

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 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 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.

DRAFT

1 TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
2 CHAPTER 675 NURSING AND SPECIALIZED FACILITIES  
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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      secretion, 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.<sup>1</sup>

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

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<sup>1</sup> 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.<sup>2</sup>

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

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<sup>2</sup> 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.<sup>3</sup>  
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<sup>3</sup> 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**

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

**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.

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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.<sup>1</sup>  
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:

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<sup>1</sup> 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).<sup>2</sup>

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

### 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.

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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 homes'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 **"Statement of Deficiencies"** means a written description of  
25 deficiencies prepared by the Department of Health.

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

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

43 **"Transfer"** means a change in location of living arrangements  
44 of a resident from one home to another home.<sup>1</sup>

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<sup>1</sup> 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  
2 **SUBCHAPTER 3. LICENSURE REQUIREMENTS**  
3

4 **310:680-3-15. Remedies**

5 (a) Statement of Deficiencies

6 (1) When the Department identifies a home's failure to comply with  
7 state statute and/or regulations, the Department shall document  
8 such failure(s) on a state form.

9 (b) Remedies Generally

10 (1) Remedies Available. In accordance with Title 63 O.S. et. seq.  
11 1-833.A the following remedies are available.

12 A. When a residential care home has been determined to have  
13 failed to comply with any provision of the Residential Care Act  
14 or any rule promulgated shall be liable for a civil penalty of  
15 not more than One Hundred Dollars (\$100.00) per day.

16 B. The maximum civil penalty shall not exceed Ten Thousand  
17 Dollars (\$10,000.00) for any related series of violations.

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

21 A. Shall consider whether a residential care home's noncompliance  
22 resulted in harm, whether there was a potential for harm, the  
23 degree of actual and/or potential harm, and/or whether there was  
24 immediate jeopardy;

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

27 C. May consider the relationship of the deficiency to other  
28 deficiencies and the residential care home's history of  
29 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. Civil Penalties: \$20 - \$40 per day

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

37 A. Plan of Correction

38 B. Civil Penalties: \$40 - \$80 per day

39 (3) Category 3 Remedies. Category 3 remedies include one or more  
40 of the following:

41 A. Plan of Correction

42 B. Revocation or Suspension of License

43 C. Transfer Residents

44 D. Temporary Manager

45 E. Administrative Penalties: \$80 - \$100 per day

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.<sup>2</sup>

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

### 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.