



LONG-TERM CARE FACILITY ADVISORY BOARD

Regular Meeting

April 13, 2011 at 1:30 p.m. in Room 1102

Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK

Draft Minutes

1) Call to Order

Kay Parsons, Vice-Chair, called the meeting to order at 1:39 p.m. Wednesday, April 13, 2011. The 2011 Long Term Care Facility Advisory Board (LTCFAB) meeting notices were filed and posted with the Secretary of State and Oklahoma State Department of Health (OSDH) website on November 18, 2010. The April 13, 2011 meeting agenda was posted April 11, 2011 on the OSDH website and at the OSDH building's front entrance on April 12, 2011.

2) Roll Call

Jacob Booth called roll with the following members present: Kay Parsons, Vice-Chair; Margaret Wallace, Secretary-Treasurer; Donna Bowers; Jane Carlson; Sharon Housh; Esther Houser; Angela York; Cassell Lawson; Mich Magness; Alan Mason; Bonita Cordray; Dustin Cox; Tammy Vaughn; Linda Brannon; Willie Cantwell; Dewey Sherbon; H.F. Timmons; Dr. Peter Winn; Renee Hoback, and Marla Heckman.

The following LTCFAB members were absent: Wendell Short, Chair; Theo Crawley; JoAnne Sellars; and Diana Sturdevant.

Currently, there are three vacancies on the LTCFAB which consist of one (1) Osteopathic General Practitioner/Geriatrician position, one (1) Residential Care Home Operator/Administrator position, and one (1) General Public Over Age of 65 position.

A quorum was met with twenty (20) LTCFAB members present. Introduction of LTCFAB members and attendees commenced.

Identified Department of Health staff present were: Dorya Huser, Long Term Care (LTC); Jim Buck, LTC; Mike Cook, LTC; Karen Gray, LTC; Debbie Zamarripa, LTC; Mary Fleming, LTC; Nathan Johns, LTC; Vicki Kirtley, Nurse Aide Registry (NAR); James Joslin, Health Resource Development Service (HRDS); John Judge, HRDS; Darlene Simmons, HRDS; Mary Womack, OSDH; and Sue Davis, LTC.

Meetings are posted at:

<http://www.health.ok.gov/calendar/mtngs/index.html>

<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>

Approved minutes are posted at <http://www.health.ok.gov/calendar/mtngs/ltcab.html>

Identified guests present were: Marilyn Kipps, General Public; Jackye Ward, Oklahoma Board of Nursing; Oralene Sherbon, General Public; Nancy Poteete, Oklahoma Residential Assisted Living Association (ORALA); Joyce Clark, Achievis Senior Living; Gus Pekara, Downtown Consortium; Lisa Croston, OSU Wellness Center; Greg Frogge, McAfee & Taft; Becky Moore, Oklahoma Association of Health Care Providers (OAHCP); Ann Osborne, Francis Tuttle; Shelba Murray Francis Tuttle; Denise Wilson ORALA, and Marietta Lynch, OAHCP.

3) Review and Action to Approve/Amend the January, 2011 Regular Meeting Minutes

Agenda Item #3

Vote 1

Motion: Approval of the January 12, 2011 Regular Meeting Minutes

Motion Made by: Dr. Peter Winn Seconded: Kay Parsons Motion Carried: Yes
 Aye: 21 Abstain: 0 Nay: 0 Absent: 3

Aye: 19 **Abstain:** 1 **Nay:** 0 **Absent:** 4

Donna Bowers	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Jane Carlson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	JoAnne Sellars	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Theo Crawley	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dewey Sherbon	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Sharon Housh	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Wendell Short	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Esther Houser	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	H.F. Timmons	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Angela York	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Margaret Wallace	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Cassell Lawson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dr. Peter Winn	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Mich Magness	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Renee Hoback	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Alan Mason	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Diana Sturdevant	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Bonita Cordray	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Marla Heckman	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Vacant – General Public	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tammy Vaughn	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Vacant – RC Operator	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Linda Brannon	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Vacant – Osteopathic/GP	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Willie Cantwell	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

4) Protective Health Services Organizational Orientation

James Joslin, Chief, Health Resources Development Services (HRDS) provided a brief overview of the organizational structure for the Oklahoma State Department of Health (OSDH), Protective Health Services (PHS), and HRDS. Mr. Joslin further provided a comprehensive breakdown of the many different departments within PHS and the numerous services provided to the citizens of Oklahoma. In addition, Mr. Joslin provided a list of the statutory advisory boards that provide advisory services to the departments within PHS. Mr. Joslin also provided a handout entitled “Protective Health Services Organizational Overview” to the LTCFAB members and fielded questions and comments as requested.

5) Honoring Service

Kay Parsons, Vice-Chair presented a list of former LTCFAB members that are no longer with the Board and asked the Board to honor them for their previous service. Ms. Parsons further asked the board to consider a motion to present a letter of thanks to be sent to previous LTCFAB members. Cassell Lawson made the motion and Dewey Sherbon seconded that motion.

Agenda Item #5
Vote # 3

Motion: Draft Letters of Thanks to Former LTCFAB Members

Motion Made by: Cassell Lawson Seconded: Dewey Sherbon Motion Carried: Yes
 Aye: 18 Abstain: 0 Nay: 0 Absent: 6

Donna Bowers	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Jane Carlson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	JoAnne Sellars	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Theo Crawley	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dewey Sherbon	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input checked="" type="checkbox"/> Nay
Sharon Housh	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Wendell Short	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Esther Houser	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	H.F. Timmons	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Angela York	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Margaret Wallace	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Cassell Lawson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dr. Peter Winn	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Mich Magness	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Renee Hoback	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Alan Mason	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Diana Sturdevant	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
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Willie Cantwell	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

6) Update from Long Term Care

Jim Buck, Assistant Chief for the Long Term Care Services Division, provided an update on the rule changes for Chapter 675. Mr. Buck stated that the rule changes had moved forward in the rule making process and that they were approved by the Board of Health on March 8, 2011 and were heading to the Governor’s office for final approval. Mr. Buck further stated that the rule changes would become effective on June 25, 2011 pending review and signature by the Governor. Mr. Buck also provided quick updates about the recent “Fire Inspector I” training that he and his staff recently attended and the most recent edition of the “Insider Chat” newsletter. It was noted by Mr. Buck that he and all of his staff attained certification after passing the “Fire Inspector I” exam. Mr. Buck fielded questions and comments as requested.

7) New Business

Not reasonably anticipated 24 hours in advance of meeting.

8) Public Comment

Public comment was made throughout the meeting.

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<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>
 Approved minutes are posted at <http://www.health.ok.gov/calendar/mtngs/ltcab.html>

9) Adjournment

The meeting adjourned.

The next regular Long Term Care Facility Advisory Board Meeting is scheduled for July 13, 2011 at 1:30 p.m. in room 1102 of the Oklahoma State Department of Health.

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Approved minutes are posted at <http://www.health.ok.gov/calendar/mtngs/lcab.html>



LONG-TERM CARE FACILITY ADVISORY BOARD

Regular Meeting

July 13, 2011 at 1:30 p.m. in Room 1102

Oklahoma State Department of Health, 1000 NE 10th Street, Oklahoma City, OK

Draft Minutes

Informational Only

1) Call to Order

Wendell Short, Chair, called the meeting to order on Wednesday, July 13, 2011. The 2011 Long Term Care Facility Advisory Board (LTCFAB) meeting notices were filed and posted with the Secretary of State and Oklahoma State Department of Health (OSDH) website on November 18, 2010. The July 13, 2011 meeting agenda was posted July 12, 2011 on the OSDH website and at the OSDH building's front entrance on July 12, 2011.

2) Roll Call

Jacob Booth called roll with the following members present: Wendell Short, Chair; Kay Parsons, Vice Chair; Donna Bowers; Esther Houser; Angela York; Cassell Lawson; Dustin Cox; Tammy Vaughn; Willie Cantwell; Dewey Sherbon; H.F. Timmons; Dr. Peter Winn; Renee Hoback, and Marla Heckman.

The following LTCFAB members were absent: Margaret Wallace, Secretary-Treasurer; Jane Carlson; Theo Crawley; Sharon Housh; Mich Magness; Alan Mason; Bonita Cordray; Linda Brannon; JoAnne Sellars; and Diana Sturdevant.

Currently, there are three vacancies on the LTCFAB which consist of one (1) Osteopathic General Practitioner/Geriatrician position, one (1) Residential Care Home Operator/Administrator position, and one (1) General Public Over Age of 65 position.

A quorum was not met. Introduction of LTCFAB members and attendees commenced.

Identified Department of Health staff present were: Dorya Huser, Long Term Care (LTC); Jim Buck, LTC; Mike Cook, LTC; Nathan Johns, LTC; Vicki Kirtley, Nurse Aide Registry (NAR); James Joslin, Health Resource Development Service (HRDS); Mary Womack, OSDH; Terri Cook, LTC; Patty Scott, LTC; Lisa McAlister, LTC; Timothy Cathey, Protective Health Services (PHS), Marshall Dobbs, OSDH, and Sue Davis, LTC.

