

**TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 1. ADMINISTRATION**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Chapter 1. Administration

485:1-1-1. [AMENDED]

485:1-1-2. [AMENDED]

485:1-1-4. [AMENDED]

485:1-1-5. [AMENDED]

SUMMARY:

Revisions proposed in section 485:1-1-1. Functions, adds information regarding the budget approval and authorization for disbursement of funds.

The proposed revisions in section 485:1-1-2. Officers, aligns the duties of the Secretary to the current duties performed by the Secretary and clarifies that the three officers participate in the development of the budget.

Revisions proposed 485:1-1-4. Business meetings, includes changes to reflect the correct statute citation, the current statute language regarding special meetings and modifies time parameters for Board members to place a special topic on the Board's agenda.

Revisions proposed in section 485:1-1-5(b) and (c) allow the Board an opportunity to study the issues related to petitions prior to moving forward with the rule promulgation process or issuing a declaratory ruling determination.

AUTHORITY:

Oklahoma Board of Nursing 59 O.S. §§567.2A.3, 567.4F, 567.5, 567.6, 567.8, 567.12, 567.15, and 567.17.

COMMENT PERIOD:

Persons wishing to submit written comments must do so by January 18, 2010 at 4:30 p.m. to the Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, Oklahoma 73106 Attn: Gayle McNish, R.N., Ed.D.

PUBLIC HEARING:

A public hearing will be held to provide an opportunity for persons to orally present their views on Tuesday, January 26, 2010, at 5:30 p.m. at the Wyndham Garden Hotel Conference Room, 2101 S. Meridian, Oklahoma City. Anyone who wishes to speak must sign in at the door by 5:00 p.m., January 26, 2010.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by January 18, 2010, at 4:30 p.m., to the Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, OK 73106, Attn: Gayle McNish, R.N., Ed.D.

COPIES OF PROPOSED RULES:

Copies of the proposed rules may be obtained by contacting Gayle McNish, R.N., Ed.D., at the Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, Oklahoma 73106,

(405) 962-1800.

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. Section 303(D), a rule impact statement will be prepared and available on and after publication of this Notice of Rulemaking Intent on December 1, 2009. The rule impact statement may be obtained by contacting Gayle McNish, R.N., Ed.D., at the Oklahoma Board of Nursing, 2915 N. Classen, Suite 524, Oklahoma City, Oklahoma 73106, (405) 962-1800.

CONTACT PERSON:

Gayle McNish, R.N., Ed.D., (405) 962-1800

RULE IMPACT STATEMENT: Title 485. Oklahoma Board of Nursing, Chapter 1. Administration

a. Purpose of the proposed rule:

Revisions proposed in section 485:1-1-1. Functions, adds information regarding the budget approval and authorization for disbursement of funds. The proposed revisions in section 485:1-1-2. Officers, aligns the duties of the Secretary to the current duties performed by the Secretary and clarifies that the three officers participate in the development of the budget. Revisions proposed 485:1-1-4. Business meetings, includes changes to reflect the correct statute citation, the current statute language regarding special meetings and modifies time parameters for Board members to place a special topic on the Board's agenda. Revisions proposed in section 485:1-1-5(b) and (c) allow the Board an opportunity to study the issues related to petitions prior to moving forward with the rule promulgation process or issuing a declaratory ruling determination.

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

These rule changes will impact Oklahoma Board of Nursing Board members through clarification and alignment of duties of the Board officers, modification of time parameters for placement of special topics on the meeting agenda, and provision of opportunities to study petition-related issues prior to moving forward with a determination of action. The rule changes do not have cost impacts on any affected classes.

c. Classes of persons who will benefit from the proposed rule:

The proposed rules will benefit Oklahoma Board of Nursing Board members, individuals on both sides of issues related to pending petitions before the Board for rules or declaratory rulings, and the public in general, through more clearly defined and structured processes.

d. Probable economic impact of the proposed rule upon 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 are no fee changes associated with the proposed rule revisions. There is no economic impact.

e. 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.

There are no anticipated costs or benefits to the agency or any other agency associated with the proposed rule revisions.

f. Determination of whether implementation of the proposed rule will have an economic impact on any political subdivision or require their cooperation in implementing or enforcing the rule:

The implementation of the proposed rules will not have an economic impact on or require the cooperation of any other political subdivision.

g. 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.

