

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:**
December 15, 2016 Vol. 34 Ok Reg 7, Docket No. 16-867

- 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 675. NURSING AND SPECIALIZED FACILITIES

- 4. Citation to the Statutory Authority for the Rule:**
Oklahoma State Board of Health, Title 63 O.S. § 1-104; and 63 O.S. Sections 1-106.1, 1-1908, and 1-1942.

- 5. Brief Summary of the Content of the Adopted Rule:**
Amends physical plant requirements by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Provides criteria and a process for exceptions and waivers for design and construction techniques that represent innovations or improvements; establishes fees for review of design and construction plans and specifications and related services including review of temporary waivers and applications for self-certification; establishes a process to ensure timely review of design and construction documents. Requirements are added to allow for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. Establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

Amends requirement relating to reportable incidents and updates language for reporting utility failures. Clarifies reporting of injuries that have certain physician diagnoses or require treatment at a hospital. Certain complaint investigation timeframes are amended and definitions added.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code and the updated plans and specifications requirements of Subchapter 5.

- 6. Statement explaining the Need for the Adopted Rule:**
These changes address outdated life safety and design and construction requirements and the need for a predictable method for resolving discrepancies in plan review, with provisions for expedited self-certification. This change is needed to prepare for anticipated reductions in the required state appropriations subsidy for the hospital licensure program where we may be

unable to continue to support the optional services provided by OSDH for construction projects undertaken to improve patient health and safety.

The changes are needed to position OSDH to focus resources on the most serious allegations of harm and immediate jeopardy to residents.

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:

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

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

11. Incorporation by Reference Statement:

310:675-5-18. Design and construction

The requirements in applicable portions of NFPA 101, 1981, shall supersede all other standards and codes unless indicated herein to the contrary the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 are incorporated by reference. For Medicare or Medicaid certified nursing or specialized facilities, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

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, telephone (405) 271 6868, or by e-mail to MikeC@health.ok.gov.

RULE COMMENT SUMMARY AND RESPONSE

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

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 310:675-5-18. Design and construction

Oklahoma Administrative Code (OAC)

Summary of Comment: Mr. Kenyon Morgan in written comments submitted to the Oklahoma State Department of Health (OSDH) on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted to OSDH on January 17, 2017 recommended at modification to the Oklahoma Administrative Code (OAC) 310:675-5-18(1). The commenters recommended inserting a generic reference to the latest edition of the National Fire Protection Association standards, as follows:

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

The commenters proposed a similar change in OAC 310:675-5-22 for a reference to the most recent version of national design and construction guidelines.

OSDH Explanation: OSDH agrees with the proposal to use the latest standards. In the proposed rule, OSDH has attempted to provide flexibility for facilities which choose to use the most current nationally recognized standards. This flexibility is provided in a new section of rule at 310:675-5-22. The new section acknowledges the potential for innovations and improvements in design and construction techniques, and provides criteria and a process for requesting exceptions and waivers of OAC 310:675.

This approach was taken because of limits on the agency's authority to require compliance with the latest edition of national standards. Rules adopted by the State Board of Health are required to confirm with rule drafting requirements promulgated by the Secretary of State. Those rules require an agency to identify the specific issue or issues of publication of incorporated standards. An agency may not incorporate standards as they may be amended in the future. The text of the Secretary of State rule governing rulemaking is as follows:

Oklahoma Administrative Code
Title 655 - Secretary of State
Chapter 10 - Administrative Rules on Rulemaking
Subchapter 5 - Rule Drafting Requirements
655:10-5-15. Incorporations by reference

For purposes of this Section, "standards" shall mean the *published standards* [or rules] *established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies* [75:251(D)].

(1) **Lengthy standards.** When imposing standards of recognized organizations and technical societies, or state or federal agencies, the preferred method is to rewrite the standards as part of the rule. However, if the standard is lengthy, *in order to avoid unnecessary expense, an agency may ... incorporat[e] the standards ... in its rules ... by reference ... without reproducing the standards in full* [75:251(D)]. The agency rule which incorporates the standards shall identify *the specific issue or issues of publications in which the standards are published* [75:251(D)].

(2) **Text not submitted.** Agencies submitting rules which incorporate standards by reference should not submit the text of such standards for publication.

