

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. 16-748
December 15, 2016 Vol. 34 Ok Reg 7, Docket No. 16-870

- 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 663. CONTINUUM OF CARE AND ASSISTED LIVING

- 4. Citation to the Statutory Authority for the Rule:**
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; 63 O.S. Section 1-890.3, and 63 O.S. Section 1-890.3(A)(8).

- 5. Brief Summary of the Content of the Adopted Rule:**
The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations; establishes fees for review of design and construction plans and specifications; sets fees for related services including review of temporary waivers and applications for self-certification; establishes a process to ensure timely review of design and construction documents; and establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

This proposal adds OAC 310:663-15-4 as new rule to address requirements in statute related to a resident's freedom of choice in physician and pharmacist and prohibits any financial penalty or fee for their choice. This change enacts the authorizing statute at Title 63 O.S. Section 1-890.3(A)(8).

The proposed change amends the Subchapter 19 requirements for reporting incidents.

- 6. Statement explaining the Need for the Adopted Rule:**
These changes provide needed changes for the plan review process to offer a predictable method for resolving discrepancies, and 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 that assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the continuum of care and assisted living licensure program. OSDH may be unable to continue to provide current levels of services for construction projects. The changes position OSDH to support timely completion of construction projects.

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

Adopted February 14, 2017, 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:

Based on comments, corrections to errors in numbering, references, and applicable days were applied and clarifications inserted to address the scope of applicability. Comment was received and revisions made regarding consistency across those Chapters proposed for amendment addressing plan review processing fees.

Commenters requested the Department publish the decisions on exception and waiver requests. Publication of decisions on exception and waiver requests would be of benefit to facilities, architects and engineers designing and building facilities, it would serve to make the process more transparent, and would serve as the basis for future rule amendments to enable innovation and improvement. The Department amended the rule include publication of decisions on requests for exceptions and waivers and making them available to facilities and the public.

Comment was received and revisions made to address proposed removal of incident reporting on utility failures, storm damage and fires represent, which represent only (1%) of total incident reports annually. Maintaining the requirements would not present an undue burden on OSDH or facilities. In emergency responses to situations such as hazardous weather, wildfires, outages of municipal water systems, a communication system is activated through local emergency managers, the state Office of Emergency Management, and the Oklahoma State Department Emergency Response and Preparedness Services. The rule was revised to promote initial coordination with local emergency officials with reporting to the Department allowed within ten days.

The plan review ancillary fees were developed with the support of the continuum of care and assisted living trade associations and advocacy community. The Long Term Care Facility Advisory Board endorses the proposed fee increase. Pursuant to statute at Title 63 O.S., Section 1-1923, this Board serves as an advisory body to the Department.

A full summary of public comment is attached as Exhibit A.

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:

- Ms. Denise Wilson, Oklahoma Residential Assisted Living Association, (speaking on Chapter 310:680 and requesting consistency across three chapters of rules for long-term care facilities.)
- Esther Houser
- Mary Brinkley, Executive Director, LeadingAge Oklahoma

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 – Absent
Mrs. Martha Burger – Absent
Dr. Terry Gerard – Absent
Dr. Charles Grim - Aye
Dr. R. Murali Krishna - Aye
Mr. Timothy Starkey - Aye
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 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 COMMENT SUMMARY AND RESPONSE

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, 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.*[75:303.1(E)(9)&(10)]

Rule Section 663-7-3. Submission of plans and specifications and related requests for services

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310:680-5-9(a)(1)(I) and correction of the error results in clarification but no substantive alteration of the rule.

Change: Subparagraph 310:663-7-3(a)(1)(I) should be corrected as follows:

(I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;

Summary of Comment: A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:663-7-3(d)(1)(A) as proposed includes the same 15-day review time frame.

OSDH Explanation: For consistency with other health-facility plan review processes, including OAC 310:675, OSDH proposes reducing the 15-day administrative review time for resubmitted materials.

Change: Subparagraph 310:663-7-3(d)(1)(A) should be revised to read as follows:

(A) **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 ten (10) calendar days to review the application for completeness.