There will be no effect on small business.

h. Explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

There are no compliance costs.

i. 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 rules help to protect safety of the public through ensuring that the Board is permitted an opportunity to study the issues related to petitions prior to moving forward with the rule promulgation process or issuing a declaratory ruling determination.

j. Determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented:

There are no detrimental effects.

k. Date the rule impact statement was prepared: November 18, 2009

**TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 1. ADMINISTRATION**

485:1-1-1. Functions

The Board is authorized to:

- (1) *adopt and revise rules not inconsistent with . . . the Oklahoma Nursing Practice Act; [59 O.S. Section 567.4(F)]*
- (2) prescribe standards for educational programs preparing persons for licensure to practice practical nursing, registered nursing, or preparing individuals for advanced practice nursing;
- (3) provide for surveys of such educational programs;
- (4) approve such educational programs for the preparation of practitioners of practical nursing, registered nursing, or advanced practice nursing as shall meet the requirements of this statute and of the Board;
- (5) deny, or withdraw approval of educational programs for failure to meet or maintain prescribed standards required by this statute and by the Board;
- (6) examine, license and renew the licenses of duly qualified applicants;
- (7) recognize Advanced Practitioners in accordance with the Rules and Regulations;
- (8) conduct hearings upon charges calling for disciplinary action; and
- (9) provide consultation, conduct conferences, forums, studies and research on nursing education and practice.
- (10) approve the agency's budget and authorize disbursement of the funds by the Executive Director.

485:1-1-2. Officers

(a) **Election of officers.** The officers of the Board shall be elected annually at the regular meeting in January. The candidate receiving the plurality of votes shall be declared elected and shall assume office on the first day of March following their election.

(b) **Vacancies in office.**

- (1) A vacancy occurring in the office of President shall be filled by the Vice-President for the unexpired term.
- (2) A vacancy occurring in the office of Vice-President shall be filled by appointment by the President with the approval of the Board for the period of the unexpired term.
- (3) A vacancy occurring in the office of the Secretary shall be filled by appointment by the President with the approval of the Board for the period of the unexpired term.

(c) **Duties of officers.**

- (1) The President shall preside at meetings and shall appoint members to serve on such committees as may be created and shall be an ex-officio member of all committees. The President shall cause the agenda to be prepared for the meeting.
- (2) The Vice-President shall preside in the absence of the President, and shall assume the duties of the President, when necessary.
- (3) ~~The Secretary~~ Secretary/Treasurer ~~shall cause to be completed the necessary arrangements for the meetings; send notices and agendas of the meetings to the members of the Board and the Secretary of State; record the minutes of the meeting; and~~ conduct the necessary correspondence of the Board and keep a register of the names of all Licensed Practical Nurses and Registered Nurses duly licensed under the provisions of the Oklahoma Nursing Practice Act.
- (4) ~~The Secretary, who is also the Treasurer,~~ officers of the Board shall participate in the development of the budget ~~and shall be responsible for the disbursement of the funds with the approval of the Board.~~

485:1-1-4. Business meetings

(a) **Special meetings.** *Special meetings may be called by the President or Secretary ~~or petitioned by three (3) Board members~~ with five (5) days notice to each member of the Board. [59 O.S. Section 567.4(EF)]*

(b) **Emergency meetings.** Emergency meetings may be called by the President without required notice for situations of imminent peril to the public health, safety, welfare or other compelling extraordinary circumstances.

(c) **Agenda.** A copy of the agenda shall be sent to each member at least five (5) days prior to the meeting. Any member wishing to have a special topic placed on the agenda shall notify the ~~Secretary~~ President at least ~~ten (10)~~ fifteen (15) days prior to the meeting. Items of an emergency nature shall be considered at any meeting without prior notice.

- (d) **Record of meeting.** The Secretary shall cause to be kept a record of all meetings which shall include a recording of votes by each member in attendance and such records shall be retained as a permanent record of the transaction of the Board.
- (e) **Parliamentary authority.** The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the meetings in all instances to which they are applicable. The President shall have a vote on all matters coming before the Board.
- (f) **Notice of meetings.** Notice of all meetings shall be in writing and delivered to Board members ten (10) days prior to meeting.

485:1-1-5. Rules and regulations

(a) **Adoption, amendment, or repeal of rules.** The adoption, amendments, filing, or repeal of rules will be in accordance with the Oklahoma Administrative Procedures Act.

