



Oklahoma State Department of Health  
Creating a State of Health

**LONG-TERM CARE FACILITY ADVISORY BOARD**  
**Regular Meeting**  
**January 11, 2017 at 1:30 in Room 1102**  
**Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299**

**AGENDA**

1. Call to Order.....Wendell Short, Chair
2. Roll Call.....Lori Bautista
3. Nomination of 2017 officers .....James Colgan
4. Review and Action to Approve the Amended April 13, 2016 Regular Meeting minutes  
.....Dr. Andrew Dentino, Chair
5. Review and Action to Approve/Amend the July 13, 2016 Regular Meeting minutes  
.....Dr. Andrew Dentino, Chair
6. Review and Action to Approve/Amend the October 12, 2016 Regular Meeting minutes  
.....Dr. Andrew Dentino, Chair
7. PROPOSED RULEMAKING RECOMMENDATIONS.....Mike Cook

Pursuant to Title 63 of the Oklahoma Statutes, at section 1-1923(D), *the Advisory Board shall have the power and duty to: ... 2. Review, make recommendations regarding, and approve in its advisory capacity the system of standards developed by the Department;*

Discussion and possible action on approval and/or recommendations for adoption to the Board of Health for the following proposed rules:

- A. CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**
- B. CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**
- C. CHAPTER 680. RESIDENTIAL CARE HOMES**

8. Licensure, Resident Assessment, Nurse Aide Registry, and Background Check Update  
.....James Joslin  
*Updates on program activity and new developments.*
9. Nurse Aide Investigations Ad Hoc Report.....Joanna Martin  
*Ms. Martin will provide an update on the work of the Ad Hoc Committee for Nurse Aide.*
10. Healthy Aging Report Ad Hoc Report.....Dr. Andrew Dentino, Chair  
*Dr. Dentino will provide an update on the healthy aging Ad Hoc committee, to include information on work in the last quarter.*

11. House Bill 2280 Ad Hoc Report.....Joyce Clark  
*Ms. Clark will re-present the Scope & Severity Grid for the Enforcement Process for Assisted Living Facilities. The LTCFAB will vote to recommend the Assisted Living Scope and Severity Grid.*
12. Long Term Care Service Update.....Mike Cook
  - *Unlicensed LTC Facilities*
  - *LTCFAB Annual Report*
13. New Business..... Dr. Andrew Dentino, Chair
14. Public Comment
15. Adjourn



## LONG-TERM CARE FACILITY ADVISORY BOARD

Regular Meeting

April 13, 2016 at 1:30 in Room 806

Oklahoma State Department of Health, 1000 NE 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299

### **MINUTES**

April 13, 2016

#### **1) Call to Order**

Wendell Short, Chair, called the meeting to order at 1:30 p.m.

#### **2) Roll Call**

Lori Bautista called roll with the following LTCFAB members present: Wendell Short, Chair; Christean Bolding; Willie Burkhart; Tracy Chlouber; Joyce Clark; Andrew Dentino; Ivoria Holt; Kenneth Jones; Adam Jordan; Joanna Martin; Alan Mason; Jimmy McWhirter; Kay Parsons; Robert Quatro; William Whited; Denise Wilson and Monica Woodall.

The following LTCFAB members were absent: Donna Bowers; James Colgan; Dustin Cox; Theo Crawley; Terry Ferrel; Pamela Humphreys; Randy McKinney; Dewey Sherbon; Diana Sturdevant and Eileen Wilson.

The following guests were present: Michael Cook, OSDH; Julie Myers, OSDH; Tawanda Cox, Chief of Federal & State Health Policy; James Joslin, OSDH; Ann Osborne, Francis Tuttle Tech. Center; Esther Houser, general public; Vicki Kirtley, OSDH; Alexandria Hart-Smith, OSDH; Debbie Zamarripa, OSDH; Michael Jordan, OSDH; Becky Moore, OAHCP; Nancy Atkinson, OSDH; Mary Brinkley, Leading Age OK; Lori Bautista, OSDH.

Currently, there is no vacancy on the LTCFAB, which consists of 27 members.

A quorum was met with 17 members present.

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>

**3) Review and Action to Approve/Amend January 13, 2016 Regular Meeting Minutes:**

**Agenda Item #3**

**Vote 1**

**Motion:** Amend the January 13, 2016 Regular Meeting Minutes: to revise agenda item #5) Healthy Aging Report Ad Hoc Report to change the date(s) for the Governor’s Healthy Aging Summit to April 12<sup>th</sup>, 2016

Motion Made by: William Whited      Seconded: Adam Jordan      Motion Carried: Yes  
 Aye: 14      Abstain: 3      Nay: 0      Absent: 10

**Aye: 14      Abstain: 3      Nay: 0      Absent: 10**

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<input 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
Willie Burkhart	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<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
James Colgan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dewey Sherbon	<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	Wendell Short	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Andrew Dentino	<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
Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivorina Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

**4) Oklahoma Health Care Authority Budget Update:**

Ivorina Holt introduced Tawanda Cox, the chief of federal and health policy, from the Oklahoma Health Care Authority (OHCA), who gave the following budget update. For state fiscal year 2016, we have two revenue shortfalls, which have totaled 7% reduction for the state. This has equated to a 3% and 4% reduction to the OHCA base. A rate reduction was implemented across the board of 3% starting January 1<sup>st</sup>, 2016 in anticipation of the state reduction. We are facing a 1.3 billion revenue failure as it relates to the appropriations. We will not know what the appropriations will be until May, 2016. Our budget has been cut 7% and the Governor indicated that our budget would be cut 6%, which equals 13% off the OHCA base from FY2015. Tawanda mentioned that our request was \$100 million. The OHCA is required to give public notice, public input, and tribal consultation. Anytime rates are reduced, it takes about 60 – 90 days to get everything through the appropriate channel and get it processed. The OHCA has announced the cut is up to 25% across the board. Some exclusions were made that would not show a savings to the OHCA budget. The 25% cut would generate \$200 million, which is the shortage needed for FY2016. A proposal was made for a \$1.50 tax on cigarettes. Two public forums were held, one at the OHCA and one held in Lawton. There is a schedule on the OHCA website for public forums. A e-mail box was set-up for suggestions. A question was posed about provider cuts, and Tawanda mentioned that the cuts are across the board. Nursing

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homes were not included in the last cut, but the crossover percentage was reduced. Ivoria Holt will follow-up after Tawanda Cox brings back information.

Wendell Short mentioned that if the 25% provider rate cut by Oklahoma's Medicaid program actually takes place, the affects will be far-reaching. Mary Brinkley stated that these cuts will have a ripple effect. Possible solutions are the tobacco tax and the Medicare rebalancing. Becky Moore said that the tobacco tax must pass with a super majority of 75% in the Senate and House of Representatives for it to go into effect. If it doesn't pass, then it will have to go to the public vote in November 2016.

It is estimated that 96% of Oklahoma's Medicaid facilities are estimated to shut down with the 25% provider rate cut. 285 nursing home facilities are estimated to close, which would displace 17,200 long term care residents. Wendell summarized that the point was well made that we are in a crisis situation.

William Whited mentioned that there is a petition by CARE Oklahoma to send to the Governor and legislators to stop the 25% Medicaid cuts which is located at the following web address: <https://www.change.org/p/we-need-16k-signatures-protect-oklahoma-nursing-home-funding-protecttheelderly>. He also said to call your senator and/or your house representative and getting everyone you know to do it. Esther Houser mentioned there is an application developed by the Oklahoma Association of Electric Cooperatives (OAEC) which is called "OAEC 55<sup>th</sup> Legislative Guide/; that can be downloaded to your phone. Go to this website for more information: [http://www.oaec.coop/legislative\\_center/?page=stateelectedofficials](http://www.oaec.coop/legislative_center/?page=stateelectedofficials). William Whited also said that you can go to the <http://www.oklegislature.gov/> website and put in your address to "Find My Legislator." The area to input your address is located at the bottom right of the webpage.

A proposal was made to draft a letter from the LTCFAB that is reviewed by the board members and is signed by Wendell Short to be sent to the Governor, Senate, House of Representatives, Nico Gomez, Terry Cline, Ph.D., etc. Any contributions need to be sent by 5p.m. April 14<sup>th</sup>, 2016 in response to the reminder e-mail that will be sent by Lori Bautista after today's meeting.

**5) Action to draft a letter from the LTCFAB addressing the 25% cut to Medicaid Providers:**

**Agenda Item #4**

**Vote 2**

**Motion:** Write a Letter of Concern regarding the impact of proposed Medicaid budget cuts on the aging citizens of Oklahoma to Executive and Legislative branches and other selected individuals and agencies.

Motion Made by: Joyce Clark                      Seconded: Kay Parsons                      Motion Carried: Yes  
Aye: 17      Abstain: 0      Nay: 0      Absent: 10

***Aye: 17      Abstain: 0      Nay: 0      Absent: 10***

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<input 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
Willie Burkhart	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<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
James Colgan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dewey Sherbon	<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	Wendell Short	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Andrew Dentino	<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
Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivorla Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

**6) Nurse Aide Investigations Ad Hoc Report:**

Joanna Martin presented the Executive Summary for the eleventh meeting of the Ad Hoc Committee for Nurse Aide Investigations that met April 13<sup>th</sup>, 2016. She mentioned that if anyone had any questions we could talk about it. She also said that it was a very effective meeting and the brainstorming sessions went well. The next meeting is scheduled for the morning of July 13<sup>th</sup>, 2016,

**7) Health Aging Report Ad Hoc Report:**

Dr. Andrew Dentino gave a progress report from the Ad Hoc Committee on Healthy Aging. He talked the pilot project that is underway, “It’s Not OK to Fall.” Reducing falls with major injury in five local nursing homes by using the “Plan, Do, Check, Act” process. Dr. Dentino went on to talk about immunizations and pneumonia & flu vaccinations in nursing homes as a next step.

Dr. Dentino spoke about the Governor’s Healthy Aging Summit, which was held on April 12th, 2016 at the Moore Norman Technology Center. The central themes of the summit were: 1) Fall Prevention, 2) Physical Activity, 3) Nutrition, and 4) Depression.

The next meeting is scheduled for May 2016 to check the progress of the pilot project and talk about the plan for the rest of 2016.

**8) Nurse Aide Registry Update and Background Check Update:**

James Joslin provided two reports on the Nurse Aide Registry Statistics. The first handout is the Nurse Aide Registry Third Quarter 2016 statistics and the second handout is the Abuse, Neglect, Misappropriation (ANM) Findings through Third Quarter FY2016. All the trends are following

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past experience from previous reports. James introduced Vicki Kirtley, Administrative Program Manager for the Nurse Aide Registry. James spoke about the continued success with the first floor desk, where nurse aides can renew their certifications immediately. He mentioned that the highest walk-ins processed to date was 1,289 total last quarter.

On the Abuse, Neglect, Misappropriation (ANM) findings report, they were broken up into quarters. The numbers jumped substantially in the Third Quarter FY16 from the previous quarter due to the delay for processing cases. As of November 1<sup>st</sup>, 2015 a law was passed that the nurse aides must maintain a current address with the nurse aide registry. And any petition sent is considered legally served to the address on file. The next step is to start charting the information in the ANM findings report, to visually see comparisons, rather than comparing the numbers across the quarters in the table.

In the last quarter there were 31 findings of ANM with most of them from misappropriation of property with 51.6%. Out of the 31 findings 10 had applications in OK Screen. Did our pending notation process in OK Screen have any impact? James said that it did have an impact. Of the 10 that had applications in OK Screen, seven of those went through and had a determination of eligible. Three of them were withdrawn because the provider(s) saw that status of pending investigations. Of the seven that were found to be eligible, two had prior criminal history that did not have disqualifying offenses. Six of seven had their employment terminated prior to the finding in OK Screen. And one of the seven was never employed.

James said there are 144 licensed Home Health Agencies. He identified 92 of the 144 licensed only Home Health Agencies have accounts in OK Screen and are screening staff. More research will be done on the Home Health Agencies that are not using OK Screen to see if they are aware of the program available to them.

James spoke about the employment classes that are tracked in OK Screen. The largest employment class is nurse aides (32.5%) and the second largest is personal care workers (10.1 %.) The third largest is licensed practical nurses (9.5%) and fourth is registered nurse (5.7 %.) Once an individual is in the system already, they do not need to go through the OK Screen process when they change employment.

There were no deficiencies found when the FBI completed an audit of the OK Screen program. The OK Screen program was approved for a sixth grant year. There will be a technical support extension, where CMS will pay the software vendor to continue to support OK Screen. The FBI RAP back needs to be rolled into the OK Screen system. Also, some additional DHS and OSBI integration was mentioned by James. There is a new finger printing vendor as of July 1<sup>st</sup>, 2016, with UPS primary locations.

Darlene Simmons has taken early retirement and her position will not be refilled. Espaniola Bowen will take on her responsibilities. One of two jail inspectors has also taken early retirement. James will file a petition request justification to get a part-time jail inspector. And finally Nancy Atkinson, (Quality Improvement Evaluation Service) is also taking early retirement. As of June 1<sup>st</sup>, 2016, James Joslin will be taking on her responsibilities.

## 9) Long Term Care Service Update:

Mike Cook, Director Long Term Care Services, presented the Long Term Care update.

- *1) Budget Update:* Mike mentioned that one of the things they discussed in expanded leadership was the priority and strategic map they have in place. One of the top priorities of the agency will be to continue to keep up with the mandates. LTC will have priority as to positions. The hard to fill positions have always been surveyors. They are the exception to the executive order. We have not heard of any reduction in force notifications. We have looked at cuts in some services. A lot of scenarios are going around right now. LTC has five Voluntary Out Benefit Offers (VOBOs), where staff have opted for early retirement. Three of those are surveyor positions, but we have sufficient survey positions open to fill those vacancies. One of the other early retirement positions is from Training. Karen Gray who has been the training coordinator for a long time. Beverly Clark will be the interim manager of training. Karen Gray was also the master trainer for the Quality Indicator Survey (QIS) program. Fortunately, we were able to have four trainers for the program back in 2012. Sharon Ross has stepped up to be the master trainer when Karen Gray leaves.
- *2) CMS update:* CMS is continuing to look at both the traditional and QIS to develop a new survey process after any new rules and regulations have passed in September, 2016.
- *3) OSDH Building Renovation Project:* LTC and HRDS were scheduled to move in March, 2016. The 11<sup>th</sup> and 12<sup>th</sup> floors were moved. Mike Cook and James Joslin were told the renovation was at a stopping point and would not be moving forward. LTC and HRDS will still be located on the 10<sup>th</sup> floor. Until the budget is looked at and concerns addressed, whatever they plan to do with the renovation project down the road will depend on all of those things.
- *4) State Appropriations:* Long Term Care (LTC) does receive some state appropriations when it comes to assisted living, residential care, and adult day care. Some of the funding is from revolving fees. Majority of the funding for long term care is federal. Based on meetings with Dr. Hank Hartsell, Mike Cook and Beverly Clark thought it would be prudent to not offer provider training for state funded agencies.
- *5) Provider Training:* LTC and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) will be offered this year, because they are funded by federal civil money penalty (CMP) dollars. For LTC Provider Training, there will be two offered; one in Tulsa and one in Oklahoma City. ICF/IID will have one Provider Training session offered. Originally, we were going to have provider training for adult day care, residential care, assisted living and veterans center. Regretfully, they were canceled because they are state funded.
- *6) CMS Initiative on the Reduction of Antipsychotic Use:* Mike presented a handout on the reduction of antipsychotic use. The chart on the left hand of the handout shows the comparison between the Nation and Oklahoma for the prevalence of antipsychotic use for long-stay nursing home residents from fourth quarter 2011 to third quarter 2015. Nancy Atkinson made the chart on the right hand side of the handout showing the percentage change from fourth quarter 2011 to third quarter 2015. A 15% change was supposed to be achieved by 2013; a 20% change by 2014; a 25% change by 2015; and 30% by FY2016. By third quarter of 2013, the goal of 20% for 2014 was reached a year early. We are on track to reach the goal of 30% change by September 2016.

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- 7) *House Bill 2280*: (Senator Rob Standridge, Representative Jason Murphey) LTC worked with Leading Age and the Oklahoma Assisted Living Association to come up with a bill that addresses the Assisted Living Rules from Chapter 663 of having a committee (LTCFAB) reviewing some of the fines would be assessed and distributed based on whether it is actual harm, immediate jeopardy or if there is reoccurring situations and how to address those. This bill has passed the house and is awaiting a vote in the full senate.
- 8) *Assisted Living Conference*: Jimmy McWhirter mentioned that with respect to not being able to have the assisted living provider training this year, at the Oklahoma Assisted Living Association Board Meeting, they approved to have a 2-day conference in the Fall.

**10) New Business:**

1. *Side-note from the Governor's Health Aging Summit*: Wendell mentioned that it was brought up as a point that sometimes associations that we are a part of don't get the information or hear the things that we talk about at the LTCFAB meetings. He encourages anyone that are members of other associations to get information back to those associations.

**11) Public Comment:**

Public comment made throughout the meeting.

**12) Adjournment**

The meeting adjourned at 3:24 p.m.



## LONG-TERM CARE FACILITY ADVISORY BOARD

Regular Meeting

July 13, 2016 at 1:30 in Room 1102

Oklahoma State Department of Health, 1000 NE 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299

### **MINUTES**

July 13, 2016

#### **1) Call to Order**

Dr. Andrew Dentino, Vice-Chair, called the meeting to order at 1:30 p.m.

#### **2) Roll Call**

Lori Bautista called roll with the following LTCFAB members present: Christean Bolding; Donna Bowers; Willie Burkhart; Tracy Chlouber; Joyce Clark; James Colgan; Andrew Dentino; Ivoria Holt; Pamela Humphreys; Kenneth Jones; Joanna Martin; Alan Mason; Jimmy McWhirter; Robert Quatro; Dewey Sherbon; Diana Sturdevant William Whited; Denise Wilson and Monica Woodall.

The following LTCFAB members were absent: Dustin Cox; Theo Crawley; Terry Ferrel; Adam Jordan; Randy McKinney; Kay Parsons; Wendell Short; and Eileen Wilson.

The following guests were present: Michael Cook, OSDH; Julie Myers, OSDH; Roberto Medina, Physician; Becky Moore, OAHCP; Dee Downer, OKALA; Melissa Holland, OKALA; Patty Scott, OSDH; Vicki Kirtley, OSDH; James Joslin, OSDH; Tim Cathey, OSDH; Don Maisch, OSDH; Michael Jordan, OSDH; Debbie Zamarripa, OSDH; Natalie Smith, OSDH; Ann Osborne, Francis Tuttle Tech; Shelby Murray, Francis Tuttle Tech; Esther Houser, general public; Lori Bautista, OSDH.

Currently, there is no vacancy on the LTCFAB, which consists of 27 members.

A quorum was met with 19 members present.

#### **3) Review and Action to Approve the Amended January 13, 2016 Regular Meeting Minutes:**

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**Agenda Item #3**

**Vote 1**

**Motion:** Approve the Amended January 13, 2016 Regular Meeting Minutes: to revise agenda item #5) Healthy Aging Report Ad Hoc Report to change the date(s) for the Governor’s Healthy Aging Summit to April 12<sup>th</sup>, 2016

Motion Made by: Joanna Martin      Seconded: William Whited      Motion Carried: Yes  
 Aye: 17      Abstain: 2      Nay: 0      Absent: 8

**Aye: 17      Abstain: 2      Nay: 0      Absent: 8**

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<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
Willie Burkhardt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
James Colgan	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<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
Theo Crawley	<input 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
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Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivorvia Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

**4) Review and Action to Approve/Amend April 13, 2016 Regular Meeting Minutes:**

**Agenda Item #4**

**Vote 2**

**Motion:** Amend the April 13, 2016 Regular Meeting Minutes: to revise agenda item #2) The following guests were present: Tawanda Cox, OHCA to Tawanda Cox, Chief of Federal & State Health Policy

Motion Made by: Monica Woodall      Seconded: Denise Wilson      Motion Carried: Yes  
 Aye: 15      Abstain: 4      Nay: 0      Absent: 8

**Aye: 15      Abstain: 4      Nay: 0      Absent: 8**

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay	Alan Mason	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Willie Burkhardt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
James Colgan	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Dewey Sherbon	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Theo Crawley	<input 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

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/lcabc.html>

Andrew Dentino	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Diana Sturdevant	<input type="checkbox"/> Aye <input checked="" type="checkbox"/> Abstain <input type="checkbox"/> Nay
Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivoria Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

### 5) Licensure, Nurse Aide Registry and Background Check Update:

James Joslin provided two reports on the Nurse Aide Registry Statistics and a brief update on licensure. The first handout is the Nurse Aide Registry Fourth Quarter 2016 statistics and the second handout is the Abuse, Neglect, Misappropriation (ANM) Findings through Fourth Quarter FY2016. James and Vicki Kirtley, Administrative Program Manager for the Nurse Aide Registry have been talking about presenting a graphical representation of the statistics to show the trend across time. He mentioned there is a decline in the amount of actively certified nurse aides. James said the Nurse Aide training programs and the inspections on the training programs are going well.

The Abuse, Neglect, Misappropriation (ANM) findings report has been presented quarterly for the past year. In the last quarter there were 23 findings of ANM against nurse aides or non-technical service workers. As previously mentioned a law was passed that the nurse aides must maintain a current address with the nurse aide registry. And any petition sent is considered legally served to the address on file. James mentioned there is a backlog of cases the office of general council has been working to address. There will be an increase within the next two quarters with default judgements with nurse aides being legally served. The data in the table show the type of cases there are on the nurse aides. The misappropriation of property with 47.8% for FY16-Q4, 50% the previous quarter and 11.1% for FY16-Q2 are on track with trends.

Out of the 23 findings 10 had applications in OK Screen. Of the 10 that had applications in OK Screen, one application was withdrawn, and nine went through and had a determination of eligible. Of the nine that were found to be eligible, two had prior criminal history that did not have disqualifying offenses. Four of nine had their employment terminated prior to the finding in OK Screen. And one was terminated after the finding in OK Screen. Four of the nine were employed with pending allegation prior to the ANM finding.

