



**Nurse Aide Registry Report for the Quarter ending September 30, 2019  
January 8, 2020 Long Term Care Facility Advisory Board Meeting**

**CURRENT CERTIFICATIONS**

TYPES OF CERTIFICATIONS	FY2017	FY2018	FY2019	FY20-Q1
Adult Day Care (ADC)	28	24	39	39
Long Term Care (LTC)	37,855	37,942	38,368	38,147
Certified Medication Aide (CMA)	6,068	6,074	6,247	6,116
Advanced CMA Gastrology (CMA/G)	2,821	3,061	3,292	3,165
Advanced CMA Glucose Monitoring (CMA/GM)	1,191	1,293	1,447	1,377
Advanced CMA Insulin Administration (CMA/IA)	862	951	1,060	1,002
Advanced CMA Respiratory (CMA/R)	2,907	3,134	3,350	3,222
Feeding Assistant (FA)	603	576	460	483
Home Health Aide (HHA)	13,839	13,707	13,288	13,482
Developmentally Disabled Direct Care Aides (DDDCA)	1,268	1,248	1,228	1,187
Residential Care Aide (RCA)	69	57	57	55
<b>TOTALS</b>	<b>67,511</b>	<b>68,067</b>	<b>69,307</b>	<b>68,275</b>

WALK-INS FOR RENEWAL	FY2017	FY2018	FY2019	FY20-Q1
First Floor - NAR Walk-Ins	5,026	6,647	5,893	1,555

NEW CERTIFICATIONS	FY2017	FY2018	FY2019	FY20-Q1
<b>INBOUND RECIPROCITY CERTIFICATIONS</b>				
LTC	1,001	1,369	1,539	494
HHA	6	1	10	2
<b>NEW CERTIFICATIONS FROM TRAINING</b>				
LTC	5,568	5,291	4,687	1,034
HHA	2,791	2,851	2,817	448
DDDCA	209	240	207	68
RCA	0	19	0	0
ADCA	0	1	0	0
CMA	1,102	1,229	1,088	296
FA	230	198	80	13
<b>TOTALS</b>	<b>9,900</b>	<b>9,829</b>	<b>8,879</b>	<b>1,859</b>
<b>NEW ADVANCED CMA</b>				
CMA-R	1024	1322	589	141
CMA-G	992	1315	554	131
CMA-GM	399	538	289	45
CMA-IA	304	399	198	21
<b>TOTALS</b>	<b>2719</b>	<b>3574</b>	<b>1,630</b>	<b>338</b>

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RETEST	FY2017	FY2018	FY2019	FY20-Q1
Retest - CMA	148	61	54	21
Retest - LTC	400	250	200	48
Retest - HHA	128	76	72	9
Retest - DDCA	1	0	0	1
<b>TOTALS</b>	<b>677</b>	<b>387</b>	<b>326</b>	<b>79</b>
<b>OUTBOUND RECIPROCITY</b>				
Reciprocity - LTC	417	401	373	222

**TRAINING PROGRAMS**

APPROVED TRAINING PROGRAM	FY2017	FY2018	FY2019	FY20-Q1
LTCA	134	131	126	128
HHA	0	0	0	0
DDDCA	10	10	10	10
RCA	1	1	0	0
ADC	0	0	0	0
CMA	46	50	48	47
CMA/Continuing Education Units(CEUs)	36	38	38	37
CMA/IA	21	23	25	24
CMA/GM	4	4	4	4
CMA/R	2	2	2	2
CMA/RG	26	29	30	29
CMA/G	4	1	1	1
<b>TOTALS</b>	<b>281</b>	<b>289</b>	<b>284</b>	<b>282</b>
<b>ONSITE SURVEYS PERFORMED</b>				
	FY2017	FY2018	FY2019	FY20-Q1
LTCA	35	104	34	24
HHA	0	0	0	0
DDDCA	2	9	0	4
RCA	0	1	0	0
ADCA	0	0	0	0
CMA	16	7	26	10
CMA / CEU	14	6	19	7
CMA/IA	5	3	11	3
CMA/GM	2	0	2	0
CMA/R	1	0	1	2
CMA/RG	6	5	14	3
<b>TOTALS</b>	<b>81</b>	<b>135</b>	<b>107</b>	<b>53</b>

