POLICY TRANSMITTAL NO. 09-10  DATE: MAY 12, 2009
DEVELOPMENTAL DISABILITIES SERVICES DIVISION  DEPARTMENT OF HUMAN SERVICES
OFFICE OF LEGISLATIVE RELATIONS AND POLICY

TO: ALL OFFICES

SUBJECT: MANUAL MATERIAL

OAC 340:100-3, Table of Contents; 100-3-4; 100-3-5 through 100-3-5.2; 100-3-33; 100-3-35; 100-3-38.5; 100-3-38.12; 100-3-39; 340:100-5, Table of Contents; 100-5-17; 100-5-21; 100-5-22.1; 100-5-26; 100-5-53; 100-6-45; 100-6-55; and 100-17-30.

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

The proposed revisions to Subchapters 3, 5, 6, and 17 of Chapter 100 amend the rules to: (1) clarify appropriate uses of service recipients' personal funds, maintaining Medicaid eligibility, and reporting exploitation; (2) specify age of initial guardianship or advocacy assessment; specify priority guardian/advocate candidates; and clarify special guardianships; (3) address eligibility, training, and responsibilities for volunteer advocates; (4) remove the provision for use of the guardianship voucher for conservatorship; (5) specify authority in authorization and proper documentation of services; and the use of state funds to meet critical needs; (6) clarify processes and responsibilities involved in a mortality review; (7) clarify training exceptions in relation to the certificate of competency; (8) extend training requirements for staff providing homemaker and homemaker respite in community settings; (9) clarify persons classified as community service workers and specify screening procedures for persons contracted directly with Oklahoma Health Care Authority (OHCA); and clarify temporary employment offers not extend any longer than the time necessary to receive the results of the criminal history records search and registry review; (10) update anti-scald information and provider requirements; (11) reduce the number of unannounced monthly visits from provider agency program coordination staff; (12) remove the provision for state funding of vocational assessment activities that would be provided to persons transitioning from a public Intermediate Care Facilities for the Mentally Retarded (ICF/MR) facility; and (13) promote health and wellness of service recipients.

340:100-3-4 is amended to: (1) clarify the service recipients responsibility in paying room and board and other routine expenses from personal funds; (2) include direction for personal funds of minor
service recipients; (3) prohibit the use of personal funds for modifying a home not owned by the service recipient; (4) planning and notification requirements for maintaining Medicaid eligibility; and (5) reporting requirements for allegations of exploitation.

340:100-3-5 is amended to: (1) specify the age when advocacy and guardianship must be initially assessed; (2) include cousins as priority guardian and advocate candidates; and (3) clarify special guardianships.

340:100-3-5.1 is amended to: (1) include language and information regarding volunteer advocacy related to eligibility and training requirements; and (2) specify responsibilities of a volunteer advocate.

340:100-3-5.2 is amended to remove the provision for use of the guardianship voucher for conservatorship.

340:100-3-33 is amended to: (1) specify authority in authorization of services; (2) proper methods for documentation of authorized services; and (3) the use of state funds to meet critical needs.

340:100-3-35 is amended to: (1) clarify processes and responsibilities involved in a mortality review; and (2) use current and appropriate terminology relating to mortality reviews.

340:100-3-38.5 is amended to clarify training exceptions in relation to the certificate of competency, and the responsible party in determining competency relating to training exceptions as being the service recipient, legal guardian, or parent(s) of a service recipient who is a minor.

340:100-3-38.12 is amended to extend training requirements for services rendered in community settings as outlined in the service recipient's individual plan.

340:100-3-39 is amended to: (1) clarify persons classified as community service workers for the purpose of pre-employment screenings, reporting of maltreatment, and the Oklahoma Department of Human Services (OKDHS) Community Services Worker Registry; (2) clarify the responsibility of Developmental Disabilities Services Division (DDSD) in following the screening procedures and notification when a community service worker contracts directly with OHCA and provides services through the Home and Community-Based (HCBS) waiver; (3) specify temporary employment offers not extend any longer than the time necessary to receive the results of the criminal history records search and registry review.

340:100-5-17 is revoked as these services are provided for in OHCA rules OAC 317:40-5-110 and 317:40-5-111.

340:100-5-21 is revoked as these services are provided for in OHCA rules OAC 317:30-5-412.

340:100-5-22.1 is amended to: (1) add tempering valve
terminology to the sections of the rule that address anti-scald information; (2) provide for testing and documentation requirements for hot water and liquids; and (3) reduce the number of unannounced visits from provider agency program coordination staff from three to two per month.

340:100-5-26 is amended to provide language consistent with service provisions relating to promoting health and wellness of service recipients.

340:100-5-53 is amended to remove language relating to the approval process and authorization for payment of services that is not consistent with policy or procedure.

340:100-6-45 is amended to provide consistent terminology relating to anti-scald protocol.

340:100-6-55 is amended to provide for consistent terminology in reducing the required unannounced monitoring visits from three to two per month.

340:100-17-30 is amended to remove the provision for state funding of vocational assessment activities that would be provided to persons transitioning from a public ICF/MR facility prior to their transition to the community.
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.

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Revised 5-15-09

(a) **General information.** Each service recipient receiving services from Developmental Disabilities Services Division (DDSD) is ensured access to his or her personal funds.

(1) Personal funds include income from all sources, earned or unearned, and assets.

   (A) Income is money received in the current month.

   (B) Any income not used to meet the service recipient's needs during the current month is a resource or asset of the service recipient in the following month(s).

(2) Services do not include the provision of room and board or personal spending. Each service recipient is responsible for meeting his or her room and board and personal spending needs including, but not limited to healthcare, medications and co-pays not provided by Medicare, Medicaid, or other health insurance, legal fees, vacation costs, recreation and social expenses, educational expenses, clothing, furniture or household items except as provided by OAC 340:100-5-22.5. After the service recipient's day-to-day needs for food and shelter are met, personal funds may be used for the service recipient's needs such as recreation, clothing, and other expenses. The provider agency staff and Personal Support Team (Team) work with the service recipient, as needed, to ensure all needs are met.

(b) **Prohibited transactions.** Provider agency and DDSD employees are prohibited from engaging in any financial transaction with a service recipient, including:

(1) giving gifts to a service recipient with a cumulative annual value more than $100;

(2) accepting gifts from a service recipient with a cumulative annual value more than $20;

(3) selling, purchasing, leasing, or trading any item except:

   (A) as part of an established business in which fair market value is received; or

   (B) when approved in advance in writing by the Team;

(4) borrowing personal funds or any item of value from a service recipient; and
(5) loaning funds to a service recipient, except:

(A) loaning small amounts, such as money for a meal or a recreational activity, for periods of time less than 24 hours; or

(B) as part of a program authorized in advance in writing by the Team.

(c) Living expenses. The provider agency:

(1) may lend funds to a service recipient to cover the service recipient's living expenses in expectation that funds will be available in the future that enable the service recipient to repay the loan; and

(2) must submit ongoing written reports to the Team regarding the status of the service recipient’s financial condition and the status of the loan or repayment.

(d) Protection of personal funds.

(1) The provider agency retains, safeguards and accounts for the service recipient’s personal funds when determined necessary by the service recipient’s Team and as authorized by the service recipient, applicable guardian, or when the provider agency is the representative payee.

(2) Per OAC 340:100-3-1.2, each service recipient has the right to manage, be taught to manage, receive assistance in managing his or her financial affairs, and access all financial records regarding his or her personal funds.

(3) Staff who have access to or assist the service recipient with personal funds, ensures:

(A) service recipient's personal funds are not co-mingled with provider agency funds;

(B) a separate financial record is maintained for each service recipient that includes receipts for all expenditures that are:

   (i) more than five dollars; and

   (ii) made with provider agency staff involvement;

(C) a written accounting of the service recipient's personal funds is maintained;
(D) a summary of financial transactions is available to the service recipient, guardian, DDSD case manager, and the Office of Client Advocacy (OCA) advocate, if involved:

(i) monthly; and

(ii) when the service recipient ceases receiving service from the provider agency;

(E) copies of the written accounting and summary of financial transactions are provided to the service recipient, guardian, case manager, and OCA advocate if involved, upon request.

(F) service recipient’s personal funds account is reconciled at least monthly by provider agency staff who does not have authority to disburse funds from or responsibility to deposit funds to the account;

(G) documentation is maintained to support all transactions involving the service recipient's personal funds that are not independently controlled by the service recipient;

(H) service recipient's income is deposited to the service recipient's personal account within seven days of receipt;

(I) when the service recipient's income is held in an interest bearing account, the interest accrues to the service recipient;

(J) any personal cash not in the service recipient's possession is properly protected against theft;

(K) service recipient receives requested funds within one banking day of request;

(L) service recipient, parent of a minor service recipient, guardian, or representative payee, as applicable, and DDSD case manager are advised of eligibility requirements when the service recipient's account accumulates $1200 unless the Plan includes specific provisions to maintain Medicaid eligibility;

(M) service recipient's personal funds are not used to supplement service rates or to purchase items that are part of the services that the service recipient is currently authorized to receive;

(N) prior to receiving services from a provider agency, a written agreement is executed between the service recipient, or guardian as applicable, and provider
agency. Copies of the agreement are provided to each party and filed in the service recipient's record. The agreement includes:

(i) responsibilities of the provider agency to the service recipient in handling the service recipient's personal funds;

(ii) service recipient's fiscal responsibilities; and

(iii) services for which the service recipient's personal funds must be used;

(O) all requested financial information necessary for the maintenance of the service recipient's financial eligibility is provided to Oklahoma Department of Human Services (OKDHS) and the Social Security Administration in a timely manner;

(P) service recipient receives choices in the selection of stores for the purchase of food, clothing, and personal items; and

(Q) service recipient's personal funds are not used to make permanent modifications to a home not owned by the service recipient.

(4) Allegations of exploitation must be reported in accordance with OAC 340:2-3-33. When a provider agency is a service recipient's representative payee, it must fulfill its duties in accordance with applicable federal regulations which define those duties.

(e) Team planning and assistance to manage personal funds. The Team may limit, but not totally deny, a service recipient without a guardian access to or use of his or her personal funds only when a determination is made, per OAC 340:100-3-4, that the limitation is essential to prevent the service recipient from unreasonably or significantly dissipating his or her personal funds.

(1) The Team follows rules per OAC 340:100-3-1.2.

(2) Regular allowances or spending programs may be implemented on an individual basis, provided it is requested by the service recipient, guardian, or parent of a minor service recipient and reviewed by the service recipient's Team. The specific amount of the allowance is documented in the service recipient's Individual Plan (Plan). An allowance consists of a fixed amount of money regularly given to the service recipient to spend as he or she wishes.
(3) Justification for limiting access to and use of personal funds is documented in the service recipient's Plan. The Team develops a Plan to remove the restriction and includes specific dates to review the Plan.

(4) The Team ensures the service recipient is afforded due process prior to implementation of any financial restrictions.

(5) When determining whether to limit a service recipient's access to personal funds, the Team addresses whether the service recipient:

(A) is able to recognize currency, coins, and value of such;

(B) does not regularly lose money;

(C) does not leave money lying around;

(D) does not give money away;

(E) has the ability to make change or knows when to wait for change;

(F) shows responsible behavior regarding his or her money, paying bills on time, writing checks only when he or she has sufficient funds, and saving or planning for special items;

(G) understands his or her responsibility to pay room and board expenses; and

(H) understands budgeting so money will last all month.

(f) Payee responsibilities. In addition to the requirements of OAC 340:100-3-4 persons and organizations serving as representative payee for a service recipient's personal funds are responsible for obtaining a copy of the dispersing agency's regulations regarding representative payee responsibilities and adhering to the dispersing agency's requirements.

(1) The service recipient, guardian, or representative payee is responsible for paying for room and board from the service recipient's income.

(2) A provider agency serving as payee uses direct deposit of benefits, if available.
340:100-3-5. Advocacy and guardianship

Revised 5-15-09

(a) **Purpose.** Developmental Disabilities Services Division (DDSD) Advocacy and Guardianship Program identifies the advocacy needs of each service recipient to protect the service recipient's interests, rights, and welfare.

   (1) Although a service recipient may have other advocates, only a guardian may act on behalf of his or her ward, per OAC 340:100-1-2, to the extent authorized in the guardianship order and Title 30 of the Oklahoma Statutes (O.S.).

   (2) Each guardian is:

      (A) responsible for representing the interest of his or her ward as provided by Oklahoma law; and

      (B) obligated to involve the ward in decision-making to the extent the ward is able.

   (3) An advocate is responsible for assisting the service recipient to represent the interests of the service recipient.

(b) **Capacity to give informed consent.** Service recipients, age 18 or older, are presumed to have capacity to give informed consent except to the extent adjudicated incapacitated by the court. A service recipient:

   (1) is not considered incapacitated solely by reason of his or her diagnosis or admission to:

      (A) Northern Oklahoma Resource Center of Enid (NORCE);

      (B) Southern Oklahoma Resource Center (SORC); or

      (C) Robert M. Greer Center (Greer);

   (2) may be adjudicated incapacitated in one area while being fully capable of understanding and exercising his or her rights in other areas; and

   (3) has the right to exercise judgment in all areas of capacity.