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<http://www.health.ok.gov/calendar/mtns/index.html>

<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>

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Identified guests present were: Jackye Ward, Oklahoma Board of Nursing; Oralene Sherbon, General Public; Nancy Poteete, Oklahoma Residential Assisted Living Association (ORALA); Joyce Clark, Achievis Senior Living; Lisa Croston, OSU Wellness Center; Becky Moore, Oklahoma Association of Health Care Providers (OAHCP); Ann Osborne, Francis Tuttle; Shelba Murray Francis Tuttle; Penny Ridenour, Oklahoma Assisted Living Association (OKALA); Connie Jones, Centers for Medicare and Medicaid Services (CMS); Ernest Baumann, CNA; Kristin Schrader, CNA; Mary Brinkley, LeadingAge Oklahoma; Andrea Pogue, Oklahoma Department of Career and Technology Education (ODCTE); and Marietta Lynch, OAHCP.

3) Review and Action to Approve/Amend the April 13, 2011 Regular Meeting Minutes

A quorum was not reached; therefore, a vote was not able to be taken on the April 13, 2011 minutes. Due to a quorum not being reached, the LTC Facility Advisory Board reviewed the April 13, 2011 minutes. The approval of the April 13, 2011 minutes will be addressed at the October 12, 2011 LTCFAB meeting.

4) Oklahoma Long Term Care Background Check Program

James Joslin, Chief, Health Resources Development Services (HRDS) introduced Ernest Baumann, from CNA. Mr. Baumann explained that CNA is a non-profit organization that provides research services at no cost to the States through a grant provided by the Centers for Medicare and Medicaid Services (CMS). Mr. Baumann further explained that CNA has been working with a number of states that have been awarded grant money by CMS to implement the National Background Check Program and that they are currently working with the State of Oklahoma. Mr. Baumann then provided a handout to the LTCFAB members and public that provided a brief overview of the program, related statistics concerning crimes, convictions, and jobs in which the convicted are currently holding, and also the next steps the State of Oklahoma will take in implementing the program. Mr. Baumann proceeded to review the handout with the LTCFAB members and fielded questions and comments as requested. Mr. Baumann then handed over the presentation to Mr. Joslin who provided a current update of where Oklahoma is currently at in the process of implementing the National Background Check Program. Mr. Joslin then fielded questions and comments as requested.

5) Oklahoma State Department of Health (OSDH) Rulemaking Process

Jim Buck, Assistant Chief, Long Term Care Service Division provided a brief overview of the rulemaking process that is utilized by the Oklahoma State Department of Health (OSDH). Mr. Buck provided a handout defining the steps that are followed when the OSDH decides to make rule changes or draft new language. Mr. Buck then provided a brief overview of the document that was provided and explained to the LTCFAB their role in the rulemaking process. He further explained that the LTCFAB provides recommendations and guidance to the Commissioner of Health concerning rule changes or drafting of new language. Mr. Buck then fielded questions and comments as requested.

6) Update from Long Term Care

Dorya Huser, Chief, Long Term Care Service Division, provided an update on the recent announcement that LTC would begin implementing the new Quality Indicator Survey (QIS) process. Ms. Huser explained that LTC would hopefully begin the official process in the next six weeks. Ms. Huser further provided a brief overview of how the process would be implemented and how it would affect staff and the survey process. Mr. Huser then fielded questions and comments as requested.

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Approved minutes are posted at <http://www.health.ok.gov/calendar/mtngs/ltcab.html>

7) **New Business**

Not reasonably anticipated 24 hours in advance of meeting.

8) **Public Comment**

Public comment was made throughout the meeting.

9) **Adjournment**

The meeting adjourned.

The next regular Long Term Care Facility Advisory Board Meeting is scheduled for October 12, 2011 at 1:30 p.m. in room 1102 of the Oklahoma State Department of Health.

Informational Only

Meetings are posted at:

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Approved minutes are posted at <http://www.health.ok.gov/calendar/mtngs/ltcab.html>

OKLAHOMA STATE DEPARTMENT OF HEALTH
INITIAL RULE IMPACT STATEMENT
TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

Before the Oklahoma State Board of Health March 13, 2012

1. **DESCRIPTION:** The proposed rule changes establish the process for the imposition of remedies against a licensed continuum of care and/or assisted living center when such a center fails to comply with the provisions of the Continuum of Care and Assisted Living Act or any rule promulgated or order issued pursuant to the provisions of the Act; amends the current Definition section to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", "Survey exit date" and amends to definition of "Chemical restraint" and "Physical restraint" to ensure that the state definition is the same as the federal definition
Section 310:663-1-2, Definitions. This new language amends the current Definitions section of the rule to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", and "Survey exit date" so that the reader does not have to research the definition of these terms and amends the state definition of "Chemical restraint" and "Physical restraint" to be consistent with the federal definition.
Section 310:663-25-5, Remedies, This rule promulgates rules in accordance with 63 O.S. Section 1-890.6.c. The proposal defines the process through which the Department of Health may impose remedies against a licensed continuum of care and/or assisted living center when such a center fails to comply with the provisions of the Continuum of Care and Assisted Living Act and any rules promulgated pursuant thereto. The proposal will foster prompt center action to correct noncompliance conditions and promote consistency in center performance. The proposal will improve consistency and accuracy in the imposition of remedies through a defined structured process. The effect of the Rule change will be residents receiving the care and services needed to meet their highest practicable level of functioning.
2. **CLASSES OF PERSONS AFFECTED:** Affected persons will be residents and their families as well as owners, operators, staff of Continuum of Care and Assisted Living Centers, and the Department of Health.
3. **CLASSES OF PERSONS BENEFITTED:** The Remedies Rule will benefit residents through prompt center response to correct noncompliance conditions, ensuring residents receive the care and services to meet their highest practicable level of functioning and enable residents to reach these goals. The maximum number of residents that might benefit is estimated at seven thousand seven hundred (7,700).
4. **ECONOMIC IMPACT:** These Rules involve no additional fees.
5. **COST:** The cost to the agency for implementation of the rules and reprinting of Chapter 663 is approximately four thousand one hundred and fifty six dollars (\$4,156). The information can be retrieved on the Oklahoma State Department of Health's website. The Chapter will only need to be provided to facilities wanting to become licensed in the State of Oklahoma. Licensed operators receive notification of rule adoption through a Department of Health provider letter.
6. **IMPACT ON POLITICAL SUBDIVISIONS:** These rules will have no economic impact on any political subdivisions, and will not require their cooperation in implementing or enforcing these rules.

7. **ADVERSE EFFECT ON SMALL BUSINESS:** No adverse effect on small business has been identified at this time.
8. **LESS COSTLY METHODS:** No less costly methods were identified to achieve the proposed rules changes. The Department of Health conducts provider education to minimize violations and therefore decreases on-site survey time.
9. **SIGNIFICANT RISKS:** The development of these rules that address standards in care delivery within long term care facilities is an assurance function of this public health agency.

The Continuum of Care and Assisted Living Act establishes several expectations. The first is that centers remain in compliance with State licensure requirements. The regulation emphasizes the need for continued, rather than cyclical compliance. The enforcement process mandates that policies and procedures be established to remedy deficient practices and to ensure that correction is lasting; specifically, that centers take the initiative and responsibility for continuously monitoring their own performance to sustain compliance. The second expectation is that all deficiencies will be address promptly. The third expectation is that residents will receive the care and services they need to meet their highest practicable level of functioning. The remedies detailed in this Rule provide incentives for the continued compliance needed to enable residents to reach these goals.
10. **DETRIMENTAL EFFECTS:** If not implemented, the Rule defining the process by which the Department of Health may impose remedies against a licensed center when such a center fails to comply with the Continuum of Care and Assisted Living Act and any rule promulgated thereto, will be the inability to foster prompt center action to achieve compliance and hinder the Department's ability to provide incentives for compliance needed for residents of Continuum of Care and Assisted Living Centers to reach their highest level of functioning.
11. This initial rule impact statement was prepared on: September 23, 2011.

1 TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
2 CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING
3

4 SUBCHAPTER 1. GENERAL PROVISIONS
5

6 **310:663-1-2. Definitions**

7 When used in this Chapter, the following words or terms shall
8 have the following meaning unless the context of the sentence requires
9 another meaning:

10 **"Abuse"** means the willful infliction of injury, unreasonable
11 confinement, intimidation or punishment, with resulting physical harm,
12 impairment or mental anguish.

13 **"Act"** means the Continuum of Care and Assisted Living Act, Title
14 63 O.S. Sections 1-890.1 et seq. of the Oklahoma Statutes.

15 **"Assisted living center"** means any home or establishment
16 offering, coordinating or providing services to two (2) or more
17 persons who:

18 (A) are domiciled therein;

19 (B) are unrelated to the operator;

20 (C) by choice or functional impairments, need assistance with
21 personal care or nursing supervision;

22 (D) may need intermittent or unscheduled nursing care;

23 (E) may need medication assistance; and

24 (F) may need assistance with transfer and/or ambulation;
25 Intermittent nursing care and home health aide services may be
26 provided in an assisted living facility by a home health agency
27 [63:1-890.2(1)].

