

ADMINISTRATIVE AGENCY RULE REPORT
75 O.S. Supp. 2000, § 303.1
SUBMITTED TO THE GOVERNOR AND TO THE LEGISLATURE

1. Date the Notice of Intended Rulemaking was published in the Oklahoma Register:

October 3, 2016, Vol. 34 Ok Reg 2, Docket No. 16-745

2. Name and address of the Agency:

Oklahoma State Department of Health
1000 N.E. Tenth Street
Oklahoma City, Oklahoma 73117-1299

3. Title and Number of the Rule:

Title 310. Oklahoma State Department of Health
Chapter 2. Procedures of the State Department Of Health

4. Citation to the Statutory Authority for the Rule:

Oklahoma State Board of Health, Title 63 O.S. § 1-104 and 63 O.S. § 1-751 *et seq.*

5. Brief Summary of the Content of the Adopted Rule:

These proposed rules implement the Department's requirements contained in House Bill Number 2797, from the 2nd Session of the 55th Oklahoma Legislature (2016) known as "Humanity of the Unborn Child Act" and codified at 63 O.S. § 1-751 *et seq.* The proposed rules set forth the requirements to be used by facilities regulated by the Department to place signage in restrooms and other areas in compliance with the Act.

6. Statement explaining the Need for the Adopted Rule:

Conformance with House Bill Number 2797, from the 2nd Session of the 55th Oklahoma Legislature (2016) known as "Humanity of the Unborn Child Act" and codified at 63 O.S. § 1-751 *et seq.* Effective November 1, 2016.

7. Date and Location of the Meeting at which such Rules Were Adopted:

Adopted December 13, 2016 in the offices of the Oklahoma State Department of Health.

8. Summary of the Comments and Explanation of Changes or Lack of any Change Made in the Adopted Rules as a Result of Testimony Received at Public Hearings:

Comments addressed concerns with the cost of signage. Various estimates were received for costs based on the type of licensed provider, styling and framing of the sign, and whether the sign required stringent cleanliness requirements, able to be disinfected regularly in restrooms in medical facilities. Commenters objected to the fiscal impact of the proposed rules and opined that these regulations will pose an undue economic burden on thousands of individual physician practices, hospitals and others regulated by OSDH.

The OSDH received comments concerning: requiring signage in locations where the targeted audience for the signs (pregnant women or women who intend on becoming pregnant) will not view the signs and receive its message; the proposed regulations not being necessary at the present time since the Oklahoma Legislature has not appropriated funds for requirements contained in HB 2797; allowing for the signs to be placed in locations other than bathrooms; requiring the facilities licensed by the OSDH to pay for and

provide signs; the font, font size and language requirements for the signs contained in the proposed regulations; lack of OSDH web address in the signage to direct the public to information from the message.

The response of the Department was to express acknowledgment of the concerns of the fiscal impact the proposed regulations will have upon the businesses it licenses, while affirming that HB 2797 requires that rulemaking occur. While most of the provisions contained in HB 2797 contain the language, “contingent on the availability of funds being appropriated by the Legislature specifically for this purpose,…” and would require the OSDH to receive funding before implementing the requirements of the Bill, there are three provisions in the Bill that do not contain said language. These provisions are Section 2, Paragraph (B); Section 2, Paragraph (C), and Section 2, Paragraph (D) of HB 2797. Section 2, Paragraph (B) requires the OSDH to set up a hyperlink on the OSDH website containing certain information. Section 2, Paragraph (C) requires the OSDH to make available signage to all facilities regulated by the OSDH by January 1, 2018. Section 2, Paragraph (D) requires the Board of Health to promulgate rules to implement the provisions of Section 2. If the “contingent on the availability of funds being appropriated by the Legislature specifically for this purpose,…” language were a part of these three provisions, this proposed rulemaking would not have been commenced by the OSDH. Since the language was not contained in these three provisions, this rulemaking was commenced.

The language referenced by the commenters on signage placement other than bathrooms was discretionary. The commenters are correct, that HB 2797 only states that signs are required to be placed in the restrooms. Based on the comments and response, the OSDH removed the discretionary language on alternative placement.

The OSDH disagrees with commenters that the law requires the OSDH to produce the signs. The law required the OSDH to make signage available. Signage is defined as, “graphic designs, as symbols, emblems, or words, used especially for identification or as a means of giving direction or warning.” The proposed rulemaking is making signage available as the term “signage” is defined. The proposed rule addressing font size was amended to allow lettering that is reasonably legible and to include the OSDH web address.

For a complete discussion see Exhibit A, Rule Comment Summary.

9. List of Persons or Organizations Who Appeared or Registered For or Against the Adopted Rule at Any Public Hearing Held by the Agency or Those Who Have Commented in Writing Before or After the Hearing:

The Oklahoma State Department of Health received comments from:

- Oklahoma Residential Assisted Living Association,
- Oklahoma Assisted Living Association;
- Oklahoma Primary Care Association;
- Oklahoma State Medical Association;
- Oklahoma Restaurant Association;
- Oklahoma Hospital Association;
- Tulsa Campaign to Prevent Teen Pregnancy;
- Planned Parenthood Great Plains; and
- Oklahoma Association of Health Care Providers
- Tamya Cox, Planned Parenthood Great Plains
- Jim Hopper, Oklahoma Restaurant Association and Oklahoma Hotel and Lodging Association

10. Rule Impact Statement: Hereto annexed as Exhibit B.

11. Incorporation by Reference Statement:

"n/a"

12. Members of the Governing Board of the Agency Adopting the Rules and the Recorded Vote of Each Member:

Dr. Jenny Alexopoulos - Aye
Mrs. Martha Burger - Aye
Dr. Terry Gerard - Aye
Dr. Charles Grim - Aye
Dr. R. Murali Krishna - Aye
Mr. Timothy Starkey - No
Dr. Robert Stewart - Aye
Ms. Cris Hart-Wolfe - Aye
Dr. Ronald Woodson – Aye

13. Additional information: Information regarding this rule may be obtained by contacting Donald D. Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail: donm@health.ok.gov.

RULE COMMENT SUMMARY AND RESPONSE

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH SUBCHAPTER 31. HUMANITY OF THE UNBORN CHILD ACT [NEW]

The Summary of Comments is submitted to the Board of Health, and upon approval from the Board of Health submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant Title 75 of the Oklahoma Statutes, Section 303.1 (A). Pursuant to Title 75 of the Oklahoma Statutes, Section 303.1 (E) the report shall include: (9) *A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules;* (10) *A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing.*

Notice of the proposed rulemaking was published in the Oklahoma Register. The public comment period ran from October 3, 2016 through November 3, 2016. A public hearing on the proposed rulemaking was held on November 3, 2016. The Oklahoma State Department of Health received written comments from nine (9) individuals or organizations [Oklahoma Residential Assisted Living Association, Oklahoma Assisted Living Association; Oklahoma Primary Care Association; Oklahoma State Medical Association; Oklahoma Restaurant Association; Oklahoma Hospital Association; Tulsa Campaign to Prevent Teen Pregnancy; Planned Parenthood Great Plains; and Oklahoma Association of Health Care Providers]. Additionally, the Oklahoma State Department of Health received oral comments from Tanya Cox of Planned Parenthood Great Plains and Jim Hopper of the Oklahoma Restaurant Association and of the Oklahoma Hotel and Lodging Association during the November 3, 2016 public hearing. For the purposes of this Rule Comment Summary and Response, like comments will be grouped together and one response provided.