James gave an update on licensure concerning the upper payment limit and the supplemental payment. There is the ability in the Medicaid program for Healthcare Providers for the nursing facilities that are owned by non-state government owned entities to access an enhanced reimbursement rate. For example, if a hospital trust owns and operates a nursing home and the state amends its Medicaid plan, then the provider is eligible for the enhanced reimbursement rate. The rate has the possibility to increase up to 75%, if the new rate is approved. There are currently eight nursing homes operated by hospital trust. James will give an update of the status next quarter.

The Medicaid Plan for Oklahoma is in the process of being amended. There was a meeting with the Health Care Authority (HCA) about the next steps and what the HCA needs to do. Oklahoma is looking to model their structure using the Louisiana Medicaid Plan. The plan amendment may be

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filed prior to the end of calendar year 2016. If approved after October 1<sup>st</sup>, 2016, but before December 31<sup>st</sup>, 2016, the amended plan would be retroactive to October 1<sup>st</sup>, 2016.

There has been ongoing work between OSDH and nursing home industry to look at how to streamline the application process for completing certificates of need. The plan is to have online fillable .pdf forms and to be able to accept payments online.

**6) Nurse Aide Investigations Ad Hoc Report:**

Joanna Martin presented the Executive Summary for the twelfth meeting of the Ad Hoc Committee for Nurse Aide Investigations that met July 13<sup>th</sup>, 2016. She spoke about the two charts on the handout. The committee discussed the AIM statement, reviewed data on formal findings of abuse, neglect or misappropriation made against nurse aides and whether the committee should focus on a different AIM and objective. The committee also discussed providing monitoring reports to the LTCFAB on certain data elements and possible future directions. The next meeting is scheduled for the morning of October 12th, 2016,

**Action to Approve of the Continuation of the Nurse Aide Investigations Ad Hoc Committee:**

**Agenda Item #6  
 Vote 3**

**Motion:** To continue the Nurse Aide Investigations Ad Hoc Committee

Motion Made by: Joyce Clark      Seconded: Jimmy McWhirter      Motion Carried: Yes  
 Aye: 19      Abstain: 0      Nay: 0      Absent: 8

**Aye: 19      Abstain: 0      Nay: 0      Absent: 8**

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<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
Willie Burkhart	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
James Colgan	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<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
Theo Crawley	<input 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
Andrew Dentino	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Diana Sturdevant	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivorla Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

**7) Health Aging Report Ad Hoc Report:**

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<http://www.sos.state.ok.us/meetings/agencymeets.asp?intAgency=316>  
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Dr. Andrew Dentino gave a progress report from the Ad Hoc Committee on Healthy Aging. He mentioned that the committee met on May 23<sup>rd</sup>, 2016. Many of the Ad Hoc committee members attended the Oklahoma Healthy Aging Initiative's Summer Geriatric Institute held June 23<sup>rd</sup> – June 24<sup>th</sup>, 2016.

Dr. Dentino talked about the "It's Not OK to Fall" pilot project to reduce falls with major injury. The project finished phase one with four local sites. Dr. Dentino went on to talk about season influenza and pneumococcal vaccines in nursing homes as a next step. Starting with a rate of seasonal influenza of 95.2% in March, 2015, the aim is to improve to 96% by March 2018 and by 98% by 2019. For pneumococcal vaccinations, starting at a rate of 87.6% in March 2015, the aim is to improve to 92% by March 2018, with a stretch goal of 94% in 2019. He then spoke about using geographical analysis to determine where the lowest rates of vaccination were. The lowest vaccination rates appeared to be in the areas of Oklahoma City and Tulsa.

The next steps of the Ad Hoc committee include drafting an AIM statement, aligning with national goals, analyzing additional data, and verifying potential resources for intervention, which could also include training.

The committee plans to reconvene later this summer to finalize the aim statement and create an action plan.

A resident's vaccination record would be able to be readily accessible, if nurses would input shot records into Oklahoma State Immunization Information System (OSIIS). A recommendation was made to have training available to

## **8) Long Term Care Service Update:**

Mike Cook, Director Long Term Care Services, presented the Long Term Care update.

- *1) Senate Bill 1506:* Mike mentioned that this bill would permit Residential Care Homes to participate in dispute resolution panels. This would be in effect starting November 1<sup>st</sup>, 2016. LTC is working on providing training on the Informal Dispute Resolution (IDR) process. It would not only include Residential Care Facilities. LTC will look at providing the training for Nursing Homes, and Assisted Living, as well.
- *2) House Bill 2280:* Mike explained that this bill is an Assisted Living Act that has to do with establishing a scope & severity grid for enforcement process, which goes into effect November 1<sup>st</sup>, 2016. The scope and severity grid would include the following severities: no actual harm with potential for minimal harm; no actual harm with potential for more than minimal harm; actual harm; and immediate jeopardy. The bill would require that the Department of Health to develop a classification system of violations, taking into account the considerations and recommendations of the LTCFAB. The Scope & Severity grid has

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not been developed collectively, yet with the Assisted Living Association and the LTCFAB has not had input on it.

**Action to Create an Ad Hoc Committee to Develop a Scope & Severity Grid for the Enforcement Process for Assisted Living Facilities:**

**Agenda Item #8  
 Vote 4**

**Motion:** To create an Ad Hoc Committee to develop a scope & severity grid for the enforcement process for Assisted Living Facilities

Motion Made by: William Whited    Seconded: Joyce Clark    Motion Carried: Yes  
 Aye: 19    Abstain: 0    Nay: 0    Absent: 8

**Aye: 19    Abstain: 0    Nay: 0    Absent: 8**

Christean Bolding	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Joanna Martin	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Donna Bowers	<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
Willie Burkhart	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Randy McKinney	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Tracy Chlouber	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Jimmy McWhirter	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Joyce Clark	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Kay Parsons	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
James Colgan	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Robert Quatro	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Dustin Cox	<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
Theo Crawley	<input 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
Andrew Dentino	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Diana Sturdevant	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Terry Ferrel	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	William Whited	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Ivoria Holt	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Denise Wilson	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Pamela Humphreys	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Eileen Wilson	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Kenneth Jones	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay	Monica Woodall	<input checked="" type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay
Adam Jordan	<input type="checkbox"/> Aye <input type="checkbox"/> Abstain <input type="checkbox"/> Nay		Shading = Absent

- 3) *Ad Hoc Committee for House Bill 2280:* Joyce Clark volunteered to Chair and the committee members would include the following people: Alan Mason, Mike Cook, Debbie Zamarripa, Patty Scott, and William Whited. The scope & severity used for Assisted Living Facilities, as well as the regulations will be made available to the committee.
- 4) *LTC FAB Annual Report:* Mike cook requested that any recommendations on what content should be included in the report be brought to the next LTCFAB Meeting, so the report will be prepared and completed by December 31<sup>st</sup>, 2016

**9) New Business:**

1. *Appoint Nominating Committee for 2017 Officers:* The following LTCFAB members have been appointed to the nominating committee: James Colgan (Chairperson), Dewey Sherbon, William Whited, and Tracy Chlouber. Board members with expired terms can be voted on to be extended.

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2. *Budget update:* Dr. Dentino mentioned that the response to the Letter of Concern was good. Mike Cook said OSDH had a 9% overall budget cut. As far as LTC is concerned, LTC is a mandate on the strategic plan for the agency. Majority of the funds that LTC receives is from CMS under federal contract. LTC also received funds from state appropriations for Assisted Living, Residential Care and Adult Day Care. At present LTC has not experienced a reduction in force, as far as surveyors and staff, except for five employees from the Voluntary Buy Out (VOBO).
3. *Provider Training:* Assisted Living, Adult Day Care, Residential Care and Veterans Center provider training were canceled for 2016, but will be re-evaluated for next year.

**10) Public Comment:**

Public comment made throughout the meeting.

**11) Adjournment**

The meeting adjourned at 3:07 p.m.



## LONG-TERM CARE FACILITY ADVISORY BOARD

Regular Meeting

October 12, 2016 at 1:30 in Room 1102

Oklahoma State Department of Health, 1000 NE 10<sup>th</sup> Street, Oklahoma City, OK 73117-1299

### **MINUTES**

October 12, 2016

#### **1) Call to Order**

Wendell Short, Chair, called the meeting to order at 1:34 p.m.

#### **2) Roll Call**

Lori Bautista called roll with the following LTCFAB members present: Willie Burkhart; Joyce Clark; James Colgan; Andrew Dentino; Ivoria Holt; Pamela Humphreys; Joanna Martin; Alan Mason; Jim McWhirter; Kay Parsons; Dewey Sherbon; Wendell Short; and Denise Wilson.

The following LTCFAB members were absent: Christean Bolding; Donna Bowers; Tracy Chlouber; Dustin Cox; Theo Crawley; Terry Ferrel; Adam Jordan; Randy McKinney; Jacki Millspaugh, Robert Quatro; Diana Sturdevant; William Whited; Eileen Wilson; and Monica Woodall.

The following guests were present: Michael Cook, OSDH; Mary Brinkley, Leading Age OK; Esther Houser, general public; Diane Henry, OSDH; Alex Hart-Smith, OSDH; Doris Carder, OSDH; Gina Stafford, OK Board of Nursing; Michael Jordan, OSDH; Debbie Zamarripa, OSDH; Becky Moore, general public; Melissa Holland, OKALA; Dee Downer, OKALA; Don Maisch, OSDH; Henry Hartsell, OSDH; James Joslin, OSDH; and Lori Bautista, OSDH.

Currently, there is no vacancy on the LTCFAB, which consists of 27 members.

A quorum was not met with 13 members present, so official business was not conducted.

#### **3) Review and Action to Approve the Amended April 13, 2016 Regular Meeting Minutes:**

Quorum was not met. This agenda item was tabled to the LTCFAB Meeting, January 11<sup>th</sup>, 2017

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- 4) **Review and Action to Approve/Amend July 13, 2016 Regular Meeting Minutes:**  
Quorum was not met. This agenda item was tabled to the LTCFAB Meeting, January 11<sup>th</sup>, 2017

5) **Licensure, Nurse Aide Registry and Background Check Update:**

James Joslin gave an update on licensure concerning the upper payment limit and the supplemental payment. OSDH has had a number of meetings with the Oklahoma Health Care Authority (OHCA) and representatives of the nursing home industry. There is the ability in the Medicaid program for Healthcare Providers for the nursing facilities that are owned by non-state government owned entities to receive an enhanced reimbursement rate. The final approval for the state plan amendment will go through the Centers for Medicare & Medicaid Services (CMS). The rules that Oklahoma enacts to implement the state plan amendment will go through the OHCA Board for approval. Implementation is set for January 1<sup>st</sup>, 2017.

There are two pieces to be able to receive the enhanced reimbursement rate. One piece is getting permission. And the other piece is the nursing homes going under the ownership of non-state government owned entity. OSDH is working on two provisions that address the change of ownership from a nursing home to a non-state government organization (NSGO.)

The standards that must be met by the non-state government organization (NSGO) relate to the following: 1) Hospital re-admissions; 2) Flu & pneumonia; 3) Focus on excellence; and 4) The Healthy Aging Initiative. There will be quality metrics that must be fulfilled by the NSGO and they must cooperate with the quality improvement organizations (QIO) to receive the enhanced reimbursement rate. They must meet certain standards to receive the initial 75%, and to be able to stay in the program. James mentioned that it takes 45 – 90 days for change of ownership and licensure. The original licensee has the right to revoke the change of ownership, if the working relationship does not work out. One of the goals for implementing the state plan amendment is to reduce hospital re-admission rates.

James Joslin provided two reports on the Nurse Aide Registry Statistics and a brief update on licensure. The first handout is the Nurse Aide Registry First Quarter 2017 statistics and the second handout is the Abuse, Neglect, Misappropriation (ANM) Findings through First Quarter FY2017.

The Abuse, Neglect, Misappropriation (ANM) findings report has been presented quarterly for the past year. In the last quarter there were 20 findings of ANM against nurse aides or non-technical service workers. As previously mentioned a law was passed that the nurse aides must maintain a current address with the nurse aide registry, and any petition sent is considered legally served to the address on file. Of the 20 cases, 11 of those were default judgement. James mentioned there is a backlog of cases the office of general council has been working to address.

Out of the 20 findings 15 had applications in OK Screen. Of the 15 that had applications in OK Screen, three applications were withdrawn, and 12 went through and had a determination of eligible. Of the 12 that were found to be eligible, three had prior criminal history that did not have disqualifying offenses. Four of 12 were discharged when the allegation was found. Three of 12 had their employment terminated prior to the finding in OK Screen. And four were terminated after the

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finding in OK Screen. Six of the 12 were employed with pending allegation prior to the ANM finding. James pointed out that the system of follow-ups and notifications is working.

**6) Nurse Aide Investigations Ad Hoc Report:**

Joanna Martin presented the Executive Summary for the thirteenth meeting of the Ad Hoc Committee for Nurse Aide Investigations that met October 12<sup>th</sup>, 2016. The committee reviewed various items, which included data on nurse aides and non-technical service workers for formal findings of abuse, neglect or misappropriation, and data on F225 and F226. She spoke about the two charts on the handout. The F225 & F226 chart shows the improvement and change over three year a period. The chart on the back sheet shows the processing time of allegations of abuse, neglect and misappropriation. The committee discussed whether it would be more effective to focus on a different AIM and objective. The committee would like to survey the LTCFAB. The findings will be brought to the next LTCFAB meeting for recommendations and discussion. The next meeting is scheduled for 10:00 a.m. on January 11th, 2017.

A survey will be sent out via e-mail to the members of the LTCFAB for prioritizing items for the committee to focus on next.

**7) Health Aging Report Ad Hoc Report:**

Dr. Andrew Dentino gave a progress report from the Ad Hoc Committee on Healthy Aging. He mentioned that the committee met on August 23<sup>rd</sup>, 2016 for their twelfth meeting. He spoke about the two objectives for 2016: 1) Monitor the progress of the nursing home fall prevention pilot program, and 2) Formulate an approach to increase the percent of nursing home residents assessed and appropriately given the influenza and pneumococcal vaccines.

Dr. Dentino talked about the AIM Statement for Fall Prevention, and then presented two charts with graph lines representing Oklahoma, Region VI and US: 1) Percent of Nursing Home Residents with at least one Fall with Major Injury; 2) Pilot Project: Aggregated Composite Score and Percent of Falls with Major Injury (4 facilities.) Dr. Dentino mentioned the graphs show a negative slope overall.

Dr. Dentino next spoke about the Vaccination Initiative. He talked about statistics the Centers of Disease Control and Prevention (CDC) estimates for hospitalizations and death caused by seasonal flu, as well as hospitalizations caused by pneumococcal disease. The Ad Hoc Committee chose to focus on Influenza and Pneumococcal vaccinations in LTC facilities. Dr. Dentino mentioned additional prevention measures. The committee plans to continue to define project parameters. Dr. Dentino then went over the matters of concern for the vaccination initiative.

Dr. Dentino talked about the AIM Statement for Vaccinations, and then presented two charts with graph lines representing Oklahoma, Region VI, US and Goal: 1) Percent of Residents Assessed and Appropriately Given the Seasonal Influenza Vaccine (Long Stay) Observed

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Percentage; 2) Percent of Residents Assessed and Appropriately Given the Pneumococcal Vaccine (Long Stay) Observed Percentage. Dr. Dentino mentioned this effort should improve physical, mental, social, and emotional well-being.

**8) House Bill 2280 Ad Hoc Report:**

Joyce Clark said the committee was tasked with coming up with a classification system for violations to include a scope & severity grid and corresponding fines. In two meetings, the committee accomplished everything they wanted to complete. They used the scope & severity grid used for nursing homes as a template. The fines range from \$30 to \$500 per day for a violation. The grid shows the fining structure based on the scope and severity. This scope and severity grid and corresponding fines will go into effect November 1<sup>st</sup>, 2016. The LTCFAB will vote to recommend the Assisted Living Scope and Severity Grid at the next LTCFAB meeting.

**9) Nomination of 2017 Officers:**

James Colgan wanted to recognize the following members who served on the nominating committee: Dewey Sherbon, William Whited, Tracy Chlouber, and himself, James Colgan. The officers nominated for the LTCFAB for 2017 are: Dr. Andrew Dentino, Chair, who is currently Vice-Chair; Joanna Martin, Vice-Chair, who is currently the Secretary/Treasurer; and Alan Mason, Secretary/Treasurer. Approval of the nominated officers for 2017 is tabled to the LTCFAB Meeting, January 11th, 2017, since quorum was not met.

**10) Governor Appointments of the LTCFAB:**

Wendell Short went over a list of appointments that are expiring. Willie Burkhart, James Colgan, Dustin Cox, Andrew Dentino, Pamela Humphreys, Joanna Martin, Randy McKinney, Kay Parson, Robert Quatro, Dewey Sherbon and Monica Woodall are up for renewal November 1<sup>st</sup>, 2016. Of the above mentioned, Randy McKinney and Monica Woodall will decline renewal of their appointments to the LTCFAB. Those interested in continuing to serve as a member of the LTCFAB, please contact Natalie Smith. Mike Cook mentioned that the application for renewal does not need to be re-submitted, if there is little change since the previous application was submitted.

**11) Long Term Care Service Update:**

Mike Cook, Director Long Term Care Services, presented the Long Term Care update.

- *1) Composite Scorecard for Oklahoma Nursing Homes:* Mike presented a handout showing long stay metrics for the period ending June 30<sup>th</sup>, 2016. Mike spoke about the charts that support the Falls Initiative and the Vaccination Initiative that the Healthy Aging Ad Hoc Committee has been working on. And went on to talk about the top three greatest

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<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>

opportunities for improvement, which are: 1) Residents who self-report moderate to severe pain; 2) Residents who received antipsychotic medication; and 3) Residents assessed and appropriately given pneumococcal vaccine. Mike gave an overview of the top three quality measures that are better than the National and/or Regional average: 1) Low risk residents who lose control of their bowels or bladder; 2) Residents physically restrained; and 3) Residents whose need for help with ADLs has increased. The goals that have been set have been hit every single year. For 2) Residents who received antipsychotic medications, Oklahoma was ranked 47<sup>th</sup> with the most prevalence. The goal was met to reduce by antipsychotic use by 15% in 2013, with other goals of 20% in 2014, 25% in 2015, and 30% for 2016. Oklahoma has moved up to 39<sup>th</sup> nationally. Mike will bring the percentages of improvement to the next LTCFAB meeting.

- 2) *Informal Dispute Resolution (IDR) Training*: Mike announced that there will be Assisted Living/Residential Care IDR Training October 19<sup>th</sup>, 2016. The Nursing Home and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID) IDR Training will be November 8<sup>th</sup>, 2016. The trainings are set tentatively at the University of Oklahoma Health Sciences Center.
- 3) *Nursing Home Regulations*: November 28<sup>th</sup>, 2016 is the effective date. Mike has not received any new information than what was already presented originally. As new information is received, Mike will make periodic announcements.
- 4) *Recent Survey & Certification Letter from Centers for Medicare & Medicaid Services (CMS)*: Mike talked about the different scope and severity levels of A, B, C do not require a Plan of Correction (POC); D, E, F would have the opportunity to correct; G, H, I would be immediately assigned remedies; and J, K, L would be immediate jeopardy. Effective September 1st fines went up and we are currently waiting on guidance from CMS.
- 5) *Life Safety Code Training*: Life Safety Code surveyors are currently completing training. They will take the test soon and will be up and running by November 1<sup>st</sup>.
- 6) *Legislation for 2017*: Mike will talk about any changes next year as they come up. But there will be changes to complaint processing timelines, and whether or not it is more efficient to complete complaints on follow-ups and/or re-certifications.
- 7) *LTC FAB Annual Report*: Mike mentioned that the Annual Report is due November 7<sup>th</sup>, 2016 by Long Term Care. Please send any recommendations on the content that should be included in the report to Mike Cook at the following e-mail address: [mikec@health.ok.gov](mailto:mikec@health.ok.gov).

## 12) New Business:

1. *LTCFAB 2017 Meeting Dates*: A handout was passed out with next year's LTCFAB meeting dates.
  - January 11<sup>th</sup>, 2017 at 1:30 p.m.
  - April 12<sup>th</sup>, 2017 at 1:30 p.m.
  - July 12<sup>th</sup>, 2017 at 1:30 p.m.
  - October 11<sup>th</sup>, 2017 at 1:30 p.m.

Meetings are posted at:

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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>

**13) Public Comment:**

1. *Music and Memory Program:* Mary Brinkley spoke about the Music and Memory Program that was part of the Provider Training in Oklahoma City and Tulsa. She explained that it is a \$353,000 grant that will implement the program in 100 nursing homes throughout the state of Oklahoma. A video on YouTube called “Alive Inside Film of Music and Memory Project - Henry's Story” tells how music impacted a resident of a nursing home. Assisted Livings, Adult Day Cares, and other non-Medicare/Medicaid facilities can still participate at a reduced rate. Currently, the program is only for Medicare & Medicaid facilities.

**14) Adjournment**

The meeting adjourned at 3:17 p.m.

# 2017 Proposed Amendments State Board of Health Rules

Chapter 663 – Assisted Living and Continuum of Care  
Chapter 675 – Nursing and Specialized Facilities  
Chapter 680 – Residential Care Home

Michael Cook  
Director, Long Term Care Service



# TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH

## CHAPTERS 663, 675 & 680

1. The proposal amends **physical plant requirements** in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects. ***Similar language in Chapters 663 & 680.***



# TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH

## Chapters 663, 675 & 680

2. This proposal amends OAC 310:675-7-5.1 relating to **facility reportable incidents**. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital. ***Similar language in Chapters 663 & 680***
3. This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to **complaints** made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days. ***Similar language in Chapter 680.***



# Physical Plant Requirements

1. The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects. . ***Similar language in Chapters 663 & 680.***



For SFY2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of **\$330,836**. The deficits in SFY2017 and subsequent years must be covered by state appropriations.