(c) **Assessment of capacity to give informed consent.** Each service recipient's
current need for advocacy or guardianship services is reviewed at least annually and documented in the Individual Plan (Plan).

(1) Form 06MP032E, Capacity Assessment, is:

(A) used to determine the service recipient's capacity to give informed consent and identify the type of assistance, if any, the service recipient needs to make life decisions and be protected from maltreatment; and

(B) completed for each:

(i) adult and minor attaining the age of 17 ½ years, who receives residential services through the Community Waiver or Homeward Bound Waiver;

(ii) child in OKDHS custody who receives DDSD services upon reaching the age of 16 per OAC 340:75-8-39; and

(iii) resident older than age 17 ½ residing in:

(I) NORCE;

(II) SORC; or

(III) Greer.

(2) In order for the Assessment Team to meet to complete Form 06MP032E, all members are notified of the meeting at least two weeks in advance and offered the opportunity to provide written input if they cannot attend. The Assessment Team includes:

(A) all members of the Personal Support Team;

(B) the service recipient's primary physician, if the service recipient resides at NORCE, SORC, or Greer; and

(C) a licensed psychologist or psychiatrist, if the service recipient resides at NORCE, SORC, or Greer.

(3) For service recipients who do not receive residential services per OAC 340:100-5-22:

(A) a capacity assessment is not required. If the family or service recipient...
wishes to complete a capacity assessment, the DDSD case manager includes this assessment as an outcome in the Needs Assessment or Plan, and the family participates in the assessment process; and

(B) a review of the service recipient's need for advocacy or guardianship must occur annually beginning at age 17½, and be addressed in the Needs Assessment, using Forms 06MP033E, Guardianship, Advocacy, and Capacity Initial Review, and 06MP034E, Guardianship, Advocacy, and Capacity Annual Review. If this review indicates needs in the area of advocacy, the DDSD case manager offers a capacity assessment.

(d) **Recommendations of Assessment Team.** DDSD supports the use of less restrictive alternatives to guardianship.

(1) The Assessment Team recommends guardianship after they have considered and ruled out less restrictive alternatives to guardianship. Alternatives include, but are not limited to:

(A) guidance and support from family or friends;

(B) volunteer advocate;

(C) modification of the Plan to more effectively meet the service recipient's health, safety, and financial needs;

(D) representative payee;

(E) limited bank accounts;

(F) power of attorney, durable power of attorney, or durable power of attorney with health care powers;

(G) Advance Directive for Health Care;

(H) trust fund; or

(I) conservatorship.

(2) If Form 06MP032E indicates that a guardian is needed, the Personal Support Team recommends an appropriate person to serve.

(A) Priority for persons to serve as guardians is given to:
(i) any person nominated by the service recipient pursuant to Section 3-102 of Title 30 of O.S. (30 O.S. § 3-102);

(ii) a current guardian appointed by an appropriate court in another jurisdiction;

(iii) a person nominated by will or other writing of a deceased parent, spouse, or adult child who was serving as the service recipient's guardian pursuant to 30 O.S. § 3-103;

(iv) the spouse of the service recipient;

(v) an adult child of the service recipient;

(vi) a parent(s) of the service recipient;

(vii) a sibling of the service recipient;

(viii) a person with whom the service recipient has been living for more than six months prior to the filing of the petition for guardianship. Providers subject to the provisions of the Nursing Home Care Act, Residential Home Care Act, or Group Home for Developmentally Disabled or Physically Handicapped Persons Act must not be appointed guardian of such service recipient unless the provider is the service recipient’s spouse, mother, father, sibling, adult child, aunt, uncle, grandparent, or adult grandchild; or

(ix) other relatives of the service recipient, such as, niece, nephew, or cousin.

(B) If an appropriate relative is not available, a volunteer is sought in accordance with OAC 340:100-3-5.1.

(e) **Guardianship eligibility requirements.**

(1) A guardian must:

   (A) be at least 18 years of age;

   (B) be a resident of Oklahoma for at least one year, except as provided in 30 O.S. § 4-104;

   (C) not be under any financial obligation to the proposed ward; and
(D) disclose to the Personal Support Team and to the court any potential conflict of interest that may preclude acting in the best interest of the proposed ward.

(2) An incapacitated or partially incapacitated person cannot be appointed guardian.

(3) A convicted felon cannot be appointed guardian, except upon:

(A) further review by the court into the nature of the felony; and

(B) court approval.

(f) **Responsibilities of a guardian.**

(1) The guardian:

(A) is responsible for protecting the rights of the ward per 30 O.S. § 1-103;

(B) files the Plan for the Care and Treatment of the Ward, with the court within ten days of appointment as guardian;

(C) files Administrative Office of the Courts (AOC) Form 34, Report on the Guardianship of the Person, AOC Form 34a, Report on the Guardianship of Property, or both, with the court. Assistance in completing these annual reports may be obtained from the DDSD case manager or guardianship coordinator. The guardian may also hire an attorney to prepare annual reports for a fee;

(D) has a legal duty to:

   (i) know the service recipient, including his or her capabilities, needs, and physical and mental health;

   (ii) maintain contact with the service recipient;

   (iii) ensure the service recipient is living in the least restrictive environment that meets his or her needs;

   (iv) provide necessary consents authorized by the court; and

   (v) notify the court if the service recipient's incapacity has ended; and

(E) has limited authority pursuant to 30 O.S. § 3-119 and the guardianship order that sets forth the limitation of powers of a guardian by prohibiting the guardian
from consenting on behalf of the ward to the withholding or withdrawal of life-sustaining procedures except with specific authorization of the court having jurisdiction over the guardianship proceedings. Authorization must be granted in a separate court order and only at such time when the ward is in need of life-sustaining treatment.

(2) When performing duties and exercising authority, the guardian:

(A) ensures the interests, rights, and welfare of the ward are protected;

(B) may act independently, if necessary, from provider agency staff and DDSD staff;

(C) encourages the ward to:

   (i) participate to the maximum extent possible in all decisions that affect the ward; and

   (ii) act on all matters in which the ward is able to do so within the limitations imposed by the court; and

(D) as appropriate, assists the ward to develop or regain, to the maximum extent possible, his or her capacity to meet the essential requirements for health or safety.

(g) Changes in guardianship. The ward, any person interested in the welfare of the ward, or a guardian may make application to the court for:

(1) termination of the guardianship;

(2) removal of a guardian;

(3) imposition of additional restrictions or the removal of existing restrictions; or

(4) a review hearing.

(h) Special guardianships. The Advocacy and Guardianship Program assists service recipients who are in need of a temporary surrogate to obtain consent for non-emergency medical and dental procedures or to protect the service recipient's money, property, or assets at risk of loss or exploitation through a process to establish special guardianship.
(i) **Costs and fees.** Court costs are not charged for filing guardianship petitions and reports for persons who are applicants for or recipients of Social Security, per 56 O.S. § 192.

(j) **Responsibilities of OKDHS Legal Division.** If a guardian cannot be found for a resident of NORCE, SORC, or Greer, OKDHS Legal Division has the authority, per 10 O.S. § 1415, to file a petition for the appointment of a guardian ad litem for the service recipient.

   (1) Legal Division attorneys do not provide any legal services to any other party or potential party in guardianship cases.

   (2) The only legal services provided are to ensure compliance with 10 O.S. § 1415. No other legal services in connection with these guardianships are provided directly or indirectly by OKDHS.
340:100-3-5.1. Volunteer guardians and advocates

Revised 5-15-09

(a) **Purpose.** Developmental Disabilities Services Division (DDSD) contracts with an agency to maintain a system to recruit, screen, match, monitor, and support volunteer guardians and advocates for eligible service recipients. To be eligible, the service recipient must:

1. be assigned a DDSD case manager;
2. have been determined through the capacity assessment process, per OAC 340:100-3-5, to need a guardian or volunteer advocate; and
3. if volunteer guardianship is recommended; have no appropriate relative willing to serve as guardian.

(b) **Responsibilities of DDSD.**

1. When the need for a guardian or advocate has been determined through the capacity assessment process, per OAC 340:100-3-5, the DDSD case manager forwards Form 06MP032E, Capacity Assessment, with a recommendation for a volunteer guardian or advocate to the DDSD case management supervisor. If volunteer guardianship is recommended, documentation of attempts made to locate a guardian, among those who are eligible per OAC 340:100-3-5, must be included.

2. The DDSD case management supervisor reviews the documents and if approved, forwards the documents to the guardianship coordinator.

3. The guardianship coordinator reviews Form 06MP032E and, if approved, makes a referral to the volunteer guardianship agency to initiate the process to recruit a volunteer guardian or advocate.

(c) **Volunteer guardianship eligibility requirements.** In addition to requirements per OAC 340:100-3-5, eligibility criteria for volunteer guardians listed in (1) through (6) apply.

1. A corporate officer, member of the board of directors, owner, operator, administrator, or employee of a facility subject to provisions of Section 1-1901 et seq. of Title 63 of the Oklahoma Statutes (63 O.S. § 1-1901 et seq.) or 10 O.S. § 1430.1 et seq. or any other DDSD provider is ineligible to be appointed volunteer guardian of a person receiving services from that provider agency or provider.
(A) An immediate family member, spouse, parent, sibling, or adult child, of an ineligible person cannot serve as a volunteer guardian.

(B) An extended family member of an ineligible person cannot serve as a volunteer guardian when there is evidence that financial interdependence exists.

(2) Employees of DDSD cannot serve as volunteer guardians.

(A) An immediate family member, spouse, parent, sibling, or adult child, of the DDSD employee cannot serve as a volunteer guardian, if the employee is a member of the service recipient's Personal Support Team (Team).

(B) An extended family member of the DDSD employee cannot serve as a volunteer guardian when there is evidence that financial interdependence exists, and the employee is a member of the service recipient's Team.

(3) Any exceptions to the selection of a volunteer guardian, per OAC 340:100-3-5.1(c)(1) and (2) must be approved by the DDSD director or designee.

(4) Employees of Oklahoma Department of Human Services (OKDHS) cannot serve as volunteer guardians for residents of Northern Oklahoma Resource Center of Enid (NORCE), Southern Oklahoma Resource Center (SORC), or Robert M. Greer Center (Greer), per 10 O.S. § 1415.

(5) Potential guardians must:

(A) pass a background check including, but not limited to a check of the OKDHS Community Services Worker Registry;

(B) possess the willingness and ability to devote time and energy to serve as guardian;

(C) be certified by the volunteer guardianship agency; and

(D) approved by the Team.

(6) A volunteer guardian:

(A) supports the philosophy and values consistent with the DDSD mission statement per OAC 340:100-1-3.1; and

(B) serves no more than two wards unless approved in advance in writing by the
DDSD director or designee.

(d) **Volunteer advocate eligibility requirements.** DDSD supports the recruitment of volunteers from outside the service delivery system to avoid potential conflicts of interest.

(1) Non-DDSD OKDHS employees, contract providers, and employees of contract providers may serve as volunteer advocates when:

(A) an ongoing relationship exists with the service recipient; and

(B) they are not providing direct services to the service recipient and are not employed by a provider agency or OKDHS division that provides services to the service recipient.

(2) DDSD employees may not serve as volunteer advocates.

(3) Any exceptions to the selection of a volunteer advocate, per OAC 340:100-3-5.1 must be approved by the DDSD director or designee.

(e) **Responsibilities of a volunteer guardian.** The responsibilities of a volunteer guardian are outlined in OAC 340:100-3-5.

(f) **Responsibilities of a volunteer advocate.** A volunteer advocate assists the service recipient in making decisions and supports the service recipient in preserving his or her rights and obtaining necessary services. Such support may include:

(1) advocating for the service recipient;

(2) assisting the service recipient in decision making;

(3) reviewing the quality of services provided to the service recipient;

(4) attending the Individual Plan (IP) meeting or other meeting(s);

(5) assisting the service recipient with finances;

(6) accompanying the service recipient to medical appointments; or

(7) assisting the service recipient in completing applications.

(g) **Responsibilities of a temporary volunteer advocate.** The assistance of a
temporary advocate is requested when a service recipient or Team seeks a guardianship dismissal in order to restore full decision making rights to the service recipient. The responsibilities of a temporary volunteer advocate include:

1. filing a petition on behalf of the service recipient as an interested party so the request for restoration of capacity can be heard in court; and

2. after capacity is restored, continuing to be available to the service recipient for support and guidance for a period of no more than six months.

(h) Guardianship voucher. The volunteer applies for and receives Form 06MP031E, Guardianship Voucher, per OAC 340:100-3-5.2, to pay the attorney fee necessary to file the guardianship petition after certification by the volunteer guardianship agency, and approval by the Team and, if able, the service recipient. Court involvement is not required to establish volunteer advocacy, therefore the voucher is not available in such cases.

(i) Monitoring of volunteer guardians and advocates. Monitoring of the volunteer guardians and advocates is provided by the volunteer guardianship agency according to requirements specified in the OKDHS contract with the agency.

(j) Training requirements for volunteer guardians and advocates. Volunteers must participate in training regarding understanding and defining advocacy, developing effective advocacy skills, working effectively with service recipients and Teams, community inclusion, Oklahoma's service delivery system, and confidentiality. Volunteer guardians must participate in additional training regarding guardianship responsibilities, duties, and limitations.