28 **"Chemical restraint"** means the use of a medication for the
29 purpose of discipline, convenience, or in an emergency situation to
30 control mood or behavior and not required to treat the resident's
31 symptoms. ~~Chemical restraint does not mean medication prescribed to~~
32 ~~maintain emotional stability.~~

33 **"Commissioner"** means the Commissioner of Health.

34 **"Continuum of care facility"** means a home, establishment or
35 institution providing nursing facility services as defined in Section
36 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the
37 following:

38 (A) assisted living center services as defined in the Continuum
39 of Care and Assisted Living Act; and

40 (B) adult day care center services as defined in Section 1-872
41 of Title 63 of the Oklahoma Statutes [63:1-890.2.4].

42 **"Deficiency"** means a center's failure to meet a requirement of
43 Title 63 O.S. Section 1-890 et seq. or the rules promulgated by the
44 Board of Health under this Act.

45 **"Department"** means the Oklahoma State Department of Health.

46 **"Direct care staff"** in an assisted living center means qualified
47 nursing, activity, social and therapy staff employed by or under the
48 direct supervisory control of the assisted living center.

49 **"Immediate Jeopardy"** means a situation in which a center's non-
50 compliance with one or more requirements has caused, or is likely to

1 cause, serious injury, harm, impairment, or death to an individual
2 receiving care in the center.

3 **"Intermittent or unscheduled nursing care"** means skilled nursing
4 care given by a licensed practical nurse or registered nurse that is
5 not required twenty-four (24) hours a day.

6 **"Misappropriation of resident's property"** means the taking,
7 secretion, misapplication, deprivation, transfer, or attempted
8 transfer to any person not entitled to receive any property, real or
9 personal, or anything of value belonging to or under the legal
10 authority, or the taking of any action contrary to any duty imposed by
11 federal or state law prescribing conduct relating to the custody or
12 disposition of resident's property.

13 **"Neglect"** means a failure to provide goods and services necessary
14 to avoid physical harm, mental anguish or mental illness.

15 **"Non-compliance"** means any deficient practice that causes a
16 center to not be in compliance with state licensure.

17 **"Personal care"** *means assistance with meals, dressing, movement,*
18 *bathing or other personal needs or maintenance, or general supervision*
19 *of the physical and mental well-being of a person [63:1-1902.17] and*
20 *includes assistance with toileting.*

21 **"Plans of Correction"** means a written description of the actions
22 to be taken by a center in order to correct deficiencies. The Plan
23 shall include the dates by which the deficiencies will be corrected.
24 The Plan of Correction is prepared by the center.

25 **"Qualified nutritionist"** is a Department approved person who
26 holds a baccalaureate with major studies in food and nutrition,
27 dietetics, or food service management; has one year experience in the
28 dietetic service of a health care institution; and participates in
29 continuing education annually.

30 **"Representative"** means an agent under a durable power of attorney
31 for health care, or a court-appointed guardian or, if there is no
32 court-appointed guardian, the parent of a minor, a relative, or other
33 person, designated in writing by the resident.

34 **"Resident"** means anyone accepted for care through contractual
35 agreement and who meets the admission criteria established pursuant to
36 310:663-3-2.

37 **"Physical restraint"** means any manual method or physical or
38 mechanical device, material or equipment attached or adjacent to the
39 resident's body that the resident cannot remove easily, ~~that is not~~
40 ~~used for the purpose of therapeutic intervention or body alignment as~~
41 ~~determined by resident assessment and care planning,~~ and which
42 restricts the resident's desired freedom of movement and access to his
43 or her body.

44 **"Significant change"** is defined as a major change in the
45 resident's status that is not self limiting; affects more than one
46 area of the resident's health status; and requires interdisciplinary
47 review and/or revision of the care plan.

1 "Survey Exit Date" means the last day of a survey by the
2 Department of Health.¹
3

4
5 **SUBCHAPTER 25. INSPECTIONS AND INVESTIGATIONS**
6

7 **310:663-25-5. Remedies**

8 (a) Statement of Deficiencies

9 (1) When the Department identifies a center's failure to comply
10 with state statute and/or regulations, the Department shall document
11 such failure(s) on a state form.

12 (b) Remedies Generally

13 (1) Remedies Available. In accordance with Title 63 O.S. et. seq.
14 1-890.6.C the following remedies are available.

15 A. When a center has been determined to have failed to comply
16 with any provision of the Continuum of Care and Assisted Living
17 Act or any rule promulgated shall be liable for an administrative
18 penalty of not more than Five Hundred Dollars (\$500.00) per day.

19 (2) Factors to Be Considered. In order to determine the
20 seriousness of the deficiency, and the appropriate remedy to
21 pursue, if any, the Department:

22 A. Shall consider whether a center's noncompliance resulted in
23 harm, whether there was a potential for more than minimal harm,
24 the degree of actual and/or potential harm, and/or whether there
25 was immediate jeopardy;

26 B. Shall consider whether the deficiencies are isolated,
27 constitute a pattern, or are widespread; and

28 C. May consider the relationship of the deficiency to other
29 deficiencies and the center's history of noncompliance.

30 (c) Categories of Remedies

31 (1) Category 1 Remedies. Category 1 remedies include one or more
32 of the following:

33 A. Plan of Correction

34 B. Administrative Penalty: \$30 per day

35 (2) Category 2 Remedies. Category 2 remedies include one or more
36 of the following:

37 A. Ban on Admissions

38 B. Plan of Correction

39 C. Revocation or Suspension of License

40 D. Administrative Penalties: \$30 - \$300 per day

41 (3) Category 3 Remedies. Category 3 remedies include one or more
42 of the following:

¹ Amends section to include definitions for Deficiency, "Immediate jeopardy", "Noncompliance", "Plans of correction", "Survey exit date" and amends the definition of "Chemical restraint" and "Physical restraint" to ensure state definition is the same as the federal definition. This footnote is not for final promulgation.

1 A. Ban on Admissions

2 B. Plan of Correction

3 C. Revocation or Suspension of License

4 D. Administrative Penalties: \$300 - \$500 per day

5 (d) Administrative Penalties

6 (1) When Imposed. The Department of Health may impose an
7 administrative penalty for each day a center is or was not in
8 compliance with one or more requirements of licensure. The penalty
9 may be imposed in any situation under which Category 1, 2 or 3
10 remedy is required in Appendix C.

11 (2) Required Action.

12 A. Except as otherwise provided by this rule, if deficiencies do
13 not constitute immediate jeopardy but cause actual harm, the
14 penalty shall be an amount not less than Thirty Dollars (\$30.00)
15 nor more than Three Hundred Dollars (\$300.00) per day of
16 violation.

17 B. If deficiencies constitute immediate jeopardy, the penalty
18 shall be an amount not less than Three Hundred Dollars (\$300.00)
19 nor more than Five Hundred Dollars (\$500.00) per day of violation
20 (amounts set in Ten Dollar (\$10.00) increments).

21 C. Except as otherwise provided by this rule, if deficiencies
22 constituting immediate jeopardy are resolved and the immediate
23 jeopardy is removed but noncompliance continues, the daily
24 penalty shall be reduced to an amount not less than Thirty
25 Dollars (\$30.00) nor more than Five Hundred Dollars (\$500.00) per
26 day as determined by the Department.

27 D. If deficiencies not constituting immediate jeopardy become
28 more serious and immediate jeopardy exists, the daily penalty
29 shall be increased to an amount not less than Three Hundred
30 Dollars (\$300.00) nor more than Five Hundred Dollars (\$500.00)
31 per day as determined by the Department.

32 E. The Department shall discontinue accrual of the administrative
33 penalty on the last day of non-compliance.

34 (e) Notice of Administrative Penalty

35 (1) Contents of Notice: The notice of intent to impose a
36 administrative penalty under these rules shall include:

37 A. Nature of the noncompliance;

38 B. Statutory basis for the penalty;

39 C. Amount of penalty per day of noncompliance;

40 D. Date upon which the penalty begins to accrue; and

1 E. Statement of the facility's right to a hearing as in
2 accordance with OAC 310:663-25-4.(C).²

PROPOSED

² This promulgates rules in accordance with 63 O.S. Section 1-890.6.c. This footnote is not for final rule promulgation.

