

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. 16-866
  
- 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 680. RESIDENTIAL CARE HOMES
  
- 4. Citation to the Statutory Authority for the Rule:**  
Oklahoma State Board of Health, Title 63 O.S. § 1-104; 63 O.S. Sections 1-106.1, 1-1908 and 1-821.
  
- 5. Brief Summary of the Content of the Adopted Rule:**  
Subchapter 3 is amended to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation; requirements for records and reports for licensure are updated to reflect current law. Certain incident reporting is amended to encourage coordination with local emergency response managers. Reporting of injuries that have certain physician diagnoses or require treatment at a hospital are addressed.

Certain complaint investigation timeframes are amended and definitions added. Statutory requirements for appropriate occupancy are clarified in the rule. Resident choice in room furnishings is asserted. A process for reviewing plans and specifications for new buildings or major alterations is defined with fees for review of design and construction plans and specifications and fees for related services including applications for self-certification, a process for residential care homes to self-certify compliance of their plans for certain types of projects. Housekeeping requirements are clarified as are staffing training requirements for first aid and CPR for direct care staff.

- 6. Statement explaining the Need for the Adopted Rule:**  
These changes address the need for a predictable method for resolving discrepancies in plan review, with provisions for expedited self-certification. These changes are needed to avoid delays in construction projects and homes' 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 homes in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the state appropriations subsidy for the residential care home 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 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; clarifications were inserted to address the scope of applicability; terminology was revised for greater precision. 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

OSDH received written comments from:

- Ms. Esther Houser
- Ms. Denise Wilson, Oklahoma Residential Assisted Living Association

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

**11. Incorporation by Reference Statement:**

"n/a"

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

Dr. Jenny Alexopoulos – 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 680. RESIDENTIAL CARE HOMES

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)]

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#### **Rule Section 310:680-3-3. Applications**

**Summary of Comment:** The Long Term Care Facility Advisory Board at a January 22, 2017 public meeting discussed the appropriateness of the phrase “emergency medical services” in the Oklahoma Administrative Code (OAC) 310:680-3-3. The Board agreed that a residential care home should contact 911 in the event of an emergency. A residential care home is not licensed to provide medical services to residents. The consensus of the group was to remove the reference to "emergency" and to allow for consultation.

**OSDH Explanation:** The Oklahoma State Department of Health (OSDH) originally proposed to delete "emergency" because a home likely would contact an emergency medical service instead of a physician in an emergency. OSDH agrees with the advisory board's consensus and recommends removal of the reference to emergency services.

**Change:** Paragraph 310:680-3-3(e)(1) should be amended to read as follows:

(1) An Agreement with a physician, physician assistant or advanced practice registered nurse to provide ~~emergency-medical services and~~ consultation.

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#### **Rule Section 310:680-3-6. Records and reports**

**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH recommended restoring language on utility failures, storm damage and fires in subsections 310:680-3-6(d), and clarifying the language regarding contacts with the local emergency manager.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. Ms. Wilson commented that it would be beneficial to use similar language on reporting for each

long-term care facility being considered. Reporting to the emergency response manager for residential care homes should be consistent with other facility types.

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

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

**Changes:** Subsection 310:680-3-6(d) should be revised to read as follows:

(d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or utilities failure for more than eight (8) ~~four (4)~~ hours; ~~and incidents that result in fractures, head injuries or require treatment at a hospital.~~ The home shall report to the Department incidents that result in: fractures, 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. Notice shall be made no later than the next working day. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the home may coordinate its communications, status reports and assistance requests through the home's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

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## **Rule Section 310:680-3-9. Complaints**

**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH commented on paragraph 310:680-3-9(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. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017. The Association agreed with the proposed changes to the complaint investigation requirements.

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.

**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 310:680-3-9(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.

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## Rule Section 310:680-3-14. Appropriate occupancy

**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH recommended clarifying that the nursing care is not being provided by the home and that the care is not continuous.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. The association recommends approval of the changes as proposed.