The rule includes fee increases for operational services. The fees proposed for increase are:

- (A) **Design and construction plans and specifications fee**: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (B) Request for **exception or temporary waiver fee**: Five Hundred Dollars (\$500.00);
- (C) Application for **self-certification fee**: Five Hundred Dollars (\$500.00);
- (D) **Courtesy construction inspection fee**: Five Hundred Dollars (\$500.00);
- (E) **Professional consultation or technical assistance fee**: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

Plan review fees have the potential to reduce the required state appropriations subsidy by:

Continuum of Care and Assisted Living Centers - **\$13,000**

Nursing and Specialized Facilities - **\$8,980**

Residential Care Homes - **\$4,050**



# Facility Reportable Incidents

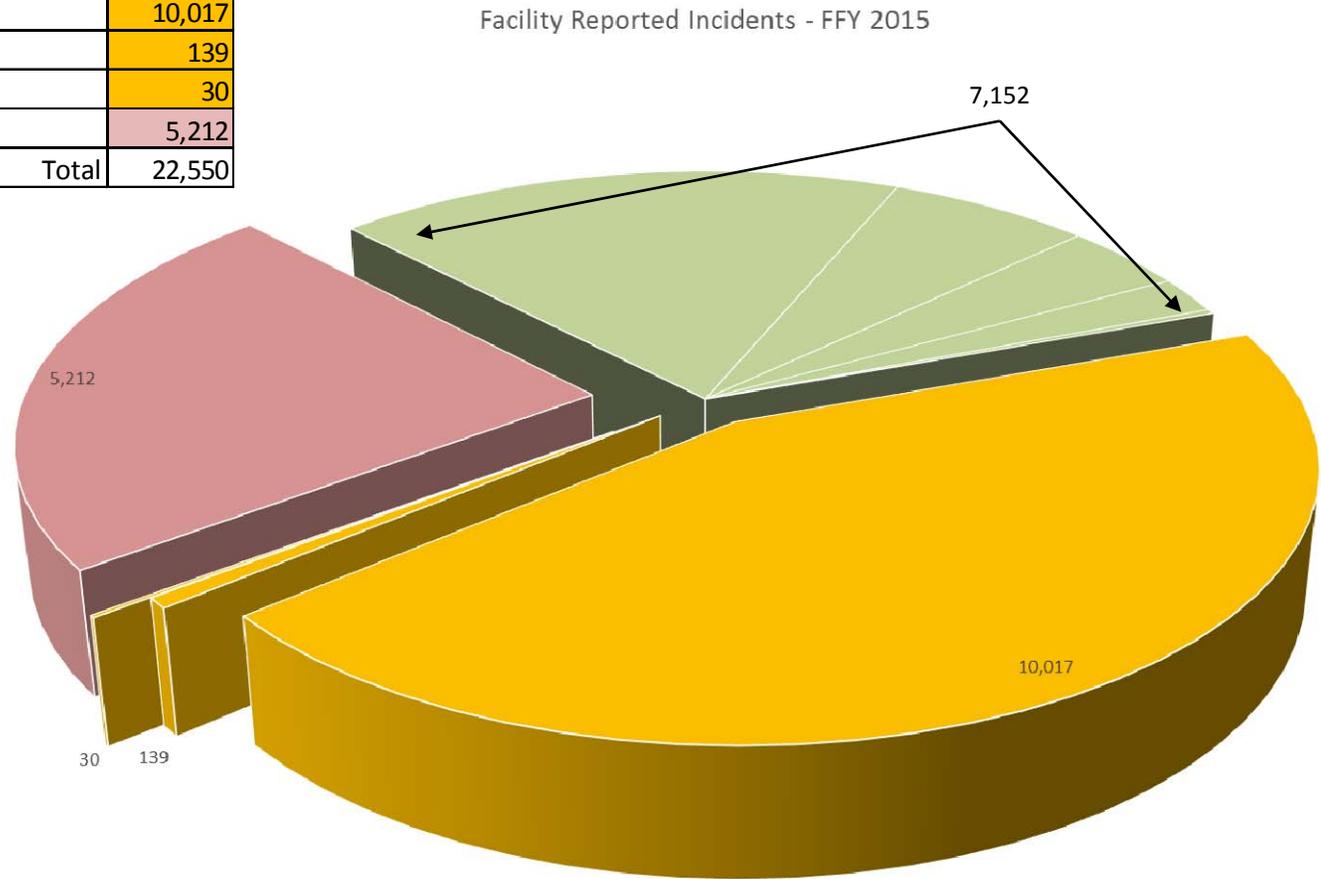
2. This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital. ***Similar language in Chapters 663 & 680***



**Reporting certain injuries.** The facility shall report to the Department incidents that result in: fractures, treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid.



Category	Qty
Abuse / Neglect / Misapp / Unknown Origin	4,184
Fall Major	1,497
Accident (Not Otherwise Specified)	911
Missing Resident	492
Communicable Disease	60
Death Not Natural	8
Head Injury	10,017
Storm / Utility	139
Fire	30
Other (Non Reportable)	5,212
Total	22,550



	Subject 1	Subject 2	Subject 3
<b>Reviewed</b>	164	164	164
<b>Met</b>	24	30	30
<b>Not Met</b>	140	134	134
<b>Not Met %</b>	<b>85%</b>	<b>82%</b>	<b>82%</b>

	10,017	150
<b>% Reduction</b>	<b>Provider</b>	<b>State</b>
20%	2,003	\$4,430
30%	3,005	\$6,645
40%	4,007	\$8,860
<b>50%</b>	<b>5,009</b>	<b>\$11,075</b>
60%	6,010	\$13,290
70%	7,012	\$15,505
80%	8,014	\$17,720

The proposed reporting of incidents will benefit residents, family and staff by reducing duplicative reporting to the OSDH and local emergency response managers by:

Continuum of Care and Assisted Living Centers – **1,600 Reports**

Nursing and Specialized Facilities – **5,000 Reports**

Residential Care Homes – **500 Reports**

In addition, the proposed has the potential to reduce the required state appropriations subsidy by:

Continuum of Care and Assisted Living Centers - **\$3,535**

Nursing and Specialized Facilities – **\$11,075**

Residential Care Homes - **\$1,000**



# Complaints

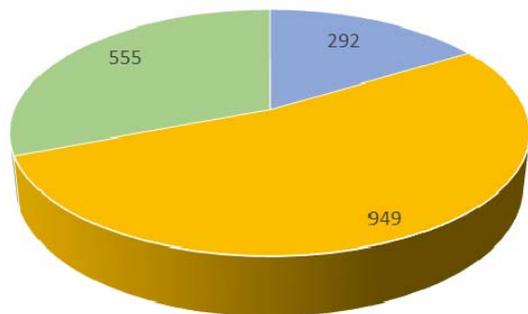
3. This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days. ***Similar language in Chapter 680.***



Investigation Type	2010	2011	2012	2013	2014	2015	2016
RECERTIFICATION	295	307	271	310	296	282	292
COMPLAINT	1028	1091	1192	1164	1155	1137	949
REVISIT	560	555	566	633	670	653	555
TOTAL	1883	1953	2029	2107	2121	2072	1796

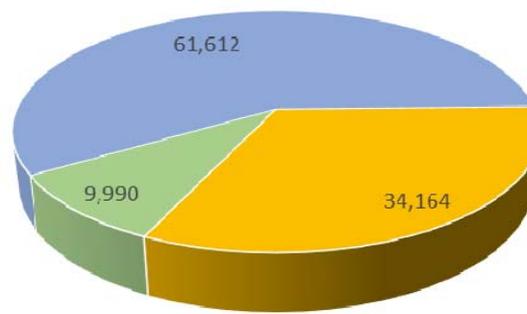
2016	Visits	%	Hrs	Hrs Total	Hrs %
RECERTIFICATION	292	16%	211	61,612	58%
COMPLAINT	949	53%	36	34,164	32%
REVISIT	555	31%	18	9,990	9%
TOTAL	1796			105,766	

Investigations Visits - FFY 2016



■ RECERTIFICATION ■ COMPLAINT ■ REVISIT

Investigation Hrs - FFY 2016

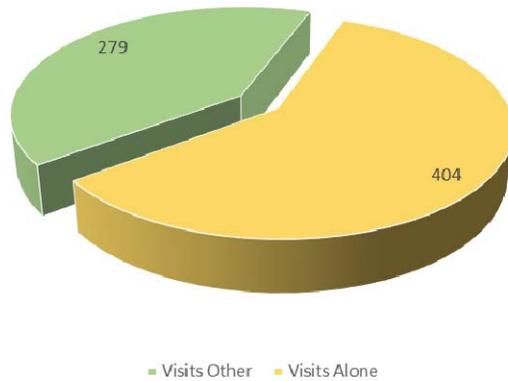


■ RECERTIFICATION ■ COMPLAINT ■ REVISIT

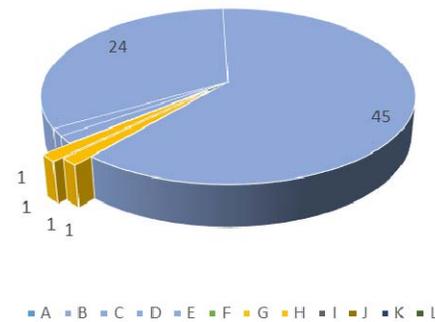


Year	Priority	Visits Total	Visits Total %	Visits Other	Visits Alone	Visits Alone %	A	B	C	D	E	F	G	H	I	J	K	L	Total
FFY 2016	IJ	51	5%	12	39	76%	0	0	0	0	4	1	0	1	0	5	2	0	13
FFY 2016	NIJH	241	25%	76	165	68%	0	0	0	10	13	1	5	6	0	0	1	0	36
FFY 2016	NIJIM	683	70%	279	404	59%	0	1	1	24	45	0	1	1	0	0	0	0	73
FFY 2016	NIJL	7	1%	3	4	57%	0	0	0	0	0	0	0	0	0	0	0	0	0

Non Immediate Jeopardy Medium  
Triaged Complaints - FFY 2016



Non Immediate Jeopardy Medium  
Triaged Complaint - FFY 2016  
Resulting in Deficiencies



	<b>Complaints</b>	IJ (Immediate Jeopardy)	NIJH (Non Immediate Jeopardy High)	NIJM (Non Immediate Jeopardy Medium)	NIJL (Non Immediate Jeopardy Low)
	<b>Federal Requirements</b>	2 Days	10 Days	Next onsite	Next onsite
	<b>Oklahoma</b>	2 Days	10 Days	25 Days	30 Days
1	<b>AL</b>	No State Regs	No State Regs	No State Regs	No State Regs
2	<b>AR</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
3	<b>AZ</b>	2 Days	10 Days	45 Days	Next onsite
4	<b>CA</b>	24 hrs			
5	<b>CO</b>	No State Regs	No State Regs	No State Regs	No State Regs
6	<b>CT</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
	<b>DE</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
7	<b>ID</b>	No State Regs	No State Regs	No State Regs	No State Regs
8	<b>IL</b>	24 hrs	7 Days	30 Days	30 Days
9	<b>LA</b>	2 Days	10 Days	30 Days	No onsite / Admin review
10	<b>MO</b>	24 hrs			
11	<b>NM</b>	2 Days	10 Days	45 Days	Next onsite
12	<b>NE</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
13	<b>NH</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
14	<b>NJ</b>	No State Regs	No State Regs	No State Regs	No State Regs
15	<b>OR</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
16	<b>PA</b>	24 hrs	2 Days	2 Days	2 Days
17	<b>RI</b>	24 hrs	7 Days	21 Days	60 Days
18	<b>SD</b>	Same as Federal	Same as Federal	Same as Federal	Same as Federal
19	<b>WI</b>	2 Days	10 Days	60 Days	
20	<b>WV</b>	2 Days	10 Days	30 - 60 Days	90 Days

The proposal has the potential to reduce the required state appropriations subsidy by:  
Nursing and Specialized Facilities – \$113,504  
Residential Care Homes - \$4,729



# **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH**

## **CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**

This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and specifications requirements of Subchapter 5.



# **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH**

## **CHAPTER 680. RESIDENTIAL CARE HOMES**

The proposal amends licensure requirements in Subchapter 3 to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation. Requirements regarding zoning of the home's location are revised to be consistent with the Residential Care Act. Requirements for records and reports to be kept in the home are updated to reflect current laws for administrators and communicable diseases. Unnecessary records are deleted.

OAC 310:680-3-14 is updated to accurately reflect statutory requirements for appropriate occupancy.

Provisions for storage of resident's belongings are revised. The amendments allow for resident choice in room furnishings.

This proposal amends housekeeping requirements to clarify allowable differences between handling of general and soiled laundry.

Staffing requirements are revised to require first aid and CPR training for direct care staff, and to remove the restriction on crediting first aid and CPR training towards the administrator's annual job-related training requirement.



# TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTERS 663, 675 & 680

These combined proposals have the potential to reduce the required state appropriations subsidy by:

Continuum of Care and Assisted Living Centers - \$16,535

Nursing and Specialized Facilities – \$133,559

Residential Care Homes - \$9,779

# \$159,873



# THANK YOU!

Michael Cook  
Director, Long Term Care Service  
[mikec@health.ok.gov](mailto:mikec@health.ok.gov)



## **RULE IMPACT STATEMENT**

### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**

#### **1. DESCRIPTION:**

The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and specifications requirements of Subchapter 5.

#### **2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of nursing and specialized facilities. The proposed construction and physical plant requirements will increase fees for owners and operators. Additionally, affected professionals working with nursing homes and specialized facilities may include architects, engineers, clinicians, and attorneys. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. No cost is anticipated to impact these parties for the proposal relating to complaints, updating terminology or incorporation of the most recent Life Safety Code.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will include residents and their families as well as owners, operators, staff of nursing homes and specialized facilities and associated professionals. The benefits include updating the rule to incorporate current life-safety codes adopted by the Centers for Medicare & Medicaid Services, and design and construction requirements. The proposed reporting of incidents will benefit residents, family and staff of nursing homes and specialized facilities by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. In Federal Fiscal Year 2016, there were 690 complaints triaged for investigation under the 25 or 30 day requirement. Of those, 617 (89 %) resulted in no citation; 73 (11%) resulted in deficiencies of no actual harm; and two of the 690 (0.3%) complaints resulted in deficiencies of actual harm. Avoiding this duplicative workload will preserve resources to address higher priority complaint and inspection workload.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

Nursing homes and specialized facilities may benefit economically from reduced times required to obtain clearance to start construction. The upgraded codes and guidelines are anticipated to include a combination of cost increases and decreases as a result of new construction technologies and methods.

The rule includes fee increases for operational services. The fees proposed for increase are as follows:

- (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

Based on State Fiscal Year (SFY) 2016 experience, the fee changes are projected to generate a total of \$8,980 in additional fee revenue, based on the following:

- \$1,980 in plan review fees, assuming 11 projects at \$180 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$500 in self-certification fees, assuming one certifications at \$500 each
- \$5,500 in courtesy inspection fees, assuming eleven inspections at \$500 each
- \$500 in professional consultation fees, assuming one project at \$500 each
- \$8,980 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the OSDH to implement the amendments will be approximately \$3,300 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules

will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel.

The fee changes and complaint investigation and incident reporting modifications are projected to reduce the required state appropriations subsidy by \$133,484 per year.

- For SFY2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of \$330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The nursing and specialized facility plan review fees have the potential to reduce the required state appropriations subsidy by \$8,980 per year.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 5,000 reports or 22%. In addition, the proposal has the potential to reduce the required state appropriations subsidy by approximately \$11,000.
- The proposed changes in complaint investigation requirements will enable the OSDH to more closely align state complaint investigations with federal complaint investigations. This will have the effect of significantly reducing the number of complaints alleging no harm or jeopardy to residents that must be individually investigated due to the time frames specified in the current rule. For Federal Fiscal Year 2016, 690 complaints were triaged for investigation under the requirements at OAC 310:675-7-6.1(b)(4)(C) and (D). Of those, 408 were investigated individually under state requirements. Under federal requirements, those complaints could have been investigated the next time OSDH conducted an annual survey or an investigation of a more serious allegation of immediate jeopardy or actual harm to a resident. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 2,737 hours. The proposal has the potential to reduce the required state appropriations subsidy by approximately \$113,504, or more than 1.3 FTE.

State agencies that operate nursing or specialized facilities and engage in construction projects may incur additional costs for plan reviews and related optional services. Such state agencies will benefit from the streamlined incident reporting requirements.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

Nursing facilities and specialized facilities operated by political subdivisions may be affected by the upgrade in codes and guidelines, the new review process, and the fees for optional services.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from business entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services. The changes in incident reporting and complaint investigation response requirements make them more consistent with federal standards by reducing additional state requirements. Maintaining an emphasis on immediate jeopardy and actual harm complaints will help ensure the OSDH has resources to continue to address those more serious situations in two days and ten days, respectively. Modifying the complaint investigation response times is projected to reduce reliance on state appropriated funds by more than \$100,000 per year.

Additionally, correspondence with and review of 17 other state agencies indicated that 9 states (Alabama, Arizona, Colorado, Connecticut, Idaho, Nebraska, New Jersey, Oregon and South Dakota) are consistent with the current federal standards which allow complaints that do not represent immediate jeopardy or actual harm to the resident to be investigated during the next onsite inspection at the facility. Elimination of certain types of reports for minor incidents will reduce the required state appropriations subsidy by an additional \$11,000 per year.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

This change will enable health care facilities to use the most current national codes and guidelines, which represent enhancements to patient safety and health care quality. Negative effects on resident safety have been minimized by modifying requirements for incident reports and complaint allegations to enable OSDH to focus on allegations of actual harm and immediate jeopardy.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services that assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the nursing facility licensure program. OSDH may be unable to continue to provide current levels of services for construction projects, incident reports, and complaint investigations. The changes position OSDH to focus resources on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; update the impact on political subdivisions in section 6; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 5. Physical Plant

310:675-5-18. Design and construction [AMENDED]

310:675-5-22. Exceptions and temporary waivers [NEW]

310:675-5-23. Submission of plans and specifications and related requests for services [NEW]

310:675-5-24. Preparation of plans and specifications [NEW]

310:675-5-25. Self-certification of plans [NEW]

Subchapter 7. Administration

301:675-7-5.1 Reports to state and federal agencies [AMENDED]

310:675-7-6.1. Complaints [AMENDED]

310:675-7-12.1 Incident Reports [AMENDED]

Subchapter 11. Intermediate Care Facilities of 16 Beds and Less for the Mentally Retarded Individuals With Intellectual Disabilities (ICF/MR 16 beds and less) (ICF/IID-16)

310:675-11-5. Physical plant [AMENDED]

310:675-11-5.1 Plans and specifications requirements applicable to ICF/IID-16 [NEW]

**SUMMARY:**

The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and

specifications requirements of Subchapter 5.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; 63 O.S. Section 1-1908; and 63 O.S. Section 1-1942.

**COMMENT PERIOD:**

December 15, 2016 through January 17, 2017. Interested persons may informally discuss the proposed rules with the contact person listed below; or may, through January 17, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on January 17, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. In the event of state offices closing due to inclement weather, there will be an alternate hearing date on January 19, 2017, at the same location in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before January 17, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSON:**

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to [MikeC@health.ok.gov](mailto:MikeC@health.ok.gov).

## RULE IMPACT STATEMENT

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

#### 1. **DESCRIPTION:**

The proposal amends physical plant requirements in Subchapter 5 by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Added are criteria and a process for nursing facilities to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give nursing facilities the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

This proposal amends OAC 310:675-7-5.1 relating to facility reportable incidents. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:675-7-6.1(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the facility, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for facilities and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

This proposal amends OAC 310:675-7-12.1 relating to facility non-reportable incidents. The proposed changes remove language on facility non-reportable incident reports.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. A section is added to incorporate into Subchapter 11 the updated plans and specifications requirements of Subchapter 5.

#### 2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of nursing and specialized facilities. The proposed construction and physical plant requirements will increase fees for owners and operators. Additionally, affected professionals working with nursing homes and specialized facilities may include architects, engineers, clinicians, and attorneys. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. No cost is anticipated to impact these parties for the proposal relating to complaints, updating terminology or incorporation of the most recent Life Safety Code.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will include residents and their families as well as owners, operators, staff of nursing homes and specialized facilities and associated professionals. The benefits include updating the rule to incorporate current life-safety codes adopted by the Centers for Medicare & Medicaid Services, and design and construction requirements. The proposed reporting of incidents will benefit residents, family and staff of nursing homes and specialized facilities by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. In Federal Fiscal Year 2016, there were 690 complaints triaged for investigation under the 25 or 30 day requirement. Of those, 617 (89 %) resulted in no citation; 73 (11%) resulted in deficiencies of no actual harm; and two of the 690 (0.3%) complaints resulted in deficiencies of actual harm. Avoiding this duplicative workload will provide inspectors more time to address higher priority complaint and inspection workload.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

Nursing homes and specialized facilities may benefit economically from reduced times required to obtain clearance to start construction. The upgraded codes and guidelines are anticipated to include a combination of cost increases and decreases as a result of new construction technologies and methods.

The rule includes fee increases for operational services. The fees proposed for increase are as follows:

- (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

Based on SFY 2016 experience, the fee changes are projected to generate a total of \$8,980 in additional fee revenue, based on the following:

- \$1,980 in plan review fees, assuming 11 projects at \$180 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$500 in self-certification fees, assuming one certifications at \$500 each
- \$5,500 in courtesy inspection fees, assuming eleven inspections at \$500 each
- \$500 in professional consultation fees, assuming one project at \$500 each
- \$8,980 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the OSDH to implement the amendments will be approximately \$3,300 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel.

The fee changes and complaint investigation and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$133,484.

- For SFY2017, plan review fees for all types of health care facilities totaling \$162,958 are projected to exceed expenses of \$469,349, for a deficit of \$330,836. The deficit in SFY2017 and subsequent years is expected to be covered by state appropriations. The nursing and specialized facility plan review fees have the potential to reduce OSDH use of state appropriations by \$8,980.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 5,000 reports or 22%. In addition, the proposal has the potential to reduce the OSDH's use of state appropriations by approximately \$11,000.
- The proposed changes in complaint investigation requirements will enable the OSDH to more closely align state complaint investigations with federal complaint investigations. This will have the effect of significantly reducing the number of complaints alleging no harm or jeopardy to residents that must be individually investigated due to the time frames specified in the current rule. For Federal Fiscal Year 2016, 690 complaints were triaged for investigation under the requirements at OAC 310:675-7-6.1(b)(4)(C) and (D). Of those, 408 were investigated individually under state requirements. Under federal requirements, those complaints could have been investigated the next time OSDH conducted an annual survey or an investigation of a more serious allegation of immediate jeopardy or actual harm to a resident. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 2,737 hours. The proposal has the potential to reduce the OSDH's use of state appropriations by approximately \$113,504, or more than 1.3 FTE.

