Oklahoma Health Care Authority

It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments are directed to the Oklahoma Health Care Authority (OHCA) Proposed Changes Blog.

OHCA COMMENT DUE DATE: February 17, 2017

The proposed policy is a Permanent Rule. The proposed policy was presented at the November 1, 2016 Tribal Consultation and is scheduled to be presented to the Medical Advisory Committee on March 9, 2017 and the OHCA Board of Directors on March 23, 2017.

Reference: APA WF 16-24B

SUMMARY:
Developmental Disabilities Services - The proposed revisions to the Developmental Disabilities Services policy amend the rules to implement changes recommended during the annual Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) rule review process. Proposed revisions include clean-up to mirror current business practices.

LEGAL AUTHORITY
The Oklahoma Health Care Authority Board; The Oklahoma Health Care Authority Act, Section 5003 through 5016 of Title 63 of Oklahoma Statutes; Director of Human Services; Section 162 of Title 56 of the Oklahoma Statues (56 O.S. 162); 42 CFR 441.301, 44.710, 441.715, 441.720, and 441.740.

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA
OKLAHOMA HEALTH CARE AUTHORITY

TO: Tywanda Cox
Health Policy

FROM: Carmen Johnson
Health Policy

SUBJECT: Rule Impact Statement
APA WF # 16-24B

A. Brief description of the purpose of the rule:

The proposed revisions to the Developmental Disabilities Services policy amend the rules to implement changes recommended during the annual Oklahoma Department of Human Services (DHS) Developmental Disabilities Services (DDS) rule review process. The amendments support DDS goals of improving the quality of life for vulnerable Oklahomans by increasing people's abilities to lead safer, healthier, and more independent, productive lives. The proposed amendments comply with federal requirements and are updated to clarify DDS rules per federal and state laws. Additionally, amendments provide clear guidance to DDS partners and staff and adhere to "best practice" standards.

The proposed policy is amended to:

- add language to include that annual eligibility review for Home and Community-Based Waiver services require a medical evaluation current within one calendar year of the requested approval date and to specify that the evaluation must be submitted within 30-calendar days prior to the expiration of the Plan of Care to maintain eligibility;
- add language that outlines standards for transportation providers to permit map mileage billing between two locations with the use of global positioning system (GPS) software as an alternative to odometer readings;
- remove treatment plan pre-approval requirements exceeding $1,000 by the DDS area medical director or designee for members of the Homeward Bound Waiver;
- define competitive integrated employment;
- remove the requirement that provider agency Human Rights Committees (HRC) review member's protective intervention protocols to authorize enhanced vocational services and supplemental supports ;
- add language that outlines the requirements for a Self-Directed Habilitation Training Specialist (SD-HTS) who supports the member's self-care, daily living and leisure skills; and
- provide language cleanup and update commonly used terms.

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.

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

The specific classes of persons affected by the proposed amendments 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 amendments do not have an impact on any political subdivisions nor 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 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 of whether there are less costly or non-regulatory 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 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 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 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 amendments are not implemented, the rules will not be in compliance with federal and state law. The proposals are intended to comply with federal and state law, 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 21, 2016
Modified: January 5, 2017

RULE TEXT

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

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-1. Home and Community-Based Services (HCBS) Waivers for persons with intellectual disabilities or certain persons with related conditions

(a) **Applicability.** ~~The rules in this~~This Section ~~apply~~applies to services funded through Medicaid HCBS Waivers per Oklahoma Administrative Code (OAC) 317:35-9-5 and~~ per~~ Section 1915(c) of the Social Security Act. ~~The specific~~Specific Waivers are the In-Home Supports Waiver (IHSW) for Adults, ~~the In-Home Supports Waiver (IHSW)~~IHSW for Children,~~ the~~ Community Waiver, and~~ the~~ Homeward Bound Waiver.

(b) **Program provisions.** Each individual requesting services provided through an HCBS Waiver and his or her family or guardian, are responsible for:

(1) accessing, with~~ the assistance of the~~ Oklahoma Department of Human Services (DHS) staff~~,~~ assistance, all benefits available under Oklahoma's Medicaid State Plan or other payment sources prior to accessing funding for those same services under ~~a~~an HCBS Waiver program;

(2) cooperating in the determination of medical and financial eligibility~~,~~ including prompt reporting of changes in income or resources;

(3) choosing between services provided through an HCBS Waiver ~~and~~or institutional care; and

(4) reporting~~ to DHS within 30 calendar days of moving~~ any changes in address or other contact information~~.~~ to DHS within 30-calendar days.

(c) **Waiver eligibility.** To be eligible for Waiver services, an applicant must meet the criteria established in ~~paragraph~~(1) of this Subsection and the criteria for one of the Waivers established in (1)(~~A),(B), or (C)~~(2) though (8) of this Subsection.

(1) **HCBS Waiver services.** Services provided through an HCBS Waiver are available to Oklahoma residents meeting SoonerCare eligibility requirements established by law, regulatory authority, and policy within funding available through State or Federal resources. To be eligible~~ for~~ and receive services funded through any of the Waivers listed in (a) of this Section, ~~a person~~an applicant must meet conditions per OAC 317:35-9-5. The applicant: ~~The individual must be determined financially eligible for SoonerCare per OAC 317:35-9-68. The SoonerCare eligible individual may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, residential care facility per Section 1-819 of Title 63 of the Oklahoma Statutes (63 O.S. § 1-819), or Intermediate Care facility for individuals with intellectual~~

disabilities (ICF/IID). The individual may not be receiving Developmental Disabilities Services (DDS) state-funded services, such as the Family Support Assistance Payment, Respite Voucher Program, sheltered workshop services, community integrated employment services, or assisted living without Waiver supports per OAC 340:100-5-22.2. The individual must also meet other Waiver-specific eligibility criteria.

(A) **In-Home Supports Waivers(IHSW).** To be eligible for services funded through the IHSW, a person must:

(i) meet all criteria listed in (c) of this Section; and

(ii) be determined to have a disability and a diagnosis of intellectual disability by the Social Security Administration (SSA); or

(iii) be determined to have a disability, and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU);

(iv) be 3 years of age or older;

(v) be determined by the OHCA/LOCEU to meet the ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122;

(vi) reside in:

(I) the home of a family member or friend;

(II) his or her own home;

(III) a DHS Child Welfare Services (CWS) foster home; or

(IV) a CWS group home; and

(vii) have critical support needs that can be met through a combination of non-paid, non-Waiver, and SoonerCare resources available to the individual, and with HCBS Waiver resources within the annual per capita Waiver limit agreed between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(B) **Community Waiver.** To be eligible for services funded through the Community Waiver, the person must:

(i) meet all criteria listed in (c) of this Section;

(ii) be determined to have a disability and a diagnosis of intellectual disability by the SSA; or

(iii) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition by DDS and be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(iv) be determined to have a disability and a diagnosis

~~of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or the OHCA/LOCEU; and~~

~~(v) be 3 years of age or older; and~~

~~(vi) be determined by the OHCA/LOCEU, to meet the ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122; and~~

~~(vii) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDS director or designee.~~

~~(C) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the person must:~~

~~(i) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;~~

~~(ii) meet all criteria for HCBS Waiver services listed in (c) of this Section; and~~

~~(iii) be determined to have a disability and a diagnosis of intellectual disability by SSA; or~~

~~(iv) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition per OAC 317:35-9-45 by DDS, and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or~~

~~(v) have a disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA/LOCEU; and~~

~~(vi) meet ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122 by the OHCA/LOCEU.~~

(A) must be determined financially eligible for SoonerCare per OAC 317:35-9-68;

(B) may not simultaneously be enrolled in any other Medicaid Waiver program or receiving services in an institution including a hospital, rehabilitation facility, mental health facility, nursing facility, or residential care home per Section 1-820 of Title 63 of the Oklahoma Statutes (O.S. 63-1-820), or Intermediate Care facility for individuals with intellectual disabilities (ICF/IID);