Organization Name: Oklahoma Hospital Association; Oklahoma Residential Assisted Living Association; Oklahoma Restaurant Association; Oklahoma State Medical Association; Oklahoma Primary Care Association; Planned Parenthood Great Plains; Oklahoma Hotel and Lodging Association; Tulsa Campaign to Prevent Teen Pregnancy; and Oklahoma Association of Health Care Providers

Comment Topic: Economic Impact on Regulated Businesses

Comments: The OSDH received the following comments concerning the economic impact of the proposed rules on the regulated businesses.

Oklahoma Hospital Association: Information we have obtained reveals the cost of the production of such signage ranges from \$45.00 to \$150.00 per sign depending on the styling and framing of the sign. Also be aware that due to the stringent cleanliness requirements that a sign must be able to be disinfected regularly in restrooms in medical facilities. This cost must be multiplied by the number of bathrooms at each facility and does not include the cost of installation. A brief sampling of the large and small hospitals and systems is stated below (cost is estimated at \$80.00 per sign):

- INTEGRIS Health System – 403 bathrooms -- \$60,000.00 (cost estimate at \$150.00 for a 3 foot by 2 foot sign, including installation)
- OU Medical System – 109 bathrooms -- \$8,720.00
- Rural Hospital #1 – 10 bathrooms -- \$800.00
- SSM Healthcare (St. Anthony Hospital, Bone and Joint, St. Anthony Shawnee) – 100 bathrooms -- \$10,000.00

As demonstrated in the information above, the cost of compliance and economic impact will vary widely on OSDH licensees from \$750.00 for a small rural hospital to \$60,000.00 for a large acute care hospital in an urban center. With over 140 licensed hospitals in Oklahoma the cost just to the hospitals is estimated to be at a minimum of \$225,000.00. When aggregated, the fiscal impact of the 114,687 state licenses of the OSDH is enormous and will be at least \$2,000,000.00 conservatively based on two public bathrooms per facility. We also added into the calculation at least two public bathrooms at each of the 751 facilities that are federally certified by the OSDH and that cost is conservatively an additional \$120,000.00 based on two bathrooms per facility. The economic impact the other licensees of the OSDH such as restaurants, nursing homes, hotels and motels, dialysis center, radiology centers and assisted living would also be significant and be at least \$2,120,000.00 across the licensed industries. Most are considered small businesses and the impact of compliance is disparate for those businesses.

Oklahoma Residential Assisted Living Association: The cost and inconvenience of creating and posting signage in all of our bathrooms will be an unnecessary burden on our members who are operating on very narrow margins.

Oklahoma Restaurant Association: The Oklahoma Restaurant Association is made up of more than 1,200 members throughout the state of Oklahoma who collectively operate over 4000 licensed locations in our state. These members are small businesses who are constantly faced with ever increasing regulations with which they are forced to comply without the benefit of clear thinking about how these new mandates will affect their ability to operate profitably. Two Oklahoma Restaurant Association members, who are multi-operation facilities throughout the state of Oklahoma were contacted. Together, these two restaurant companies operate over 200 locations throughout the state. They were asked to estimate their costs for compliance with this proposed rule. To print, laminate, purchase a frame, attach it to the bathroom wall so that it cannot be easily removed, and the labor to accomplish all of this is estimated to cost these two companies over \$20,000.00. The margins of profitability in the restaurant industry are not large, typically in the 4-7% range. So you can imagine how each unfunded mandate puts additional strain on restaurants to be profitable.

Oklahoma State Medical Association: The OSDH must consider the fiscal impact of these proposed rules. With the sheer number of regulated entities to which these rules could apply and the non-standard size of the proposed sign, these regulations will pose an undue economic burden on thousands of individual physician practices, hospitals and others regulated by OSDH. The rules are not limited to health practitioners who will be unduly burdened by this unfunded mandate.

Oklahoma Primary Care Association: The cost of implementing this policy is not limited to the cost of printing or materials, but also staff time necessary to produce and install these signs and any necessary deliver of postal charges. Given the large font size requirement would likely exceed the capability of many entities to print a sufficiently large sign within their facility, many would likely have to order such signs from outside their organization requiring production charges and shipping and delivery expenses. Some of these additional shipping and handling or delivery charges could be relatively high given that CHSs [community health centers] serve Medically Underserved Areas which are many times very rural, and the local communities might not have the ability to professionally produce a sign of that size in the area. Obtaining a price quote from a professional printer for paper only printing, costs could range between \$50.00 to \$100.00 per sign and a separate preparation fee of \$25.00 per job. The following is a possible direct cost to CHCs:

- Preparation fees – 20 CHC Organizations x \$25.00 -- \$500.00
- Printing – 90 locations, 2 pairs of men’s and women’s restrooms per location, 360 copies, \$100.00 per paper copy -- \$36,000.00

- Staff time for printing services -- \$15.00 per hour, 5 hours for CHC to retrieve template and obtain printing services -- \$1,500.00
- Framing for Paper Copies -- \$20.00 per frame for 360 copies -- \$7,200.00
- Installation -- \$15.00 per hour, one hour per location -- \$1,350.00
- Total Cost -- \$46,550.00.

A much smaller size sign that would fit on a single standard 8 ½” x 11” piece of paper would substantially reduce the cost of printing for affected entities.

Planned Parenthood Great Plains: These proposed rules also place a financial burden on business owners that must be licensed from the State including small businesses. While again the actual cost may seem minimal, the rules and law are silent to the repercussions if business owners refuse to comply. It is important that any mandates or regulations placed upon business owners be reasonable and serve a public health good. The Humanity of the Unborn Act accomplishes neither of these goals.

Oral comments from Tamya Cox representing Planned Parenthood Great Plains at the November 3, 2016 public hearing: These rules create an unnecessary fiscal impact on business owners that are arbitrary to said business owners.

Oral comments from Jim Hopper, President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association at the November 3, 2016 public hearing: Both organizations represent a lot of small and medium size businesses in the State of Oklahoma. The Oklahoma Restaurant Association has over 1,200 members operating in approximately 4,000 locations. Any sign produced to meet the requirements of the proposed rules will need to be created, laminated, placed in a tamper proof frame and permanently attached to the walls of the restrooms so the signs cannot be tampered with, torn down or removed. There are definitely costs involved with complying with this Act. I reached out to two of my 1,200 members who have multiple locations across the State of Oklahoma. Together those two entities operate approximately 200 locations. The estimated costs just for these two businesses to have the signs produced and displayed are \$20,000.00 to comply with the proposed requirements. Profit margins for these businesses are not very large and any added costs and/or unfunded mandates are cause for concern for members of both organizations.

Tulsa Campaign to Prevent Teen Pregnancy: This Law requires all facilities licensed or permitted by the OSDH to produce signage in every restroom that “meets the requirements of this act.” These measures are unlikely to achieve the desired results and place inappropriate and unfair burdens on businesses.