1. Training is provided by the volunteer guardianship agency at no cost to the volunteer.

2. Volunteers receive orientation from volunteer guardianship agency regarding applicable OKDHS rules and procedures regarding volunteer programs.

3. Volunteer guardians proceed with knowledge they are not covered by 51 O.S. § 151 et seq., The Governmental Tort Claims Act, as they are not authorized to act on behalf of OKDHS, nor can they be so authorized without creating a conflict of interest in their roles as guardians.

(k) Responsibilities of volunteer guardianship agency. Duties of the volunteer guardianship agency include:
(1) recruiting volunteers to serve as guardians and advocates;

(2) obtaining background checks of potential volunteer guardians and advocates;

(3) contacting references. The volunteer guardianship agency contacts a minimum of three references. If responses are negative or if three references cannot be found, the volunteer is not considered;

(4) submitting proposed volunteers to the Personal Support Team for review and approval;

(5) arranging visits between potential volunteers and service recipients;

(6) providing training and orientation on OKDHS rules and procedures, including 51 O.S. § 151 et seq.;

(7) monitoring in accordance with OAC 340:100-3-5.1; and

(8) providing technical assistance as requested by the volunteer or DDSD case manager, including:

   (A) attending any team meetings;

   (B) accompanying the volunteer on home visits;

   (C) reviewing legal or specific documents or records regarding the service recipient; and

   (D) providing reminders of due dates for annual court reports and if needed, providing assistance to complete the reports.
340:100-3-5.2. Guardianship Voucher Program

Revised 5-15-2009

(a) **Scope and applicability.** Pursuant to Section 1415 of Title 10 and Section 228 of Title 56 of the Oklahoma Statutes, Oklahoma Department of Human Services (OKDHS) may pay for legal fees associated with guardianship proceedings for persons who:

1. receive Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) Waiver; or
2. are residents of Northern Oklahoma Resource Center of Enid (NORCE), Southern Oklahoma Resource Center (SORC), and Robert M. Greer Center (Greer).

(b) **Payment.** Payment for legal services is contingent upon availability of resources and does not exceed $700 per service recipient.

(c) **Participation.** Participation in the Guardianship Voucher Program extends only to those service recipients who have been determined, per OAC 340:100-3-5, to need a service listed in OAC 340:100-3-5.2.

(d) **Services.** Payment may be made for legal services necessary to:

1. establish guardianship;
2. replace, change, or add a guardian;
3. appoint a successor guardian;
4. alter the terms or level of an established guardianship; or
5. restore the ward's capacity.

(e) **Subsequent services.** Requests for payment for subsequent legal services related to the guardianship of the same service recipient may be approved by the DDSD director or designee.

(f) **Eligibility.** The guardian or potential guardian applying for a voucher must be:

1. a relative of the service recipient or a volunteer certified in accordance with OAC 340:100-3-5.1; and
(2) recommended by the DDSD Personal Support Team.

(g) Financial eligibility.

(1) Approved prospective volunteer guardians are exempt from financial eligibility requirements.

(2) When the spouse, mother, or father of the service recipient is applying to be the guardian, such applicant is subject to financial eligibility requirements. To be financially eligible to receive a guardianship voucher, the annual adjusted gross income of the applicant spouse or household income of the applicant mother or father of the service recipient must be $60,000 or less.

(3) Other relatives who desire to become the service recipient's guardian are exempt from the financial eligibility criteria.

(h) Guardianship voucher application.

(1) Form 06MP030E, Guardianship Voucher Application, is available from the DDSD case manager assigned to the service recipient, the area guardianship coordinator, resource center guardianship coordinator, or volunteer guardianship agency.

(2) The spouse, mother, or father making application for the guardianship voucher must submit required income verification, per OAC 340:100-3-5.2(i).

(3) Applications are sent to the DDSD guardianship programs manager.

(4) Any incomplete application is returned to the applicant for correction.

(5) Applications for the guardianship voucher are considered in chronological order of receipt at DDSD State Office.

(6) The number of applications approved is determined by available funding. Applications not approved during a fiscal year due to insufficient funding are placed on a waiting list in the chronological order received and are processed as funds become available.

(i) Verification of income. If the applicant is the spouse, mother, or father of the service recipient, verification of annual income must be provided. Acceptable forms of verification include a signed copy of the applicant's most recent federal income tax return or documentation of all sources of income from Supplemental Security Income, Temporary Assistance for Needy Families, child support, alimony, other state or federal
subsidy, or other types of income.

(j) Notification of application status. The applicant is provided written notice of approval, denial, or placement on the waiting list of the application for the guardianship voucher within 30 calendar days of receipt of completed Form 06MP030E at DDSD State Office.

(k) Issuance and expiration of guardianship voucher. When an application for the guardianship voucher is approved, dated Form 06MP031E, Guardianship Voucher, is issued to the applicant who then seeks and retains legal counsel. Each Form 06MP031E is approved for use from the date of issuance and is valid for 365 days from the date of issuance.

(l) Submitting voucher for payment. Upon completion of the guardianship proceedings, the attorney who provides the service submits Form 06MP031E to DDSD State Office for payment. A copy of all pleadings filed, the letters of guardianship, the guardianship order, Plan for the Care and Treatment of the Ward, and an itemized bill for legal services must be attached to Form 06MP031E. Form 06MP031E and required documentation must be received by the DDSD guardianship programs manager within 365 days from the date of issuance, or Form 06MP031E expires and is null and void.

(m) Fair hearing. Any person who has been denied a voucher may request a hearing in accordance with OAC 340:2-5.
340:100-3-33. Service authorization

Revised 5-15-09

(a) Developmental Disabilities Services Division (DDSD) provides services using state and federal funds.

(1) All Medicaid services are implemented in accordance with Title XIX regulations.

(2) Oklahoma Health Care Authority (OHCA) authorizes Title XIX compensability of all Home and Community-Based Services (HCBS) Waiver and intermediate care facility for persons with mental retardation (ICF/MR) services.

(3) HCBS Waiver services are included in the service recipient's Plan of Care (POC) and are identified in accordance with OAC 340:100-5-53.

(4) Facility administrators of Northern Oklahoma Resource Center of Enid (NORCE), Southern Oklahoma Resource Center (SORC), and Robert M. Greer (Greer) are authorized to approve habilitation and support services required by the service recipient's individual program plan and regulatory standards, including the purchase of adaptive and mobility equipment.

(5) All authorized state-funded services are implemented in accordance with Oklahoma Department of Human Services (OKDHS) purchasing and contract policy and procedures. Authorization of services is contingent upon the availability of adequate resources.

(b) DDSD case managers may implement services that are:

(1) generic non-specialized services are accessed when possible;

(2) approved for DDSD payment;

(3) identified in the service recipient's POC.

(A) The amount of HCBS Waiver services must not exceed service specific utilization limitations and comply with related OHCA policy.

(B) Total expense of HCBS Waiver services must not exceed the statewide congregate average annual cost of HCBS Waiver services per service recipient.

(C) The total POC cost must not exceed annual per capita limitations, if any.
(4) State funds are approved to meet critical needs when there is no other resolution and funds are necessary to resolve an emergency, such as necessary utilities, clothing, furniture, food, and shelter. Funds cannot exceed $750.00 per event.

(c) The DDSD area manager or designee must review and approve implementation of expenditures for:

1. HCBS Waiver services prescribed for a service recipient on the POC, exceeding the statewide, congregate average annual HCBS Waiver expenditure by 35% or less per year; and

2. Short term emergency services required to meet critical needs and ensure the continuity of care when no other resolution exists.

(d) The DDSD director or designee must review and approve implementation of:

1. Expenditures for HCBS Waiver services exceeding the statewide, congregate average annual cost of HCBS Waiver services by more than 35%; and

2. Support or habilitative services not otherwise authorized by OKDHS policy, subject to approval by OKDHS Director, Oklahoma Commission for Human Services or both.

(e) Service recipients:

1. Maintain the right to appeal service eligibility determinations as stipulated by the Oklahoma State Medicaid Plan and OKDHS policy; and

2. Are provided literature and an understandable explanation describing procedures for exercising this right.
340:100-3-35. Death of a DDSD service recipient

Revised 5-15-09

(a) Death of a DDSD service recipient. Upon the death of a DDSD service recipient, the DDSD area manager, public intermediate care facility for the mentally retarded (ICF-MR) administrator, or their designee ensures immediate notification of the DDSD division administrator or designee.

(b) Death of a person receiving residential services. If a person receiving community residential supports per OAC 340:100-5-22.1, public ICF-MR services, or waiver funded group home services dies, the area manager, public ICF-MR administrator or their designee implements procedures, as appropriate, to ensure immediate notification of:

(1) the service recipient's family member(s), guardian, or both by case management staff or provider agency staff;

(2) the office of the Chief Medical Examiner, per Section 938 of Title 63 of the Oklahoma Statutes; 1

(3) the County Sheriff's office or the city police department, in the event of accidental, suicidal, or homicidal death;

(4) the Children and Family Services Division if the service recipient was under the age of 18 and there is suspicion the death was the result of abuse or neglect per OAC 75:3-9.1;

(5) the Office of Client Advocacy in the event of the death of a Hissom class member or a resident of a public ICF-MR;

(6) the state office of Adult Protective Services, if the person is a vulnerable adult and there is suspicion the death was a result of abuse or neglect; and

(7) the state office of DDSD Quality Assurance for administrative inquiry per OAC 340:100-5-27, if there is any concern the death could pose a risk to others served by the agency.

(c) Mortality review. A mortality review is a systematic review of circumstances surrounding the death of a service recipient receiving community residential supports, public ICF-MR services, or waiver funded group home services and is conducted to:
(1) identify areas of concern related to the health and safety of service recipients;

(2) identify practices or rules in need of revision; and

(3) recommend strategies for quality improvement on a local or statewide basis.

(d) Mortality reviewer. When a person receiving community residential supports, public ICF-MR services, or waiver funded group home services dies, the area manager, public ICF-MR administrator, or their designee assigns a reviewer from a designated pool of trained DDSD mortality reviewers.

(e) Provider agency policies. Each provider agency establishes and implements policies and procedures that describe actions taken in response to the death of a service recipient, including notification of the DDSD area manager or designee.

(f) Provider agency responsibilities. Each residential service provider, including specialized foster care providers:

(1) immediately notifies the DDSD area manager, or designee;

(2) immediately notifies the service recipient's family member(s), guardian or both;

(3) assists the DDSD area manager, resource center administrator, or designee, if requested, in notification of authorities, as described in this Section;

(4) immediately relinquishes to DDSD the residential record, or supplies a legible, complete photocopy;

(5) secures written witness statements from all staff who worked with the service recipient 24 hours prior to the death unless otherwise specified by the mortality reviewer;

(6) assists the DDSD reviewer in coordinating witness interviews and other needs;

(7) preserves the scene of death; and

(8) completes Form 06MP046E per OAC 340:100-3-34.

(g) Law enforcement. DDSD staff and contract providers cooperate fully with law enforcement authorities in the investigation of the death of the service recipient.
INSTRUCTIONS TO STAFF 340:100-3-35

Revised 5-15-09

1. The Office of the State Medical Examiner is notified when:

   (1) the service recipient's death is:

       (A) by violence;

       (B) by suspicious, unusual, or unnatural means;

       (C) after unexplained coma;

       (D) unattended by a licensed medical or osteopathic physician;

       (E) medically unexpected and occurring in the course of a therapeutic procedure;

       (F) while in penal incarceration; or

       (G) related to disease which might constitute a threat to public health;

   (2) the body is to be cremated, buried at sea, transported out of state, or otherwise made unavailable for further pathological study; or

   (3) the service recipient resides in a public ICF/MR.

2. The assigned DDSD mortality reviewer or designee:

   (1) completes the DDSD initial mortality review report, and forwards the report to the area manager and the DDSD division director or designee within one working day following notification of the service recipient's death. The report includes:

       (A) personal profile;

       (B) medical history;

       (C) initial information obtained on the circumstances surrounding the death;
(D) any recent pharmacology evaluation;

(E) initial information regarding possible medical examiner's involvement; and

(F) status of any law enforcement involvement.

(2) obtains release(s) of information for reports relevant to the death, including:

(A) copy of death certificate;

(B) ambulance documents, if applicable;

(C) hospital or emergency room reports, if applicable;

(D) police or fire department documents, if applicable; and

(E) autopsy results, if applicable.

(3) through coordination with the provider agency, completes interviews and obtains written witness statements from all staff who worked in the service recipient's home, or directly with the service recipient:

(A) at the time of death;

(B) during events or time periods determined relevant by the reviewer; or

(C) within 24 hours before the service recipient's death.

(4) researches all pertinent data and assembles all facts and information for an Oklahoma DDSD mortality review summary report, to be completed within 45 days of the death unless extended by the DDSD division director or designee. The Oklahoma DDSD mortality review summary includes, but is not limited to:

(A) personal profile;

(B) cause of death;
(C) medical information;

(D) recent medical history;

(E) living arrangements;

(F) circumstances surrounding death;

(G) documentation of areas of concern, practices, or rules in need of revision and committee recommendations.

