

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 4. CERTIFICATE OF NEED HEARINGS**

"Unofficial Version"

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[**Authority:** 63 O.S., §§ 1-850 et seq (Amended, 1998); and §§ 1-880.1 et seq. (Amended, 1998)]

[**Source:** Codified 12-31-1991]

**310:4-1-1. Purpose**

The purpose of this Chapter is to implement the following laws: Title 63 O.S. Sections 1-850 et seq., (Long-term Care Certificate of Need Act); Title 63 O.S. Sections 1-880.1 et seq., (Psychiatric and Chemical Dependency Facility Certificate of Need Act); and Title 75 O.S. Sections 250.1 through 323, (Administrative Procedures Act).

[**Source:** Amended at 12 Ok Reg 3025, eff 7-27-95; Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-2001]

**310:4-1-2. Applicability**

This Chapter applies to Certificate of Need applications reviewed by the State Commissioner of Health (Commissioner) or the State Department of Health (Department). The Certificate of Need laws apply to:

- (1) long-term care facilities as defined in 63 O.S. Section 1-851.1; and
- (2) psychiatric or chemical dependency facilities, services or units developed or offered in hospitals as defined in 63 O.S. Section 1-701 et seq.

[**Source:** Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 19 Ok Reg 2042, eff 6-27-2002]

**310:4-1-3. Types of reviews [REVOKED]**

[**Source:** Amended at 9 Ok Reg 1973, eff 6-11-92; Revoked at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-4. Short review process [REVOKED]**

[Source: Amended at 10 Ok Reg 3437, eff 7-1-93 (emergency); Amended at 11 Ok Reg 2609, eff 6-25-94; Amended at 12 Ok Reg 3025, eff 7-27-95; Revoked at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-5. Standard review process**

This Section governs the reviews of Certificate of Need applications.

(1) **Capital Cost.** For purposes of determining filing fees, capital cost means one or more of the following depending on the underlying nature of the transaction.

(A) For construction, the total cost of the project shall include the following components as applicable: land acquisition and site development, soil survey and investigation, construction, equipment, architect fees, engineering fees, supervision, performance and payment bonds, contingency, and inflation factor.

(B) For acquisition by purchase, the total cost of the project shall be the greater of current book value of building and/or equipment, or total contract price including any exchanges or other consideration.

(C) For acquisition by lease, the total cost of the project shall be the current book value of the facility to be leased plus any additional capital expenditures, such as equipment purchases.

(D) For a sale and leaseback, or a combination lease and purchase, the total cost of the project shall be the greater of the purchase cost or current book value of the facility.

(E) For a non-monetary transfer of stock, the total capital cost of the project shall be zero dollars (\$0).

(F) For a transfer of stock in which one party pays or exchanges other consideration to acquire the stock of another party, the total cost of the project shall be the greater of the value of the consideration given for the stock or the book value of the facility on the seller's books.

(G) For a management contract that includes no purchase, lease, donation, transfer of stock, corporate merger, assignment or foreclosure of building, equipment or other assets, the capital cost shall be zero dollars (\$0).

(H) For any other type of project, including but not limited to an addition of beds through conversion of a previously constructed physical plant, the project cost shall be based on the greater of the book value or fair market value of the assets required to accomplish the project.

(I) For any type of project in which book value is used to establish the capital cost, the book value shall be based on audited financial statements or upon generally accepted accounting principles.

(2) **Applicant.** The applicant for a Certificate of Need shall include:

(A) For a long-term care facility:

(i) The person or entity that is or will be the owner, as

that term is defined in 63 O.S. Section 1-1902;<sup>1</sup>

(ii) The person or entity that is or will be the licensee, as that term is defined in 63 O.S. Section 1-1902;<sup>2</sup>

(iii) The person or entity that is or will be the manager as that term is defined in OAC 310 675-1-2.;<sup>3</sup> and

(iv) Any person with a controlling interest, as that term is defined in 63 O.S. Section 1-851.1; or

(B) For a hospital, the entity responsible for operation as defined in OAC 310:667-1-3.