<b>CURRENT TEMPORARY EMERGENCY WAIVERS</b>	22
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REVOCATIONS OF CERTIFICATIONS DUE TO CRIMINAL BARRIERS	FY2017	FY2018	FY2019	FY20-Q1
	6	20	17*	0

\*Revised from last report

### Abuse/Neglect/Misappropriation (ANM) Findings

Findings	SFY19-Q1 7/01 to 9/30		SFY19-Q2 10/01 to 12/31		SFY19-Q3 1/1 to 3/31		SFY19-Q4 4/1 to 6/30		SFY19		SFY20-Q1 7/01 to 9/30	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
<b>Findings</b>	<b>31</b>		<b>8</b>		<b>11</b>		<b>7</b>		<b>67</b>		<b>15</b>	
Default Judgement Service to Address on File	12	39%	4	50%	5	45%	4	57%	25	44%	8	53%
Event to Final Administrative Order Less than 9 months	28	90%	2	25%	4	36%	7	100%	41	72%	8	53%
<b>Pending Notations</b>												
Notations Posted	28		18		15		26		87		44	
Average Days to Posting	7.5		8.8		12.2		7.3		8.9		8.1	
<b>Years: Certification to Finding</b>												
Average	11		16		12		8		12		7	
Minimum	0		2		3		2		0		0	
Maximum	28		42		27		14		42		19	
<b>Age at Finding</b>												
Average	36		41		37		34		37		32	
Minimum	21		24		22		28		21		20	
Maximum	59		69		60		44		69		53	
<b>Type Certification</b>												
	31	100%	8	100%	11	100%	7	100%	67	100%	15	100%
LTC/HHA	21	68%	7	88%	8	73%	4	57%	40	70%	11	73%
CMA	10	32%	0	0%	2	18%	3	43%	15	26%	1	7%
DDCA	0	0%	0	0%	0	0%	0	0%	0	0%	1	7%
NTSW	0	0%	1	13%	1	9%	0	0%	2	4%	2	13%
<b>Finding Type</b>												
	31	100%	8	100%	11	100%	7	100%	67	100%	15	100%
<b>Misappropriation</b>												
Misappropriation/Meds	11	35%	0	0%	2	18%	1	14%	14	25%	1	7%
Misappropriation/Cash	3	10%	1	13%	5	45%	2	29%	11	19%	5	33%
Misappropriation/Property	2	6%	2	25%	0	0%	1	14%	5	9%	3	20%
<b>Neglect</b>												
Services	1	3%	0	0%	0	0%	1	14%	2	4%	2	13%
Transfer	11	35%	3	38%	3	27%	1	14%	18	32%	1	7%
<b>Abuse</b>												
Physical	3	10%	2	25%	1	9%	0	0%	6	11%	3	20%
Sexual	0	0%	0	0%	0	0%	1	14%	1	2%	0	0%
Verbal	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%
<b>Facility Type</b>												
	31	100%	8	100%	11	100%	7	100%	67	100%	15	100%
Nursing	19	61%	6	75%	8	73%	4	57%	37	65%	6	40%
Assisted Living	11	35%	2	25%	2	18%	3	43%	18	32%	7	47%
Home Care	0	0%	0	0%	0	0%	0	0%	0	0%	1	7%
Hospice	0	0%	0	0%	1	9%	0	0%	1	2%	0	0%
ICF/ID	1	3%	0	0%	0	0%	0	0%	1	2%	1	7%
Private	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
<b>Training Source</b>												
	31	100%	8	100%	11	100%	7	100%	67	100%	15	100%
Career Tech	11	35%	0	0%	1	9%	2	29%	14	25%	3	20%
Provider Based	2	6%	0	0%	0	0%	0	0%	2	4%	4	27%
Private	0	0%	0	0%	2	18%	2	29%	4	7%	1	7%
Unknown	18	58%	8	100%	7	64%	3	43%	36	63%	6	40%
Reciprocity	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
OSU	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
NA: Non-technical	0	0%	0	0%	1	9%	0	0%	1	2%	1	7%
<b>Hearings</b>												
	31	100%	8	100%	11	100%	7	100%	67	100%	15	100%
Appeared	16	52%	1	13%	3	27%	1	14%	21	37%	4	27%
No Appearance	15	48%	7	88%	8	73%	5	71%	35	61%	11	73%
Agreed Order	0	0%	0	0%	0	0%	1	14%	1	2%	0	0%



