
POLICY TRANSMITTAL NO. 10-02	DATE: JANUARY 27, 2010
OKLAHOMA HEALTH CARE AUTHORITY/DEVELOPMENTAL DISABILITIES SERVICES DIVISION	DEPARTMENT OF HUMAN SERVICES OFFICE OF INTERGOVERNMENTAL RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 317:40-9-1.

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

This rule revision adds a provision to the developmental disabilities section of policy for those SoonerCare members being served under the In-Home Supports Waivers. Self-direction provides the opportunity for members to exercise choice and control in identifying, accessing, and managing specific waiver services and supports in accordance with their needs and personal preferences.

Original signed on 1-26-10

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WF # 10-B (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.

REMOVE

INSERT

317:40-9-1, pages 1-8, issued 12-3-09

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

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

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

(c) General Information. Self-Direction is an option for members receiving Home and Community Based Services (HCBS) through the In-Home Supports Waiver for Adults (IHSW-A) or the In-Home Supports Waiver for Children (IHSW-C). Self-Direction provides the opportunity for a member to exercise choice and control in identifying, accessing, and managing specific waiver services and supports in accordance with their needs and personal preferences. Self-Directed Services (SDS) are Waiver services that the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD) specifies may be directed by the member or representative using both employer and budget authority.

(1) Services may be directed by:

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

(B) a 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 legal representative.

(2) The person directing services must:

(A) be 18 years of age or older;

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

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

(D) sign an agreement with OKDHS/DDSD;

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

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

(d) SDS program includes:

(1) SDS Budget. A plan of care is developed to meet the member's needs without consideration of SDS. The member may elect to self-direct part or all of the 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, and is the allocated amount which may be used to develop the SDS budget. The SDS budget details the specific plan for spending.

(A) A 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 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 (FMS) subagent, background checks, 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 must be included in the approved SDS budget. Payment will not be made for routine care and supervision that is normally provided by a family member or the member's spouse. SD-HTS 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. Payment does not include room and board, maintenance, 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;

(E) sign an agreement with OKDHS/DDSD 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.

(3) 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:

- (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 State statutes and regulations.
- (C) One or more of the following additional criteria are met:
 - (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) food catcher;
 - (iv) specialized swing set;
 - (v) toothettes or electric toothbrush;
 - (vi) seat lift;
 - (vii) weight loss program; or
 - (viii) gym memberships when there is an identified need for weight loss or increased physical activity.
- (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 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.

(F) SD-GS are reviewed and approved by DDSD division 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 training course in self-direction. The training must be completed prior to the implementation of self-direction and will cover the following areas:

- (A) staff recruitment;
- (B) hiring of staff as employer of record;
- (C) orientation and instruction of staff in duties consistent with approved specifications;
- (D) supervision of staff including scheduling and service provisions;
- (E) evaluation of staff;
- (F) discharge of staff;
- (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;

(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 compensation insurance from their 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 SD-HTS;

(6) ensure that each employee is qualified to provide the services for which he/she is employed and that all billed services are actually provided;

(7) ensure that each employee complies with all OKDHS/DDSD training requirements for In-Home Support Waivers per OAC

340:100-3-38.5;

(8) recruit, hire, supervise, and discharge when necessary all employees providing self-directed services;

(9) verify employee qualifications;

(10) obtain a background screening on all employees providing SD-HTS per OAC 340:100-3-39;

(11) send monthly progress reports to the case manager by the 10th of each month for the preceding month of service via mail, e-mail or personal delivery.

(12) participate in the Individual Plan and SDS budget process;

(13) immediately notify the case manager of any changes in circumstances or emergencies, which 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 and OHCA administrative rules;

(16) cooperate with OKDHS/DDSD monitoring requirements per OAC 340:100-3-27;

(17) cooperate with all requirements of the FMS subagent to ensure accurate records and prompt payroll 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 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 and the SD-HTS.

(f) Financial Management Services (FMS) subagent responsibilities. The FMS subagent is an entity designated as an agent by OKDHS/DDSD 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 and OHCA administrative rules and contract requirements;
 - (2) compliance with random and targeted audits conducted by OKDHS/DDSD 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 SDS budget;
 - (8) providing reports to members/representatives, as well as OKDHS/DDSD monthly and to OHCA upon request;
 - (9) providing OKDHS/DDSD 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, disbursements and the balance of member funds;
 - (13) receiving and disbursing funds for the payment of SDS under an agreement with the OHCA; and
 - (14) executing and maintaining contractual agreement between OKDHS/DDSD and the SD-HTS (employee).
- (g) OKDHS/DDSD Case Management responsibilities in support of SDS.
- (1) The case manager develops the member's Plan per OAC 340:100-5-50 through 58;
 - (2) The DDSD 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 the member chooses self-direction, the case manager will:
 - (A) discuss with member or representative the amount available in the budget;
 - (B) assist member or representative with the development and modification of the SDS budget;

(C) submit request for SD-GS to the DDS division director or designee for review and approval prior to the case manager's approval of the SDS budget;

(D) approve the SDS budget and modifications;

(E) assist member or representative with developing or revising an emergency back-up plan;

(F) provide FMS subagent a copy of the member's authorized SDS budget and any modifications;

(G) monitor implementation of the Plan per OAC 340:100-3-27.

(H) ensure that services are initiated within required time frames;

(I) conduct ongoing monitoring of the implementation of the Plan and the member's health and welfare;

(J) specify additional employee qualifications in the Plan based on the member's needs and preferences so long as such qualifications are consistent with approved waiver qualifications;

(K) specify in the Plan how services are provided;

(L) refer potential SD-HTS providers to the FMS subagent for enrollment;

(M) assist 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 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 needs of the member and traditional services must be used.

(h) OKDHS/DDSD serves as the Organized Health Care Delivery System (OHCD) as well as the FMS provider in a Centers for Medicare and Medicaid Services (CMS) approved Government Fiscal/Employer Agent model. OKDHS/DDSD has an interagency agreement with OHCA.

(i) Voluntary Termination of Self-Directed Services. Members may discontinue self-directing services without disruption at any time, provided traditional 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 member desiring to file a complaint must follow the procedures set forth by OKDHS at OAC 340:2-5-61.

(j) Involuntary Termination of Self-Directed Services.

(1) Members may be terminated involuntarily from self-direction and offered traditional waiver services when it has been determined by OKDHS/DDSD 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 services;

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

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

(D) fraud; or

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

(2) When action is taken to terminate the member from self-directed services involuntarily, the case manager assists the member in accessing needed and appropriate services through the traditional 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 OAC 340:100-3-13 applies.

(k) Reporting requirements. While operating as an Organized Health Care Delivery System, OKDHS/DDSD will provide to the OHCA reports detailing provider activity in the format and at such times as required by the OHCA.