing or rehabilitation.

~~(E) Any invasive or intensive professional service or procedure is reviewed by the Team, including participation from any other service provider as appropriate~~

Consent is assessed per OAC 340:100-3-5 The community residential supports or group home provider is responsible for providing health care coordination.

~~(i) Team review of an invasive or intensive service or procedure includes discussion prior to implementation of the proposed service or procedure and of possible alternatives.~~

~~(ii) Invasive procedures reviewed by the Team comprise both scheduled and emergency procedures, that include, but are not limited to:~~

~~(I) tracheotomy;~~

~~(II) orthopedics;~~

~~(III) gastrostomy;~~

~~(IV) jejunostomy;~~

~~(V) multiple dental extractions;~~

~~(VI) amputation; or~~

~~(VII) consideration of permanent sterilization.~~

~~(iii) An invasive or intensive professional service or procedure implemented on an emergency basis must be reviewed by the Team as soon as possible, within five business days. Emergency procedures subject to review include, but are not limited to emergency:~~

~~(I) surgery; or~~

~~(II) behavioral intervention, including mechanical or chemical restraints.~~

~~(F) The residential or group home provider has an obligation to assure health coordination activities are implemented For a service recipient who requires extensive health supports to remain in his or her own home or maintain employment, the HCC is identified in the Plan when the HCC is a paid support.~~

~~(G) The Team identifies a health care coordinator (HCC) HCC to ensure implementation and coordination of health care services for the service recipient.~~

~~The HCC:~~

~~(i) is a person who has an understanding of the service recipient's health care needs and lifestyle, and may be the service recipient, service recipient's family member, foster parent, companion, residential provider staff, or other person who is familiar with the service recipient's needs;~~

~~(ii) receives DDS required training;~~

~~(iii) documents that health concerns are addressed, monitored, and communicated;~~

~~(iv) supports the person to directly communicate to the ~~physician~~ health care provider the reason for the medical consultation whenever possible, or communicate on the service recipient's behalf;~~

~~(v) keeps the ~~physician~~ health care provider advised of medical status and data regarding any target symptoms;~~

~~(vi) communicates ~~physician~~ health care provider orders to core Team members and other service providers as appropriate;~~

~~(vii) presents Form 06HM005E, Referral Form for Examination or Treatment, for HCBS Waiver recipients to the ~~physician~~ health care provider at the time of the visit ensuring:~~

~~(I) ensuring Form 06HM005E is completed by the HCC prior to the visit; and~~



- (II) the physician health care provider completes a short written summary of the findings;
- (viii) presents Form 06HM073E, Referral Form for Psychiatric Examination or Treatment, for HCBS Waiver recipients to the psychiatrist psychiatric health care provider at the time of the visit- ensuring:
  - (I) Form 06HM073E is completed by the HCC prior to the visit-; and
  - (II) The HCC requests the psychiatrist complete the psychiatric health care provider completes a short written summary of the findings; and
- (ix) when employed by a contract provider, the employer develops and implements a procedure to ensure appropriate backup if the HCC is unable, for any reason, to perform these duties; and
- ~~(x) completes health status and medication reviews each month using Form 06HM006E, Health Status and Monthly Medication Review.~~
- (H) For ~~HCBS Waiver~~ service recipients, who receive HCBS Waiver community residential supports or group home services, the DDS case manager ~~makes~~ submits a referral for a clinical ~~pharmacy~~ pharmacist review ~~by a clinical pharmacist or physician:~~
  - (i) ~~upon request of~~ when requested by a Team member or clinician participating with the Team;
  - (ii) when a review performed by the assigned DDS case manager ~~and or~~ nurse determines a referral ~~to an independent clinical pharmacist or physician~~ is indicated-; ~~The DDS case manager submits a clinical pharmacy review annually or as needed when the service recipient:~~
    - ~~(I) receives five or more medications;~~
    - ~~(II) has an unusual physical sign or symptom during the month in review that is not resolved through other medical interventions;~~
    - ~~(III) uses a p.r.n. medication routinely for more than three months with an average use of three per week or ten per month;~~
    - ~~(IV) takes two or more psychotropic medications per OAC 340:100-5-26.1;~~
    - ~~or~~
    - ~~(V) takes three or more anticonvulsant medications used for a seizure disorder.~~
  - (iii) annually or as needed when the service recipient:
    - (I) receives five or more routine medications;
    - (II) is experiencing potential medication-related issues not resolved through other medical interventions;
    - (III) uses a p.r.n. medication routinely for more than three months with an average use of three per week or 10 per month;
    - (IV) takes two or more psychotropic medications, per OAC 340:100-5-26.1; or
    - (V) takes three or more anticonvulsant medications; or
  - (iv) when a service recipient receives an order for a medication administered p.r.n for behavioral control, per OAC 340:100-5-26.1.
- (I) The Team meets to review pharmacy recommendations within 30-business days of receipt of a completed clinical pharmacy review.