(3) **Filing the application.** The applicant must apply using a form available from the Department. The form must be accompanied by a filing fee in the form of a check payable to the Oklahoma State Health Department.

(A) The fee for an application submitted under the Long Term Care Certificate of Need Act shall be in the amount specified in the Act.

(B) The fee for an application submitted under the Psychiatric and Chemical Dependency Facility Certificate of Need Act shall be three-fourths of one percent (.75%) of the capital cost of the project, with a minimum of One Thousand Five Hundred Dollars (\$1,500.00) and a maximum of Ten Thousand Dollars (\$10,000.00).

(C) If an application is withdrawn before the Department issues an approval or denial on the application, one of the following refunds shall apply:

(i) For an application that is withdrawn prior to the Department's determination of whether the application is complete or incomplete the refund shall be seventy-five percent (75%) of the fee paid;

(ii) For an application that is withdrawn before the deadline for participation by parties the refund shall be fifty percent (50%) of the fee paid; or

(iii) For an application that is withdrawn before the issuance of the Commissioner's final decision the refund shall be twenty-five percent (25%) of the fee paid.

(D) The refund to the applicant pursuant to 310:4-1-5(3)(C) shall not cause the total fee paid by the applicant to be less than the applicable minimum fee set in the Long Term Care Certificate of Need Act or 310:4-1-5(3)(B).

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<sup>1</sup> 63 O.S. 1-1902: '16. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the facility;'

<sup>2</sup> 63 O.S. 1-1902: '13. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by the Department pursuant to the provisions of the Nursing Home Care Act;'

<sup>3</sup> OAC 310 675-1-2: '"Manager" or "supervisor" means the person or entity which performs administrative services for the licensee. The manager or supervisor is not legally responsible for the decisions and liabilities of the licensee, and does not stand to gain or lose financially as a result of the operation of the facility. The manager is paid a fee or salary for services, and the primary remuneration shall not be based upon the financial performance of the facility.'

(4) **Completing the application.** Within fifteen (15) days after the application is filed, the Department shall determine whether or not the application is complete, clear, consistent and accurate. If the Department finds that the application is not complete, the Department shall send a written notice to the applicant requesting the additional or clarifying information needed to make the application complete. The applicant shall file all the requested information with the Department, to be received by the Department not later than ninety (90) days after the date of the notice, or the application shall be summarily dismissed. The Department's finding of completeness shall not prevent the Department from subsequently denying a certificate of need based on such incompleteness, lack of clarity, inconsistency or inaccuracy that may be discovered by the Department as the result of the investigation conducted pursuant to 63 O.S. Section 1-852 or 63 O.S. Section 1-880.6.

(5) **Notice of readiness for review.** The Department shall notify the applicant by mail when the application is determined complete. Also, the Department shall mail notice to health care facilities which provide the same type of service in the service area. The Department shall cause a paid public notice to be published in a newspaper of general circulation near the facility, and in a newspaper of general circulation in the area where the application is available for inspection. These notices shall include the name and location of the facility, a brief description of the project, information on where the full application can be viewed, and an explanation of how parties may participate in the review.

(6) **Participation by parties.** Any person or agency may participate in the review process. Any evidence or argument that a participating party proposes to have the Commissioner consider before making a final decision shall be submitted to the Department in writing within twenty (20) days after the date of publication of the paid public notice.

(7) **Decision deadlines.** The decision to approve or deny a certificate of need for acquisition of a psychiatric or chemical dependency facility shall be made within fifteen (15) days after the deadline for submitting evidence and argument as provided in OAC 310:4-1-5(6). The decision to approve or deny any other type of certificate of need shall be made within forty-five (45) days after the deadline for submitting evidence and argument as provided in OAC 310:4-1-5(6).

