

Oklahoma Health Care Authority

The Oklahoma Health Care Authority (OHCA) values your feedback and input. It is very important that you provide your comments regarding the proposed rule change by the comment due date. Comments can be submitted on the OHCA's [Proposed Changes Blog](#).

OHCA COMMENT DUE DATE: January 2, 2024

The proposed policy changes are Permanent Rules. The proposed policy changes were presented at the October 31, 2023 Tribal Consultation. The proposed rule changes will be presented at a Public Hearing on January 8, 2024. Additionally, this proposal is scheduled to be presented to the Medical Advisory Committee on January 4, 2024 and the OHCA Board of Directors on January 17, 2024.

REFERENCE: APA WF 23-27B

SUMMARY:

DDS Updates - The proposed revisions seek to update Developmental Disabilities Services (DDS) rules to align with the amendments to the DDS 1915(c) Home and Community Based Services (HCBS) waiver programs that were approved by the Centers for Medicare and Medicaid Services (CMS), effective July 1, 2023. The proposed revisions reflect current practice, update outdated terminology, and remove obsolete references to architectural modifications.

LEGAL AUTHORITY:

The Oklahoma Health Care Authority Act, Section 5007 (C)(2) of Title 63 of Oklahoma Statutes; The Oklahoma Health Care Authority Board; Section 1915(c) of the Social Security Act

RULE IMPACT STATEMENT:

STATE OF OKLAHOMA OKLAHOMA HEALTH CARE AUTHORITY

SUBJECT: Rule Impact Statement
APA WF # 23-27B

A. Brief description of the purpose of the rule:

The proposed revisions seek to update Developmental Disabilities Services (DDS) rules to reflect the current DDS HCBS waivers and to reflect current practice. The proposed revisions remove obsolete references to architectural modifications and update outdated terminology.

B. A description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the cost of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:

No classes of persons should be affected by the proposed rule. This rule should not place any cost burden on public or private entities. No information on any cost impacts were received

from any entity.

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

The proposed rule changes are not expected to benefit or impact any classes of persons.

- D. A description of the probable economic impact of the proposed rule upon the affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change:

There is no economic impact and there are no fee changes associated with the rule change for the above classes of persons or any political subdivision.

- E. The probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency:

Agency staff has determined that the proposed changes are budget neutral.

- F. A determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The proposed rule will not have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule.

- G. A determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act:

The proposed rule will not have an adverse effect on small businesses as provided by the Oklahoma Small Business Regulatory Flexibility Act.

- H. An explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or non-regulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The Agency has taken measures to determine that there is no less costly or non-regulatory method or less intrusive method for achieving the purpose of the proposed rule.

- I. A determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety, and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

The proposed rule should have no effect on the public health, safety, and environment.

- J. A determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

The Agency does not anticipate any detrimental effect on the public health, safety, or environment if the proposed rule changes are not implemented.

- K. The date the rule impact statement was prepared and if modified, the date modified:

Prepared: October 20, 2023

Modified: December 27, 2023

RULE TEXT

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

SUBCHAPTER 5. MEMBER SERVICES

PART 9. SERVICE PROVISIONS

317:40-5-101. Architectural modifications (AM)

(a) **Applicability.** The rules in this Section apply to ~~architectural modification (AM)~~ services authorized by ~~the Oklahoma Department of Human Services (OKDHS) Developmental Disabilities Services Division (DDSD)~~ through Home and Community Based Services (HCBS) Waivers.

(b) **General information.** Architectural Modification services:

(1) are provided by building contractors who have contractual agreements with the Oklahoma Health Care Authority to provide Home and community Based Services. Providers must meet requirements of the International Code Council (ICC), formerly the Building Official and Code Administrators (BOCA), for building, electrical, plumbing and mechanical inspections;

(2) include the installation of ramps, grab-bars, widening of doorways, modification of a bathroom or kitchen facilities, specialized safety adaptations such as scald protection devices, stove guards, and modifications required for the installation of specialized equipment, which are necessary to ensure the health, welfare and safety of the member or that enable the member to function with greater independence in the home;

(3) must be recommended by the member's Team and included in the member's IP. Arrangements for this service must be made through the member's case manager;

(4) are performed on homes of eligible members who have disabilities that limit accessibility or require modifications to ensure health and safety;

(5) are provided based on the:

(A) assessment and Personal Support Team (Team) consideration of the member's unique needs per OAC 317:40-5-101(b);

(B) scope of architectural modifications per OAC 317:40-5-101;

(C) most appropriate and cost effective bid, if applicable, ensuring the quality of materials and workmanship;

(D) lack of a less expensive equivalent, such as assistive technology, that meets the

member's needs; and

(E) safety and suitability of the home.