Rule Section 310:663-7-5. Self-certification of plans

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a comment on OAC 310:667 identified a need to clarify the items required in the form to request self-certification in that the form includes the items in 310:680-5-11(c). OSDH proposes an amendment to subsection (b), as shown below.

Change: To clarify that the form includes the items in 310:663-7-5(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

(b) The assisted living center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect or engineer submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:663-7-3. The form shall be signed by the assisted living center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:665-7-5(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the assisted living center where residents 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 assisted living center where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting 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 assisted living center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

- (B) Review final construction documents;
 - (C) Conduct on-site inspections of the project;
 - (D) Withdraw approval based on the failure of the assisted living center or project architect or engineer to comply with the requirements of this Chapter; and
 - (5) The assisted living center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.
-

Rule Section 663-7-6. Exceptions and temporary waivers

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH staff questioned whether the "intent or objective" referred to in 310:663-7-6(a) is that of the rule or the facility or center.

OSDH Analysis: The intent or objective referenced is that of the standards in Chapter 310:663.

Change: Subparagraph (a) should be amended to clarify the intent or objective, as follows:

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

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: Publication of decisions on exception and waiver requests would be of benefit to assisted living centers, architects and engineers designing and building facilities, it would serve to make the process more transparent, and would serve as the basis for future rule amendments to enable innovation and improvement.

Change: Subsection 310:663-7-6(c) should be amended with a new paragraph (7) to read as follows:

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and centers and the public.

Rule Section 310:663-19-1. Incident reports

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH recommended restoring language on utility failures, storm damage and fires in subsections

310:680-3-6(d), and clarifying the language regarding contacts with the local emergency manager.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association appeared at the public hearing on January 17, 2017 and spoke on proposed amendments on incident reporting in Chapter 310:680. Ms. Wilson commented that it would be beneficial to use similar language on reporting for each long-term care facility being considered.

Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association expressed concern that fires are dangerous and utility failures are important. While utility failures may not cause damage, they can point to potential problems with residents and the facility.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended amending the continuum of care and assisted living rules to be consistent with the nursing facility rules in OAC 310:675. OSDH recommended restoring language on storm damage and fires, and revising the utility failure report to include utility failures of more than 8 hours. OSDH also recommended an allowance for facilities to work with local emergency managers in response to natural or man-made disasters, with the written report to the Oklahoma State Department of Health to be made within 10 days after conclusion of the emergency response situation. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

OSDH Explanation: Incident reports on utility failures, storm damage and fires represent only (1%) of total incident reports annually, and maintaining the requirements would not present an undue burden on OSDH or facilities. In emergency responses to situations such as hazardous weather, wildfires, outages of municipal water systems, a communication system is activated through local emergency managers, the state Office of Emergency Management, and the Oklahoma State Department Emergency Response and Preparedness Services. Essential status information and assistance requests are communicated timely and effectively through that communication network, and additional reports to the OSDH Long Term Care Service in times of crisis may be counter-productive. The rule should be revised to provide facilities some relief from filing required incident reports while they are engaged with local emergency managers in an emergency response mode.

Change: Subsections 310:663-19-1(a), (b) and (h) should be revised to read as follows:

(a) **Timeline for reporting.** All reports to the Department shall be made ~~via facsimile or by telephone~~ within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted ~~via facsimile or mail~~ to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.

(b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall prepare a written incident report for the following incidents:

- (1) allegations and incidents of resident abuse;
- (2) allegations and incidents of resident neglect;
- (3) allegations and incidents of misappropriation of resident's property;
- (4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;
- (5) storm damage resulting in relocation of a resident from a currently assigned room;
- (6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;
- (7) residents missing from the assisted living center upon determination by the assisted living center that the resident is missing;
- (8) utility failure for more than 4 eight (8) hours;
- (9) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, ~~head injury or require injury requiring~~ treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid;
- (10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,
- (11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.