State agencies that operate nursing or specialized facilities and engage in construction projects may incur additional costs for plan reviews and related optional services. Such state agencies will benefit from the streamlined incident reporting requirements.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and the rule will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services. The changes in incident reporting and complaint investigation response requirements make them more consistent with federal standards by reducing additional state requirements.

Maintaining an emphasis on immediate jeopardy and actual harm complaints will help ensure the OSDH has resources to continue to address those more serious situations in two days and ten days, respectively. Modifying the complaint investigation response times is projected to reduce reliance on state appropriated funds by more than \$100,000 per year.

Additionally, correspondence with and review of 17 other state agencies indicated that 9 states (Alabama, Arizona, Colorado, Connecticut, Idaho, Nebraska, New Jersey, Oregon and South Dakota) are consistent with the current federal standards which allows complaints that do not represent immediate jeopardy or actual harm to the resident to be investigated during the next onsite inspection at the facility. Elimination of certain types of reports for minor incidents will reduce reliance on state appropriated funds by an additional \$11,000 per year.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

This change will enable health care facilities to use the most current national codes and guidelines, which represent enhancements to patient safety and health care quality. Negative effects on resident safety have been minimized by modifying requirements for incident reports and complaint allegations to enable OSDH to focus on allegations of harm and immediate jeopardy.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services which assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in state appropriations, and will be required to continue providing current levels of services using funding and administrative resources to investigate complaints and process incident reports with relatively low impact on public health. The changes position OSDH to focus on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES**

**SUBCHAPTER 5. PHYSICAL PLANT**

**310:675-5-18. Design and construction [AMENDED]**

The requirements in applicable portions of ~~NFPA 101, 1981, shall supersede all other standards and codes unless indicated herein to the contrary~~ the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 are incorporated by reference. For Medicare or Medicaid certified nursing or specialized facilities, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter. A high degree of safety for the occupants shall be provided to minimize the incidence of accidents with special consideration for residents who will be ambulatory to assist them in self care. Hazards such as sharp corners shall be avoided.

(1) **Existing facilities.** Nonconforming portions which because of financial hardship are not being totally modernized, shall comply with the safety requirements dealing with details and finishes as listed in Chapter 13 NFPA Standard 1-1, 1981.

(2) **New construction projects including additions and alterations.** Details and finishes shall comply with the following:

(A) Items such as drinking fountains, telephone booths, vending machines, and portable equipment shall be located so as not to restrict corridor traffic or reduce the corridor width below the required minimum.

(B) All rooms containing bathtubs, sitz baths, showers, and water closets, subject to occupancy by residents, shall be equipped with doors and hardware which will permit access from the outside in any emergency. When such rooms have only one opening or are small, the doors shall be capable of opening outward or be otherwise designed to be opened without need to push against a resident who may have collapsed within the room.

(C) The minimum width of all doors to resident rooms and rooms needing access for beds shall be 3'8" (1.12 m.). Doors to rooms needing access for stretchers and to resident's toilet rooms and other rooms needing access for wheelchairs shall have a minimum width of 2'10" (86.3 cm.).

(D) Doors on all openings between corridors and rooms or spaces subject to occupancy, except elevator doors, shall be swing type. Openings to showers, baths, resident's toilets, and other small wet type areas not subject to fire hazard are exempt from this requirement.

(E) Windows and outer doors which may be frequently left in an open position shall be provided with insect screens. Windows shall be designed to prevent accidental falls when open.

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 3'0" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the

required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

(H) Safety glazing shall be of materials and at locations required by the Oklahoma Safety Glazing Material Law.

(I) Thresholds and expansion joint covers shall be made flush with the floor surface to facilitate use of wheelchairs and carts and shall be constructed to restrict the passage of smoke.

(J) Grab bars shall be provided at all residents' toilets, showers, tubs, and sitz baths. The bar shall have 1 1/2" (3.8 cm.) clearance to walls and shall have sufficient strength and anchorage to sustain a concentrated load of 250 lbs. (113.4 kg.).

(K) Recessed soap dishes shall be provided in showers and bathrooms.

(L) Handrails shall be provided on both sides of corridors used by residents. A clear distance of 1 1/2" (3.8 cm.) shall be provided between the handrail and the wall. Ends of handrails and grab bars shall be constructed to prevent snagging the clothes of residents.

(M) Location and arrangement of handwashing facilities shall permit their proper use and operation.

(N) Lavatories and handwashing facilities shall be securely anchored to withstand an applied vertical load of not less than 250 lbs. (113.4 kg.) on the front of the fixture.

(O) Mirrors shall be arranged for convenient use by residents in wheelchairs as well as by residents in a standing position. Mirrors shall not be installed at handwashing fixtures in food preparation areas.

(P) Provisions for hand drying shall be included at all handwashing facilities. These shall be single-use separate, individual paper or cloth units enclosed in such a way as to provide protection against the dust or soil and ensure single unit dispensing. Hot air dryers are permitted provided that installation is such to preclude possible contamination by recirculation of air.

(Q) The minimum ceiling height shall be 8'0" (2.44 m.) with the following exceptions:

(i) Boiler rooms shall have ceiling clearances not less than 2'6" (76 cm.) above the main boiler header and connecting piping.

(ii) Rooms containing ceiling-mounted equipment shall have height required to accommodate the equipment.

(iii) Ceilings in corridors, storage rooms, toilet rooms, and other minor rooms shall be not less than 7'8" (2.34 m.).

(iv) Suspended tracks, rails and pipes located in path of normal traffic shall not be less than 6'8" (2.03 m.) above the floor.

(R) Recreation rooms, exercise rooms, and similar spaces where impact noise may be generated shall not be located directly over resident bed areas unless special provisions are made to minimize such noise.

(S) Rooms containing heat producing equipment (such as boiler or heater rooms and laundries) shall be insulated and ventilated to prevent any floor surface above from exceeding a temperature 10° F. (6° C.) above the ambient room temperature.

**(3) Finishes**

(A) Floor materials shall be easily cleanable and have wear resistance appropriate for the location involved. Floors in areas used for food preparation or food assembly shall be water-resistant and grease-proof. Joints in tile and similar material in such areas shall be resistant to food acids. In all areas frequently subject to wet cleaning methods, floor materials shall not be physically affected by germicidal and cleaning solutions. Floors that

are subject to traffic while wet (such as shower and bath areas, kitchens, and similar work areas) shall have a non-slip surface.

(B) Wall bases in kitchens, soiled workrooms, and other areas which are frequently subject to wet cleaning methods shall be made integral and covered with the floor, tightly sealed within the wall, and constructed without voids that can harbor insects.

(C) Wall finishes shall be washable and, in the immediate area of plumbing fixtures, shall be smooth and moisture resistant. Finish trim, and wall and floor constructions in dietary and food preparation areas shall be free from spaces that can harbor rodents and insects.

(D) Floor and wall penetrations by pipes, ducts, and conduits shall be tightly sealed to minimize entry of rodents and insects. Joints of structural elements shall be similarly sealed.

(E) Ceilings throughout shall be easily cleanable. Ceilings in the dietary and food preparation areas shall have a finished ceiling covering all overhead piping and duct work. Finished ceilings may be omitted in mechanical and equipment spaces, shops, general storage areas, and similar spaces, unless required for fire-resistive purposes.

### **310:675-5-22. Exceptions and temporary waivers [NEW]**

(a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective has been met.

(b) A nursing facility may submit a request for exception or temporary waiver if the rules in this Chapter create an unreasonable hardship, or if the design and construction for the nursing facility property offers improved or compensating features with equivalent outcomes to this Chapter.

(c) The Department may permit exceptions and temporary waivers of this Chapter if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-1901 et seq., and the following:

(1) Any nursing facility requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:

(i) The section(s) of this Chapter for which the exception or temporary waiver is requested;

(ii) Reason(s) for requesting an exception or temporary waiver;

(iii) The specific relief requested; and

(iv) Any documentation which supports the application for exception.

(2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:

(i) Compliance with 63 O.S. Section 1-1901 et seq.;

(ii) The level of care provided;

(iii) The impact of an exception on care provided;

(iv) Alternative policies or procedures proposed; and

(v) Compliance history with provisions of the Life Safety Code and this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the nursing facility in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) A nursing facility which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the nursing facility is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

**310:675-5-23. Submission of plans and specifications and related requests for services [NEW]**

(a) Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:675-5-24 or OAC 310:675-5-25.

(1) Plans and specifications are required for the following alterations:

(i) Changes that affect path of egress;

(ii) Change of use or occupancy;

(iii) Repurposing of spaces;

(iv) Structural modifications;

(v) Heating, ventilation and air conditioning (HVAC) modifications;

(vi) Electrical modifications that affect the essential electrical system;

(viii) Changes that require modification or relocation of fire alarm initiation or notification devices;

(ix) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;

(x) Replacement of fixed medical equipment if that work requires any work noted in in this (i) through (ix) of this paragraph;

(xi) Replacement of or modifications to any required magnetic or radiation shielding;

(xii) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

(i) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;

(ii) Ordinary repairs and maintenance;

(iii) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or

(iv) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

(2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);

(3) Application for self-certification fee: Five Hundred Dollars (\$500.00);

(4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);

(5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

(c) The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.

(1) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete

(i) **Not complete.** Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional 15 calendar days to review the application for completeness.

(ii) **Complete.** Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) **Technical review.** The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(i) **When times are tolled.** The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(ii) **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified

(iii) **Delays.** An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.

(iv) **Extensions.** Extensions may be made as provided by law.

### **310:675-5-24. Preparation of plans and specifications [NEW]**

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The nursing facility has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

### **310:675-5-25. Self-certification of plans [NEW]**

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a nursing facility considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:675-5-23. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The nursing facility and the project architect may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect attesting that the plans and specifications are based upon and comply with the requirements of this Chapter.

(c) To be eligible for self-certification, projects must comply with the following requirements:

- (1) The project involves any portion of the nursing facility where patients are intended to be examined or treated and the total cost of design and construction is one million dollars (\$1,000,000) or less; or
- (2) The project involves only portions of the nursing facility where patients are not intended to be examined or treated; and
- (3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and
- (4) The nursing facility owner/operator acknowledges that the Department retains the authority to:
- (i) Perform audits of the self-certification review program and select projects at random for review;
  - (ii) Review final construction documents;
  - (iii) Conduct on-site inspections of the project;
  - (iv) Withdraw approval based on the failure of the nursing facility or project architect to comply with the requirements of this Chapter; and
- (5) The nursing facility agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.
- (c) Within twenty-one (21) days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the nursing facility. If the application is denied, the nursing facility shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.
- (d) After denial of the application for self-certification and prior to the start of construction, the nursing facility shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the nursing facility's plans in accordance with the process in OAC 310:675-5-23.

## SUBCHAPTER 7. ADMINISTRATION

### **310:675-7-5.1. Reports to state and federal agencies [AMENDED]**

- (a) **Timeline for reporting.** All reports to the Department shall be made ~~by telephone or facsimile~~ within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be ~~mailed or faxed~~ submitted to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.
- (b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(I)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).
- (c) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

(d) **Reporting communicable diseases.** The facility shall report *communicable diseases* [63 O.S. §1-1939(I)(1)(a)] and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting).

(e) **Reporting certain deaths.** The facility shall report *deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device*, [63 O.S. §1-1939(I)(1)(b)] according to applicable state and federal laws. The facility shall also report such deaths to the Department.

(f) **Reporting missing residents.** The facility shall report *missing residents* to the Department after a search of the facility and facility grounds and a determination by the facility that the resident is missing. *In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing* [63 O.S. §1-1939(I)(1)(c)].

(g) **Reporting criminal acts.** The facility shall report *situations arising where a criminal intent is suspected. Such situations shall also be reported to local law enforcement* [63 O.S. §1-1939(I)(1)(d)]. Where physical harm has occurred to a resident as a result of a suspected criminal act, a report shall immediately be made to the municipal police department or to the sheriff's office in the county in which the harm occurred. A facility that is not clear whether the incident should be reported to local law enforcement should consult with local law enforcement.

~~(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than four (4) hours.~~

~~(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in: fractures, head injury or require treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid.~~

~~(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.~~

~~(k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.~~

(i) **Reporting to local emergency response manager.** The facility shall coordinate with the local emergency response manager their response to fire damage, storm damage resulting in relocation of residents or power outage of four (4) hours or more.

(j) **Incident report format.** The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report shall include, at a minimum: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

~~(1) **Reporting nurse aides.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:~~

- ~~(1) facility name, address, and telephone;~~
- ~~(2) facility type;~~
- ~~(3) date;~~
- ~~(4) reporting party name or administrator name;~~
- ~~(5) employee name and address;~~
- ~~(6) employee certification number;~~
- ~~(7) employee social security number;~~
- ~~(8) employee telephone number;~~

~~(9) termination action and date;~~

~~(10) other contact person name and address; and~~

~~(11) facts of abuse, neglect, or misappropriation of resident property.~~

~~(m)~~**(k) Content of reports to the department.** Reports to the Department made pursuant to this section shall contain the following:

(1) The preliminary report shall, at the minimum, include:

(A) who, what, when, and where; and

(B) measures taken to protect the resident(s) during the investigation.

(2) The follow-up report shall, at the minimum, include:

(A) preliminary information;

(B) the extent of the injury or damage if any; and

(C) preliminary findings of the investigation.

(3) The final report shall, at the minimum, include preliminary and follow-up information and:

(A) a summary of investigative actions;

(B) investigative findings and conclusions based on findings; and

(C) corrective measures to prevent future occurrences.

(D) if items are omitted, why the items are omitted and when they will be provided.

(l) **Reporting nurse aides and non-technical service workers.** The facility shall report to the Department allegations and incidents of abuse, neglect, or misappropriation of resident property by a nurse aide or non-technical service worker by submitting a completed Nurse Aide Abuse, Neglect, Misappropriation of Resident Property Form (ODH Form 718), which requires the following:

(1) facility name, address, and telephone;

(2) facility type;

(3) date;

(4) reporting party name or administrator name;

(5) employee name and address;

(6) employee certification number;

(7) employee social security number;

(8) employee telephone number;

(9) termination action and date;

(10) other contact person name and address; and

(11) facts of abuse, neglect, or misappropriation of resident property.

### **310:675-7-6.1. COMPLAINTS [AMENDED]**

(a) **Complaints to the facility.** The facility shall make available to each resident or the resident's representative a copy of the facility's complaint procedure. The facility shall ensure that all employees comply with the facility's complaint procedure. The facility's complaint procedure shall include at least the following requirements.

(1) The facility shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:

(A) The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;

(B) Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and

- (C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.
- (2) If a resident, resident's representative or facility employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the facility shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.
- (b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.
- (1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.
- (2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.
- (3) If the complainant is a facility resident, the resident's representative, or a current employee of the facility, the Department shall keep the complainant's identity confidential. For other complainants the Department shall ask the complainant's preference regarding confidentiality.
- (4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:
- (A) A complaint alleging a situation in which the facility's noncompliance with state or federal requirements relating to nursing facilities has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;
- (B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and
- (C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty-five (25) days a violation causing or potentially causing harm of limited consequence and not significantly impairing the resident's mental, physical, and/or psychosocial status or function shall be scheduled for an onsite survey and investigated no later than the next onsite survey; and
- (D) A complaint alleging other than immediate jeopardy or actual harm to a resident shall be classified as a primary complaint and shall be investigated within thirty (30) days a violation that may have caused physical, mental and/or psychosocial discomfort that does not constitute injury or damage shall be investigated during the next onsite survey. The Department shall review complaints classified as low priority for tracking of possible trends in the nature of complaints in order to determine if there are common themes that suggest areas for focused attention when the next onsite survey occurs.
- (E) A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as

continuing and investigated the earlier of the next onsite survey or one-hundred eighty (180) calendar days.

### **310:675-7-12.1. Incident reports [AMENDED]**

- (a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, where injury may have occurred, ~~including but not limited to, head injuries, medication, treatment errors or events~~ which are subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents).
- (b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.
- (c) **Incident report format.** ~~Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires~~ shall include, at a minimum: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.
- (d) **Incident report preparation.** At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.
- (e) **Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.
- (f) **Incident records on file.** A copy of each incident report shall be on file in the facility.
- (g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.
- (h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

## **SUBCHAPTER 11. INTERMEDIATE CARE FACILITIES OF 16 BEDS AND LESS FOR THE MENTALLY RETARDED INDIVIDUALS WITH INTELLECTUAL DISABILITIES (ICF/MR-16 BEDS AND LESS) (ICF/IID-16)**

### **310:675-11-5. Physical plant [AMENDED]**

- (a) ICF/MR-16 facilities shall be of one hour (minimum) fire resistant construction as approved by the Department and the State Fire Marshal, or shall be fully protected by an automatic sprinkler system approved by the Department and the State Fire Marshal. In addition, ICF/MR-16 facilities shall comply with the requirements of ~~Chapter 21, "Life Safety Code; NFPA 101, 1985",~~ the National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016 applicable to residential board and care occupancies for small facilities are incorporated by reference. The text and commentary provided in the "Life Safety Code Handbook, Third Edition: based on the "Life Safety Code: NFPA 101, 1985", shall be the official interpretation for the Code. For Medicare or Medicaid certified ICF/IID-16s, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(b) Prior to issuance of license, the essential operation functions of the physical plant shall be submitted to licensing agency for review and approval. This submittal shall be in such detail as will depict compliance with applicable codes, including emergency evacuation and day to day living accommodations. This submittal shall be accompanied by the applicant's written certification declaring the classification (prompt, slow, impractical) shown for "evacuation capabilities" Chapter 21, LSC 1985 Edition. The certified evacuation classification shall not change without written approval of State Fire Marshal and Licensing Agency. The Department shall receive, prior to each required survey, a written declaration by a physician or nurse or qualified mental retardation professional, stating that each resident qualifies for the evacuation classification, as previously submitted and approved.

(c) Each facility must have a license. Any facility licensed under this part shall consist of contiguous construction.

(1) **Resident rooms.** The following requirements shall be provided:

(A) Capacity shall be a maximum of four (4) residents.

(B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.

(C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

(2) **Service areas.** The following shall be provided:

(A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.

(B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.

(C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ICF-MR-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.

(D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.

(E) Meal service space shall be provided as follows:

(i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.

(ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.

(iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.

(F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

(3) **Recreation, lounge and public areas.** Each ICF/MR-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed.

Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

(5) **Window size.** Windows and exterior doors may be used as a natural means of light and ventilation, and when so used their aggregate glass area shall amount to not less than eight percent of the floor area served, and with not less than one half of this required area available for unobstructed ventilation.

**310:675-11-5. 1. Plans and specifications requirements applicable to ICF/IID-16 [NEW]**

The following sections of this Chapter shall apply to ICF/IID-16 facilities: 310:675-5-22 (relating to exceptions and temporary waivers), 310:675-5-23 (relating to submission of plans and specifications and related requests for services), 310:675-5-24 (relating to preparation of plans and specifications) and 310:675-5-25 (relating to self-certification of plans).

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

Proposed changes based on public comment

Subchapter 5. Physical Plant

310:675-5-18. Design and construction [AMENDED]

310:675-5-22. Exceptions and temporary waivers [NEW]

310:675-5-23. Submission of plans and specifications and related requests for services [NEW]

310:675-5-24. Preparation of plans and specifications [NEW]

310:675-5-25. Self-certification of plans [NEW]

Subchapter 7. Administration

301:675-7-5.1 Reports to state and federal agencies [AMENDED]

(h) **Reporting utility failures.** The facility shall report to the Department utility failures of more than eight 8 four (4) hours.

(i) **Reporting certain injuries.** The facility shall report to the Department incidents that result in: fractures, head injury or require injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid.

(j) **Reporting storm damage.** The facility shall report to the Department storm damage resulting in relocation of a resident from a currently assigned room.

(k) **Reporting fires.** The facility shall report to the Department all fires occurring on the licensed real estate.

(l) Reporting to local emergency response manager. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the facility may coordinate its communications, status reports and assistance requests through the facility's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

310:675-7-6.1. Complaints [AMENDED]

(C) A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty-five (25) days- shall be scheduled for an onsite survey and investigated no later than the next onsite survey.

(D) A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or one-hundred eighty (180) calendar days.

310:675-7-12.1 Incident Reports [AMENDED]

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury; or where injury may have occurred, including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents). The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

(b) **Incident records.** Each facility shall maintain an incident report record and shall have incident report forms available.

(c) **Incident report format.** ~~Incident reports shall be on a printed incident report form. The form used shall be Long Term Care's Incident Report Form, ODH Form 283. The Incident Report Form requires shall include, at a minimum: the facility name, address and identification number;~~ the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

(d) **Incident report preparation.** At the time of the incident, the administrator, or the person designated by the facility with authority to exercise normal management responsibilities in the administrator's absence, shall be notified of the incident and prepare the report. The report shall include the names of the persons witnessing the incident and their signatures where applicable.

(e) ~~**Incident reporting: scope.** The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.~~

Subchapter 11. Intermediate Care Facilities of 16 Beds and Less for the Mentally Retarded Individuals With Intellectual Disabilities (ICF/MR-16 beds and less) (ICF/IID-16)

310:675-11-5. Physical plant [AMENDED]

310:675-11-5.1 Plans and specifications requirements applicable to ICF/IID-16 [NEW]

## RULE IMPACT STATEMENT

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

1. **DESCRIPTION:**

The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. The proposal establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

The proposed change amends the Subchapter 19 requirements for reporting incidents. The proposal updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of assisted living centers. The proposed construction and physical plant requirements will increase fees for owners and operators. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spends on preparing, filing and reporting, therefore allowing more time to be spent on resident care.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Affected persons will be the public, residents and their families and staff of assisted living centers. The public benefits by having the regulated profession pay for a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the re-allocation for funds from other public services. The proposed reporting of incidents will affect residents, family and staff of assisted living centers by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

(A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

(B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);

- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

Based on State Fiscal Year (SFY)2016 experience, the fee changes are projected to generate a total of \$13,000 in additional fee revenue, based on the following:

- \$7,000 in plan review fees, assuming 14 projects at \$500 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$1,000 in self-certification fees, assuming two certifications at \$500 each
- \$3,500 in courtesy inspection fees, assuming seven inspections at \$500 each
- \$1,000 in professional consultation fees, assuming two projects at \$500 each
- \$13,000 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.