(J) For service recipients who receive community residential supports or group home services and are hospitalized the DDS case manager identifies preventative measures, and reviews needed services and supports. When the service recipient is admitted to a:

- (i) non-psychiatric hospital the Team holds a discharge planning meeting; or
- (ii) psychiatric facility a review is completed, per OAC 340:100-5-57. A Team meeting is held if changes to the Plan are identified.

**(f)(e) Implementation procedures for HCBS waiver Waiver skilled nursing services.**

- (1) Skilled nursing services are implemented, per OAC 317:30-5-390 through 317:30-5-393.
- (2) Community service workers are trained and carry out implementation strategies addressing health care outcomes.
- (3) Accurate and current medical and program information is maintained in the home record by the residential provider and is available for review by authorized DHS Oklahoma Human Services staff.

**(g)(f) Case management monitoring responsibilities for HCBS Waiver service recipients.**

- (1) The case manager monitors implementation of the ~~plan~~ Plan, per OAC 340:100-5-52 and 340:100-3-27.
- (2) For the purpose of monitoring and evaluation, designated DDS staff has access at all times to the service recipient's medical and programmatic information.
- (3) The case manager monitors the service recipient's access to medical and dental services.
- (4) The case manager may assist the service recipient in locating health care providers.

**340:100-5-26.2. End-of-life issues**

~~Issued 4-10-03~~ Revised 9-15-21

(a) **Purpose.** ~~The rules~~ Rules in this Section are established to support the decisions of persons receiving services from the Developmental Disabilities Services Division (~~DDSD~~) (DDS) regarding end-of-life issues. ~~DDSD~~ DDS affirms life and regards dying as a normal process ~~that should neither be hastened nor prolonged.~~ DDS encourages ~~individuals~~ each person to fully exercise ~~their~~ his or her rights and make decisions about end-of-life issues that allow ~~them~~ the person to live with dignity and comfort.

(b) **Applicability.** Rules in this Section apply to ~~DDSD~~ DDS staff and to ~~contracted~~ service providers ~~who are contracted,~~ licensed, or funded through a ~~DDSD~~ DDS Home and Community-Based Services Waiver Waivers or ~~DDSD~~ DDS state funds services and serve a ~~person(s)~~ person who has been is certified by a physician to be terminally ill. A person is considered terminally ill if when he or she has a medical prognosis of life expectancy of six months or less ~~if the illness runs its natural course.~~

(c) **End-of-life services.** When a person is diagnosed by a physician with a terminal illness, or is referred for hospice services, or a Do-Not-Resuscitate Consent Form is signed per Section 3131.1 et.seq. of Title 63 of the Oklahoma Statutes, the case manager holds a ~~personal support team~~ Personal Support Team (Team) meeting within

five working days to review the person's needs, services, and supports ~~all care options with the person, guardian, or next of kin including consideration of hospice services.~~ ■

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(d) **DDS Case manager responsibilities.** If When the person, guardian, or next of kin elects hospice care, the case manager:

(1) identifies resources, including ~~available funding~~ funding available, prior to selection of a hospice provider;

(2) notifies the ~~DDSD DDS state office Medical Services Unit programs administrator or designee and assigned DDS nurse, when applicable,~~ that hospice ~~services care have been~~ is elected;

(3) arranges to meet with ~~the service recipient, guardian or next of kin, DDSD nurse, health care coordinator, residential agency representative(s), other personal support team~~ Team members ~~as needed,~~ and the hospice ~~team~~ provider to develop a treatment plan;

(4) integrates the hospice treatment plan into the Individual Plan (IPPlan) and amends the plan of care to terminate services no longer needed and add any needed services; and

(5) ~~assists to coordinate the implementation of the treatment plan between the hospice team and the personal support team; and ensures DDS does not duplicate services provided by hospice.~~

(6) ~~ensures that DDSD does not duplicate services provided by hospice but supplements hospice services to the extent needed in each situation.~~

(e) **DDSD DDS nurse responsibilities role.** If When the ~~service recipient~~ person, guardian, or next of kin elects hospice care, the ~~DDSD DDS~~ nurse is ~~responsible available, upon request,~~ to:

(1) ~~assist in conjunction with the case manager, the service recipient, guardian, or next of kin~~ the Team with the selection of a hospice agency identification of available hospice providers; and

(2) ~~develop a nursing support plan to identify hospice needs; and~~

(3) ~~coordinate medication issues between~~ assist the hospice provider and the residential ~~provider~~ providers to ensure medications are administered per compliance with Oklahoma Administrative Code (OAC) 340:100-5-32 regarding administration, documentation, and disposal of medications.

