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| POLICY TRANSMITTAL NO. 08-35 | DATE: JULY 17, 2008 |
| OKLAHOMA HEALTH CARE AUTHORITY/DEVELOPMENTAL DISABILITIES SERVICES DIVISION | DEPARTMENT OF HUMAN SERVICES OFFICE OF LEGISLATIVE RELATIONS AND POLICY |

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 317:30-5-515 through 30-5-519; 317:40, Table of Contents; 40-5-3; and 40-5-8.

EXPLANATION: **Policy revisions were approved by the Board and the Governor as required by the Administrative Procedures Act.**

Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) Waiver rules are revised to provide current provisions for respite care for persons with mental retardation and certain persons with related conditions. Agency companion service rules are amended to add another level of support for individuals who require additional professional level support to remain in an agency companion setting due to pervasive behavioral or emotional challenges. Other revisions delineate agency companion services salary options, which include the contractor and employer models, and use of specific OKDHS forms.

Original signed on 7-15-08

James M. Nicholson, Director
Developmental Disabilities Services Division

Sharon Neuwald, Coordinator
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WF # 08-J (NAP)

INSTRUCTIONS FOR FILING MANUAL MATERIAL

OAC is the acronym for Oklahoma Administrative Code. If OAC appears before a number on an Appendix or before a Section in text, it means the Appendix or text contains rules or administrative law. Lengthy internal policies and procedures have the same Chapter number as the OAC Chapter to which they pertain following an "OKDHS" number, such as personnel policy at OKDHS:2-1 and personnel rules at OAC 340:2-1. The "340" is the Title number that designates OKDHS as the rulemaking agency; the "2" specifies the Chapter number; and the "1" specifies the Subchapter number.

The chronological order for filing manual material is: (1) OAC 340 by designated Chapter and Subchapter number; (2) if applicable, OKDHS numbered text for the designated Chapter and Subchapter; and (3) all OAC Appendices with the designated Chapter number. For example, the order for filing personnel policy is OAC 340:2-1, OKDHS:2-1, and OAC 340:2 Appendices behind all Chapter 2 manual material. Any questions or assistance with filing manual material will be addressed by contacting Policy Management Unit staff at 405-521-4326.

| <u>REMOVE</u> | <u>INSERT</u> |
|---------------------------|--|
| 317:30-5-515 | 317:30-5-515, 1 page only, revised 6-1-08 |
| 317:30-5-516 | 317:30-5-516, 1 page only, revised 6-1-08 |
| 317:30-5-517 | 317:30-5-517, 1 page only, revised 6-1-08 |
| 317:30-5-518 | 317:30-5-518, 1 page only, revised 6-1-08 |
| 317:30-5-519 | 317:30-5-519, 1 page only, revised 6-1-08 |
| 317:40, Table of Contents | 317:40, Table of Contents, pages 1-4, revised 7-7-08 |
| 317:40-5-3 | 317:40-5-3, pages 1-4, revised 6-1-08 |
| 317:40-5-8 | 317:40-5-8, pages 1-2, revised 6-1-08 |

**MEDICAL PROVIDERS-FEE FOR SERVICE
RESPITE CARE SPECIFIC**

OAC 317:30-5-515

317:30-5-515. Home and Community-Based Services Waivers for persons with mental retardation or certain persons with related conditions

The Oklahoma Health Care Authority administers Home and Community-Based Services (HCBS) Waivers for persons with mental retardation or certain persons with related conditions that are operated by the Oklahoma Department of Human Services Developmental Disabilities Services Division. Each waiver allows payment for respite care as defined in the waiver approved by the Centers for Medicare and Medicaid Services.

**MEDICAL PROVIDERS-FEE FOR SERVICE
RESPITE CARE SPECIFIC**

OAC 317:30-5-516

317:30-5-516. Coverage

All respite care must be included in the member's Individual Plan (IP). Arrangements for this service must be made through the member's case manager.

317:30-5-517. Description of services

Respite care is:

(1) available to eligible members not receiving daily living supports or group home services and who are unable to care for themselves; and

(2) furnished on a short-term basis due to the absence or need for relief of those persons normally providing the care, and includes:

(A) homemaker respite per OAC 317:30-5-535 through 317:30-5-538;

(B) daily respite provided in a group home.

(i) Group homes providing respite must be licensed per OAC 340:100-6.

(ii) Respite care provided in a group home is authorized as respite at the applicable group home rate as identified in the member's Plan of Care;

(C) daily respite provided in an agency companion services (ACS) home.

(i) Respite must be approved in accordance with the home profile process, per OAC 317:40-5-40, and required training, per OAC 340:100-3-38.

(ii) Respite provided in an ACS home is authorized as respite at the applicable level of support per OAC 317:40-5-3.

(iii) Respite providers are limited to providing 52 days of respite per year when they concurrently provide ACS; and

(D) daily respite provided in any other approved home. Respite:

(i) must be approved in accordance with the home profile process, per OAC 317:40-5-40, and required training, per OAC 340-100-3-38;

(ii) is based on the member's needs and includes:

(I) maximum supervision - for members with extensive needs;

(II) close supervision - for members with moderate needs; and

(III) intermittent supervision - for members with minimum needs; and

(iii) providers must:

(I) pass a background investigation per OAC 317:40-5-40 and OAC 340:100-3-39; and

(II) be at least 18 years of age.