The fee changes and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$16,535.

- For SFY2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of \$330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce the required state appropriations subsidy by \$13,000.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 1,600 reports. The proposal has the potential to reduce the required state appropriations subsidy by \$3,535.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and the proposed changes will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

The enhanced optional construction-related services will support assisted living centers in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts and resources on more serious incidents.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services that assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the continuum of care and assisted living licensure program. OSDH may be unable to continue to provide current levels of services for construction projects. The changes position OSDH to support timely completion of construction projects.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

**SUBCHAPTER 7. PHYSICAL PLANT DESIGN**

310:663-7-3. Submission of plans and specifications and related requests for services [NEW]

310:663-7-4. Preparation of plans and specifications [NEW]

310:663-7-5. Self-certification of plans [NEW]

310:663-7-6. Exceptions and temporary waivers [NEW]

**SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES**

310:663-19-1. Incident reports [AMENDED]

**SUMMARY:**

The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. The proposal establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

The proposed change amends the Subchapter 19 requirements for reporting incidents. The proposal updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-890.3.

**COMMENT PERIOD:**

December 15, 2016 through January 17, 2017. Interested persons may informally discuss the proposed rules with the contact person listed below; or may, through January 17, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on January 17, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. In the event of state offices closing due to inclement weather, there will be an alternate hearing date on January 19, 2017, at the same location in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before January 17, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSON:**

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to [MikeC@health.ok.gov](mailto:MikeC@health.ok.gov).

## **RULE IMPACT STATEMENT**

### **TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**

1. **DESCRIPTION:**

The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. The proposal establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

The proposed change amends the Subchapter 19 requirements for reporting incidents. The proposal updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of assisted living centers. The proposed construction and physical plant requirements will increase fees for owners and operators. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spends on preparing, filing and reporting, therefore allowing more time to be spent on resident care.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Affected persons will be the public, residents and their families and staff of assisted living centers. The public benefits by having the regulated profession pay for a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the re-allocation for funds from other public services. The proposed reporting of incidents will affect residents, family and staff of assisted living centers by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

(A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

- (B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

Based on SFY 2016 experience, the fee changes are projected to generate a total of \$13,000 in additional fee revenue, based on the following:

- \$7,000 in plan review fees, assuming 14 projects at \$500 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$1,000 in self-certification fees, assuming two certifications at \$500 each
- \$3,500 in courtesy inspection fees, assuming seven inspections at \$500 each
- \$1,000 in professional consultation fees, assuming two projects at \$500 each
- \$13,000 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.

The fee changes and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$16,535.

- For SFY2017, plan review fees for all types of health care facilities totaling \$162,958 are projected to exceed expenses of \$469,349, for a deficit of \$330,836. The deficit in SFY2017 and subsequent years is expected to be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce OSDH use of state appropriations by \$13,000.
- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local emergency response managers by approximately 1,600 reports. In addition, the proposal has the potential to reduce the OSDH's use of state appropriations by approximately \$3,535.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and it will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

The enhanced optional construction-related services will support assisted living centers in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts and resources on more serious incidents.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services which assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in state appropriations, and will be required to continue providing current levels of services using funding and administrative resources to process incident reports with relatively low impact on public health. The changes position OSDH to focus on the most serious incidents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**

**SUBCHAPTER 7. PHYSICAL PLANT DESIGN**

**310:663-7-3. Submission of plans and specifications and related requests for services [NEW]**

(a) Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:663-7-4 or OAC 310:663-7-5.

(1) Plans and specifications are required for the following alterations:

- (i) Changes that affect path of egress;
- (ii) Change of use or occupancy;
- (iii) Repurposing of spaces;
- (iv) Structural modifications;
- (v) Heating, ventilation and air conditioning (HVAC) modifications;
- (vi) Electrical modifications that affect the essential electrical system;
- (viii) Changes that require modification or relocation of fire alarm initiation or notification devices;
- (ix) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
- (x) Replacement of fixed medical equipment if that work requires any work noted in in this (i) through (ix) of this paragraph;
- (xi) Replacement of or modifications to any required magnetic or radiation shielding;
- (xii) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

- (i) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
- (ii) Ordinary repairs and maintenance;
- (iii) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
- (iv) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

- (1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (3) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

(c) The fee for review of design and construction plans and specifications shall cover the cost of

review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.

(1) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete

(i) **Not complete.** Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional 15 calendar days to review the application for completeness.

(ii) **Complete.** Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) **Technical review.** The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(i) **When times are tolled.** The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(ii) **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified

(iii) **Delays.** An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar after the Department's request, unless the time is extended by agreement for good cause.

(iv) **Extensions.** Extensions may be made as provided by law.

#### **310:663-7-4. Preparation of plans and specifications [NEW]**

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. An assisted living center has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two

documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for approval by the Department. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

(1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.

(A) Equipment and built-in furnishings are to be identified in the stage one submittal.

(B) The assisted living center has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.

(C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.

(i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

(iii) All mechanical, electrical, and plumbing plans and specifications.

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of patients, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.

(e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

**310:663-7-5. Self-certification of plans [NEW]**

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to an assisted living center considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310:663-7-3, The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The assisted living center and the project architect may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:663-7-3. The form shall be signed by the assisted living center and the project architect attesting that the plans and specifications are based upon and comply with the requirements of this Chapter.

(c) To be eligible for self-certification, projects must comply with the following requirements:

(1) The project involves any portion of the assisted living center where residents are intended to be examined or treated and the total cost of design and construction is one million dollars (\$1,000,000) or less; or

- (2) The project involves only portions of the assisted living center where residents are not intended to be examined or treated; and
- (3) The project architect attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and
- (4) The assisted living center owner/operator acknowledges that the Department retains the authority to:
- (i) Perform audits of the self-certification review program and select projects at random for review;
  - (ii) Review final construction documents;
  - (iii) Conduct on-site inspections of the project;
  - (iv) Withdraw approval based on the failure of the assisted living center or project architect to comply with the requirements of this Chapter; and
- (5) The assisted living center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.
- (c) Within twenty-one (21) calendar after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the assisted living center. If the application is denied, the assisted living center shall have thirty (30) calendar to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.
- (d) After denial of the application for self-certification and prior to the start of construction, the assisted living center shall pay the applicable fee for plan review specified in OAC 310:663-7-3. Upon receipt of the plan review fee, the Department shall review the assisted living center's plans in accordance with the process in OAC 310:663-7-3.

### **310:663-7-6. Exceptions and temporary waivers [NEW]**

- (a) These standards are not intended to restrict innovations and improvements in design or construction techniques. Accordingly, the Department may approve plans and specifications which contain deviations if it is determined that the respective intent or objective has been met.
- (b) An assisted living center may submit a request for exception or temporary waiver if the rules in this Chapter create an unreasonable hardship, or if the design and construction for the assisted living center property offers improved or compensating features with equivalent outcomes to this Chapter.
- (c) The Department may permit exceptions and temporary waivers of this Chapter if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-1901 et seq., and the following:
- (1) Any assisted living center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department. The form shall include:
    - (i) The section(s) of this Chapter for which the exception or temporary waiver is requested;
    - (ii) Reason(s) for requesting an exception or temporary waiver;
    - (iii) The specific relief requested; and
    - (iv) Any documentation which supports the application for exception.
  - (2) In consideration of a request for exception or temporary waiver, the Department shall

consider the following:

- (i) Compliance with 63 O.S. Section 1-1901 et seq.;
- (ii) The level of care provided;
- (iii) The impact of an exception on care provided;
- (iv) Alternative policies or procedures proposed; and
- (v) Compliance history with provisions of this Chapter.

(3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.

(4) If the Department finds that a request is incomplete, the Department shall advise the assisted living center in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.

(5) An assisted living center which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the assisted living center is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

## **SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES**

### **310:663-19-1. Incident reports [AMENDED]**

(a) **Timeline for reporting.** All reports to the Department shall be made via facsimile or by telephone within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted via facsimile or mail to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.

(b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall prepare a written incident report for the following incidents:

- (1) allegations and incidents of resident abuse;
- (2) allegations and incidents of resident neglect;
- (3) allegations and incidents of misappropriation of resident's property;
- ~~(4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;~~
- ~~(5) storm damage resulting in relocation of a resident from a currently assigned room;~~
- ~~(6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;~~
- ~~(7)~~(5) residents missing from the assisted living center upon determination by the assisted living center that the resident is missing;
- ~~(8) utility failure for more than 4 hours;~~

~~(9)~~(6) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, ~~head injury or require treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid;~~

~~(10)~~(7) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,

~~(11)~~(8) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.

(c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.

(d) **Reports to the Department.** Each assisted living center shall report to the Department those incidents specified in 310:663-19-1(b). An assisted living center may use the Department's Long Term Care Incident Report Form.

(e) **Licensing boards.** Each assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by licensed personnel to the appropriate licensing board within five (5) business days.

(f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by a nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse, Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

- (1) facility/center name, address and telephone;
- (2) facility type;
- (3) date;
- (4) reporting party name or administrator name;
- (5) employee name and address;
- (6) employee certification number;
- (7) employee social security number;
- (8) employee telephone number;
- (9) termination action and date (if applicable);
- (10) other contact person name and address; and
- (11) the details of the allegation or occurrence of abuse, neglect, or misappropriation of resident property.

(g) **Content of incident report.**

- (1) The preliminary report shall at the minimum include:
  - (A) who, what, when, and where; and
  - (B) measures taken to protect the resident(s) during the investigation.
- (2) The follow-up report shall at the minimum include:
  - (A) preliminary information;
  - (B) the extent of the injury or damage if any; and
  - (C) preliminary findings of the investigation.
- (3) The final report shall, at the minimum, include preliminary and follow-up information and:
  - (A) a summary of investigative actions;
  - (B) investigative findings and conclusions based on findings;
  - (C) corrective measures to prevent future occurrences; and

(D) if items are omitted, why the items are omitted and when they will be provided.

(h) The assisted living center shall coordinate with the local emergency response manager their response to fire damage, storm damage resulting in relocation of residents or power outage of four (4) hours or more.

## RULE IMPACT STATEMENT

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES

#### 1. **DESCRIPTION:**

This proposal amends licensure requirements in Subchapter 3 to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation. Requirements regarding zoning of the home's location are revised to be consistent with the Residential Care Act. Requirements for records and reports to be kept in the home are updated to reflect current laws for administrators and communicable diseases. Unnecessary records are deleted.

This proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:680-3-9(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the home, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for homes and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

OAC 310:680-3-14 is updated to accurately reflect statutory requirements for appropriate occupancy.

The proposal amends construction and physical plant requirements in Subchapter 5. Provisions for storage of resident's belongings are revised. The amendments allow for resident choice in room furnishings. The proposal requires submittal of plans and specifications for new buildings or major alterations. Added are criteria and a process for residential care homes to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give residential care homes the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for residential care homes to self-certify compliance of their plans for certain types of projects.

This proposal amends housekeeping requirements to clarify allowable differences between handling of general and soiled laundry. Staffing requirements are revised to require first aid and CPR training for direct care staff, and to remove the restriction on crediting first aid and CPR training towards the administrator's annual job-related training requirement.

#### 2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of residential care homes. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. The proposed construction and physical plant requirements will increase fees for owners and operators. No cost is anticipated to impact these parties for the proposal relating to zoning, requirements for records, occupancy, housekeeping, complaints or CPR training.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will be the public, residents and their families and staff of residential care homes. The use of physician assistants or advanced practice registered nurses will allow rural residential care homes greater access to services and consultation. The proposed reporting of incidents will affect residents, family and staff of residential care homes by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. Combining certain complaints that do not represent immediate jeopardy or actual harm will better utilize state resources and reduce disruption for homes and residents. For State Fiscal Year 2016, there were 25 complaints triaged for investigation under the 25 or 30 day requirements. Of those, 15 resulted in no citation; 2 resulted in deficiencies of no actual harm. The public benefits by having the regulated industry pay a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the required state appropriations subsidy for the residential care home licensure program.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

- (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

Based on SFY 2016 experience, the fee changes are projected to generate a total of \$4,050 in additional fee revenue, based on the following:

- \$50 in plan review fees, assuming 1 project at \$50 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$500 in self-certification fees, assuming one certification at \$500 each
- \$500 in courtesy inspection fees, assuming one inspection at \$500 each
- \$500 in professional consultation fees, assuming no projects at \$500 each
- \$4,050 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.

The fee changes and complaint investigation and incident reporting modifications are projected to reduce the required state appropriations subsidy by \$8,779, as follows:

- For State Fiscal Year (SFY) 2017, health facility plan review expenses of \$469,349 are projected to exceed fees of \$162,958, for a deficit of \$330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The residential care home plan review fees have the potential to reduce the required state appropriations subsidy by \$4,050.
- The fees for optional construction-related services will generate anticipated revenue of \$4,050 per year.
- The changes in incident reporting requirements are projected to result in fewer incident reports filed with OSDH, with administrative savings of \$1,000 for OSDH. For Federal Fiscal Year 2016, 25 complaints were triaged for investigation under the requirements at OAC 310:680-3-9(b)(4)(C) and (D). Of those, 17 were investigated individually. These investigations average 6.71 hours of investigator staff time each. By implementing this rule change these individual investigations can be combined with other investigations. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 114 hours. The proposal has the potential to reduce the required state appropriations subsidy by \$4,729.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and the rule will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services. The changes in incident reporting and complaint investigation response requirements will enable OSDH to reduce the required appropriations subsidy used for lower priority complaints and maintain emphasis on immediate jeopardy and actual harm complaints.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

The enhanced optional construction-related services will support homes in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying

requirements for reporting to enable centers and OSDH to focus efforts on allegations of actual harm and immediate jeopardy.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the homes' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services that assist homes in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the state appropriations subsidy for the residential care home licensure program. OSDH may be unable to continue to provide current levels of services for construction projects, incident reports, and complaint investigations. The changes position OSDH to focus on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; to clarify in section 3 of this statement the benefits of reducing the required state appropriation subsidy for the residential care home licensure program; correct an error in section 5 regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriation subsidy referenced in sections 5 and 10; update section 8 to clarify the effect of reducing the required state appropriation subsidy on minimizing the cost of the proposed change; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 680. RESIDENTIAL CARE HOMES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

**SUBCHAPTER 3. LICENSURE REQUIREMENTS**

310:680-3-3. Applications [AMENDED]

310:680-3-6. Records and reports [AMENDED]

310:680-3-9. Complaints [AMENDED]

310:680-3-14. Appropriate occupancy [AMENDED]

**SUBCHAPTER 5. CONSTRUCTION REQUIREMENTS AND PHYSICAL PLANT**

310:680-5-6. Building elements [AMENDED]

310:680-5-7. Resident rooms [AMENDED]

310:680-5-9. Submission of plans and specifications and related requests for services [NEW]

310:680-5-10. Preparation of plans and specifications [NEW]

310:680-5-11. Self-certification of plans [NEW]

**SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS**

310:680-7-5. Housekeeping [AMENDED]

**SUBCHAPTER 11. STAFFING REQUIREMENTS**

310:680-11-1. Requirements [AMENDED]

**SUMMARY:**

The proposal amends licensure requirements in Subchapter 3 to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation. Requirements regarding zoning of the home's location are revised to be consistent with the Residential Care Act. Requirements for records and reports to be kept in the home are updated to reflect current laws for administrators and communicable diseases. Unnecessary records are deleted. The proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:680-3-9(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the home, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for homes and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

OAC 310:680-3-14 is updated to accurately reflect statutory requirements for appropriate occupancy.

The proposal amends construction and physical plant requirements in Subchapter 5. Provisions for storage of resident's belongings are revised. The amendments allow for resident choice in room furnishings. The proposal requires submittal of plans and specifications for new buildings or major alterations. Added are criteria and a process for residential care homes to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is

added to set requirements for stage one, stage two, and special construction plan submittals, and to give residential care homes the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for residential care homes to self-certify compliance of their plans for certain types of projects.

This proposal amends housekeeping requirements to clarify allowable differences between handling of general and soiled laundry. Staffing requirements are revised to require first aid and CPR training for direct care staff, and to remove the restriction on crediting first aid and CPR training towards the administrator's annual job-related training requirement.

**AUTHORITY:**

Oklahoma State Board of Health, Title 63 O.S. Section 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-821.

**COMMENT PERIOD:**

December 15, 2016 through January 17, 2017. Interested persons may informally discuss the proposed rules with the contact person listed below; or may, through January 17, 2017, submit written comment to the contact person identified below; or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303 (A), the public hearing for the proposed rulemaking in this chapter shall be on January 17, 2017, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 beginning at 10:00 a.m. In the event of state offices closing due to inclement weather, there will be an alternate hearing date on January 19, 2017, at the same location in room 1102 beginning at 10:00 a.m. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing before January 17, 2017, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., §303(D), a rule impact statement is available from the contact person identified below or via the agency website at [www.health.ok.gov](http://www.health.ok.gov).

**CONTACT PERSON:**

Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to [MikeC@health.ok.gov](mailto:MikeC@health.ok.gov).

## RULE IMPACT STATEMENT

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 680. RESIDENTIAL CARE HOMES

1. **DESCRIPTION:**

This proposal amends licensure requirements in Subchapter 3 to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation. Requirements regarding zoning of the home's location are revised to be consistent with the Residential Care Act. Requirements for records and reports to be kept in the home are updated to reflect current laws for administrators and communicable diseases. Unnecessary records are deleted.

This proposed change updates language for reporting utility failures, storm damage and fires to local emergency response managers. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

This proposal amends OAC 310:680-3-9(b)(4)(C) and (D) relating to complaints made to the Department. The proposal authorizes the Department to investigate, during the next required onsite inspection at the home, complaints that do not represent immediate jeopardy or actual harm to the resident. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for homes and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

OAC 310:680-3-14 is updated to accurately reflect statutory requirements for appropriate occupancy.

The proposal amends construction and physical plant requirements in Subchapter 5. Provisions for storage of resident's belongings are revised. The amendments allow for resident choice in room furnishings. The proposal requires submittal of plans and specifications for new buildings or major alterations. Added are criteria and a process for residential care homes to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements. The proposal establishes fees for review of design and construction plans and specifications. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give residential care homes the option to move directly to the stage two plan submittal. The proposal establishes requirements and a process for residential care homes to self-certify compliance of their plans for certain types of projects.

This proposal amends housekeeping requirements to clarify allowable differences between handling of general and soiled laundry. Staffing requirements are revised to require first aid and CPR training for direct care staff, and to remove the restriction on crediting first aid and CPR training towards the administrator's annual job-related training requirement.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

Affected persons will be residents and their families as well as owners, operators, and staff of residential care homes. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. The proposed construction and physical plant requirements will increase fees for owners and operators. No cost is anticipated to impact these parties for the proposal relating to zoning, requirements for records, occupancy, housekeeping, complaints or CPR training.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

Persons benefiting will be the public, residents and their families and staff of residential care homes. The use of physician assistants or advanced practice registered nurses will allow rural residential care homes greater access to services and consultation. The proposed reporting of incidents will affect residents, family and staff of residential care homes by reducing duplicative reporting to OSDH and local emergency response managers. This will allow more time for the care of residents. Combining certain complaints that do not represent immediate jeopardy or actual harm will better utilize state resources and reduce disruption for homes and residents. For State Fiscal Year 2016, there were 25 complaints triaged for investigation under the 25 or 30 day requirements. Of those, 15 resulted in no citation; 2 resulted in deficiencies of no actual harm. The public benefits by having the regulated profession pay for a greater portion of their costs for construction and physical plant requirement reviews thereby reducing the re-allocation for funds from other public services.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**

These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:

- (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (B) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (C) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (D) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (E) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

Based on SFY 2016 experience, the fee changes are projected to generate a total of \$4,050 in additional fee revenue, based on the following:

- \$50 in plan review fees, assuming 1 project at \$50 each
- \$500 in exception or temporary waiver fees, assuming 1 project at \$500
- \$500 in self-certification fees, assuming one certification at \$500 each
- \$500 in courtesy inspection fees, assuming one inspection at \$500 each
- \$500 in professional consultation fees, assuming no projects at \$500 each
- \$4,050 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

The cost to the Department to implement the amendments will be approximately \$4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.

The fee changes and complaint investigation and incident reporting modifications are projected to reduce OSDH reliance on state appropriated funds in the amount of \$8,779, as follows:

- The fees for optional construction-related services will generate anticipated revenue of \$4,050 per year.
- The changes in incident reporting requirements are projected to result in fewer incident reports filed with OSDH, with administrative savings of \$1,000 for OSDH. For Federal Fiscal Year 2016, 25 complaints were triaged for investigation under the requirements at OAC 310:680-3-9(b)(4)(C) and (D). Of those, 17 were investigated individually. These investigations average

6.71 hours of investigator staff time each. By implementing this rule change these individual investigations can be combined with other investigations. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 114 hours. The proposal has the potential to reduce the OSDH's use of state appropriations for investigation allegations of no harm by approximately \$4,729.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions and the rule will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**

The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**

The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

The enhanced optional construction-related services will support homes in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts and resources on more serious incidents.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the homes' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services which assist homes in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in state appropriations, and will be required to continue providing current levels of services using funding and administrative resources to investigate complaints and process incident reports with relatively low impact on public health. The changes position OSDH to focus on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on December 15, 2016.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 680. RESIDENTIAL CARE HOMES**

**SUBCHAPTER 3. LICENSURE REQUIREMENTS**

**310:680-3-3. Applications [AMENDED]**

(a) An applicant for license or renewal thereof to operate a residential care home shall submit to the Department a completed application along with the fifty dollar (\$50.00) license fee and documents required by the Commissioner to determine that the applicant is of reputable and responsible character and otherwise demonstrates the skill and fitness to provide the necessary services. In addition, the applicant shall have appropriate business or professional experience in dealing with the type of residents in the home. The license fee of fifty dollars (\$50.00) is not refundable.

(b) A license fee of twenty dollars (\$20.00) shall accompany any application for modification of a license.