(8) **Report of investigation.** If the Department's investigation indicates that the application is not consistent with applicable criteria and standards, then the Department shall notify the applicant of such inconsistencies in writing prior to the decision deadline in 310:4-1-5(7). The applicant shall be offered an opportunity to respond in writing to the Department's notice. To allow the applicant sufficient time to respond and upon mutual agreement of the applicant and the Department, the decision deadline may be extended to a date certain. Upon receipt of the applicant's response, the Department may amend the report of investigation but shall not be required to offer

the applicant a second opportunity to respond. The Commissioner shall consider the applicant's response in making a decision on the certificate of need application. The provisions of this subsection shall not apply if any person has knowingly given false, misleading, or intentionally incomplete information in the application.

[**Source:** Amended at 10 Ok Reg 3437, eff 7-1-93 (emergency); Amended at 11 Ok Reg 2609, eff 6-25-94; Amended at 12 Ok Reg 3025, eff 7-27-95; Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 16 Ok Reg 2450, eff 6-25-99; Amended at 18 Ok Reg 2468, eff 6-25-2001; Amended at 19 Ok Reg 2042, eff 6-27-2002; Amended at 22 Ok Reg 2363, eff 7-11-2005]

**310:4-1-6. Subpoenas and attendance of witnesses [REVOKED]**

[**Source:** Revoked at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-7. Conduct of public hearings [REVOKED]**

[**Source:** Revoked at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-7.1. Applicant's holdings and history**

For the purposes of investigation under 63 O.S. Section 1-852(G) and of findings under 63 O.S. Section 1-853(D), the Department and the Commissioner shall consider the following:

(1) If the licensee has not established a record of performance in long-term care facility operations in the state of Oklahoma of at least sixty (60) months immediately preceding the filing of the application, then the Department and the Commissioner shall investigate and make required findings on the holdings and long-term care facility operations of each person with a controlling interest. In determining the relevance of prior holdings and operations, the Commissioner shall consider whether the person as an individual:

(A) Has authority to adopt or substantially influence governing policies that affect the financial performance or quality of care of the facility for which a Certificate of Need has been applied; and

(B) Had authority to adopt or substantially influence governing policies that affected the financial performance or quality of care of the prior holding or operation.

(2) A history of noncompliance as defined in 63 O.S. Section 1-851.1(6).

[**Source:** Added at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-2001; Amended at 22 Ok Reg 2363, eff 7-11-2005]

**310:4-1-8. Reconsideration of decision**

The applicant or any party may request reconsideration of the Commissioner's decision to issue or deny a Certificate of Need. This section describes the process for reconsideration.

(1) **Filing a request.** The request for reconsideration must be written and must be received by the Department within time frames specified by 63 O.S. Sections 1-853 or 1-880.7 if applicable. The request must demonstrate conformity to at least one (1) of the grounds for a reconsideration hearing set out in

Section 317 of the Administrative Procedures Act.

(2) **Determining good cause.** Within ten (10) days after receipt of the request, the Commissioner shall determine whether the request has shown good cause for reconsideration. If good cause is not shown, the Commissioner shall notify the applicant and other parties of this fact, and no further action shall be taken by the Commissioner. If the Commissioner does find good cause for reconsideration, the Commissioner shall so notify the parties and schedule a public hearing.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-2001]

**310:4-1-9. Judicial review [REVOKED]**

[Source: Revoked at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-10. Ex parte contacts**

Contacts concerning Certificate of Need projects before the Commissioner or the Department may be directed to the Department staff. Applicants and other parties shall not attempt to discuss the merits of a particular case with the Commissioner or the hearing officer except during a preliminary conference or public hearing.

(1) **Procedure.** If the Commissioner or hearing officer is a party to a discussion on the merits of a particular case, then they shall document the contact by reducing to writing the names of the parties and the essence of the conversation. The summary of the contact shall be included in the record of the case.