(C) may not be receiving Development Disabilities Services (DDS) state-funded services, such as the Family Support Assistance Payment, Respite Voucher Program, sheltered workshop services, community integrated employment services, or assisted living without Waiver supports OAC 340:100-5-22.2; and

(D) must also meet other Waiver-specific eligibility criteria

(2) **In-Home Supports Waivers (IHSW).** To be eligible for services funded through the IHSW, an applicant must:

(A) meet all criteria listed in (c) of this Section; and

(B) be determined by the Social Security Administration (SSA) to have a disability and a diagnosis of intellectual disability; or

(C) be determined to have a disability and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the Oklahoma Health Care Authority (OHCA) Level of Care Evaluation Unit (LOCEU);

(D) be 3 years of age or older;

(E) be determined by the OHCA LOCEU to meet the ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122;

(F) reside in:

(i) the home of a family member or friend;

(ii) his or her own home;

(iii) a DHS Child Welfare Services (CWS) foster home; or

(iv) a CWS group home; and

(vii) have critical support needs that can be met through a combination of non-paid, non-Waiver, and SoonerCare resources available to the individual and HCBS Waiver resources within the annual per capita Waiver limit agreed on between the State of Oklahoma and the Centers for Medicare and Medicaid Services (CMS).

(3) **Community Waiver.** To be eligible for services funded through the Community Waiver, the applicant must:

(A) meet all criteria listed in (c) of this Section;

(B) be determined by the SSA to have a disability and a diagnosis of intellectual disability; or

(C) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition by DDS and be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(D) be determined to have a disability and a diagnosis of intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or the OHCA LOCEU; and

(E) be 3 years of age or older; and

(F) be determined by the OHCA LOCEU, to meet ICF/IID Institutional Level of Care requirements per OAC 317:30-5-

122; and

(G) have critical support needs that can be met by the Community Waiver and cannot be met by IHSW services or other service alternatives, as determined by the DDS director or designee.

(4) **Homeward Bound Waiver.** To be eligible for services funded through the Homeward Bound Waiver, the applicant must:

(A) be certified by the United States District Court for the Northern District of Oklahoma as a member of the plaintiff class in *Homeward Bound et al. v. The Hissom Memorial Center*, Case No. 85-C-437-E;

(B) meet all criteria for HCBS Waiver services listed in (c) of this Section; and

(C) be determined by SSA to have a disability and a diagnosis of intellectual disability; or

(D) have an intellectual disability as defined in the Diagnostic and Statistical Manual of Mental Disorders or a related condition per OAC 317:35-9-45 as determined by DDS, and to be covered under the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act; or

(E) have a disability as defined in the Diagnostic and Statistical Manual of Mental Disorders by the OHCA/LOCEU; and

(F) meet ICF/IID Institutional Level of Care requirements per OAC 317:30-5-122 as determined by the OHCA LOCEU.

~~(2)~~(5) **Evaluations and information.** ~~The person~~Applicants desiring services through any of the Waivers listed in (a) of this Section participates in diagnostic evaluations and provides information necessary to determine HCBS Waiver services eligibility, including:

(A) a psychological evaluation, by a licensed psychologist that includes:

(i) a full-scale, functional and/or adaptive assessment; and

(ii) a statement of age of onset of the disability; and

(iii) intelligence testing that yields a full-scale, intelligence quotient.

(I) Intelligence testing results obtained at 16 years of age ~~or~~and older are considered valid of the current status, provided they are compatible with current behavior. Intelligence testing results obtained between 7 to 16 years of age are considered current for four years when the ~~full scale~~full-scale intelligence quotient is less than 40, and for two years when the intelligence quotient is 40 or above.

(II) DDS may require a current psychological evaluation when a significant change of condition, disability, or psychological status is noted;

(B) a social service summary, current within 12 months of the requested approval date~~,~~ that includes a developmental history; and

(C) a medical evaluation, current within 90-calendar days of the requested approval date; and

(D) a completed Form LTC-300, ICF/IID Level of Care Assessment ~~form (LTC-300)~~; and

(E) proof of disability ~~according to~~per SSA guidelines. When a disability determination is not made by SSA, ~~OHCA/LOCEU~~OHCA LOCEU may make a disability determination using ~~the same guidelines as SSA.~~SSA guidelines.

~~(3)~~(6) **Eligibility determination.** OHCA reviews the diagnostic reports listed in (2) of this subsection and makes ~~a~~an eligibility determination ~~of eligibility~~ for DDS HCBS Waivers.

~~(4)~~(7) **State's alternative disposition plan.** For individuals who are determined to have an intellectual disability or a related condition by DDS per the State's alternative disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, DDS reviews the diagnostic reports listed in (2) of this subsection and, on behalf of OHCA, makes a determination of eligibility for DDS HCBS Waiver services and ICF/IID level of care.

~~(5)~~(8) **Member's choice.** A determination of need for ICF/IID Institutional Level of Care does not limit the opportunities of the person receiving services to participate in community services. Individuals are assured of the opportunity to exercise informed choice in the selection of services.

(d) **Request list.** When state DDS resources are unavailable~~ for new persons to be added~~to add individuals to services funded through an HCBS Waiver, persons are placed on a statewide Request for Waiver Services List.

(1) The Request for Waiver Services List is maintained in chronological order, based on the date of receipt of a written request for services on Form 06MP001E, Request for Developmental Disabilities Services. The applicant must submit the required documentation per Form 06MP001E, Request for Developmental Disabilities Services for initial consideration of potential eligibility. Active United States Armed Forces personnel, who have a pending HCBS Waiver application in another state for an immediate family member, may be placed on the list~~ in accordance~~ with the date they applied in the other state. The person's name is added to the list when ~~they provide~~he or she provides proof of application

date from the other state.

(2) The Request for Waiver Services List for persons requesting services provided through an HCBS Waiver is administered by DDS uniformly throughout the state.

(3) An individual applicant is removed from the Request for Waiver Services List when ~~the individual:~~he or she:

(A) is found to be ineligible for services;

(B) cannot be located by DHS;

(C) ~~fails to respond or~~ does not provide ~~requested~~DHS-requested information ~~to DHS;~~or fails to respond;

(D) is not ~~a~~an Oklahoma resident ~~of the state of Oklahoma~~ at the ~~time of~~ requested Waiver approval date; or

(E) declines an offer of Waiver services.

(4) An individual applicant removed from the Request for Waiver Services List, due to the inability to locate the individual by DHS, may ~~later~~ submit ~~to DDS~~ a written request ~~to be returned to the Request for Waiver Services List.~~to be reinstated to the list. The ~~individual~~applicant is returned ~~at~~to the same chronological place on the Request for Waiver Services List ~~that the individual had~~ prior to removal, provided ~~the individual~~he or she was on the list prior to January 1, 2015.

(e) **Applications.** When resources are sufficient for initiation of HCBS Waiver services, DDS ensures action regarding a request for services occurs within 45-calendar days. When action is not taken within the required 45-calendar days, the applicant may seek resolution per OAC ~~340:2-5.~~340:2-5-61.

(1) Applicants are allowed 60-calendar days to provide information requested by DDS to determine eligibility for services.

(2) When requested information is not provided within 60-calendar days, the applicant is notified that the request was denied, and ~~the individual~~he or she is removed from the Request for Waiver Services List.