## **INSTRUCTIONS TO STAFF 340:100-5-26.2**

### **Revised 9-15-21**

1. ~~General information regarding hospice services~~ **Hospice care.** The purpose of hospice care is to provide for the ~~palliation (comfort care)~~ palliative care or management of the terminal illness and related conditions. **Hospice:**

(1) ~~Hospice is a concept of care available to persons with a terminal illness. Hospice recognizes death as the final stage of life, and helps the service recipient~~ person live his or her final days to the fullest, surrounded by family and friends.;

(2) ~~Hospice care does not deliberately prolong the process of dying. The focus is on the person, not the terminal illness. Consequently, support~~

Support focuses on pain management and symptom control, rather than disease treatment;

(3) Hospice provides state-of-the-art comfort through quality medical and emotional care;

(4) Hospice care is person-centered, taking into account and honoring the needs, wishes, beliefs, and situation of the person and family; and

(5) ~~Desired outcomes of hospice care include:~~

(A) living with dignity and comfort;

(B) controlling and managing pain;

(C) focusing on the whole person, including his or her physical, social, emotional, and spiritual well-being;

(D) providing support to the person to maintain control over his or her own life as much as possible for as long as possible;

(E) providing care in a familiar environment, usually the person's home;

(F) providing support to the person, family members, and caregivers with their emotional, interpersonal, and spiritual needs;

(G) ~~acknowledging advance directives the person's advance health care decisions per Section 3101.1 et.seq. of Title 63 of the Oklahoma Statutes and do not resuscitate (DNR) orders, as defined by Do-Not-Resuscitate Consent per the Oklahoma Do-Not-Resuscitate Act, in accordance with OAC 340:100-5-26; and~~

(H) assisting individuals to secure information regarding advance directives an Advance Directive for Health Care and DNR Do-Not-Resuscitate Consent. Hospice services are not contingent on the execution of an Advance Directive for Health Care or DNR Do-Not-Resuscitate Consent.

### **340:100-5-35. Non-Residential Habilitation Training Specialist (HTS) services**

Revised 7-1-12

(a) **Applicability.** Habilitation Training Specialist (HTS) services, per OAC 317:30-5-482, and are authorized per OAC 317:40-5-110 or ~~OAC~~ 317:40-5-111 and OAC 340:100-3-33 and applies to nonresidential HTS services provided to service recipients not receiving community residential or group home services, per OAC 340:100-5-22.1 or OAC 340:100-6.

(b) **General information.**

(1) Non-residential HTS services are authorized:

(A) as a result of needs identified by the team Developmental Disabilities Services (DDS) Personal Support Team (Team) and informed selection by the service recipient;

(B) only during periods when staff are engaged in purposeful activity that directly or indirectly benefits the service recipient;

(C) when directed toward the development or maintenance of a skill in order to achieve a specifically stated outcome; and

(D) when the service provided is not a function that the parent would provide for the individual without charge as a matter of course in the relationship among members of the nuclear family when the member resides in a family home.

- (2) Non-residential HTS services are not authorized when a service recipient is in need of:
- (A) sleep time supervision; or
  - (B) assistance responding to emergencies, in which case a residential alternative, per OAC 317:40-1-2, must be selected, unless unpaid natural supports are available to meet these needs and identified in the Individual Plan (Plan).
- (3) Non-residential HTS services are not authorized for:
- (A) services provided in the home of the HTS, unless the service recipient and the HTS reside in the same home;
  - (B) employment supports that are provided, per OAC 317:40-7;
  - (C) respite services provided, per OAC 317:30-5-517;
  - (D) homemaker services provided, per OAC 317:30-5-537;
  - (E) adult day services provided, per OAC 317:40-5-113; or
  - (F) child care services; or
  - (G) services provided by the legal guardian, biological or adoptive parent of a minor child, per OAC 340:100-3-33.2.
- (4) In accordance with OAC 340:100-3-33.1, services must be provided in the most cost effective manner. When the need for HTS services is expected to continue to exceed an average of nine hours daily, cost effective community residential services must be considered and requested, per OAC 317:40-1-2. For adults, continuation of non-residential services in excess of nine hours per day for more than one plan of care year ~~will~~ is not be authorized except:
- (A) when needed for members who receive services through the Homeward Bound Waiver;
  - (B) when determined by the division administrator or designee to be the most cost effective option; or
  - (C) as a transition period of ~~420~~ 120-calendar days or less to allow for identification of and transition to a cost effective residential option. Members who do not ~~wish~~ want to receive residential services ~~will be~~ are assisted to identify options that meet their needs within an average of nine hours daily.
- (5) Non-residential HTS providers may not perform any job duties associated with other employment, including on call duties at the same time they are providing HTS services.
- (6) Non-residential HTS services are limited to no more than 40 hours per week for the household when the HTS resides in the same home as the service recipient recipients. When one or more service recipient lives in the same household, services provided by individuals living in the home may not exceed a total of 40 hours per week. If additional hours of service are needed, they must be provided by someone living outside the home. Exceptions may be authorized when needed for service recipients who receive services through the Homeward Bound Waiver.
- (7) When the service recipient also receives nursing or Homemaker services or is out of the home for school, work, adult day services, or other non-HTS supported activities, the total number of hours of non-residential HTS, Homemaker, and hours away from the home cannot exceed 12 hours per day, unless an exception is granted, per OAC 317:40-5-110.

