

**COMMENT DUE DATE: January 5, 2021**

**Date: December 23, 2020**

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It is important that you provide your comments regarding the **draft copy** of rules by the comment due date. Comments are directed to [\\*STO.LegalServices.Policy@okdhs.org](mailto:*STO.LegalServices.Policy@okdhs.org).

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

Subchapter 5. Client Services

340:100-5-22.7 [NEW]

**(WF 20-09)**

**SUMMARY:**

This rule is amended through the emergency rule making process to support participation in community life for individuals receiving DDS residential services. The rule adds provisions for DDS to supplement room and board costs for individuals with exceptionally low income. These new provisions add assurances that provider agencies are not paying room and board costs with Medicaid funding.

**EMERGENCY APPROVAL:** Emergency rulemaking is requested to update and clarify DDS rules in accordance with federal and state laws. The changes align rules with Section 1915(c) of the Social Security Act to provide home and community-based services (but not room and board) to individuals who require institutional level of care. Federal Medicaid dollars are not available to pay for the room and board expenses of non-institutionalized persons who receive DDS services.

**LEGAL AUTHORITY:** Director of Human Services; Section 162 and 230.52 of Title 56 of the Oklahoma Statutes.



## Rule Impact Statement

**To:** Programs Administrator  
Legal Services Policy

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

**Date:** December 17, 2020

**Re:** **CHAPTER 100. DEVELOPMENTAL DISABILITIES SERVICES**  
Subchapter 5. Client Services  
340:100-5-22.7 [NEW]  
(Reference WF )

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

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

**Purpose.** This rule is amended through the emergency rule making process to support participation in community life for individuals receiving DDS residential services. The rule adds provisions for DDS to supplement room and board costs for individuals with exceptionally low income. These new provisions add assurances that provider agencies are not paying room and board costs with Medicaid funding.

### Strategic Plan Impact.

The proposed amendments:

- position Oklahoma Human Services (OKDHS) DDS to improve services to individuals with intellectual and developmental disabilities;
- 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
- comply with federal requirements.

### Substantive changes.

Oklahoma Administrative Code (OAC) 340:100-5-22.7 is created to set forth rules for supplemental room and board payments. To ensure Waiver funding is not used

for room and board expenses when the service recipient has exceptionally low income, a room and board payment is provided with State General Funds.

**Reasons.**

The proposed amendments update and clarify DDS rules in accordance with federal and state laws. The changes align rules with Section 1915(c) of the Social Security Act to provide home and community-based services (but not room and board) to individuals who require institutional level of care. Federal Medicaid dollars are not available to pay for the room and board expenses of non-institutionalized persons who receive DDS services.

**Repercussions.**

The proposed amendments contribute to: 1) the health and safety of vulnerable Oklahomans who are in need of additional funding to support his or her participation in community living; 2) the amendments bring practices in line with Section (c) of the Social Security Act, and 3) ensure that DDS is in compliance with federal regulations.

**Legal authority.**

Director of Human Services; Section 162 of Title 56 of the Oklahoma Statutes.

**Emergency 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 adopted the state will be in direct conflict with Section (c) of the Social Security Act.
- K. The date the rule impact statement was prepared and, if modified, the date modified:** Prepared December, 17 2020.

## SUBCHAPTER 5. CLIENT SERVICES

### **340:100-5-22.7. Supplemental room and board funding for persons receiving Home and Community-Based Services (HCBS) Waivers**

(a) **Applicability.** This Section applies to services funded through Medicaid HCBS Waivers, per Oklahoma Administrative Code (OAC) 317:35-9-5, and Section 1915(c) of the Social Security Act. Specific Waivers include service recipients who receive:

- (1) daily living supports (DLS), per OAC 317:40-5-150; or
- (2) group home services, per OAC 317:40-5-152.