Appendix C. Scope and Severity Levels for Health Inspections Deficiency Citations

S E V E R I T Y	Level 4	Scope & Severity = J Isolated Immediate Jeopardy to resident health or safety. <u>Category 3</u>	Scope & Severity = K Patterned – Immediate Jeopardy to resident health or safety. <u>Category 3</u>	Scope & Severity = L Widespread – Immediate Jeopardy to resident health or safety. <u>Category 3</u>
	Level 3	Scope & Severity = G Isolated – Actual Harm that is not immediate jeopardy. <u>Category 2</u>	Scope & Severity = H Patterned – Actual Harm that is not immediate jeopardy. <u>Category 2</u>	Scope & Severity = I Widespread – Actual Harm that is not immediate jeopardy. <u>Category 2</u>
	Level 2	Scope & Severity = D Isolated – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = E Patterned – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = F Widespread – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>
	Level 1	Scope & Severity = A Isolated – No actual harm with potential for minimal harm. <u>Category 1</u>	Scope & Severity = B Patterned – No actual harm with potential for minimal harm. <u>Category 1</u>	Scope & Severity = C Widespread – No actual harm with potential for minimal harm. <u>Category 1</u>
	Isolated	Pattern	Widespread	
SCOPE				

Remedy Categories

Category 1

- Plan of Correction
- Administrative Penalty:
\$30 per day

Category 2

- Plan of Correction
- Ban on Admissions
- Suspension of License
- Revocation of License
- Administrative Penalties:
\$30 - \$300 per day

Category 3

- Plan of Correction
- Ban on Admissions
- Suspension of License
- Revocation of License
- Administrative Penalties:
\$300 - \$500 per day

Guidance on Severity Levels

There are four severity levels. Level 1, no actual harm with potential for minimal harm; Level 2, no actual harm with potential for more than minimal harm that is not immediate jeopardy; Level 3, actual harm that is not immediate jeopardy; Level 4, immediate jeopardy to resident health or safety. These four levels are defined accordingly:

1. Level 1 is a deficiency that has the **potential for causing no more than a minor negative impact** on the resident(s).
2. Level 2 is noncompliance that results **in no more than minimal physical, mental and/or psychosocial discomfort** to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
3. Level 3 is noncompliance that results in a negative outcome that has **compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and psychosocial well-being** as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. This does not include a deficient practice that only could or has caused limited consequence to the resident.
4. Level 4 is **immediate jeopardy**, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused or is likely to cause, **serious injury, harm, impairment, or death** to a resident receiving care in a facility.

Guidance on Scope Levels

Scope has three levels: isolated; pattern; and widespread. The scope levels are defined accordingly:

1. Scope is **isolated** when one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, and/or the situation has occurred only occasionally or in a very limited number of locations.
2. Scope is a **pattern** when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been

affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

3. Scope is **widespread** when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents. Widespread scope refers to the entire facility population, not a subset of residents or on unit of a facility. In addition, widespread scope may be identified if a systemic failure in the facility (e.g., failure to maintain food at safe temperatures) would be likely to affect a large number of residents and is, therefore, pervasive in the facility.

PROPOSED

OKLAHOMA STATE DEPARTMENT OF HEALTH
INITIAL RULE IMPACT STATEMENT
TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

Before the Oklahoma State Board of Health March 13, 2012

1. **DESCRIPTION:** The proposed rule changes establish the process for the imposition of remedies against a licensed nursing and specialized facility when such a facility fails to comply with the provisions of the Nursing Home Care Act or any rule promulgated or order issued pursuant to the provisions of the Act; amends the current Definition section to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", "Significant weight loss", "Survey exit date" and amends to definition of "Physical restraint" to ensure that the state definition is the same as the federal definition; amends the requirement for documenting percentages of consumed meals, supplements and meal replacements to only those residents receiving supplements or experiencing significant weight loss.

Section 310:675-1-2, Definitions. This new language amends the current Definitions section of the rule to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", "Significant weight loss", and "Survey exit date" so that the reader does not have to research the definition of these terms and amends the state definition of "Physical restraint" to be consistent with the federal definition.

Section 310:675-3-9, Remedies. This rule promulgates rules in accordance with 63 O.S. Section 1-1916.1.A. The proposal defines the process through which the Department of Health may impose remedies against a nursing facility or a specialized facility when such a facility fails to comply with the provisions of the Nursing Home Care Act and any rules promulgated pursuant thereto. The proposal will foster prompt facility action to correct noncompliance conditions and promote consistency in facility performance. The proposal will improve consistency and accuracy in the imposition of remedies through a defined structured process. The effect of the Rule change will be residents receiving the care and services needed to meet their highest practicable level of functioning.

Section 310:675-12.1(d)(1), Meals. The current Rule addresses the requirement for the documentation of percentages of consumed meals, supplements and meal replacements in clinical record at the time of observation. This proposal amends the requirement for documenting percentages to only residents receiving supplements and/or experiencing significant weight loss. The effect of the rule change is the elimination of an unnecessary paper compliance when outcomes can be measured through lab values, nutritional assessments, monthly documentation, and monthly weights.

2. **CLASSES OF PERSONS AFFECTED:** Affected persons will be residents and their families as well as owners, operators, staff of Nursing and Specialized Facilities, and the Department of Health.

Facilities staff will benefit from the documentation of percentages Rule through the elimination of an unnecessary regulatory requirement for the documentation of percentages of consumed meals, supplements and meals consumed from all residents to only those receiving supplements and/or experiencing significant weight loss.

3. **CLASSES OF PERSONS BENEFITED:** The Remedies Rule will benefit residents through prompt center response to correct noncompliance conditions, ensuring residents receive the care and services to meet their highest practicable level of

functioning and enable residents to reach these goals. The maximum number of residents that might benefit is estimated at twenty thousand four hundred and twenty two (20,422).

Three hundred and eighty seven (387) Nursing and Specialized facilities will benefit from the documenting percentage of consumed meals, supplements and meal replacements Rule by the elimination of an unnecessary regulatory requirement.

4. **ECONOMIC IMPACT:** These Rules involve no additional fees. Elimination of the requirement for documenting percentages of consumed meals, supplements and meal replacements for all residents has the potential to reduce cost that regulated facilities incur in allocating resources in meeting this unnecessary regulatory requirement.
5. **COST:** The cost to the agency for implementation of the rules and reprinting of Chapter 675 is approximately four thousand five hundred and eleven dollars (\$4,511). The information can be retrieved on the Oklahoma State Department of Health's website. The Chapter will only need to be provided to facilities wanting to become licensed in the State of Oklahoma. Licensed operators receive notification of rule adoption through a Department of Health provider letter.
6. **IMPACT ON POLITICAL SUBDIVISIONS:** These rules will have no economic impact on any political subdivisions, and will not require their cooperation in implementing or enforcing these rules.
7. **ADVERSE EFFECT ON SMALL BUSINESS:** No adverse effect on small business has been identified at this time.
8. **LESS COSTLY METHODS:** No less costly methods were identified to achieve the proposed rules changes. The Department of Health conducts provider education to minimize violations and therefore decreases on-site survey time.
9. **SIGNIFICANT RISKS:** The development of these rules that address standards in care delivery within long term care facilities is an assurance function of this public health agency.

The Nursing Home Care Act establishes several expectations. The first is that facilities remain in compliance with State licensure requirements. The regulation emphasizes the need for continued, rather than cyclical compliance. The enforcement process mandates that policies and procedures be established to remedy deficient practices and to ensure that correction is lasting; specifically, that facilities take the initiative and responsibility for continuously monitoring their own performance to sustain compliance. The second expectation is that all deficiencies will be address promptly. The third expectation is that residents will receive the care and services they need to meet their highest practicable level of functioning. The remedies detailed in this Rule provide incentives for the continued compliance needed to enable residents to reach these goals.

The Rule change addressing documentation percentages of consumed meals, supplements and meal replacements removes an unnecessary regulatory requirement for Nursing and Specialized facilities to document percentages for all residents. The Rule change will also reduce the burden of facilities to allocate resources to meet this regulatory requirement and focus resources on providing services to meet the needs of residents.

10. **DETRIMENTAL EFFECTS:** The effect of not implementing, the Rule defining the process by which the Department of Health may impose remedies against a licensed nursing facility or a specialized facility when such a facility fails to comply with the Nursing Home Care Act and any rule promulgated thereto, will be the inability to foster prompt facility action to achieve

compliance and hinder the Department's ability to provide incentives for compliance needed for residents of a Nursing Facility or a Specialized Facility to reach their highest level of functioning.

If not implemented, the Rule eliminating the regulatory requirement for a facility to document percentages of consumed meals, supplements and meal replacements for all residents, will allow for continued enforcement of an unnecessary regulatory requirement.

11. This initial rule impact statement was prepared on: September 23, 2011.

PROPOSED

1 TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
2 CHAPTER 675 NURSING AND SPECIALIZED FACILITIES
3
4

5 SUBCHAPTER 1. GENERAL PROVISIONS
6

7 **310:675-1-2. Definitions**

8 The following words and terms, when used in this Chapter, shall
9 have the following meaning, unless the context clearly indicates
10 otherwise:

11 **"Act"** means Title 63 of the Oklahoma Statutes, Sections 1-1901
12 and following as amended also known as the Nursing Home Care Act.

13 **"Allied health professional"** means one of the following persons:
14 physician assistant, physical, speech, or occupational therapist,
15 occupational therapy assistant, physical therapy assistant, or
16 qualified social worker.

17 **"Attendant"** means the person having control of an animal/pet
18 visiting or in residence in a facility.

19 **"Approval"** means the mandatory state government process by which
20 an agency or program is reviewed, and publicly proclaimed, to render a
21 service worthy of note.