**MEDICAL PROVIDERS-FEE FOR SERVICE
RESPITE CARE SPECIFIC**

OAC 317:30-5-518

317:30-5-518. Coverage limitations

(a) Payment is not made for daily respite care and specialized foster care or agency companion services for the same member on the same date of service.

(b) Respite care:

(1) is not available to members in the custody of the Oklahoma Department of Human Services (OKDHS) and in out-of-home placement funded by the OKDHS Children and Family Services Division; and

(2) for members not receiving ACS, is limited to 30 days or 720 hours annually per member, except as approved by the Developmental Disabilities Services Division director and authorized in the member's Plan of Care; or

(3) for members receiving ACS, is limited in accordance with OAC 317:40-5-8.

**MEDICAL PROVIDERS-FEE FOR SERVICE
RESPITE CARE SPECIFIC**

OAC 317:30-5-519

317:30-5-519. Diagnosis code

The ICD-9-CM diagnosis code for respite care is 319 (mental retardation). This code must be entered in field 21 on Form CMS-1500.

CHAPTER 40. DEVELOPMENTAL DISABILITIES SERVICES

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- 317:40-5-2. Purpose [REVOKED]
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- 317:40-5-4. Selection of Agency Companion Services provider
- 317:40-5-5. Agency Companion Services provider responsibilities
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- 317:40-5-8. Agency companion services service authorization budget
- 317:40-5-9. Payment authorization for Agency Companion Services
- 317:40-5-10. Agency companion services (ACS) annual review
- 317:40-5-11. Termination of Agency Companion services
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317:40-5-3. Scope of agency companion services

(a) Agency companion services (ACS):

- (1) are provided by private agencies contracted with the Oklahoma Health Care Authority (OHCA);
- (2) are available to members who are eligible for services through the Community Waiver or Homeward Bound Waiver;
- (3) are based on the member's need for support as described in the member's Individual Plan (IP), per OAC 340:100-5-50 through 340:100-5-58;
- (4) are provided in a nurturing environment in the member's home, the companion's home, or in a mutually rented or owned home; and
- (5) support visitation desired by the member with his or her natural family and friends, and in accordance with the member's IP.

(b) An agency companion:

- (1) must be employed by or contract with a provider agency approved by the Oklahoma Department of Human Services Developmental Disabilities Services Division (DDSD);
- (2) is limited to serving as companion for one member. Exceptions may be granted only upon review and approval by the DDSD director or designee;
- (3) may not have employment, volunteer activities, or personal commitments that prevent the companion from fulfilling his or her responsibilities to the member per OAC 317:40-5.

(A) Employment as an agency companion is the companion's primary employment.

(B) The companion may have other employment when:

- (i) serving members approved for intermittent or regular levels of support;
- (ii) the Personal Support Team addresses all documented related concerns in the member's IP; and
- (iii) the other employment is approved in advance by the DDSD area manager or designee; and

(4) approved for other employment may not be employed in another position that requires on-call duties.

(A) If, after receiving approval for other employment, authorized DDSD staff determines the other employment interferes with the care, training, or supervision needed by the member, the companion must terminate, within 30 days:

- (i) the other employment; or
- (ii) his or her employment as an agency companion.

(B) Homemaker, habilitation training specialist, and respite services are not provided in order for the companion to perform other employment.

(c) Each member may receive up to 60 days per year of therapeutic leave without reduction in the agency companion's salary.

(1) Therapeutic leave:

(A) is a Medicaid payment made to the contract provider to enable the member to retain services; and

(B) is claimed when:

(i) the member does not receive ACS for 24 consecutive hours due to:

(I) a visit with family or friends without the companion;

(II) vacation without the companion; or

(III) hospitalization, regardless whether the companion is present; or

(ii) the companion uses authorized respite time;

(C) is limited to no more than 14 consecutive days per event, not to exceed 60 days per Plan of Care year; and

(D) cannot be accrued from one Plan of Care year to the next.

(2) The therapeutic leave daily rate is the same amount as the ACS per diem rate.

(3) The provider agency pays the agency companion the salary that he or she would earn if the member were not on therapeutic leave.

(d) Levels of support for the member and corresponding payment are:

(1) determined by authorized DDS staff in accordance with levels described in (A) through (D); and

(2) re-evaluated when the member has a change in agency companion providers.

(A) **Intermittent level of support.** Intermittent level of support is authorized when the member:

(i) requires minimal assistance with basic daily living skills, such as bathing, dressing, and eating;

(ii) communicates needs and wants;

(iii) is able to spend short periods of time unsupervised inside and outside the home;

(iv) requires assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments or other activities, and arranging transportation; and

(v) has stable or no ongoing medical or behavioral difficulties.

