

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 677.
NURSE AIDE TRAINING AND CERTIFICATION
SUBCHAPTER 1. GENERAL PROVISIONS**

310:677-1-6. Temporary emergency waiver

(a) **Purpose.** This section implements temporary emergency waivers authorized in 63:1-1950.3(A)(2) for nursing facilities, specialized facilities, continuum of care facilities, assisted living centers, adult day care centers, and residential care homes.

(b) **Eligibility for waiver.** A facility, center or home is eligible to receive a waiver if it:

(1) Makes diligent efforts to recruit and retain certified nurse aides, to be evidenced by one or more of the following:

- (A) Employment advertisements;
- (B) Competitive salaries;
- (C) Retention incentives; or
- (D) Recruitment incentives; and

(2) Has not been cited with a deficiency or violation that:

(A) Was identified by the department during an investigation or inspection conducted on or after the effective date of this section; and

(B) Relates to one or more of the following areas of noncompliance:

(i) Failure to develop and implement policies and procedures that prohibit mistreatment, neglect, abuse and misappropriation of property;

(ii) Failure to implement infection control procedures;

(iii) Failure to ensure that staff observe resident rights and responsibilities;

(iv) Failure to comply with criminal history background checks in 63:1-1950.1;

(v) Failure of a nurse aide to perform proficiently on nursing or personal care services;

(vi) Incompetence of a nurse aide; or

(vii) Failure to conduct performance appraisals or training as required for nurse aides; and

(C) Is associated with one or both of the following aggravating circumstances:

(i) The deficiency or violation has not been corrected within required time frames; and/or

(ii) The deficiency or violation is based on activity or inactivity of an uncertified nurse aide

that caused a resident serious injury, harm, impairment or death.

(c) **Process.** This subsection specifies the process to obtain a waiver.

(1) A facility, center or home shall submit a written request on an application form made available by the Department. The form shall require:

(A) Identifying information for the facility;

(B) Documentation that the facility complies with the eligibility requirements specified in OAC 310:677-1-6(b);

(C) Numbers of certified nurse aides, uncertified nurse aides, and other direct care staff persons projected to be employed by the facility during the effectiveness of the waiver;

(D) A narrative describing the reasons why the facility is unable to meet the staffing requirements of 63:1-1950.3, the means by which uncertified nurse aides shall be trained and evaluated during the waiver, and the anticipated duration of the waiver, not to exceed six months; and

(E) An attestation of the truth of the information provided in the application.

(2) If the Department finds that an application is incomplete, the Department shall advise the applicant in writing and offer an opportunity to submit additional or clarifying information.

(3) Within thirty days after receipt of a completed request for a waiver, the Department shall approve or disapprove the request and send written notice of the decision to the facility, center or home.

(4) The Department shall provide notice to the Office of the Oklahoma Long Term Care Ombudsman established under section 307(a)(12) of the Older Americans Act of 1965 of the Department's action on each waiver application.

(5) The facility, center or home shall notify residents, clients or participants (or, where appropriate, the guardian or legal representative) and members of their immediate families of the Department's action on the waiver application. A copy of the notice shall be posted in an easily accessible and conspicuous place in the facility, center or home.

(6) An applicant who disagrees with the Department's disapproval of the waiver application may file a written petition requesting review by an administrative law judge in an individual proceeding under the Oklahoma Administrative Procedures Act.

(d) **Conditions for obtaining waiver.** The following additional conditions apply.

(1) To remain eligible for a waiver, the facility must continue after November 1, 2004 to comply with the substantive training limitations specified in 63:1-1950.3(A)(1), (B), (C) and (D).

(2) A waiver approved by the Department is effective for the period specified by the Department and not to exceed six months, unless sooner withdrawn by the Department for failure to meet eligibility requirements.

(3) If a facility, center or home applies for a subsequent waiver it shall submit another application for waiver in accordance with (c) of this section and include the following additional information on each uncertified nurse aide employed during the preceding waiver period:

(A) Name and date of birth;

(B) Date the facility began using the person as a nurse aide;

(C) Date the person entered training and competency evaluation; and

(D) Date the person completed training and competency evaluation, or, if training and evaluation have not been completed, the person's status at the time of application and the projected date when evaluation will be completed.

[**Source:** Added at 22 Ok Reg 232, eff 10-31-2004 (emergency);
Added at 22 Ok Reg 2456, eff 7-11-2005]