(c) **Service location.**

(1) Non-residential HTS services are provided in the:

(A) ~~the~~ service recipient's home; or

(B) ~~the~~ community.

(2) Non-residential HTS services are not provided in:

(A) a school;

(B) a ~~hospital~~ nursing facility;

(C) ~~a nursing facility~~ an intermediate care facility for persons with intellectual disabilities (ICF/ID);

(D) ~~an intermediate care facility for persons with intellectual disabilities (ICF/ID)~~ an unlicensed facility-based program;

(E) ~~an unlicensed facility-based program~~ a private home except the service recipient's home or the home of a relative, unless the home was approved, per OAC 317:40-5-40; or

(F) ~~a private home except the service recipient's home or the home of a relative, unless the home has been approved per OAC 317:40-5-40; or the service recipient's employment setting or any other employment setting.~~

(G) ~~the service recipient's employment setting or any other employment setting.~~

(d) **Backup plan.** Prior to service delivery, an emergency backup plan must be developed and specify how the service recipient's needs will be met if when paid staff are unavailable. The emergency backup plan is included in the Plan.

(e) **Service requirements.**

(1) The provider:

(A) implements the service recipient's Plan;

(B) promotes community inclusion;

(C) promotes the service recipient's health and welfare, increased independence, self-sufficiency; and

(D) cooperates in securing alternative services while continuing to provide services when the service recipient, legal guardian, or provider ~~wishes~~ wants to discontinue services until the Team confirms all essential services are in place.

(2) The provider develops and maintains written policies and procedures that are consistent with Oklahoma ~~Department of~~ Human Services (OKDHS) rules and govern all aspects of service provision, with the exception of services provided, per OAC 317:40-9-1.

(A) Provider agency policies are made available to each service recipient, service recipient's parent(s), legal guardian, advocate, provider agency staff, and OKDHS.

(B) Provider agency policies and procedures include, but are not limited to:

(i) service recipient rights protection;

(ii) services provided;

(iii) admission and discharge criteria;

(iv) grievance procedures;

(v) prevention and reporting of abuse, neglect, and exploitation;

(vi) confidentiality;

(vii) emergency management;

(viii) fees paid by service recipient;

- (ix) health and safety precautions;
- (x) safeguarding service recipient funds;
- (xi) medication administration; and
- (xii) incident reporting.

(3) The provider agency designates one person who, in the absence of the agency administrator, is responsible for the administration of the agency and is empowered to act on behalf of the provider agency, with the exception of services provided, per OAC 317:40-9-1.

(4) The provider agency is responsible for recruitment, screening, training, and supervision of staff or volunteers providing direct services, and ensuring direct support staff:

(A) are not supervised by a relative or person living in the staff's home. A relative includes wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any such person with whom the employee shares a foster relationship;

(B) who provide backup services are available and have received training, per OAC 340:100-3-38;

(C) are at least 18 years of age;

(D) are present as specified in the Plan and as authorized by the service recipient's Plan of Care;

(E) are physically able and mentally alert to carry out the job duties;

(F) implement and follow the service recipient's Plan; and

(G) do not take the service recipient to visit staff's home, unless the Team has provided advance written approval of any visit with the purpose specified in the Plan.

(5) The provider agency ensures supervision, guidance, and oversight of all aspects of programming associated with receipt of non-residential HTS supports.

(A) The program coordination staff (PCS) must:

(i) ensure staff are familiar with Plan requirements;

(ii) make supervisory visits to the service site. The PCS makes a minimum of one monitoring visit per:

(I) month, when a service recipient receives an average of 30 or more hours of HTS weekly; or

(II) quarter based on calendar year quarters, when a service recipient receives an average of 29 or fewer hours of HTS weekly;

(iii) supervise direct contact staff to promote achievement of Plan outcomes;

(iv) ensure staffing levels meet the requirements of the service recipient's Plan, with staff trained, per OAC 340:100-3-38;

(v) ensure records are maintained, per OAC 340:100-3-40;

(vi) assist the ~~Developmental Disabilities Services Division (DDSD)~~ DDS case manager as requested to prepare for and implement the Plan and its revisions, per OAC 340:100-5-50 through ~~OAC 340:100-5-58~~;

(vii) ensure applicable OKDHS and Oklahoma Health Care Authority (OHCA) rules are followed;

- (viii) complete necessary training, per OAC 340:100-3-38; and
- (ix) have a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities, or full-time equivalent experience in a supervisory position, unless this requirement is waived in writing by the ~~DDSD~~ DDS director or designee.

