

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 16, 2019

The proposed policy is a Permanent Rule. The proposed policy was presented at the November 6, 2018 Tribal Consultation. Additionally, this proposed change will be presented at a Public Hearing scheduled for January 16, 2019. This proposal is scheduled to be presented to the Medical Advisory Committee on January 17, 2019 and to the OHCA Board of Directors on February 14, 2019.

Reference: APA WF # 18-22B

SUMMARY:

Developmental Disabilities Division (DDS) Revisions - The proposed revisions to the DDS policy amend the rules to implement changes recommended during the annual Oklahoma Department of Human Services (DHS) DDS rule review process. Proposed revisions will reflect new service requirements for employment services through Home and Community-Based Services Waivers. Additional revisions will eliminate and update outdated policy in order to better align with current business practices.

LEGAL AUTHORITY

The Oklahoma Health Care Authority Act, Section 5007 (F)(1) and (3) of Title 63 of Oklahoma Statutes; Section 5003 through 5016 of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Director of Human Services; Sections 441.301 et. seq. of Title 42 of the Code of Federal Regulations

RULE IMPACT STATEMENT:

**STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY**

TO: Ivoria Holt
Federal and State Policy

FROM: Carmen Johnson
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 18-22B

A. Brief description of the purpose of the rule:

The proposed revisions to the Developmental Disabilities Services (DDS) policy is being requested to add new language to provide general clarification that when a home-based business is established through the Oklahoma Department of Rehabilitation (OKDRS) services, DDS stabilization services are utilized when the OKDRS end. In addition, new language will provide guidelines for the Personal Support Team to follow when the required thirty (30) hours of employment services (community-based services, center-based services, employment training specialist intensive training services, and job coaching services) through Home and Community-based services (HCBS) waivers is not met. Guideline Additional Personal support team guidelines also provide guidelines for the Personal Support Team to support individuals in seeking competitive integrated job as a requirement to meeting the HCBS final rule. Revisions will also include removal of outdated language relating to the exception process for employment services through the HCBS and updating obsolete acronyms. Finally, proposed revisions include removal of outdated language relating to the exception process for employment services through the HCBS waiver and updating obsolete acronyms. These proposed changes were recommendations from the annual Oklahoma Department of Human Services DDS rule review process.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

The classes of persons affected by the proposed amendments are individuals receiving services from DDS, who will bear no cost associated with the implementation of the rule.

C. A description of the classes of persons who will benefit from the proposed rule:

The classes of persons who benefit are individuals receiving services from DDS.

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 services from DDS.

- 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:

There are no probable costs associated with the enforcement of this rule.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule does not have an impact on any political subdivisions or require their cooperation in enforcing the rules.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule does 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 of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The proposed rule will not increase compliance costs. There are no less costly or non-regulatory methods 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 revisions bring the rule into compliance with federal and state laws, thereby increasing program effectiveness, positively impacting the health, safety and well-being of affected persons.

- J. A determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

If the proposed rules are not implemented, the rules will not be in compliance with federal and state law. The proposed rules are intended to comply with federal 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: November 6, 2018

Modified: December 4, 2018

RULE TEXT

TITLE 317. OKLAHOMA HEALTH CARE AUTHORITY CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

SUBCHAPTER 7. EMPLOYMENT SERVICES THROUGH HOME AND COMMUNITY-BASED SERVICES WAIVERS

317:40-7-5. ~~Community-Based Services~~Community-based services

~~Community-Based Services~~Community-based services are provided in sites and at times typically used by others in the community and promote independence, ~~inclusion within the community,~~ inclusion, and the creation of natural supports. Community-based services must reflect the member's choice and values in typical age and cultural situations ~~that are typical for age and culture~~.

(1) ~~Approved Community-Based Services~~community-based services are individualized work-related supports targeting inclusion into integrated experiences. ~~Community-Based Services~~ and are pre-planned, documented activities supported by a schedule relating to the member's identified employment outcomes. Approved community-based services activities include:

(A) active participation in formalized volunteer activities;

- (B) active participation in paid or unpaid work experience sites in community settings;
- (C) training through generic entities such as trade schools, ~~Vo Techs, technology centers, junior~~community colleges, or other community groups. The provider is paid for the time ~~during which~~when direct supports are necessary and provided;
- (D) stamina-enhancing programs ~~that occur~~ in integrated settings;
- (E) transportation to and from employment or community-based activities;
- (F) meals and breaks ~~which must occur during the conduct of the member's employment activities;~~ that occur in the community at a location used for the same purpose, with others without disabilities;
- (G) job tours or job shadowing scheduled with and provided by a ~~community business~~community-business entity;
- (H) using Workforce OK services; and
- (I) attending job fairs.

(2) Any other work-related, community-based activities must be approved through the exception process, ~~described in OAC per~~ Oklahoma Administrative Code (OAC) 317:40-7-21.