(f) **Admission protocol.** Initiation of services funded through an HCBS Waiver occurs in chronological order from the Request for Waiver Services List per (d) of this Section based on the date of DDS receipt of a completed request for services, as a result of the informed choice of the person requesting services or the individual acting on the member's behalf, and upon determination of eligibility, per (c) of this Section. Exceptions to the chronological requirement may be made, when:

(1) an emergency situation exists in which the health or safety of the person needing services~~,~~ or of others~~,~~ is endangered~~,~~ and there is no other resolution to the emergency. An emergency exists, when:

(A) the person is unable to care for himself or herself

and:

(i) the person's caretaker, per 43A O.S. § 10-103:

~~(I) is hospitalized;~~

~~(II) has moved into a nursing facility;~~

~~(III) is permanently incapacitated; or~~

~~(IV) has died; and~~

(I) is hospitalized;

(II) moved into a nursing facility;

(III) is permanently incapacitated; or

(IV) died; and

(ii) there is no caretaker to provide needed care to the individual; or

(iii) an eligible person is living at a homeless shelter or on the street;

(B) DHS finds the person needs protective services due to ~~experiencing~~ ongoing physical, sexual, or emotional abuse or neglect in his or her present living situation, resulting in serious jeopardy to the person's health or safety;

(C) the behavior or condition of the person needing services is such that others in the home are at risk of being seriously harmed by the person. For example, the person is routinely physically assaultive to the caretaker or others living in the home and sufficient supervision cannot be provided to ensure the safety of those in the home or community; or

(D) the person's medical, psychiatric, or behavioral challenges are such that the person is seriously injuring or harming himself or herself, or is in imminent danger of doing so;

(2) the Legislature appropriated special funds with which to serve a specific group or a specific class of individuals ~~under the provisions of an~~per HCBS Waiver~~;~~ provisions;

(3) Waiver services ~~are~~may be required for people who transition to the community from a public ICF/IID or ~~who are~~ children in ~~the State's~~DHS custody receiving services from DHS. Under some circumstances Waiver services related to accessibility may be authorized in advance of transition, but may not be billed until the day the member leaves the ICF/IID and enters the Waiver;

(4) individuals subject to the provisions of Public Law 100-203 residing in nursing facilities for at least 30-continuous months prior to January 1, 1989, and are determined by Preadmission Screening and Resident Review (PASRR) evaluation conducted per Title 42 Section 483.100 of the Federal Code of Regulations to have an intellectual disability or a related condition, who are covered under the State's alternative

disposition plan adopted under Section 1919(e)(7)(E) of the Social Security Act, and choose to receive services funded through the Community or Homeward Bound Waiver.

(g) **Movement between DDS HCBS Waiver programs.** A person's movement from services funded through one DDS-administered HCBS Waiver~~,~~ to services funded through another DDS-administered HCBS Waiver is explained in this subsection.

(1) When a member receiving services funded through the IHSW for children becomes 18 years of age, services through the IHSW for adults ~~become~~becomes effective.

(2) Change to services funded through the Community Waiver from services funded through the IHSW occurs only when:

(A) a member has critical health and safety support needs that cannot be met by IHSW services, non-Waiver services, or other resources as determined by the DDS director or designee; and

(B) funding is available per OAC 317:35-9-5.

(3) Change to services funded through the IHSW from services funded through the Community Waiver may only occur when a member's history of annual service utilization was within the IHSW per capita allowance.

(4) When a member served through the Community Waiver has support needs that can be met within the per capita Waiver allowance of the applicable IHSW and through a combination of non-Waiver resources, the individual may choose to receive services through the IHSW.

(h) **Continued eligibility for HCBS Waiver services.** Eligibility for members receiving services provided through the HCBS Waiver is re-determined by the ~~OHCA/LOCEU~~OHCA LOCEU when a determination of disability was not made by the Social Security Administration. The ~~OHCA/LOCEU~~OHCA LOCEU determines categorical relationship to the SoonerCare disabled category according to Social Security Administration guidelines. ~~OHCA/LOCEU~~OHCA LOCEU also approves the level of care per OAC 317:30-5-122 and confirms a diagnosis of intellectual disability per the Diagnostic and Statistical Manual of Mental Disorders. ~~DDS may require a new psychological evaluation and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status is noted.~~

(1) DDS may require a new psychological evaluation and re-determination of eligibility at any time when a significant change of condition, disability, or psychological status is noted.

(2) Annual review of eligibility requires a medical evaluation that is current within one year of the requested approval date. The medical evaluation must be submitted by the member or the individual acting on his or her behalf 30-

calendar days prior to the Plan of Care expiration.

(i) **HCBS Waiver services case closure.** Services provided through an HCBS Waiver are terminated, when:

(1) a member or the individual ~~action~~acting on the member's behalf chooses to no longer receive Waiver services;

(2) a member is incarcerated;

(3) a member is financially ineligible to receive Waiver services;

(4) a member is determined by ~~the Social Security Administration~~SSA to no longer have a disability qualifying the individual for services under these Waivers;

(5) a member is determined by the ~~OHCA/LOCEU~~OHCA LOCEU to no longer be eligible;

(6) a member moves out of state~~,~~ or the custodial parent or guardian of a member who is a minor moves out of state;

(7) a member is admitted to a nursing facility, ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for more than ~~30 consecutive~~30-consecutive calendar days;

(8) the guardian of a member who is a minor or adjudicated adult fails to cooperate during the annual review process per OAC 340:100-5-50 through 340:100-5-58;

(9) the guardian of a member who is a minor or adjudicated adult fails to cooperate in the implementation of DHS policy or service delivery in a manner that places the health or welfare of the member at risk, after efforts to remedy the situation through Adult Protective Services or Child Protective Services were not effective;

(10) the member is determined to no longer be SoonerCare eligible;

(11) there is sufficient evidence the member or the individual acting on the member's behalf engaged in fraud or misrepresentation, failed to use resources as agreed on in the Individual Plan, or knowingly misused public funds associated with these services;

(12) the member or the individual acting on the member's behalf either cannot be located, did not respond ~~to~~, or did not allow case management to complete plan development or monitoring activities as required ~~by policy~~per OAC 340:100-3-27 and the member or the individual acting on the member's behalf:

(A) does not respond to the notice of intent to terminate; or

(B) the response prohibits the case manager from being able to complete plan development or monitoring activities as required ~~by policy;~~per OAC 340:100-3-27;

(13) the member or the individual acting on the member's

behalf fails to cooperate with the case manager to implement a Fair Hearing decision;

(14) it is determined services provided through an HCBS Waiver are no longer necessary to meet the member's needs and professional documentation provides assurance the member's health, safety, and welfare can be maintained without Waiver supports;

(15) the member or the individual acting on the member's behalf fails to cooperate with service delivery;

(16) a family member, the individual acting on the member's behalf, other individual in the member's household, or persons who routinely visit, pose a threat of harm or injury to provider staff or official DHS representatives; or

(17) a member no longer receives a minimum of one Waiver service per month and DDS is unable to monitor the member on a monthly basis.

(j) **Reinstatement of services.** Waiver services are reinstated when:

(1) the situation resulting in case closure of a Hissom class member is resolved;

(2) a member is incarcerated for 90-calendar days or less;

(3) a member is admitted to a nursing facility, ICF/IID, residential care facility, hospital, rehabilitation facility, or mental health facility for 90-calendar days or less; or

(4) a member's SoonerCare eligibility is re-established within 90-calendar days of the SoonerCare ineligibility date.

SUBCHAPTER 5. MEMBER SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-103. Transportation

(a) **Applicability.** The rules in this Section apply to transportation services provided through the Oklahoma Department of Human Services ~~DHS,~~ (DHS), Developmental Disabilities Services ~~DDS~~(DDS); Home and Community Based Services (HCBS) Waivers.

(b) **General Information.** Transportation services include adapted, non-adapted, and public transportation.

(1) Transportation services are provided to promote inclusion in the community, access to programs and services, and participation in activities to enhance community living skills. Members are encouraged to utilize natural supports or community agencies that can provide transportation without charge before accessing transportation services.

(2) Services include, but are not limited to, transportation to and from medical appointments, work or employment services, recreational activities, and other community

activities within the number of miles authorized in the Plan of Care.

(A) Adapted or non-adapted transportation may be provided for each eligible person.

(B) Public transportation may be provided up to a maximum of $5,000 per Plan of Care year. The DDS director or designee may approve requests for public transportation services totaling more than $5,000 per year when public transportation is the most cost-effective option. For the purposes of this Section, public transportation is defined as:

(i) services, such as an ambulance when medically necessary, a bus, or a taxi; or

(ii) a transportation program operated by the member's employment services or day services provider.