22 **"CEP"** means the nurse aide competency evaluation program.

23 **"Certification"** means the process by which a non-governmental
24 agency, or association, or governmental agency attests that an
25 individual or facility has met certain predetermined standards
26 specified by the certifying body.

27 **"Certified medication aide"** means a person who has passed a
28 Department approved program for administering medications.

29 **"Certified nurse aide"** means any person who provides, for
30 compensation, nursing care or health-related services to residents of
31 a facility, who is not a licensed health professional and has
32 completed a Department approved training and competency program.

33 **"Charge nurse"** means a registered nurse or licensed practical
34 nurse responsible for supervising nursing services on a specific
35 shift.

36 **"Chemical restraints"** means the use of a medication for the
37 purpose of discipline, convenience, or in an emergency situation to
38 control mood or behavior and not required to treat the resident's
39 symptoms.

40 **"Consultant registered nurse"** means a registered nurse who
41 provides consultation to the director of nursing and administrator
42 concerning the delivery of nursing care for all residents in the
43 facility.

44 **"Deficiency"** means a facility's failure to meet a requirement of
45 Title 63 O.S. Section 1-1900 et seq. or the rules promulgated by the
46 Board of Health under this Act.

47 **"Denial"** means a decision made by the appropriate body to
48 disapprove an application.

49 **"Direct care staff"** means nursing, activity, social and therapy
50 staff.

1 **"Director of nursing"** means either a registered nurse or licensed
2 practical nurse, who has the authority and responsibility to
3 administer nursing services within the facility.

4 **"Emergency"** means, for the purposes of Title 63 O.S. Section 1-
5 1912, a serious, potentially life-threatening or life-endangering
6 situation in which immediate action is necessary to ensure the health,
7 safety, or welfare of residents, and for which the facility:

8 (A) does not have a plan acceptable to the Department to ensure
9 health, safety or welfare of residents; or

10 (B) refuses to remedy the situation.

11 **"Health related services"** means any medically directed service
12 provided by any person in a facility that may include but is not
13 limited to, the following:

14 (A) Positioning and turning of residents.

15 (B) Self-help skill training.

16 (C) Assistance with prosthetic/assistive devices.

17 (D) Medication administration.

18 (E) Nutrition and hydration.

19 (F) Monitoring of resident vital signs.

20 (G) Catheter and nasogastric care.

21 (H) Behavior modification programs.

22 (I) Administering a medically related care plan

23 (J) Restorative services.

24 **"Immediate Jeopardy"** means a situation in which a facility's non-
25 compliance with one or more requirements has caused, or is likely to
26 cause, serious injury, harm, impairment, or death to an individual
27 receiving care in the facility.

28 **"In charge"** and **"supervision"** means the administrator must have
29 the requisite authorization from the licensee to make those purchases
30 and incur those necessarily attendant debts in order to comply with
31 the rules promulgated by the Board and all pertinent state statutes.

32 **"Inservice education"** means activities intended to assist the
33 individual to acquire, maintain, and/or increase competence in
34 fulfilling the assigned responsibilities specific to the employer's
35 expectations.

36 **"Licensed health professional"** means one of the following: a
37 physician; dentist, podiatrist, chiropractor, physician assistant,
38 nurse practitioner; pharmacist; physical, speech, or occupational
39 therapist; registered nurse, licensed practical nurse; licensed or
40 certified social worker; or licensed/registered dietician.

41 **"Licensed nurse"** means a registered nurse or a licensed practical
42 nurse who is currently licensed by the Oklahoma Board of Nursing.

43 **"Licensed pharmacist"** means a person who is a graduate of an
44 accredited pharmacy program and is currently licensed by the Oklahoma
45 Board of Pharmacy.

46 **"Licensed practical nurse"** means a person who is a graduate of a
47 state approved practical nursing education program, or who meets other
48 qualifications established by the Oklahoma Board of Nursing, and is
49 currently licensed by the Oklahoma Board of Nursing.

50 **"Licensure"** means the process by which the Department grants to
51 persons or entities the right to establish, operate, or maintain any
52 facility.

1 **"Local law enforcement"** means:

2 (A) The municipal police department, if the facility is within
3 the jurisdiction of any municipality of this state, or

4 (B) The county sheriff, if the facility is outside the
5 jurisdiction of any municipality within this state.

6 **"Manager" or "supervisor"** means the person or entity which
7 performs administrative services for the licensee. The manager or
8 supervisor is not legally responsible for the decisions and
9 liabilities of the licensee, and does not stand to gain or lose
10 financially as a result of the operation of the facility. The manager
11 is paid a fee or salary for services, and the primary remuneration
12 shall not be based upon the financial performance of the facility.

13 **"Misappropriation of resident's property"** means the taking,
14 secrection, misapplication, deprivation, transfer, or attempted
15 transfer to any person not entitled to receive any property, real or
16 personal, or anything of value belonging to or under the legal control
17 of a resident, without the effective consent of the resident or other
18 appropriate legal authority, or the taking of any action contrary to
19 any duty imposed by federal or state law prescribing conduct relating
20 to the custody or disposition of resident's property.

21 **"Non-compliance"** means any deficient practice that causes a
22 facility to not be in compliance with state licensure.

23 **"Nurse aide"** means any person providing nursing or nursing
24 related services to residents in a facility, but does not include an
25 individual who is a licensed health professional, or who volunteers to
26 provide such services without monetary compensation.

27 **"Nurse aide trainee"** means any person who has been employed by a
28 facility to provide nursing care or health related services, and is
29 enrolled in but has not completed a Department approved training and
30 competency program.

31 **"Orientation"** means the training for a particular job activity
32 given to all employees.

33 **"Perishables"** means food supplies, to include dietary supplements
34 and intravenous feedings, medical supplies, and medications.

35 **"Plans of Correction"** means a written description of the actions
36 to be taken by a facility in order to correct deficiencies. The Plan
37 shall include the dates by which the deficiencies will be corrected.
38 The Plan of Correction is prepared by the facility.

39 **"Physical restraints"** means any manual method or physical or
40 mechanical device, material or equipment attached or adjacent to the
41 resident's body that the resident cannot remove easily, ~~that is not~~
42 ~~used for the purpose of therapeutic intervention or body alignment as~~
43 ~~determined by resident assessment and care planning,~~ and which
44 restricts the resident's desired freedom of movement and access to his
45 or her body.

46 **"Qualified nutritionist"** is a Department approved person who
47 holds a baccalaureate with major studies in food and nutrition,
48 dietetics, or food service management; has one year experience in the
49 dietetic service of a health care institution; and participates in
50 continuing education annually.

1 **"Registered/licensed dietitian"** means a person who is registered
2 as a dietitian by the American Dietetic Association and licensed by
3 the Oklahoma Board of Medical Licensure and Supervision.

4 **"Registered nurse"** means a person who is a graduate of a state
5 approved registered nursing education program, and who is currently
6 licensed by the Oklahoma Board of Nursing.

7 **"Registry"** means a Department maintained list of individuals who
8 have successfully completed a nurse aide training and competency
9 evaluation program, or a competency evaluation program, approved by
10 the Department.

11 **"Revoke"** means to rescind approval of a previous action.

12 **"Specialized facility"** means any facility which offers or
13 provides inpatient long-term care services on a twenty-four hour basis
14 to a limited category of persons requiring such services, including,
15 but not limited to, a facility providing health or habilitation
16 services for developmentally disabled persons, infants and/or
17 children, or Alzheimer's and dementia residents.

18 **"Standards of nursing practice"** means an authoritative statement
19 that describes a level of care or performance common to the profession
20 of nursing by which the quality of nursing practice can be judged.
21 Standards of nursing practice include both standards of care and
22 standards of professional performance.

23 **"Standards of care"** means a description of a competent level of care
24 demonstrated by a process of accurate assessment and diagnosis,
25 planning, appropriate interventions, and predicted patient outcomes.
26 (Appendix B of this Chapter.)

27 **"Standards of professional performance"** means a description of a
28 competent level of behavior in the professional role including
29 activities related to quality assurance, education, consultation,
30 research, ethics, resource utilization, accountability, peer review,
31 and interdisciplinary collaboration.

32 **"Survey Exit Date"** means the last day of a survey by the
33 Department of Health.

34 **"Suspended license"** means a license that is issued for a period
35 not to exceed three years to a facility which has temporarily closed
36 or ceased operations.

37 **"Training and competency evaluation program"** means a program
38 approved by the Department to instruct and evaluate individuals to act
39 as nurse aides.

40 **"Transfer"** means the move of a resident from one facility to
41 another facility.

42 **"Intra-facility transfer"** means the moving of a resident from one
43 room to another within a facility.

44 **"Transfer of ownership"** means a change of substantial, or
45 controlling interest, in the ownership of a facility. A change of less
46 than five percent (5%) of the interest of the owner does not
47 constitute a transfer of ownership unless it also results in a change
48 of control of the owner.