**OKSCREEN and Abuse, Neglect, and Misappropriation (ANM) Findings**

Findings & OK-SCREEN Applicant Reviews	SFY19-Q1 07/01 to 09/30		SFY19-Q2 10/01 to 12/31		SFY19-Q3 01/01 to 03/31		SFY19-Q4 04/01 to 06/30		SFY19		SFY20-Q1 07/01 to 09/30	
	Count	%	Count	%	Count	%	Count	%	Count	%	Count	%
Persons with ANM findings	31	100%	8	100%	11	100%	7	100%	57	100%	15	100%
ANM Applicant's with Status in OKS	29	94%	7	88%	10	91%	7	100%	53	93%	15	100%
No applicant record in OKS	2	6%	1	13%	1	9%	0	0%	4	7%	0	0%
<b>ANM Applicant's with Status in OKS</b>												
ANM Applicants with Status in OKS	29	100%	7	100%	10	100%	7	100%	53	100%	15	100%
Had eligible determination in OKS prior to finding	28	97%	6	86%	10	100%	7	100%	51	96%	15	100%
Had pending determination with provisional employment	0	0%	0	0%	0	0%	0	0%	0	0%	0	0%
Had incomplete or withdrawn application(s) or pending not eligible determination	1	3%	1	14%	0	0%	0	0%	2	4%	0	0%
Not eligible in OKS	0	0%	0	0%	0	0	0	0%	0	0%	0	0%
<b>Prior Criminal History for ANM Cases w/ prior Eligible Determination in OKS</b>												
ANM Cases with prior eligible determination in OKS	28	100%	6	100%	10	100%	7	100%	51	100%	15	100%
Had prior eligible criminal history	7	24%	1	14%	0	0%	2	29%	10	20%	2	13%
Had no prior criminal history	21	76%	5	86%	10	100%	5	71%	41	80%	13	87%
<b>OKS Employment History for ANM Cases w/ prior Eligible Determination in OKS</b>												
ANM Cases with prior eligible determination in OKS	28	100%	6	100%	10	100%	7	100%	51	100%	15	100%
Discharged @ Allegation	2	8%	1	14%	7	70%	0	0%	10	20%	0	0%
Terminated in OKS prior to ANM Finding	13	50%	4	57%	2	20%	3	43%	22	43%	4	27%
Terminated in OKS at or after ANM Finding	4	8%	1	14%	1	10%	4	57%	10	20%	10	67%
Termination date pending	8	31%	0	0%	0	0%	0	0%	8	16%	1	7%
Never employed	1	4%	0	14%	0	0%	0	0%	1	2%	0	0%
Employed with Pending Allegation Prior to ANM Finding	12		3		3		4		22		12	

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 21. Rules of Procedure Governing Individual Proceedings [AMENDED]

Subchapter 29. Criminal History Background Checks [AMENDED]

Subchapter 37. Initial Determination on Criminal History as a Disqualification for License or Certification [NEW]

Subchapter 39. Military Reciprocity Licensure [NEW]

**SUMMARY:**

Subchapter 21. Rules of Procedure Governing Individual Proceedings. The current rule establishes due process procedures for parties appearing before the Department consistent with the Oklahoma Administrative Procedures Act. The proposal modifies the requirements for legal service of instruments related to administrative proceedings before the Department. This change is necessary because experience in providing legal service of instruments has found that Respondents who are licensed by the Department have avoided legal service and delayed administrative proceedings by refusing or avoiding delivery of the service instrument. The effect of the Rule change will be expedited execution of legal service of instruments. The value of this change will be seen though the avoided costs of repeated efforts to obtain service of a legal instrument in a legal proceeding where the licensee was avoiding legal service of the instrument. This change will also provide benefit by removing delays in the administrative hearing process where sanction of a licensee is warranted and/or to remove threats to public health and/or safety.