(3) Transportation services must be included in the member's Individual Plan (Plan) and arrangements for this service must be made through the member's case manager.

(4) Authorization of Transportation Services is based on:

(A) Personal Support Team (Team) consideration, per ~~OAC~~Oklahoma Administrative Code (OAC) 340:100-5-52, of the unique needs of the person and the most cost effective type of transportation services that meets the member's need, per (d) of this Section; and

(B) the scope of transportation services as explained in this Section.

(c) **Standards for transportation providers.** All drivers employed by contracted transportation providers must have a valid and current Oklahoma driver license, and the vehicle(s) must meet applicable local and state requirements for vehicle licensure, inspection, insurance, and capacity.

(1) The provider must ensure that any vehicle used to transport members:

(A) meets the member's needs;

(B) is maintained in a safe condition;

(C) has a current vehicle tag; and

(D) is operated in accordance with local, state, and federal law, regulation, and ordinance.

(2) The provider maintains liability insurance in an amount sufficient to pay for injuries or loss to persons or property occasioned by negligence or malfeasance by the agency, its agents, or employees.

(3) The provider ensures all members wear safety belts during transport.

(4) Regular vehicle maintenance and repairs ~~of vehicles~~ are the responsibility of the transportation provider. Providers of adapted transportation services are also responsible for

maintenance and repairs of modifications made to vehicles Providers of non-adapted transportation with a vehicle modification funded through HCBS assistive technology services may have repairs authorized per OAC 317:40-5-100.

(5) Providers must maintain documentation, fully disclosing the extent of services furnished that specifies the:

(A) service date;

(B) location and odometer mileage reading at the starting point and destination; or trip mileage calculation from Global Positioning System(GPS) software;

(C) name of the member transported; and

(D) purpose of the trip.

(6) A family member, including a family member living in the same household~~,~~ of an adult member may establish a contract to provide transportation services to:

(A) work or employment services;

(B) medical appointments; and

(C) other activities identified in the Plan as necessary to meet the needs of the member, per OAC 340:100-3-33.1.

(7) Individual transportation providers must provide~~ to the DDS area office~~ verification of vehicle licensure, insurance and capacity to the DDS area office before a contract may be established~~,~~ and updated verification of each upon expiration. Failure to provide updated verification of a current and valid Oklahoma driver license and/or vehicle licensure may result in cancellation of the contract.

(d) **Services not covered.** Services that cannot be claimed as transportation services include:

(1) services not approved by the Team;

(2) services not authorized by the Plan of Care;

(3) trips that have no specified purpose or destination;

(4) trips for family, provider, or staff convenience;

(5) transportation provided by the member;

(6) transportation provided by the member's spouse;

(7) transportation provided by the biological, step or adoptive parents of the member or legal guardian, when the member is a minor;

(8) trips when the member is not in the vehicle;

(9) transportation claimed for more than one member per vehicle at the same time or for the same miles, except public transportation;

(10) transportation outside Oklahoma unless:

(A) the transportation is provided to access the nearest available medical or therapeutic service; or

(B) advance written approval is given by the DDS area manager or designee;

(11) services that are mandated to be provided by the public

schools pursuant to the Individuals with Disabilities Education Act;

(12) transportation that occurs during the performance of the member's paid employment, even ~~if~~when the employer is a contract provider; or

(13) transportation when a closer appropriate location was not selected.

(e) **Assessment and Team process.** At least annually, the Team addresses the member's transportation needs. The Team determines the most appropriate means of transportation based on the:

(1) present needs of the member. When addressing the possible need for adapted transportation, the Team only considers the ~~needs of the member only.~~member's needs. The needs of other individuals living in the same household are considered separately;

(2) member's ability to access public transportation services; and

(3)~~ the~~ availability of other transportation resources including natural supports, and community agencies.

(f) **Adapted ~~Transportation.~~transportation.** Adapted transportation may be transportation provided in modified vehicles with wheelchair or ~~stretcher safe~~stretcher-safe travel systems or lifts that meet the member's medical needs~~ of the member~~ that cannot be met with the use of a standard passenger vehicle, including a van when the modification to the vehicle was not funded through HCBS assistive technology service and is owned or leased by the DDS HCBS provider agency.

(1) Adapted transportation is not authorized when a provider agency leases an adapted vehicle from a member or a member's family.

(2) Exceptions to receive adapted transportation services for modified vehicles other than those with wheelchair/stretcher safe travel systems and lifts may be authorized by the DDS programs manager for transportation services when documentation supports the need, and there is evidence the modification costs exceeded $10,000. All other applicable requirements of OAC 317:40-5-103 must be met.

(3) Adapted transportation services do not include vehicles with modifications including, but not limited to:

(A) restraint systems;

(B) plexi-glass windows;

(C) barriers between the driver and the passengers;

(D) turney seats; and

(E) seat belt extenders.

(4) The Team determines if the member needs adapted transportation according to:

(A) the member's need for physical support when sitting;
(B) the member's need for physical assistance during transfers from one surface to another;
(C) the portability of the member's wheelchair;
(D) associated health problems the member may have; and
(E) less costly alternatives to meet the need.

(5) The transportation provider and the equipment vendor ensure that ~~requirements of~~ the Americans with Disabilities Act requirements are met.

(6) The transportation provider ensures all staff assisting with transportation ~~has been~~is trained according to the requirements specified by the Team and the equipment manufacturer.

(g) **Authorization of transportation services.** The limitations ~~given~~ in this subsection include the total of all transportation units on the Plan of Care, not only the units authorized for the identified residential setting.

(1) Up to 12,000 units of transportation services may be authorized in a member's Plan of Care per OAC 340:100-3-33 and OAC 340:100-3-33.1.

(2) When there is a combination of non-adapted transportation and public transportation on a Plan of Care, the total cost for transportation cannot exceed the cost for non-adapted transportation services at the current non-adapted transportation reimbursement rate multiplied by 12,000 miles for the Plan of Care year.

(3) The DDS area manager or designee may approve:
(A) up to 14,400 miles per Plan of Care year for people who have extensive needs for transportation services; and
(B) a combination of non-adapted transportation and public transportation on a Plan of Care, when the total cost for transportation does not exceed the cost for non-adapted transportation services at the current, non-adapted transportation reimbursement rate multiplied by 14,400 miles for the Plan of Care year.

(4) The DDS division director or designee may approve:
(A) transportation services in excess of 14,400 miles per Plan of Care year in extenuating situations when person-centered planning identified specific needs that require additional transportation for a limited period; or
(B) any combination of public transportation services with adapted or non-adapted~~; or~~ transportation; or
(C) public transportation services in excess of $5,000, when it is the most cost effective service option for necessary transportation.

317:40-5-112. Dental services

(a) **Applicability.** ~~OAC 317:40-5-112~~Coverage applies to members:

(1) receiving dental services through the Homeward Bound Waiver; and

(2) 21 years of age ~~or~~and older receiving dental services through the Community Waiver or In-Home Supports Waiver for adults.

(b) **Description of services.** Dental services include services per OAC 317:30-5-482. Preventative, restorative, replacement, and repair services to achieve or restore functionality are provided after appropriate review, ~~if~~when required per OAC 317:40-5-112(e).

(c) **Standard of care.** Comprehensive diagnostic and treatment services are authorized for each member eligible to receive such services from qualified personnel~~,~~ including licensed dentists and dental hygienists ~~in accordance with the~~per applicable Home and Community-Based Services (HCBS) Waiver limits. Part 79 of OAC 317:30-5 and dental guidelines published by the Oklahoma Health Care Authority (OHCA) must be followed.

(d) **Providers.** Providers of dental services must have a non-restrictive license to practice dentistry in Oklahoma or the state where treatment is rendered.

(e) **Treatment plan.** A proposed dental treatment plan must be submitted to the member and Personal Support Team (Team) for review.