Oklahoma Association of Health Care Providers: Expressed concerns with the fiscal impact of the rulemaking in compliance with the Humanity of the Unborn Child Act and Public Restrooms (HB 2797 in 2016). This amounts to an unfunded mandated of unreasonable costs of up to \$80.00 per sign that must be multiplied by the number of bathrooms at each facility as well as the labor costs of installation. More than 70 percent of all nursing home beds are funded by the state Medicaid program. Medicaid rates have been cut significantly the past 6 years. The addition of unfunded mandates as required with this rule and the compounding impact of the Medicaid cuts further diminishes our ability to invest in improving patient care. This creates an unnecessary hardship and greater proportional negative impact on our small businesses because our facilities have many restrooms and the primary individuals utilizing those restrooms are seniors beyond reasonable child bearing age.

Response: The Oklahoma State Department of Health understands the concerns of the fiscal impact the proposed regulations will have upon the businesses it licenses. The Oklahoma State Department of Health thanks each of the commenters who provided fiscal impact information concerning the proposed rulemaking. The fiscal impacts provided in these comments will be added to an amended Rule Impact

Statement that is provided to the Board of Health, the Governor, the Speaker of the House and the President Pro Tempore of the Senate. Unfortunately, HB 2797 requires that rulemaking occur concerning the signage issue and the web portal issue. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Tulsa Campaign to Prevent Teen Pregnancy and Planned Parenthood Great Plains

Comment Topic: Economic Impact on State Agencies (including the OSDH)

Comments: The OSDH received the following comments concerning the economic impact of the proposed rules on Oklahoma State Agencies.

Tulsa Campaign to Prevent Teen Pregnancy: The proposed regulations in HB 2797 will have a significant negative fiscal impact on already stressed state agencies. The regulations are completely unnecessary and unwanted. This law imposes fiscal hardship on state agency budgets – most notably on the Oklahoma State Department of Health (OSDH) and the Oklahoma State Department of Education (ODSE) – in a time of financial crisis for our state. The May 2016 fiscal analysis of the bill state the negative financial impact of the bill: *“Department of Education personnel anticipate that cost would include \$10,000 to establish and maintain the information program, \$145,000.00 - \$150,000.00 for development of the program instructional training and materials for students and \$10,000.00 per high school site for cost of instruction based on average teacher salary. There are 478 high schools sites. Additional costs cannot be estimated at this time.”* The law established a dedicated revolving fund to be specifically used for promotion of material that is neither evidence-based nor part of any recognized quality sex education curricula. At a time when funding for education and public health is being slashed in our state, this law dilutes and confuses the great work that is already happening at the local level. Requiring OSDH to create and maintain a website of all program across the state that claim to want to help pregnant women is an unfunded mandate that would require an exorbitant amount of staff time and resources. Oklahoma will continue to face a significant budget shortfall in 2017. It is time to be laser-focused on fiscal responsibility and real public health priorities that are actually impacting our communities.

Planned Parenthood Great Plains: During the legislative session, many opponents argued that the cost to implement HB 2797 was too great especially at a time with the State was facing a huge budget deficit. The Act creates obstacles for teen pregnancy prevention efforts that have already realized dramatic results in helping reduce the teen pregnancy rate. Communities and tribes have secured over \$5 million in federal dollars while the State has refused to contribute any funding toward prevention. The proposed rules create an unnecessary cost to the Department itself. There is a simple cost just associated with the rule drafting process as well as the cost of implementing. The law requires the state to create a web portal complying with its provision. However, no additional funding was allocated to the Department for implementation. Even if the actual costs are minimal to the Department, the funding will have to be diverted from another area.

Response: The Oklahoma State Department of Health understands the concerns of the fiscal impact the proposed regulations will have upon the OSDH and other state agencies. The Oklahoma State Department of Health thanks each of the commenters who provided fiscal impact information concerning the proposed rulemaking. The fiscal impacts provided in these comments will be added to an amended Rule Impact Statement that is provided to the Board of Health, the Governor, the Speaker of the House and the President Pro Tempore of the Senate. Unfortunately, HB 2797 requires that rulemaking occur concerning the signage issue and the web portal issue. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Association of Health Care Providers; Oklahoma Restaurant

Association; Oklahoma Residential Assisted Living Association; Oklahoma Assisted Living Association; Oklahoma Hotel and Lodging Association

Comment Topic: The Act and proposed rules are required to be implemented in situations where the targeted population of the Act is not available.

Comments: The OSDH received the following comments concerning the Act and/or the proposed regulations being required in locations where the targeted audience for the signs (pregnant women or women who intend on becoming pregnant) will not view the signs and receive its message.

Oklahoma Association of Health Care Providers: There is no distinction between men's and women's restrooms with the requirement it (the sign) be posted in both places. This creates an unnecessary hardship and greater proportional negative impact on our small businesses because our facilities have many restrooms and the primary individuals utilizing those restrooms are seniors beyond reasonable child bearing age.

Oklahoma Restaurant Association: The new statute does not differentiate between which restrooms must have the signs posted, but mandates they be posted in every public restroom in facilities licensed by the Health Department. This just makes no sense for signs to be posted in men's restrooms.

Oklahoma Residential Assisted Living Association: Our members and most long term care facilities are not necessarily open to the general public for the purposes of using a bathroom. Therefore, the majority of our residents and their visitors are likely not going to benefit from this information.

Oklahoma Assisted Living Association: This rule could have a negative emotional impact on our residents. I understand the purpose of House Bill 2797 is to educate those of child bearing age of option to terminating a pregnancy. However, our residents are obviously older and not of child bearing age. Is it necessary to inform them of options which are not applicable?

Oral comments from Jim Hopper, President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association at the November 3, 2016 public hearing: The Act says (and this is a paraphrase) the entities that are licensed by the State Health Department that have restrooms that are open to the public must post these signs. The Act does not differentiate between men's and women's restrooms and does not differentiate between the type of businesses regulated by the Department, whether a hospital, nursing home, tattoo parlor. This language is poorly drafted and not well thought out by the legislature. You would think that the legislature would have reached out to stakeholders about the requirements of the Act, and say here is what we want to do, help us reach this goal.

Response: The OSDH agrees that HB 2797 (2016) and these proposed rules (due to the language contained in the House Bill) do not differentiate between which bathrooms the signs must be posted or what types of businesses the signs must be posted. The language from HB 2797 requires the signs contemplated by the Bill to be posted in the restrooms available to the public for those facilities licensed by the OSDH. Since the House Bill that was passed and signed into law does not differentiate between the types of bathrooms where the signs shall be posted or differentiate between the types of facilities where the signs shall be posted, the OSDH and the Board of Health does not have the legislative authority to make such a differentiation. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Assisted Living Association

Comment Topic: Impact of HB 2797 and/or the proposed rules to implement the Bill on certain

residents at certain facilities regulated by the OSDH.

Comments: The OSDH received the following comments concerning the Act and/or the proposed regulations and the potential impact of both on the residents of the facility

Oklahoma Assisted Living Association: My other concern is that an assisted living center, while regulated by the Department of Health, is a limited public facility. They are homes of our residents. Some of these residents suffer from mental ailments. In some instances, these posters could cause further trauma to our residents. The public bathrooms are used mainly by the resident's that live there. These posting could cause great confusion and undue stress to those that have dementia. In a worst case scenario they (the residents) could re-live a repressed memory of a personal experience causing emotional harm which would violate their rights.