(h) **Emergency Response.** In lieu of making incident reports during an emergency response to a natural or man-made disaster, the facility may coordinate its communications, status reports and assistance requests through the facility's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

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 were:

Persons appearing at the January 17, 2017 public hearing were:

- Ms. Denise Wilson, Oklahoma Residential Assisted Living Association, (speaking on Chapter 310:680 and requesting consistency across three chapters of rules for long-term care facilities.)

OSDH received written comments from:

- Ms. Esther Houser
- Mary Brinkley, LeadingAge Oklahoma

Agency Rule Contact:

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 6868, or by e-mail to

MikeC@health.ok.gov.

RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

1. **DESCRIPTION:**

The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations. 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. The proposal establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

This proposal adds OAC 310:663-15-4 as new rule to address requirements in statute related to a resident's freedom of choice in physician and all other providers of medical services and supplies and prohibits any financial penalty or fee for their choice. This change enacts the authorizing statute at Title 63 O.S. Section 1-890.3(A)(8). This change enumerates the resident rights and defines the responsibilities to be observed by each facility and its staff.

The proposed change amends the Subchapter 19 requirements for reporting incidents. The proposal 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.

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 assisted living centers. The proposed construction and physical plant requirements will increase fees for owners and operators. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spends on preparing, filing and reporting, therefore allowing more time to be spent on resident care. Residents and their families will benefit from improved access to physicians and all other providers of medical services and supplies; this increased access may save them money. Owners, operators and staff of Assisted Living Centers will have increased responsibility for coordinating with resident choices. This increased coordination activity may cost operators in staff time and lost revenue. Cost impacts were sought during the comment period and none received. There were comments on other aspects of the proposed rules as addressed in the Rule Comment Summary.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Affected persons will be the public, residents and their families and staff of assisted living centers. The public benefits by having the regulated profession pay for a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the re-allocation

for funds from other public services. The proposed reporting of incidents will affect residents, family and staff of assisted living centers by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents.

Residents and their families are expected to benefit from improved access to physicians and all other providers of medical services and supplies. Maintaining access to current physicians and all other providers of medical services and supplies may reduce resident costs and eliminate resident and family stress associated with changing physicians and pharmacists. Comment on cost impacts were sought during the comment period and none received.

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

These rules involve additional fees. This rule change will reduce costs to the agency and the public. 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 Department's costs for travel.

Based on State Fiscal Year (SFY)2016 experience, the fee changes are projected to generate a total of \$13,000 in additional fee revenue, based on the following:

- \$7,000 in plan review fees, assuming 14 projects at \$500 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$1,000 in self-certification fees, assuming two certifications at \$500 each
- \$3,500 in courtesy inspection fees, assuming seven inspections at \$500 each
- \$1,000 in professional consultation fees, assuming two projects at \$500 each
- \$13,000 total increased fees.

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

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.

The fee changes and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$16,535.

- For SFY2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of \$330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce the required state appropriations subsidy by \$13,000.
- 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 1,600 reports. The proposal has the potential to reduce the required state appropriations subsidy by \$3,535.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and the proposed changes 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 requested public comment from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. The comments received did not identify further adverse effects beyond those identified by the Department.

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.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

The enhanced optional construction-related services will support assisted living centers in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts and resources on more serious incidents.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

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 that assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the continuum of care and assisted living licensure program. OSDH may be unable to continue to provide current levels of services for construction projects. The changes position OSDH to support timely completion of construction projects.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. Final formatting and conclusions were written January 27, 2017.

FEE JUSTIFICATION

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

The Oklahoma State Department of Health is proposing fees pertaining to physical plant plan review requirements. The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations. 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. The proposal establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

This regulatory activity is labor-intensive and the costs associated with them are not easy to avoid or minimize. Based upon the premise that a regulated industry should bear all or substantially all of the costs routinely or regularly incurred by the State, the absence of a fee structure for these entities does not recoup the Department's expenses. The rule changes will permit the Department to offset the costs that promote services in continuum of care assisted living centers that are safe and delivered in settings that conform to industry standards for best practice. The increased revenue will assist the program to meet the budget demands for the operation and maintenance of these programs, provide timely plan review to the industry, and reduce the public health risk due to insufficient physical plant plan review.

