TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

RULEMAKING ACTION:
Notice of proposed PERMANENT rulemaking

PROPOSED RULES:
Subchapter 5. Physical Plant
310:675-5-18. Design and construction [AMENDED]
310:675-5-22. Exceptions and temporary waivers [NEW]
310:675-5-23. Submission of plans and specifications and related requests for services [NEW]
310:675-5-24. Preparation of plans and specifications [NEW]
310:675-5-25. Self-certification of plans [NEW]

Subchapter 7. Administration
301:675-7-5.1 Reports to state and federal agencies [AMENDED]
310:675-7-6.1. Complaints [AMENDED]
310:675-7-12.1 Incident Reports [AMENDED]

310:675-11-5. Physical plant [AMENDED]
310:675-11-5.1 Plans and specifications requirements applicable to ICF/IID-16 [NEW]

SUMMARY:
The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and
specifications requirements of Subchapter 5.

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; 63 O.S. Section 1-1908; and 63 O.S. Section 1-1942.

COMMENT PERIOD:
December 15, 2016 through January 17, 2017. Interested persons may informally discuss the proposed rules with the contact person listed below; or may, through January 17, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

PUBLIC HEARING:
Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on January 17, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. In the event of state offices closing due to inclement weather, there will be an alternate hearing date on January 19, 2017, at the same location in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

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, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before January 17, 2017, to the contact person identified below.

COPIES OF PROPOSED RULES:
The proposed rules may be obtained for review from the contact person identified below or via the agency website at www.health.ok.gov.

RULE IMPACT STATEMENT:
Pursuant to 75 O.S., §303(D), a rule impact statement is available from the contact person identified below or via the agency website at www.health.ok.gov.

CONTACT PERSON:
Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.
RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

1. DESCRIPTION:

   The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

   This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

   This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

   This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

   Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and specifications requirements of Subchapter 5.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

   Affected persons will be residents and their families as well as owners, operators, and staff of nursing and specialized facilities. The proposed construction and physical plant requirements will increase fees for owners and operators. Additionally, affected professionals working with nursing homes and specialized facilities may include architects, engineers, clinicians, and attorneys. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. No cost is anticipated to impact these parties for the proposal relating to complaints, updating terminology or incorporation of the most recent Life Safety Code.
3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will include residents and their families as well as owners, operators, staff of nursing homes and specialized facilities and associated professionals. The benefits include updating the rule to incorporate current life-safety codes adopted by the Centers for Medicare & Medicaid Services, and design and construction requirements. The proposed reporting of incidents will benefit residents, family and staff of nursing homes and specialized facilities by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. In Federal Fiscal Year 2016, there were 690 complaints triaged for investigation under the 25 or 30 day requirement. Of those, 617 (89%) resulted in no citation; 73 (11%) resulted in deficiencies of no actual harm; and two of the 690 (0.3%) complaints resulted in deficiencies of actual harm. Avoiding this duplicative workload will provide inspectors more time to address higher priority complaint and inspection workload.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

   Nursing homes and specialized facilities may benefit economically from reduced times required to obtain clearance to start construction. The upgraded codes and guidelines are anticipated to include a combination of cost increases and decreases as a result of new construction technologies and methods.

   The rule includes fee increases for operational services. The fees proposed for increase are as follows:

   (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars ($50.00) and a maximum fee of One Thousand Dollars ($1,000.00);
   (B) Request for exception or temporary waiver fee: Five Hundred Dollars ($500.00);
   (C) Application for self-certification fee: Five Hundred Dollars ($500.00);
   (D) Courtesy construction inspection fee: Five Hundred Dollars ($500.00);
   (E) Professional consultation or technical assistance fee: Five Hundred Dollars ($500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

Based on SFY 2016 experience, the fee changes are projected to generate a total of $8,980 in additional fee revenue, based on the following:

- $1,980 in plan review fees, assuming 11 projects at $180 each
- $500 in exception or temporary waiver fees, assuming 1 project at $500
- $500 in self-certification fees, assuming one certifications at $500 each
- $5,500 in courtesy inspection fees, assuming eleven inspections at $500 each
- $500 in professional consultation fees, assuming one project at $500 each
- $8,980 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

   The cost to the OSDH to implement the amendments will be approximately $3,300 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel.
The fee changes and complaint investigation and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of $133,484.

- For SFY2017, plan review fees for all types of health care facilities totaling $162,958 are projected to exceed expenses of $469,349, for a deficit of $330,836. The deficit in SFY2017 and subsequent years is expected to be covered by state appropriations. The nursing and specialized facility plan review fees have the potential to reduce OSDH use of state appropriations by $8,980.

- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 5,000 reports or 22%. In addition, the proposal has the potential to reduce the OSDH’s use of state appropriations by approximately $11,000.

- The proposed changes in complaint investigation requirements will enable the OSDH to more closely align state complaint investigations with federal complaint investigations. This will have the effect of significantly reducing the number of complaints alleging no harm or jeopardy to residents that must be individually investigated due to the time frames specified in the current rule. For Federal Fiscal Year 2016, 690 complaints were triaged for investigation under the requirements at OAC 310:675-7-6.1(b)(4)(C) and (D). Of those, 408 were investigated individually under state requirements. Under federal requirements, those complaints could have been investigated the next time OSDH conducted an annual survey or an investigation of a more serious allegation of immediate jeopardy or actual harm to a resident. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 2,737 hours. The proposal has the potential to reduce the OSDH’s use of state appropriations by approximately $113,504, or more than 1.3 FTE.

State agencies that operate nursing or specialized facilities and engage in construction projects may incur additional costs for plan reviews and related optional services. Such state agencies will benefit from the streamlined incident reporting requirements.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
There will be no impact on political subdivisions and the rule will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**
The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services. The changes in incident reporting and complaint investigation response requirements make them more consistent with federal standards by reducing additional state requirements.
Maintaining an emphasis on immediate jeopardy and actual harm complaints will help ensure the OSDH has resources to continue to address those more serious situations in two days and ten days, respectively. Modifying the complaint investigation response times is projected to reduce reliance on state appropriated funds by more than $100,000 per year.

Additionally, correspondence with and review of 17 other state agencies indicated that 9 states (Alabama, Arizona, Colorado, Connecticut, Idaho, Nebraska, New Jersey, Oregon and South Dakota) are consistent with the current federal standards which allows complaints that do not represent immediate jeopardy or actual harm to the resident to be investigated during the next onsite inspection at the facility. Elimination of certain types of reports for minor incidents will reduce reliance on state appropriated funds by an additional $11,000 per year.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**
   
   This change will enable health care facilities to use the most current national codes and guidelines, which represent enhancements to patient safety and health care quality. Negative effects on resident safety have been minimized by modifying requirements for incident reports and complaint allegations to enable OSDH to focus on allegations of harm and immediate jeopardy.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
    
    If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services which assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in state appropriations, and will be required to continue providing current levels of services using funding and administrative resources to investigate complaints and process incident reports with relatively low impact on public health. The changes position OSDH to focus on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**
    
    This rule impact statement was prepared on December 15, 2016.
310:675-5-18. Design and construction [AMENDED]

The requirements in applicable portions of NFPA 101, 1981, shall supersede all other standards and codes unless indicated herein to the contrary. The National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 are incorporated by reference. For Medicare or Medicaid certified nursing or specialized facilities, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter. A high degree of safety for the occupants shall be provided to minimize the incidence of accidents with special consideration for residents who will be ambulatory to assist them in self care. Hazards such as sharp corners shall be avoided.

1) Existing facilities. Nonconforming portions which because of financial hardship are not being totally modernized, shall comply with the safety requirements dealing with details and finishes as listed in Chapter 13 NFPA Standard 1-1, 1981.

2) New construction projects including additions and alterations. Details and finishes shall comply with the following:

(A) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(B) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outward or be otherwise designed to be opened without need to push against a resident who may have collapsed within the room.

(C) The minimum width of all doors to resident rooms and rooms needing access for beds shall be 3'8" (1.12 m.). Doors to rooms needing access for stretchers and to resident's toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of 2'10" (86.3 cm.).

(D) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type. Openings to showers, baths, resident's toilets, and other small wet type areas not subject to fire hazard are exempt from this requirement.

(E) Windows and outer doors which may be frequently left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open.

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 30" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the
required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

(H) Safety glazing shall be of materials and at locations required by the Oklahoma Safety Glazing Material Law.

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts and shall be constructed to restrict the passage of smoke.

(J) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bar shall have 1 1/2" (3.8 cm.) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 lbs. (113.4 kg.).

(K) Recessed soap dishes shall be provided in showers and bathrooms.

(L) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1 1/2" (3.8 cm.) shall be provided between the handrail and the wall. Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of residents.

(M) Location and arrangement of handwashing facilities shall permit their proper use and operation.

(N) Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 lbs. (113.4 kg.) on the front of the fixture.

(O) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position. Mirrors shall not be installed at handwashing fixtures in food preparation areas.