(c) An application for license, or renewal, shall include a copy of all agreements with the professional consultants utilized by the home.

(d) An application for an initial license to operate a residential care home shall include documentation that the State Fire Marshal or the State Fire Marshal's representative has inspected and approved the home. Each application for renewal of a license for a residential care home with more than six beds shall include documentation of annual inspection and approval by the State Fire Marshal or the State Fire Marshal's representative.

(e) The following items must be renewed annually:

(1) An Agreement with a physician, physician assistant or advanced practice registered nurse to provide ~~emergency~~-medical services and consultation.

(2) Agreements with registered nurse, registered dietitian, and registered pharmacist, as required based on the needs of the residents.

(3) Licensed plumber or building inspector's report.

(4) Licensed electrician or municipal inspector's report.

(5) ~~Kitchen inspection report made by a registered sanitarian.~~

(f) ~~An approval letter from the local zoning authority shall accompany each initial license application.~~ Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the home stating that the location is not in violation of a zoning ordinance. [63:1-822(C)]

(g) Each application shall be accompanied by an attested statement from the applicant assuring that the applicant ~~has not been convicted of a felony in connection with the operation or management of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes or the care and treatment of the residents of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statute [63:1-822(D)]~~ complies with 63 O.S. Section 1-822(D). If the applicant is a firm, partnership or corporation, the application shall include an attested statement from each member of the firm or partnership and from each officer and major stockholder of the corporation.

**310:680-3-6. Records and reports [AMENDED]**

(a) Every residential care home shall conspicuously post in an area of its offices accessible to residents, employees, and visitors, the following:

(1) Its current license.

(2) The name of the current administrator and their ~~certificate~~license posted.

- (3) A copy of Residents' Rights.
  - (4) Complaint procedure, established by the Nursing Home Care Act and provided by the Department which includes name, address, and telephone number of a person within the Department who is authorized to receive complaints.
  - (5) A copy of any order pertaining to the ~~facility~~ home issued by the Department or a court, which is currently in effect.
- (b) Every residential care home shall retain the following for public inspection:
- (1) A complete copy of every inspection report of the residential care home received from the Department during the past three (3) years.
  - (2) A copy of every order pertaining to the residential care home issued by the Department or a court during the past three (3) years.
  - (3) A description of the services provided by the residential care home, the rates charged for those services, and items for which a resident may be separately charged.
  - (4) A copy of the statement of ownership.
  - (5) A list of personnel who are licensed, certified, or registered and employed or retained by the residential care home, including area in which individual is credentialed.
  - ~~(6) If source of payment for resident's care is from public funds, the contract with the agency providing the funds.~~
- (c) Reports of communicable disease shall be made in accordance with 63 O.S. ~~4974~~Section 1-501, et seq.
- (d) The Department shall be notified of all incidents pertaining to ~~fire, storm damage~~, death other than natural; ~~or residents missing, or utilities failure for more than four (4) hours, and incidents that result in fractures, head injuries or require treatment at a hospital.~~ The home shall report to the Department incidents that result in: fractures, treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid. Notice shall be made no later than the next working day. The home shall coordinate with the local emergency response manager regarding fire damage, storm damage resulting in relocation of residents or power outage of four (4) hours or more.
- (e) An evacuation plan shall be developed and permanently displayed in the hallways and sitting room. Fire drills shall be conducted at least quarterly.
- (f) ~~Facility~~The home shall have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation and/or other natural disasters that may render the home unsuitable.

### **310:680-3-9. Complaints [AMENDED]**

- (a) **Complaints to the residential care home.** The home shall make available to each resident or the resident's representative a copy of the home's complaint procedure. The home shall ensure that all employees comply with the home's complaint procedure. The home's complaint procedure shall include at least the following requirements:
- (1) The home shall list in its procedures and shall require to be posted in a conspicuous place outside the administrator's office area the following information:
    - (A) The names, addresses and telephone numbers of staff persons designated to receive complaints for the home;
    - (B) Notice that a good faith complaint made against the home shall not result in reprisal against the person making the complaint; and
    - (C) Notice that any person with a complaint is encouraged to attempt to resolve the

complaint with the home's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the home.

(2) If a resident, resident's representative or home employee submits to the administrator or designated complaint staff a written complaint concerning resident abuse, neglect or misappropriation of resident's property, the home shall comply with the Protective Services for Vulnerable Adults Act, Title 43A O.S. Sections 10-101 through 10-110.

(b) **Complaints to the Department.** The following requirements apply to complaints filed with the Department.

(1) The Department shall provide to each home a notice identifying the telephone number and location of the Department's central call center to which complaints may be submitted. The home shall post such notice in a conspicuous place outside the administrator's office area.

(2) Any person may submit a complaint to the Department in writing, by phone, or personally. The Department shall reduce to writing a verbal complaint received by phone or in person.

(3) If the complainant is a resident, the resident's representative, or a current employee of the home, the Department shall keep the complainant's identity confidential. For other complaints, the Department shall ask the complainants preference regarding confidentiality.

(4) The Department shall receive and triage complaints at a central call center. The complaints shall be classified and investigated according to the following priorities:

(A) A complaint alleging a situation in which the home's noncompliance with state requirements relating to residential care homes has caused or is likely to cause serious injury, harm, impairment or death to a resident shall be classified as immediate jeopardy and shall be investigated by the Department within two (2) working days;

(B) A complaint alleging minimal harm or more than minimal harm to a resident but less than an immediate jeopardy situation shall be classified as actual harm and shall be investigated by the Department within ten (10) working days; and

(C) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days~~ a violation causing or potentially causing harm of limited consequence and not significantly impairing the resident's mental, physical, and/or psychosocial status or function shall be scheduled for an onsite survey and investigated no later than the next onsite survey; and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident shall be classified as a primary complaint and shall be investigated within thirty (30) days~~ a violation that may have caused physical, mental and/or psychosocial discomfort that does not constitute injury or damage shall be investigated during the next onsite survey. The Department shall review complaints classified as low priority for tracking of possible trends in the nature of complaints in order to determine if there are common themes that suggest areas for focused attention when the next onsite survey occurs.

(E) A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or one-hundred eighty (180) calendar days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation

of the Residential Care Act or any rules promulgated under authority of the Act if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's representative or designated guardian or a current or past employee of the home by conforming to the following:

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and

(ii) The investigator shall interview or observe at least three (3) residents during the home observation or tour, which will include the resident referenced in the complaint if identified and available in the home. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;

(B) Review surveys completed within the last survey cycle to identify tendencies or patterns of non-compliance by the home;

(C) Attempt to contact the State or Local Ombudsman and the complainant, if identified, prior to the survey; and

(D) Interview the complainant, the resident, if possible, and any potential witness, collateral resource or affected resident.

(7) The Department shall limit the complaint report to the formal report of complaint investigation. The formal report of complaint investigation shall be issued to the home and the complainant, if requested, within ten (10) business days after completion of the investigation. The formal report of investigation shall include at least the following:

(A) Nature of the allegation(s);

(B) Written findings;

(C) Deficiencies, if any, related to the complaint investigation;

(D) Warning notice, if any;

(E) Correction order, if any; and

(F) Other relevant information.

### **310:680-3-14. Appropriate occupancy [AMENDED]**

~~A residential care home shall not admit or provide services to a resident who is not ambulatory and essentially capable of participating in their own activities of daily living. Residents shall not routinely require nursing services~~The residents of a residential care home shall be ambulatory and essentially capable of participating in their own activities of daily living, but shall not routinely require nursing services [63 O.S. Section 1-820(a)8]. The resident may receive nursing services that an individual otherwise may receive in their private home provided by an individual or agency qualified under state or federal law.

## **SUBCHAPTER 5. CONSTRUCTION REQUIREMENTS AND PHYSICAL PLANT**

### **310:680-5-6. Building elements [AMENDED]**

(a) Each residential care home shall have its address clearly visible from the street.

- (b) At least two (2) flashlights in working order shall be maintained for emergency lighting.
- (c) All doors and windows opening to the outside for ventilation shall be screened. Screens shall be well fitted and in good repair.
- (d) Adequate ~~enclosed~~ storage space shall be provided for items belonging to residents. ~~Clothing, bedding, and residents's personal belongings shall be stored off the floor.~~
- (e) Each residential care home shall have one toilet facility for every six (6) residents. Toilet facility shall contain one (1) stool and one (1) lavatory.
- (f) Bathtubs or showers shall be provided at the rate of one (1) for each ten (10) residents.
- (g) Hot water temperatures at faucets accessible to residents shall be maintained within a range of 100° to 120° Fahrenheit.
- (h) Laundry equipment, if on premises, shall be housed in a safe, well-ventilated and clean area. Laundry equipment shall be kept clean and dryer shall be vented to outside.
- (i) Linen storage areas shall be provided and be clean and organized.
- (j) Cleaning supplies and equipment shall be stored in a separate, clean, and locked area.
- (k) Telephone service must be available within the building. Pay phones are not acceptable as the only telephone service.

### **310:680-5-7. Resident rooms [AMENDED]**

- (a) Each resident shall be provided with clean, comfortable orderly, and reasonably private living accommodations.
- (b) Each resident's room shall have direct access to exits and other areas of the home without passing through another resident's room, the kitchen, laundry, or bathroom.
- (c) Each single resident room shall contain a minimum of 80 square feet of floor space.
- (d) Each resident room containing multiple beds shall provide a minimum of 60 square feet per bed.
- (e) Each resident room shall have at least one (1) outside operable window installed in a vertical wall which can be used as an emergency exit. However, if a ~~facility~~home has a sprinkler system approved by the State Fire Marshall, it shall be exempt from the requirement of an outside operable window in each resident room useable as an emergency exit but shall be required to have a window. Minimum dimension of this window shall be 22 inches and the area shall be minimum of 5 square feet. Windows shall have adjustable coverings to provide privacy.
- (f) Each resident room shall have a full door which can be closed to provide privacy.
- (g) Male and female residents shall not be housed in the same or adjoining rooms which do not have a full floor-to-ceiling partition and door which can be locked, except immediate family may occupy the same room.
- (h) Each resident room shall have an electrical outlet.
- (i) Each resident room shall have a minimum of 20 foot candle power of lighting.
- (j) ~~Each~~Unless the resident elects otherwise, each resident shall have a comfortable chair, a bedside table and a bureau or its equivalent for storing personal belongings.
- (k) When residents' personal furniture is used, it shall be clean and in good repair.
- (l) Each resident's bed shall have a comfortable mattress and bed linens which are clean and in good condition.
- (m) Clean towels and wash cloths shall be available to meet the needs of all residents. Towels and wash cloths shall be in good condition.

### **310:680-5-9. Submission of plans and specifications and related requests for services [NEW]**

(a) Before construction is begun, plans and specifications covering the construction of new buildings or major alterations to existing buildings shall be submitted to the Department for review as provided in OAC 310:680-5-10 or OAC 310:680-5-11.

(1) Plans and specifications are required for the following alterations:

(i) Changes that affect path of egress;

(ii) Change of use or occupancy;

(iii) Repurposing of spaces;

(iv) Structural modifications;

(v) Heating, ventilation and air conditioning (HVAC) modifications;

(vi) Electrical modifications that affect the essential electrical system;

(viii) Changes that require modification or relocation of fire alarm initiation or notification devices;

(ix) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;

(x) Replacement of fixed medical equipment if that work requires any work noted in in this (i) through (ix) of this paragraph;

(xi) Replacement of or modifications to any required magnetic or radiation shielding;

(xii) Changes to or addition of any egress control devices or systems.

(2) Plans and specifications are not required for the following alterations:

(i) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;

(ii) Ordinary repairs and maintenance;

(iii) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or

(iv) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.

(b) Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:

(1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);

(2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);

(3) Application for self-certification fee: Five Hundred Dollars (\$500.00);

(4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);

(5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

(c) The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.

(d) **Review process.** Design and construction plans and specifications shall be reviewed in

accordance with the following process.

(1) **Administrative completeness review.** Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete

(i) **Not complete.** Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional 15 calendar days to review the application for completeness.

(ii) **Complete.** Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

(2) **Technical review.** The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.

(i) **When times are tolled.** The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

(ii) **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

(iii) **Delays.** Failure by an applicant to supplement an application within 90 calendar days after the request shall be deemed to be withdrawn unless the time is extended by agreement for good cause.

(iv) **Extensions.** Extensions may be made as provided by law.

### **310:680-5-10. Preparation of plans and specifications [NEW]**

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A residential care home has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

(b) **Stage two.** A proposed construction document shall be submitted that includes final drawings and specifications adequate for proposed contract purposes. All final plans and specifications shall be appropriately sealed and signed by an architect registered by the State of Oklahoma. All construction modifications of approved documents are subject to review and approval, and shall be submitted timely.

(c) **Special submittals.**

- (1) **Fast-track projects.** The fast track process applies only to stage two submittals. A stage one submittal and functional program must be approved before entering the fast track process.
- (A) Equipment and built-in furnishings are to be identified in the stage one submittal.
- (B) The residential care home has the option to submit two packages: civil, landscaping and structural in stage one, and the balance of the components in stage two.
- (C) Fast-track projects shall have prior approval and be submitted in no more than four (4) separate packages.
- (i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.
- (ii) Complete architectural plans and specifications.
- (iii) All mechanical, electrical, and plumbing plans and specifications.
- (iv) Equipment and furnishings.
- (2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.
- (d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one (1) foot, with additional clarifying documents as required.
- (e) **Application form.** The submittal shall be made using a Department application form which requests information required by this Chapter and specifies the number of copies and format for document submittal.

### **310:680-5-11. Self-certification of plans [NEW]**

- (a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a residential care home considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310: 680-5-9, The consultation is optional and not a prerequisite for filing a request through the self-certification review process.
- (b) The residential care home and the project architect may elect to request approval of design and construction plans through a self-certification review process. The residential care home and the project architect shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:680-5-9. The form shall be signed by the residential care home and the project architect attesting that the plans and specifications are based upon and comply with the requirements of this Chapter.
- (c) To be eligible for self-certification, projects must comply with the following requirements:
- (1) The project involves any portion of the residential care home where residents are intended to be examined or treated and the total cost of design and construction is two million dollars (\$2,000,000) or less; or
- (2) The project involves only portions of the residential care home where residents are not intended to be examined or treated; and
- (3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and
- (4) The residential care home owner/operator acknowledges that the Department retains the authority to:
- (i) Perform audits of the self-certification review program and select projects at random

for review;

(ii) Review final construction documents;

(iii) Conduct on-site inspections of the project;

(iv) Withdraw approval based on the failure of the residential care home or project architect to comply with the requirements of this Chapter; and

(5) The residential care home agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

(c) Within twenty-one (21) calendar days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the residential care home. If the application is denied, the residential care home shall have thirty (30) calendar days to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

(d) After denial of the application for self-certification and prior to the start of construction, the residential care home shall pay the applicable fee for plan review specified in OAC 310:680-5-9. Upon receipt of the plan review fee, the Department shall review the residential care home's plans in accordance with the process in OAC 310:680-5-9.

## **SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS**

### **310:680-7-5. Housekeeping [AMENDED]**

(a) The interior and exterior of the home shall be safe, clean and sanitary.

(b) Practices and procedures shall be utilized to keep the home free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.

(c) Floors and floor coverings shall be clean and in good condition. Floor polishes shall provide for a non-slip finish.

(d) Walls and ceilings shall be in good condition and shall be cleaned regularly. All homes shall have walls capable of being cleaned.

(e) Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.

(f) Home and surrounding areas shall be kept free from refuse, discarded furniture, and old newspaper. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas away from residents' rooms. No items shall be stored in the hot water heater closet or furnace closet.

(g) General laundry shall be placed in linen ~~hampers/carts with the lids closed~~ hampers, carts, laundry bags, or similar containers suitable for laundry not soiled by body fluids.

(h) Soiled linens or clothing shall be placed in bags or nonporous containers with lids tightly closed.

## **SUBCHAPTER 11. STAFFING REQUIREMENTS**

### **310:680-11-1. Requirements [AMENDED]**

Residential care homes shall employ sufficient personnel appropriately qualified and trained to provide the essential services of the home.

#### **(1) Sufficient number of persons.**

(A) Each residential care home shall have one (1) person who is administratively responsible

for the home.

(B) There shall be at least one (1) person in charge of the home and its operation on duty in the home whenever residents are present.

(C) There shall be a minimum of 3/4 hour of personnel per day per resident based on average daily census.

(D) All residential care homes shall have a signed, written agreement with a registered nurse to act as a consultant. Documentation of the use of the nurse consultant shall be maintained in the home.

**(2) Staff qualifications.**

(A) Each residential care home shall have a person designated as "Administrator," who ~~is at least 21 years old and has obtained a residential care administrator's certificate of training from an institute of higher learning whose program has been reviewed by the Department is licensed in accordance with Title 63 O.S. Section 330.51 et seq.~~

(B) All personnel who have the responsibility for administering or monitoring medication to residents shall obtain a certificate of training in medication administration from an institution of higher learning whose program has been reviewed by the Department. (Currently licensed physicians, registered nurses and licensed practical nurses shall be deemed to meet the medication administration training requirement.)

(C) All other staff shall have training and/or experience relevant to their job description.

(D) Personnel responsible for providing professional services must be appropriately certified, registered, or licensed.

**(3) Staff training.** In order to ensure all homes maintain a level of competency necessary to meet the needs of each individual served in the home, personnel must complete the following training requirements.

(A) ~~All employees~~ At all times there shall be in the home at least one staff person shall be currently certified trained in first-aid and cardiopulmonary resuscitation ~~(that is Red Cross training or equivalent training with a hands-on component)~~. Proof of ~~certification and training~~ shall be kept on file in the home. First-Aid and CPR ~~certificates~~ training shall be ~~renewed annually, or as required to be kept current.~~

(B) Administrators shall ~~have sixteen (16) hours of job-related training annually. First-aid and CPR training do not count for the sixteen (16) hours~~ obtain continuing education training as required to maintain an administrator's license pursuant to Title 63 O.S. Section 330.51 et seq. All training shall be documented and the record kept in the home.

(C) Direct care staff who are responsible for administering or monitoring medication shall annually be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care program and operation.

(D) All direct care staff shall begin eight (8) hours of inservice by the administrator of the home or other person designated by the administrator of the home within ninety (90) days of employment and completed within twelve (12) months of employment. Eight (8) hours of inservice shall be required annually thereafter.

(E) All residential care programs shall provide a new employee orientation program which includes instruction in policies and procedures regarding the areas of abuse and neglect, resident rights, confidentiality, procedure for handling emergencies, and job descriptions.

**(4) Personnel practices**

(A) Residents shall not supervise other residents.

(B) The behavior of staff reflects sensitivity to the needs of the individuals served for privacy and dignity. For example, confidentiality and normal sensibility are exercised in speaking about an individual, and undignified displays, exhibitions, or exposure of individuals served, whether deliberate or unintentional, do not occur.

(C) The home shall have written personnel policies and procedures which address such issues as: job description, terms of employment, authorized leave procedures, grievance procedures, and professional conduct.

Abuse/Neglect/Misappropriation (ANM) Findings

	FY16-Q1 7/1/15 to 9/30/15		FY16-Q2 10/1/15 to 12/31/15		FY16-Q3* 1/1/16 to 3/31/16		FY16-Q4 4/1/16 to 6/30/16		FY17-Q1 7/1/16 to 9/30/16		FY17-Q2 10/1/16 to 12/31/16	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
<b>Findings</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
<b>Default Judgement Service to Address on File</b>			<b>1</b>	<b>11%</b>	<b>22</b>	<b>69%</b>	<b>16</b>	<b>70%</b>	<b>11</b>	<b>55%</b>	<b>9</b>	<b>60%</b>
<b>Event to Final Administrative Order Less than 6 months</b>									<b>0</b>	<b>0%</b>	<b>4</b>	<b>27%</b>
<b>Years From Certification to Finding</b>												
Average	6		11		7		7		9		6	
Minimum	2		1		2		0		1		1	
Maximum	16		18		22		22		27		19	
<b>Age at Finding</b>												
Average	33		38		36		33		38		34	
Minimum	22		19		20		19		19		22	
Maximum	45		54		62		51		63		61	
<b>Gender</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
Male	3	30%	1	11%	6	19%	3	13%	1	5%	0	0%
Female	7	70%	8	89%	26	81%	20	87%	19	95%	15	100%
<b>Type Certification</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
LTC/HHA	7	70.0%	7	77.8%	28	87.5%	22	95.7%	17	85.0%	13	86.7%
CMA	1	10.0%	2	22.2%	0	0.0%	0	0.0%	2	10.0%	0	0.0%
DDCA	1	10.0%	0	0.0%	1	3.1%	1	4.3%	0	0.0%	0	0.0%
NTSW	1	10.0%	0	0.0%	3	9.4%	0	0.0%	1	5.0%	2	13.3%
<b>Finding Type</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
Misappropriation												
Misappropriation/Meds	1	10.0%	1	11.1%	3	9.4%	1	4.3%	2	10.0%	4	26.7%
Misappropriation/Cash	3	30.0%	3	33.3%	2	6.3%	0	0.0%	0	0.0%	1	6.7%
Misappropriation/Property	0	0.0%	1	11.1%	16	50.0%	11	47.8%	11	55.0%	4	26.7%
Neglect												
Services	1	10.0%	1	11.1%	6	18.8%	2	8.7%	2	10.0%	3	20.0%
Transfer	3	30.0%	1	11.1%	1	3.1%	3	13.0%	3	15.0%	3	20.0%
Abuse												
Physical	2	20.0%	1	11.1%	3	9.4%	6	26.1%	2	10.0%	0	0.0%
Sexual	0	0.0%	0	0.0%	1	3.1%	0	0.0%	0	0.0%	0	0.0%
Verbal	0	0.0%	1	11.1%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Mistreatment	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%	0	0.0%
<b>Facility Type</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
Nursing	9	90%	4	44%	19	59%	17	74%	15	75%	10	67%
Assisted Living	0	0%	1	11%	9	28%	4	17%	5	25%	3	20%
Home Care	0	0%	1	11%	2	6%	1	4%	0	0%	2	13%
Hospice	0	0%	0	0%	1	3%	0	0%	0	0%	0	0%
ICF/IID	1	10%	1	11%	1	3%	1	4%	0	0%	0	0%
Private	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
<b>Training Source</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
Career Tech	4	40%	4	44%	17	53%	12	52%	9	45%	9	60%
Provider Based	2	20%	3	33%	6	19%	4	17%	6	30%	0	0%
Private	2	20%	1	11%	1	3%	3	13%	1	5%	1	7%
Unknown	1	10%	0	0%	2	6%	3	13%	3	15%	1	7%
Reciprocity	0	0%	1	11%	3	9%	1	4%	0	0%	2	13%
OSU	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
NA: Non-technical	1	10%	0	0%	3	9%	0	0%	1	5%	2	13%
<b>Hearings</b>	<b>10</b>	<b>100%</b>	<b>9</b>	<b>100%</b>	<b>32</b>	<b>100%</b>	<b>23</b>	<b>100%</b>	<b>20</b>	<b>100%</b>	<b>15</b>	<b>100%</b>
Appeared	6	60%	1	11%	6	19%	3	13%	8	40%	5	33%
No Appearance	3	30%	8	89%	26	81%	20	87%	12	60%	10	67%
Agreed Order	1	10%	0	0%	0	0%	0	0%	0	0%	0	0%

\* This quarter represented the first complete quarter in which 63 O.S. § 1-1951(D)(8) applied. This new law provided legal service exists when delivery of the petition and order for hearing were sent to the address on file for a nurse aide.