(3) **Availability to public.** *The standards shall be readily available to the public for examination at the administrative offices of the agency.* [75:251(D)] The agency shall cite the hours when and the place where the standards are available to the public for examination. Such citation shall appear in the preamble [see 655:10-7-11(b)(6)]. *A copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act.* [75:251(D)]

(4) **Future amendments.** Agencies may not incorporate by reference standards as they may be amended in the future. If the standard is updated, the agency may update the rule to reflect the updated standards only by promulgating another rule, or an amendment to the existing rule, which incorporates the new material.

Change: No change is required.

Rule Section 310:675-5-22. Exceptions and temporary waivers

Summary of Comment: At a January 9, 2017 meeting sponsored by the OSDH with representatives of nursing facilities, one commenter questioned whether OAC 310:675 provides for waivers of federal Centers for Medicare & Medicaid Services (CMS) requirements.

OSDH Explanation: The exceptions and waivers authorized in OAC 310:675-5-22 apply to Oklahoma state requirements in OAC 310:675. Requests for waivers of federal CMS requirements may be requested in accordance with criteria and procedures established by CMS.

Change: No change is required.

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH staff

questioned whether the "intent or objective" referred to in 310:675-5-22(a) is that of the rule or the facility.

OSDH Explanation: The intent or objective referenced is of the standards in Chapter 310:675.

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: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended inserting references to the Facility Guidelines Institute (FGI) Guidelines for Residential Facilities in subsection 310:675-5-22(c).

OSDH Explanation: The Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition, are the most current nationally recognized standards for design and construction of nursing facilities. Nursing facilities should be encouraged to design and construct to the FGI Guidelines. OSDH did not propose adopting the FGI Guidelines by reference based on concerns expressed by nursing facilities about cost impacts on facilities. However, recognizing the FGI Guidelines in the exception and waiver section will promote use of the FGI Guidelines and may serve as a step to formal incorporation of the FGI Guidelines as the Oklahoma standard as more facilities adopt their use.

Change: Amend subsection OAC 310:675-5-22(c) to read as follows:

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

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

(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;

(D) Any supporting requirements in the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

(E) 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;

(E) Compliance with the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition;
and

(F) Compliance history with provisions of the Life Safety Code and this Chapter.

Summary of Comment: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended amending subsection 310:675-5-22(c). They proposed reducing the time for OSDH to permit or disallow exceptions and waivers from 45 days to 21 days.

OSDH Explanation: OSDH proposed the 45 day time frame anticipating that the first year of implementation will require OSDH and nursing facilities to undergo extensive education and practice with the 2012 Life Safety Code and the 2014 FGI Guidelines. Initially, OSDH expects complex requests for exceptions and waivers may require as much or more OSDH time than design and construction plans based on older versions of the code and guidelines. OSDH expects requests of limited scope and complexity to take fewer working hours to process. However, the exception and waiver requests must be administered and integrated with other pending reviews, including stage one and two plans, fast track reviews, self-certification and consultation requests, construction site inspections, and other responses to customer service inquiries. Since 2015, OSDH has worked with the health facility industry to streamline the design and construction review process in order to reduce the overall time "from concept to market." The exception and waiver process is one component of that effort. OSDH will work collaboratively with the industry to transition to the updated guidelines. OSDH will consult with industry representatives to develop OSDH administrative practices and forms to standardize the processes and drive down OSDH review times. OSDH will collaborate with the industry to offer training on the updated guidelines and codes. As experience is gained with the updated requirements, OSDH will work with the industry to revise the processing times mandated in the rules.

Change: No change is recommended by OSDH.

Summary of Comment: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended an addition to subsection 675-5-22(c), requiring OSDH to make available lists of exceptions granted.

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 310:675-5-22(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 nursing facilities and the public.

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

Summary of Comment: Ms. Esther Houser, in a January 5, 2017 email to OSDH staff identified a drafting error at subparagraph 310:675-5-23(a)(1)(I).

Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended these additions:

- Providing for fees based on a proportionate share of the package as part of the total cost, for resubmittal of fast track packages after two disapproved submittals;
- Decreasing the time for OSDH to complete the administrative review on resubmitted materials, from 15 days to 10 days; and
- Providing for a meeting to review deficiencies cited on a technical review by OSDH, within 10 days.

OSDH Explanation: The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310:675-5-23(1)(I) and correction of the error results in clarification but no substantive alteration of the rule.

