

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING
FACILITY BEDS**

Unofficial Version

Section

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- [**Authority:** 63 O.S. 1990, § 1-851.2]
[**Source:** Codified 12-31-1991]

310:630-1-1. Purpose

This Chapter shall apply to Certificate of Need applications reviewed by the Department for proposed licensed nursing facility (LNF) beds. This Chapter establishes review criteria and standards.

(1) The Department shall use these standards in considering an application's conformity to the Long Term Care Certificate of Need Act.

(2) Each applicant who proposes licensed nursing facility beds has the burden to clearly demonstrate conformity to these standards.

(3) For purposes of this Chapter, licensed nursing facility (LNF) beds shall include all facilities defined under the Nursing Home Care Act, 63 O.S. Section 1-1901 et seq., excluding any facility certified for service to the mentally retarded.

[**Source:** Amended at 18 Ok Reg 2498, eff 6/25/2001]

310:630-1-2. Service areas

(a) For the purposes of this Chapter, the service area for an LNF shall be presumed to be a map mileage of fifteen miles from the location of the facility, except that the service area shall be a radius of seven and one-half miles for any facility located in the corporate limits of Tulsa or Oklahoma City, and any municipality contiguous with boundaries of Tulsa or Oklahoma City.

(1) The map mileage for LNFs shall be calculated based on the minimum distance on hard surface, all weather roads from LNF to LNF using the State Transportation Department Planning Division's current official General Highway Map by County or City which provides sufficient detail for calculations of the distance between facilities.

(2) The calculation of the service area population shall include population data for the cities and towns which fall within the service area, and an estimate of the service area population which does not live in area cities or towns. If detailed official population data are not available for a rural portion of the service area, the estimate of the rural population shall be a prorated share of the county's rural population based on the geographic size of the portion of the county which is included in the facility's service area.

(b) An applicant may define and describe a service area other than that presumed in (a) of this Section by showing through a clear and convincing demonstration one or more of the following:

(1) the facility is providing or will provide services exclusively to religious groups in which membership is restricted;

(2) the facility is responding or will respond to a regional, statewide or national population with special health service needs;

(3) the facility is or will be a qualified continuing care facility as such term is defined under the Internal Revenue Code Section 7872(g)(4)(A) and is serving or will serve individuals who are residing or will reside in a separate independent living unit owned by the applicant;

(4) the facility is serving or will serve a rural area where residents must drive more than 30 minutes to reach adequate nursing facility services; or

(5) the facility is the nursing care component of a life care community.

[Source: Amended at 18 Ok Reg 2498, eff 6/25/2001; Amended at 19 Ok Reg 2080, eff 6-27-2002]

310:630-1-3. Standards

(a) The applicant shall demonstrate that existing licensed nursing facility beds are not and will not be adequate in the service area described in 310:630-1-2, based on the need of the population.

(1) The applicant shall demonstrate that there are persons who need services in the area but are unable to obtain those services due to the inadequacy of existing LNF facilities in the area.

(2) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over statewide. The applicant must show that the proposed new beds likely will not cause the statewide ratio to exceed 179 beds per 1000 persons age 75 and over, and that the project is consistent with the achievement of an optimal target ratio of 152 beds per 1000 persons age 75 and over.

(3) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over in the service area. No application shall cause an excessive increase in the bed to population ratio of a service area. The determination of whether or not an increase is excessive shall be based on the percentage of increase a project will cause in an area's bed to population ratio, and on a comparison of the area's bed to population ratio against the statewide ratio.

(4) The most recent population data published at the time the application is filed shall be used. The source of population projections for current and future years shall be based on year 2000 census data as published by the Oklahoma Department of Commerce.

(5) If the applicant proposes a special service area under

310:630-1-2, then the applicant shall demonstrate that the target population will have access to the proposed services through public or private transportation.

(b) The applicant shall demonstrate that alternative or substitute services are not and will not be available or are and will be inadequate to meet the needs of the population.

(1) An overall mean occupancy rate of 85% should be maintained in LNF beds in the Service Area described in OAC 310:630-1-2.