The proposed fees will enable the Department to accomplish our responsibilities without creating an undue burden on all of the State's taxpayers. The changes are necessary to cover increasing costs and workload for plan review and to allow flexibility to the industry in the plan review process.

These fees were developed with the support of the continuum of care and assisted living trade associations and advocacy community. The Long Term Care Facility Advisory Board endorses the proposed fee increase. Pursuant to statute at Title 63 O.S., Section 1-1923, this Board serves as an advisory body to the Department.

COST IMPACT RESPONSE: The proposed rules were developed over the course of 18 months in cooperation with representatives of health care facilities, architects, attorneys and engineers. The goal of the working group was to reduce the time from concept to market for health services, by ensuring that OSDH reviews are timely completed while reducing the proportion of plans denied or requiring rework. Those participating sought the changes based on their assertions that health facility customers will benefit from more timely access to health services with lower project development and implementation costs.

BENEFITS: Affected persons will be the public, residents and their families and staff of assisted

living centers, and the owners and architects promoting new construction. The public benefits by having the regulated profession pay for a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the re-allocation for funds from other public services. The addition of the exception and waiver process affords a method to promote innovations and improvements in design or construction techniques.

Providers may benefit economically from reduced times required to obtain clearance to start construction as well as access to an optional and expedited self-certification process to reduce the time required for review and approval of design and construction documents. The proposal was developed in cooperation with representatives of health care facilities, architects, attorneys and engineers. The goal of the working group is to reduce the time from concept to market for health services, by ensuring that OSDH reviews are timely completed while reducing the proportion of plans denied or requiring rework. Health facility customers will benefit from more timely access to health services with lower project development and implementation costs.

For the period from July 2015 to August 2016, the average time from submittal of plans to approval by the OSDH was 94 days for design documents, with 27% completed in less than 45 days. For final construction documents, the time from original submittal to OSDH approval averaged 60 days, with 50% completed in less than 45 days. The objective of the proposed changes is to complete all reviews within 45 days after submittal.

The average time from original submittal of plans to completion of construction averaged just over 400 days from July to December 2015. The average improved slightly to 380 days from July to September 2016. An objective of the project is to achieve 15% annual reductions in total project completion times until the review process demonstrates statistical control.

Note: The data above are for projects submitted by hospitals and ambulatory surgical centers. The OSDH processing times referenced include time taken by facilities to correct or revise plans following comments or rejections by OSDH. Actual OSDH review days are about one-third of total construction completion statistics.

PROPOSED FEES:

These rules involve new fees. This rule change will reduce costs to the agency and the public. 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 Department's costs for travel.

Based on State Fiscal Year (SFY)2016 experience, the fee changes are projected to generate a total of \$13,000 in additional fee revenue, based on the following:

Plan review fees, assuming 14 projects at \$500 each	\$7,000
Exception or temporary waiver fees, assuming 1 project at \$500	500
Self-certification fees, assuming two certifications at \$500 each	1,000
Courtesy inspection fees, assuming seven inspections at \$500 each	3,500
Professional consultation fees, assuming two projects at \$500 each	<u>1,000</u>
Total increased revenues	\$13,000

The proposed rule will be implemented and enforced by existing Department personnel. The fee changes and along with incident reporting modifications in the proposed rule are projected to reduce OSDH reliance on state appropriated funds in the amount of \$16,535.

- For SFY2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of \$330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce the required state appropriations subsidy by \$13,000.
- The proposed revised requirements on 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 1,600 reports. The proposal has the potential to reduce the required state appropriations subsidy by \$3,535.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**

SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-3. Submission of plans and specifications and related requests for services

(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 310:663-7-4 or OAC 310:663-7-5.

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

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

(E) Heating, ventilation and air conditioning (HVAC) modifications;

(F) Electrical modifications that affect the essential electrical system;

(G) Changes that require modification or relocation of fire alarm initiation or notification devices;

(H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;

(I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;

(J) Replacement of or modifications to any required magnetic or radiation shielding;

(K) Changes to or addition of any egress control devices or systems.