OSDH with the recommendation for OSDH to provide written notice on technical reviews and offer an opportunity for discussion of deficiencies, but does not agree to a required 10-day time frame for such discussions. OSDH will work to timely process all workload; however, the discussions of deficiencies must be administered and integrated with other pending reviews, including stage one and two plans, fast track reviews, self-certification and consultation requests, construction site inspections, exception and waiver requests, and other responses to customer service inquiries.

OSDH respectfully disagrees with the request to prorate fees for resubmittal of fast-track plans after two disapprovals. One consideration is that fast-track projects may receive up to eight reviews, compared with two reviews for standard stage two submittals; OSDH time and expense for fast-track reviews actually may be greater than for stage two submittals. A second consideration is that overall fees do not cover the cost of OSDH plan reviews for health facilities and require subsidization with state appropriations. The proposed plan review fee for nursing facilities is based on the statutory maximum of 0.02% (0.0002 multiplied by the design and construction costs). This fee is relatively low compared to fees for hospital and ambulatory surgical centers with similar design and construction costs. The review fee for a \$1,000,000 hospital project is \$2,000; the fee for a nursing facility project of the same cost would be \$200. If OSDH were to reduce the fees for resubmittals of fast-track projects, the review costs would have to be subsidized with state appropriations. OSDH will revisit this recommendation with the health facility industry in a collaborative effort to streamline and

increase the speed of the review process and bring OSDH costs into line with fees.

Changes: Subparagraph 310:675-5-23(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;

Subparagraph 310:675-5-23(d)(1)(A) should be amended 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.

(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.

Paragraph 310:675-5-23(d)(2) should be amended as follows:

(2) **Technical review.** The Department shall have forty-five (45) calendar days from the date a completed application is filed to review the application for technical compliance with the relevant rules. The Department shall provide the results of the review, including a statement of any deficiencies, in writing. The written notice shall offer the applicant an opportunity to discuss the results of the review with the Department.

Rule Section 310:675-5-24. Preparation of plans and specifications

Summary of Comment: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended a provision allowing an applicant to move to stage two submittal after the first submittal of stage one plans, at the applicant's risk.

OSDH Explanation: OSDH accepts the proposed change based on the recommendation to make the requirement based on the applicant accepting the risk of moving to the stage two process.

Changes: Subsection 310:675-5-24(a) should be amended as follows:

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project;

project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. After the first review and before Department approval of stage one plans, the nursing facility at its own risk may choose to make a stage two submittal; a nursing facility electing this option would not be eligible for the fast track process.

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

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH staff recommended changing the words "patients" to "residents" in OAC 310:675-5-25(b).

The Oklahoma Association of Health Care Providers and members at January 9, 2017 rule discussion with OSDH staff, and through written comment on January 17, 2017 requested an increase in the eligibility threshold in paragraph 310:675-5-25(c)(1) for self-certification of projects affecting resident areas. Additionally, they requested an addition to the end of paragraph 310:675-5-25(b)(5): "for any item involving Life Safety or not meeting the Building Code as determined by the Authority Having Jurisdiction."

OSDH Explanation: "Residents" is the correct term to be used for nursing facilities and patients should be changed to residents.

OSDH agrees with the OAHCP request to raise the eligibility threshold for self-certification of projects.

OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a public comment on a similar provision in OAC 310:667 identified a need to clarify the items required in the form to request self-certification.

OSDH does not recommend the requested change to paragraph 310:675-5-25(b)(5). The proposed rule includes provisions for exceptions and waivers to resolve differences between OAC 310:675 and building codes administered by other authorities having jurisdiction.

Changes: To clarify that the form includes the items in 310:675-5-25(c), OSDH proposes an amendment to subsection (b), as shown below. The threshold for self-certification of projects involving resident areas is raised from \$1,000,000 to \$2,500,000. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

(b) The nursing facility and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect 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 310:675-5-25(c).

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

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

(2) The project involves only portions of the nursing facility 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 nursing facility 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 nursing facility or project architect or engineer to comply with the requirements of this Chapter; and

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

Rule Sections:

310:675-5-3. Nursing unit

310:675-5-4. Service areas

310:675-5-5. Resident's dining and reception areas

310:675-5-6. Physical therapy facilities

310:675-5-7. Occupational therapy facilities

310:675-5-9. Dietary facilities

310:675-5-12. Linen services

310:675-5-13. General stores

Summary of Comments: Mr. Kenyon Morgan in written comments submitted to the Oklahoma State Department of Health (OSDH) on January 9, 2017 provided suggested changes to the above listed sections. The changes included updating to current building practices and codes, accommodating trends towards smaller and more home-like facilities, and improving the efficiency and cost-effectiveness of space.