**OKSCREEN and Abuse, Neglect, and Misappropriation (ANM) Findings**

	FY16-Q1 7/1/15 to 9/30/15		FY16-Q2 10/1/15 to 12/31/15		FY16-Q3* 1/1/16 to 3/31/16		FY16-Q4 4/1/16 to 6/30/16		FY17-Q1 7/1/16 to 9/30/16		FY17-Q2 10/1/16 to 12/31/16	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
<b>Findings &amp; OK-SCREEN Applicant Reviews</b>												
Persons with ANM findings	10	100%	7	100%	31	100%	23	100%	20	100%	15	100%
ANM Applicant's with Status in OKS	5	50%	2	29%	10	32%	10	43%	15	75%	15	100%
No applicant record in OKS	5	50%	5	71%	21	68%	13	57%	5	25%	0	0%
<b>ANM Applicant's with Status in OKS</b>												
ANM Applicants with Status in OKS	5	100%	2	100%	10	100%	10	100%	15	100%	15	100%
Had prior eligible determination in OKS prior to finding	2	40%	2	100%	7	70%	9	90%	12	80%	15	100%
Had pending determination with provisional employment	1	20%	0	0%	0	0%	0	0%	0	0%	0	0%
Had incomplete or withdrawn application(s) or pending not eligible determination	2	40%	0	0%	3	30%	1	10%	3	20%	0	0%
<b>Prior Criminal History for ANM Cases w/ prior Eligible Determination in OKS</b>												
ANM Cases with prior eligible determination in OKS	2	100%	2	100%	7	100%	9	100%	12	100%	15	100%
Had prior eligible criminal history	0	0%	0	0%	2	29%	2	22%	3	25%	7	47%
Had no prior criminal history	2	100%	2	100%	5	71%	7	78%	9	75%	8	53%
<b>OKS Employment History for ANM Cases w/ prior Eligible Determination in OKS</b>												
ANM Cases with prior eligible determination in OKS	2	100%	2	100%	7	100%	9	100%	12	100%	15	100%
Discharged @ Allegation	0	0%	0	0%	0	0%	4	44%	4	33%	6	40%
Terminated in OKS prior to ANM Finding	1	50%	1	50%	5	71%	4	44%	3	25%	6	40%
Terminated in OKS after ANM Finding	0	0%	1	50%	0	0%	1	11%	4	33%	2	13%
Termination date pending	1	50%	0	0%	0	0%	0	0%	0	0%	1	7%
Never employed	0	0%	0	0%	1	14%	0	0%	1	8%	0	0%
<b>Employed with Pending Allegation Prior to ANM Finding</b>							4		6		7	

\* This quarter represented the first complete quarter in which 63 O.S. § 1-1951(D)(8) applied. This new law provided legal service exists when delivery of the petition and order for hearing were sent to the address on file for a nurse aide.

**FY17 2ND QTR. NURSE AIDE REGISTRY**  
**LTC Advisory Board 01/12/2017**



Nurse Aide Registry  
 Oklahoma State  
 Department of Health



TYPES OF CERTIFICATION	FY2015	FY2016	FY17-Q1	FY17-Q2
ADC	29	30	30	29
LTC	38,259	37,614	37,747	37,612
CMA	5,714	5,869	5,948	5,921
CMA GASTRO	2,475	2,609	2,684	2,688
CMA GM	983	1,091	1,113	1,113
CMA IA	710	780	791	801
CMA R	2,556	2,693	2,770	2,770
FEEDING ASSISTANT	591	653	651	637
HHA	14,186	13,755	13,881	13,705
DDDCA	1,653	1,402	1,341	1,301
RCA	98	83	76	77
TOTALS	67,254	66,579	67,032	66,654
<b>WALK INS FOR RENEWAL</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17Q2</b>
First Floor - NARS Walk-Ins	4,272	5,009	1,224	1,079
<b>FEEDING ASSISTANTS</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
Feeding Assistants Added	302	266	75	35
<b>NEW CERTIFICATIONS</b>				
<b>RECIPROCITY - TRANSFERRED CERTIFICATION INTO THE STATE</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
LTC	890	897	273	205
HHA	0	11	2	1
<b>NEW CERTIFICATIONS FROM TRAINING PROGRAM TESTING</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
LTC	5,949	5183	1,242	1,190
HHA	2,776	2403	570	541
DDDCA	206	180	57	30
RCA	0	0	0	0
ADCA	2	0	0	0
CMA	1,121	999	230	256
TOTAL	10,054	8708	2,099	2,017
<b>NEW ADVANCED CMA</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
CMA-R	460	706	203	221
CMA-G	468	688	198	214
CMA-GM	226	323	71	88
CMA-IA	153	228	57	71
TOTAL	1,307	1945	529	594
<b>RETEST</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
Retest - CMA	57	91	24	39
Retest - LTC	126	274	62	36
Retest - HHA	35	93	19	33
TOTAL	218	458	105	108
<b>RECIPROCITY - TRANSFERRED CERTIFICATION TO ANOTHER STATE</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
Reciprocity - LTC	375	415	104	89

**FY17 2ND QTR. NURSE AIDE REGISTRY**  
**LTC Advisory Board 01/12/2017**

<b>TRAINING PROGRAMS</b>				
<b>Approved Training Programs</b>	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
Long Term Care	119	129	133	133
Home Health	0	0	0	0
DDCA	11	11	11	10
Residential Care	2	1	1	1
Adult Day care	1	0	0	0
Certified Medication Aide	47	47	47	46
CMA/CEU	35	35	35	36
CMA/IA	15	20	20	21
CMA/GM	2	2	2	3
CMA/R	1	2	2	2
CMA/RG	23	25	25	25
CMA/G	0	1	1	1
<b>TOTAL</b>	<b>256</b>	<b>273</b>	<b>277</b>	<b>278</b>
<b>TRAINING PROGRAMS SURVEYS PERFORMED</b>				
	<b>FY2015</b>	<b>FY2016</b>	<b>FY17-Q1</b>	<b>FY17-Q2</b>
Long Term Care	56	119	14	4
Home Health	0	0	0	0
DDCA	2	12	0	1
Residential Care	0	4	0	0
Adult Day Care	1	0	0	0
Certified Medication Aide	2	25	5	8
CMA / CEU	0	22	4	8
CMA/IA	0	7	2	3
CMA/GM	0	1	0	1
CMA/R	0	0	0	1
CMA/RG	0	12	2	3
<b>TOTAL</b>	<b>61</b>	<b>196</b>	<b>27</b>	<b>29</b>

# Composite Scorecard for Oklahoma Nursing Homes

## Long-stay metrics for the period ending 09/30/2016

N = OK Denominator for current period

Nation

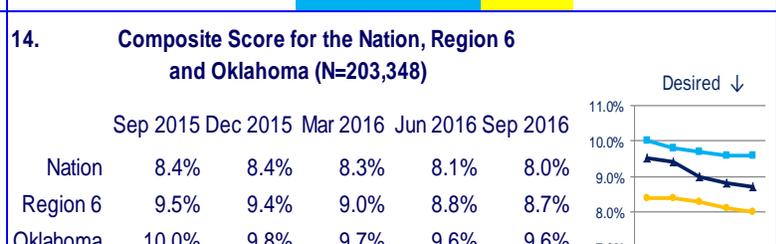
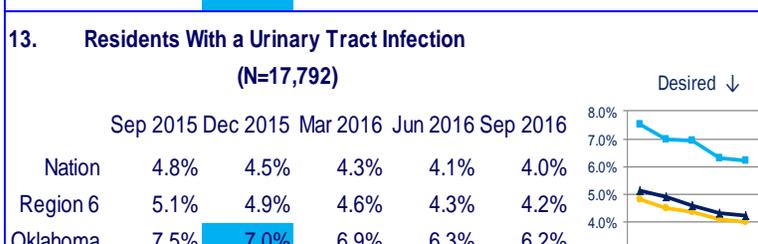
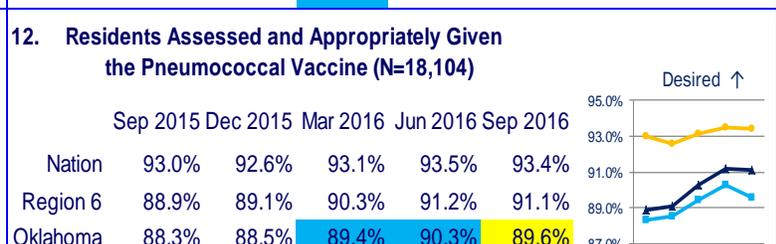
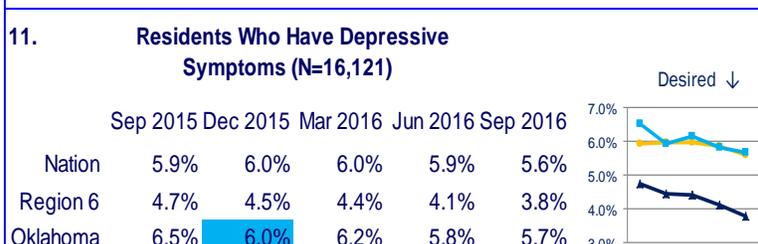
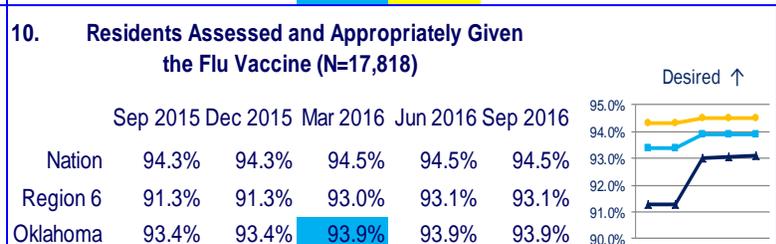
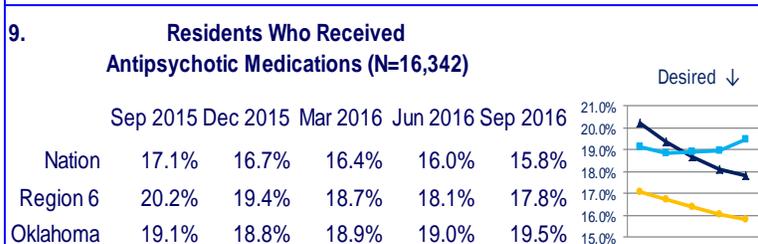
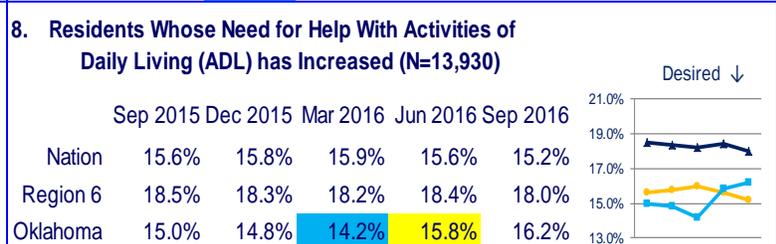
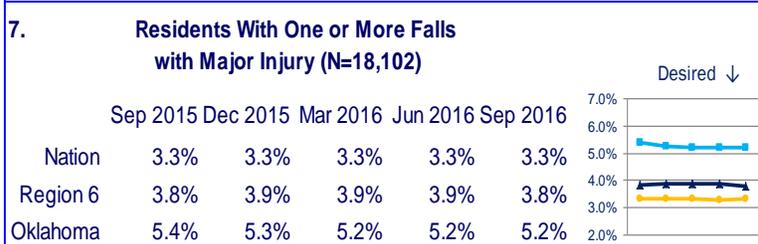
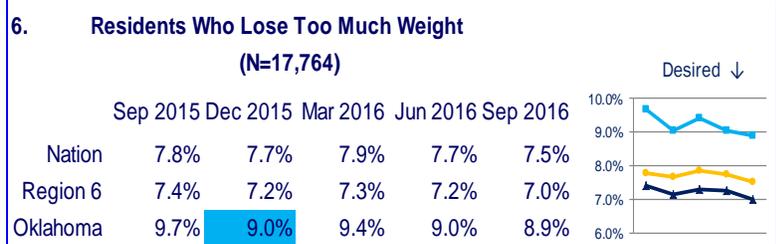
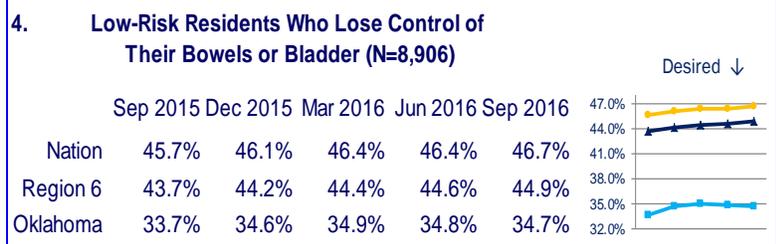
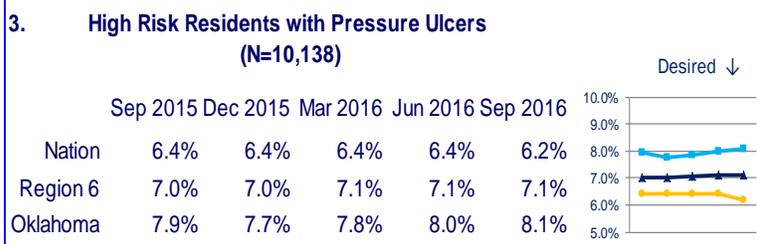
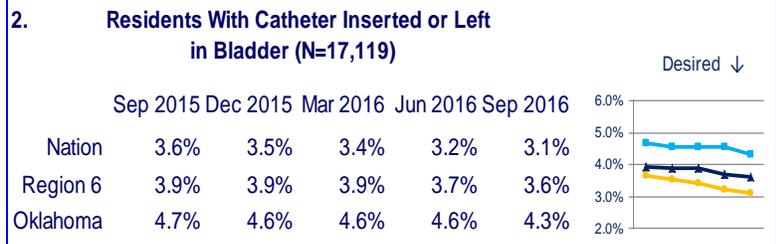
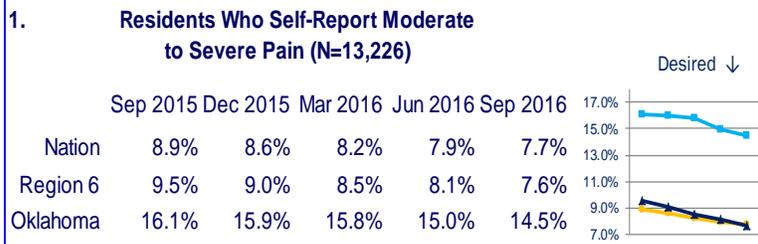
Region

Oklahoma

Better

Worse

Statistically significant change



## Nursing Home Score Card

Select Long Stay Quality Measures for the Period Ending 9/30/2016

This score card provides an overview of Oklahoma nursing home performance with comparative data from the region and nation. The data comes from the Minimum Data Set National Repository, which is referred to as MDS 3.0. The data for this score card edition was retrieved on December 8, 2016 for the data period ending September 30, 2016. It includes a five quarter review of performance on key quality measures. These 13 metrics comprise the *composite score* as designated by the Centers for Medicare and Medicaid Services. The composite score is a snapshot of overall quality in nursing homes and is featured as Chart 14 on the bottom right of the score card. Changes in the data that are statistically significant between quarters are highlighted blue (change is for better) or red (change is for worse).

Variation of note across these five quarters includes the pneumococcal vaccination and ADL metrics. The percent of residents assessed and appropriately given the pneumococcal vaccine decreased from June 2016 to September 2016, but improved compared to last year. Both vaccination measures are being addressed by the Healthy Aging Ad Hoc Committee of the Long Term Care Facility Advisory Board and by the CMP Fund Program. Residents who needed help with activities of daily living (ADL) increased from March 2016 to June 2016. This measure is not typically associated with seasonal fluctuations. Additional analysis is underway to determine the cause of the variation, but anecdotal reports suggest that adoption, optimization, and staff training in use of electronic health records may be capturing ADL support in a timelier, more accurate manner. Although the measure for incontinence among low-risk residents worsened, the same trend was noted in the region and nation.

Changes since last <b>QUARTER - OK</b>		Changes since last <b>YEAR -OK</b>
<i>Statistically significant change for the <b>better</b> includes the following measures:</i>		
		Self-reported pain(1)
		Lose too much weight (6)
		Falls with Major Injury (7)
		Influenza vaccination (10)
		Severe Depressive Symptoms (11)
		*Pneumococcal vaccination (12)
		Urinary tract infections (13)
		<b>State Composite Score (14)</b>
<i>Statistically significant change for the <b>worse</b> includes the following measures:</i>		
*Pneumococcal vaccination (12)		Incontinence (4)
		Help with activities of daily living (ADL) (8)

Note: Statistical significance was calculated based the 95% confidence interval.

Email [QIEShelpdesk@health.ok.gov](mailto:QIEShelpdesk@health.ok.gov) for more information.

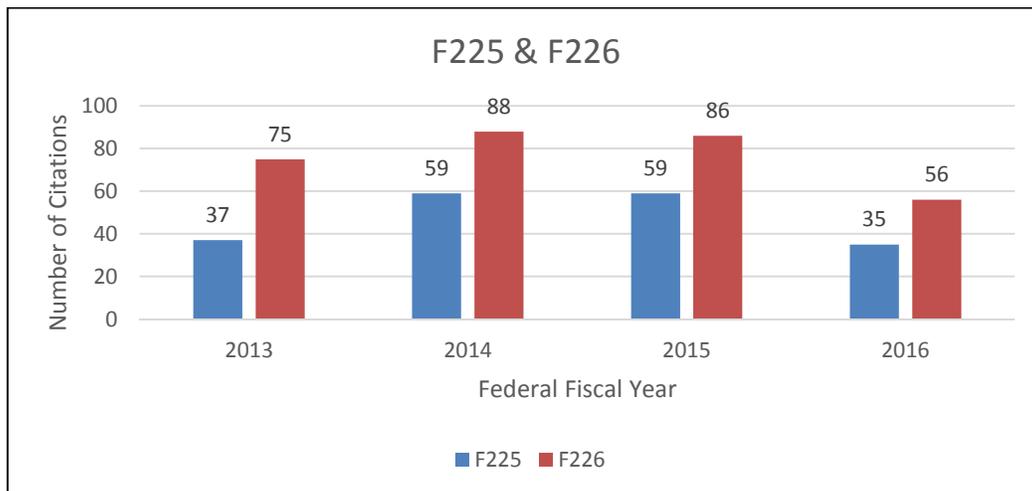
**Ad Hoc Committee on Standards, Practices and Procedures of the Oklahoma State Department of Health Relating to Nurse Aides of the Long Term Care Facility Advisory Board Executive Summary**

October 12, 2016 updated January 11, 2017

The Ad Hoc Committee on Standards, Practices and Procedures of the Oklahoma State Department of Health Relating to Nurse Aides held their thirteenth meeting on October 12, 2016. Long Term Care Facility Advisory Board members present were Jimmy McWhirter, Joanna Martin and Wendell Short. Others present were David Rising, Janine McCullough, Henry Hartsell, Alex Hart-Smith, Lois Baer, James Joslin, Patricia Shidler, Diane Henry, Michael Cook, Becky Moore, Don Maisch, Esther Houser, Naresh Bhandari, Julie Myers, Dee Downer. From the OU Center for Public Management, Ginger Thompson facilitated the meeting.

The committee reviewed data on formal findings of abuse, neglect or misappropriation made against nurse aides and non-technical services workers by an administrative law judge following either a hearing or opportunity for hearing. From January 1 through September 30, 2016, 94 findings of abuse, neglect or misappropriation were made against nurse aides and non-technical services workers. This number is less than the previous quarter. (Please see minutes of the meeting to view this data in detail).

The Committee also reviewed data on citations of violations of federal regulations at F225 (employee, investigate, report abuse/neglect) and F226 (develop and implement abuse/neglect policies). Further, projections indicate decreases in both allegations and deficiency citations. After reviewing the data, the Committee determined that citations are trending downward. The year-to-date citations (federal fiscal year) for F225 and F226 are lower than federal fiscal years 2013, 2014 and 2015. (See Figure 1.) Figure 1 illustrates the decrease in all citations related to F225 and F226. Of those citations 4 citations of F226 were at level H and higher (actual harm or immediate jeopardy) and one F225 citation was at level H and higher. The number of these high level citations in 2015 was 11 each.



**Figure 1:F225 & F226 Citations against Okla. Nursing Facilities, FFY2013-FFY2016**

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Data were presented and reviewed relative to abuse and failure-to-report data for assisted living, residential care and intermediate care facility for individuals with intellectual disability. The ratios are approximate to that of nursing facilities.

The Committee heard a status report on the processing of allegations of abuse, neglect and misappropriation, and placements of pending notations on the nurse aide registry. From January 1, 2016 through September 30, 2016, the Oklahoma State Department of Health posted 94 allegations of abuse on the nurse aide registry within an average of 8 calendar days during that period. The AIM is 10 days or less. (See Figure 2.)