Subchapter 29. Criminal History Background Checks. The current Rule sets forth parameters to implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., and creates an administrative hearing process for applicants to request waivers from disqualifying employment eligibility determinations. This proposal modifies the purpose to include eligibility appellate procedures for those Chapters under Title 310, which provide for denials of eligibility for a license, certification, or permit based on criminal history. The period for requesting an employment eligibility waiver pursuant to 63 O.S. 1-1947(T)(1) is amended to allow for extensions of the thirty (30) days allowed to appeal where good cause is shown. New rule addresses individuals who have been found not eligible for a license, certification, or permit based on their criminal history, and establishes that they may file an appeal with the Department at any time following receipt of the notice of disqualification and may request a reconsideration twelve (12) months from the previous appeal of a determination of ineligibility. This change is necessary because experience in receiving and reviewing waiver requests has shown that various factors influence the timing for the submittal of a waiver request, including allowing adequate time to elapse to show evidence of rehabilitation. The effect of the Rule change will be a more equitable period for submitting waiver requests and to allow for reconsiderations.

Subchapter 37. Initial Determination on Criminal History as a Disqualification for License or Certification. This new Rule will implement Section 4000.1 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process will apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health. The rule defines the process for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit, or certification consistent with Title 59,

Section 4000.1 and defines the fee at Ninety-five Dollars (\$95.00), consistent with the fee authorized at Title 59, Section 4000.1(F). This change is necessary because of House Bill 1373, which created new law at Title 59, Section 4000.1 establishing these requirements and was effective November 1, 2019. The effect of the rule change will be a rule implementing the law.

Subchapter 39. Military Reciprocity Licensure. This new Rule will implement Section 4100.8 of Title 59 (2019) of the Oklahoma Statutes relating to processes for active duty military personnel and their spouses to request an expedited temporary, reciprocal or comity license or certification for a currently held valid license or certification. This process will apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health. The rule defines the process for requesting a temporary, reciprocal or comity license consistent with Title 59, Section 4108(B). The rule establishes that there will be no fee to request a reciprocity license and that there will be an appeal procedure in the event the request is denied. This change is necessary because of Senate Bill 670, which created new law at Title 59, Section 4100.8 establishing these requirements and was effective November 1, 2019. The effect of the rule change will be a rule implementing the law.

**AUTHORITY:**

State Commissioner of Health, Title 63 O.S. Section 1-104; and Title 63 O.S. Section 1-1944 et seq., and Title 59 O.S. Sections 4000.1 and 4100.8.

**COMMENT PERIOD:**

February 3, 2020, through March 7, 2020. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through March 7, 2020, 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 March 6, 2020, at the Oklahoma State Department of Health, 1000 Northeast Tenth Street, Oklahoma City, OK 73117-1207, in room 1102 from 9AM to noon. The alternate date and time in the event of an office closure due to inclement weather is March 10, 2020, in room 1102, beginning at 9AM. 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 through March 7, 2020, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

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

**CONTACT PERSON:**

Kim Bailey, General Counsel, Oklahoma State Department of Health, 1000 N. E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1207; phone (405) 271-6017, e-mail [KimB@health.ok.gov](mailto:KimB@health.ok.gov) or Audrey C. Talley, Rule Liaison, Oklahoma State Department of Health, 1000 N. E. 10<sup>th</sup> Street, Oklahoma City, OK 73117-1207, phone (405) 271-9444 ext.56535, e-mail [AudreyT@health.ok.gov](mailto:AudreyT@health.ok.gov).

## INITIAL RULE IMPACT STATEMENT

(This document may be revised based on comment received during the public comment period.)