OSDH Explanation: The above listed sections in Subchapter 5, Physical Plant, were not included in the notice of rulemaking intent published on December 15, 2016. A total of 17 sections dealing with physical plant requirements in Subchapter 5 were not included in the notice of intent. The central purpose of the amendments proposed by OSDH is to update the Chapter by incorporating the most recent Life Safety Code, 2012 Edition, to replace the 1981 Edition. Time is of the essence because the Life Safety Code changes were adopted by the

Centers for Medicare & Medicaid Services in July 2016 and were effective for certified facilities in November 2016. Rather than attempting at this time to modify Chapter 675 to identify and reconcile all possible conflicts with the 2012 Life Safety Code, OSDH proposes to amend Section 310:675-5-18 to incorporate the 2012 Life Safety Code and to specify that the Code will prevail over conflicting provisions in other sections of the rule, including those referenced by Mr. Morgan.

In order to allow generally for innovations and improvements in construction and design, OSDH proposed the new Section 310:675-5-23, establishing criteria and a process for approving deviations from Chapter 675. This will allow OSDH to consider and approve changes such as those proposed in Mr. Morgan's comments, as well as those not yet identified. OSDH agrees with the recommendation to make public its decisions on exception and waiver requests. As experience builds in implementing the exception and waiver process and the Life Safety Code, OSDH will work with the nursing facility industry to develop comprehensive changes to the Chapter to remove regulatory barriers to innovation and improvement in facility design and construction.

Change: At this time, no changes are proposed. OSDH will work collaboratively with nursing facilities to transition to the updated Life Safety Code. OSDH will consult with industry representatives to develop administrative practices and templates to standardize the plan review process. Additionally, OSDH will collaborate with the nursing facility industry to offer public training events on the updated guidelines and codes. OSDH intends to revisit with the industry additional rule changes necessary to ensure that facilities and the Department have the flexibility to incorporate and recognize innovations and improvements in design and construction techniques.

Rule Section 310:675-7-5.1. Reports to state and federal agencies [AMENDED]

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 310:675-7-5.1(h), (j) and (k), and clarifying the language regarding contacts with the local emergency manager.

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.

Ms. Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association recommended restoring utility failures and revising the time to eight hours. The association agreed with the change in reporting small head injuries. The association recommended restoring storm damage and fire reporting.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended restoring language on storm damage and fires, and revising the utility failure report to include utility failures of more than eight 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.

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.

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: Restore (h), (j) and (k), modify the utility failure period to eight hours, and revise reporting allowances during emergency response situations. To correct an error in drafting, a proposed new section detailing the required incident report form, ODH 283, was moved to a new paragraph (o) and edited for clarity, to read as follows:

- (h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than ~~four (4)~~ eight (8) hours.
- (i) **Reporting certain injuries.** The facility shall report to the Department incidents 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.
- (j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.
- (k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.
- (l) **Reports made following local 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.
- (m) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

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

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

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

(o) Form for incident reports to the Department. Facilities shall use the Incident Report Form, ODH Form 283, to report incidents required to be reported to the Department under OAC 310:675-7-5.1. The ODH Form 283 shall require: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

Rule Section 310:675-7-6.1. Complaints

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH commented on paragraph 310:675-7-6.1(b)(4). Contrary to statements in the notice of rulemaking intent, the language relating to an allegation of harm or discomfort is present in proposed changes to 4 (C) and 4 (D) making the intent confusing. The recommendation is to remove language from 4 (C) and 4 (D) that makes reference to harm or discomfort having occurred. The proposed rule amendment regarding continuing violations sets a maximum of 180 days for investigations, but OSDH should consider a shorter time frame.

Ms. Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association expressed concern that lengthening the time frames for investigations could result in larger fines if fines are assessed retroactively to the date of the incident. The association recommended clarifying that OSDH has authority to investigate a complaint earlier

than the next onsite survey if OSDH deems necessary.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended deleting proposed references to harm in subparagraphs 310:680-3-9(b)(4)(C) and (D), and revising the investigation time frame for continuing complaints to 90 days. The Long Term Care Facility Advisory Board recommended approval of the rule changes as presented by OSDH.