Response: The OSDH sympathizes with the commenters concerning the potential impact of the placement of the signs in the restroom of Assisted Living facilities. This same or similar impact could also occur with the placement of signs in Nursing Facilities, Residential Care Facilities, Hospitals and other Primary Care Facilities. The House Bill that was passed and signed into law does not differentiate between the types of facilities where the signs shall be posted. Since the House Bill does not make distinction concerning the types of facilities that are required to post the signs, the OSDH and the Board of Health does not have the legislative authority to make such a differentiation. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma State Medical Association; and Oklahoma Hospital Association

Comment Topic: HB 2797 only requires the Oklahoma State Department of Health to regulate in this area when funds are appropriated.

Comments: The OSDH received the following comments concerning the proposed regulations not being necessary at the present time since the Oklahoma Legislature has not appropriated funds for requirements contained in HB 2797.

Oklahoma State Medical Association: The law at Title 63 Okla. Stat. § 1-752 clearly states these rules should be promulgated and in the form made available "contingent on the availability of funds being appropriated by the Legislature specifically for this purpose." Given that such funding has not been provided, we believe these proposed regulations are both unnecessary and premature.

Oklahoma Hospital Association: HB 2797 contains language that the required website, which will provide the information required by the legislation, is contingent. "Contingent on the availability of funds being appropriated by the Legislature specifically for this purpose, the State Department of Health shall develop, update annually and maintain an electronic format containing information..." *Title 63 Okla. Stat. § 1-752.* There is no evidence that funds were appropriated to the OSDH in 2016 for implementation of the law such as enforcement of licenses and to establish the website for the information for compliance with the Humanity of the Unborn Child Act. Therefore, the OSDH should not proceed with the rulemaking for requiring the posting of signs that by licensees of the OSDH.

Response: While most of the provisions contained in HB 2797 contain the language, "contingent on the availability of funds being appropriated by the Legislature specifically for this purpose,..." and would require the OSDH to receive funding before implementing the requirements of the Bill, there are three provisions in the Bill that does not contain said language. These provisions are Section 2, Paragraph (B); Section 2, Paragraph (C), and Section 2, Paragraph (D) of HB 2797. Section 2, Paragraph (B) requires the OSDH to set up a hyperlink on the OSDH website containing certain information. Section 2, Paragraph (C) requires the OSDH to make available signage to all facilities regulated by the OSDH by January 1,

2018. Section 2, Paragraph (D) requires the Board of Health to promulgate rules to implement the provisions of Section 2. If the “contingent on the availability of funds being appropriated by the Legislature specifically for this purpose,…” language were a part of these three provisions, this proposed rulemaking would not have been commenced by the OSDH. Since the language was not contained in these three provisions, this rulemaking was commenced. Additionally, the OSDH has been contacted by the primary House author for HB 2797 concerning the progress being made on this proposed rulemaking. This would appear to demonstrate legislative intent that would run counter to the interpretation provided by the commenters. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Association of Health Care Providers; Oklahoma State Medical Association; Oklahoma Hospital Association; Planned Parenthood Great Plains

Comment Topic: Discretionary language concerning signs being posted at places other than bathrooms

Comments: The OSDH received the following comments concerning the proposed regulations allowing for the signs to be placed in locations other than bathrooms.

Oklahoma Association of Health Care Providers: We concur with our colleagues at the Oklahoma Hospital Association that “the Oklahoma State Department of Health has exceeded the authority of the legislation by adding language to the rulemaking beyond posting in bathrooms the signs may also be posed in ‘other portions of the facility as necessary.’ See 310:2-31-3 (8). The law does not provide for any additional places for posting beyond the phrase ‘all bathrooms open to the public.’”

Oklahoma State Medical Association: The proposed rules speak to the possibility of displaying the signage “at any other location at the facility.” This goes beyond the wording and the intent of HB 2797, which specifically refers to signage being placed in the restroom. As such, at a minimum we believe this provision should be removed from the proposed rules.

Oklahoma Hospital Association: The OSDH has exceeded the authority of the legislation by adding language to the rulemaking, beyond just posting in bathrooms that signs may also be posed in “other portions of the facility as necessary.” See 310:2-31-3 (8). The law does not provide for any additional places for posting beyond the phrase “all bathrooms open to the public.”

Response: The language referenced by the commenters is discretionary and does not place any additional burden on any facility licensed or permitted by the OSDH. The language allows any facility, at its discretion, to place such a sign in any additional location at the facility. The commenters are correct, that HB 2797 only states that signs are required to be placed in the restrooms of facilities licensed or permitted by the OSDH. There is no language in HB 2797 that requires the need for this discretionary language. Therefore, based on the comments and response, the OSDH will propose the following amendment to the proposed rule in OAC 310:2-31-3 (8) to remove the discretionary language as follows: “Any facility creating, producing and displaying signage in compliance with these requirement shall display said sign in any and all public restrooms at the facility ~~and may display the signage at any other location at the facility;~~ and”

Organization Name: Oklahoma Restaurant Association; Planned Parenthood Great Plains; Oklahoma Hotel and Lodging Association

Comment Topic: Oklahoma State Department of Health to provide the signs

Comments: The OSDH received the following comments concerning the proposed regulations requiring the facilities regulated by the OSDH to pay for and provide signs.

Oklahoma Restaurant Association: The final version of HB 2797 that became law when signed by the Governor contained this provision in Section 2, C:

C. On or before January 1, 2018, the Department shall make available to each facility in this state which is open to the public containing a restroom available to the public, and licensed by the State Department of Health, signage which is to be posted in its restroom containing the statement and the website address to obtain information provided by subsection A of this section.

As you can see, the new law clearly states the Health Department shall provide these signs. The Proposed rule before you would require restaurants, and other small businesses cover by this rule, to bear the costs for these signs.

Planned Parenthood Great Plains: The proposed rules are an overreach of state law. *63 O.S. §751* (c) (sic) states “the department shall make *available* (emphasis added) to each facility licensed by the Department of Health signage which is to be posed in its restroom containing specific language and a link to a website.” There is nothing in the law that compels business owners to place signs in their restrooms. However, these proposed rules require signs to *not only* be created by the facility but also the proposed rules require the signage to be displayed. The law clearly states that the Department will create the signs and make them available to business owners. The business owners should then be allowed to choose whether or not they want to post. The Department is requiring business owners to ascribe to the anti-abortion view that is the true intent of this new law and thus the proposed rules. There are no provisions that allow business owners to decline displaying the signs. The Department is compelling government speech on private business owners to strengthen its anti-abortion agenda. In no other areas has the Department demanded that business owner place signs in bathrooms. The proposed rules are compulsory and more restrictive than state law requires. Therefore, the proposed rules should be rescinded or at the very least amended to follow state law and make signs available to business owners and allow them to use their own discretion.

Oral comments from Tamya Cox representing Planned Parenthood Great Plains at the November 3, 2016 public hearing: The bill requires that the Department shall make available the signs that are to be posted in any facility that is licensed by the Department. Shall make available implies that the Department will create these signs and make available. It does not compel business owners to place these signs in restrooms. The language in the rule that requires licensed facilities to create, produce and display the signs to be compulsory on business owners. We believe business owners should have the discretion so at the very least we are asking that Section 3 (b) be amended so that the signs may be available so that business owners want to place them and display them that is at the business owner’s discretion.