49 **"Willful violation"** means:

50 (A) a pattern of violation of the direct-care staffing
51 requirement;

1 (B) a violation of the direct-care staffing requirement in which
2 the facility knew or should have known staffing would be
3 insufficient to meet the requirement yet took no action to avert
4 the violation; or

5 (C) the reporting of materially inaccurate or misleading
6 information of direct-care staffing to the Health Care
7 Authority.¹

8
9 **SUBCHAPTER 3. LICENSES**

10
11 **310:675-3-9. Remedies**

12 (a) Statement of Deficiencies

13 (1) When the Department identifies a facility's failure to comply
14 with state regulations, the Department shall document such
15 failure(s). The Statement of Deficiencies shall be accompanied by
16 notification of the informal dispute resolution process.

17 (b) Remedies Generally

18 (1) Remedies Available. In accordance with Title 63 O.S. et. seq.
19 1-1916.1.A. the following remedies are available.

20 A. Deficiencies that do not constitute immediate jeopardy to
21 residents, a penalty of not less than Fifty Dollars (\$50.00) or
22 more than Three Thousand Dollars (\$3,000.00) per day may be
23 imposed,

24 B. Deficiencies constituting immediate jeopardy to residents, a
25 penalty of not less than Three Thousand Fifty Dollars (\$3,050.00)
26 or more than Ten Thousand Dollars (\$10,000.00) per day may be
27 imposed,

28 C. However, a specialized facility or a nursing facility licensed
29 pursuant to the Nursing Home Care Act that does not participate
30 in Medicaid or Medicare, shall be liable for a maximum penalty,
31 not to exceed Ten Thousand Dollars (\$10,000.00) for any related
32 series of violations.

33 (2) Factors to be considered. In order to determine the seriousness
34 of the deficiency, and the appropriate remedy to pursue, if any,
35 the Department:

36 A. Shall consider whether a facility's noncompliance resulted in
37 harm, whether there was a potential for more than minimal harm,
38 the degree of actual and/or potential harm, and/or whether there
39 was immediate jeopardy;

40 B. Shall consider whether the deficiencies are isolated,
41 constitute a pattern, or are widespread; and

¹ Amends section to include definitions for "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", "Significant weight loss", "Survey exit date" and amends the definition of "Chemical restraint" and "Physical restraint" to ensure state definition is the same as the federal definition. This footnote is not for final promulgation.

1 C. May consider the relationship of the deficiency to other
2 deficiencies and the facility's history of noncompliance.

3 (c) Categories of Remedies

4 (1) Category 1 Remedies. Category 1 remedies include one or more of
5 the following:

6 A. Ban on Admissions

7 B. Plan of Correction

8 C. Administrative Penalties: \$50 - \$3000 per day

9 (2) Category 2 Remedies. Category 2 remedies include one or more of
10 the following:

11 A. Ban on Admissions

12 B. Plan of Correction

13 C. Temporary Management

14 D. Revocation of License

15 E. Administrative Penalties: \$3,050 - \$10,000 per day

16 (d) Administrative Penalties

17 (1) When Imposed. The Department of Health may impose an
18 administrative penalty for each day a facility is or was not in
19 substantial compliance with one or more requirements of licensure.
20 The penalty may be imposed in any situation under which a Category
21 1 or 2 remedy is required in Appendix C.

22 (2) Required Action.

23 A. Except as otherwise provided by this rule, if deficiencies do
24 not constitute immediate jeopardy but cause actual harm, the
25 penalty shall be an amount not less than Fifty Dollars (\$50.00)
26 nor more than Three Thousand Dollars (\$3,000.00) per day of
27 violation.

28 B. If deficiencies constitute immediate jeopardy, the penalty
29 shall be an amount not less than Three Thousand Fifty Dollars
30 (\$3,050.00) nor more than Ten Thousand Dollars (\$10,000.00) per
31 day of violation (amounts set in Fifty Dollar (\$50.00)
32 increments.

33 C. Except as otherwise provided by this rule, if deficiencies
34 constituting immediate jeopardy are resolved and the immediate
35 jeopardy is removed but noncompliance continues, the daily
36 penalty shall be reduced to an amount not less than Fifty Dollars
37 (\$50.00) per day nor more than Three Thousand Dollars
38 (\$3,000.00), as determined by the Department.

39 D. If deficiencies not constituting immediate jeopardy become
40 more serious and immediate jeopardy exists, the daily penalty
41 shall be increased to an amount not less than Three Thousand
42 Fifty Dollars (\$3,050.00) nor more than Ten Thousand Dollars
43 (\$10,000.00) per day as determined by the Department.

44 E. The Department shall discontinue accrual of the administrative
45 penalty on the last day of non-compliance.

1 (e) Notice of Administrative Penalty

2 (1) Contents of Notice: The notice of intent to impose an
3 administrative penalty under these rules shall include:

4 A. Nature of the noncompliance;

5 B. Statutory basis for the penalty;

6 C. Amount of penalty per day of noncompliance;

7 D. Date upon which the penalty begins to accrue; and

8 E. Statement of the facility's right to a hearing as in
9 accordance with the Nursing Home Care Act.²

10
11 SUBCHAPTER 9. RESIDENT CARE SERVICES

12
13 **310:675-9-12.1. Dietary services**

14 (a) **Services.** The facility shall provide dietary services to meet
15 the resident's nutritional needs. There shall be a designated
16 staff person qualified by experience or training, responsible for
17 directing or supervising the dietary services. The food service
18 supervisor, in conjunction with a qualified nutritionist or
19 registered/licensed dietitian, shall develop a dietary care plan
20 for each resident. There shall be sufficient dietary staff to
21 meet the needs of all residents.

22 (b) **Clinical record.** The dietary services provided to residents
23 needing dietary intervention shall be recorded in the clinical
24 record. Progress notes for these residents shall be written at
25 least monthly, or when a significant change in the resident's
26 condition occurs.

27 (c) **Nutritional assessment.** A nutritional assessment shall be
28 completed for each resident that addresses all pertinent dietary
29 problems such as chewing or swallowing, elimination, appetite or
30 eating habits, pertinent lab results, weight and height, diet and
31 medication interactions, food preferences and assistive devices.
32 The dietary staff shall have input into the resident's individual
33 care plan.

34 (d) **Diet.** The facility shall provide a nourishing, palatable, well-
35 balanced diet that meets the resident's daily nutritional and
36 special dietary needs.

37 (d) **Diet.** The facility shall provide a nourishing, palatable, well-
38 balanced diet that meets the resident's daily nutritional and
39 special dietary needs.

40 (1) **Meals**

41 (A) The facility shall serve at least three regularly scheduled
42 meals, or their equivalent daily. There shall be at least four
43 hours between each meal.

44 (B) Diets shall be prescribed by the resident's physician and
45 shall be planned, in writing, reviewed, approved and dated by a
46 qualified nutritionist or registered/licensed dietitian. A

² This promulgates rules in accordance with 63 O.S. Section 1-1916.1.A. This footnote is not for final rule promulgation.

1 therapeutic diet shall be served with skillful attention to the
2 diet control system. Portioning of menu servings shall be
3 accomplished with portioned control serving utensils.

4 (C) Substitutes of similar nutritive value shall be offered when
5 a resident refuses served menu items.

6 (D) Residents at nutritional risk shall have timely and
7 appropriate nutrition intervention.

8 (E) Nourishments shall be available and may be offered at any
9 time in accordance with approved diet orders and resident
10 preference. Bedtime nourishment shall be offered to all
11 residents.

12 (F) There shall be an identification system established and
13 updated, as needed, to ensure that each resident receives the
14 prescribed diet.

15 (G) The percentages of consumed meals, supplements and meal
16 replacements ingested shall be observed and recorded in the
17 clinical record at the time of observation for residents
18 receiving supplements or experiencing significant weight loss.³
19

³ This removes the requirement for documenting percentages of consumed meals, supplements and meal replacements for all residents. This footnote is not for final rule promulgation.

Appendix C. Scope and Severity Levels for Health Inspections Deficiency Citations

S E V E R I T Y	Level 4	Scope & Severity = J Isolated Immediate Jeopardy to resident health or safety. <u>Category 2</u>	Scope & Severity = K Patterned – Immediate Jeopardy to resident health or safety. <u>Category 2</u>	Scope & Severity = L Widespread – Immediate Jeopardy to resident health or safety. <u>Category 2</u>
	Level 3	Scope & Severity = G Isolated – Actual Harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = H Patterned – Actual Harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = I Widespread – Actual Harm that is not immediate jeopardy. <u>Category 1</u>
	Level 2	Scope & Severity = D Isolated – No actual harm with potential for more than minimal harm that is not immediate jeopardy.	Scope & Severity = E Patterned – No actual harm with potential for more than minimal harm that is not immediate jeopardy.	Scope & Severity = F Widespread – No actual harm with potential for more than minimal harm that is not immediate jeopardy.
	Level 1	Scope & Severity = A Isolated – No actual harm with potential for minimal harm.	Scope & Severity = B Patterned – No actual harm with potential for minimal harm.	Scope & Severity = C Widespread – No actual harm with potential for minimal harm.
		Isolated	Pattern	Widespread
SCOPE				

Remedy Categories

Category 1

- Plan of Correction
- Ban Admissions
- Administrative Penalties:
\$50 - \$3,000 per day

Category 2

- Plan of Correction
- Ban on Admissions
- Temporary Manager
- Revocation of License
- Administrative Penalties:
\$3,050 - \$10,000 per day

Guidance on Severity Levels

There are four severity levels. Level 1, no actual harm with potential for minimal harm; Level 2, no actual harm with potential for more than minimal harm that is not immediate jeopardy; Level 3, actual harm that is not immediate jeopardy; Level 4, immediate jeopardy to resident health or safety. These four levels are defined accordingly:

1. Level 1 is a deficiency that has the **potential for causing no more than a minor negative impact** on the resident(s).
2. Level 2 is noncompliance that results **in no more than minimal physical, mental and/or psychosocial discomfort** to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
3. Level 3 is noncompliance that results in a negative outcome that has **compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and psychosocial well-being** as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. This does not include a deficient practice that only could or has caused limited consequence to the resident.
4. Level 4 is **immediate jeopardy**, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused or is likely to cause, **serious injury, harm, impairment, or death** to a resident receiving care in a facility.