(1) All arrangements for services must be made with the Developmental Disabilities Services ~~Division (DDSD)~~(DDS) case manager and be specified in the member's Individual Plan (IP).

~~(2) The DDSD area medical director or designee must pre-approve treatment plans for members in the Homeward Bound Waiver exceeding $1,000.00.~~

~~(3)~~(2) Requests for pre-authorization must propose services that are the most cost effective to restore dental health ~~in accordance with~~per OHCA published dental guidelines ~~published by the OHCA~~.

(f) **Frequency of examination.** The dentist and Team determine frequency of ~~examination~~examinations on an individual basis.

(g) **Documentation of dental services.** The dental provider summarizes dental services ~~provided~~ on the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Form 06HM005E, Referral Form for Examination or Treatment, or comparable form for members who receive residential services.

(h) **Prevention.** The member's IP must address the prevention of dental disease and promotion of dental health. Independence in oral hygiene care is promoted. ~~If~~When the member is unable to maintain adequate oral hygiene as determined by the dentist and Team, direct assistance and responsibility must be assigned to

appropriate Team members in the IP.

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

317:40-7-2. Definitions

The following words and terms, when used in this Subchapter shall have the following meaning, unless the context clearly ~~indicate~~indicates otherwise.

"Commensurate ~~Wage"~~wage" means wages paid to a worker with a disability based on the worker's productivity in proportion to the wages and productivity of workers without a disability performing essentially the same work in the same geographic area. Commensurate wages must be based on the prevailing wage paid to experienced workers without disabilities doing the same job.

"Competitive integrated employment" means work in the competitive labor market performed on a full-time or part-time basis in integrated community settings. The individual is compensated at or above minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals without disabilities. Competitive employment is an individual placement.

"Employment ~~Assessment"~~assessment" means the evaluation that identifies the unique preferences, strengths, and needs of ~~the service recipient~~members in relation to work. The assessment determines work skills and work behaviors, is supplemented by personal interviews and behavioral observations, and incorporates information that addresses the ~~service recipient's~~member's desired medical, physical, psychological, social, cultural, and educational outcomes, as well as present and future employment options. The assessment~~, which~~ is updated annually or more frequently as needed, and includes support needs, environmental preferences, and possible accommodations.

"Enhanced ~~Rate"~~rate" means a differential rate established to provide an incentive to provider agencies to provide community employment services to ~~service recipients~~members with significant needs.

"Group ~~Placement"~~placement" means ~~two to eight service recipients~~two-to-eight workers with disabilities abilities situated close together, who are provided continuous, long-term training and support in an integrated job site. ~~Service recipients~~Members may be employed by the company or by the provider agency. The terms "work crew" and "enclave" also describe a group placement.

"Individual placement in community-based services" means the ~~service recipient~~member is provided supports that enable him or

her to participate in approved community-based activities~~, as described in OAC 317:40-7-5,~~per Oklahoma Administrative Code 317:40-7-5, individually and not as part of a group placement.

"Individual placement in job coaching services" means one ~~service recipient~~member receiving job ~~coach~~coaching services, who:

(A) works in an integrated job setting;

(B) receives minimum wage or more;

(C) does not receive services from a job coach who is simultaneously responsible for continuous job coaching for a group;

(D) is employed by a community employer or the provider agency; and

(E) has a job description that is specific to his or her work.

"Integrated ~~Employment Site"~~employment site" means an activity or job that provides regular interaction with people without disabilities, excluding service providers, to the same extent that a worker without disabilities in a comparable position interacts with others.

"Job ~~Coach"~~coach" means an individual who holds a ~~DDSD-approved~~DDS-approved training job coach certification and provides ongoing support services to eligible persons in supported employment placements. Services directly support the ~~service recipient's~~member's work activity including marketing and job development, job and work site assessment, training and worker assessment, job matching procedures, development of co-worker natural and paid supports, and teaching job skills.

"Job ~~Sampling"~~sampling" means a paid situational assessment whereby a ~~service recipient~~member performs a job at a prospective employer's integrated job site~~,~~ in order to determine the ~~service recipient's~~member's interests and abilities. Situational assessments adhere to the Department of Labor (DOL) regulations regarding wages. The Personal Support Team determines the appropriate type and number of situational assessments for each ~~service recipient.~~member.

~~"On-Site Supports"~~"On-site supports" means a situation in which the job coach is physically at the job site providing job training to a ~~service recipient.~~member.

"Situational assessment" means a comprehensive community-based evaluation of the ~~service recipient's~~member's functioning in relation to the supported job~~,~~ including the job site, ~~the~~ community through which the ~~service recipient~~member must travel to and from the job, and ~~the people~~those at the job site, such as the job coach, co-workers, and ~~supervisor.~~supervisors.

~~"Sub-Contract With Industry"~~"Sub-contract with industry" means the provider agency enters into a sub-contract with an

industry or business to pay industry employees to provide supports to ~~service recipients.~~members. ~~If~~When the industry agrees, the provider agency may contract directly with an industry employee(s)~~ of the industry directly~~ to provide the services. The state continues to pay the provider agency and the agency provides all pertinent information ~~that is~~ required for persons served by the agency. The Team determines what, if any, training is required for the employees of the industry providing services.

"Supported ~~Employment"~~employment" means competitive work in an integrated work setting with ongoing support services for ~~service recipients~~members for whom competitive employment has not traditionally occurred or ~~has been~~was interrupted or intermittent as a result of the member's disabilities.

"Unpaid ~~Training"~~training" means unpaid experience in integrated employment sites ~~in accordance~~per with DOL regulations. ~~Service recipients~~Members do a variety of tasks~~,~~ ~~which~~that do not equal the full job description of a regular worker.

"Volunteer ~~Job"~~job" means an unpaid activity in which a ~~service recipient~~member freely participates.

317:40-7-6. ~~Center-Based Services~~Center-based services

(a) ~~Center-Based Services~~Center-based services are ~~provided in segregated settings, where the majority of people served have a disability. Any employment service provided where a majority of the people at the site are persons with a disability is billed as Center-Based Services.~~any employment service provided where a majority of the people at the site are persons with a disability. These settings facilitate opportunities to seek employment in competitive settings and support access to the greater community.

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

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

(1) ~~paid contract work which occurs in a workshop or other center-based setting.~~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~~team-prescribed therapy programs, such as speech, physical therapy, or switch activation ~~which are~~ implemented by employment provider staff in the workshop or other center-based setting~~.~~; and

~~(3) unpaid training or paid work experience which occurs in a~~

~~setting without opportunities for regular daily interactions with co-workers without disabilities or the general public.~~

~~(4)~~(3) computer classes, ~~GED~~General Education Development preparation, job club, interviewing skills, or other classes whose participants all have disabilities, even ~~if~~when the location is in the community.

(d) Paid contract work is usually subcontracted, and the persons receiving services earn commensurate wage according to Department of Labor regulations.

~~(e) For SoonerCare reimbursement in Center-Based Services, a member's pay cannot exceed 50% of minimum wage.~~

~~(f)~~(e) Participation in Center-Based Services is limited to 15 hours per week for persons receiving services through the Homeward Bound Waiver, unless approved through the exception process explained in ~~OAC~~(OAC) 317:40-7-21.

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

~~(h)~~(g) During periods in which no paid work is available for members, despite the provider's documented good faith efforts ~~of the provider~~ to secure ~~such~~ work, the ~~employment provider~~employment-provider agency ensures ~~that~~ each member participates in training activities that are age appropriate, work related, and consistent with the ~~IP.~~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.

