

**CHAPTER 35. MEDICAL ASSISTANCE FOR ADULTS AND  
CHILDREN-ELIGIBILITY  
SUBCHAPTER 15. PERSONAL CARE SERVICES**

**317:35-15-8.1. Agency Personal Care services; billing, and issue resolution (4-1-2009)**

The ADvantage Administration (AA) certifies qualified PC service agencies and facilitates the execution of the agencies' SoonerCare contracts on behalf of OHCA. OHCA will check the list of providers that have been barred from Medicare/Medicaid participation to ensure that the PC services agency is not listed.

(1) **Payment for Personal Care.** Payment for PC services is generally made for care in the member's "own home". In addition to an owned or rented home, a rented apartment, room or shelter shared with others is considered to be the member's "own home".

A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., and/or in any other type of settings prohibited under applicable federal or state statutes, rules, regulations, or other written instruments that have the effect of law is not a setting that qualifies as the member's "own home" for delivery of PC services through SoonerCare. With prior approval, PC services may be provided in an educational or employment setting to assist the member in achieving vocational goals identified on the care plan.

(A) **Use of Personal Care service agency.** To provide PC services, an agency must be licensed by the Oklahoma State Department of Health, meet certification standards identified by OKDHS or the AA, and possess a current SoonerCare contract.

(B) **Reimbursement.** Personal Care services payment on behalf of a member is made according to the type of service and number of units of PC services authorized in the care plan.

(i) The amount paid to PC services providers for each unit of service is according to the established SoonerCare rates for the PC services. Only authorized units contained on each eligible member's individual care plan are eligible for reimbursement. Providers serving more than one PC service member residing in the same residence will assure that the members' care plans combine units in the most efficient manner possible to meet the needs of all eligible persons in the residence.

(ii) Payment for PC services is for tasks performed in accordance with OAC 317:30-5-951 only when listed on an authorized care plan. Payment for PC skilled nursing

service is made on behalf of the member for assessment/evaluation and associated service planning per assessment/service planning visit by the provider agency personal care skilled nurse.

(2) **Issue resolution.** If the member is dissatisfied with the PC services provider agency or the assigned PCA, and has exhausted attempts to work with the PC services agency's grievance process without resolution, the member may contact the OKDHS nurse to attempt to resolve the issues. The member has the right to appeal to the OHCA in accordance with OAC 317:2-1-2. For members receiving ADvantage services, the member or family should contact their case manager for the problem resolution. If the problem remains unresolved, the member or family should contact the Consumer Inquiry System (CIS). Providers are required to provide the CIS contact number to every member. The ADvantage Program member also has the right to appeal to the OHCA in accordance with OAC 317:2.

(3) **Persons ineligible to serve as Personal Care Assistants.**  
Payment from Medicaid funds for Personal Care services may not be made to an individual who is a legally responsible family member (spouse, legal guardian or parent of a minor child) of the member to whom he/she is providing personal care services.

### **317:35-15-13.2. Individual Personal Care contractor; billing, training, and problem resolution (4-1-2003)**

The Oklahoma Department of Human Services (OKDHS) initiates initial contracts with qualified individuals for provision of Personal Care services as defined in OAC 317:35-15-2. The contract renewal for the PCA is the responsibility of the Oklahoma Health Care Authority (OHCA).

(1) **Payment for Personal Care.** Payment for Personal Care is generally made for care in the ~~client's~~ member's own home. A rented apartment, room or shelter shared with others is considered "own home". A facility that meets the definition of a nursing facility, room and board, licensed residential care facility, licensed assisted living facility, group home, rest home or a specialized home as set forth in O.S. Title 63, Section 1-819 et seq., Section 1-890.1 et seq., and Section 1-1902 et seq., does not constitute a suitable substitute home. Personal Care may not be approved if the ~~client~~ member lives in the PCA's home except with the interdisciplinary team's written approval. The potential individual PCA must meet the minimum requirements under (2) of this subsection. With ~~DHS~~ OKDHS area nurse approval, or for ADvantage waiver ~~clients~~ members, with service plan authorization and ADvantage Program Manager approval, Personal Care services may be provided in an educational or employment setting to assist the ~~client~~ member in achieving vocational goals identified on the service plan.

(A) **Reimbursement.** Personal Care payment for a client member is made according to the number of units of service identified in the service plan.