(5) forms a mortality review committee to include:

(A) the reviewer who chairs the committee;

(B) programs supervisor;

(C) a DDSD area nurse;

(D) case manager or case management supervisor;

(E) a representative from the Office of Client Advocacy (OCA), Child Protective Services (CPS), or Adult Protective Services (APS), if investigation is required;

(F) a representative from OCA if the service recipient was a Hissom class member or a resident of a public ICF-MR; and

(G) other person(s) deemed appropriate by the reviewer.

(6) invites a representative of the provider agency to attend the committee meeting.

(7) schedules a meeting of the mortality review committee, and:

(A) presents the Oklahoma DDSD mortality review summary report to the committee;

(B) schedules additional meetings, if necessary.
(C) Members of the death review committee are bound by confidentiality regarding the findings and contents of the committee's meeting(s), and all reports related to the review are confidential.

(D) The committee's completed report includes:

(i) a written summary of the reviewer's report; and

(ii) a summary of the meeting including:

(I) the committee's findings;

(II) recommendations for system or procedural changes; and

(III) concerns identified related to the health and safety of service recipients; and

(IV) concerns regarding contract compliance, per OAC 340:100-3-27.

(8) sends the Oklahoma DDSD mortality review summary report to the DDSD area manager and a copy to the DDSD division director or designee.

3. The DDSD division director or designee tracks recommendations for system or procedural changes until final disposition.
340:100-3-38.5. Training requirements for staff providing supports in family's or service recipient's home through an In-Home Supports Waiver

Revised 5-15-09

(a) Applicability. OAC 340:100-3-38.5 sets forth training requirements for staff providing direct supports funded through an In-Home Supports Waiver (IHSW) in the family's or service recipient's home. Staff providing employment supports must complete training per OAC 340:100-3-38.2.

(b) New employee training. No later than 30 days following the date of hire, staff providing direct supports or supervising at any level the delivery of direct supports must complete the first available Developmental Disabilities Services Division (DDSD) approved foundation training course and effective teaching course. 1 The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's date of hire.

(c) First aid and cardio-pulmonary resuscitation (CPR). All direct support staff must be certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.

(1) First aid and CPR certification of each staff must occur within 90 days following employment.

(2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, staff must receive first aid and CPR certification in less than 90 days.

(d) Medication administration training. Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.

(e) Individual-specific in-service training. Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan) for implementation and consistency of supports and programs and to ensure the service recipient's health and welfare.

(1) The service recipient's Team specifies required time frames for completion of individual-specific in-service training. If time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.
(2) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with time frames for completion.

(3) The Team identifies the person responsible for providing individual-specific training and verifies staff has knowledge and skills necessary to provide the identified services. Videos may be used when approved by the Team.

(f) **Job-specific training.** Staff must complete:

1. within 90 days after date of assignment, Health course; and
2. within six months after date of assignment:
   - (A) Communication course; and
   - (B) Skill Building course.

(g) **Specialized training.** Additional specialized training courses may be required for direct support staff working with service recipients who have significant health and physical support issues or behavior support issues.

1. If specialized health and physical support training courses are identified in the Plan, staff must complete the courses before working alone or with other untrained staff, but no later than 60 days after starting work with the service recipient.
2. Staff serving a service recipient with a protective intervention plan that includes non-restrictive intervention techniques must be trained on these techniques before use.
3. Completion of an approved behavior support course is required for direct support staff serving a service recipient with a protective intervention plan that:
   - (A) addresses challenging behavior that places the service recipient's physical safety, environment, relationships, or community participation at serious risk; and
   - (B) contains one or more procedures in (i) through (iv).
     - (i) Physical guidance to overcome resistance.
     - (ii) Physical guidance to move to safety.
(iii) Physical hold to restrict movement.

(iv) Intensified staffing to ensure safety.

(4) The approved behavior support course is identified in the Plan and must be completed before working alone or with other untrained staff, but no later than 60 days after starting work with the service recipient. ▼ 3

(5) Staff must complete the approved physical management course before using any technique of physical management identified in a protective intervention plan. If an approved protective intervention plan includes physical management procedures, the chief executive officer or designee of each provider agency verifies conditions per OAC 340:100-3-38.5(g) are met before securing training on the procedures. ▼ 3

(A) All staff to be trained must complete foundation training with the approved effective teaching course and behavior support course.

(B) Staff working with the service recipient implements the positive components of the plan, as well as non-intrusive procedures to assist the service recipient during a crisis.

(C) The protective intervention plan must be reviewed by the provider agency Human Rights Committee and approved by the Statewide Behavior Review Committee.

(D) Training in physical management procedures occurs only within the requirements per OAC 340:100-3-38.5(g).

(E) Only staff and staff supervisors who provide support to the service recipient are trained on use of a physical management procedure.

(F) Staff formally trained to use physical management procedures do not use those techniques with other service recipients, except in emergencies per OAC 340:100-5-57.

(G) Training curricula regarding behavior support are approved by the DDSD director of human resource development and DDSD director of psychological and behavioral supports.

(6) If the DDSD director of psychological and behavioral supports or positive support field specialist grants emergency authorization per OAC 340:100-5-57 of a
protective intervention plan that includes physical management procedures, training is provided only to staff who complete or enroll in the courses per OAC 340:100-3-8.5(g).

(7) Training regarding physical management procedures must be obtained from certified DDSD trainers.

(8) Staff must complete an annual retraining on the specific procedures in the protective intervention plan.

(h) Ongoing training. All direct support staff employed by contract agencies who provide services funded through an IHSW complete 12 hours of annual training. Annual training may come from:

(1) required re-certification classes in first aid, CPR, and medication administration training;

(2) courses per OAC 340:100-3-38(b)(1);

(3) courses, conferences, or workshops approved by the DDSD director of human resource development;

(4) individual-specific training; or

(5) agency-specific in-services.

(i) Certification of competency. If the service recipient, if applicable, legal guardian, or parent(s) of a minor service recipient determines the person chosen to provide services has demonstrated competency in providing care to the service recipient, the service recipient, legal guardian, or parent(s) may exempt the person from training requirements, per OAC 340:100-3-38.5, by signing Form 06IS037E, In-Home Supports Waiver - Certificate of Competency.

(1) The exemption from training is intended to allow services to be provided by a friend, neighbor, family member, or other person who has been trained and deemed competent by the service recipient, or if applicable, legal guardian or parent(s) of a minor service recipient.

(A) No person may coerce or in any way influence a service recipient, legal guardian, or family member to sign Form 06IS037E.

(B) Violation of this prohibition may result in sanctions per OAC 340:100-3-27.
If a service recipient, if applicable, legal guardian, or parent(s) of a minor service recipient chooses to exempt staff from training, neither Oklahoma Department of Human Services (OKDHS) nor the employing contract agency is liable in the event of harm, attributable to lack of training, to the service recipient while in the care of contract agency staff.

If an adult service recipient without a legal guardian chooses to exempt staff from training, training requirements are not waived without written concurrence, on Form 06IS038E, In-Home Supports Waiver - Family Member's Statement, from a parent(s) or family member closest to the service recipient.

The provider agency employing the staff may require training not included in the exemption.

All staff, regardless of signed Form 06IS037E, must successfully complete:

(A) certification in first aid and CPR before working alone or with untrained staff, but no later than 90 days after starting work with the service recipient;

(B) an approved medication administration course per OAC 340:100-3-38.10; and

(C) individual-specific in-service training per OAC 340:100-3-38.5(e).

Form 06IS037E:

(A) is valid for no longer than one year; and

(B) may be withdrawn at any time by the service recipient, if applicable, legal guardian, or parent(s) of a minor service recipient by writing to the DDSD case manager and provider agency.

OKDHS may withdraw the exemption from training at any time.

Exceptions. Exceptions to training requirements per OAC 340:100-3-38.5 may be made by the DDSD director or designee.

INSTRUCTIONS TO STAFF 340:100-3-38.5

Revised 5-15-09
1. Effective teaching course. The effective teaching courses include either Effective Teaching and Learning I (ETL I), or Effective Teaching course available through the College of Direct Supports on-line training.

2. Specialized training courses. Specialized health and physical support training courses are:

   (1) Physical Assistance I;

   (2) Physical Assistance II; and

   (3) Mealtime Challenges.

3. Behavior support courses. The approved:

   (1) behavior support courses include either ETL II or Behavior Support course available through the College of Direct Supports on-line training.

   (2) course on non-restrictive techniques includes Methods of Protective Intervention I (MOPI I); and

   (3) course on physical management procedures is MOPI II.
340:100-3-38.12. Training requirements for direct support staff providing respite, homemaker, or homemaker respite services

Revised 5-15-09

(a) Applicability. OAC 340:100-3-38.12 sets forth training requirements for direct support staff or provider agency volunteers and direct supervisors providing only respite, homemaker, or homemaker respite services through the Community Waiver, an In-Home Supports Waiver (IHSW), or Homeward Bound Waiver in the family's or service recipient's home or in any community setting as specified per the service recipient's Individual Plan.

(1) If Form 06IS037E, In-Home Supports Waiver - Certificate of Competency, is in place for IHSW participants per OAC 340:100-3-38.5, staff does not have to meet the requirements of OAC 340:100-3-38.12.

(2) Direct support staff providing services beyond respite, homemaker, or homemaker respite services completes training appropriate to staff jobs per OAC 340:100-3-38.

(b) New employee training. No later than 30 days following the date of hire, staff providing direct supports or supervising at any level the delivery of direct supports must complete the first available Developmental Disabilities Services Division (DDSD) approved foundation training course and effective teaching course. The first available class is the first unfilled class held within 60 miles of the staff's work location following the staff's date of hire.

(c) First aid and cardio-pulmonary resuscitation (CPR). All direct support staff must be currently certified in an approved course of first aid and CPR before providing services alone or with other untrained staff.

(1) First aid and CPR certification of each staff must occur within 90 days following employment.

(2) The service recipient's Personal Support Team (Team) may determine, based on the service recipient's needs, staff must receive first aid and CPR certification in less than 90 days.

(d) Medication administration training. Staff must be certified in an approved medication administration course, per OAC 340:100-3-38.10, before administering medication to a service recipient or assisting with a service recipient's medication support plan.
(e) **Individual-specific in-service training.** Individual-specific in-service training is identified for direct support staff in the service recipient's Individual Plan (Plan) based on the physical status review (PSR), if applicable, per OAC 340:100-5-26, and other assessment information for implementation and consistency of supports and programs and to ensure the service recipient's health and welfare.

(1) A service recipient's Team specifies required time frames for completion of individual-specific in-service training. If time frames are not identified in the Plan, required individual-specific in-service training must be completed before working with the service recipient.

(2) As the service recipient's needs require changes in supports or programs, the Team documents in the Plan, or in addenda to the Plan, any new or additional in-service training required, with time frames for completion.

(3) Individual-specific training is provided by the appropriate Team member.

(4) The responsible Team member verifies staff has knowledge and skills necessary to provide the identified services.

(f) **Ongoing training.** All direct support staff employed by provider agencies complete eight hours of approved annual training. Annual training may come from:

(1) required re-certification classes in first aid, CPR, and medication administration training;

(2) courses per OAC 340:100-3-38(b)(1);

(3) courses, conferences, or workshops approved by the DDSD director of human resource development;

(4) individual-specific training; or

(5) agency-specific in-services.

(g) **Exceptions.** Exceptions to training requirements per OAC 340:100-3-38.12 may be made by the DDSD director or designee.

**INSTRUCTIONS TO STAFF 340:100-3-38.12**

**Revised 5-15-09**
1. Effective teaching course. The effective teaching courses include either Effective Teaching and Learning I (ETL I) or Effective Teaching course available through the College of Direct Supports on-line training.
340:100-3-39. Pre-employment screening for community services workers

Revised 5-15-09

(a) Legal basis. Section 1025.1 et seq. of Title 56 of the Oklahoma Statutes (56 O.S. § 1025.1 et seq.) requires Oklahoma Department of Human Services (OKDHS) to establish and maintain a registry listing the names of community services workers against whom a final investigative finding of maltreatment involving a service recipient, has been made by OKDHS or an administrative law judge. Providers of community services:

(1) are required to conduct a search of criminal history records and OKDHS Community Services Worker Registry (Registry) prior to permanent employment of any community services worker; and

(2) must not hire, contract with, or use as a volunteer, a person whose name is listed in the Registry or who has a criminal background described in OAC 340:100-3-39(d)(1)(G).

(b) Applicability. The requirements set forth in OAC 340:100-3-39 apply to all community services providers who contract with, or are licensed or funded by OKDHS or who contract with Oklahoma Health Care Authority (OHCA) to provide residential or employment services to service recipients through Developmental Disabilities Services Division (DDSD) Home and Community-Based Services (HCBS) Waivers.

(c) Definitions. The following words and terms when used in this Section shall have the following meanings, unless the context clearly indicates otherwise:

(1) "Community services provider" means a community-based program, corporation, or person who contracts with, or is licensed or funded by OKDHS or who contracts with OHCA to provide residential or employment services to a service recipient through DDSD HCBS Waivers.

(2) "Community services worker" means any person who:

(A) contracts with the OHCA to provide specialized foster care, habilitation training specialist services, or homemaker services to persons with developmental disabilities; or

(B) is not a licensed health professional; and

(C) employed by or under contract with a community services provider to provide
for compensation or as a volunteer:

(i) health-related services;

(ii) training; or

(iii) supportive assistance.