(6) are limited to modifications of two different residences within any seven-year period beginning with the member's first request for an approved architectural modification service;

(7) are provided with assurance of plans for the member to remain in the residence for at least five years;

(8) may be denied when DDS~~D~~ determines the home is unsafe or otherwise unsuitable for architectural modifications.

(A) ~~DDS~~D~~ area office~~ resource development staff with architectural modification experience screens a home for safety and suitability for architectural modifications prior to home acquisition.

(B) Members needing home modification services and provider agencies assisting members to locate rental property identify several homes, when possible, for screening in order to select a home with the fewest or most cost effective modifications;

(9) are provided to eligible members with the homeowner's signed permission;

(10) are not authorized to modify homes solely for family or staff convenience or for cosmetic preference;

(11) are provided on finished rooms complete with wiring and plumbing;

(12) services that do not meet the requirements of OAC 317:40-5-101 may be approved by the DDS~~D~~ division administrator or designee in exceptional circumstances; and

(13) are authorized in accordance with requirements of The Oklahoma Central Purchasing Act 74 O.S., § 85.1 et. Seq., Chapter 15 of Title 580 of the Department of Central Services, and other applicable statutory provisions.

(c) Assessment and Team process.

(1) Architectural modification assessments are performed by:

(A) ~~DDS~~D~~ area office~~ resource development staff with architectural modification experience, when the requested architectural modification complies with minimum applicable national standards for persons with physical disabilities as applicable to private homes; or

(B) a licensed occupational therapist or physical therapist, at the request of designated ~~DDS~~D~~ area office~~ resource development staff or ~~area program supervisory~~ staff, when the requested architectural modification exceeds or requires a variance to applicable national standards for persons with physical disabilities, or when such expertise is deemed necessary by ~~DDS~~D~~ area office~~ resource development staff or ~~area program supervisory~~ staff.

(2) The Team considers the most appropriate architectural modifications based on the:

(A) member's needs;

(B) member's ability to access his or her environment; and

(C) possible use of assistive technology instead of architectural modification.

(3) The Team considers architectural modifications that:

(A) are necessary to ensure the health, welfare, and safety of the member; and

(B) provide the member increased access to the home to reduce dependence on others for assistance in daily living activities.

(d) Requirements and standards for architectural modification contractors and construction.

All contractors must meet applicable federal, state and local requirements.

- (1) Contractors are responsible for:
 - (A) obtaining all permits required by the municipality where construction is performed;
 - (B) following all applicable building codes; and
 - (C) taking and providing pictures to ~~area office~~ resource development staff of each completed architectural modification project within five working days of project completion and prior to payment of the architectural modification claim. ~~Area office resource~~ Resource development staff may take pictures of the completed architectural modification projects when requested by the contractor.
- (2) Any penalties assessed for failure to comply with requirements of the municipality are the sole responsibility of the contractor.
- (3) New contractors must provide three references of previous work completed.
- (4) Contractors must provide evidence of:
 - (A) liability insurance;
 - (B) vehicle insurance;
 - (C) worker's compensation insurance or affidavit of exemption; and
 - (D) lead paint safety certificate.
- (5) All modifications meet national standards for persons with physical disabilities as applicable to private homes unless a variance is required by the assessment.
- (6) Contractors complete construction in compliance with written assessment recommendations from the:
 - (A) ~~DDSD area office~~ resource development staff with architectural modification experience; or
 - (B) a licensed professional.
- (7) All architectural modifications must be completed by using high standard materials and workmanship, in accordance with industry standard.
- (8) Ramps are constructed using the standards in (A) through (G) of this paragraph.
 - ~~(A) All exterior wooden ramps are constructed of number two pressure treated wood.~~
 - ~~(B) Surface of the ramp has a rough, non-skid texture.~~
 - ~~(C) Ramps are assembled by the use of deck screws.~~
 - ~~(D) Hand rails on ramps, if required, are sanded and smooth.~~
 - ~~(E)~~(B) Ramps ~~can~~must be constructed of ~~stamped~~aluminum or steel.
 - ~~(F)~~(C) Support legs on ramps are no more than six feet apart.
 - ~~(G) Posts on ramps must be set or anchored in concrete.~~
- (9) Roll-in showers are constructed to meet standards in (A) through (E) of this paragraph.
 - (A) The roll-in shower includes a new floor that slopes uniformly to the drain at not less than one-fourth nor more than one-half inch per foot.
 - (B) The material around the drain is flush, without an edge on which water can catch before going into the drain.
 - (C) Duro-rock, rather than sheet rock, is installed around the shower area, at least 24 inches up from the floor, with green board above the duro-rock.
 - (D) Tile, shower insert, or other appropriate water resistant material is installed to cover the duro-rock and green board.
 - (E) The roll-in shower includes a shower pan, or liner if applicable.
 - (F) Roll in showers may also be constructed with a one piece pre-formed material.
- (10) ~~DDSD area office~~ resource development staff inspect any or all architectural modification