(b) **General Information.** In an effort to support participation in community life Oklahoma Human Services (OKDHS) Developmental Disabilities Services (DDS) may supplement room and board costs for service recipients with exceptionally low income. Room and board costs are not a reimbursable waiver expense, per the HCBS service regulations. Room and board expenses in a residential setting may leave a service recipient with insufficient personal funds. State General Fund supplemental payments permit a provider to be reimbursed for room and board costs beyond a service recipient's ability to pay with personal benefits income.

(1) Allowable room and board costs are actual monthly expenses that include:

- (A) rent;
- (B) food;
- (C) housing supplies;
- (D) utilities;
- (E) basic cable or television;
- (F) telephone;
- (G) repair and maintenance that are not an obligation of another entity; and
- (H) insurance.

(2) Services must be provided in the most cost effective manner, per OAC 340-3-33.1. When the need for a supplemental payment is expected to continue, cost effective community living arrangements must be considered and documented in the Individual Plan (IP). The supplemental room and board payment must meet all of the requirements in A through F of this subsection.

- (A) funding to meet the service recipient's needs are not available through another source;
- (B) the DDS director or designee determines the supplement is the most cost effective option;
- (C) the service recipient's room and board expenses are consistent with fair market values for similar monthly living expenses;
- (D) the supplemental payment must be necessary to support community living and must be required for other than the convenience of the service recipient, family or provider;
- (E) The provider must disclose all claimed expenses to entities having common ownership with the provider, and
- (F) the supplemental payment is contingent upon availability of funding and must not exceed the amount set forth in OKDHS Appendix D-26, Developmental Disabilities Services Rates Schedule.

(3) The service recipient's Personal Support Team (Team) is responsible for ensuring individuals have at least \$100 each month of personal spending money.

(4) When possible, the Team develops a plan to resolve the room and board deficiency.

(c) **Room and board payment.** Each service recipient contributes an amount determined by the provider, not to exceed actual expenses. The service recipient retains at least \$100 a month in personal spending money. The service recipient may contribute employment income to meet his or her room and board costs.

(1) To ensure Waiver funding is not used for room and board costs when the service recipient has exceptionally low income, a room and board supplement is provided. The supplement is provided when he or she ■ 1:

(A) does not have adequate income to meet his or her room and board expenses;

(B) is awaiting a medical decision from the Social Security Administration for Supplemental Security income eligibility; or

(C) is unable to maintain employment resulting in a room and board income deficit.

(2) The provider submits OKDHS Form 06CL001E, Room and Board Supplement Claim Form, and OKDHS Form 10AD012E, Claim Form for reimbursement.

(d) **General provider requirements.** The provider establishes a written financial agreement with the service recipient or legal guardian that defines the provider and service recipient's responsibilities per Oklahoma Administrative Code (OAC) 340:100-5-22.1.

(1) The provider ensures:

(A) service recipient expenses are accrued on a monthly basis and are based on actual expenses;

(B) Social Security is contacted to review the service recipient's benefits when his or her personal benefits are low; and

(C) the service recipient is employed an average of 30 hours per week. When the service recipient does not participate in 30 hours per week of employment services, the Team develops a plan to address the situation, per OAC 317:40-7-15.

#### **Instructions to Staff:**

**1. (a) When a service recipient has low income, DDS assists in the development of a plan to remedy the cause for reduced personal benefits income:**

**(1) The Personal Support Team (Team) reviews the service recipient's personal income benefits to ensure he or she is receiving all benefits for which he or she is eligible. When it is discovered that he or she is eligible for additional benefits the Team assists the service recipient in applying for additional benefits;**

**(2) When a service recipient resides in daily living supports (DLS), with less than two roommates, the field administrator may grant approval for a two-person DLS placement per Oklahoma Administrative Code (OAC) 317:40-5-150. When the request is submitted, the field administrator ensures the service recipient can afford his or her living arrangement; and**

**(3) When the service recipient is unable to consistently participate in employment, DDS vocational staff are contacted to provide technical assistance to the personal**

**support team.**