The Long Term Care Facility Advisory Board at its January 11, 2017 public meeting discussed the requirement that residents must be ambulatory and essentially capable of participating in their activities of daily living. The advisory board recommended approval of the section as proposed.

**OSDH Explanation:** This provision will allow residents to receive care from home health agencies and similar providers of nursing services such as periodic injections of medications, but it does not authorize continuous nursing services, or nursing services to be provided by the residential care home. The Residential Care Act requires residents to be ambulatory and essentially capable of participating in their activities of daily living. OSDH will monitor the implementation of this proposed change to OAC 310:680-3-14 to ensure that residents are appropriate for occupancy in residential care homes.

**Change:** No change is required.

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### **Rule Section 310:680-5-6. Building elements**

**Summary of Comment:** Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. The association recommends approval of the changes as proposed.

The Long Term Care Facility Advisory Board at its January 11, 2017 public meeting discussed resident storage space and the need to make it secure. The consensus was to change the language to “enclosed secure storage space.”

**OSDH Explanation:** OSDH concurs with the advisory board's recommendation. Allowing the residents to have an enclosed secure space for storage should not present an undue burden on the Department or facilities.

**Change:** The proposed rule amendment in subsection 310:680(d) should be modified by restoring “enclosed” and adding “secure,” to read as follows:

(d) Adequate enclosed secure storage space shall be provided for items belonging to residents. ~~Clothing, bedding, and residents's personal belongings shall be stored off the floor.~~

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## **Rule Section 310:680-5-9. Submission of plans and specifications and related requests for services**

**Summary of Comment:** One commenter noted an error in language regarding fixed medical equipment projects in 310:680-5-9(a)(1)(x).

A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:680-5-9(d)(1)(A) as proposed includes the same 15-day review time frame.

**OSDH Explanation:** The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310:680-5-9(a)(1)(x) and correction of the error results in clarification but no substantive alteration of the rule. In the process of this correction an error in number sequence was identified for this paragraph as well as an error in numbering for the subparagraphs.

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

**Changes:** Subparagraphs (i) through (xii) will be re-sequenced and renumbered (A) through (K). Subparagraph (x) was changed to (I) and corrected as follows:

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

Subparagraph 310:680-5-9(d)(1)(A) should be revised to read as follows:

(A) **Not complete.** Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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## **Rule Section 310:680-5-11. Self-certification of plans**

**Summary of Comment:** OSDH received comments on similar modifications to other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:680.

**OSDH Explanation:** OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a comment on OAC 310:667

identified a need to clarify the items required in the form to request self-certification in that the form includes the items in 310:680-5-11(c). OSDH proposes an amendment to subsection (b), as shown below.

**Change:** To clarify that the form includes the items in 310:680-5-11(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

**310:680-5-11. Self-certification of plans**

(b) The residential care home and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The residential care home 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 310:680-5-9. The form shall be signed by the residential care home 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 310:680-5-11(c).

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

(1) The project involves any portion of the residential care home where residents are intended to be examined or treated and the total cost of design and construction is two million dollars (\$2,000,000) or less; or

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

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

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**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

OSDH received written comments from:

- Ms. Esther Houser
  - Ms. Denise Wilson, Oklahoma Residential Assisted Living Association
- 

**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 680. RESIDENTIAL CARE HOMES

1. **DESCRIPTION:**

Subchapter 3 is amended to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation; zoning submissions with licensure are revised to be consistent with the Residential Care Act; requirements for records and reports to be kept in the home are updated to reflect current laws. Language on reporting utility failures, storm damage and fires is amended to encourage coordination with local emergency response managers and delay reporting to the Department. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

OAC 310:680-3-9(b)(4)(C) is amended to authorize the Department to investigate, during the next required onsite inspection at the home, those complaints that do not represent immediate jeopardy or actual harm to the resident. OAC 310:680-3-9(b)(4)(D) is amended to define continuing complaints and require the investigation of those complaints within 90 days. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for homes 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.