(3) ~~Community-Based Services~~Community-based services continue ~~if~~when the member ~~has to go~~goes to a center-based facility for support, such as repositioning or personal care, as long as the member returns immediately to a planned community-based activity. The amount of time for the repositioning and personal care are based upon a Team-approved health care positioning plan ~~approved by the Team.~~

(4) ~~Community-Based Services~~Community-based services are available for individual and group placements.

(A) Individual placement means the member is provided supports that enable him or her to participate in approved individual community-based activities described in this Section ~~individually~~ and not as part of a group placement.

(B) ~~Group Placement~~placement means ~~two to five~~two-to-five members are provided supports that enable ~~him or her to participate~~participation in the approved community-based activities described in this Section.

317:40-7-6. Center-based services

(a) Center-based services are ~~any employment services~~services provided where at the majority of the people at the ~~site are persons with a disability~~have disabilities. These settings facilitate opportunities to seek employment in competitive settings and support access to the greater community.

(b) Center-based services are pre-planned, documented activities that relate to the member's identified employment outcomes.

(c) Examples of ~~Center-based~~center-based services are active participation in:

(1) learning and work experiences where the individual can develop general, non-job-task specific strengths and skills that contribute to employability in paid employment in integrated community settings;

(2) team-prescribed therapy programs, such as speech, physical therapy, or a switch activation program implemented by employment provider staff in the workshop or other center-based setting; ~~and~~

(3) computer classes, General Education Development preparation, job club, interviewing skills, or other classes ~~whose~~where all participants all have disabilities, even when the location is in the community; ~~and~~

(4) mealtimes where the majority of people with disabilities are employed.

(d) Paid contract work is usually subcontracted, and the ~~person~~member receiving services ~~earns~~earns commensurate wage according to Department of Labor regulations.

(e) Participation in ~~Center-based~~center-based services is limited to ~~15~~fifteen (15) hours per week for ~~persons~~members receiving services through the Homeward Bound Waiver, unless approved through the exception process, ~~explained in (OAC)~~per Oklahoma Administrative Code (OAC) 317:40-7-21.

(f) The provider agency must meet physical plant expectations, ~~of (OAC)~~per OAC 340:100-17-13.

(g) During periods in which no paid work is available ~~for members,~~ despite the provider's documented good faith efforts to secure work, the employment-provider agency ensures each member participates in training activities that are age appropriate, work related, and consistent with the Individual Plan. Such activities may include, but are not limited to:

(1) resume development and application writing;

(2) work attire selection;

(3) job interview training and practice;

(4) job safety and evacuation training;

(5) personal or social skills training; and

(6) stamina and wellness classes.

317:40-7-15. Service requirements for employment services through Home and Community-Based Services (HCBS) Waivers

(a) The Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) case manager, the member, ~~at the~~ member's family or, when applicable, the member's legal guardian,

and the member's provider develop a preliminary plan of services including the:

- (1) site and amount of the services ~~to be~~ offered;
- (2) types of services to be delivered; and
- (3) expected outcomes.

(b) To promote community integration and inclusion, employment services are only delivered in non-residential sites.

(1) Employment services through ~~Home and Community-Based Services (HCBS) Waivers~~ HCBS waivers cannot be reimbursed when those services occur in the member's or paid staff's residence or property of the member or provider-paid staff, including garages and sheds, ~~whether the garage or shed is~~ when attached or unattached to the home or not. When a home-based business is established and supported through the Oklahoma Department of Rehabilitation Services (OKDRS), DDS stabilization services are utilized when OKDRS stabilization services end.

(2) No exceptions to Oklahoma Administrative Code (OAC) 317:40-7-15(b) are authorized.

(c) The service provider is required to notify the DDS case manager in writing when the member:

- (1) is placed in a new job;
- (2) loses his or her job. ~~A Personal Support Team~~ a personal support team (Team) meeting must be held when the member loses the job;
- (3) experiences significant changes in the community-based or employment schedule; or
- (4) ~~experiences other circumstances,~~ is involved in critical and non-critical incidents per OAC 340:100-3-34.

(d) The provider submits a DHS Provider Progress Report, per OAC 340:100-5-52, for each member receiving services.

(e) The cost of a member's employment services, excluding transportation and state-funded services per OAC 340:100-17-30, cannot exceed \$27,000 per Plan of Care year.

(f) ~~Each member receiving residential supports per OAC 340:100-5-22.1, or group home services is employed for 30 hours per week or receives a minimum of 30 hours of employment services, each week, excluding transportation to and from the member's residence.~~ HCBS is supported in opportunities to seek employment and work in competitive integrated settings. When the member is not employed in a competitive integrated job, the Team identifies outcomes and/or action steps to create opportunities that move the member toward competitive integrated employment.