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

#### 1. DESCRIPTION:

Subchapter 21. Rules of Procedure Governing Individual Proceedings. The current rule establishes due process procedures for parties appearing before the Department consistent with the Oklahoma Administrative Procedures Act. The proposal modifies the requirements for legal service of instruments related to administrative proceedings before the Department. This change is necessary because experience in providing legal service of instruments has found that Respondents who are licensed by the Department have avoided legal service and delayed administrative proceedings by refusing or avoiding delivery of the service instrument. The effect of the Rule change will be expedited execution of legal service of instruments. The value of this change will be seen though the avoided costs of repeated efforts to obtain service of a legal instrument in a legal proceeding where the licensee was avoiding legal service of the instrument. This change will also provide benefit by removing delays in the administrative hearing process where sanction of a licensee is warranted and/or to remove threats to public health and/or safety.

Subchapter 29. Criminal History Background Checks. The current Rule sets forth parameters to implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., and creates an administrative hearing process for applicants to request waivers from disqualifying employment eligibility determinations. This proposal modifies the purpose to include eligibility appellate procedures for those Chapters under Title 310, which provide for denials of eligibility for a license, certification, or permit based on criminal history. The period for requesting an employment eligibility waiver pursuant to 63 O.S. 1-1947(T)(1) is amended to allow for extensions of the thirty (30) days allowed to appeal where good cause is shown. New rule addresses individuals who have been found not eligible for a license, certification, or permit based on their criminal history, and establishes that they may file an appeal with the Department at any time following receipt of the notice of disqualification and may request a reconsideration twelve (12) months from the previous appeal of a determination of ineligibility. This change is necessary because experience in receiving and reviewing waiver requests has shown that various factors influence the timing for the submittal of a waiver request, including allowing adequate time to elapse to show evidence of rehabilitation. The effect of the Rule change will be a more equitable period for submitting waiver requests and to allow for reconsiderations.

Subchapter 37. Initial Determination on Criminal History as a Disqualification for License or Certification. This new Rule will implement Section 4000.1 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process will apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health. The rule defines the process for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit, or certification consistent with Title 59, Section 4000.1 and defines the fee at Ninety-five Dollars (\$95.00), consistent with the fee authorized at Title 59, Section 4000.1(F). This change is necessary because of House Bill 1373, which created new law at Title 59, Section 4000.1 establishing these requirements and was effective November 1, 2019. The effect of the rule change will be a rule implementing the law.

Subchapter 39. Military Reciprocity Licensure. This new Rule will implement Section 4100.8 of Title 59 (2019) of the Oklahoma Statutes relating to processes for active duty military personnel and their spouses to request an expedited temporary, reciprocal or comity license or certification for a currently held valid license or certification. This process will apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health. The rule defines the process for requesting a temporary, reciprocal or comity license consistent with Title 59, Section 4108(B). The rule establishes that there will be no fee to request a reciprocity license and that there will be an appeal procedure in the event the request is denied. This change is necessary because of Senate Bill 670, which created new law at Title 59, Section 4100.8 establishing these requirements and was effective November 1, 2019. The effect of the rule change will be a rule implementing the law.

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

It is anticipated that those persons affected by the changes at Subchapter 21, Rules of Procedure Governing Individual Proceedings, will be those parties appearing before the Department in administrative proceedings.

It is anticipated that those persons affected by the changes at Subchapter 29, Criminal History Background Checks, will be applicants seeking for waivers from disqualifying employment eligibility determinations and applicants seeking to appeal denials of eligibility for a license, certification, or permit based on criminal history.

It is anticipated that those persons affected by the new Rule at Subchapter 37, Initial Determination on Criminal History as a Disqualification for License or Certification, will be applicant's with a criminal history seeking to obtain a occupational license or certification from the Department.

It is anticipated that those persons affected by new Rule at Subchapter 39, Military Reciprocity Licensure, will be active duty military personnel and their spouses requesting a temporary, reciprocal or comity license or certification for a currently held valid license or certification.

Those persons potentially affected are requested to provide the agency with information, in dollar amounts if possible, regarding any 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 individual or entity due to compliance with the proposed rule.