(P) Provisions for hand drying shall be included at all handwashing facilities. These shall be single-use separate, individual paper or cloth units enclosed in such a way as to provide protection against the dust or soil and ensure single unit dispensing. Hot air dryers are permitted provided that installation is such to preclude possible contamination by recirculation of air.

(Q) The minimum ceiling height shall be 8'0" (2.44 m.) with the following exceptions:
   (i) Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm.) above the main boiler header and connecting piping.
   (ii) Rooms containing ceiling-mounted equipment shall have height required to accommodate the equipment.
   (iii) Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34 m.).
   (iv) Suspended tracks, rails and pipes located in path of normal traffic shall not be less than 6'8" (2.03 m.) above the floor.

(R) Recreation rooms, exercise rooms, and similar spaces where impact noise may be generated shall not be located directly over resident bed areas unless special provisions are made to minimize such noise.

(S) Rooms containing heat producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature 10° F. (6° C.) above the ambient room temperature.

(3) Finishes

(A) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that
are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a non-slip surface.

(B) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(C) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish trim, and wall and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(D) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(E) Ceilings throughout shall be easily cleanable. Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and duct work. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

310:675-5-22. Exceptions and temporary waivers [NEW]

(a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective has been met.

(b) A nursing facility may submit a request for exception or temporary waiver if the rules in this Chapter create an unreasonable hardship, or if the design and construction for the nursing facility property offers improved or compensating features with equivalent outcomes to this Chapter.

(c) The Department may permit exceptions and temporary waivers of this Chapter if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-1901 et seq., and the following:

(1) Any nursing facility requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:

   (i) The section(s) of this Chapter for which the exception or temporary waiver is requested;
   (ii) Reason(s) for requesting an exception or temporary waiver;
   (iii) The specific relief requested; and
   (iv) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

   (i) Compliance with 63 O.S. Section 1-1901 et seq.;
   (ii) The level of care provided;
   (iii) The impact of an exception on care provided;
   (iv) Alternative policies or procedures proposed; and
   (v) Compliance history with provisions of the Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the nursing facility in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.
(5) A nursing facility which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the nursing facility is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

310:675-5-23. Submission of plans and specifications and related requests for services [NEW]

(a) Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:675-5-24 or OAC 310:675-5-25.

(1) Plans and specifications are required for the following alterations:

(i) Changes that affect path of egress;
(ii) Change of use or occupancy;
(iii) Repurposing of spaces;
(iv) Structural modifications;
(v) Heating, ventilation and air conditioning (HVAC) modifications;
(vi) Electrical modifications that affect the essential electrical system;
(vii) Changes that require modification or relocation of fire alarm initiation or notification devices;
(viii) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
(ix) Replacement of fixed medical equipment if that work requires any work noted in in this (i) through (ix) of this paragraph;
(x) Replacement of or modifications to any required magnetic or radiation shielding;
(xi) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

(i) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
(ii) Ordinary repairs and maintenance;
(iii) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
(iv) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars ($50.00) and a maximum fee of One Thousand Dollars ($1,000.00);
(2) Request for exception or temporary waiver fee: Five Hundred Dollars ($500.00);
(3) Application for self-certification fee: Five Hundred Dollars ($500.00);
(4) Courtesy construction inspection fee: Five Hundred Dollars ($500.00);
(5) Professional consultation or technical assistance fee: Five Hundred Dollars ($500.00) for
each eight hours or major fraction thereof of staff time. For technical assistance requiring
travel, the fee may be increased to include the Department's costs for travel.

(c) The fee for review of design and construction plans and specifications shall cover the cost of
review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a
stage one or stage two submittal is not approved after two (2) submissions, another review fee
shall be required with the third submittal. Fast-track projects shall be allowed two reviews for
each package submitted. If a fast-track stage package is not approved after the second submittal,
another review fee based on the cost of the project shall be required with the third submittal of
the package.

(d) Review process. Design and construction plans and specifications shall be reviewed in
accordance with the following process.

(1) Administrative completeness review. Unless otherwise provided in this Subchapter, the
Department shall have ten (10) calendar days in which to initially determine if the filed
application is administratively complete

   (i) Not complete. Upon determining that the application is not administratively
complete, the Department shall immediately notify the applicant in writing and shall
indicate with reasonable specificity the inadequacies and measures necessary to complete
the application. Such notification shall not require nor preclude further review of the
application and further requests for specific information. If the Department fails to notify
the applicant as specified in this Paragraph, the period for technical review shall begin at
the close of the administrative completeness review period. Upon submission of
correction of inadequacies, the Department shall have an additional 15 calendar days to
review the application for completeness.

