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

RULEMAKING ACTION:
Notice of proposed PERMANENT rulemaking

PROPOSED RULES:
SUBCHAPTER 7. PHYSICAL PLANT DESIGN
310:663-7-3. Submission of plans and specifications and related requests for services [NEW]
310:663-7-4. Preparation of plans and specifications [NEW]
310:663-7-5. Self-certification of plans [NEW]
310:663-7-6. Exceptions and temporary waivers [NEW]

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES
310:663-19-1. Incident reports [AMENDED]

SUMMARY:
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.

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.

AUTHORITY:
Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-890.3.

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

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

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

COPIES OF PROPOSED RULES:

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

RULE IMPACT STATEMENT:

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

CONTACT PERSON:

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

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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. 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.

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.

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 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, plan review fees for all types of health care facilities totaling $162,958 are projected to exceed expenses of $469,349, for a deficit of $330,836. The deficit in SFY2017 and subsequent years is expected to be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce OSDH use of state appropriations 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. In addition, the proposal has the potential to reduce the OSDH’s use of state appropriations by approximately $3,535.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

   There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

   The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.
8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
   The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

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 which assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in state appropriations, and will be required to continue providing current levels of services using funding and administrative resources to process incident reports with relatively low impact on public health. The changes position OSDH to focus on the most serious incidents.

11. **PREPARATION AND MODIFICATION DATES:**
    This rule impact statement was prepared on December 15, 2016.
TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
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SUBCHAPTER 7. PHYSICAL PLANT DESIGN

310:663-7-3. Submission of plans and specifications and related requests for services [NEW]
(a) Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:663-7-4 or OAC 310:663-7-5.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Stage one. Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. 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
(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 [NEW]

(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 may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect 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 attesting that the plans and specifications are based upon and comply with the requirements of this Chapter.

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

   (1) The project involves any portion of the 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 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:
   (i) Perform audits of the self-certification review program and select projects at random for review;
   (ii) Review final construction documents;
   (iii) Conduct on-site inspections of the project;
   (iv) Withdraw approval based on the failure of the assisted living center or project architect 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 [NEW]
(a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective has been met.
(b) 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:
      (i) The section(s) of this Chapter for which the exception or temporary waiver is requested;
      (ii) Reason(s) for requesting an exception or temporary waiver;
      (iii) The specific relief requested; and
      (iv) Any documentation which supports the application for exception.
   (2) In consideration of a request for exception or temporary waiver, the Department shall
consider the following:
   (i) Compliance with 63 O.S. Section 1-1901 et seq.;
   (ii) The level of care provided;
   (iii) The impact of an exception on care provided;
   (iv) Alternative policies or procedures proposed; and
   (v) Compliance history with provisions of 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) A request shall be considered withdrawn if the assisted living center does not respond to the Department within thirty (30) calendar days after receipt of notification.

(6) 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.

SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

310:663-19-1. Incident reports [AMENDED]
(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 hours;
(9)(6) 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 treatment at a hospital, a physician’s diagnosis of closed head injury or concussion, or head injuries that require more than first aid;
(10)(7) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,
(11)(8) 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) The assisted living center shall coordinate with the local emergency response manager their
response to fire damage, storm damage resulting in relocation of residents or power outage of
four (4) hours or more.