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

It is anticipated that those persons benefitting by the changes at Subchapter 21, Rules of Procedure Governing Individual Proceedings, will be the public, licensees of the Department, and the Department, through expedited execution of service of legal instruments. The value of this change will be seen though the avoided costs of repeated efforts to obtain service of a legal instrument in a legal proceeding where the licensee was avoiding legal service of the instrument. This change will also provide benefit by removing delays in the administrative hearing process where sanction of a licensee is warranted and/or to remove threats to public health and/or safety.

It is anticipated that those persons affected by the changes at Subchapter 29, Criminal History Background Checks, will be applicants seeking for waivers from disqualifying employment eligibility determinations and applicants seeking to appeal denials of eligibility for a license, certification, or permit based on criminal history. The value of this change will be seen in a more equitable hearing process that makes provision for applicants to re-apply for an appeal or waiver after additional time has elapsed and the applicant has used that time to show additional evidence of rehabilitation.

It is anticipated that those persons affected by the new Rule at Subchapter 37, Initial Determination on Criminal History as a Disqualification for License or Certification, will be applicant's with a criminal history seeking to obtain a occupational license or certification from the Department. This new rule implements requirements in statute.

It is anticipated that those persons affected by new Rule at Subchapter 39, Military Reciprocity Licensure, will be active duty military personnel and their spouses requesting a temporary, reciprocal or comity license or certification for a currently held valid license or certification. This new rule implements requirements in statute.

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

The economic impact associated with these changes is related to the cost to licensees to maintain a current address with Department and the expanded employment opportunities available to Oklahoma Citizens who will have expanded job opportunities, as they are able to show evidence of rehabilitation after a disqualifying criminal conviction. The fee referenced in Subchapter 37 is that fee authorized at Title 59, Section 4000.1(F). Public comment is sought to further assess economic impact and the cost of compliance.

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

It is anticipated that the Department will experience cost savings from the changes at Subchapter 21, Rules of Procedure Governing Individual Proceedings. The Department, through expedited execution of service of legal instruments, will avoid the costs of repeated efforts to obtain service of a legal instrument in a legal proceeding where the licensee was avoiding legal service of the instrument. This change will also provide benefit by removing delays in the administrative hearing process where sanction of a licensee is warranted, and/or to remove threats to public health and/or safety.

Annual Avoided Costs for Duplicate Delivery of Certified Mail

Avoided certified mail pieces sent to licensees after avoiding service:	50
Avoided Costs in certified mail	\$747.50
Staff Cost avoided in processing duplicate mail:	<u>340.81</u>
Avoided Costs in certified mail	\$ 1,088.31

Avoided Cost of Certified Mail Issued To Multiple Respondents

Avoided Certified mail pieces	4,000
Avoided Costs in certified mail	\$ 27,200.00
Avoided Staff Costs to issue certified mail	<u>\$ 27,264.66</u>
Total Cost Avoided	\$ 54,464.66

It is anticipated that the Department will experience increased costs from the changes at Subchapter 29, Criminal History Background Checks. These costs will be applicants seeking waivers from disqualifying employment eligibility determinations and applicants seeking re-hearings on denials of eligibility for a license, certification, or permit based on criminal history. The per review cost for staff time processing is estimated as shown below

Estimated additional reviews annually	120
Estimated additional reviews requiring hearing	60

Determination Analyst (APO I) Staff Cost (Salary and Fringe) @ .5 hours:	\$ 1,774.04
Attorney II (Salary and Fringe):	6,317.31
Hearing Clerk Staff Time Processing Mailing/Filing/Logging/Archiving	<u>1,170.87</u>
Total Staff cost:	\$ 9,262.22

It is anticipated that there will be minimal cost impact from the new Rule at Subchapter 37, Initial Determination on Criminal History as a Disqualification for License or Certification. The Department estimates fewer than 20 applicants were denied a license, certificate, or permit based on disqualifying history. Existing staff are trained to review complex criminal history records. Ten complex reviews are anticipated annually. Time on these reviews is estimated to average 45 minutes. Time per unit of clerical processing is estimated at 40 minutes. The average per unit cost of processing applications is estimated at \$41.00 dollars. To account for other costs and to provide a 5 year window for inflation, the per review cost to the applicant is set at \$45.00

It is anticipated that there will be no additional costs to the agency from the new Rule at Subchapter 39, Military Reciprocity Licensure. Reciprocity for active military and their spouses is currently provided. The new rule provides guidance for expedited review.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There are no anticipated impacts on political subdivisions and cooperation is not anticipated in implementing or enforcing the proposed amendment. Public comment is sought regarding any impacts.