OAC 310:680-3-14 is updated to reflect statutory requirements for appropriate occupancy.

Within Subchapter 5, provisions for storage of resident's belongings are revised to allow for resident choice in room furnishings. There are new requirements for submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications and sets fees for related services including applications for self-certification, a process for residential care homes to self-certify compliance of their plans for certain types of projects. 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 residential care homes the option to move directly to the stage two plan submittal.

Housekeeping requirements are amended to clarify allowable differences between handling of general and soiled laundry. Staffing requirements are revised to require first aid and CPR training for direct care staff, and to remove the restriction on crediting first aid and CPR training towards the administrator's annual job-related training requirement.

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 residential care homes. 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. The proposed construction and physical plant requirements will increase fees for owners and operators desiring to engage in new construction. No cost is anticipated to impact these parties for the proposal relating to zoning, requirements for records, occupancy, housekeeping, complaints or CPR training.

Comments from the Oklahoma Residential and Assisted Living Association were favorable for the rule. These comments were considered by OSDH in the final rule.

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

Persons benefiting will be the public, residents and their families and staff of residential care homes. The use of physician assistants or advanced practice registered nurses will allow rural residential care homes greater access to services and consultation. The proposed reporting of incidents will affect residents, family and staff of residential care homes by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. Combining certain complaints that do not represent immediate jeopardy or actual harm will better utilize state resources and reduce disruption for homes and residents. For State Fiscal Year 2016, there were 25 complaints triaged for investigation under the 25 or 30 day requirements. Of those, 15 resulted in no citation; 2 resulted in deficiencies of no actual harm. The public benefits by having the regulated industry pay a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the required state appropriations subsidy for the residential care home licensure program.

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

These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

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

Based on SFY 2016 experience, the fee changes are projected to generate a total of \$4,050 in additional fee revenue, based on the following:

- \$50 in plan review fees, assuming 1 project at \$50 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$500 in self-certification fees, assuming one certification at \$500 each
- \$500 in courtesy inspection fees, assuming one inspection at \$500 each
- \$500 in professional consultation fees, assuming one project at \$500 each
- \$2,050 total additional revenue.

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

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

The fee changes and complaint investigation and incident reporting modifications are projected to reduce the required state appropriations subsidy by \$8,779, as follows:

- For State Fiscal Year (SFY) 2017, 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 residential care home plan review fees have the potential to reduce the required state appropriations subsidy by \$4,050.
- The fees for optional construction-related services will generate anticipated revenue of \$4,050 per year.
- The changes in incident reporting requirements are projected to result in fewer incident reports filed with OSDH, with administrative savings of \$1,000 for OSDH. For Federal Fiscal Year 2016, 25 complaints were triaged for investigation under the requirements at OAC 310:680-3-9(b)(4)(C) and (D). Of those, 17 were investigated individually. These investigations average 6.71 hours of investigator staff time each. By implementing this rule change these individual investigations can be combined with other investigations. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 114 hours. The proposal has the potential to reduce the required state appropriations subsidy by \$4,729.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

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

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

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from the Oklahoma Residential and Assisted Living Association were favorable for the rule. These comments were considered by OSDH in the final rule.

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 will enable OSDH to reduce the required appropriations subsidy used for lower priority complaints and maintain emphasis on immediate jeopardy and actual harm complaints.

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

The enhanced optional construction-related services will support homes in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts on allegations of actual harm and immediate jeopardy.

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

If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the homes' 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 homes in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the state appropriations subsidy for the residential care home 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 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; to clarify in section 3 of this statement the benefits of reducing the required state appropriation subsidy for the residential care home licensure program; correct an error in section 5 regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriation subsidy referenced in sections 5 and 10; update section 8 to clarify the effect of reducing the required state appropriation subsidy on minimizing the cost of the proposed change; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. Final formatting and conclusions were prepared January 26, 2017.

## **FEE JUSTIFICATION**

### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES**

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 There are new requirements for submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications and sets fees for related services including applications for self-certification, a process for residential care homes to self-certify compliance of their plans for certain types of projects. 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 residential care homes the option to move directly to the stage two plan submittal.