(B) Provider agencies assign PCS caseloads, per OAC 340:100-5-22.1.

(6) Staff, when assisting a service recipient with bathing or showering, must ensure the water temperature is safe and comfortable for the service recipient. The requirements of this paragraph are enforced even when an anti-scald device is used.

~~The staff~~ Staff:

(A) tests the water temperature by touch or with a thermometer designed to test hot liquids, before the service recipient enters the water. The water must be determined safe and comfortable for the service recipient, not merely comfortable for the staff.

(B) is trained by his or her employer in the unique needs of each service recipient, including tolerance to water temperature and bathing or showering needs; and

(C) does not leave a service recipient who is unable to attend to safety considerations, alone in the bath or shower.

### **340:100-5-35.1. Habilitation training specialist (HTS) services in acute care hospitals**

Issued 9-15-21

**(a) Applicability.** HTS services, per Oklahoma Administrative Code (OAC) 317:30-5-482, are authorized, per OAC 317:40-5-110 or 317:40-5-111, and OAC 340:100-3-33; and apply to HTS services provided to adult service recipients receiving community residential supports, group home services, and in non-residential settings, per OAC 340:100-5-22.1, 340:100-6, and 340:100-5-35.

#### **(b) General information.**

(1) HTS services are authorized in an acute care hospital per the 21st Century Cares Act when the service is:

(A) identified in an individual's person-centered plan of services and supports;

(B) provided to meet needs of the individual that are not met through the provision of hospital services;

(C) not a substitute for services the hospital is obligated to provide through its conditions of participation or under federal or state law; and

(D) designed to ensure smooth transitions between acute care settings and home and community-based settings, and to preserve the individual's functions.

(2) HTS services are available in an acute care hospital for no more than 14-consecutive, calendar days per event, not to exceed 60-calendar days per Plan of Care year, up to the following limits no more than:

(A) 16 hours per day for those receiving daily living supports, per OAC 317:40-5-150 or 317:40-5-153;

(B) 24 hours per day for those receiving services for Prader-Willi Syndrome, per OAC 340:100-5-34;



(C) nine hours per day for those receiving agency companion services, per OAC 317:40-5;

(D) nine hours per day for those receiving specialized foster care, per OAC 317:40-5;

(E) nine hours per day for those receiving group home services, per OAC 340:100-6;

(F) 24 hours per day for those receiving alternative group home services, per OAC 340:100-5-22.6;

(G) nine hours per day for those who do not receive community residential supports, per OAC 340:100-5-22.1; group home services, per OAC 340:100-6; or alternative group home services, per OAC 340:100-5-22.6.

(3) Exceptions to the nine hours per day limit may be authorized by the DDS director or designee when needed for service recipients who require additional supports. The DDS director or designee may authorize HTS services provided in psychiatric facilities when required for admission to address issues such as significant daily living, communication and other needs.

(4) HTS services in an acute care hospital are:

(A) only authorized during times the service recipient is typically awake. HTS services are utilized during normal sleep hours when the service recipient demonstrates a pattern of not sleeping at night;

(B) not intended to provide more than one Waiver funded staff at a time;

(C) not provided by the service recipient's agency companion, per OAC 317:40-5; and

(D) not provided at the same time as DLS therapeutic leave, per OAC 317:40-5-150 or 317:40-5-153.

## **PART 5. INDIVIDUAL PLANNING**

### **340:100-5-52. Personal Support Team (Team)**

Revised 9-15-169-15-21

(a) The Team is composed of people selected by the service recipient who know and work with the service recipient or whose participation is necessary to achieve the service recipient's desired outcomes.

(1) To respect the service recipient's dignity and privacy, the Team is no larger than is necessary to plan and implement the services needed to achieve the service recipient's desired outcomes. The Team is large enough to possess the expertise and capacity necessary to address the service recipient's needs, but not ~~so~~ as large as to intimidate the service recipient or to stifle the service recipient's participation or that of his or her representatives.

(2) The core Team includes the service recipient, his or her case manager, the legal guardian, and advocate(s), when applicable and, who may be a parent, family member, friend, or another individual who knows the service recipient well. The service recipient is assured of his or her opportunity to select an individual to serve as an advocate.

(3) Depending on the service recipient's needs and the issues addressed, the Team may include others. The selection of these additional Team members reflects the service recipient's choices.

(b) The Team role is detailed in this subsection.

(1) Team members implement responsibilities identified in the Individual Plan (Plan) or in the Oklahoma Department of Human Services (~~DHS~~) (OKDHS) or Oklahoma Health Care Authority (OHCA) rules. Implementation of the Plan may only be delegated to persons who are appropriately qualified and trained.