(2) **Penalty.** Any party who attempts to make an improper ex parte communication with the Commissioner or the hearing officer may be disqualified from further participation in the review of the case.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97]

**310:4-1-11. Effectiveness of issued Certificates of Need**

No Certificate of Need shall be issued to any person other than the person making application for same. No Certificate of Need may be transferred in whole or part to another person. Any transfer of a Certificate of Need renders the certificate invalid.

(1) The review process for plan review is as follows and shall not exceed a total time of twelve (12) months from preliminary or initial plan submittal to include approval by the Department.

A plan submittal which does not satisfy requirements for approval within twelve (12) months shall render the certificate of need void.

(A) Preliminary plans and outline specifications shall be submitted to the Department within six (6) months after approval of a Certificate of Need. The plans and specifications shall include sufficient information to establish 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.

(B) 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) All construction project submittals shall be reviewed and approved or disapproved within 30 calendar days after receipt by the Department.

(2) Commencement of construction for a new or relocated facility, or for an addition to an existing facility, shall be evidenced by the following:

(A) a building permit, if one is required by local government;

(B) proof of excavations for foundations, footings or pilings; and

(C) proof of an incurred financial obligation in the form of an invoice for the excavation work, dated not later than the required construction start date.

(3) For a new or relocated facility, the Department shall visit the new or relocated facility site. The applicant shall agree to be present or represented at the site at the time of the visit.

(4) For a construction project which does not involve the addition of space, the start of construction shall be demonstrated with a building permit, if one is required locally, and an invoice for construction work done at the facility.

(5) Completion of a facility structure or modification shall include at least the completion of exterior walls, all interior load-bearing members, and the facility roof. The Department shall visit the facility site within fifteen (15) working days after receiving a written request from the applicant to confirm the completion of the structure.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 19 Ok Reg 2042, eff 6-27-2002; Amended at 20 Ok Reg 2352, eff 7-11-2003]

### **310:4-1-12. Penalties**

No person may acquire, establish, construct, expand, or begin to acquire, establish, construct or expand a covered health care facility unless that person has first obtained a required Certificate of Need or an exemption from review. Any person who engages in a reviewable activity without first having obtained a Certificate of Need shall be subject to an administrative penalty of not less than One Hundred Dollars (\$100) and not more than Five Hundred Dollars (\$500). Each day that such person continues to acquire, establish, construct, or expand the health care facility service shall be a separate offense, and fines may be imposed separately. Said administrative penalties may be imposed upon order of the Department after notice and opportunity for hearing as required in the Administrative Procedures Act.

[Source: Amended at 18 Ok Reg 2468, eff 6-25-2001]

**310:4-1-13. Description of application forms**

(a) The standard application for a certificate of need requires the following:

(1) The names and addresses of the facility and contact person;

(2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* [63:1-853(D)(2)(d)], including but not limited to:

(A) Sworn and notarized statements from the applicant and each person with controlling interest confirming the lack of any such conviction;

(B) Social security numbers for the applicant and each person with a controlling interest;

(C) Birth dates for the applicant and each person with a controlling interest;

(D) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(i) Name and date of the document;

(ii) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(iii) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (a)(2)(D)(ii) of this section; and

(iv) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department;

(3) Historical operating and financial information for the applicant and the facility;

(4) Residents council and family council minutes for the applicant's facilities;

(5) A detailed description of the project;

(6) Projections of personnel needs and identification of the medical director;

(7) Construction and building information;

(8) Justification of need for the project; and

(9) Data and projections on financial and economic feasibility, including but not limited to the following as applicable:

- (A) For conventional, bank, seller-carried, third party, or bond financing, a statement of the proposed principal amount, interest rate and repayment terms, and that the applicant has access to the required funds, signed under oath by a representative of the lending institution, seller, third party, or authority;
- (B) For equity financing:
- (i) An attested balance sheet for the applicant that is dated within the past twelve (12) months and that reflects cash or cash equivalents sufficient to fund the project; or
  - (ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose.
- (C) For financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank:
- (i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and
  - (ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.
- (b) The certificate of need application for exemption for a ten (10) bed or ten percent (10%) expansion of a licensed nursing or specialized facility requires the following:
- (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity;
  - (3) Historical occupancy information for the facility;
  - (4) A detail of the number of beds to be added; and
  - (5) The projected capital cost.
- (c) The certificate of need application for exemption for facility replacement requires the following:
- (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity;
  - (3) A detail of the number of beds to be replaced;
  - (4) The projected capital cost;
  - (5) A plan for future use of the facility to be replaced; and
  - (6) The distance from the current and proposed sites and a map of the area.
- (d) The certificate of need application for facility acquisition requires the following:
- (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* [63:1-853(D)(2)(d)], including but not limited to:

- (A) Sworn and notarized statements from the applicant and each person with controlling interest confirming the lack of any such conviction;
- (B) Social security numbers for the applicant and each person with a controlling interest;
- (C) Birth dates for the applicant and each person with a controlling interest;
- (D) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:
  - (i) Name and date of the document;
  - (ii) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;
  - (iii) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (d)(2)(D)(ii) of this section; and
  - (iv) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department;
- (3) A description of the proposed transaction and a copy of the contract or agreement;
- (4) A plan for operating the facility including identification of the medical director;
- (5) The projected capital cost;
- (6) Financial proof of the applicant's ability to complete the acquisition and to continue services and staffing; and
- (7) Residents council and family council minutes for the applicant's facilities.
- (e) The certificate of need notice for a decrease of beds or a change in continuum of care at a psychiatric or chemical dependency treatment facility or unit requires the following:
  - (1) The names and addresses of the facility and contact person;
  - (2) A description of the change in beds or change in continuum of care; and
  - (3) The anticipated date of the decrease or change.
- (f) The certificate of need application for exemption of a management agreement requires the following:
  - (1) The names and addresses of the facility, manager and contact person;
  - (2) A copy of the executed management agreement that details the manager's responsibilities and duties;

(3) Disclosure of the applicant's identity and experience that is sufficient to determine if the management entity and any person with a controlling interest has a history of noncompliance;

(4) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(A) Name and date of the document;

(B) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;

(C) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (f)(4)(B) of this section; and

(D) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department; and

(5) The anticipated date of commencement of the management agreement.

(g) The certificate of need application for exemption for ownership change or transfer requires the following:

(1) The names and addresses of the facility and contact person; and

(2) A description of the transfer and disclosure of persons and entities involved or affected;

(3) Copies of agreements or contracts by which ownership is changed or transferred; and

(4) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. Instead of submitting a document that is not a public record previously filed with a local, state or federal government agency, the applicant may submit a sworn and notarized statement that includes all of the following information:

(A) Name and date of the document;

(B) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in

the disclosed document by proper name or by function;

(C) Description of the interest, responsibility, and/or nature of participation of each person or entity named pursuant to (g)(4)(B) of this section; and

(D) Location address and telephone number of the place of business in Oklahoma wherein the applicant shall make the document(s) available for inspection by the Department, upon written request by the Department.

(h) For the purposes of this section, the term "attest" shall have the meanings as defined in 59 O.S. Supp. 2004, Section 15.1A.

[Source: Added at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-2001; Amended at 19 Ok Reg 2042, eff 6-27-2002; Amended at 22 Ok Reg 2363, eff 7-11-2005]

**310:4-1-14. Confidentiality of records**

Financial data submitted by an applicant for the purpose of obtaining a certificate of need does not constitute a record as that term is defined in Title 51 O.S. Section 24A.3., and is therefore not subject to public inspection, copying, and/or mechanical reproduction.

[Source: Added at 19 Ok Reg 2042, eff 6-27-2002]

**310:4-1-15. Management contract exemption [REVOKED]**

[Source: Added at 19 Ok Reg 2042, eff 6-27-2002; Revoked at 22 Ok Reg 2363, eff 7-11-2005]