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 residential care homes 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 this program, 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 residential care trade association 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 physical plant plan review rules and fees 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 residential care homes, 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. Consumers will benefit from more timely access to health services with lower project development and implementation costs.

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

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

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

**PROPOSED FEES:**

These rules involve new fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

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

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

Plan review fees, assuming 1 project at \$50 each	\$ 50
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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 one inspection at \$500 each	500
Professional consultation fees, assuming one project at \$500 each	<u>500</u>
Total increased revenues	\$ 2,050

The proposed rule will be implemented and enforced by existing Department personnel. The fee changes are projected to reduce the required state appropriations subsidy by \$2,050 as follows:

- For State Fiscal Year (SFY) 2017, 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 residential care home plan review fees have the potential to reduce the required state appropriations subsidy by \$2,050.
- The fees for optional construction-related services will generate anticipated revenue of \$2,050 per year.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 680. RESIDENTIAL CARE HOMES**

**SUBCHAPTER 3. LICENSURE REQUIREMENTS**

**310:680-3-3. Applications**

(a) An applicant for license or renewal thereof to operate a residential care home shall submit to the Department a completed application along with the fifty dollar (\$50.00) license fee and documents required by the Commissioner to determine that the applicant is of reputable and responsible character and otherwise demonstrates the skill and fitness to provide the necessary services. In addition, the applicant shall have appropriate business or professional experience in dealing with the type of residents in the home. The license fee of fifty dollars (\$50.00) is not refundable.

(b) A license fee of twenty dollars (\$20.00) shall accompany any application for modification of a license.

(c) An application for license, or renewal, shall include a copy of all agreements with the professional consultants utilized by the home.

(d) An application for an initial license to operate a residential care home shall include documentation that the State Fire Marshal or the State Fire Marshal's representative has inspected and approved the home. Each application for renewal of a license for a residential care home with more than six beds shall include documentation of annual inspection and approval by the State Fire Marshal or the State Fire Marshal's representative.

(e) The following items must be renewed annually:

(1) An ~~Agreement~~ agreement with a physician, physician assistant or advanced practice registered nurse to provide ~~emergency medical services and~~ clinical consultation.

(2) Agreements with registered nurse, registered dietitian, and registered pharmacist, as required based on the needs of the residents.

(3) Licensed plumber or building inspector's report.

(4) Licensed electrician or municipal inspector's report.

(5) ~~Kitchen inspection report made by a registered sanitarian.~~

(f) ~~An approval letter from the local zoning authority shall accompany each initial license application.~~ Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the home stating that the location is not in violation of a zoning ordinance. [63:1-822(C)]

(g) Each application shall be accompanied by an attested statement from the applicant assuring that the applicant ~~has not been convicted of a felony in connection with the operation or management of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes or the care and treatment of the residents of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statute [63:1-822(D)]~~ complies with 63 O.S. Section 1-822(D). If the applicant is a firm, partnership or corporation, the application shall include an attested statement from each member of the firm or partnership and from each officer and major stockholder of the corporation.

**310:680-3-6. Records and reports**

(a) Every residential care home shall conspicuously post in an area of its offices accessible to residents, employees, and visitors, the following:

(1) Its current license.

(2) The name of the current administrator and their ~~certificate~~ license posted.