(2) The Team develops the Plan and reviews and approves strategies, protocols, and guidelines developed to implement services or supports.

(3) The service recipient or his or her guardian participate in the development of the Plan and provide written, informed consent for the Plan's implementation.

(4) The Team implements the Plan upon approval of the Plan of Care, and inclusion of service providers' signatures on the Plan signature sheet.

(5) A copy of the Plan is maintained, per Oklahoma Administrative Code (OAC) 340:100-3-40. All staff implementing the Plan must be knowledgeable about its contents and have access to a copy of the Plan.

(6) Each Team member responsible for services identified in the Plan sends a quarterly summary of progress on assigned outcomes and action steps to the case manager.

(A) The quarterly summary of progress is due by the 10th of:

(i) April for services rendered in January, February, and March;

(ii) July for services rendered in April, May, and June;

(iii) October for services rendered in July, August, and September; and

(iv) January for services rendered in October, November, and December, unless an alternative schedule is specified in the Plan.

(B) The quarterly summary of progress includes:

(i) whether services were provided per the Plan, and if not why; and

(ii) if the outcomes were achieved; or

(iii) the outcome progress status, if not achieved.

(c) The case manager role is detailed in this subsection.

(1) Prior to the initial and annual Team meeting, the case manager meets with the service recipient and his or her advocate or legal guardian, when applicable, to review the individual situation, including the service recipient's vision and progress attaining the vision. Among the questions explored are whether the service recipient is satisfied with the results of the Plan and whether outcomes need to be revised, based on the progress achieved, or on changing circumstances in the service recipient's life. This review provides a clear agenda for the Team meeting and ensures the service recipient's input and participation.

(2) The case manager identifies available service providers for selection by the service recipient or legal guardian.

(3) The case manager ensures the size and composition of the Team support the person-centered planning process.

(A) The case manager plans for the participation of people whom the service recipient wants on the Team, people whose services are needed to achieve identified outcomes, and people who know the service recipient best. The case

manager sends Team members written or electronic notice of the meeting, at least ~~two weeks~~ 30-calendar days in advance of the annual Team meeting. ■ 1

(B) Planning may occur in Team meetings or through individual or small group consultation according to the service recipient's wants and needs.

(C) The case manager notifies a Team member by letter when his or her services on the Team are no longer required:

(i) at the request of the service recipient or the legal guardian; or

(ii) when the ~~performance of the Team member~~ member's performance reveals a course of action that:

(I) is not in the service recipient's best interest ~~of the service recipient~~;

(II) is destructive toward the Team's collaborative process ~~of the Team~~; or

(III) violates ~~DHS~~ OKDHS or OHCA rules or accepted standards of professional practice.

(4) Unless the service recipient elects to chair his or her own meetings, the case manager serves as Team chair ~~of the Team~~.

(5) The case manager empowers and supports the service recipient in setting the direction for the Team and in actively participating in Team meetings.

(6) The case manager writes or revises the Plan based on input from the Team.

(7) The case manager assists the Team in developing strategies, protocols, and guidelines to achieve the service recipient's preferred or needed outcomes.

(8) The case manager monitors all aspects of the Plan's implementation, per OAC 340:100-3-27.

(9) The case manager routinely asks the service recipient, his or her family, guardian, or advocate about their satisfaction with services and supports, and initiates appropriate action to identify and resolve barriers to consumer satisfaction.

■ 2

(10) The case manager convenes Team meetings as needed.

(A) The Team evaluates if the Plan and its components are meeting the service recipient's objectives.

(B) The case manager may convene a Team meeting at the request of any Team member.

(C) Meetings are held at times and locations convenient for the service recipient.

■ 3

(11) Case manager responsibilities are carried out by provider-agency program coordination staff when the service recipient receives ~~state-funded~~ state-funded employment, ~~state-funded~~ state-funded group home, or assisted living services without ~~waiver~~ Waiver supports. Each person filling this role in a provider agency must have a minimum of four years of any combination of college level education and full-time equivalent experience in serving persons with disabilities, unless this requirement is waived in writing by the DDS director or designee.

(12) The planning process must:

(A) reflect the service recipient's cultural considerations;

(B) be provided in plain language in an accessible manner; and

(C) provide needed language services or aids.

(13) In order to avoid a conflict of interest, DDS staff including the case manager, case management supervisor, and plan of care reviewer must not:

- (A) be related by blood or marriage to the service recipient, or any paid service provider for the service recipient;
- (B) be financially responsible for the service recipient;
- (C) be empowered to make financial or health related decisions for the service recipient; or
- (D) hold a financial interest in any entity paid to provide care for the service recipient.