   (ii) Complete. Upon determination that the application is administratively complete, the
Department shall immediately notify the applicant in writing. The period for technical
review begins.

(2) Technical review. The Department shall have forty-five (45) calendar days from the date
a completed application is filed to review each application for technical compliance with the
relevant regulations and reach a final determination.

   (i) When times are tolled. The time period for technical review is tolled (the clock
stops) when the Department has asked for supplemental information and advised the
applicant that the time period is tolled pending receipt.

   (ii) Supplements. To make up for time lost in reviewing inadequate materials, a request
for supplemental information may specify that up to 30 additional calendar days may be
added to the deadline for technical review, unless the request for supplemental
information is a second or later request that identifies new deficiencies not previously
identified.

   (iii) Delays. An application shall be deemed withdrawn if the applicant fails to
supplement an application within 90 calendar days after the Department's request, unless
the time is extended by agreement for good cause.

   (iv) Extensions. Extensions may be made as provided by law.

310:675-5-24. Preparation of plans and specifications [NEW]
(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

1. **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.
   
   (A) Equipment and built-in furnishings are to be identified in the stage one submittal.
   
   (B) The nursing facility has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.
   
   (C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.
      
      (i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.
      
      (ii) Complete architectural plans and specifications.
      
      (iii) All mechanical, electrical, and plumbing plans and specifications.
      
      (iv) Equipment and furnishings.

2. **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

### 310:675-5-25. Self-certification of plans [NEW]

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a nursing facility considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:675-5-23. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The nursing facility and the project architect may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect attesting that the plans and specifications are based upon and comply with the requirements of this Chapter.

(c) To be eligible for self-certification, projects must comply with the following requirements:
(1) The project involves any portion of the nursing facility where patients are intended to be examined or treated and the total cost of design and construction is one million dollars ($1,000,000) or less; or
(2) The project involves only portions of the nursing facility where patients are not intended to be examined or treated; and
(3) The project architect or engineer atesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and
(4) The nursing facility owner/operator acknowledges that the Department retains the authority to:
   (i) Perform audits of the self-certification review program and select projects at random for review;
   (ii) Review final construction documents;
   (iii) Conduct on-site inspections of the project;
   (iv) Withdraw approval based on the failure of the nursing facility or project architect to comply with the requirements of this Chapter; and
(5) The nursing facility agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(c) Within twenty-one (21) days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the nursing facility. If the application is denied, the nursing facility shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(d) After denial of the application for self-certification and prior to the start of construction, the nursing facility shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the nursing facility's plans in accordance with the process in OAC 310:675-5-23.

SUBCHAPTER 7. ADMINISTRATION

310:675-7-5.1. Reports to state and federal agencies [AMENDED]
(a) Timeline for reporting. All reports to the Department shall be made by telephone or facsimile within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be mailed or faxed to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.

(b) Reporting abuse, neglect or misappropriation. The facility shall report to the Department allegations and incidents of resident abuse, neglect or misappropriation of residents' property [63 O.S. §1-1939(I)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).

(c) Reporting to licensing boards. The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.
(d) **Reporting communicable diseases.** The facility shall report communicable diseases [63 O.S. §1-1939(I)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).

(e) **Reporting certain deaths.** The facility shall report deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device, [63 O.S. §1-1939(I)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.

(f) **Reporting missing residents.** The facility shall report missing residents to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing [63 O.S. §1-1939(I)(1)(c)].

(g) **Reporting criminal acts.** The facility shall report situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement [63 O.S. §1-1939(I)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff’s office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.

(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than four (4) hours.

(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in: fractures, head injury or require treatment at a hospital, a physician’s diagnosis of closed head injury or concussion, or head injuries that require more than first aid.

(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.

(k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.

(l) **Reporting to local emergency response manager.** The facility shall coordinate with the local emergency response manager their response to fire damage, storm damage resulting in relocation of residents or power outage of four (4) hours or more.

(i) **Incident report format.** The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report shall include, at a minimum: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

(j) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

1. facility name, address, and telephone;
2. facility type;
3. date;
4. reporting party name or administrator name;
5. employee name and address;
6. employee certification number;
7. employee social security number;
8. employee telephone number;
(9) termination action and date;
(10) other contact person name and address; and
(11) facts of abuse, neglect, or misappropriation of resident property.