Oral comments from Jim Hopper, President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association at the November 3, 2016 public hearing: The legislation passed by the legislature and signed by the Governor clearly requires that the OSDH provide these signs to be posted in the public restrooms. The proposed rule requires the business entities to provide the signs. It is unclear how that changed from the legislation to the proposed rules. We have concerns about that.

Response: HB 2797 requires the OSDH to “make available... signage”. The OSDH disagrees with the commenters that this language requires the OSDH to produce the signs. This language does not require the OSDH to produce the signs themselves, but to make signage available. Signage is defined as, “graphic designs, as symbols, emblems, or words, used especially for identification or as a means of

giving direction or warning” see, the definition of the term “signage” contained at dictionary.com at <http://www.dictionary.com/browse/signage?s=t> The proposed rulemaking, through the requirements for font, font size, specific language and placement, is making signage available as the term “signage” is defined. As stated in a previous response to comments, the Oklahoma Legislature chose not to add the funding requirements language to this provision. The OSDH has taken a nearly 30% reduction in state appropriations since fiscal year 2009. The only way the OSDH can meet the requirements of HB 2797 is by requiring the costs of the signs be absorbed by licensees of the OSDH that maintain public restrooms.

There is nothing in HB 2797 that would give business owners the discretion whether to post the sign. Specifically, Section 2, Paragraph (C) of HB 2797 states, “...signage which is to be posted in its restroom...” This is mandatory language that the signs are required to be posted. There is no discretion afforded in the language from Section 2, Paragraph (C). The OSDH and/or the Board of Health has no agenda concerning abortion issues. The only agenda for the OSDH and/or Board of Health is to implement those requirements within its jurisdiction from the authority granted by the legislature. In this case the legislature mandated that signs be posted in restrooms that contain a specific message. Additionally, the legislature mandates that a hyperlink to certain information be provided on the OSDH webpage and requires the Board to adopt rules. That is all this proposed rulemaking provides. This rulemaking goes no further than what is required by HB 2797.

Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Primary Care Association; Oklahoma State Medical Association; Oklahoma Assisted Living Association and Oklahoma Hospital Association

Comment Topic: The requirements concerning the font size and language to be contained on the signs.

Comments: The OSDH received the following comments concerning the font, font size and language requirements for the signs contained in the proposed regulations.

Oklahoma Primary Care Association: HB 2797 specified that OSDH is to make signage available to every facility licensed by OSDH in the state. The signage is to include a specified statement explicitly provided in the legislation and the statement along with corresponding information is to be made available via the OSDH website. The law does not specify the format of the sign with which the statement would be made. Requiring a sign to include 1” tall font size for the prescribed statement and ½” tall compliance statement would require a physical printed sign to be extremely large – which may equate to more than seven full standard 8 ½” x 11” sheets of paper. Including the requirement for a sign to be of such a large creates unnecessary additional expense to those entities which must comply with this policy and goes beyond what is necessary to satisfy the statute.

Oklahoma State Medical Association: The proposed rules require lettering on any signage to “be at least one inch (1”) in height and be in a times new roman or courier font.” With that size requirement, the required notice will take up several pages, making compliance overly burdensome and costly.

Oklahoma Assisted Living Association: The sign requirements identified in 310:2-31-3, Section 3 and Section 5, the Department of Health requires that the lettering be “at least one inch (1”) in height” and “at least one-half inch (1/2”) in height.” Section 2C of House Bill 2797 does not address the height requirements of the sign or provide any requirement that the signage or letters be of a certain size. To that end, could you please provide the statutory authority requiring that the letter on the sign be of a minimum height?

Oklahoma Hospital Association: The specific language which must be produced in 1” type, in Times

New Roman or Courier font in black typeface and on a white background is:

“There are many public and private agencies willing and able to help you carry your child to term and assist you and your child after your child is born, whether you choose to keep your child or to place him or her for adoption. The State of Oklahoma strongly urges you to contact them if you are pregnant.”

Additionally, the sign shall also contain in at least ½ inch height: “This sign is created, produced and displayed in compliance with the Humanity of the Unborn Child Act.”

The signage will **not fit onto one letter sized (8 ½ x 11) piece of paper** or a standard adhesive transparency. One inch type in either the Times New Roman or Courier font means the font size in a Word document is 110-point and will fit onto approximately seven (7) sheets of letter sized paper with a ½ inch margin on all four sides. The sign is a non-standard size to be produced in-house or framed in restrooms.

Response: Based on the comments received and the potential excessive cost the one inch and one-half inch lettering may cause, the Oklahoma State Department of Health proposes the following changes to the proposed rules:

310:2-31-3 (3): The lettering on any signage shall be ~~at least one inch (1") in height and be in a times new roman or courier font~~ reasonably legible.

310:2-31-3 (5): Additionally, the signage shall contain lettering, ~~at least one half inch (1/2") in height~~ which is reasonably legible, that says: "This sign is created, produced and displayed in compliance with the Humanity of the Unborn Child Act.";

Organization Name: Tulsa Campaign to Prevent Teen Pregnancy and Planned Parenthood Great Plains

Comment Topic: Humanity of the Unborn Child Act (Act) and/or proposed regulations not in line with the mission of the OSDH

Comments: The OSDH received the following comments concerning the Act or the proposed regulations not being in line with the mission of the OSDH.

Tulsa Campaign to Prevent Teen Pregnancy: This law violates the mission of the OK Board of Health and OSDH, namely “to protect and promote the health of its citizens, prevent disease and injury, and cultivate conditions by which Oklahomans can be healthy.” No Oklahoman’s health is protected when pregnant women are encouraged to go to organizations, programs and/or services that, despite indicating an inclination to help pregnant women, OSDH knows nothing about, are not subject to OSDH oversight, and are not accountable to generally accepted medical standards.

Planned Parenthood Great Plains: The proposed rules are oppositional to the mission and value statement of the Department. The mission statement highlights “the importance to protect and promote health.” The proposed rules mandated by the so called Humanity of the Unborn Child Act neither protect nor promote health in Oklahoma. In fact, the law does the opposite – restricting access to safe, legal abortion or even information on comprehensive family planning options, which only harms Oklahomans seeking all available options. Even if the signs and web content required under the proposed rules contain comprehensive information about options for unintended pregnancies and family planning, the passive nature of displaying signs and web content means they are unlikely to significantly change behavior. The resources dedicated to the proposed rules would be better and more effectively spent on delivering comprehensive, medically accurate services directly to Oklahomans. The Department is without a way to reliably measure the impact of signs and web

materials on unintended pregnancy or abortion rates; by contrast, the delivery of direct services has a substantive, individually measured impact. In the service of protecting and promoting public health, the Department should prioritize initiatives that can measurably contribute to its mission.