Guidance on Scope Levels

Scope has three levels: isolated; pattern; and widespread. The scope levels are defined accordingly:

1. Scope is **isolated** when one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, and/or the situation has occurred only occasionally or in a very limited number of locations.
2. Scope is a **pattern** when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been

affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

3. Scope is **widespread** when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents. Widespread scope refers to the entire facility population, not a subset of residents or on unit of a facility. In addition, widespread scope may be identified if a systemic failure in the facility (e.g., failure to maintain food at safe temperatures) would be likely to affect a large number of residents and is, therefore, pervasive in the facility.

PROPOSED

OKLAHOMA STATE DEPARTMENT OF HEALTH
INITIAL RULE IMPACT STATEMENT
TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 680. RESIDENTIAL CARE HOMES

Before the Oklahoma State Board of Health March 13, 2012

1. **DESCRIPTION:** The proposed rule changes establish the process for the imposition of remedies against a licensed residential care home when such a home fails to comply with the provisions of the Residential Care Act or any rule promulgated or order issued pursuant to the provisions of the Act; amends the current Definition section to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", and "Survey exit date".

Section 310:680-1-2, Definitions. This new language amends the current Definitions section of the rule to include the definitions of "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", and "Survey exit date" so that the reader does not have to research the definition of these terms.

Section 310:680-3-15, Remedies, This rule promulgates rules in accordance with 63 O.S. Section 1-833.A. The proposal defines the process through which the Department of Health may impose remedies against a residential care home when such a home fails to comply with the provisions of the Residential Care Act and any rules promulgated pursuant thereto. The proposal will foster prompt home action to correct noncompliance conditions and promote consistency in home performance. The proposal will improve consistency and accuracy in the imposition of remedies through a defined structured process. The effect of the Rule change will be residents receiving the care and services needed to meet their highest practicable level of functioning.
2. **CLASSES OF PERSONS AFFECTED:** Affected persons will be residents and their families as well as owners, operators, staff of Residential Care Homes, and the Department of Health.
3. **CLASSES OF PERSONS BENEFITTED:** The Remedies Rule will benefit residents through prompt center response to correct noncompliance conditions, ensuring residents receive the care and services to meet their highest practicable level of functioning and enable residents to reach these goals. The maximum number of residents that might benefit is estimated at two thousand four hundred and seventy three (2,473).
4. **ECONOMIC IMPACT:** These Rules involve no additional fees.
5. **COST:** The cost to the agency for implementation of the rules and reprinting of Chapter 680 is approximately three thousand six hundred and twenty two dollars (\$3,622). The information can be retrieved on the Oklahoma State Department of Health's website. The Chapter will only need to be provided to facilities wanting to become licensed in the State of Oklahoma. Licensed operators receive notification of rule adoption through a Department of Health provider letter.
6. **IMPACT ON POLITICAL SUBDIVISIONS:** These rules will have no economic impact on any political subdivisions, and will not require their cooperation in implementing or enforcing these rules.

7. **ADVERSE EFFECT ON SMALL BUSINESS:** No adverse effect on small business has been identified at this time.

8. **LESS COSTLY METHODS:** No less costly methods were identified to achieve the proposed rules changes. The Department of Health conducts provider education to minimize violations and therefore decreases on-site survey time.

9. **SIGNIFICANT RISKS:** The development of these rules that address standards in care delivery within long term care facilities is an assurance function of this public health agency.

The Residential Care Act establishes several expectations. The first is that homes remain in compliance with State licensure requirements. The regulation emphasizes the need for continued, rather than cyclical compliance. The enforcement process mandates that policies and procedures be established to remedy deficient practices and to ensure that correction is lasting; specifically, that homes take the initiative and responsibility for continuously monitoring their own performance to sustain compliance. The second expectation is that all deficiencies will be address promptly. The third expectation is that residents will receive the care and services they need to meet their highest practicable level of functioning. The remedies detailed in this Rule provide incentives for the continued compliance needed to enable residents to reach these goals.

10. **DETRIMENTAL EFFECTS:** If not implemented, the Rule defining the process by which the Department of Health may impose remedies against a licensed home when such a home fails to comply with the Residential Care Act and any rule promulgated thereto, will be the inability to foster prompt home action to achieve compliance and hinder the Department's ability to provide incentives for compliance needed for residents of Residential Care Homes to reach their highest level of functioning.

11. This initial rule impact statement was prepared on: September 23, 2011.

1 TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
2 CHAPTER 680. RESIDENTIAL CARE HOMES
3
4

5 SUBCHAPTER 1. GENERAL PROVISIONS
6

7 **310:680-1-2. Definitions**

8 When used in this Chapter the following words or terms shall have
9 the following meaning unless the context of the sentence requires
10 another meaning.

11 **"Abuse"** means any intentional or negligent act or omission,
12 directly and proximately resulting in physical or mental injury to
13 a resident of a facility.

14 **"Access"** means the right of a person to enter a home to
15 communicate privately and without unreasonable restriction.

16 **"Administration"** means the removing of a single dose of
17 medication from a labeled container and preparing that dose for
18 distribution.

19 **"Administrator"** means the person who is in charge of a home
20 and denotes one-third (1/3) of his/her full working time to on-the-
21 job supervision of such home.

22 **"Ambulatory"** means any resident who is capable of self-
23 movement, including in and out of wheelchairs, to all areas of the
24 home.

25 **"Deficiency"** means a home's failure to meet a requirement of
26 Title 63 O.S. Section 1-819 et seq. or the rules promulgated by the
27 Board of Health under this Act.

28 **"Department"** means the State Department of Health.

29 **"Dispensing"** means transferring one or more doses of
30 medication from one labeled container to another labeled container.

31 **"Habilitation"** means procedures and interventions designed to
32 assist a mentally ill, drug dependent or alcohol-dependent person
33 eighteen (18) years of age or older to achieve greater physical,
34 mental and social development by enhancing the well-being of the
35 person and teaching skills which increase the possibility that the
36 resident will make progressively independent and responsible
37 decisions about social behavior, quality of life, job satisfaction
38 and personal relationships.

39 **"Home"** means residential care home.

40 **"Immediate Jeopardy"** means a situation in which a home's non-
41 compliance with one or more requirements has caused, or is likely
42 to cause, serious injury, harm, impairment, or death to an
43 individual receiving care in the home.

44 **"Institution of higher learning"** means an institution which
45 provides post-secondary school programs.

46 **"Licensee"** means a person, corporation, partnership, or
47 association who is the owner of a home which is licensed pursuant
48 to the provisions of the Residential Care Act.

49 **"Maintenance"** means meals, shelter, and laundry services.

1 **"Medication"** means a prescription drug or an over-the-counter
2 drug prescribed by a person licensed to prescribe.

3 **"Monitor"** means watch, observe, check and keep track of for a
4 special purpose.

5 **"Neglect"** means any act of omission or commission by any
6 owner, operator, administrator, licensee or any agent, servant,
7 employee or other person under the employment, supervision or
8 control of any one or more of the owners, operators or
9 administrators, and which act is a direct and proximate cause of
10 any physical or mental injury to a resident.

11 **"Non-compliance"** means any deficient practice that causes a
12 home to not be in compliance with state licensure.

13 **"Owner"** means a person, corporation, partnership, association
14 or other entity which owns a home or leases a home. The person or
15 entity who stands to profit or lose as a result of the financial
16 success or failure of the operation shall be presumed to be the
17 owner of the homes.

18 **"Personal care"** means assistance with meals, dressing,
19 movement, bathing, or other personal needs or maintenance or
20 general supervision of the physical and mental well-being of a
21 person who is capable of maintaining a private, independent
22 residence, or who is incapable of managing his person whether or
23 not a guardian has been appointed for such person.

24 **"Plans of Correction"** means a written description of the
25 actions to be taken by a home in order to correct deficiencies.
26 The Plan shall include the dates by which the deficiencies will
27 be corrected. The Plan of Correction is prepared by the home.