(i) The unit amounts paid to individual contractors is according to the established rates. A service plan will be developed for each eligible individual in the home and units of service assigned to meet the needs of each client member. The service plans will combine units in the most efficient manner to meet the needs of all eligible persons in the household.

(ii) From the total amounts billed by the individual PCA in (i) of this subparagraph, the OHCA (acting as agent for the client-employer member-employer) withholds the appropriate percentage of FICA tax and sends it to the Internal Revenue Service as the individual contractor's contribution toward Social Security coverage. To assure that the individual contractor's social security account may be properly credited, it is vital that the individual contractor's social security number be entered correctly on each claim. In order for the OHCA to withhold FICA tax, the LTC nurse must obtain a signed OHCA Form HCA-66, Authorization for Withholding of FICA Tax in Personal Care, from the client member as soon as the area nurse, or designee, has approved Personal Care. A copy of the signed HCA-66 must be in the case record. A signed OHCA-0026, Personal Care Program Individual Contract must be on file with the OHCA before the individual contractor's first claim can be submitted.

(iii) The contractor payment fee covers all Personal Care services included on the service and care plans developed by the LTC nurse or ADvantage case manager. Payment is made for direct services and care of the eligible client(s) member(s) only. The area nurse, or designee, authorizes the number of units of service the client member receives each month.

(iv) A client member may select more than one individual contractor. This may be necessary as indicated by the service and care plans.

(v) The individual contractor may provide Medicaid SoonerCare Personal Care services for several households during one week, as long as the daily number of paid service units do not exceed eight per day. The total number of hours per week cannot exceed 40.

(B) **Release of wage and/or employment information for individual contractors.** Any inquiry received by the local office requesting wage and/or employment information for an individual Personal Care contractor will be forwarded to the OHCA, Claims Resolution.

(2) **Client Member selection of individual PCA.** ~~Clients Members~~ and/or family members recruit, interview, conduct reference checks, and select the individual to be considered as an individual contractor. An individual contractor applicant must have a background check performed by the Oklahoma State Bureau of Investigation (OSBI). The results of the background check determine whether a person will be permitted to work as an individual Personal Care contractor. According to Section 1025.2 of Title 56 of the Oklahoma Statutes, before the ~~client member~~ employer makes an offer to employ or contract with a ~~Medicaid~~ SoonerCare Personal Care Assistant applicant to provide Personal Care Services to a person who receives ~~state Medicaid~~ SoonerCare Personal Care Services, the ~~DHS~~ OKDHS LTC nurse, acting for the ~~client member~~, must check the ~~DHS~~ OKDHS Community Services Worker Registry to determine if the name of the applicant seeking employment or contract has been entered. The ~~DHS~~ OKDHS LTC nurse must also check the Certified Nurse Aid Registry. The ~~DHS~~ OKDHS LTC nurse must affirm that the applicant's name is not contained on either registry. The LTC nurse will notify the OHCA if the applicant is on the registry.

(A) **Persons eligible to serve as individual Personal Care Assistants.** Payment is made for Personal Care Services to an individual who:

- (i) is at least 18 years of age,
- (ii) has no pending notation related to abuse, neglect or exploitation as reported by the Oklahoma State Department of Health Nurse Aide Registry,
- (iii) is not included on the ~~DHS~~ OKDHS Community Services Worker Registry in accordance with Section 1025.2 of Title 56, of Oklahoma Statutes,
- (iv) has not been convicted of a crime as outlined in Title 63 of Oklahoma Statutes, Sections 1-1950 as determined by an OSBI background check,
- (v) demonstrates the ability to understand and carry out assigned tasks,
- (vi) is not a legally responsible family member (spouse or parent of a minor child) of the ~~client member~~ being served,
- (vii) has a verifiable work history and/or personal references, verifiable identification, and
- (viii) meets any additional requirements as outlined in the contract and certification requirements with the Oklahoma Health Care Authority.

(B) **Persons ineligible to serve as Personal Care Assistants.** Payment from ~~Medicaid~~ SoonerCare funds for Personal Care services may not be made to an individual who is a legally responsible family member (spouse, legal guardian or parent of a minor child) of the ~~client member~~ to whom he/she is

providing personal care services.