(g) Each member receiving residential supports, per OAC 340:100-5-22.1, or group-home services is employed for thirty (30) hours per week or receives a minimum of thirty (30) hours of employment services each week, excluding transportation to and from his or her residence.

~~(1) Thirty hours~~Thirty (30) hours of employment service each week may be a combination of community-based services, center-based services, employment training specialist (ETS) intensive training services, stabilization services, ~~and~~ job coaching services. Center-based services cannot exceed ~~15~~fifteen (15) hours per week for members receiving services through the Homeward Bound Waiver.

~~(2) Less than 30 hours of employment activities per week requires approval per OAC 317:40-7-21.~~When the member does not participate in thirty (30) hours per week of employment services, the Team:

(A) documents the outcomes and/or action steps to create a pathway that moves toward employment activities;

(B) describes a plan to provide a meaningful day in the community; or

(C) increases the member's employment activities to thirty (30) hours per week.

317:40-7-21. Exception process for employment services through Home and Community-Based Services Waivers

(a) All exceptions to rules in ~~OAC~~Oklahoma Administrative Code (OAC) 317:40-7 are:

(1) approved, per OAC 317:40-7-21 prior to service implementation;

(2) intended to result in the ~~Personal Support Team~~personal support team (Team) development of an employment plan tailored to meet the member's needs;

(3) identified in the Individual Plan (Plan) process, per OAC 340:100-5-50 through 340:100-5-58; and

(4) documented and recorded in the Individual Plan by the Developmental Disabilities Services Division (~~DDSD~~)(DDS) case manager after Team approval.

~~(b) A request for an exception to the minimum of 30 hours per week of employment services, per OAC 317:40-7-15, includes documentation of the Team's:~~

~~(1) discussion of:~~

~~(A) current specific situation that requires an exception;~~

~~(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and~~

~~(C) progress toward previous exception strategies or plans;~~

~~(2) plan with specific steps and target dates to address the situation throughout the Plan of Care year so the exception may be lessened or no longer necessary at the end of the Plan of Care year; and~~

~~(3) specific residential schedule to provide integrated activities outside the home while the plan to increase to 30 hours is implemented.~~

~~(e)~~ A request for an exception to the maximum limit of ~~15~~^{fifteen} ~~(15)~~ hours per week for center-based services, per OAC 317:40-7-6, or continuous supplemental supports, per OAC 317:40-7-13, for a member receiving services through the Homeward Bound Waiver includes documentation of the Team's:

(1) discussion of:

(A) a current, specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans; and

(2) plan, with specific steps and target dates to address the situation throughout the Plan of Care year, so the exception may be lessened or no longer necessary at the end of the Plan of Care year.

~~(d)~~^(c) A request for an alternative to required community-based activities per OAC 317:40-7-5 includes documentation of the Team's:

(1) discussion of:

(A) current specific situation that requires an exception;

(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(C) progress toward previous exception strategies or plans; and

(2) plan, with specific steps and target dates to address the situation throughout the Plan of Care year, so the exception may be lessened or no longer necessary at the end of the Plan of Care year.

~~(e)~~^(d) Exception requests, per OAC 340:40-7-21~~(f)~~^(e), are documented by the ~~DDSD~~^{DDSD} case manager after Team consensus, and submitted to the ~~DDSD area manager~~^{DDSD field administrator} or designee within ten ~~(10)-business-working~~ days after the annual IP or interim Team meeting. The ~~area manager~~^{field administrator} approves or denies the request with a copy to the ~~DDSD area office claims staff and case manager~~^{DDSD area office claims staff and case manager} based on the thoroughness of the Team's discussion of possible alternatives and reasons for rejection of the other possible alternatives. A copy of the field administrator's decision is provided to the assigned case manager. A request for any other exception to rules in OAC 317:40-7-21 requires documentation of the Team's discussion of:

(1) a current, specific situation that requires an exception;

(2) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and

(3) progress toward previous exception strategies or plans.

~~(1) State dollar reimbursement for absences of a member receiving services through the Community Waiver in excess of~~

~~10% of authorized units up to 150 units is approved for medical reasons only. The request includes:~~

- ~~(A) Team's discussion of current specific situation that requires an exception;~~
- ~~(B) specific medical issues necessitating the exception request; and~~
- ~~(C) a projection of units needed to complete the State fiscal year.~~

~~(2) A request for any other exception to rules in OAC 317:40-7-21 requires documentation of the Team's discussion of:~~

- ~~(A) current specific situation that requires an exception;~~
- ~~(B) all employment efforts, successful and unsuccessful, made by the member and Team in the past year; and~~
- ~~(C) progress toward previous exception strategies or plans.~~

~~(f)~~(e) The ~~DDS~~DDS director or designee may review exceptions granted per OAC 317:40-7-21, directing the Team to provide additional information, ~~if~~when necessary, to comply with OAC 340:100-3-33.1 and other applicable rules.