OSDH Explanation: Removing the proposed language on harm in (4)(C) and 4(D) referencing harm will make the rule clearer and ensure that complaints alleging violations that relate to harm will be investigated in no more than 10 days. Changing the proposed investigation deadlines for repeated violations from 180 days to 90 days will serve to better protect residents in situations where previously cited violations are suspected to have recurred.

Additionally, to make the changes to OAC 310:680 consistent with changes to OAC 310:675, OSDH recommends adding the phrase "or sooner if deemed necessary by the Department" to (4)(C). This clarifies that the Department has discretion to conduct an investigation earlier than the next onsite survey.

Change: Subparagraphs 675-7-6.1(b)(4)(C) and (D) should be revised to read as follows.

(C) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department;~~
and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days.~~
A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

Rule Section 310:675-7-12.1 Incident Reports

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH commented on section 310:675-7-12.1, and commented at the January 11, 2017 public meeting of the Long Term Care Facility Advisory Board. Ms. Houser commented that the section needs to be clearer that it relates to internal incident reports, not the reports required to be filed with OSDH under 310:675-7-5.1 Ms. Houser commented that it also seems to indicate that facilities will no longer be expected to develop internal incident reports on such occurrences as Medication Errors and Treatment Errors.

Nico Gomez with the Oklahoma Association of Health Care Providers through written comment on January 17, 2017 recommended striking "which are subject to the reporting requirements in

310:675-7-5.1 (relating to reportable incidents).” Also, the association recommended striking unclear language related to reporting, and strike incident reporting; Just use word Scope or combine (a) & (e) and delete (e). The association recommended adding the language “apparent injury, or where injury may or may not have occurred.”

Ms. Mary Brinkley with Leading Age provided written comment on 1/16/2017. Ms. Brinkley recommended reinserting the language to use Long Term Care’s Incident Report Form ODH Form 283.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended modifying the rule to specify 310:675-7-12.1 for internal incident reporting, while 310:675-7-5.1 covers incident reports to OSDH. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

OSDH Explanation: OSDH agrees that the language of this section could be clarified to show that it relates to each facility's internal incident reports, and not the reports required to be made to the Department under a separate section. OSDH recommends renaming the section to Internal Facility Incident Reports. The facility is expected to develop internal records on any accident, unusual occurrence where there is apparent injury or where injury may or may not have occurred. In addition, the language includes unusual occurrences affecting residents. Striking the reference to "310:675-7-5.1" and combining (a) with (e) should provide more clarity. Medication errors and treatment errors that result in accident where there is apparent injury or where injury may or may not have occurred would be covered. Additionally, other provisions in the Chapter specifically address medication errors. OSDH disagrees with the request to require the use of the ODH Form 283 for internal incident reports; reporting on ODH Form 283 is required in OAC 310:675-7-5.1, and the revisions to OAC 310:675-7-12.1 give facilities flexibility to use their own internal incident documentation and quality assurance systems.

Change: Rename the section to “Internal Facility Incident Reports.” Add the language “or where injury may or may not have occurred” to (a). Strike the language “subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents)” in (a). Combine the language at (e) with (a) and strike (e).

310:675-7-12.1 ~~Incident~~ Internal facility incident reports

(a) Incident defined. An incident is any accident or unusual occurrence where there is apparent injury; or where injury may or may not have occurred; ~~including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).~~ The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(b) Incident records. Each facility shall maintain an incident report record and shall have incident report forms available.

(c) Incident report format. ~~Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires~~ incident report shall include, at a minimum: the facility name, address and identification number; the date, location and type of incident;

parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

(d) Incident report preparation. At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

~~**(e) Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.~~

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 675. NURSING AND SPECIALIZED FACILITIES

1. **DESCRIPTION:**

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

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

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

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

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

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

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

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

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

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

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

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

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

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

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

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

The cost to the OSDH to implement the amendments will be approximately \$3,300 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules

will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel.

The fee changes and complaint investigation and incident reporting modifications are projected to reduce the required state appropriations subsidy by \$133,484 per year.