~~(i) The DHS Director may give approval for payment from DHS state funds for Personal Care to a legally responsible family member of the client being served when no other PCA is available, available PCAs are unable to provide care to the client, or the needs of the client are so extensive that the legally responsible family member who provides the care is prohibited from working outside the home due to the client's need for care.~~

~~(ii)~~ (i) Payment cannot be made to a ~~DHS~~ OKDHS or OHCA employee. Payment cannot be made to an immediate family member of a ~~DHS~~ an OKDHS employee who works in the same county without OKDHS/Aging Services Division approval. When a family member relationship exists between a ~~DHS~~ an OKDHS LTC nurse and a PCA in the same county, the LTC nurse cannot manage services for a client member whose individual provider is a family member of the LTC nurse.

(iii) If it is determined that an employee is interfering in the process of providing Personal Care Services for personal or family benefit, he/she will be subject to disciplinary action.

(3) **Orientation of the Personal Care Assistant.** When a client member selects an individual PCA, the LTC nurse contacts the individual to report to the county office to complete the ODH form 805, Uniform Employment Application for Nurse Aide Staff, and the ~~DHS~~ OKDHS form ~~DDS-39~~ 06PE039E, Employment Application Supplement, and for a determination of qualifications and orientation. This process is the responsibility of the LTC nurse. The PCA can begin work when:

- (A) he/she has been interviewed by the client member,
- (B) he/she has been oriented by the LTC nurse,
- (C) he/she has executed a contract (OHCA-0026) with the OHCA,
- (D) the effective service date has been established,
- (E) the Community Service Worker Registry has been checked and the PCA's name is not on the Registry,
- (F) the Oklahoma State Department of Health Nurse Aide Registry has been checked and no notations found, and
- (G) the OSBI background check has been completed.

(4) **Training of Personal Care Assistants.** It is the responsibility of the LTC nurse to make sure for each client, that the PCA has the training needed to carry out the plan of care prior to service initiation.

(5) **Problem resolution related to the performance of the Personal Care Assistant.** When it comes to the attention of the LTC nurse or ~~social~~ worker that there is a problem related to the performance of the PCA, a counseling conference is held between the client member, LTC nurse and ~~social~~ worker. The LTC nurse will counsel the PCA regarding problems with his/her

performance. Counseling is considered when the staff believe that counseling will result in improved performance.

**(6) Termination of the PCA Provider Agreement.**

(A) A recommendation for the termination of a PCA's contract is submitted to the OHCA and the services of the PCA are suspended immediately when:

- (i) a PCA's performance is such that his/her continued participation in the program could pose a threat to the health and safety of the ~~client~~ member or others; or
- (ii) the PCA failed to comply with the expectations outlined in the PCA Provider Agreement and counseling is not appropriate or has not been effective; or
- (iii) a PCA's name appears on the ~~DHS~~ OKDHS Community Services Worker Registry, even though his/her name may not have appeared on the Registry at the time of application or hiring.

(B) The LTC nurse makes the recommendation for the termination of the PCA to the OHCA Legal Division with a copy to the ~~DHS~~ OKDHS State Office Aging Services Division. The memo ~~shall~~ must include a specific description of the problems, the specific contract violation, facts substantiating the problems, any actions taken previously to correct the problems and a proposed effective date of termination of the Personal Care Program Individual Contract.

When the problem is related to allegations of abuse, neglect, or exploitation, ~~DHS~~ OKDHS Adult Protective Services, State Attorney General's Medicaid Unit, the OHCA, and the Oklahoma State Department of Health are notified by the LTC nurse.

(C) The OHCA will review the memorandum and take one of the following actions:

- (i) Approve the recommendation of termination of the Personal Care contract.
- (ii) Deny the recommendation for termination of the provider agreement and give written notification to the LTC nurse of the reason for the denial.
- (iii) Refer the case to the Office of Inspector General for investigation by completion of ~~DHS~~ OKDHS form ARD-1, Referral Form. In this instance, the investigation is carried out as expeditiously as possible. When the results of the investigation are received, the Aging Services Division takes the appropriate action as outlined in units (i) or (ii) of this subparagraph.

(D) When the problem is related to allegations of abuse, neglect or exploitation, the LTC nurse follows notice and due process as outlined in OAC 340:100-3-39(d)(2) and (3). The PCA is afforded notice as outlined in OAC 340:100-3-39.