(m)(k) **Content of reports to the department.** Reports to the Department made pursuant to this section shall contain the following:

1. The preliminary report shall, at the minimum, include:
   A. who, what, when, and where; and
   B. measures taken to protect the resident(s) during the investigation.
2. The follow-up report shall, at the minimum, include:
   A. preliminary information;
   B. the extent of the injury or damage if any; and
   C. preliminary findings of the investigation.
3. The final report shall, at the minimum, include preliminary and follow-up information and:
   A. a summary of investigative actions;
   B. investigative findings and conclusions based on findings; and
   C. corrective measures to prevent future occurrences.
   D. if items are omitted, why the items are omitted and when they will be provided.

(l) **Reporting nurse aides and non-technical service workers.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide or non-technical service worker by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

1. facility name, address, and telephone;
2. facility type;
3. date;
4. reporting party name or administrator name;
5. employee name and address;
6. employee certification number;
7. employee social security number;
8. employee telephone number;
9. termination action and date;
10. other contact person name and address; and
11. facts of abuse, neglect, or misappropriation of resident property.

### 310:675-7-6.1. COMPLAINTS [AMENDED]

(a) **Complaints to the facility.** The facility shall make available to each resident or the resident's representative a copy of the facility's complaint procedure. The facility shall ensure that all employees comply with the facility's complaint procedure. The facility's complaint procedure shall include at least the following requirements.

1. The facility shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:
   A. The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;
   B. Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and
(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.

(2) If a resident, resident's representative or facility employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the facility shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

(b) Complaints to the Department. The following requirements apply to complaints filed with the Department.

(1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a facility resident, the resident's representative, or a current employee of the facility, the Department shall keep the complainant's identity confidential. For other complainants the Department shall ask the complainant's preference regarding confidentiality.

(4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and

(C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty-five (25) days; a violation causing or potentially causing harm of limited consequence and not significantly impairing the resident's mental, physical, and/or psychosocial status or function shall be scheduled for an onsite survey and investigated no later than the next onsite survey; and

(D) A complaint alleging other than immediate jeopardy or actual harm to a resident shall be classified as a primary complaint and shall be investigated within thirty (30) days; a violation that may have caused physical, mental and/or psychosocial discomfort that does not constitute injury or damage shall be investigated during the next onsite survey. The Department shall review complaints classified as low priority for tracking of possible trends in the nature of complaints in order to determine if there are common themes that suggest areas for focused attention when the next onsite survey occurs.

(E) A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as
continuing and investigated the earlier of the next onsite survey or one-hundred eighty (180) calendar days.

310:675-7-12.1. Incident reports [AMENDED]
(a) Incident defined. An incident is any accident or unusual occurrence where there is apparent injury, where injury may have occurred, including but not limited to, head injuries, medication, treatment errors or events which are subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).
(b) Incident records. Each facility shall maintain an incident report record and shall have incident report forms available.
(c) Incident report format. Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires shall include, at a minimum: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.
(d) Incident report preparation. At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.
(e) Incident reporting: scope. The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.
(f) Incident records on file. A copy of each incident report shall be on file in the facility.
(g) Incident in clinical record. The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.
(h) Incidents: reviewers. All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES OF 16 BEDS AND LESS FOR THE MENTALLY RETARDED INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/MR-16 BEDS AND LESS) (ICF/IID-16)

310:675-11-5. Physical plant [AMENDED]
(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified mental retardation professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.

(c) Each facility must have a license. Any facility licensed under this part shall consist of contiguous construction.

(1) **Resident rooms.** The following requirements shall be provided:
   (A) Capacity shall be a maximum of four (4) residents.
   (B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.
   (C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:
   (A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.
   (B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.
   (C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ICF-MR-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.
   (D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.
   (E) Meal service space shall be provided as follows:
      (i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.
      (ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.
      (iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.
   (F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

(3) **Recreation, lounge and public areas.** Each ICF/MR-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed.
Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

(5) **Window size.** Windows and exterior doors may be used as a natural means of light and ventilation, and when so used their aggregate glass area shall amount to not less than eight percent of the floor area served, and with not less than one half of this required area available for unobstructed ventilation.

**310:675-11-5. 1. Plans and specifications requirements applicable to ICF/IID-16 [NEW]**

The following sections of this Chapter shall apply to ICF/IID-16 facilities: 310:675-5-22 (relating to exceptions and temporary waivers), 310:675-5-23 (relating to submission of plans and specifications and related requests for services), 310:675-5-24 (relating to preparation of plans and specifications) and 310:675-5-25 (relating to self-certification of plans).