(A) This mean shall be based upon data from all similarly-licensed facilities in the Service Area using monthly reports filed with the Department of Health, taking into consideration the following:

(i) any specialized facility for mentally retarded persons or intermediate care facility for mentally retarded persons in the area shall be excluded;

(ii) in the case of a nursing facility application, any hospital-based skilled nursing unit shown to serve a different health service need shall be excluded;

(iii) in the case of a hospital-based skilled nursing unit application, any nursing facility shown to serve a different health service need shall be excluded;

(iv) in the case of a facility demonstrating a special service area under OAC 310:630-1-2(b), each facility not shown to be adequate or appropriate to meet the needs of the facility's special population shall be excluded.

(B) The mean shall be calculated using data for the most recent six month period for which reports are published by the Department of Health, as of the first day of the month during which an application is initially filed.

(i) Beds reserved for residents who were temporarily absent from facilities for hospitalization or other therapeutic purposes shall be considered to have been occupied.

(ii) The area bed capacity used to calculate the occupancy rate shall be reduced by the number of beds that are not available because rooms licensed for multiple occupants have been reserved for single occupants throughout the six-month period.

(C) In determining the service area's conformity to the occupancy goal specified in this subsection, the Department shall investigate the causes for low-occupancy operation of other facilities in the service area. The Department shall exclude such low-occupancy facility from the service area calculations if the facility has been in operation continuously under the current licensee for twenty-four (24) or more months and:

(i) The facility's state license or federal certification during the sixty (60) months preceding the filing of the application has been revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal;

(ii) The facility has a history of noncompliance as defined in 63:1-851.1(6); or

(iii) The facility has not complied with all lawful orders of suspension, temporary management, or administrative

- penalty issued by the Department, another state agency, or by the federal Health Care Financing Administration;
- (iv) The facility's owner, operator, manager, or medical director has been convicted of a criminal offense related to the operation or management of a long-term care facility; or
- (v) The facility has been assessed an administrative penalty above the level of deficiency with one or more of the following unfavorable factors:
- (I) The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;
 - (II) The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident; or
 - (III) Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at the facility within the preceding 60 months.
- (2) The applicant shall demonstrate that the proposed beds are needed in addition to any beds previously approved under the State Certificate of Need laws but not yet in operation in the service area.
- (3) The applicant's demonstration shall include consideration of the adequacy of such alternative services as residential care facilities, Eldercare, home health care, hospice, assisted living and adult day care.
- (c) The applicant shall demonstrate adequate financial resources for the new or expanded long-term care services and for the continued operation thereof.
- (1) Reimbursement shall be structured to realistically provide for care and services to persons living in the service area.
 - (2) The proposed charges shall be in line with the prevailing rate of similar institutions and services within the health service area.
 - (3) The projected utilization rates shall be sufficient to maintain cost-effectiveness.
 - (4) The projected cash flow shall give the proposed project financial viability within three years.
 - (5) The relationship of the institution's assets to liabilities shall not be increased by the proposed project to the point of threatening the financial viability of the institution.
 - (6) The applicant shall supply a cost/benefit analysis to justify the cost-effectiveness of the proposed project.
- (d) The applicant shall demonstrate that sufficient personnel will be available to properly staff and operate the proposed new or expanded long-term care service.
- (1) A proposal to provide new or expanded long-term care service must provide assurances that the appropriate numbers and types of staff will be available to comply with licensure requirements.
 - (2) Professional and paraprofessional staffing of new or expanded long-term care services must not compromise the

staffing of existing long-term care services.

(3) The applicant shall disclose all current and prior experience in the operation of health care facilities, giving names of facilities, locations, and dates. If the applicant has less than sixty (60) months experience in health care facility operations immediately preceding the filing of the application, then the applicant shall:

(i) Provide a plan which details how experienced and competent staffing and leadership, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, will be placed in charge of facility operations; and

(ii) Agree to advise the OSDH, prior to any change in the staffing and leadership during the first six months of operation of the new or expanded facility.

[Source: Amended at 18 Ok Reg 2498, eff 6/25/2001; Amended at 19 Ok Reg 2080, eff 6-27-2002; Amended at 22 Ok Reg 2416, eff 7-11-2005]

310:630-1-4. Standards (Revoked)

[Source: Revoked at 11 Ok Reg 3173, eff 6-27-94]