(3) "Good cause" means failure of a community services worker to make a timely response for reconsideration of a confirmed finding of maltreatment due to:

(A) a death within the community services worker's immediate family;

(B) hospitalization of the community services worker; or

(C) an equally meritorious reason, determined within the sound discretion of the administrative law judge or other OKDHS staff authorized per OAC 340:100-3-39 to determine such cause.

(4) "Health related services" means assistance provided to a service recipient that includes, but is not limited to:

(A) personal hygiene;

(B) transferring;

(C) range of motion;

(D) supervision or assistance in activities of daily living; or

(E) basic nursing care, such as:

   (i) taking temperature, pulse, or respiration;

   (ii) positioning;

   (iii) incontinent care; or

   (iv) identification of signs and symptoms of disease; and

(F) certain tasks that may be performed as basic nursing care by community services workers and require appropriate training provided or approved by
OKDHS, written agreement by the service recipient's personal support team, and the primary care physician's acknowledgement and specific order related to the task. Under such circumstances, basic nursing care may include, but need not be limited to:

(i) nutrition, including meals by gastrostomy tube or jejunostomy tube;

(ii) blood glucose monitoring;

(iii) ostomy bag care;

(iv) oral suctioning; and

(v) administration of oral metered dose inhalers and nebulizers.

(5) "Supportive assistance" means the service rendered that is sufficient to enable the service recipient to meet an adequate level of daily living including, but not limited to:

(A) training;

(B) supervision;

(C) assistance in housekeeping;

(D) assistance in meal preparation; and

(E) assistance in personal care and activities of daily living necessary for the health and comfort of the service recipient.

(6) "Maltreatment" means abuse, verbal abuse, sexual abuse, neglect, financial neglect, exploitation, or sexual exploitation of vulnerable adults as defined in Section 10-103 of Title 43A of the Oklahoma Statutes; or abuse, neglect, sexual abuse, or sexual exploitation of children as defined in Section 7102 of Title 10 of the Oklahoma Statutes.

(7) "Specialized foster care" means the home and community-based service as defined in the 1915(c) waiver approved by the Centers for Medicare and Medicaid Services.

(8) "Habilitation training specialist services" means the home and community-based service as defined in the 1915(c) waiver approved by the Centers for
Medicare and Medicaid Services.

(9) "Homemaker services" means the home and community-based service as defined in the 1915(c) waiver approved by the Centers for Medicare and Medicaid Services.

(d) Duties of OKDHS. When the OHCA contracts directly with a specialized foster care provider, habilitation training specialist services provider, or a homemaker services provider to provide services through the DDSD HCBS waivers, OKDHS follows the screening procedures required for community services providers.

(e) Duties of community services providers.

(1) Provider pre-employment responsibilities. Each community services provider conducts a search of criminal history records and the Registry for each potential employee who is not a licensed health professional and who will provide, for compensation or as a volunteer, on a full-time or part-time basis, health-related services, training, or supportive assistance to a service recipient. This requirement also applies to applicants for supervisory, management, or administrative positions, when the applicant is to provide, on a full-time or part-time basis, supportive assistance, health-related services, or training to a service recipient. The provider:

(A) uses Form 06PE039E, Employment Application Supplement, to formally advise each applicant of the:

(i) required search of criminal history records and the Registry;

(ii) potential consequences of background checks, including the provider's prohibition from hiring any person whose name appears in the Registry or who has a prohibited criminal conviction, per OAC 340:100-3-39(e);

(iii) requirement that the community services worker's employment must be terminated if his or her name appears in the Registry, even though the applicant's name may not have appeared in the Registry at the time of application or hiring;

(iv) requirement to report all current and previous employers who provide services to children or to vulnerable adults; and

(v) fact that giving false information regarding current and previous employers results in termination of employment.
(B) contacts all previous employers engaged in delivery of services to children or vulnerable adults, defined in 43A O.S. § 10-103, requesting information on investigations or findings of maltreatment;

(C) when contacted by a potential employer, gives accurate information regarding investigations of maltreatment that were reported to Adult Protective Services (APS), Office of Client Advocacy (OCA), or Child Protective Services (CPS) and are pending or confirmed;

(D) requests a criminal history records search from Oklahoma State Bureau of Investigation (OSBI) prior to employment of, or offer of employment to, any applicant, except as provided in OAC 340:100-3-39(d)(1).

(i) The provider must secure the criminal history records search and cannot accept documents provided by the applicant.

(ii) If the provider uses a contractor to secure the criminal history records search, the contractor attaches the document received from OSBI to any report given to the provider;

(E) investigates discrepancies in the criminal record information received from OSBI.

(i) If discrepancies exist between criminal history information and information reported by the applicant, such as convictions not reported by the applicant, the provider secures from the applicant a written explanation of the discrepancy that is then sent to OKDHS if the provider is requesting a waiver per OAC 340:100-3-39(e).

(ii) If OSBI information reports inconclusive data, such as reporting the case was referred to another law enforcement agency, the provider secures documentary evidence of the outcome;

(F) may choose to make an offer of temporary employment to an applicant, pending the results of the OSBI criminal history records search.

(i) The provider submits a request for a criminal history records search to OSBI within 72 hours of the applicant's acceptance of any offer of temporary employment.

(ii) Temporary employment of any applicant does not extend longer than the time necessary to receive the results of the criminal history records search.
and registry review, not to exceed 30 calendar days; and

(G) when the OSBI search reveals that the applicant has been convicted, pled guilty, or pled nolo contendere to misdemeanor assault and battery or a felony, the provider does not hire or contract with the person and immediately cancels any temporary employment arrangement. If a waiver is requested per OAC 340:100-3-39(e), the community services worker is relieved of responsibilities working directly with service recipients until the provider receives a written decision by OKDHS.

(2) Provider duties during an investigation. Upon receiving notification of an investigation of an allegation of maltreatment involving an employee, the provider chief executive officer or designee:

(A) ensures protection and the health and safety for any and all persons receiving services from the provider;

(B) notifies the community services worker, in a face-to-face conference, of the upcoming investigation; and

(C) explains the rights of the community services worker, using Form 06PE059E, Rights and Responsibilities of Community Services Worker in an investigation of maltreatment, before the community services worker is interviewed by the investigator, including:

   (i) that notice of the outcome of the investigation is mailed to the community services worker's address given on Form 06PE059E; and

   (ii) the community services worker's right to request due process in accordance with procedures given in the notice mailed.

(3) Provider responsibilities regarding due process procedures. If an employee of a provider is called as a witness in a hearing, the provider:

(A) directs the employee to attend the hearing to give testimony;

(B) accommodates work schedules; and

(C) when written records are required, submits the required records or certified copies. Failure to comply with these responsibilities may result in sanctions per OAC 340:100-3-27.
(f) Waiver of requirement not to hire based on criminal history records search. If the criminal history records search reveals a criminal background the provider believes will not place a service recipient at risk of harm and will not affect the quality of services provided by the applicant, the provider may request a waiver from OKDHS.

(1) The provider sends a written request for a waiver to the DDSD director. The request includes:

(A) the applicant's:

(i) full name;

(ii) Social Security number; and

(iii) date of birth;

(B) a legible copy of the criminal history records search; and

(C) an explanation of all factors or circumstances the provider believes must be considered.

(2) A waiver is not granted, under any circumstance, for employment of an applicant who has been convicted of, pled guilty, or pled nolo contendere to:

(A) a felony count of:

(i) aggravated assault and battery;

(ii) homicide;

(iii) murder;

(iv) attempted murder;

(v) rape;

(vi) incest; or

(vii) sodomy; or

(B) abuse, neglect, or exploitation of any person entrusted to the applicant's care.
(3) No waiver is granted for offenses resulting in a conviction, plea of guilty, or plea of nolo contendere to a felony that occurred less than five calendar years from the date of the request.

(4) Factors considered in the OKDHS decision to grant or deny a waiver include:

   (A) other convictions of the person;
   (B) responsibility evidenced by the person since conviction;
   (C) time lapse since the person's conviction;
   (D) person's age upon conviction;
   (E) nature and underlying circumstances of the person's offense;
   (F) evidence of efforts made by the person toward rehabilitation, including job training or educational programs in which the person participated;
   (G) person's prior employment record; and
   (H) nature and location of the position the person seeks.

(5) OKDHS:

   (A) may grant a waiver for applicants who will provide services through DDSD HCBS Waivers only upon concurrence by OHCA; and
   (B) assumes no responsibility for the actions of a person employed by a provider subsequent to a waiver. The provider indemnifies and holds OKDHS harmless for any damages or attorney fees resulting from a claim that an employee of the provider subsequently abused, neglected, exploited, or otherwise injured a service recipient.

(g) **Rights of community services worker.** During investigation of an allegation of maltreatment, any community services worker who is accused of maltreatment is entitled to:

   (1) be advised of the nature of any allegation against such worker;
   (2) be interviewed by the investigator and allowed to give his or her position in relation to the allegation;
(3) be advised of the substance of the evidence against him or her prior to making a statement to the investigator. The identity of persons reporting alleged maltreatment is not released during the investigation;

(4) refuse, without penalty, to take a polygraph examination;

(5) submit or supplement a written statement relating to the allegation;

(6) seek and receive advice concerning his or her rights and responsibilities in the investigation and review process; and

(7) receive notice from OKDHS of the outcome of the investigation. The community services worker:

   (A) provides a correct address to receive notice; and

   (B) is responsible to notify CPS, APS, or OCA, as applicable, of any address change.

(h) Responsibilities of community services worker. Any community services worker who is involved, either as a witness or an accused caretaker, in the investigation of alleged maltreatment has the responsibility to:

(1) prepare a written incident report;

(2) be available for scheduled interviews;

(3) respond fully and truthfully to the investigator's questions. A community services worker who believes that his or her answers to official inquiries concerning alleged maltreatment may incriminate the worker in a criminal prosecution may discontinue the interview for that reason;

(4) refrain from any action that may interfere with the investigation, including any action that may intimidate, threaten, or harass any person who has or may provide information relating to alleged maltreatment; and

(5) appear at any hearing as requested by OKDHS per OAC 340:100-3-39(h)(6).

(i) Procedures for notice and due process.

(1) Determination not to place in Registry. At any time during the notice and due process, OKDHS may determine the placement of a community services worker's
name in the Registry is not warranted, despite a confirmed finding of maltreatment by APS, CPS, or OCA, as applicable.

(A) OKDHS may determine that the community services worker's name will not be placed in the Registry when the wrongful conduct:

(i) does not warrant placement in the Registry using the clear and convincing evidence standard applicable at the administrative hearing;

(ii) did not result in, or create a substantial risk of, serious physical or emotional injury to a service recipient; or

(iii) is not the result of intentional, willful, or reckless disregard for the health or safety of a service recipient.

(B) When a determination is made that a community services worker's name is not to be placed in the Registry, OKDHS sends a notice to the community services worker informing the worker that his or her name will not be placed in the Registry. A copy of the notice is sent to the community services provider who employed the community services worker at the time of the incident that resulted in the confirmed finding.

(2) Notification of DDSD. OKDHS divisions responsible for investigating allegations of maltreatment, per OAC 340:2-3, OAC 340:5, or OAC 340:75-3, send reports of investigations to the DDSD director or designee.

(3) Notification to provider. The OKDHS division responsible for the investigation notifies the provider, or appropriate OKDHS representative, when the investigative report reveals systemic administrative issues regarding:

(A) protection or safety of the service recipient; or

(B) provider agency shortcomings.

(4) Notification to community services worker. OKDHS sends written notice of the results of the investigation to the community services worker alleged to have committed maltreatment. The name of the community services worker who has a confirmed finding of maltreatment is added to the Registry when OKDHS has sent proper notice to the last known address of the community services worker, and the notice was returned as unclaimed or undeliverable. The notice:

(A) is sent within three working days of receipt by OCA of the OKDHS
determination to proceed with the Registry process. If the allegation is ruled out, the provider is also notified;

(B) is sent by certified mail, return receipt requested, if the investigation resulted in a finding of maltreatment;

(C) contains a summary of the evidence supporting the finding of maltreatment without identifying the complainant;

(D) specifies that, if the community services worker desires to contest the finding, he or she submits a detailed written statement with a request that OKDHS issue a reconsideration decision reversing the finding;

(E) advises the community services worker that a reconsideration decision must be requested in writing, postmarked within ten calendar days of receipt of the notice; and

(F) notifies the community services worker that failure, absent good cause, to request a reconsideration decision within ten calendar days, as evidenced by the date of his or her signature on the U.S. Postal Service return receipt card:

(i) results in the finding becoming final;

(ii) waives the right to further administrative or judicial review; and

(iii) authorizes:

(I) entry of the community services worker's name in the Registry; and

(II) disclosure per OAC 340:100-3-39(I) to any person requesting such information per OAC 340:100-3-39(j).

(5) Reconsideration decision. If the community services worker submits a timely request for a reconsideration decision, or if OKDHS determines good cause for untimely filing, OKDHS issues a reconsideration decision.