(b) **Petition requesting promulgation, amendment or repeal of a rule.**

(1) Any ~~person~~ Registered Nurse or Licensed Practical Nurse may petition the Board in writing requesting the promulgation, amendment, or repeal of a rule. The petition shall include the language of the requested rule, amendment or repeal, a statement of the purpose of the requested rule, amendment or repeal, at least one example of a fact situation to which the rule, amendment or repeal will apply, and the name and address of the person who requested the rule, amendment or repeal. If the requesting party is an association or corporate body, the petition shall identify a contact person at the association or corporate body who is able to provide meaningful information about the request. The petition shall be accompanied by an explanation and implications of the request and shall be:

- ~~(A) co signed by at least ten (10) Registered Nurses or Licensed Practical Nurses;~~
- ~~(B) submitted to the Board at least thirty (30) days prior to a regular meeting;~~
- ~~(C) referred to the Board's attorney for legal consideration;~~
- ~~(D) considered by the Board at a regular meeting; and~~
- ~~(E) scheduled for a Public Hearing within ninety (90) days after being considered by the Board in a regular meeting~~

(2) A petition requesting promulgation, amendment or repeal of a rule shall not be considered by the Board if the subject of the Petition is the same as or similar to the subject presented in a Petition and considered by the Board within the previous twelve (12) months.

(3) The petition shall be cosigned by at least ten persons.

(4) The petition shall be submitted to the Board not less than forty five (45) days prior to a regular meeting.

(5) The Board, on its own motion or upon the request of any other interested party, may require any petitioner to provide additional information, as may be specified by the Board, for use in the Board's consideration and disposition of the petition. The failure of the petitioner to provide such information shall constitute grounds for the Board to take no further action on a petition.

(6) The Board shall refer the petition to its counsel for legal consideration. In addition, the Board may refer the petition to an appropriate advisory committee or subcommittee for review prior to the Board's action. The advisory committee or subcommittee review and recommendation shall not constitute Board action. Upon completion of the study period, the petition shall be referred to the Board with the recommendation of the committee, if any.

(7) If the Board determines the requested action or some other action should be taken, then notice of the proposed action shall be published in accord with the Administrative Procedures Act and the matter shall be set for public hearing. At the time and place designated for the public hearing, proponents and opponents of the proposed rulemaking action may be heard in the manner and order prescribed by the Board at that time.

(8) At the Board meeting during which the public hearing is held or immediately thereafter the Board shall render its decision on the petition and shall take such action as it deems necessary and appropriate and as authorized by the Administrative Procedures Act to implement its decision.

~~(c) **Validity or applicability of rules – declaratory judgment.**~~

~~(1) Any person may request a declaratory ruling as to the applicability of any rule or order of the Board by filing a petition requesting such declaratory ruling which:~~

- ~~(A) is signed by the person making the request; and~~
- ~~(B) contains a concise statement of the facts and law supporting the request for action by the Board.~~

~~(2) The petition shall be promptly set for hearing by the Board at which hearing the Board shall consider all information relevant to the petition including argument of counsel. The declaratory ruling or the refusal to~~

~~issue such ruling shall be ordered by the Board on or before the next scheduled meeting of the Board following the hearing.~~

(c) Declaratory Rulings

(1) Any person or group may petition the Board for a declaratory ruling as to the applicability of any rule or order of the Board and any other person or group may file a response.

(2) A petition for declaratory ruling shall be signed by the person or association making the request and shall include a concise statement of the facts and the law supporting the request.

(3) The Board may request the petitioner or any respondent to submit any information it deems pertinent to the inquiry or useful in resolving the issue, including oral and documentary evidence and citations of legal authority.

(4) The agency shall refer the petition to its counsel. The Board may refer the petition to an appropriate advisory committee or subcommittee for its review and a recommendation. The advisory committee or subcommittee may hold a hearing, take testimony of witnesses, require submission of legal memoranda, and hear argument of counsel just as the Board can do. The findings or recommendations of the advisory committee or subcommittee shall not constitute Board action. Upon completion of the period of study, whether the assigned committee held a hearing or not, the petition shall be referred to the Board with the recommendation of the committee.

(5) Upon receipt of the committee's recommendation in the Board office, Board staff shall have not less than thirty (30) days in which to disseminate the recommendation to the Board members so that it can be addressed at the next regularly scheduled Board meeting.

(6) The declaratory ruling or the refusal to issue such a ruling shall be ordered by the Board on or before the next scheduled meeting of the Board following completion of the period of study and referral of the petition back to the full Board for action.

(7) The agency shall give reasonable notice to the petitioner and any respondents to the petition in advance of the Board making a final ruling and the Board shall accompany any ruling with written findings of fact and conclusions of law.