- (3) A copy of Residents' Rights.
  - (4) Complaint procedure, established by the Nursing Home Care Act and provided by the Department which includes name, address, and telephone number of a person within the Department who is authorized to receive complaints.
  - (5) A copy of any order pertaining to the ~~facility~~ home issued by the Department or a court, which is currently in effect.
- (b) Every residential care home shall retain the following for public inspection:
- (1) A complete copy of every inspection report of the residential care home received from the Department during the past three (3) years.
  - (2) A copy of every order pertaining to the residential care home issued by the Department or a court during the past three (3) years.
  - (3) A description of the services provided by the residential care home, the rates charged for those services, and items for which a resident may be separately charged.
  - (4) A copy of the statement of ownership.
  - (5) A list of personnel who are licensed, certified, or registered and employed or retained by the residential care home, including area in which individual is credentialed.
  - ~~(6) If source of payment for resident's care is from public funds, the contract with the agency providing the funds.~~
- (c) Reports of communicable disease shall be made in accordance with 63 O.S. ~~4974~~Section 1-501, et seq.
- (d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or ~~utilities~~ utility failure for more than eight (8) ~~four (4)~~ hours; ~~and incidents that result in fractures, head injuries or require treatment at a hospital.~~ The home shall report to the Department incidents that result in: fractures, 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. Notice shall be made no later than the next working day. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the home may coordinate its communications, status reports and assistance requests through the home's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.
- (e) An evacuation plan shall be developed and permanently displayed in the hallways and sitting room. Fire drills shall be conducted at least quarterly.
- (f) ~~Facility~~The home shall have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation and/or other natural disasters that may render the home unsuitable.

### **310:680-3-9. Complaints**

- (a) **Complaints to the residential care home.** The home shall make available to each resident or the resident's representative a copy of the home's complaint procedure. The home shall ensure that all employees comply with the home's complaint procedure. The home's complaint procedure shall include at least the following requirements.
- (1) The home 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 staff persons designated to receive complaints for the home;
    - (B) Notice that a good faith complaint made against the home 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 home's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the home.

(2) If a resident, resident's representative or home employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the home 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 home a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The home 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 resident, the resident's representative, or a current employee of the home, the Department shall keep the complainant's identity confidential. For other complaints, the Department shall ask the complainants 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 home's noncompliance with state requirements relating to residential care homes 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.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Residential Care Act or any rules promulgated under authority of the Act if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's

representative or designated guardian or a current or past employee of the home by conforming to the following:

- (i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and
  - (ii) The investigator shall interview or observe at least three (3) residents during the home observation or tour, which will include the resident referenced in the complaint if identified and available in the home. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;
- (B) Review surveys completed within the last survey cycle to identify tendencies or patterns of non-compliance by the home;
  - (C) Attempt to contact the State or Local Ombudsman and the complainant, if identified, prior to the survey; and
  - (D) Interview the complainant, the resident, if possible, and any potential witness, collateral resource or affected resident.
- (7) The Department shall limit the complaint report to the formal report of complaint investigation. The formal report of complaint investigation shall be issued to the home and the complainant, if requested, within ten (10) business days after completion of the investigation. The formal report of investigation shall include at least the following:
- (A) Nature of the allegation(s);
  - (B) Written findings;
  - (C) Deficiencies, if any, related to the complaint investigation;
  - (D) Warning notice, if any;
  - (E) Correction order, if any; and
  - (F) Other relevant information.

### **310:680-3-14. Appropriate occupancy**

~~A residential care home shall not admit or provide services to a resident who is not ambulatory and essentially capable of participating in their own activities of daily living. Residents shall not routinely require nursing services~~The residents of a residential care home shall be ambulatory and essentially capable of participating in their own activities of daily living, but shall not routinely require nursing services [63 O.S. Section 1-820(a)]. The resident may receive nursing services that an individual otherwise may receive in their private home provided by an individual or agency qualified under state or federal law.

## **SUBCHAPTER 5. CONSTRUCTION REQUIREMENTS AND PHYSICAL PLANT**

### **310:680-5-6. Building elements**

- (a) Each residential care home shall have its address clearly visible from the street.
- (b) At least two (2) flashlights in working order shall be maintained for emergency lighting.
- (c) All doors and windows opening to the outside for ventilation shall be screened. Screens shall be well fitted and in good repair.
- (d) Adequate enclosed secure storage space shall be provided for items belonging to residents.