(B) **Regular level of support.** Regular level of support is authorized when the member:

(i) requires regular, frequent and sometimes constant assistance and support or is totally dependent on others to complete daily living skills, such as bathing,

dressing, eating, and toileting;
(ii) has difficulty or is unable to communicate basic needs and wants;
(iii) requires extensive assistance with medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments or other activities, and arranging transportation; and
(iv) requires regular monitoring and assistance with health, medication, or behavior interventions, and may include the need for specialized training, equipment, and diet.

(C) Enhanced level of support. Enhanced level of support is authorized when the member:

- (i) is totally dependent on others for:
 - (I) completion of daily living skills, such as bathing, dressing, eating, and toileting; and
 - (II) medication administration, money management, shopping, housekeeping, meal preparation, scheduling appointments or other activities, and arranging transportation;
- (ii) demonstrates ongoing complex medical or behavioral issues requiring specialized training courses per OAC 340:100-3-38.3; and
- (iii) has medical support needs that are rated at Level 4, 5, or 6 on the Physical Status Review (PSR), per OAC 340:100-5-26. In cases where complex medical needs are not adequately characterized by the PSR, exceptions may be granted only upon review by the DDS director or designee; or
- (iv) requires a protective intervention plan (PIP) with a restrictive or intrusive procedure as defined in OAC 340:100-1-2. The PIP must be:
 - (I) approved by the Statewide Behavior Review Committee (SBRC), per OAC 340:100-3-14; and
 - (II) reviewed by the Human Rights Committee (HRC), per OAC 340:100-3-6.

(D) Pervasive level of support. Pervasive level of support is authorized when the member:

- (i) requires additional professional level support to remain in an agency companion setting due to pervasive behavioral or emotional challenges. The support must be provided:
 - (I) by a licensed professional counselor (LPC) or professional with a minimum of Masters of Social Work (MSW) degree; and

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AGENCY COMPANION SERVICES

OAC 317:40-5-3 (p4)

(II) as ongoing support and training to the companion, offering best practice approaches in dealing with specific members; and

(ii) does not have an available personal support system. The need for this service level:

(I) must be identified by the grand staffing committee, per OAC 340:75-8-40; and

(II) requires the provider to market, recruit, screen, and train potential companions for the member identified.

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OAC 317:40-5-8 (p1)

317:40-5-8. Agency companion services service authorization budget

Upon approval of the home profile per OAC 317:40-5-40, the companion, provider agency, the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) case manager, agency companion services (ACS) staff, and others as appropriate meet to develop a service authorization budget. OKDHS Form 06AC074E, Service Authorization Budget, is used to develop the individual service budget for the member's program and is updated annually by the member's Personal Support Team (Team).

(1) The companion receives:

(A) a salary based on the level of support needed by the member. The level of support is determined by authorized DDSD staff per OAC 317:40-5-3. The ACS rate for the:

- (i) employer model includes funding for the provider agency for the provision of benefits to the companion; and
- (ii) contractor model does not include funding for the provider agency for the provision of benefits to the companion; and

(B) any combination of hourly or daily respite per Plan of Care year to equal 660 hours in order to provide respite to the companion as reflected on Form 06AC074E.

(i) Habilitation training specialist (HTS) services may be approved by the DDSD director or designee if providing ACS with additional support represents the most cost-effective placement for the member and the member has an ongoing pattern of not:

- (I) sleeping at night; or
- (II) working or attending employment services, in spite of continuing efforts by the Team.

(ii) HTS units authorized must be reduced when the on-going situation changes.

(iii) HTS authorizations must be reviewed annually or more often if needed.

(2) OKDHS Form 6AC074E reflects the amount of room and board the member pays to the companion. If the amount exceeds \$450, the increase must be:

(A) agreed to by the member and, if applicable, legal guardian;

(B) recommended by the Team; and

(C) submitted with written justification attached to OKDHS Form 06AC074E to the DDSD area manager or designee for approval.

(3) Prior to the meeting to discuss the service authorization budget, a back-up plan identifying respite staff is developed by

the provider agency program coordination staff and companion.

(A) The back-up plan:

(i) is submitted to the DDS case manager for approval and attached to completed OKDHS Form 06AC074E;

(ii) describes expected and emergency back-up support and program monitoring for the home; and

(iii) is signed by the companion, provider agency representative, and DDS case manager.

(B) The companion and provider agency program coordination staff equally share the responsibility to identify approved respite providers who are:

(i) knowledgeable about the member;

(ii) trained to implement the member's Individual Plan (Plan);

(iii) trained per OAC 340:100-3-38; and

(iv) involved in the member's daily life.

(C) The spouse or other adult residing in the home may provide ACS in the absence of the companion, if trained in accordance with OAC 340:100-3-38. The spouse or other adult residing in the home cannot:

(i) serve as paid respite staff; and

(ii) be paid simultaneously with the companion.

(D) The companion and respite staff are responsible for the cost of their meals and entertainment during recreation and leisure activities. Activities selected must be affordable to the member and respite staff. Concerns about affordability are presented to the Team for resolution.

(4) The member is allowed therapeutic leave in accordance with OAC 317:40-5-3.