317:40-7-12. Enhanced rates

An ~~Enhanced Rate~~enhanced rate is available for both ~~Community-Based Group Services~~community-based group services and ~~Group Job Coaching Services~~group job-coaching services when necessary to meet a member's intensive personal needs in the employment setting(s). The need for the enhanced rate is identified through the Personal Support Team process and is supported by documentation in the Individual Plan (Plan) with consideration of risk assessment per ~~OAC~~Oklahoma Administrative Code(OAC) 340:100-5-56 and assessment of medical, nutritional, ~~and~~ mobility needs, ~~and:~~and the:

(1) Team assessment of the member's needs per OAC 340:100-5-51, OAC 340:100-5-56, OAC 340:100-5-57, and OAC 340:100-5-26; ~~of the member's needs.~~

(2) ~~the~~ member must:

(A) have a protective intervention ~~plan~~protocol (PIP)

that:

(i) contains a restrictive or intrusive procedure ~~as defined in~~per OAC 340:100-1-2 implemented in the employment setting; and

(ii) ~~has been~~is approved by the State Behavior Review Committee ~~(SBRC)~~(SHRBRC) ~~in accordance with~~per OAC 340:100-3-14 or by the Developmental Disabilities Services ~~Division (DDSD)~~(DDS) staff per OAC 340:100-5-57; ~~and~~

~~(iii) has been reviewed by the Human Rights Committee (HRC) per OAC 340:100-3-6;~~

(B) have procedures included in the~~ Individual~~ Plan ~~which~~that address dangerous behavior that places the member or others at risk of serious physical harm but are neither restrictive or intrusive procedures ~~as defined in~~per OAC 340:100-1-2. The Team submits documentation of this risk and the procedures to the positive support field specialist to ~~assure that~~ensure positive approaches are being used to manage dangerous behavior;

(C) have a visual impairment that requires assistance for mobility or safety;

(D) have nutritional needs requiring tube feeding or other dependency for food intake ~~which~~that must occur in the employment setting~~.~~;

(E) have mobility needs, such that he or she requires two or more people for lifts, transfers, and personal care. Use of a mechanical lift or other assistive technology ~~has been~~is evaluated for the current employment program and determined not feasible by the ~~DDSD~~DDS division director or designee; or

(F) reside in alternative group home ~~as described in~~per OAC 317:40-5-152~~.~~; and

(3)~~ The~~ enhanced rate can be claimed only ~~if~~when the person providing services fulfills all applicable training criteria specified in OAC 340:100-3-38. There are no exceptions for the enhanced rate other than as allowed in this Section.

~~(4) There are no exceptions for the enhanced rate other than as allowed in this Section.~~

317:40-7-13. Supplemental ~~Supports for Center-Based Services~~supports for center-based services

(a) ~~In those instances when~~When a member receiving ~~Center-Based Services~~center-based services needs additional supports, the provider assigns staff in patterns that most effectively meet the needs of each member as indicated by a personal care and/or a risk assessment and defined in the Individual Plan (IP) or Protective Intervention ~~Plan.~~Protocol (PIP).

(b) ~~If~~When re-arranging staff patterns is not sufficient to meet the member's needs, the provider may file a request and plan for Supplemental Supports utilizing Vocational Habilitation Training Specialist Services. Supplemental ~~Supports can be~~supports are claimed only ~~if~~when provided by a staff member who ~~has~~ completed all specialized training and individual-specific training prescribed by the Team ~~in accordance with OAC~~per Oklahoma Administrative Code(OAC) 340:100-3-38.

(c) Supplemental ~~Supports for Center-Based Services~~supports for center-based services include two types of services, behavioral continuous support, and personal care intermittent support.

(1) **Continuous ~~Supplemental Supports.~~supplemental supports.** Continuous ~~Supplemental Supports~~supplmental supports cannot exceed 15 hours per week for persons receiving services through the Homeward Bound ~~waiver~~Waiver unless specifically approved through the exception process ~~described in~~per OAC 317:40-7-21.

(A) To be eligible for continuous supplemental supports, the member must have:

(i) a ~~protective intervention plan~~behavioral PIP that:

(I) contains a restrictive or intrusive procedure ~~as defined in~~per OAC 340:100-1-2 implemented in the employment setting;

~~(II) has been submitted to the Human Rights Committee (HRC) per OAC 340:100-3-6; and~~

~~(III)~~(II) ~~has been~~is approved by the State Human Rights and Behavior Review Committee ~~(SBRC)~~(SHRBRC) per OAC 340:100-3-14 or by the Developmental Disabilities Services ~~Division (DDSD)~~(DDS) staff per OAC 340:100-5-57; or

(ii) procedures included in the ~~protective intervention plan which~~PIP that address dangerous behavior that places the member or others at risk of serious physical harm. The Team submits documentation of this risk and the procedures to the ~~DDSD~~DDS positive support field specialist to ~~assure that~~ensure positive approaches are being used to manage dangerous behavior.

(B) The Team documents discussion of the need for continuous ~~Supplemental Supports.~~supplemental supports.

(2) **Intermittent Supplemental Supports.** To receive personal care intermittent support, a member must have a personal care need that requires staffing of at least one-to-one during ~~that~~the time frame when the support is needed.

(A) ~~If~~When a member needs intermittent personal care support during ~~Center-Based Services,~~center-based services, the Team documents discussion ~~of:~~of the:

(i) ~~the~~ specific support need(s) of the member, such as

staff-assisted repositioning, lifting, transferring, individualized bathroom assistance, or nutritional support; and

(ii) ~~the~~ calculations that combine the time increments of support to determine the total number of units needed on the Plan of Care.

(B) The case manager sends the documentation to the case management supervisor for approval.

(C) The case management supervisor signs and forwards a copy of the approval, denial, or recommended modifications to the case manager within two ~~working~~business days of receipt~~.~~ of the documentation.

(D) A member may receive ~~Center-Based Services~~center-based services and ~~Intermittent Supplemental Supports~~intermitent supplemental supports at the same time.

(d) Supplemental ~~Support for Center-Based Services~~support for center-based services described in this Section cannot be accessed in ~~Community-Based Services.~~community-based services.

(e) Sufficient staff must be available in the center-based facility to provide the supplemental support in order for a provider to claim the units.

SUBCHAPTER 9. SELF-DIRECTED SERVICES

317:40-9-1. ~~Self-Directed Services~~Self-directed services (SDS)

(a) **Applicability.** ~~The rules in this section apply~~This Section applies to ~~self-directed services~~SDS provided through ~~Home and Community Based Service~~Home and Community-based Services (HCBS) Waivers operated by the Oklahoma Department of Human Services ~~(OKDHS)~~(DHS) Developmental Disabilities Services ~~Division (DDSD).~~(DDS).

(b) **Member ~~Option.~~option.** Traditional service delivery methods are available for eligible members who do not elect to self-direct ~~their~~ services.

(c) **General ~~Information.~~information.** ~~Self-Direction is~~SDS are an option for members receiving ~~Home and Community Based Services (HCBS)~~HCBS through the In-Home Supports Waiver for Adults (IHSW-A)~~,~~ ~~or the~~ In-Home Supports Waiver for Children (IHSW-C)~~.~~ when the adult member lives in a non-residential setting. ~~Self-Direction~~SDS provides a member the opportunity ~~for a member~~ to exercise choice and control in identifying, accessing, and managing specific ~~waiver~~Waiver services and supports in accordance with ~~their~~his or her needs needs and personal preferences. ~~Self-Directed Services (SDS)~~SDS are Waiver services ~~that the Oklahoma Department of Human Services (OKDHS)~~DHS ~~Developmental Disabilities Services Division (DDSD)~~DDS specifies may be directed by the member or

representative using ~~both~~ employer and budget authority.

(1) ~~Services~~SDS may be directed by:

(A) an adult member, ~~if~~when the member has the ability to self-direct; ~~or~~

(B) a member's legal representative ~~of the member,~~ including a parent, spouse or legal guardian; or

(C) a non-legal representative freely chosen by the member or ~~their~~his or her legal representative.