~~Clothing, bedding, and residents's personal belongings shall be stored off the floor.~~

- (e) Each residential care home shall have one toilet facility for every six (6) residents. Toilet facility shall contain one (1) stool and one (1) lavatory.
- (f) Bathtubs or showers shall be provided at the rate of one (1) for each ten (10) residents.
- (g) Hot water temperatures at faucets accessible to residents shall be maintained within a range of 100° to 120° Fahrenheit.
- (h) Laundry equipment, if on premises, shall be housed in a safe, well-ventilated and clean area. Laundry equipment shall be kept clean and dryer shall be vented to outside.
- (i) Linen storage areas shall be provided and be clean and organized.
- (j) Cleaning supplies and equipment shall be stored in a separate, clean, and locked area.
- (k) Telephone service must be available within the building. Pay phones are not acceptable as the only telephone service.

### **310:680-5-7. Resident rooms**

- (a) Each resident shall be provided with clean, comfortable orderly, and reasonably private living accommodations.
- (b) Each resident's room shall have direct access to exits and other areas of the home without passing through another resident's room, the kitchen, laundry, or bathroom.
- (c) Each single resident room shall contain a minimum of 80 square feet of floor space.
- (d) Each resident room containing multiple beds shall provide a minimum of 60 square feet per bed.
- (e) Each resident room shall have at least one (1) outside operable window installed in a vertical wall which can be used as an emergency exit. However, if a ~~facility~~home has a sprinkler system approved by the State Fire Marshall, it shall be exempt from the requirement of an outside operable window in each resident room useable as an emergency exit but shall be required to have a window. Minimum dimension of this window shall be 22 inches and the area shall be minimum of 5 square feet. Windows shall have adjustable coverings to provide privacy.
- (f) Each resident room shall have a full door which can be closed to provide privacy.
- (g) Male and female residents shall not be housed in the same or adjoining rooms which do not have a full floor-to-ceiling partition and door which can be locked, except immediate family may occupy the same room.
- (h) Each resident room shall have an electrical outlet.
- (i) Each resident room shall have a minimum of 20 foot candle power of lighting.
- (j) ~~Each~~Unless the resident elects otherwise, each resident shall have a comfortable chair, a bedside table and a bureau or its equivalent for storing personal belongings.
- (k) When residents' personal furniture is used, it shall be clean and in good repair.
- (l) Each resident's bed shall have a comfortable mattress and bed linens which are clean and in good condition.
- (m) Clean towels and wash cloths shall be available to meet the needs of all residents. Towels and wash cloths shall be in good condition.

### **310:680-5-9. 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 310:680-5-10 or OAC 310:680-5-11.

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

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

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

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

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

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

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

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

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

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

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

(B) Ordinary repairs and maintenance;

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

(D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

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

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

(2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);

(3) Application for self-certification fee: Five Hundred Dollars (\$500.00);

(4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);

(5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

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

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

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

(A) **Not complete.** Upon determining that the application is not administratively

complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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

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

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

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

(C) **Delays.** Failure by an applicant to supplement an application within 90 calendar days after the request shall be deemed to be withdrawn unless the time is extended by agreement for good cause.

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

### **310:680-5-10. 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 residential care home has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

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

(c) **Special submittals.**

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

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

(B) The residential care home 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.

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

(B) Complete architectural plans and specifications.

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

(D) 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.

### **310:680-5-11. Self-certification of plans**

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a residential care home considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310: 680-5-9. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The residential care home and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The residential care home 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 310:680-5-9. The form shall be signed by the residential care home 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 310:680-5-11(c).

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

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

(2) The project involves only portions of the residential care home 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 residential care home 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 residential care home or project

architect or engineer to comply with the requirements of this Chapter; and

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

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

(d) After denial of the application for self-certification and prior to the start of construction, the residential care home shall pay the applicable fee for plan review specified in OAC 310:680-5-9. Upon receipt of the plan review fee, the Department shall review the residential care home's plans in accordance with the process in OAC 310:680-5-9.

## **SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS**

### **310:680-7-5. Housekeeping**

(a) The interior and exterior of the home shall be safe, clean and sanitary.

(b) Practices and procedures shall be utilized to keep the home free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.