Response: Whether the requirements contained in HB 2797 or the proposed rules violates the mission of the OSDH or the Board of Health is not within the purview of this rulemaking process. The proposed rulemaking was undertaken due to the requirements contained in Section 2, Paragraph (B); Section 2, Paragraph (C), and Section 2, Paragraph (D) of HB 2797. The proposed rulemaking was undertaken with the intent to “be in aid of and not in derogation of the legislative purpose” for the proposed rules, see Attorney General Opinion 84-194. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Restaurant Association; Oklahoma Hotel and Lodging Association

Comment Topic: Future changes to the language in HB 2797

Comments: Contact has been made to an author of HB 2797 and changes to the bill may be forthcoming.

Oral comments from Jim Hopper, President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association at the November 3, 2016 public hearing: The Board of Health can take this as they want to, but we are already in conversations with the author in the legislature of this legislation to express our concerns and tell the author and the people at the legislature that we want to work with them to either change this law or repeal this law before it goes into effect because it does not make good common sense. There has to be a better way to get this message out to pregnant women about their options about their pregnancy.

Response: The OSDH appreciates the concerns expressed in these comments and the communication to members of the Oklahoma Legislature. As the bill is currently constructed, these provisions go into effect on January 1, 2018. To have rules in place by January 1, 2018, the OSDH must go through the current rulemaking process. These rules, as proposed, if adopted by the Board of Health and either (1) approved by the legislature; or (2) approved by the Governor, would not be finalized until sometime in September of 2017. If the Board of Health waited for any potential action to occur by the Oklahoma Legislature in the upcoming session, then there would be no rules in effect on January 1, 2018 as required by HB 2797. As stated previously, the OSDH has already received communications from the primary House author concerning the status of rulemaking. The Oklahoma Legislature or the Governor will not act on this proposed rulemaking, if passed by the Board of Health, until the end of the 2017 legislative session. If changes to HB 2797 are passed during the upcoming legislative session to change the necessity of these proposed rules, then the legislature and/or the Governor can deny the proposed rules. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Planned Parenthood Great Plains

Comment Topic: Humanity of the Unborn Child Act (Act) is unconstitutional

Comments: The OSDH received the following comments concerning the Act being unconstitutional.

Planned Parenthood Great Plains: In 2015 (sic), the Oklahoma Legislature passed the so called Humanity of the Unborn Act despite the vocal opposition highlighting the numerous problems with such a measure. While the law appears in certain areas to attempt to expand access to resources for pregnant women, the true intent is to restrict safe, legal abortion access as evidenced by the numerous accounts from the author of the bill. The law plainly states the “purpose of achieving an abortion-free

society” [see, Enrolled HB 2797, Section 3 (2)] and demands educational material be created that “clearly and consistently teach that abortion kills a human being” [see, Enrolled HB 2797, Section 3 (2)]. It is important to continue to highlight the true intent of the Act. The United States Supreme Court recently affirmed long established precedence that the State may not create unnecessary and arbitrary barriers to abortion access [see, *Whole Woman v. Hellerstedt*, 579 US _____, 136 S.Ct. 2292]. The Humanity of the Unborn Act runs afoul of this decision. By creating an anti-abortion curriculum and requiring biased signs to be posted, the State is interfering in Oklahomans’ constitutionally protected right to an abortion. The State is emphasizing its anti-abortion agenda by requiring taxpayers to fund these unnecessary provisions. While the Act may not restrict the *practice* of abortion, its clear purpose is to advance an anti-abortion agenda—even perceived obstacles create an impermissible undue burden. Because the Act itself is unconstitutional, the proposed rules of the Department must be rescinded.

Oral comments from Tamyia Cox representing Planned Parenthood Great Plains at the November 3, 2016 public hearing: The Act these proposed rules derive from, we believe the Act is unconstitutional. We have a recent Supreme Court decision in June saying that any unnecessary or arbitrary barriers to the access to abortion will be ruled and deemed unconstitutional. We believe the Humanity of the Unborn Act runs afoul of the Constitution. So for that reason alone because we believe the Act itself is unconstitutional, we are asking the Department to rescind these rules.

Response: While the Department is aware of the recent United States Supreme Court ruling in the case of *Whole Woman’s Health v. Hellerstedt*, 579 US _____, 136 S.Ct. 2292 (2016) as well as the 2014 5th Circuit decision in *Jackson Women’s Health Organization v. Currier*, 760 F.3d 448 (5th Cir. 2014, cert. denied 2016), Oklahoma law requires the Department to presume that an Act of the Oklahoma Legislature is constitutional, see generally, *Dani v. Miller*, 374 P.3d 779 (Okla. 2016) and *Reynolds v. Fallin*, 374 P.3d 799 (Okla. 2016). It is the purview of the Oklahoma Courts, not an Oklahoma State Agency whether the Act as passed by the Oklahoma Legislature is unconstitutional, see generally, *State v. Warren*, 975 P.2d 900 (Okla. 1998). Therefore, it is not within the purview of the OSDH or the Board of Health to consider whether the Act is constitutional. The OSDH, as well as the Board of Health are required by law to presume the Act is constitutional, until a court says otherwise. Therefore, there will be no changes made to the proposed rulemaking based on these comments.

Organization Name: Oklahoma Primary Care Association; Oklahoma Hospital Association

Comment Topic: OSDH web address on signs

Comments: That language for the signs does not contain the OSDH’s web address as required by HB 2797.

Oklahoma Primary Care Association: HB 2797 requires that the signs reference a website that includes information about unborn children and related services. The law requires that OSDH include this website on the Department’s website. However the proposed rule prohibits the signs from identifying OSDH. Therefore, the web address to be displayed on signs must not contain elements that would otherwise identify the agency.

Oklahoma Hospital Association: Additionally, the website address for the information required in the legislation is missing from the proposed rules on signage posting as required by 63 Okla. Stat. § 1-752.

Response: Section 2, Paragraph (C) does require the following:

On or before January 1, 2018, the Department shall make available to each facility in this state which is open to the public containing a restroom available to the public, and licensed by the State Department of Health, signage which is to be posted in its restroom containing the statement *and the website address to obtain the information provided by subsection A of this section.*

(Emphasis added). The OSDH inadvertently left off the web address to obtain information from the message. Therefore, based on these comments and this response, the following changes are being recommended to the proposed rulemaking (the underlined language is the language to be added):

- In OAC 310:2-31-3 (5) Additionally, the signage shall contain lettering, ~~at least one half inch (1/2") in height~~ which is reasonably legible, that says: "This sign is created, produced and displayed in compliance with the Humanity of the Unborn Child Act. For more information, please visit www.ok.gov/health";
- In OAC 310:2-31-3 (7) Neither the Department logo nor any other Department identification, except for the information required in OAC 310:2-31-3 (5), shall appear on the signage;

Agency Rule Contact:

Donald D. Maisch, General Counsel, Oklahoma State Department of Health, 1000 N.E. 10th Street, Room #206, Oklahoma City, Oklahoma 73117, (405) 271-60317 e-mail: DonM@health.ok.gov

RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

SUBCHAPTER 31. HUMANITY OF THE UNBORN CHILD ACT [NEW]

1. **DESCRIPTION:** *(a brief description of the purpose of the proposed rule [75 O.S. §303.D.2(a)])*