- 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 nursing and specialized facility plan review fees have the potential to reduce the required state appropriations subsidy by \$8,980 per year.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 5,000 reports or 22%. In addition, the proposal has the potential to reduce the required state appropriations subsidy by approximately \$11,000.
- The proposed changes in complaint investigation requirements will enable the OSDH to more closely align state complaint investigations with federal complaint investigations. This will have the effect of significantly reducing the number of complaints alleging no harm or jeopardy to residents that must be individually investigated due to the time frames specified in the current rule. For Federal Fiscal Year 2016, 690 complaints were triaged for investigation under the requirements at OAC 310:675-7-6.1(b)(4)(C) and (D). Of those, 408 were investigated individually under state requirements. Under federal requirements, those complaints could have been investigated the next time OSDH conducted an annual survey or an investigation of a more serious allegation of immediate jeopardy or actual harm to a resident. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 2,737 hours. The proposal has the potential to reduce the required state appropriations subsidy by approximately \$113,504, or more than 1.3 FTE.

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

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

Nursing facilities and specialized facilities operated by political subdivisions may be affected by the upgrade in codes and guidelines, the new review process, and the fees for optional services.

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 business entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

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

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

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

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

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

If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services 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 nursing facility licensure program. OSDH may be unable to continue to provide current levels of services for construction projects, incident reports, and complaint investigations. The changes position OSDH to focus resources on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016. 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; update the impact on political subdivisions in section 6; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10.

FEE JUSTIFICATION

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

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

Plan review activity is labor-intensive and requires a professional architect and the associated costs 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 nursing and specialized facilities 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 rules and supporting fees were developed with the support of the nursing facility 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 nursing and specialized facilities, 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 \$8,980 in additional fee revenue, based on the following:

Plan review fees, assuming 11 projects at \$180 each	\$ 1,980
Exception or temporary waiver fees, assuming 1 project at \$500	500
Self-certification fees, assuming one certification at \$500 each	500
Courtesy inspection fees, assuming eleven inspections at \$500 each	5,500
Professional consultation fees, assuming one project at \$500 each	<u>500</u>
Total increased revenues	\$ 8,980

The proposed rule will be implemented and enforced by existing Department personnel. The fee changes and complaint investigation and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$133,484.

- For SFY2017, plan review fees for all types of health care facilities totaling \$162,958 are projected to exceed expenses of \$469,349, for a deficit of \$330,836. The deficit in SFY2017 and subsequent years is expected to be covered by state appropriations. The nursing and specialized facility plan review fees have the potential to reduce OSDH use of state appropriations by \$8,980.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 5,000 reports or 22%. In addition, the proposal has the potential to reduce the OSDH’s use of state appropriations by approximately \$11,000.
- The proposed changes in complaint investigation requirements will enable the OSDH to more closely align state complaint investigations with federal complaint investigations. This will have the effect of significantly reducing the number of complaints alleging no harm or jeopardy to residents that must be individually investigated due to the time frames specified in the current rule. For Federal Fiscal Year 2016, 690 complaints were triaged for investigation under the requirements at OAC 310:675-7-6.1(b)(4)(C) and (D). Of those, 408 were investigated individually under state requirements. Under federal requirements, those complaints could have been investigated the next time OSDH conducted an annual survey or an investigation of a more serious allegation of immediate jeopardy or actual harm to a resident. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 2,737 hours. The proposal has the potential to reduce the OSDH’s use of state appropriations by approximately \$113,504, or more than 1.3 FTE.

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

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

SUBCHAPTER 5. PHYSICAL PLANT

310:675-5-18. Design and construction

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

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

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

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

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

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

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

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

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 3'0" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the

required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

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

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

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

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

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

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

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

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

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

(Q) The minimum ceiling height shall be 8'0" (2.44 m.) with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm.) above the main boiler header and connecting piping.

(ii) Rooms containing ceiling-mounted equipment shall have height required to accommodate the equipment.

(iii) Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34 m.).

(iv) Suspended tracks, rails and pipes located in path of normal traffic shall not be less than 6'8" (2.03 m.) above the floor.

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

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

(3) **Finishes**

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

are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a non-slip surface.

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

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

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

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

310:675-5-22. Exceptions and temporary waivers

(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 of this Chapter has been met.

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

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

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

(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;

(D) Any supporting requirements in the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

(E) 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;

(E) Compliance with the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition;

and

(F) Compliance history with provisions of the Life Safety Code and this Chapter.

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

(4) If the Department finds that a request is incomplete, the Department shall advise the nursing facility in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) A nursing facility which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

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

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

310:675-5-23. 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 310:675-5-24 or OAC 310:675-5-25.