**INSTRUCTIONS TO STAFF 340:100-5-52**

**Revised 9-15-16**

1. When a key person cannot attend the meeting, the case manager secures written or verbal input from that person prior to the meeting.
2. Since the absence of a complaint does not necessarily imply satisfaction, the case manager initiates action to resolve barriers when:
  - (1) progress toward identified outcomes is not occurring; and
  - (2) the person's identified needs are not addressed or met.
3. When applicable, the case manager coordinates the times and locations of meetings with the service recipient's legal guardian.

**SUBCHAPTER 17. EMPLOYMENT SERVICES**

**PART 3. STATE-FUNDED EMPLOYMENT (SHELTERED WORKSHOP) SERVICES**

**340:100-17-10. General state-funded employment (sheltered workshop) expectations**

Revised 5-12-059-15-21

(a) Access to state-funded (sheltered workshop) employment services is contingent upon sufficient resources and a determination of eligibility of the service recipient, ~~based upon criteria as established in~~ per Oklahoma Administrative Code OAC 340:100-3-1. A person is not eligible for state-funded employment services ~~if the person~~ when he or she:

(1) receives Home and Community-Based Services funded by the Oklahoma Health Care Authority; or

(2) resides in a private intermediate care facility for ~~persons with mental retardation (ICF/MR)~~ individuals with intellectual disabilities (ICF/IID).

(b) State-funded (sheltered workshop) employment services are provided by private agencies that have a current contract with ~~the Oklahoma Department of Human Services (OKDHS)~~.

(c) State-funded (sheltered workshop) employment services serve eligible persons with developmental disabilities who are 16 years of age ~~or~~ and older. Individuals between the ages of 16 and 21 who have not completed ~~their~~ eligibility for services provided through Individuals with Disabilities Education Act (IDEA) may receive state-funded employment services during times when school is not in session, ~~if~~ when not participating in an Individual Education Program (IEP) that includes extended school year services through ~~their~~ the school system.

(d) The provider agency ensures ~~that~~ service recipients participate in meaningful work-related activities for the entire service day, five hours per day, unless determined otherwise by the service recipient's Team and justified in the Individual Plan (IP).

(e) State-funded (sheltered workshop) employment services include:

- (1) evaluation;
- (2) training;
- (3) supportive assistance; and
- (4) paid employment.

(f) The services allow the service recipient to engage in meaningful work or participate in training activities ~~which~~ that are age appropriate, work related, and consistent with the service recipient's IP.

(1) The work day is devoted to paid employment, evaluation, or specific job task activities for which the service recipient is remunerated ~~in accordance with~~ per the United States Department of Labor Wage and Hour regulations and the Fair Labor Standards Act.

(2) During periods in which no paid work is available for service recipients, despite the good faith efforts of the provider to secure such work, the employment provider agency ensures that each service recipient participates in training activities ~~which~~ that are age appropriate, work related, and consistent with the IP. Such activities may include, but are not limited to:

- (A) resume development and application writing;
- (B) work attire selection;
- (C) job interview training and practice;
- (D) job safety and evacuation training;
- (E) personal or social skills training; and
- (F) stamina and wellness classes.

(3) Activities that do not contribute to the service recipient's work experience, skills, or knowledge are not appropriate services.

~~(g) Sheltered Workshop providers comply with Part 1 of this Subchapter~~ The provider agency submits a monthly attendance record to DDS to receive payment for state-funded employment (sheltered workshop) services. Claims for services rendered to service recipients must be submitted within 90-calendar days of the provision of services. Supporting encumbrances may be canceled upon a lapse of six months from the actual provision of services. ■ 1

(h) The provider agency maintains documentation available for review that documents the:

- (1) ~~the~~ service recipient's:
  - (A) legal name;
  - (B) case number or Social Security number;
  - (C) date of birth;
  - (D) progress toward outcomes;
  - (E) wages earned; and
  - (F) hours worked;
- (2) ~~the~~ type of service provided; and
- (3) date(s) of service delivery.

**Instructions to Staff 340:100-17-10**

**Issued 9-15-21**

**1. To receive payment for state-funded employment (sheltered workshop) services, the provider agency submits to the appropriate Developmental Disabilities Services area office:**

**(1) Form 06WP044E, Monthly Attendance Record; and**

**(2) a cover sheet, such as Form 10AD012E, Claim Form, or the provider agency's invoice that includes each service recipient's:**

**(A) legal name;**

**(B) case number;**

**(C) Social Security number;**

**(D) date of birth; and**

**(E) type, amount, rate, and date of service delivery.**

**340:100-17-17. Billing for state-funded employment (sheltered workshop) services  
[REVOKED]**

~~Revised 5-15-08~~

~~(a) To receive payment for state-funded employment (sheltered workshop) services, the provider agency submits to the appropriate Developmental Disabilities Services Division (DDSD) area office:~~

~~(1) Form 06WP044E, Monthly Attendance Record; and~~

~~(2) a cover sheet, such as Form 10AD012E, Claim Form, or the provider agency's invoice that includes each service recipient's:~~