These proposed regulations, if adopted, will implement the Department's requirements contained in House Bill Number 2797, from the 2nd Session of the 55th Oklahoma Legislature (2016) known as "Humanity of the Unborn Child Act" and codified at 63 O.S. § 1-751 *et seq.* The proposed regulations set forth the requirements to be used by facilities regulated by the Department to place signage in restrooms and other areas in compliance with the Act.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:** *(a description of the 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 [75 O.S. §303.D.2(b)])*

The classes of persons potentially affected are all owners of facilities licensed or permitted by the Department. Additionally, pregnant women may be affected by proposed regulations.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:** *(a description of the classes of persons who will benefit from the proposed rule [75 O.S. §303.D.2(c)])*

The potential benefit will be to assist and inform women who are pregnant.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:** *(a description of the 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 [75 O.S. §303.D.2(d)])*

Based on public comments received, the following are the potential economic impact on regulated entities:

Oklahoma Hospital Association: Information we have obtained reveals the cost of the production of such signage ranges from \$45.00 to \$150.00 per sign depending on the styling and framing of the sign. Also be aware that due to the stringent cleanliness requirements that a sign must be able to be disinfected regularly in restrooms in medical facilities. This cost must be multiplied by the number of bathrooms at each facility and does not include the cost of installation. A brief sampling of the large and small hospitals and systems is stated below (cost is estimated at \$80.00 per sign):

- INTEGRIS Health System – 403 bathrooms -- \$60,000.00 (cost estimate at \$150.00 for a 3 foot by 2 foot sign, including installation)
- OU Medical System – 109 bathrooms -- \$8,720.00
- Rural Hospital #1 – 10 bathrooms -- \$800.00

- SSM Healthcare (St. Anthony Hospital, Bone and Joint, St. Anthony Shawnee) – 100 bathrooms -- \$10,000.00

As demonstrated in the information above, the cost of compliance and economic impact will vary widely on OSDH licensees from \$750.00 for a small rural hospital to \$60,000.00 for a large acute care hospital in an urban center. When aggregated, the fiscal impact of the 114,687 state licenses of the OSDH is enormous and will be at least \$2,000,000.00 conservatively based on two public bathrooms per facility. We also added into the calculation at least two public bathrooms at each of the 751 facilities that are federally certified by the OSDH and that cost is conservatively an additional \$120,000.00 based on two bathrooms per facility. The economic impact the other licensees of the OSDH such as restaurants, nursing homes, hotels and motels, dialysis center, radiology centers and assisted living would also be significant and be at least \$2,120,000.00 across the licensed industries. Most are considered small businesses and the impact of compliance is disparate for those businesses. With over 140 licensed hospitals in Oklahoma the cost just to the hospitals is estimated to be at a minimum of \$225,000.00.

Oklahoma Residential Assisted Living Association: The cost and inconvenience of creating and posting signage in all of our bathrooms will be an unnecessary burden on our members who are operating on very narrow margins.

Oklahoma Restaurant Association: The Oklahoma Restaurant Association is made up of more than 1,200 members throughout the state of Oklahoma who collectively operate over 4000 licensed locations in our state. These members are small businesses who are constantly faced with ever increasing regulations with which they are forced to comply without the benefit of clear thinking about how these new mandates will affect their ability to operate profitably. Two Oklahoma Restaurant Association members, who are multi-operation facilities throughout the state of Oklahoma were contacted. Together, these two restaurant companies operate over 200 locations throughout the state. They were asked to estimate their costs for compliance with this proposed rule. To print, laminate, purchase a frame, attach it to the bathroom wall so that it cannot be easily removed, and the labor to accomplish all of this is estimated to cost these two companies over \$20,000.00. The margins of profitability in the restaurant industry are not large, typically in the 4-7% range. So you can imagine how each unfunded mandate puts additional strain on restaurants to be profitable.

Oklahoma State Medical Association: The OSDH must consider the fiscal impact of these proposed rules. With the sheer number of regulated entities to which these rules could apply and the non-standard size of the proposed sign, these regulations will pose an undue economic burden on thousands of individual physician practices, hospitals and others regulated by OSDH. The rules are not limited to health practitioners who will be unduly burdened by this unfunded mandate.

Oklahoma Primary Care Association: The cost of implementing this policy is not limited to the cost of printing or materials, but also staff time necessary to produce and install these signs and any necessary deliver of postal charges. Given the large font size requirement would likely exceed the capability of many entities to print a sufficiently large sign within their facility, many would likely have to order such signs from outside their organization requiring production charges and shipping and delivery expenses. Some of these additional shipping and handling or delivery charges could be relatively high given that CHSs [community health centers] serve Medically Underserved Areas which are many times very rural, and the local communities might not have the ability to professionally produce a sign of that size in the area. Obtaining a price quote from a professional printer for paper only printing, costs could range between \$50.00 to \$100.00 per sign and a separate preparation fee of \$25.00 per job. The following is a possible direct cost to CHCs:

- Preparation fees – 20 CHC Organizations x \$25.00 -- \$500.00
- Printing – 90 locations, 2 pairs of men’s and women’s restrooms per location, 360 copies, \$100.00 per paper copy -- \$36,000.00
- Staff time for printing services -- \$15.00 per hour, 5 hours for CHC to retrieve template and obtain printing services -- \$1,500.00
- Framing for Paper Copies -- \$20.00 per frame for 360 copies -- \$7,200.00
- Installation -- \$15.00 per hour, one hour per location -- \$1,350.00
- Total Cost -- \$46,550.00.

A much smaller size sign that would fit on a single standard 8 ½” x 11” piece of paper would substantially reduce the cost of printing for affected entities.

Oral comments from Jim Hopper, President and CEO of the Oklahoma Restaurant Association and the Oklahoma Hotel and Lodging Association at the November 3, 2016 public hearing: Both organizations represent a lot of small and medium size businesses in the State of Oklahoma. The Oklahoma Restaurant Association has over 1,200 members operating in approximately 4,000 locations. Any sign produced to meet the requirements of the proposed rules will need to be created, laminated, placed in a tamper proof frame and permanently attached to the walls of the restrooms so the signs cannot be tampered with, torn down or removed. There are definitely costs involved with complying with this Act. I reached out to two of my 1,200 members who have multiple locations across the State of Oklahoma. Together those two entities operate approximately 200 locations. The estimated costs just for these two businesses to have the signs produced and displayed are \$20,000.00 to comply with the proposed requirements. Profit margins for these businesses are not very large and any added costs and/or unfunded mandates are cause for concern for members of both organizations.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:** *(the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency)*

[75 O.S. §303.D.2(e)] The cost to implement the rule for the Oklahoma State Department of Health is unknown at the present time. If adopted the proposed rules would establish requirements for Department licensed or permitted facilities that choose to place signs, in compliance with the Act, in the restroom and potentially other places in their establishment.

The cost to the Department to implement the amendments will be approximately \$[4,419.63] to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented by existing Department personnel and will have no anticipated effect on state revenues.