(2) The person directing services must:

(A) be 18 years of age or older;

(B) comply with ~~OKDHS/DDSD~~DDS and Oklahoma Health Care Authority (OHCA) rules and regulations;

(C) complete required ~~OKDHS/DDSD~~DDS training for self-direction;

(D) sign an agreement with ~~OKDHS/DDSD;~~DDS;

(E) be approved by the member or ~~their~~his or her legal representative to act in the capacity of a representative; ~~and~~

(F) demonstrate knowledge and understanding of the member's needs and preferences~~.~~; and

(G) not serve as the SDS-HTS for the member her or she is directing services

(d) ~~**SDS program includes:**~~**The SDS program includes:**

(1) The SDS ~~Budget.~~budget. A plan of care is developed to meet the member's needs without SDS consideration ~~of SDS~~. The member may elect to self-direct part or ~~all of~~ the entire amount identified for traditional Habilitation Training Specialist (HTS) services. This amount is under the control and discretion of the member in accordance with this policy and the approved ~~IHSW,~~plan of care, and is the allocated amount ~~which~~that may be used to develop the SDS budget. The SDS budget details the specific plan for spending.

(A) ~~A~~The SDS budget is developed annually at the time of the annual plan development and updated as necessary by the member, case manager, parent, legal guardian, and others the member invites to participate in the development of the budget.

(B) Payment may only be authorized for goods and services not covered by SoonerCare or other generic funding sources~~,~~ and ~~meets the~~meet criteria of service necessity per OAC 340:100-3-33.1.

(C) The member's SDS budget includes the actual cost of administrative activities including fees for services performed by a ~~Financial Management Services~~financial management services (FMS) subagent, background checks, ~~workers~~workers' compensation insurance, and the amount identified for SD-HTS and SD-GS.

(D) The SDS budget is added to the plan of care to replace any portion of traditional HTS services to be self-directed.

(2) The SD-Habilitation Training Specialist (SD-HTS) supports the member's self-care, daily living and leisure skills needed to reside successfully in the community. Services are provided in community-based settings in a manner that contributes to the member's independence, self-sufficiency, community inclusion, and well-being. SD-HTS services must be included in the approved SDS budget. Payment ~~will~~is not ~~be~~ made for routine care and supervision that is normally provided by a family member or the member's spouse. SD-HTS services are provided only during periods when staff is engaged in purposeful activity that directly or indirectly benefits the member. At no time are SD-HTS services authorized for periods during which the staff are allowed to sleep. Legally responsible persons may not provide services per OAC 340:100-3-33.2. Other family members providing services must be employed by provider agencies per OAC 340:100-3-33.2. For the purpose of this policy, family members include parents and siblings including ~~step and half~~step- and half-siblings and anyone living in the same home as the member. Payment does not include room and board, maintenance, or upkeep or improvements to the member's or family's residence. A SD-HTS must:

(A) be 18 years of age;

(B) pass a background check per OAC 340:100-3-39;

(C) demonstrate competency to perform required tasks;

(D) complete required training per OAC ~~340:100-3-38.5;~~340:100-3-38 et seq.;

(E) sign an agreement with ~~OKDHS/DDSD~~DDS and the member;

(F) be physically able and mentally alert to carry out the duties of the job;

(G) not work more than 40 hours in any week in the capacity of a SD-HTS; ~~and~~

(H) not implement restrictive or intrusive procedures per OAC 340:100-5-57~~.~~;

(I) provide services to only one member at any given time. This does not preclude services from being provided in a group setting where services are shared among members of the group; and

(J) not perform any job duties associated with other employment including on-call duties at the same time they are providing SD-HTS services.

(3) ~~Self-Directed Goods and Services~~Self-directed goods and services (SD-GS). SD-GS are incidental, non-routine goods and services that promote the member's self-care, daily living,

adaptive functioning, general household activity, meal preparation and leisure skills needed to reside successfully in the community and do not duplicate other services authorized in the member's plan of care. These goods and services must be included in the individual plan and approved SDS budget. SD-GS must meet the ~~following~~ requirements~~:~~ listed in (A) through (F).

(A) The item or service is justified by a recommendation from a licensed professional.

(B) The item or service is not prohibited by Federal ~~and~~or State statutes and regulations.

(C) One or more of the following additional criteria are met~~:~~. The item or service would:

(i) ~~the item or service would~~ increase the member's functioning related to the disability;

(ii) ~~the item or service would~~ increase the member's safety in the home environment; or

(iii) ~~the item or service would~~ decrease dependence on other SoonerCare funded services.

(D) SD-GS may include, but are not limited to:

(i) fitness items that can be purchased at ~~most~~ retail stores;

(ii) personal emergency monitoring systems;

(iii) a food catcher;

(iv) a specialized swing set;

(v) toothettes or an electric toothbrush;

(vi) a seat lift;

(vii) weight loss ~~program;~~programs; or

(viii) gym memberships when:

(I) there is an identified need for weight loss or increased physical activity;

(II) justified by outcomes related to weight loss, increased physical activity or stamina; and

(III) in subsequent plan of care year requests, documentation is provided that supports the member's progress toward weight loss or increased physical activity or stamina.

(E) SD-GS may not be used for:

(i) co-payments for medical services;

(ii) over-the-counter medications;

(iii) items or treatments ~~that have~~ not ~~been~~ approved by the Food and Drug Administration;

(iv) homeopathic services;

(v) services available through any other funding source, such as SoonerCare, Medicare, private insurance, public school system, ~~Rehabilitation Services~~rehabilitation services, or natural supports;

(vi) room and board~~,~~ including deposits, rent, and mortgage payments;
(vii) personal items and services not directly related to the member's disability;
(viii) vacation expenses;
(ix) insurance;
(x) vehicle maintenance or ~~any~~ other transportation related expense;
(xi) costs related to internet access;
(xii) clothing;
(xiii) tickets and related costs to attend recreational events;
(xiv) services, goods, or supports provided to, or benefiting persons other than the member; ~~or~~
(xv) experimental goods or services~~.~~;
(xvi) personal trainers;
(xvii) spa treatments; or
(xviii) goods or services with costs that significantly exceed community norms for the same or similar ~~good~~goods or ~~service.~~services.

(F) SD-GS are reviewed and approved by ~~DDSD division~~the DDS director or designee.

(e) **Member Responsibilities**. When the member chooses the SDS option, the member or member's representative is the employer of record and must:

(1) enroll and complete the ~~OKDHS/DDSD sanctioned~~DDS-sanctioned training course in self-direction. The training must be completed prior to the implementation of self-direction and ~~will cover the following areas:~~covers:

(A) staff recruitment;
(B) hiring of staff as an employer of record;
(C) ~~orientation and instruction of staff in duties consistent with approved specifications;~~staff orientation and instruction;
(D) supervision of staff including scheduling and service provisions;
(E) ~~evaluation of staff;~~staff evaluation;
(F) ~~discharge of staff;~~staff discharge;
(G) philosophy of self-direction;
(H) OHCA policy on self-direction;
(I) individual budgeting;
(J) development of a self-directed support plan;
(K) cultural diversity; and
(L) rights, risks, and responsibilities~~.~~;

(2) sign an agreement with ~~OKDHS/DDSD;~~DDS;

(3) agree to utilize the services of a FMS subagent;