28 **"Representative of a resident"** means a court-appointed
29 guardian, or if there is no court-appointed guardian, the parent of
30 a minor, a relative or other person designated in writing by the
31 resident. An owner, agent, or employee of a home shall not be a
32 representative of a resident unless such person is appointed by the
33 court.

34 **"Residential Care Home"** means

35 (A) Any establishment or institution other than a hotel motel,
36 fraternity or sorority house, or college or university
37 dormitory which offers or provides residential accommodations,
38 food service and supportive assistance to any of its residents
39 or houses any resident requiring supportive assistance who are
40 not related to the owner or administrator of the home by blood
41 or marriage. Said residents shall be ambulatory and
42 essentially capable of managing their own affairs, but do not
43 routinely require skilled nursing care or intermediate care.

44 (B) Transitional Living facility and halfway houses are
45 defined in section 3-403 of Title 43A of Oklahoma Statutes.

46 (C) A residential care home may consist of a series of units
47 or buildings which are not connected or part of the same
48 structure if:

1 (i) Such buildings or units are owned by the same owner
2 or operator.

3 (ii) All residents of the units or buildings are fully
4 capable of ambulation to and from buildings or units.

5 (iii) The location and construction of the building or
6 units ensure the health, safety and protection from fire
7 hazards and other hazards and provide for the convenience
8 and accessibility of the residents to each residential
9 building or unit.

10 (iv) Any out-of-doors premise or thoroughfare is
11 adequately maintained to ensure the health and safety of
12 the residents.

13 (v) The building or units are within one hundred seventy-
14 five (175) feet of the building housing the main kitchen
15 and dining room.

16 (vi) The units or buildings must be located in the most
17 convenient and accessible location for residents.

18 **"Residential Care Certification"** means a program in a
19 residential care home certified by and contracted with the
20 Department of Mental Health to provide specialized services to
21 residents who are mentally ill.

22 **"Self-administration"** means the administration of resident's
23 medication by the resident with periodic staff review.

24 **"Supportive assistance"** means the service rendered to any
25 person which is sufficient to enable the person to meet an adequate
26 level of daily living. Supportive assistance includes but is not
27 limited to housekeeping, assistance in the preparation of meals,
28 assistance in the safe storage, distribution and administration of
29 medications, and assistance in personal care as is necessary for
30 the health and comfort of such person. The term "supportive
31 assistance" shall not be interpreted or applied so as to prohibit
32 the participation of residents in housekeeping or meal preparation
33 tasks as a part of the written treatment plan for the training,
34 habilitation or rehabilitation of the resident prepared with the
35 participation of the resident, the mental health or drug or alcohol
36 services case manager assigned to the resident and the
37 administrator of the facility, or his designee. Supportive
38 assistance shall not include medical service.

39 **"Survey Exit Date"** means the last day of a survey by the
40 Department of Health.

41 **"Transfer"** means a change in location of living arrangements
42 of a resident from one home to another home.¹

43
44
45

¹ Amends section to include definition for "Deficiency", "Immediate jeopardy", "Noncompliance", "Plans of correction", and "Survey exit date". This footnote is not for final rule promulgation.

1 (d) Civil Penalties

2 (1) When Imposed. The Department of Health may impose a civil
3 penalty for each day a residential care home is or was not in
4 compliance with one or more requirements of licensure. The penalty
5 may be imposed in any situation under which Category 1, 2 or 3
6 remedy is required in Appendix A.

7 (2) Required Action.

8 A. Except as otherwise provided by this rule, if deficiencies do
9 not constitute immediate jeopardy but cause actual harm, or have
10 potential of causing more than minimal harm, the penalty shall be
11 an amount not less than Twenty Dollars (\$20.00) nor more than
12 Eighty Dollars (\$80.00) per day of violation.

13 B. If deficiencies constitute immediate jeopardy, the penalty
14 shall be an amount not less than Eighty Dollars (\$80.00) nor more
15 than One Hundred Dollars (\$100.00) per day of violation (amounts
16 set in Ten Dollar (\$10.00) increments).

17 C. Except as otherwise provided by this rule, if deficiencies
18 constituting immediate jeopardy are resolved and the immediate
19 jeopardy is removed but noncompliance continues, the daily
20 penalty shall be reduced to an amount not less than Twenty
21 Dollars (\$20.00) nor more than Eighty Dollars (\$80.00) per day as
22 determined by the Department.

23 D. If deficiencies not constituting immediate jeopardy become
24 more serious and immediate jeopardy exists, the daily penalty
25 shall be increased to an amount not less than Eighty Dollars
26 (\$80.00) nor more than One Hundred Dollars (\$100.00) per day as
27 determined by the Department.

28 (e) Notice of Civil Penalty

29 (1) Contents of Notice: The notice of intent to impose a civil
30 penalty under these rules shall include:

31 A. Nature of the noncompliance;

32 B. Statutory basis for the penalty;

33 C. Amount of penalty per day of noncompliance;

34 D. Date upon which the penalty begins to accrue; and

35 E. Statement of the facility's right to a hearing.²

² This promulgates rules in accordance with 63 O.S. Section 1-833.A. This footnote is not for final rule promulgation.

Appendix A. Scope and Severity Levels for Health Inspections Deficiency Citations

S E V E R I T Y	Level 4	Scope & Severity = J Isolated Immediate Jeopardy to resident health or safety. <u>Category 3</u>	Scope & Severity = K Patterned – Immediate Jeopardy to resident health or safety. <u>Category 3</u>	Scope & Severity = L Widespread – Immediate Jeopardy to resident health or safety. <u>Category 3</u>
	Level 3	Scope & Severity = G Isolated – Actual Harm that is not immediate jeopardy. <u>Category 2</u>	Scope & Severity = H Patterned – Actual Harm that is not immediate jeopardy. <u>Category 2</u>	Scope & Severity = I Widespread – Actual Harm that is not immediate jeopardy. <u>Category 2</u>
	Level 2	Scope & Severity = D Isolated – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = E Patterned – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>	Scope & Severity = F Widespread – No actual harm with potential for more than minimal harm that is not immediate jeopardy. <u>Category 1</u>
	Level 1	Scope & Severity = A Isolated – No actual harm with potential for minimal harm. <u>Category 1</u>	Scope & Severity = B Patterned – No actual harm with potential for minimal harm. <u>Category 1</u>	Scope & Severity = C Widespread – No actual harm with potential for minimal harm. <u>Category 1</u>
	Isolated	Pattern	Widespread	
SCOPE				

Remedy Categories

Category 1

- Plan of Correction
- Civil Penalties:
\$20 - \$40 per day

Category 2

- Plan of Correction
- Civil Penalties:
\$40 - \$80 per day

Category 3

- Plan of Correction
- Suspension of License
- Revocation of License
- Transfer Residents
- Temporary Manager
- Civil Penalties:
\$80 - \$100 per day

Guidance on Severity Levels

There are four severity levels. Level 1, no actual harm with potential for minimal harm; Level 2, no actual harm with potential for more than minimal harm that is not immediate jeopardy; Level 3, actual harm that is not immediate jeopardy; Level 4, immediate jeopardy to resident health or safety. These four levels are defined accordingly:

1. Level 1 is a deficiency that has the **potential for causing no more than a minor negative impact** on the resident(s).
2. Level 2 is noncompliance that results **in no more than minimal physical, mental and/or psychosocial discomfort** to the resident and/or has the potential (not yet realized) to compromise the resident's ability to maintain and/or reach his/her highest practicable physical, mental and/or psychosocial well-being as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services.
3. Level 3 is noncompliance that results in a negative outcome that has **compromised the resident's ability to maintain and/or reach his/her highest practicable physical, mental and psychosocial well-being** as defined by an accurate and comprehensive resident assessment, plan of care, and provision of services. This does not include a deficient practice that only could or has caused limited consequence to the resident.
4. Level 4 is **immediate jeopardy**, a situation in which immediate corrective action is necessary because the facility's noncompliance with one or more requirements of participation has caused or is likely to cause, **serious injury, harm, impairment, or death** to a resident receiving care in a facility.

Guidance on Scope Levels

Scope has three levels: isolated; pattern; and widespread. The scope levels are defined accordingly:

1. Scope is **isolated** when one or a very limited number of residents are affected and/or one or a very limited number of staff are involved, and/or the situation has occurred only occasionally or in a very limited number of locations.
2. Scope is a **pattern** when more than a very limited number of residents are affected, and/or more than a very limited number of staff are involved, and/or the situation has occurred in several locations, and/or the same resident(s) have been

affected by repeated occurrences of the same deficient practice. The effect of the deficient practice is not found to be pervasive throughout the facility.

3. Scope is **widespread** when the problems causing the deficiencies are pervasive in the facility and/or represent systemic failure that affected or has the potential to affect a large portion or all of the facility's residents. Widespread scope refers to the entire facility population, not a subset of residents or on unit of a facility. In addition, widespread scope may be identified if a systemic failure in the facility (e.g., failure to maintain food at safe temperatures) would be likely to affect a large number of residents and is, therefore, pervasive in the facility.

PROPOSED