

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, 2018

The proposed policy is a Permanent Rule. The proposed policy was presented at the November 7, 2017 Tribal Consultation and is scheduled to be presented to the Medical Advisory Committee on January 18, 2018 and the OHCA Board of Directors on February 8, 2018.

Reference: APA WF # 17-25B

SUMMARY:

Developmental Disabilities Division - 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.

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; 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: Tywanda Cox
Federal and State Policy

FROM: Carmen Johnson
Federal and State Authorities

SUBJECT: Rule Impact Statement
APA WF # 17-25B

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. Proposed revisions to the Home and Community-Based Waiver affirm a member's rights to have visitors of his/her choosing. Revisions also remove treatment extensions for Habilitation Services authorized by DDS area managers. In addition, revisions allow eligible members, 16 years of age and older, to access Waiver employment services through the Home and Community-Based Services Waiver.

- 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

- 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 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: October 23, 2017

RULE TEXT

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

SUBCHAPTER 1. GENERAL PROVISIONS

317:40-1-3. Requirements for Home and Community-Based settings

(a) The Oklahoma Department of Human Services Developmental Disabilities Services Home and Community-Based Services (HCBS) Waiver settings have the following qualities defined in federal regulation per ~~42 CFR § 441.301(c)(4)~~ Section 441.301(c)(4) of Title 42 of the Code of Federal Regulations [42 CFR § 441.301(c)(4)] based on the needs of the individual defined in his or her Individual Plan (Plan).

(1) The setting is integrated and supports full access of individuals receiving HCBS Waivers to the greater community, including opportunities to:

(A) seek employment and work in competitive, integrated settings;

(B) engage in community life;

(C) control personal resources; and

(D) receive services in the community, to the same degree as individuals not receiving Medicaid HCBS Waiver Services.

(2) The setting is selected by the member from options including non-disability settings and an option for a private unit in a residential setting. The setting options are identified and documented in the person-centered service plan and based on individual needs and preferences.

(3) For residential settings, the member must have income available for room and board.

(4) The setting ensures the member's rights of privacy, dignity, respect, and freedom from coercion and restraint.

(5) The setting optimizes individual initiative, autonomy, and independence in making life choices including, but not limited to:

(A) daily activities;

(B) the physical environment; and

(C) with whom to interact.

(6) The setting facilitates individual choice regarding services and supports, including who provides them.

(b) In a provider-owned or controlled residential setting, in addition to the attributes specified above, the additional conditions listed in (1) through (8) of this subsection must be met.

(1) The unit or dwelling is a specific, physical place, owned, rented, or occupied under a ~~legally enforceable~~ legally-enforceable agreement by the member receiving services.

(2) The member has the same responsibilities and protections from eviction, that tenants have per the Residential Landlord and Tenant Act, ~~41 O.S. § 101, et seq.~~ Section 101 et. seq. of Title 41 of the Oklahoma Statutes (41 O.S. §§ 101, et. seq.)

(3) In settings where landlord tenant laws do not apply, the provider agency completes a lease, residency agreement, or other form of written agreement for each member. The document provides protections that address eviction processes and appeals comparable to those provided in the Residential Landlord and Tenant Act, 41 O.S. § 101, et seq.

(4) Each member has privacy in his or her sleeping or living unit, where:

(A) units have entrance doors lockable by the member, with only appropriate staff having keys to doors;

(B) members sharing units have a choice of roommates; and

(C) members have freedom to furnish and decorate ~~his or her~~ sleeping or living units within the lease or other agreement.

(5) Each member has the freedom and support to control his or her own ~~schedules,~~ schedule, activities, and access to food at any time.

(6) ~~Each member may have visitors whenever he or she chooses.~~ Members are able to have visitors of his or her choosing, at any time.

(7) The setting is physically accessible to the member.

(8) Any modifications of the additional conditions specified in this subsection, must be supported by a specific, assessed need, ~~and~~ justified in the person-centered ~~Plan~~ plan and includes:

(A) an identified individualized assessed need;

(B) documentation of the positive interventions and supports used prior to any modifications to the person-centered plan;

(C) documentation of less intrusive methods tried, including those that did not work;

- (D) a clear description of the condition, proportionate to the specific assessed need;
 - (E) regular collection and review of data to measure the ongoing effectiveness of the modification;
 - (F) established time limits for periodic reviews to determine if the modification continues to be necessary or can be terminated;
 - (G) the informed consent of the member; and
 - (H) an assurance the interventions and supports will cause no harm to the member.
- (c) Any setting that isolates members from the broader community of individuals not receiving HCBS is not considered an HCBS.
- (1) Settings that are not HCBS per 42 CFR § 441.301(c)(5)(v) include:
- (A) a nursing facility;
 - (B) an institution for mental diseases;
 - (C) an intermediate care facility for individuals with intellectual disabilities;
 - (D) a hospital; or
 - (E) any other locations with qualities of an institutional setting per 42 CFR § 441.301(c)(5)(v).

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

317:40-7-3. Eligibility for Waiver Employment Services

- (a) Individuals served through Waiver Employment Services must be:
- (1) 16 years of age ~~or and~~ older for persons receiving services through the Community Waiver, ~~or 18 years of age or older for persons receiving services through the~~ In Home Supports Waiver, or the Homeward Bound Waiver; and
 - (2) approved for waiver services ~~in accordance with OAC, per Oklahoma Administrative Code (OAC) 317:40-1-1.~~
- (b) ~~Services available to the service recipient~~member through the Oklahoma Department of Rehabilitation Services (DRS) or through the state or local education agency are not funded under Waiver Employment Services.
- (1) ~~Service recipients~~Members may utilize waiver employment services during times when school is not in session, ~~unless an IEP approved program through the school system is in place and/or the member is not participating in an Individual Education Program that includes extended school year services through the school system.~~
 - (2) All ~~service recipients~~members seeking supported competitive, integrated employment make application to DRS. Prior to the authorization of Waiver Employment Services, the

~~case manager completes OKDHS Form DDS-55, Documentation of Application for DRS Supported Employment Services, to be maintained as a permanent entry in the local case record documents the application for DRS services. The documentation is permanently maintained in the Client Contact Manager record.~~

(3) Since services provided by DRS are time-limited by federal law, ~~DDSD~~Developmental Disabilities Services provides ~~long term, long-term,~~ on-going supports for individuals who need long-term supports, as described in OAC 317:40-7-11.

317:40-7-4. Services provided through Waiver Employment Services

(a) Waiver Employment Services are offered under the Medicaid Home and Community-Based Waiver for persons with intellectual disabilities at rates prescribed by the Oklahoma Health Care Authority.

(b) ~~Types of Waiver Employment Services offered include:~~

- ~~(1) Vocational Habilitation Training Specialist—(VHTS), Supplemental Support;~~
- ~~(2) Employment Training Specialist—(ETS);~~
- ~~(3) Center-Based Services;~~
- ~~(4) Community-Based Services;~~
- ~~(5) Enhanced Community-Based Services;~~
- ~~(6) Job Coaching;~~
- ~~(7) Enhanced Job Coaching; and~~
- ~~(8) Stabilization Services.~~

(c) State-funded services described in OAC 340:100-17-30 may supplement Employment Services funded through the Community Waiver. State-funded employment services are available to members of the Homeward Bound class who are not eligible for Developmental Disabilities Services Waiver services.