(A) The reconsideration decision:

(i) affirms the investigative report;

(ii) modifies the investigative report;
(iii) reverses the investigative report; or

(iv) remands the investigative report for further investigation; and

(v) is issued within ten working days of receipt of the request or, if applicable, the date of any determination of good cause.

(I) If the decision is to remand for further investigation, the investigation is completed within 15 working days of the decision to remand.

(II) Upon completion of the supplemental investigation, OKDHS notifies the community services worker within three working days;

(vi) states the basis for the determination including, but not limited to, any investigative report, OKDHS records, or provider records deemed relevant;

(vii) specifically evaluates and comments upon the contents of the community services worker's written request; and

(viii) is mailed to the community services worker by certified mail return receipt requested, postage prepaid.

(B) When the reconsideration decision affirms or modifies the investigative report, OKDHS:

(i) if the community services worker is aggrieved by the decision, notifies the community services worker that he or she may request an administrative hearing;

(ii) states a written request for hearing must be submitted by the community services worker to OKDHS at a specified address and postmarked within ten calendar days of receipt of the reconsideration decision, unless good cause is established. Receipt is deemed to occur on the date the community services worker signs the U.S. Postal Service return receipt card; and

(iii) states failure to timely request a hearing, absent a finding of good cause by an administrative law judge:

(I) results in the reconsideration decision becoming final;

(II) waives any right to either an administrative hearing or judicial review; and
(III) authorizes entry of the community services worker's name in the Registry, and disclosure to any person requesting the information per OAC 340:100-3-39(j).

(6) **Notice of hearing.** When the community services worker submits a timely written request for hearing, or upon the administrative law judge finding of good cause for a request that was not timely, OKDHS sends a notice of hearing by certified mail, return receipt requested, postage prepaid within ten working days of receipt of the request. The notice is dated and states:

(A) name of administrative law judge;

(B) time and date of hearing, that must be held no earlier than 15 calendar days and no later than 60 calendar days after the date of mailing of the notice;

(C) street and city address, and room number where the hearing will be held;

(D) failure of the community services worker to attend the hearing, absent a finding of good cause by an administrative law judge:

   (i) results in the reconsideration decision becoming final;

   (ii) waives any right to either an administrative hearing or judicial appeal; and

   (iii) authorizes entry of the community services worker's name in the Registry, and disclosure to any person requesting the information per OAC 340:100-3-39(j);

(E) the community services worker may be represented by an attorney;

(F) requests by the community services worker or his or her attorney for witnesses, records, or both, relevant to the proceeding must be directed to OKDHS. OKDHS sends requests to the relevant provider, per OAC 340:100-3-39(d)(3), persons, and appropriate OKDHS divisions;

(G) a final proposed list of witnesses and summary of anticipated testimony must be submitted to the administrative law judge designated on the notice of hearing at least ten calendar days prior to any hearing;

(H) any final decision on the specific persons allowed to testify, the scope of direct testimony and cross-examination, and admissibility of exhibits will be within the sound discretion of the administrative law judge, except all OKDHS and
provider records pertaining to a finding of confirmed maltreatment are admissible;

(I) the community services worker or his or her attorney is allowed to cross examine witnesses called by the OKDHS attorney, who is allowed to cross examine any witnesses called by the community services worker or his or her attorney; and

(J) although the formal rules of evidence and procedure under Oklahoma law are not controlling, the burden of persuasion and initially coming forward with evidence is on OKDHS through its attorney, and the standard of proof is clear and convincing evidence.

(7) Hearing.

(A) The hearing is:

(i) closed and all information presented therein is confidential; and

(ii) tape recorded.

(B) The administrative law judge affirms, modifies, or reverses the reconsideration decision, or determines the name of the community services worker, who has been confirmed as having engaged in maltreatment, must not be added to the Registry when the act or omission that is the basis for the confirmed finding:

(i) did not result in, or create a substantial risk of, serious physical or emotional injury to a service recipient; or

(ii) was not the result of intentional, willful, or reckless disregard for the health or safety of a service recipient.

(C) A written decision by the administrative law judge affirming, modifying, or reversing the reconsideration decision, or determining, per OAC 340:100-3-39(h)(7)(B), the community services worker's name is not to be placed in the Registry:

(i) is issued within 30 calendar days of the hearing;

(ii) is mailed to the community services worker by certified mail, return receipt requested, no later than the first working day following the date the decision
is signed by the administrative law judge;

(iii) contains findings of fact and conclusions of law;

(iv) notifies the community services worker that, if he or she is aggrieved by the decision, a judicial appeal, solely on the administrative record, may be initiated by filing a petition in the Oklahoma district court with jurisdiction within 30 calendar days from the date the decision is signed by the administrative law judge, pursuant to 56 O.S. § 1025.3 and 75 O.S. § 318; and

(v) states a copy of any petition and summons filed in district court must be served on OKDHS Legal Division.

(j) Disclosure requirements for Registry.

(1) The Registry information includes, but is not limited to:

   (A) community services worker's:

      (i) full name;

      (ii) Social Security number; and

      (iii) date of birth;

   (B) date the community services worker's name was placed in the Registry; and

   (C) information on the final investigative finding or administrative law judge finding regarding the community services worker.

(2) The information disclosed includes only whether the person is listed in the Registry. No other information related to the allegation, investigation, or evidence is disclosed.

(3) The provider requesting Registry information on an applicant or employing a community services worker alleged to have committed maltreatment is notified when the community services worker's or applicant's name is entered in the Registry. If more than one community services worker is named as an accused caretaker, a separate letter is sent to the provider for each community services worker.

(k) Public access to Registry. Access to the Registry is available to the public through
the OKDHS Web site: www.okdhs.org.
SUBCHAPTER 5. CLIENT SERVICES

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340:100-5-25. Service authorization/client services/service provisions/residential services [REVOKED]
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PART 5. INDIVIDUAL PLANNING

340:100-5-50. Principles of individual planning
340:100-5-51. Individual assessment
340:100-5-52. The Personal Support Team (Team)
340:100-5-53. Individual Plan
340:100-5-54. Planning for obstacles
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340:100-5-56. Risk assessment
340:100-5-57. Protective intervention plan
340:100-5-57.1. Reporting and monitoring the use of restrictive or intrusive procedures or emergency interventions
340:100-5-58. Prohibited procedures
340:100-5-22.1. Community residential supports

Revised 5-15-09

(a) **Applicability.** Community residential supports are funded through contracts with Oklahoma Department of Human Services (OKDHS), Oklahoma Health Care Authority (OHCA), or both, and must meet standards per OAC 340:100-5-22.1.

1. A service recipient is considered receiving community residential supports when the service recipient receives:
   - (A) daily living supports (DLS), per OAC 317:40-5-150;
   - (B) Prader-Willi services;
   - (C) agency companion services (ACS), per Part 1 of OAC 317:40-5; or
   - (D) specialized foster care (SFC), per Part 5 of OAC 317:40-5.

2. OAC 340:100-5-22.1 does not apply to:
   - (A) group home services, per OAC 340:100-6; or
   - (B) services provided to service recipients who receive assisted living services, per OAC 340:100-5-22.2.

(b) **General information.**

1. Services for children are provided in family settings unless approved by the Developmental Disabilities Services Division (DDSD) Community Services Unit programs administrator or designee.

2. In addition to OAC 340:100-5-50 through 340:100-5-58, the DDSD case manager ensures each Personal Support Team (Team) assesses and addresses the service recipient's needs regarding:

   - (A) safety in the home, including:
     - (i) storage of toxic chemicals, cleaning supplies, and combustibles; and
     - (ii) use of a tempering valve or other anti-scald device or lowered hot water tank temperature to control water temperature;
(B) financial issues in addition to OAC 340:100-3-4, including:

(i) a household budget that provides adequate resources for housing, food, clothing, furnishings, personal supplies, and recreational opportunities; and

(ii) assistance needed by the service recipient in money management;

(C) selection, adaptation, and maintenance of a home;

(D) community inclusion and access to work, recreation, and therapies;

(E) transportation; and

(F) water safety.

(3) Each service recipient is responsible for his or her room and board expenses, including recreational activities, clothing, furnishings, food, and other expenses for services or supports not funded through OKDHS, except as:

(A) provided to members of the Homeward Bound class; or

(B) approved in emergency circumstances per OAC 340:100-3-33 or 340:100-5-3.

(c) Homes. Community residential supports are provided in the service recipient's home. The provider agency ensures:

(1) the home and yard are clean, well-maintained, safe, free from hazards, and adapted to the service recipient's needs;

(2) the home has:

(A) utility service and adequate heating, cooling, and plumbing;

(B) safety items in operating condition located in strategic locations in the home, such as:

(i) flashlight;

(ii) smoke detector;

(iii) carbon monoxide detector;
(iv) first aid kit;

(v) fire extinguisher; and

(vi) a tempering valve or other anti-scald device, when determined by the Team necessary to ensure the service recipient's safety;

(C) phone service that is available and accessible to the service recipient. Emergency numbers are available at each phone, including:

(i) DDSD toll-free number;

(ii) fire, police, ambulance, hospital, and poison control, if not in a 911 area;

(iii) physician name and number; and

(iv) nursing agency number, if applicable;

(D) at least two means of exit;

(E) a bedroom of at least 80 square feet for each service recipient living in the home. If a service recipient shares a bedroom with another, the bedroom must have 120 square feet or more;

(F) adequate enclosed storage space available for personal items;

(G) laundry equipment, if in the home, located in a safe, well ventilated, and clean area, with dryers vented to the outside;

(H) an address that is clearly visible from the street;

(I) a bathroom that:

(i) includes a:

   (I) flush toilet;

   (II) fixed basin; and

   (III) shower or bath tub that meets the service recipient's needs;

(ii) is in proper working order;
(iii) provides privacy;

(iv) is adapted if needed; and

(v) provides hot and cold running water; and

(J) a kitchen and equipment to store, prepare, and serve food in a sanitary manner;

(3) dangerous or deadly weapons are not permitted in the home, except as provided in OAC 317:40-5-40. Provider agency staff is prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons. Dangerous or deadly weapons include, but are not limited to:

(A) guns, BB guns, air rifles, or other firearms;

(B) crossbows;

(C) paint guns;

(D) arrows;

(E) explosives;

(F) stun guns; and

(G) knives, except cooking and eating utensils; and

(4) illegal substances are not permitted in the home.

(d) Pre-service requirements. The DDSD case manager and service recipient, or, if applicable, legal guardian, complete and approve steps in (1) through (3) when community residential supports are initiated, when the service recipient changes provider agencies, and before the service recipient moves to a new home. The documentation of such is maintained in the home record and the case manager record.

(1) Prior to service delivery, the provider completes an emergency housing back-up plan for review and approval by the service recipient's Team per OAC 340:100-5-52.

(A) The back-up plan contains:

(i) service recipient's name;
(ii) description of living arrangement;

(iii) name and phone number for back-up staff;

(iv) back-up housing location;

(v) written agreement by:

(I) service recipient or legal guardian;

(II) direct provider of service, if an ACS or SFC provider;

(III) agency program coordination staff (PCS);

(IV) provider agency administrative representative; and

(V) DDSD case manager;

(vi) dates for provider review of back-up plan, required quarterly and as changes occur; and

(vii) review date by DDSD case manager.

(B) When the location for the back-up plan is a hotel or motel, the provider agency is responsible for including a plan to pay the cost without additional reimbursement from OKDHS.

(C) OKDHS must complete a home profile on a private home prior to the Team's identification of the home in the back-up plan or use of the home to provide back-up services to the service recipient. A home profile is not required if the service recipient stays in the private home of a relative, per OAC 340:100-5-22.1(f)(4)(A).

(D) The ACS or SFC provider is responsible for re-establishing a residence if his or her home becomes uninhabitable.

(2) The provider agency cooperates with the service recipient and Team to establish and maintain a household budget based on the service recipient's earned and unearned income.

(A) Expenses associated with supporting the household are maintained in an auditable fashion sufficient to track the use of money collected from the service
recipient by the contract provider.

(B) Upon request, the contract provider furnishes to the service recipient, service recipient's family, and legal guardian:

(i) a record of all funds collected from the service recipient;

(ii) documentation of how the money was used; and

(iii) the amount of remaining money held by the provider.

(C) Upon termination of residential supports from the contract provider, unused funds are returned to the service recipient within ten calendar days of service termination date.

(3) Form 06CB034E, Residential Pre-Service Checklist, is completed, and all requirements of OAC 340:100-5-22.1 are satisfied.

(e) Service requirements.

(1) Unless the service recipient demonstrates the ability under varying conditions to independently and appropriately respond to emergency situations, the provider agency assists in conducting fire drills at least quarterly and weather emergency drills two times annually. The dates, times, and outcomes of the drills are available in the home for review.