(c) Floors and floor coverings shall be clean and in good condition. Floor polishes shall provide for a non-slip finish.

(d) Walls and ceilings shall be in good condition and shall be cleaned regularly. All homes shall have walls capable of being cleaned.

(e) Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(f) Home and surrounding areas shall be kept free from refuse, discarded furniture, and old newspaper. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas away from residents' rooms. No items shall be stored in the hot water heater closet or furnace closet.

(g) General laundry shall be placed in linen hampers/carts with the lids closed hampers, carts, laundry bags, or similar containers suitable for laundry not soiled by body fluids.

(h) Soiled linens or clothing shall be placed in bags or nonporous containers with lids tightly closed.

## **SUBCHAPTER 11. STAFFING REQUIREMENTS**

### **310:680-11-1. Requirements**

Residential care homes shall employ sufficient personnel appropriately qualified and trained to provide the essential services of the home.

#### **(1) Sufficient number of persons.**

(A) Each residential care home shall have one (1) person who is administratively responsible for the home.

(B) There shall be at least one (1) person in charge of the home and its operation on duty in the home whenever residents are present.

(C) There shall be a minimum of 3/4 hour of personnel per day per resident based on

average daily census.

(D) All residential care homes shall have a signed, written agreement with a registered nurse to act as a consultant. Documentation of the use of the nurse consultant shall be maintained in the home.

**(2) Staff qualifications.**

(A) Each residential care home shall have a person designated as "Administrator," who ~~is at least 21 years old and has obtained a residential care administrator's certificate of training from an institute of higher learning whose program has been reviewed by the Department~~ is licensed in accordance with Title 63 O.S. Section 330.51 et seq.

(B) All personnel who have the responsibility for administering or monitoring medication to residents shall obtain a certificate of training in medication administration from an institution of higher learning whose program has been reviewed by the Department. (Currently licensed physicians, registered nurses and licensed practical nurses shall be deemed to meet the medication administration training requirement.)

(C) All other staff shall have training and/or experience relevant to their job description.

(D) Personnel responsible for providing professional services must be appropriately certified, registered, or licensed.

**(3) Staff training.** In order to ensure all homes maintain a level of competency necessary to meet the needs of each individual served in the home, personnel must complete the following training requirements.

(A) ~~All employees~~ At all times there shall be in the home at least one staff person ~~shall be currently certified~~ trained in first-aid and cardiopulmonary resuscitation (that is Red Cross training or equivalent training with a hands-on component). Proof of ~~certification and training~~ certification and training shall be kept on file in the home. First-Aid and CPR ~~certificates~~ training shall be ~~renewed annually, or as required to be kept current.~~

(B) Administrators shall ~~have sixteen (16) hours of job-related training annually. First-aid and CPR training do not count for the sixteen (16) hours~~ obtain continuing education training as required to maintain an administrator's license pursuant to Title 63 O.S. Section 330.51 et seq. All training shall be documented and the record kept in the home.

(C) Direct care staff who are responsible for administering or monitoring medication shall annually be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care program and operation.

(D) All direct care staff shall begin eight (8) hours of inservice by the administrator of the home or other person designated by the administrator of the home within ninety (90) days of employment and completed within twelve (12) months of employment. Eight (8) hours of inservice shall be required annually thereafter.

(E) All residential care programs shall provide a new employee orientation program which includes instruction in policies and procedures regarding the areas of abuse and neglect, resident rights, confidentiality, procedure for handling emergencies, and job descriptions.

**(4) Personnel practices**

(A) Residents shall not supervise other residents.

(B) The behavior of staff reflects sensitivity to the needs of the individuals served for privacy and dignity. For example, confidentiality and normal sensibility are exercised in speaking about an individual, and undignified displays, exhibitions, or exposure of

individuals served, whether deliberate or unintentional, do not occur.

(C) The home shall have written personnel policies and procedures which address such issues as: job description, terms of employment, authorized leave procedures, grievance procedures, and professional conduct.