work, prior to payment of an architectural modifications claim, to ensure:

(A) architectural modifications are completed in accordance with assessments; and

(B) quality of workmanship and materials used comply with requirements of OAC 317:40-5-101.

(e) Architectural modifications when members change residences.

(1) When two or more members share a home that has been modified and the member will no longer be sharing the home, the member whose Plan of Care authorized the modifications is given the first option of remaining in the residence.

(2) Restoration of architectural modifications is performed only for members of the Homeward Bound class when a written agreement between the homeowner and DDSØ director, negotiated before any architectural modifications begin, describes in full the extent of the restoration. If no written agreement exists between the DDSØ director and homeowner, OKDHS is not responsible to provide, pay for, or authorize any restorative services.

(f) Services not covered under architectural modifications. Architectural modifications do not include adaptations or improvements to the home which are of general utility and are not of direct medical or remedial benefit to the member, construction, reconstruction, or remodeling of any existing construction in the home, such as floors, sub-floors, foundation work, roof, or major plumbing.

(1) Square footage is not added to the home as part of an architectural modification.

(2) Architectural modifications are not performed during construction or remodeling of a home.

(3) Modifications not authorized by the OKDHS include, but are not limited to:

(A) roofs;

(B) installation of heating or air conditioning units;

(C) humidifiers;

(D) water softener units;

(E) fences;

(F) sun rooms;

(G) porches;

(H) decks;

(I) canopies;

(J) covered walkways;

(K) driveways;

(L) sewer lateral lines or septic tanks;

(M) foundation work;

(N) room additions;

(O) carports;

(P) concrete for any type of ramp, deck, or surface other than a five by five landing pad at the end of a ramp, as described in applicable national standards for persons with physical disabilities as applicable to private homes;

(Q) non-adapted home appliances;

(R) carpet or floor covering that is not part of an approved architectural modification that requires and includes a portion of the floor to be re-covered such as a roll in shower, a door widening; or

(S) a second ramp or roll in shower in a home.

(4) A sidewalk is not authorized unless needed by the member to move between the house and

vehicle.

(g) **Approval or denial of architectural modification services.** DDS approval or denial of an architectural modification service is determined in accordance with (1) through (3) of this subsection.

(1) The architectural modification request provided by the DDS case manager to DDS area office resource development staff includes:

(A) documentation from the member's Team confirming the need and basis for architectural modification, including the architectural modification assessment;

(B) documentation of current Team consensus, including consideration of issues per OAC 317:40-5-101;

(C) lease, proof of home ownership, or other evidence that the member is able to live in the modified residence for at least 12 months; and

(D) an assurance by the member or legal guardian, if applicable, that the member plans to reside in the residence for five years.

(2) ~~The DDS area office:~~

~~(A) authorizes architectural modification services less than \$2500 when the plan of care is less than the state office reviewer limit; and~~

~~(B) provides all required information to the DDS State Office architectural modification programs manager for authorization of services when the plan of care is more than the area office limit or is \$2500 or more.~~

~~(3) Architectural modifications may be denied when the requirements of OAC 317:40-5-101 are not met.~~

(h) **Appeals.** The denial of acquisition of an architectural modification request may be appealed per OAC 340:2-5.

(i) **Resolving problems with services.** If the member, family member, or legal guardian, or Team is dissatisfied with the architectural modification, the problem resolution process per OAC 340:100-3-27 is initiated.