~~(A) legal name;~~

~~(B) case number;~~

~~(C) Social Security number;~~

~~(D) date of birth; and~~

~~(E) type, amount, rate, and date of service delivery.~~

~~(b) The DDSD area office attempts to reconcile claims that are incomplete or lacking supporting documentation. If unsuccessful, the DDSD area office mails the claim back to the provider agency indicating the documentation or corrections needed.~~

~~(c) Claims for services rendered to service recipients must be submitted within 90 calendar days of the provision of services. Supporting encumbrances may be canceled upon a lapse of six months from the actual provision of services.~~

**PART 4. COMMUNITY INTEGRATED EMPLOYMENT SERVICES**

**340:100-17-25. Community integrated employment services**

~~Revised 5-15-08~~9-15-21

(a) Community integrated employment (CIE) services promote independence through paid work and training activities. CIE services allow service recipients to engage in gainful integrated employment. CIE services are:

(1) delivered in integrated settings in the community by contract providers;

(2) provided to eligible service recipients 16 years of age or and older who are not:

(A) eligible for reimbursement by Oklahoma Health Care Authority (OHCA) through Home and Community-Based Services Waiver employment services; or

- (B) residing in a private intermediate care facility for ~~persons with mental retardation (ICF/MR)~~ individuals with intellectual disabilities; and
- (3) available to service recipients 16 to 21 years of age who have not completed eligibility for services provided through Individuals with Disabilities Education Act (IDEA). The service recipient may receive CIE services when school is not in session, ~~if the service recipient~~ when he or she is not participating in an Individual Education Program (IEP) that includes extended school year services through his or her school.
- (b) Access to CIE services is contingent upon sufficient Oklahoma ~~Department of~~ Human Services (OKDHS) resources and written determination of eligibility, per OAC 340:100-3-1.
- (c) The provider agency:
- (1) may use, prior to placement, up to 20 hours for assessment and up to 40 hours for job development;
  - (2) after placement, provides, as needed, job site training, technical assistance to the employer, job adaptation, participation in Personal Support Team meetings, benefits planning, and transportation to and from the work site. These services are reimbursed when the job coach is with the service recipient;
  - (3) ensures the service recipient is paid ~~in accordance with~~ per United States Department of Labor (USDOL) wage and hour regulations for work performed;
  - (4) ensures the service recipient's employment plan includes specific employment outcomes and action steps;
  - (5) ensures all CIE services are provided by job coaches who complete required training, per OAC 340:100-3-38;
  - (6) may bill for CIE services rendered prior to determination of eligibility when CIE services are authorized in an employment plan and the service recipient is ultimately determined eligible; and
  - (7) receives reimbursement for providing CIE services to only one service recipient at a given time.
    - (A) This does not preclude CIE services from being provided to service recipients in group settings-
    - (B) ~~For example,~~ such as one job coach simultaneously providing CIE services to three service recipients for three hours may only claim three units of reimbursement, not nine.
- (d) CIE services include reimbursement for securing individual gainful employment, individual follow-along, and group placements.
- (1) The provider agency must secure gainful employment in a job paying at least minimum wage for service recipients, in accordance with the current contract for CIE services.
  - (2) Follow-along services are available to service recipients who were successfully placed in CIE services or who completed stabilization in Oklahoma Department of Rehabilitation Services supported employment program during the prior contract year. Reimbursement for follow-along services cannot exceed amounts specified in the contract for CIE services.

(3) The provider agency may provide integrated group placements of two or more service recipients in gainful integrated group employment and claim ~~in accordance with~~ per the contract for CIE services. Group placements:

(A) may pay at or more than minimum wage or commensurate wages ~~in accordance with~~ per USDOL wage and hour regulations; and

(B) cannot exceed eight service recipients.

(e) Payment for CIE services is only disbursed following the delivery of authorized CIE service to eligible service recipients.

(1) To receive payment, the provider agency submits to the ~~DDSD~~ DDS ~~area~~ state office a claim for CIE services rendered and any supporting documentation required by OKDHS. Claims may be submitted on the provider agency's invoice or Form 10AD012E, Claim Form, and must include the:

(A) service recipient's:

(i) legal name;

(ii) case number;

(iii) date of birth; and

(iv) Social Security number; and

(B) category, amount, rate, and date of CIE service delivered to the service recipient.

(2) The provider agency maintains documentation available for review that documents the:

(A) service recipient's:

(i) legal name;

(ii) case number or Social Security number;

(iii) date of birth;

(iv) progress toward outcomes;

(v) wages earned; and

(vi) hours worked; and

(B) type and date of CIE service delivered to the service recipient.

(3) Claims for reimbursement of CIE services must be submitted within ~~90-calendar~~ 90-calendar days of service provision. Supporting encumbrances may be cancelled upon a lapse of six months from the actual provision of CIE services.