(4) agree to pay administrative costs for background checks, FMS subagent fee, and ~~worker's~~workers' compensation insurance from ~~their~~his or her SDS budget;
(5) comply with federal and state employment laws and ensure no employee works more than 40 hours per week in the capacity of an SD-HTS;
(6) ensure that each employee is qualified to provide the services for which ~~he/she~~he or she is employed and that all billed services are actually provided;
(7) ensure that each employee complies with all ~~OKDHS/DDSD~~DDS training requirements ~~for In-Home Support Waivers~~ per OAC ~~340:100-3-38.5;~~340:100-3-38 et seq.;
(8) recruit, hire, supervise, and discharge ~~when necessary~~ all employees providing self-directed services~~;~~, when necessary;
(9) verify employee qualifications;
(10) obtain ~~a~~ background ~~screening~~screenings on all employees providing SD-HTS services per OAC 340:100-3-39;
(11) send progress reports per OAC 340:100-5-52.
(12) participate in the Individual Plan and SDS budget process;
(13) immediately notify the case manager of any changes in circumstances or emergencies~~, which~~ that may require modification of the type or amount of services provided for in the member's Individual Plan or SDS budget;
(14) wait for approval of budget modifications before implementing changes;
(15) comply with ~~OKDHS/DDSD~~DDS and OHCA administrative rules;
(16) cooperate with ~~OKDHS/DDSD~~DDS monitoring requirements per OAC 340:100-3-27;
(17) cooperate with~~ all requirements of the~~ FMS subagent requirements to ensure accurate records and prompt payroll processing including:
   (A) reviewing and signing employee time cards;
   (B) verifying the accuracy of hours worked; and
   (C) ensuring the appropriate expenditure of funds~~.~~;
(18) complete all required documents within established timeframes;
(19) pay for services incurred in excess of the budget amount;
(20) pay for services not identified and approved in the member's SDS budget;
(21) pay for services provided by an unqualified provider;
(22) determine staff duties, qualifications, and specify service delivery practices consistent with SD-HTS ~~waiver~~Waiver service specifications;
(23) orient and instruct staff in duties;

(24) evaluate staff performance;
(25) identify and train back-up staff, when required;
(26) determine amount paid for services within Plan limits;
(27) schedule staff and the provision of services;
(28) ensure SD-HTS do not implement restrictive or intrusive procedures per OAC 340:100-5-57; and
(29) sign an agreement with ~~OKDHS/DDSD~~DDS and the SD-HTS.

(f) **Financial ~~Management Services~~management services (FMS) subagent responsibilities**. The FMS subagent is an entity designated as an agent by ~~OKDHS/DDSD~~DDS to act on behalf of members who have employer and budget authority for the purpose of managing payroll tasks for the member's employee(s) and for making payment of SD-GS as authorized in the member's Plan. FMS subagent duties include, but are not limited to:
(1) compliance with all ~~OKDHS/DDSD~~DDS and OHCA administrative rules and contract requirements;
(2) compliance with random and targeted audits conducted by ~~OKDHS/DDSD~~DDS or the OHCA;
(3) provision of financial management support to the member by tracking individual expenditures and monitoring SDS budgets;
(4) processing the member's employee payroll, withholding, filing and paying of applicable federal, state and local employment-related taxes and insurance;
(5) collection and process of employee's time sheets and making payment to member's employees;
(6) processing and payment of invoices for SD-GS as authorized in the member's SDS budget;
(7) providing each member with information that ~~will assist with managing the~~assists with the SDS budget~~;~~management;
(8) providing reports to members/representatives, as well as ~~OKDHS/DDSD~~ monthly to DDS and to OHCA upon request;
(9) providing ~~OKDHS/DDSD~~DDS and OHCA authorities access to individual member's accounts through a web-based program;
(10) assisting members in verifying employee citizenship status;
(11) maintaining separate accounts for each member's SDS budget;
(12) tracking and reporting member funds, balances, and disbursements; ~~and the balance of member funds;~~
(13) receiving and disbursing funds for ~~the~~SDS payment ~~of SDS under an~~per OHCA agreement ~~with the OHCA~~; and
(14) executing and maintaining a contractual agreement between ~~OKDHS/DDSD~~DDS and the SD-HTS (employee).

(g) **~~OKDHS/DDSD Case Management~~DDS case management responsibilities in support of SDS**.

(1) The case manager develops the member's Plan per OAC 340:100-5-50 through ~~58;~~340:100-5-58;
(2) The ~~DDSD~~DDS case manager meets with the member, ~~and/or the~~ member's representative, or legal guardian to discuss the following service delivery options in the HCBS Waiver:
(A) traditional Waiver services; and
(B) self-directed services including information regarding scope of choices, options, rights, risks, and responsibilities associated with self-direction.
(3) ~~If~~When the member chooses self-direction, the case manager ~~will~~:
(A) ~~discuss~~discusses with member or representative the available amount ~~available~~ in the budget;
(B) ~~assist~~assist the member or representative with the development and modification of the SDS budget;
(C) ~~submit~~submits request for SD-GS to the ~~DDSD division~~DDS director or designee for review and approval prior to the case manager's approval of the SDS budget;
(D) ~~approve~~approves the SDS budget and modifications;
(E) ~~assist~~assists the member or representative ~~with developing~~develop or ~~revising~~revise an emergency back-up plan;
(F) ~~provide~~provides the FMS subagent a copy of the member's authorized SDS budget and any modifications;
(G) ~~monitor~~monitors implementation of the Plan per OAC 340:100-3-27~~.~~;
(H) ~~ensure that~~ensures services are initiated within required time frames;
(I) ~~conduct~~conducts ongoing monitoring of ~~the~~Plan implementation ~~of the Plan~~ and the member's health and welfare;
(J) ~~specify~~specifies additional employee qualifications in the Plan based on the member's needs and preferences ~~so long as~~when such qualifications are consistent with approved ~~waiver~~Waiver qualifications;
(K) ~~specify~~specifies in the Plan how services are provided;
(L) ~~refer~~refers potential SD-HTS providers to the FMS subagent for enrollment;
(M) ~~assist~~assists in locating and securing services and other community resources that promote community integration~~, community membership~~ and independence~~,~~ as provided in the member's Plan; and
(N) ~~ensure any~~ensures restrictive or intrusive procedures per OAC 340:100-5-57 are not implemented by the SD-HTS. If the Team determines restrictive or intrusive procedures are necessary, SD-HTS is not appropriate to meet the

member's needs ~~of the member~~ and traditional services must be used.

(h) **Government ~~Fiscal/Employer Agent Model.~~fiscal/employer agent model.** ~~OKDHS/DDSD~~DDS serves as the Organized Health Care Delivery System (OHCDS) ~~as well as the~~and FMS provider in a Centers for Medicare and Medicaid Services (CMS) approved ~~Government Fiscal/Employer Agent~~government fiscal/employer agent model. ~~OKDHS/DDSD~~DDS has an interagency agreement with OHCA.

(i) **Voluntary ~~Termination of Self-Directed Services.~~termination of self-directed services.** Members may discontinue self-directing services without disruption at any time, provided traditional ~~waiver~~Waiver services are in place. Members or representatives may not choose the self-directed option again until the next annual planning meeting, with services resuming no earlier than the beginning of the next plan of care. ~~Any~~A member desiring to file a complaint must follow ~~the~~ procedures ~~set forth~~per ~~by OKDHS at~~ OAC 340:2-5-61.

(j) **Involuntary ~~Termination of Self-Directed Services.~~termination of self-directed services.**

(1) Members may be ~~terminated~~ involuntarily terminated from self-direction and offered traditional ~~waiver~~Waiver services when ~~it has been determined by OKDHS/DDSD~~the DDS director ~~Director~~ or designee that any of the following exist:

(A) immediate health and safety risks associated with self-direction, such as, imminent risk of death or irreversible or serious bodily injury related to ~~waiver~~Waiver services;

(B) intentional misuse of funds following notification, assistance and support from ~~OKDHS/DDSD;~~DDS;

(C) failure to follow and implement policies of self-direction after receiving DDS technical assistance and guidance from ~~OKDHS/DDSD~~;

(D) fraud; ~~or~~

(E) it is determined that restrictive or intrusive procedures are essential for safety~~.~~; or

(F) reliable information shows the employer of record or SD-HTS engaged in illegal activity.

(2) When action is taken to involuntarily terminate the member from self-directed services ~~involuntarily~~, the case manager assists the member ~~in accessing~~access needed and appropriate services through the traditional ~~waiver~~Waiver services option, ensuring that no lapse in necessary services occurs for which the member is eligible.

(3) The Fair Hearing process ~~as described in~~per OAC 340:100-3-13 applies.

(k) **Reporting requirements**. While operating as an Organized Health Care Delivery System, ~~OKDHS/DDSD will provide to the~~DDS

provides OHCA reports detailing provider activity in the format and at ~~such~~ times ~~as required by the~~ OHCA~~.~~ requires.