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

(A) Painting, papering, tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;

(B) Ordinary repairs and maintenance;

(C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or

(D) 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

(A) **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 ten (10) calendar days to review the application for completeness.

(B) **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.

(A) **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.

(B) **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

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

(D) **Extensions.** Extensions may be made as provided by law.

310:663-7-4. Preparation of plans and specifications

(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. An assisted living center 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.

(c) **Special submittals.**

(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 assisted living center 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 patients, 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.

310:663-7-5. Self-certification of plans

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to an assisted living center considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:663-7-3. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The assisted living center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect or engineer submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:663-7-3. The form shall be signed by the assisted living center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:665-7-5(c).

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the assisted living center where residents are intended to be examined or treated and the total cost of design and construction is two million five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the assisted living center where residents are not

intended to be examined or treated; and

(3) The project architect or engineer attesting 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 assisted living center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

(C) Conduct on-site inspections of the project;

(D) Withdraw approval based on the failure of the assisted living center or project architect or engineer to comply with the requirements of this Chapter; and

(5) The assisted living center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(c) Within twenty-one (21) calendar after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the assisted living center. If the application is denied, the assisted living center shall have thirty (30) calendar 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 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 assisted living center shall pay the applicable fee for plan review specified in OAC 310:663-7-3. Upon receipt of the plan review fee, the Department shall review the assisted living center's plans in accordance with the process in OAC 310:663-7-3.

310:663-7-6. Exceptions and temporary waivers

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

(b) An assisted living center 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 assisted living center 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 assisted living center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:

(A) The section(s) of this Chapter for which the exception or temporary waiver is requested;

(B) Reason(s) for requesting an exception or temporary waiver;

(C) The specific relief requested; and

(D) 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:

(A) Compliance with 63 O.S. Section 1-1901 et seq.;

(B) The level of care provided;

(C) The impact of an exception on care provided;

(D) Alternative policies or procedures proposed; and

(E) Compliance history with provisions of 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 assisted living center 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) An assisted living center 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 assisted living center 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.

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and centers and the public.

SUBCHAPTER 15. RESIDENT RIGHTS AND RESPONSIBILITIES

310:663-15-4. Prohibited restrictions and fees

Residents shall have the freedom of choice regarding any personal attending physicians and all other providers of medical services and supplies without a financial penalty or fee charged by the assisted living center [Title 63 O.S. Section 1-890.3 (A)(8)].

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-1. Incident reports

(a) **Timeline for reporting.** All reports to the Department shall be made ~~via facsimile or by telephone~~ within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted ~~via facsimile or mail~~ to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.

(b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall prepare a written incident report for the following incidents:

(1) allegations and incidents of resident abuse;

(2) allegations and incidents of resident neglect;

- (3) allegations and incidents of misappropriation of resident's property;
- (4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;
- (5) storm damage resulting in relocation of a resident from a currently assigned room;
- (6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;
- (7) residents missing from the assisted living center upon determination by the assisted living
- (8) utility failure for more than 4 eight (8) hours;
- (9) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, ~~head injury or require injury requiring~~ treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid;
- (10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,
- (11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.

(c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.

(d) **Reports to the Department.** Each assisted living center shall report to the Department those incidents specified in 310:663-19-1(b). An assisted living center may use the Department's Long Term Care Incident Report Form.

(e) **Licensing boards.** Each assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by licensed personnel to the appropriate licensing board within five (5) business days.

(f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by a nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse, Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

- (1) facility/center 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 (if applicable);
- (10) other contact person name and address; and
- (11) the details of the allegation or occurrence of abuse, neglect, or misappropriation of resident property.

(g) **Content of incident report.**

- (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;
 - (C) corrective measures to prevent future occurrences; and
 - (D) if items are omitted, why the items are omitted and when they will be provided.

(h) **Emergency Response.** In lieu of making incident reports during an emergency response to a natural or man-made disaster, the facility may coordinate its communications, status reports and assistance requests through the local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.