(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. 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. The Department shall provide the results of the review, including a statement of any deficiencies, in writing. The written notice shall offer the applicant an opportunity to discuss the results of the review with the Department.

(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 days 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.

310:675-5-24. 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. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. After the first review and before Department approval of stage one plans, the nursing facility at its own risk may choose to make a stage two submittal; a nursing facility electing this option would not be eligible for the fast track process.

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

(1) Fast-track projects. The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The nursing facility has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

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

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

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

310:675-5-25. Self-certification of plans

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

(b) The nursing facility and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect 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 310:675-5-25(c).

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

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

(2) The project involves only portions of the nursing facility 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 nursing facility 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 nursing facility or project architect or engineer to comply with the requirements of this Chapter; and

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

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

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

SUBCHAPTER 7. ADMINISTRATION

310:675-7-5.1. Reports to state and federal agencies

- (a) **Timeline for reporting.** All reports to the Department shall be made ~~by telephone or facsimile~~ within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be ~~mailed or faxed~~ submitted to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.
- (b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(A)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).
- (c) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.
- (d) **Reporting communicable diseases.** The facility shall report *communicable diseases* [63 O.S. §1-1939(A)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).
- (e) **Reporting certain deaths.** The facility shall report *deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device*, [63 O.S. §1-1939(A)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.
- (f) **Reporting missing residents.** The facility shall report *missing residents* to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. *In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing* [63 O.S. §1-1939(A)(1)(c)].
- (g) **Reporting criminal acts.** The facility shall report *situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement* [63 O.S. §1-1939(A)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff's office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.
- (h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than ~~four (4)~~ eight (8) hours.
- (i) **Reporting certain injuries.** The facility shall report to the Department incidents 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.
- (j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.
- (k) **Reporting fires.** The facility shall report to the Department all ~~fires~~ accidental fires and fires not planned or supervised by facility staff occurring on the licensed real estate.
- (l) **Reports made following local 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.
- (m) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a

completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

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

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

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

(o) Form for incident reports to the Department. Facilities shall use the Incident Report Form, ODH Form 283, to report incidents required to be reported to the Department under OAC 310:675-7-5.1. The ODH Form 283 shall require: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

310:675-7-6.1. COMPLAINTS

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

- (1) The facility shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:
 - (A) The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;
 - (B) Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and

- (C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.
- (2) If a resident, resident's representative or facility employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the facility shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.
- (b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.
- (1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.
- (2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.
- (3) If the complainant is a facility resident, the resident's representative, or a current employee of the facility, the Department shall keep the complainant's identity confidential. For other complainants the Department shall ask the complainant's preference regarding confidentiality.
- (4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:
- (A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;
- (B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and
- (C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department; and
- (D) A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days. A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

310:675-7-12.1 Incident Internal facility incident reports

- (a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury; or where injury may or may not have occurred , ~~including but not limited to, head~~

~~injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents). The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.~~

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

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

(d) **Incident report preparation.** At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

~~(e) **Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.~~

(f) **Incident records on file.** A copy of each incident report shall be on file in the facility.

~~(g)~~(f) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

~~(h)~~(g) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

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

310:675-11-5. Physical plant

(a) ~~ICF/MR-16 ICF/IID-16~~ facilities shall be of one hour (minimum) fire resistant construction as approved by the Department and the State Fire Marshal, or shall be fully protected by an automatic sprinkler system approved by the Department and the State Fire Marshal. In addition, ~~ICF/MR-16 ICF/IID-16~~ facilities shall comply with the requirements of ~~Chapter 21, "Life Safety Code; NFPA 101, 1985", the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016~~ applicable to residential board and care occupancies for small facilities are incorporated by reference. The text and commentary provided in the "Life Safety Code Handbook, Third Edition: based on the "Life Safety Code: NFPA 101, 1985", shall be the official interpretation for the Code. For Medicare or Medicaid certified ICF/IID-16s, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as

will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified ~~mental-retardation~~ intellectual disabilities professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.

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

(1) **Resident rooms.** The following requirements shall be provided:

(A) Capacity shall be a maximum of four (4) residents.

(B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.

(C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:

(A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.

(B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.

(C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ~~ICF-MR-16~~ ICF/IID-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.

(D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.

(E) Meal service space shall be provided as follows:

(i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.

(ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.

(iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.

(F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

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

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

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

310:675-11-5.1. Plans and specifications requirements applicable to ICF/IID-16

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