6. **IMPACT ON POLITICAL SUBDIVISIONS:** *(a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule [75 O.S. §303.D.2(f)])*

There is a potential economic impact any political subdivisions of the State of Oklahoma who receive licenses from the Oklahoma State Department of Health. Based on public comments, the following are the costs provided concerning one political subdivision of the State of Oklahoma:

Tulsa Campaign to Prevent Teen Pregnancy: The proposed regulations in HB 2797 will have a significant negative fiscal impact on already stressed state agencies. The regulations are completely

unnecessary and unwanted. This law imposes fiscal hardship on state agency budgets – most notably on the Oklahoma State Department of Health (OSDH) and the Oklahoma State Department of Education (ODSE) – in a time of financial crisis for our state. The May 2016 fiscal analysis of the bill state the negative financial impact of the bill: “*Department of Education personnel anticipate that cost would include \$10,000 to establish and maintain the information program, \$145,000.00 - \$150,000.00 for development of the program instructional training and materials for students and \$10,000.00 per high school site for cost of instruction based on average teacher salary. There are 478 high schools sites. Additional costs cannot be estimated at this time.*” The law established a dedicated revolving fund to be specifically used for promotion of material that is neither evidence-based nor part of any recognized quality sex education curricula. At a time when funding for education and public health is being slashed in our state, this law dilutes and confuses the great work that is already happening at the local level. Requiring OSDH to create and maintain a website of all program across the state that claim to want to help pregnant women is an unfunded mandate that would require an exorbitant amount of staff time and resources. Oklahoma will continue to face a significant budget shortfall in 2017. It is time to be laser-focused on fiscal responsibility and real public health priorities that are actually impacting our communities.

7. **ADVERSE EFFECT ON SMALL BUSINESS:** *(a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act [75 O.S. §303.D.2(g)]*¹²

There is a potential economic impact to any and all small business in the State of Oklahoma who receive licenses from the Oklahoma State Department of Health and provide public restrooms. Many of facilities from the information contained in #2 above are small businesses. Please see the information contained in #2 above for the economic adverse effect on small businesses. The following are additional adverse effect on small businesses received during the public comments on the proposed rules:

Oklahoma Association of Health Care Providers: There is no distinction between men’s and women’s restrooms with the requirement it (the sign) be posted in both places. This creates an unnecessary hardship and greater proportional negative impact on our small businesses because our facilities have many restrooms and the primary individuals utilizing those restrooms are seniors beyond reasonable child bearing age.

Oklahoma Residential Assisted Living Association: Our members and most long term care facilities are not necessarily open to the general public for the purposes of using a bathroom. Therefore, the majority of our residents and their visitors are likely not going to benefit from this information.

Oklahoma Assisted Living Association: This rule could have a negative emotional impact on our residents. I understand the purpose of House Bill 2797 is to educate those of child bearing age of option to terminating a pregnancy. However, our residents are obviously older and not of child bearing age. Is it necessary to inform them of options which are not applicable?

¹ 75 O.S. § 502. As used in the Oklahoma Small Business Regulatory Flexibility Act:

4. "Small business" means a for-profit enterprise consisting of fifty or fewer full-time or part-time employees.

² 75 O.S. § 504(B). If the proposed rules may have an adverse economic effect upon small business, the agency shall submit a copy of the proposed rules and a rule impact statement to the Small Business Regulatory Review Committee for its review and comment pursuant to the review and comment provisions of paragraph 2 of subsection A and paragraph 6 of subsection B of [Section 303](#) of this title.

Oklahoma Assisted Living Association: My other concern is that an assisted living center, while regulated by the Department of Health, is a limited public facility. They are homes of our residents. Some of these residents suffer from mental ailments. In some instances, these posters could cause further trauma to our residents. The public bathrooms are used mainly by the resident's that live there. These posting could cause great confusion and undue stress to those that have dementia. In a worst case scenario they (the residents) could re-live a repressed memory of a personal experience causing emotional harm which would violate their rights.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:** *(an 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 [75 O.S. §303.D.2(h)])*

All the requirements contained in the proposed regulations are required by the implementing statutory requirements.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:** *(a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk [75 O.S. §303.D.2(i)])*
- Explain how this rule supports core public health functions, ensures delivery of essential public health services, and contributes to strategic planning goals and objectives.
 - Hyperlinks to published articles on the internet supporting the statement of effects are acceptable.

The public health benefit is to assist and inform women who are pregnant.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:** *(a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented [75 O.S. §303.D.2(j)])*

It is unknown if there are any detrimental effects on public health and safety if these proposed rules are not adopted.

11. This rule impact statement was prepared on July 26, 2016. Modifications made subsequent to the publication of the *Notice of Rulemaking Intent* were made on: August 31, 2016, November 7, 2016 and November 22, 2016. *(the date the rule impact statement was prepared and if modified, the date modified [75 O.S. §303.D.2(k)])*

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH**

SUBCHAPTER 31. HUMANITY OF THE UNBORN CHILD ACT

310:2-31-1. Purpose.

The rules in this Subchapter implement the authorities assigned to the Oklahoma State Department of Health as established in Enrolled House Bill Number 2797, from the 2nd Session of the 55th Oklahoma Legislature (2016) known as the "Humanity of the Unborn Child Act" and codified at 63 O.S. § 1-751 *et seq.*

310:2-31-2. Definitions.

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Department" means the Oklahoma State Department of Health.

"O.S." means Oklahoma Statute.

"Signage" means information provided by the Department that shall be used by a facility licensed or permitted by the Department to produce a sign meeting the requirements of the Humanity of the Unborn Child Act.

310:2-31-3. Signage.

Any facility licensed or permitted by the Department shall create, produce and display a sign pursuant to the Humanity of the Unborn Child Act that meets the following requirements:

(1) The background of any signage shall be white;

(2) The lettering on any signage shall be in black;

(3) The lettering on any signage shall be reasonably legible;

(4) The signage shall contain the following statement: "There are many public and private agencies willing and able to help you carry your child to term and assist you and your child after your child is born, whether you choose to keep your child or to place him or her for adoption. The State of Oklahoma strongly urges you to contact them if you are pregnant."

(5) Additionally, the signage shall contain lettering, which is reasonably legible that says: "This sign is created, produced and displayed in compliance with the Humanity of the Unborn Child Act. For more information, please visit www.ok.gov/health";

(6) The signage shall be created, produced and displayed in English, additional signage may be created, produced and displayed in languages other than English at the discretion of the owner or operator of the licensed or permitted facility;

(7) Neither the Department logo nor any other Department identification, except for the information required in OAC 310:2-31-3 (5) shall appear on the sign;

(8) Any facility creating, producing and displaying signage in compliance with these requirements shall display said sign in any and all public restrooms at the facility; and

(9) Any facility creating, producing and displaying signage in compliance with the requirements of this subchapter shall create, produce and display said signage at the facility's expense.

310:2-31-4. Language and web portal requirements.

The Department shall create a web portal on the Department's website for the purposes of housing and making available information to comply with the Humanity of the Unborn Child Act. The information contained on the web portal shall include, at a minimum:

(1) The requirements contained in this subchapter.

(2) The following language in a downloadable format for use on the signage: "There are many public and private agencies willing and able to help you carry your child to term and assist you and your child after your child is born, whether you choose to keep your child or to place him or her for adoption. The State of Oklahoma strongly urges you to contact them if you are pregnant."

(3) The Department shall publish on its website the address for the web portal to all facilities licensed by the Department.

(4) The Department shall inform the advisory committees and/or councils who advise the Oklahoma State Board of Health on issues related to Department licensed or permitted facilities about the web portal and the requirements of this subchapter.