(2) The provider:

(A) ensures all requested financial information necessary for maintaining the service recipient's financial eligibility is provided to OKDHS in a timely manner;

(B) when serving as payee, ensures the service recipient maintains financial eligibility for benefits and services by notifying appropriate authorities of a change in the service recipient's income;

(C) when a change of payee is necessary, cooperates to ensure the change is made in a timely manner;

(D) establishes a written financial agreement with the service recipient or legal guardian that defines financial responsibilities of the agency and service recipient.
(i) The financial agreement:

(I) accurately reflects the ongoing financial arrangement between the provider and service recipient;

(II) clearly defines who purchases personal items;

(III) is renewed annually and when changes occur; and

(IV) is available to the service recipient, legal guardian, Office of Client Advocacy (OCA) advocate, and DDSD case manager;

(E) as a member of the service recipient's Team, assists in determining safeguards necessary to protect the service recipient's assets;

(F) allows service recipients to select stores for the purchase of food, clothing, and personal items;

(G) implements the service recipient's Individual Plan (Plan);

(H) provides necessary assistance, including staff support for each service recipient's active participation in community life;

(I) assists the service recipient in maintaining an adequate supply of seasonal clothing that fits appropriately, personal grooming materials, and linens. All items are maintained in good condition;

(J) promotes the service recipient's health and welfare, including providing meals that meet the service recipient's nutritional needs;

(K) promotes visitation and contact with each service recipient's natural family, legal guardian, and friends, according to the service recipient's desires;

(L) promotes friendships with neighbors, co-workers, and peers, according to the service recipient's desires;

(M) when the service recipient, legal guardian, or provider wishes to discontinue services, cooperates in securing alternative services and continues to serve the service recipient until the Team confirms all essential services are in place;
(N) while providing services, ensures staff is engaged at all times in purposeful activity that directly or indirectly benefits the service recipient;

(O) ensures the service recipient attends scheduled medical and therapy appointments.

(i) Transportation to the appointment is provided.

(ii) Adequate records, needed materials, and equipment accompany the service recipient to the appointment.

(iii) If the service recipient requires support in describing illness, issues, or concerns to the practitioner, knowledgeable staff accompanies the service recipient;

(P) ensures the service recipient's prescriptions are filled and administered as prescribed, per OAC 340:100-5-32;

(Q) ensures the Plan addresses in a positive manner any issues related to maintaining the home per OAC 340:100-5-22.1(c);

(R) ensures the service recipient has transportation to programs and services.

(i) Transportation is provided to and from:

(I) medical or therapy appointments;

(II) personal shopping;

(III) leisure or recreational activities;

(IV) vocational or employment activities;

(V) religious or cultural activities;

(VI) Team meetings;

(VII) appointments necessary to secure or maintain needed services; and

(VIII) voting.
(ii) All vehicles used to transport the service recipient meet local and state requirements for licensing, inspection, insurance, and capacity.

(iii) A vehicle used to transport a service recipient with physical disabilities is adapted to meet the service recipient's needs.

(iv) Drivers of vehicles have valid and appropriate driver licenses.

(S) ensures that the hot water temperature for the home is set to no more than 120 degrees Fahrenheit. The provider tests the hot water temperature of the home at least annually, after any servicing of the home's water system, and any time the water temperature is believed to have increased above 120 degrees Fahrenheit. The provider will maintain documentation of tests performed, and this documentation will at minimum include the date of the test and the temperature of the home's hot water. The documentation is maintained in the home and available for inspection. The provisions within this paragraph will henceforth be known as the Julie Teenor Anti-Scald Protocol; and

(T) ensures reasonable precautions are employed for safety with hot food, cooking oils, and other hot liquids.

(f) Provider agency policies, practices, and procedures. The provider agency develops and maintains written policies and procedures that are consistent with OKDHS rules and govern all aspects of service provision.

(1) Provider agency policies are made available to each service recipient, service recipient's parent(s), legal guardian, or advocate, provider agency staff, and OKDHS.

(2) Provider agency policies and procedures include, but are not limited to:

   (A) service recipient rights protection;

   (B) services provided;

   (C) admission and discharge criteria;

   (D) grievance procedures;

   (E) prevention and reporting of abuse, neglect, and exploitation;
(F) confidentiality;

(G) emergency management;

(H) fees paid by service recipient;

(I) health and safety precautions; and

(J) safeguarding service recipient funds.

(3) The provider agency designates one person who, in the absence of the agency administrator, is responsible for the administration of the agency and is empowered to act on behalf of the provider agency.

(4) The provider agency is responsible for recruitment, screening, training, and supervision of staff or volunteers providing direct services, ensuring direct support staff:

   (A) is not supervised by a relative or person living in the staff's home. A relative includes wife, husband, children, parents, stepparents, parents-in-law, grandchildren, grandparents, brothers, sisters, stepchildren, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, aunts, uncles, nieces, nephews, first cousins or any such person with whom the employee shares a foster relationship;

   (B) who provides back-up services is available and has received training per OAC 340:100-3-38;

   (C) is at least 18 years of age;

   (D) is present in sufficient numbers to ensure the service recipient's health, and welfare, as authorized by the service recipient's Plan of Care;

   (E) is physically able and mentally alert to carry out the duties of the job;

   (F) implements and follows the service recipient's Plan;

   (G) does not take the service recipient to visit staff's home unless the Team has provided prior written approval; and

   (H) must meet requirements of OAC 317:40-5-40 when overnight visits are going to occur.
(5) The provider agency ensures the PCS supervises, guides, and oversees all aspects of programming associated with receipt of community residential supports.

(A) The PCS must:

(i) get to know the service recipient and his or her needs;

(ii) make announced and unannounced visits to the service recipient's home. The PCS makes a minimum of three monitoring visits per month, based on the needs of the service recipient and the need for supervision of staff. At least two of the visits must be unannounced. Of the unannounced visits:

   (I) at least one visit each month must occur on Saturday or Sunday; or

   (II) between 8:00 p.m. and 7:00 a.m. on a weekday;

(iii) provide support and assistance to any service recipient who is experiencing an emotional, behavioral, or medical crisis;

(iv) be accessible to direct service staff 24 hours per day and available to respond, in person if necessary, to an emergency;

(v) supervise direct contact staff to promote achievement of outcomes in the Plan;

(vi) ensure staffing levels meet the requirements of the service recipient's Plan, with staff trained in accordance with OAC 340:100-3-38;

(vii) ensure records are maintained according to DDSD community records per OAC 340:100-3-40;

(viii) ensure basic household requirements are always in place, including:

   (I) utilities and phone service;

   (II) furniture;

   (III) food supplies that meet the service recipient's nutritional needs;

   (IV) linens;

   (V) personal items;
(VI) adaptive equipment; and

(VII) prescription medications;

(ix) assist the DDSD case manager as requested to prepare for and implement the Plan and its revisions per OAC 340:100-5-50 through 340:100-5-58;

(x) ensure applicable OKDHS and OHCA rules are followed;

(xi) complete necessary training per OAC 340:100-3-38; and

(xii) have a minimum of four years of any combination of college level education or full-time equivalent experience in serving persons with disabilities, unless this requirement is waived in writing by the DDSD director or designee.

(B) Provider agencies ensure the caseload of each PCS numbers no more than 15 service recipients when the PCS serves service recipients receiving community residential supports.

(C) Provider agencies providing community residential supports for less than one year ensure the caseload of each PCS numbers no more than ten service recipients when the PCS serves service recipients receiving community residential supports.

(D) The DDSD director may grant a written exception to the PCS ratios per OAC 340:100-5-22.1 upon written request and adequate justification from the provider.

(E) Provider agencies who fail to meet program coordination requirements per OAC 340:100-5-22.1(f) may be required to provide a reduced PCS ratio in accordance with sanctions per OAC 340:100-3-27.

(6) Staff, who assist a service recipient with bathing or showering, must ensure the water temperature is safe and comfortable for the service recipient. The requirements of this paragraph are enforced even when an anti-scald device is used. The staff:

(A) tests the water temperature by touch or with a thermometer designed to test hot liquids, before the service recipient enters the water. The water must be determined safe and comfortable for the service recipient, not merely
comfortable for the staff;

(B) is trained by his or her employer in the unique needs of each service recipient including tolerance to water temperature and bathing or showering needs; and

(C) does not leave a service recipient who is unable to attend to safety considerations alone in the bath or shower.
340:100-5-26. Health and wellness

Revised 5-15-09

(a) **Purpose.** Services and supports promote health and well-being.

(b) **Scope and applicability.** OAC 340:100-5-26 applies to service recipients receiving services funded by Developmental Disabilities Services Division (DDSD) or Home and Community-Based Services (HCBS) Waivers.

1. Oklahoma State Department of Health (OSDH) guidelines for universal precautions, and infection control practices are used to prevent the transmission of communicable diseases.

2. DDSD staff and contract providers implement procedures to promote the health and wellness of each service recipient, including procedures related to:
   
   (A) accessing emergency medical intervention;
   
   (B) initiating first aid and cardio pulmonary resuscitation (CPR);
   
   (C) promoting disease prevention;
   
   (D) addressing issues associated with aging;
   
   (E) medication administration per OAC 340:100-5-32;
   
   (F) health related services per OAC 340.100-5-26.3;
   
   (G) assisting the service recipient to access medical and dental services when needed; and
   
   (H) identifying and addressing service recipient needs per OAC 340:100-5-50 through 340:100-5-58.

(c) **Service recipient responsibilities.**

1. The right of a service recipient to refuse service is respected per OAC 340:100-3-11. However the:
   
   (A) Personal Support Team (Team) meets to discuss the service recipient's decision;
(B) service recipient must cooperate with assessments and provide documents necessary to continue eligibility to receive HCBS waiver services;

(C) service recipient must cooperate with the case manager and provider to obtain necessary assessments and physician orders if assistance by a paid HCBS waiver provider is identified in the Individual Plan (Plan); and

(D) except as provided for in OAC 340:100-5-22.5; the service recipient is responsible for health and medical costs including:

(i) over-the-counter medications, and other medications not covered by insurance;

(ii) health insurance co-payments;

(iii) dental treatments and appliances not covered by dental insurance or within the allowable annual limits of the HCBS waiver, if eligible;

(iv) medical treatments not covered by health insurance;

(v) dietary supplements, including but not limited to:

(I) vitamins; and

(II) herbal and dietary treatments;

(vi) treatment supplies not medically necessary for:

(I) nutrition;

(II) incontinence;

(III) respirator or ventilator care;

(IV) decubitis care;

(V) catheterization;

(VI) health conditions;

(VII) infection control; or
(VIII) not within the allowable limits of the HCBS waiver.

(2) The service recipient or his or her family will assume the responsibility for making appointments when residing in his or her own home or family home.

(d) **Assessment of needs.** The DDSD case manager ensures an individual assessment is completed for each service recipient per OAC 340:100-5-51.

(e) **Planning and implementation requirements.**

(1) Health and wellness support and services and the roles of various individuals are specifically noted in the service recipient's IP per OAC 340:100-5-50 through 340:100-5-58.

(2) For a service recipient who receives minimal services to maintain residence in his or her own home, family home, or to maintain employment, the service recipient and his or her Team determines the appropriate roles for members of the Team per applicable policy.

(3) For a service recipient who receives residential, group home or extensive health supports to remain in their own home, family home, or maintain employment, the team will identify specific roles and protocols necessary to provide support as listed in (A) – (H) of this paragraph.

   (A) The Team identifies desired health care outcomes through the Team process.

   (B) Health issues identified through health care evaluations and assessments that impact the service recipient's life are incorporated and integrated by the Team into the Plan through goals and objectives.

   (C) Health care services are addressed in terms of individual outcomes, not units of clinically specific service.

   (D) When assessing health care services or implementation strategies involving discipline-specific services, a representative from that discipline participates in at least a consulting role.

   (E) Any invasive or intensive professional service or procedure is reviewed by the Team, including participation from any other service provider as appropriate. Consent is assessed per OAC 340:100-3-5.
(i) Team review of an invasive or intensive service or procedure includes discussion, prior to implementation, of the proposed service or procedure, and of possible alternatives.

(ii) Invasive procedures reviewed by the Team comprise both scheduled and emergency procedures, that include but are not limited to:

(I) tracheotomy;

(II) orthopedics;

(III) gastrostomy;

(IV) jejunostomy;

(V) multiple dental extractions;

(VI) amputation; or

(VII) consideration of permanent sterilization.

(iii) An invasive or intensive professional service or procedure implemented on an emergency basis must be reviewed by the Team as soon as possible, but within five working days. Emergency procedures subject to review include, but are not limited to emergency:

(I) surgery; or

(II) behavioral intervention including mechanical or chemical restraints.

(F) The residential or group home provider has an obligation to assure health coordination activities are implemented.

(G) The Team identifies a health care coordinator (HCC) to ensure implementation and coordination of health care services for the service recipient. The HCC:

(i) is a person who has an understanding of the service recipient's health care needs and lifestyle, and may be the service recipient, service recipient's family member, foster parent, companion, residential provider staff, or other person who is familiar with the service recipient's needs;
(ii) receives DDSD required training;

(iii) documents that health concerns are addressed, monitored, and communicated;

(iv) supports the person to directly communicate to the physician the reason for the medical consultation whenever possible, or communicate on the service recipient's behalf;

(v) keeps the physician advised of medical status and data regarding any target symptoms;

(vi) communicates physician orders to core Team members and other service providers as appropriate;

(vii) presents Form 06HM005E, Referral Form for Examination or Treatment, for HCBS Waiver recipients to the physician at the time of the visit.

(I) Form 06HM005E is completed by the HCC prior to the visit.

(II) The HCC requests the physician to complete a short written summary of the findings.