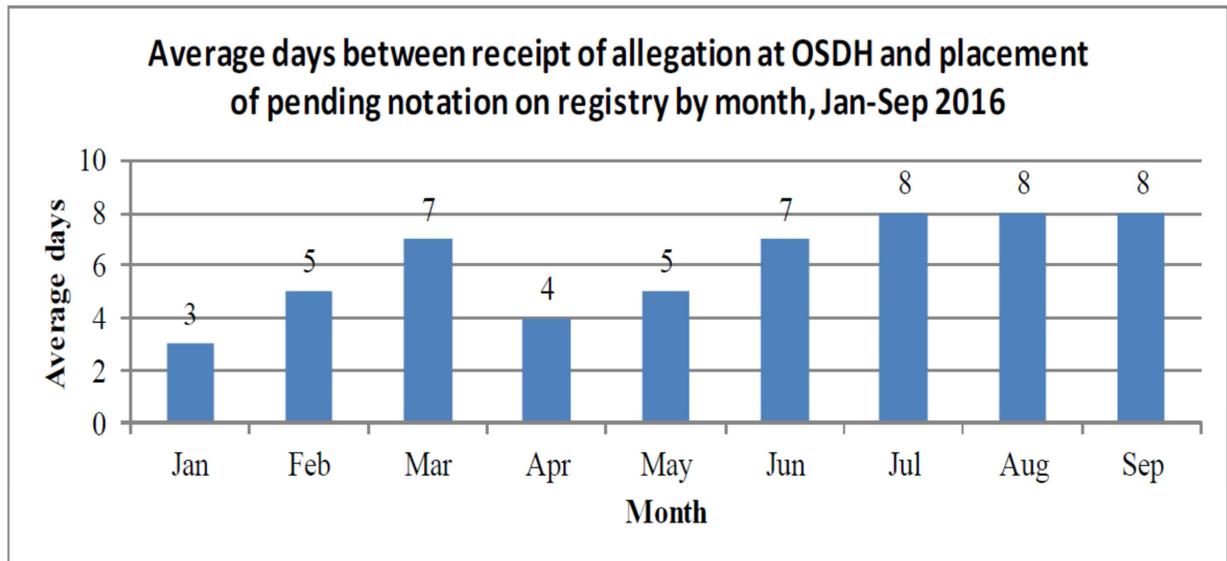


Figure 2: Days between receipt of allegation at OSDH and placement of pending notation on registry by month, Jan-Sep 2016

The Committee discussed whether or not it would be more effective for the Committee to focus on a different AIM and objective given the projected 58% decrease in F225, which is a measure of failure to report to abuse. Upon review of the data, the Committee recognized that pursuing a quality improvement initiative related to this issue would not be the most efficient use of the Committee’s resources.

The Committee agreed to survey the Advisory Board members to assess, prioritize, and recommend future projects to the larger Board. The Ad Hoc Committee plans to utilize Survey Monkey to prioritize pertinent issues. The group will assess the results and identify related data sources. The Committee agreed to bring its findings to the Long Term Care Facility Advisory Board for discussion and recommendations following its next meeting (January 11 at 10 a.m.).

The meeting convened at 9:40 a.m. and adjourned at 11:45 a.m. The next meeting will be held beginning at 10:00 a.m. on January 11, 2017.

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## Long Term Care Facility Advisory Board Ad Hoc Committee on Nurse Aide Registration, Investigation and Notation Improvements

### Executive Summary

January 11, 2017

The ad hoc committee held their fourteenth meeting on January 11, 2017. Long Term Care Facility Advisory Board (LTCFAB) members present were Jimmy McWhirter, Joanna Martin, Wendell Short and William Whited. Others present included Patricia Shidler, Henry Hartsell, Alex Hart-Smith, James Joslin, Michael Cook, Don Maisch, Esther Houser, Julie Myers, Debra Burris, and Vicki Kirtley.

The committee made corrections to and approved the October executive summary report. James Joslin presented the draft of the ad hoc committee's report in the format of a storyboard. The report was reviewed and approved with recommendations for amendment.

James Joslin presented on the results of the Next Steps survey submitted to the members of the LTCFAB. Eight members responded. The consensus based on the survey and discussion was the ad hoc committee has been successful in meeting its goals and should be adjourned. It was noted that the proposed future topics for investigation are deserving of further research by the Department and examination by the LTCFAB at their discretion. The consensus of the ad hoc committee was to revise the storyboard reviewed today and issue it at the afternoon meeting as the final report and recommend the ad hoc committee be adjourned.

Mike Cook, Director of the Long Term Care Service, presented data related to abuse and neglect and resident rights violations in non-nursing facilities. Don Maisch provided the revised Centers for Medicare and Medicaid Services (CMS) definitions of abuse, exploitation, neglect, misappropriation and mistreatment as issued in their latest rule updates. The effective impact of the language change will depend on the interpretive guidance that has yet to be issued by CMS.

#### **Final Recommendation:**

1. The Department implements the future plans identified in the ad hoc committee's final report and continues to present to the LTCFAB on a quarterly basis the newly developed case reporting on abuse, neglect, and misappropriation (ANM).
2. The Department use the data systems and reporting developed as a result of the ad hoc committee to continue to improve on investigations, nurse aide and provider training on ANM prevention, investigation, and reporting.
3. The ad hoc committee be adjourned.

The meeting convened at 10:15 a.m. and adjourned at 11:45 a.m.

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# Report of the Long Term Care Facility Advisory Board Ad Hoc Committee on Nurse Aide Registration, Investigation and Notation Improvements

## PLAN

Identify an opportunity and plan for improvement

### 1. Getting Started

- The Nursing Home Care Act [Title 63, Section 1-1951] requires the Department set standards for nurse aide training programs, certify those programs and nurse aides, and provide a public registry of aide certifications. The registry is to include administrative actions against an aide. When an allegation of abuse, exploitation, neglect or misappropriation of a resident is received, "the Department shall place a pending notation in the registry until a final determination has been made [63:1-1951(D)(5)].
- Nursing facility deficiencies cited by the Department relating to abuse, neglect, mistreatment or misappropriation (ANM) increased by 32% in 2013, the largest increase since 2005.
- The Board of Health requested the Long Term Care Facility Advisory Board (LTCFAB) to evaluate and review standards, practices, and procedures of the Department relating to nurse aides.
- The LTCFAB created an ad hoc committee which used the Plan-Do-Check-Act (PDCA) cycle and quality improvement tools to perform the analysis.

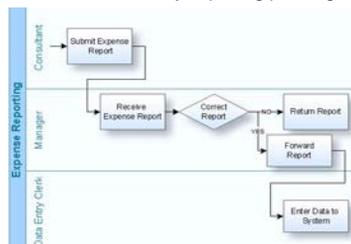
### 2. Assemble the Team

The Nurse Aide Ad hoc Subcommittee included:

- Nursing, Assisted Living and Residential Care facility operators/administrators
- General public over age 65
- The OSDH offices of Nurse Aide Registry (Registry); General Counsel; National Background Check Program; and Long Term Care Service
- Department of Human Services (Adult Protective Services)
- Long Term Care Ombudsman

### 3. Examine the Current Approach

- The committee developed a "swim lane" process map to identify the multiple individuals/agencies involved in the abuse investigation process from the time an incident of possible abuse occurs to the time the matter reaches several termination points.
- The Procedures, Policies, Personnel, Resources, Measurements and Environment identified through the process map were examined in a fishbone analysis for failure points and found these opportunities:
  - pending allegations transparency;
  - cumbersome investigation process, averaging 49 days from date of incident to date of closure; approximately 1% of cases take more than 160 days to close;
  - deferral to Attorney General's Office delays opening pending notations on the Registry;
  - lack of current address for nurse aides delays or avoids legal service;
  - pending investigation notations on the



- Registry is not accessible to employers;
- changes in pending investigation status not accessible to employers..

### 4. Identify Potential Solutions

The Committee used research, brainstorming and ranking to identify significant causal factors and to generate and prioritize potential solutions. Those were:

- Set processing time frames and track them for triage determinations
- Screen allegations before sending to the AG's office
- Open pending investigation notations on the Registry based on early triage
- Make pending investigation notations on the Registry accessible, and transparent
- Equivalent triage regardless of the source
- Modify the existing law regarding nurse aides who do not accept service of process notices

**AIM STATEMENT: BY JUNE 30, 2015, WE WILL DECREASE THE TIME FROM RECEIPT OF AN ALLEGATION TO PLACEMENT OF A PENDING NOTATION ON THE NURSE AIDE REGISTRY TO 10 DAYS.**

### 5. Develop an Improvement Theory

- Office of the General Council to work with Attorney General to reduce complaint referrals sent to the AG's office in order to move triage earlier in the process to reduce process time.
- Improve tracking of dates and data to identify problem areas in the abuse investigation process.
- Draft and submit legislation to address legal service on nurse aides.
- Develop through OK-SCREEN the means to notify current and prospective employers of nurse aide pending investigations.
- The right stakeholders are engaged.

## DO

Test the theory for improvement

### 6. Test the Theory

- OSDH and Attorney General's office agreed OSDH will only send Medicaid fraud cases to the AG's office.
- OSDH changed procedure: notations of a pending investigation are placed on the Nurse Aide Registry prior to referring cases to the Attorney General's Office.
- OK-SCREEN was modified to return pending notations in the screening process and notify current employers of pending notations via email.
- Data fields were added to the case tracking spreadsheet maintained by the Office of General Counsel, to allow more accurate tracking of the time required at important steps in the process.
- House Bill 1435 took effect on November 1, 2015, which allows for proof of service on the last known address of a nurse aide.

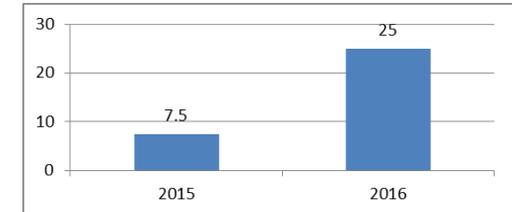
## CHECK

Use data check results

### 7. Check the Results

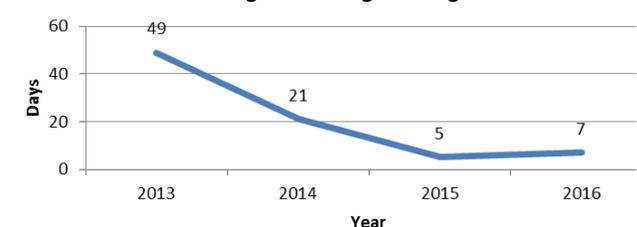
- Employers are notified by email if there is a change of status to any employed nurse aides.
- Legislation allowing legal service to last known address effective Nov. 1, 2015; This provision now represents over half of all adverse findings and resulted in 58 default judgments through September 30, 2016.

**Average # Cases per Quarter: Abuse, Neglect, & Misappropriation (ANM)**



- The processing time for placement of pending notation on the nurse aide registry was reduced.

**Average Days: Allegation Receipt to Posting of Pending Investigation**



## ACT

Standardize the improvement and establish future plans

### 8. Standardize the improvement and establish future plans

- Ad Hoc Committee members were in favor of adopting the new changes, with the caveat that future changes may be needed as deemed necessary.
- A communication plan was developed to include regular reporting to the Long Term Care Facility Advisory Board on ANM cases and for dissemination of lessons learned from case reviews to aide training programs and providers.
- Standardized report in development to show current status of nurse aide abuse investigation system.

### 9. Future plans

- Provide regular progress and status updates to the Long Term Care Facility Advisory Board at its quarterly meetings.
- Identify the next priority problems to be addressed and solved using the Plan-Do-Check-Act cycle.
- OSDH will develop and provide training to long term care facilities and training programs regarding the case review findings on abuse, exploitation, neglect, mistreatment and misappropriation by nurse aides.



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**Ad Hoc Committee on Healthy Aging  
Long Term Care Facility Advisory Board  
Executive Summary  
January 11, 2017**

The Ad Hoc Committee on Healthy Aging held its 13<sup>th</sup> meeting on November 29, 2016. The Long Term Care Facility Advisory Board members present were Andrew Dentino MD, and Diana Sturdevant PhD. Others present at these meetings were Henry Hartsell Jr PhD, Mary Brinkley, Terry Cothran, Michaela Craven, Claire Dowers-Nichols, Alexandria Hart-Smith, Gayla Middlestead, Julie Myers, Marisa New, Crystal Rushing, and Debara Yellseagle.

The committee has two objectives currently. The first is to monitor the progress of the fall prevention pilot program. The second objective is to concurrently increase the percent of nursing home residents assessed and appropriately given the influenza and pneumococcal vaccines.

**Fall Prevention Initiative:**

Due largely to the collaborative efforts of this ad hoc work group, fewer nursing home residents have experienced falls with major injury in Oklahoma. The preliminary results indicate net positive results among participating facilities. Peaking at 5.6% state average, before work began, the most recent reporting period indicates an observed percentage of 5.19% (8/31/2016, MDS 3.0, Retrieved 11/8/16).

*AIM Statement for Fall Prevention:* To reduce the rate of falls with major injury in Oklahoma nursing facilities starting with a rate of 5.3% in September 2014, moving through 5.0% by June 2016, to 3.0% by June 2019.

**Vaccination Initiative:**

The ad hoc committee continues its work to define project parameters and identify potential covariance of clinical measure indicators. Geospatial data for this objective indicates clusters around the metropolitan areas without concentration in any given tribal areas. The OSDH has tasked a current contractor (also an ad hoc participant) to pilot initial efforts. Activities included regional meetings in October to provide information about immunizations, assessment of current practices relative to healthcare worker vaccination, and direct support to at least 40 homes with quality assurance process improvement projects specific to immunizations.

*AIM Statement for Vaccinations:* Increase the percentage of long-stay residents in Oklahoma nursing facilities that are assessed and appropriately given the seasonal influenza and pneumococcal vaccines. Starting with a rate for **seasonal influenza** of 95.2% in March 2015, the aim is to improve to 96% by March 2018 with a stretch goal of 98% by March 2019. Starting with a rate for **pneumococcal** vaccinations of 87.6% in March 2015, the aim is to improve to 92% by March 2018, with a stretch goal of 94% by March 2019.

The Committee will reconvene on June 20, 2017 at 1pm to review data and progress.

# ASSISTED LIVING PENALTIES

<p><b>Sanctions</b></p> <p><b>63 OS 1-890.6(B)</b> Ban on Admissions</p> <p>Deny, suspend, refuse to renew, or revoke license</p> <p><b>§63-1-890.6(C)</b> Maximum Per Day Administrative Penalty \$500.00</p> <p>Assisted Living Center Surveys will be accompanied by the AL/RC/DC Surveyor Coversheet. The coversheet will include information regarding start dates for level 3 and 4 deficiencies, and the coversheet will include surveyor determinations of continuing non-compliance for severity levels 1 and 2 deficiencies re-cited upon revisit as defined by <b>63 OS 1-890.6(D)(4)</b>.</p>	<p><b>SEVERITY LEVEL 4 "J"</b> IMMEDIATE JEOPARDY TO RESIDENT HEALTH &amp; SAFETY <b>ISOLATED</b> ONE OR A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$500</p>	<p><b>SEVERITY LEVEL 4 "K"</b> IMMEDIATE JEOPARDY TO RESIDENT HEALTH &amp; SAFETY <b>PATTERN</b> MORE THAN A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$500</p>	<p><b>SEVERITY LEVEL 4 "L"</b> IMMEDIATE JEOPARDY TO RESIDENT HEALTH &amp; SAFETY <b>WIDESPREAD</b> PERVASIVE PROBLEMS THROUGHOUT THE FACILITY \$500</p>
	<p><b>SEVERITY LEVEL 3 "G"</b> ACTUAL HARM THAT IS NOT IMMEDIATE JEOPARDY <b>ISOLATED</b> ONE OR A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$100</p>	<p><b>SEVERITY LEVEL 3 "H"</b> ACTUAL HARM THAT IS NOT IMMEDIATE JEOPARDY <b>PATTERN</b> MORE THAN A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$200</p>	<p><b>SEVERITY LEVEL 3 "I"</b> ACTUAL HARM THAT IS NOT IMMEDIATE JEOPARDY <b>WIDESPREAD</b> PERVASIVE THROUGHOUT THE FACILITY \$300</p>
	<p><b>SEVERITY LEVEL 2 "D"</b> NO ACTUAL HARM WITH POTENTIAL FOR MORE THAN MINIMAL HARM <b>ISOLATED</b> ONE OR A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$30*</p>	<p><b>SEVERITY LEVEL 2 "E"</b> NO ACTUAL HARM WITH POTENTIAL FOR MORE THAN MINIMAL HARM <b>PATTERN</b> MORE THAN A VERY LIMITED NUMBER OF RESIDENTS AFFECTED \$30*</p>	<p><b>SEVERITY LEVEL 2 "F"</b> NO ACTUAL HARM WITH POTENTIAL FOR MORE THAN MINIMAL HARM <b>WIDESPREAD</b> PERVASIVE THROUGHOUT THE FACILITY \$30*</p>
	<p><b>SEVERITY LEVEL 1 "A"</b> NO ACTUAL HARM WITH POTENTIAL FOR MINIMAL HARM <b>ISOLATED</b> ONE OR A VERY LIMITED NUMBER OF RESIDENTS AFFECTED</p>	<p><b>SEVERITY LEVEL 1 "B"</b> NO ACTUAL HARM WITH POTENTIAL FOR MINIMAL HARM <b>PATTERN</b> MORE THAN A VERY LIMITED NUMBER OF RESIDENTS AFFECTED</p>	<p><b>SEVERITY LEVEL 1 "C"</b> NO ACTUAL HARM WITH POTENTIAL FOR MINIMAL HARM <b>WIDESPREAD</b> PERVASIVE THROUGHOUT THE FACILITY</p>
	<p>* Fines for continued non-compliance start on the exit date of the original survey. (Unrelated violations are not included in the penalty.)</p>		

**Severity Levels:**

- Severity Level 1** – No actual harm with the potential for minimal harm,
- Severity Level 2** – No actual harm with the potential for more than minimal harm,
- Severity Level 3** – Actual harm that is not immediate jeopardy, and
- Severity Level 4** – Immediate jeopardy to resident health and safety.

**Scope:**

**Isolated:** When one or a very limited number of residents or employees have been affected and/or a very limited number of area(s)/location(s) have/has been, or one or a very limited number of opportunity (ies) for compliance was/were missed,

**Pattern:** When more than a very limited number of residents or employees have been affected, and/or the situation(s) has/have occurred in more than a limited number of locations but the locations are not dispersed throughout the facility, and/or a pattern of non-compliance related to number of times (i.e. 8:00 am medications, evening meals, night shift, etc.) the violation(s) has/have occurred,

**Widespread** when the problems causing the deficiency (ies) is pervasive (affect many locations) throughout the facility and/or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.

### **Penalty Amounts:**

**\$30 per day:** Imposed with opportunity to correct (OTC) when continuing non-compliance (CNC) has been established upon revisit.

**\$100 per day:** Imposed with no opportunity to correct (NOTC) effective when the **ISOLATED** actual harm that is not immediate jeopardy occurred.

**\$200 per day:** Imposed with NOTC effective when the **PATTERN** of actual harm that is not immediate jeopardy first began.

**\$300 per day:** Imposed with NOTC, effective when the **WIDE SPREAD** actual harm that is not immediate jeopardy first began.

**\$500 per day:** Imposed with NOTC, effective when the **IMMEDIATE JEOPARDY (IJ)** first began.

### **Sanctions:**

**Severity Level 1:** No administrative penalty

**Severity Level 2:** \$30.00 per day per violation up to a total maximum of \$500.00 per day

The facility will be given an opportunity to correct (OTC) level 2 deficiencies prior to assessment of administrative penalties. When level 2 deficiencies represent continuing non-compliance (CNC) as defined by 63 OS 1-890.6(D)(4), the \$30.00 per day per violation penalty will begin on the survey exit date of the original citation and continue until the correction date established by the revisit. If a deficiency is re-cited at a higher level, the per-day penalty will be increased on the revisit survey exit date that determined the higher scope and severity. Penalties will be recalculated upon each revisit.

**Severity Level 3:** \$100.00 - \$300.00 per day per violation up to a total maximum \$500.00 per day

The facility will **not** have an opportunity to correct (NOTC) level 3 deficiencies prior to assessment of administrative penalties. Level 3 deficiencies that represented an isolated scope will be calculated at \$100.00 per day per violation. Level 3 deficiencies that represented scope at a pattern will be calculated at \$200.00 per day per violation. Level 3 deficiencies that represented a widespread scope will be calculated at \$300.00 per day per violation. NOTC deficiencies will begin on the date identified as the first date actual harm occurred and continue until the correction date established by the revisit, or the survey exit date the violation was re-cited at a lower or higher level. Penalties will be recalculated upon each revisit.

**Severity Level 4: \$500.00 per day**

The facility will **not** have an opportunity to correct level 4 deficiencies prior to assessment of administrative penalties. NOTC deficiencies that represented immediate jeopardy will begin on the date identified as the first date immediate jeopardy existed (or on the survey exit date if no discernable start date could be identified) for one or more residents and continue until the immediate jeopardy has been removed as verified onsite by a surveyor. Once a penalty for immediate jeopardy has begun, a per day penalty will continue at a minimum of \$30.00 per day (if no actual harm occurred) per violation, or \$100.00 per day per violation if isolated actual harm occurred, or \$200.00 per day per violation if actual harm at a pattern occurred until the correction date established by the revisit or the date the violation was re-cited at a lower level. Penalties will be recalculated upon each revisit.

**63 OS 1-890.6 (C)** *Any person who has been determined by the Commissioner to have violated any provision of the Continuum of Care and Assisted Living Act or any rule promulgated hereunder shall be liable for an administrative penalty of not more than Five Hundred Dollars (\$500.00) for each day that the violation occurs.*

**63 OS 1-890.6(D) 4** *Any new violation unrelated to the original violation and not classified as actual harm or immediate jeopardy that is discovered upon a re-visitation of a continuum of care facility or assisted living center shall constitute a new action and shall not be included in the original citation or assessment of fines or penalties; provided, that a preexisting violation not corrected in compliance with the approved plan of correction shall be considered still in effect.*