(viii) When employed by a contract provider, the employer develops and implements a procedure to ensure appropriate backup if the HCC is unable, for any reason, to perform these duties; and

(ix) completes health status and medication reviews each month using Form 06HM006E.

(H) For HCBS Waiver service recipients, the DDSD case manager makes a referral for a clinical pharmacy review by a clinical pharmacist or physician:

(i) upon request of a Team member or clinician participating with the Team;

(ii) when a review performed by the assigned DDSD case manager and nurse determines a referral to an independent clinical pharmacist or physician is indicated. The DDSD case manager submits a clinical pharmacy review annually or as needed when the service recipient:

(I) receives five or more medications:
(II) has an unusual physical sign or symptom during the month in review that is not resolved through other medical interventions;

(III) uses a p.r.n. medication routinely for more than three months with an average use of three per week or ten per month;

(IV) takes two or more psychotropic medications per OAC 340:100-5-26.1; or

(V) takes three or more anticonvulsant medications used for a seizure disorder.

(f) Implementation procedures for HCBS waiver skilled nursing services.

(1) Skilled nursing services are implemented per OAC 317:30-5-390 through 317:30-5-394.

(2) Community service workers are trained and carry out implementation strategies addressing health care outcomes.

(3) Accurate and current medical and program information is maintained in the home record by the residential provider and available for review by authorized OKDHS staff.

(g) Case management monitoring responsibilities for HCBS Waiver service recipients.

(1) The case manager monitors implementation of the plan per OAC 340:100-5-52 and 340:100-3-27.

(2) For the purpose of monitoring and evaluation, designated DDSD staff have access at all times to the service recipient's medical and programmatic information.

(3) The case manager monitors the service recipient's access to medical and dental services.

(4) The case manager may assist the service recipient in locating health care providers.

INSTRUCTIONS TO STAFF 340:100-5-26

Revised 5-15-2009
1. The Developmental Disabilities Services Division (DDSD) case manager completes Form 06HM007E, Physical Status Review, for service recipients of the Homeward Bound Waiver or those in the Community Waiver who receive residential supports or group home services.

(1) Form 06HM007E is a review tool that identifies a service recipient's functional ability to attend to activities of daily living based on past and present health history and current treatment modalities.

(2) The PSR assesses the service recipient's needs in the areas of:

   (A) functional abilities;

   (B) behaviors;

   (C) physiological needs;

   (D) safety considerations; and

   (E) frequency of service.

(3) To complete Form 06HM007E, the case manager communicates with the service recipient or someone who knows the service recipient's medical history, current trends in overall health and behavior, daily care needs, medical or nursing treatments, the past year's medical incidents, emergency room visits, hospitalizations, and medication regimen.

2. Form 06HM007E is completed annually, no more than 60 days prior to the annual Team meeting.

3. When a significant change in the service recipient's function or health treatment occurs that requires additional staff training or health care services, the case manager completes a new Form 06HM007E and revises the Plan as necessary.

4. The PSR identifies a health care level.

   (1) A DDSD nurse reviews the responses documented by the case manager.

      (A) Level I, service recipient ordinarily has no body system
compromised. The service recipient is assisted or has the ability to access the health care system.

(B) Level II, service recipient ordinarily has a chronic condition, but the health status is stable.

(C) Level III, service recipient ordinarily has two or more chronic co-existing conditions with no occurrences within the past year.

(D) Level IV, service recipient ordinarily has two or more existing health conditions that require close observation for symptoms and specialized health training.

(E) Level V, service recipient ordinarily meets all criteria for Level IV and has health needs that require licensed nursing treatment one or more times daily.

(F) Level VI, service recipient ordinarily has several existing health issues that are unstable and require treatment by a nurse more frequently than every two hours over a 24-hour period.

(2) Based on the review and responses from the PSR, the DDSD RN makes health related training and service recommendations for Team consideration.
340:100-5-53. Individual Plan

Revised 5-15-09

(a) The Individual Plan (Plan) is a written document that describes the outcomes desired by the service recipient and the services and supports necessary to achieve those outcomes. Each Plan includes:

(1) basic demographic information, including emergency information and health and safety concerns;

(2) assessment information;

(3) description of services and supports identified by the Personal Support Team;

(4) outcomes to be achieved;

(5) action steps or methods to achieve the outcomes, including:

   (A) means to assess progress; and

   (B) names of persons or agency positions responsible for implementing each part of the Plan;

(6) methods to address safety and health risks and needs, including those identified in Form 06HM007E, Physical Status Review, per OAC 340:100-5-26;

(7) community participation strategies and activities;

(8) identification of needed individual-specific staff training, with required time frames for completion, per OAC 340:100-3-38; and

(9) medication support plan, per OAC 340:100-5-32.

(b) The Plan is updated as required by ongoing assessment of progress and needs.

(c) A copy of the service recipient's Plan is provided to the:

   (1) service recipient; and

   (2) service recipient's family, legal guardian, and designated advocate.
(d) Relevant portions of the Plan are provided to persons or agencies who provide support or services to the service recipient.

(e) The Developmental Disabilities Services Division case manager develops a Plan of Care that is consistent with the Plan.
340:100-6-45. Health and safety

Revised 5-15-09

(a) The group home provider acts immediately to remedy any situation that poses a risk to the health, well-being, safety, or provision of specified services to any service recipient.

(1) In the event of such a threat, the provider immediately notifies Developmental Disabilities Services Division (DDSD):

(A) of the nature of the situation; and

(B) upon resolution of the threatening situation.

(2) The provider completes and regularly reviews incident and injury reports per OAC 340:100-3-40.

(3) In the event of the death of a service recipient, the provider complies with OAC 340:100-3-35.

(b) An evacuation plan must be developed for each group home. Fire drills must be conducted at least quarterly and severe weather drills must be conducted two times annually.

(c) The group home must have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation, or other natural disasters that may render the facility unsuitable.

(d) Dangerous or deadly weapons are not permitted in the home. Provider agency staff is prohibited from assisting any service recipient to obtain or possess dangerous or deadly weapons. Dangerous or deadly weapons include, but are not limited to:

(1) guns or other firearms;

(2) crossbows;

(3) paint guns;

(4) arrows;

(5) explosives;
(6) stun guns; and

(7) knives, except cooking and eating utensils.

(e) Illegal substances are not permitted in the group home.

(f) Adequate enclosed storage space in the group home must be provided for items belonging to service recipients.

(g) Laundry equipment must be:

(1) provided in the group home and housed in a safe, well ventilated, and clean area; and

(2) kept clean with the clothes dryer vented to the outside.

(h) All group home doors and windows opening to the outside for ventilation must have screens that are well fitted and in good repair.

(i) Phone service must be available within the group home and accessible to the service recipient in accordance with his or her Individual Plan.

(j) Linen storage areas must be clean and organized.

(k) Any bulk cleaning supplies must be stored in a separate, clean area of the group home.

(l) The address of each group home must be clearly visible from the street.

(m) Items required to be in operating condition and accessible for use in the group home are:

(1) flashlights;

(2) smoke detectors;

(3) first aid kit;

(4) fire extinguisher; and

(5) carbon monoxide detectors.
(n) Medication administration is performed in accordance with OAC 340:100-5-32.

(o) Group home staff who assist a resident with bathing or showering must ensure the water temperature is safe and comfortable before allowing a member to enter water by touch or with a thermometer designed to test hot liquids for the resident being bathed, including when an anti-scald or tempering device is used.

(p) The group home provider ensures that the hot water temperature for the home is set to no more than 120 degrees Fahrenheit. The group home provider tests the hot water temperature of the home at least annually, after any servicing of the home's water system, and any time the water temperature is believed to have increased above 120 degrees Fahrenheit. The group home provider will maintain documentation of tests performed, and this documentation will at minimum include the date of the test and the temperature of the home's hot water. The documentation is maintained in the home and available for inspection. The provisions within this Subsection will henceforth be known as the Julie Teenor Anti-Scald Protocol.
340:100-6-55. Staffing requirements

Revised 5-15-09

Group homes must employ sufficient staff who are appropriately qualified and trained to provide the essential services of the home.

(1) Sufficient staff. Each group home must have one person who is administratively responsible for the entire program. This person must be in addition to direct support staff.

   (A) There must be at least one designated person in charge of the home and its operation available for each home when service recipients are present. Staff support and supervision must be provided as needed for each service recipient in the home.

   (B) In addition to direct support staff, each service recipient in a group home must have a staff person who serves as program coordinator. In addition to duties required by OAC 340:100-5-52, program coordination staff must:

      (i) get to know the service recipient and the service recipient's needs;

      (ii) make announced and unannounced visits to the group home that include a minimum of three monitoring visits per month, based on the needs of the service recipients and the need for supervision of staff. At least two of the visits must be unannounced. Of the unannounced visits, at least one visit must occur each month:

         (I) on Saturday or Sunday; or

         (II) between 8:00 p.m. and 7:00 a.m. on a weekday;

      (iii) provide support and assistance to any service recipient who is experiencing an emotional, behavioral, or medical crisis;

      (iv) be accessible to direct support staff 24 hours per day and available to respond, in person if necessary, to an emergency;

      (v) supervise direct support staff to promote achievement of outcomes in the service recipient's Individual Plan (Plan);

      (vi) ensure staffing levels meet the requirements of the service recipient's
Plan, with staff trained in accordance with OAC 340:100-3-38;

(vii) ensure each service recipient's needs are always met, including:

(I) utilities and phone service;

(II) furniture;

(III) food supplies that meet the service recipient's nutritional needs;

(IV) linens;

(V) personal items;

(VI) adaptive equipment; and

(VII) prescription medications;

(viii) assist the Developmental Disabilities Services Division (DDSD) case manager as requested to prepare for and implement the service recipient's Plan and its revisions per OAC 340:100-5-50 through 340:100-5-58;

(ix) ensure Oklahoma Department of Human Services and Oklahoma Health Care Authority rules are followed; and

(x) complete necessary training specified in OAC 340:100-3-38.

(C) All group home providers must have a signed, written agreement with a registered nurse to:

(i) act as a consultant;

(ii) review medication issues and administration quarterly, or more often if required; and

(iii) provide technical assistance upon request. Documentation of the use of the nurse consultant must be maintained by the group home provider.

(D) Service recipients do not supervise other service recipients.

(2) Staff qualifications.
(A) The group home has an administrator and program coordinator who must:

(i) be at least 21 years old; and

(ii) have a minimum of four years of any combination of college level coursework or full-time equivalent experience in serving persons with disabilities, unless this requirement is waived in writing by the DDSD director or designee. Both roles may be filled by the same person.

(B) All other staff must be at least 18 years of age.

(C) The provider agency must comply with OAC 340:100-3-39 regarding pre-employment screening for community services workers.

(3) **Staff training.** To ensure all providers achieve and maintain a level of competency necessary to meet the needs of each service recipient in the group home, provider agency staff must complete training specified in OAC 340:100-3-38.
340:100-17-30. Other state funded employment services

Revised 5-15-09

State funded employment services may supplement employment services offered through the Community Waiver and Homeward Bound Waiver, per OAC 317:40-7.

(1) State funded employment services include:

(A) therapeutic leave, limited to 150 hours per service recipient each fiscal year.

(i) Each service recipient is eligible for up to 150 hours of therapeutic leave absence per fiscal year if the service recipient receives:

(I) center-based prevocational services;

(II) community-based prevocational services;

(III) enhanced community-based prevocational services;

(IV) individual placement in community-based services; or

(V) supplemental supports.

(ii) Therapeutic leave may be used for:

(I) legal holidays, maximum of 12 days per fiscal year;

(II) service recipient or family initiated vacations;

(III) service recipient medical appointment, concern, illness, or injury;

(IV) severe weather conditions; or

(V) service recipient refusal to attend the employment program.

(iii) When a service recipient is absent for more than five consecutive days due to illness, the service recipient's Team meets to discuss possible:

(I) program interventions; and

(II) suspension of the service recipient's employment program to avoid
exhausting all available therapeutic leave.

(iv) When a service recipient refuses to attend his or her employment program for three consecutive days, the Team, including residential staff, meets to discuss possible program changes. The employment provider cannot claim for therapeutic leave beyond the three consecutive days until the Team has met.

(v) Claims for therapeutic leave require supporting documentation that includes the date and length of absence and specific reason for absence.

(vi) The provider can claim for therapeutic leave only for the number of scheduled work hours the service recipient missed.

(vii) The provider cannot claim for therapeutic leave when the:

(I) provider agency is closed for reasons other than severe weather conditions;

(II) provider staff is absent, other than on legal holidays; or

(III) service recipient's absence is caused by the provider's inability to supply trained back-up staff.

(viii) The provider pays the direct support staff member the salary that the staff member would have earned if the:

(I) provider bills for therapeutic leave; and

(II) direct support staff member is unable to work due to the absence of the service recipient.

(B) center-based prevocational services;

(C) individual placement in community-based services;

(D) community-based prevocational services;

(E) enhanced community-based services;

(F) individual placement in job coaching services;
(G) job coaching services;

(H) enhanced job coaching services;

(I) stabilization and extended services; and

(J) employment training specialist services.

(2) State funded employment services are available to members of the Homeward Bound class who are not eligible for DDSD waiver services.