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

There is no anticipated adverse economic effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act. Public comment is sought regarding any adverse economic effects.

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

There are no less costly means currently identified.

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

See the descriptions in section three of this rule impact statement for a discussion of the persons benefiting and value of benefit.

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

Without adoption of these rules inefficient administrative hearing processes will continue with delays in administrative hearings and delayed actions to protect the public health and safety. Applicants will be denied access to appeals and reconsiderations to show evidence of rehabilitation, and rule will not be adopted to implement law.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was initially prepared on December 9, 2019.

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

SUBCHAPTER 21. RULES OF PROCEDURE GOVERNING INDIVIDUAL  
PROCEEDINGS

**310:2-21-4. Service of instruments initiating an administrative proceeding**

Any instruments initiating an administrative proceeding ~~shall~~ must be served upon on every named Respondent in accordance with the provisions of 12 O.S. § 2004(C)(1)(e) by either personal service, certified mail, return receipt requested, restricted delivery, or issuing a report by hand-delivery. If service is being sent by certified mail, return receipt requested, and the intended Respondent refuses to sign the return receipt or otherwise does not sign or is unavailable to sign and accept service through the certified mail at the address identified on Department records, then Respondent is deemed to have been served, A person designated by the Commissioner may be used to accomplish service for the Department. Service of the instrument initiating an administrative proceeding may be made by certified mail, return receipt requested, restricted delivery. If service is by personal service, The the person serving the instrument initiating an administrative proceeding shall file proof of service with the Hearing Clerk within twenty (20) days of service or before the date of the first hearing, whichever is sooner. If an inspection is performed, the report and/or the notice to correct violations issued by the inspectors/sanitarrians to the license holder or to the person in charge, requesting a signed acknowledgement of receipt of the report or notice, shall constitute service of the report and/or notice. Acknowledgement in writing by the Respondent or appearing at the hearing without objection to service is equivalent to service.

SUBCHAPTER 29. CRIMINAL HISTORY BACKGROUND CHECKS

**310:2-29-1. Purpose**

These rules implement the Long Term Care Security Act as established at Title 63 O.S. Section 1-1944 et seq., as amended, and eligibility appellate procedures for those Chapters under Title 310, which provide for denials of eligibility for a license, certification, or permit based on criminal history.

**310:2-29-5. Appeals**

(a) **Notice.** A determination by the Department that finds an applicant not eligible for a license, certification, permit or employment will result in a notice to the applicant to ~~include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment eligibility. The notice shall also include information regarding where to file and describe the appellate procedures~~ {63 O.S. § 1-1947(K)(2)} include the reasons why the applicant is not eligible for license, certification, permit or employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the eligibility. The notice shall also include information regarding where to file and describe the appellate procedures.

(b) **Days to initiate an appeal.**

(1) Pursuant to Title 63 O.S. 1-1947(T) ~~1~~ (1), any individual who has been disqualified from or denied employment by an employer pursuant to Title 63 O.S. Section 1-1947 may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification. An applicant under 63 O.S. 1-1947(T)(1) may receive an extension of the thirty (30) days allowed to appeal where good cause is shown.

(2) An individual who has been found not eligible for a license, certification, or permit based on their criminal history may file an appeal with the Department at any time following receipt of the notice of disqualification.

(c) **Types of appeals.** An applicant may appeal the determination by:

(1) Challenging the finding that the applicant is the true subject of the results from a name-based registry background check;

(2) Challenging the criminal history record as inaccurate; ~~or~~

(3) Requesting a waiver which gives the applicant the opportunity to demonstrate that the applicant should be allowed to work because he or she does not pose a risk to patients, facilities or their property; or

(4) Requesting a reconsideration of eligibility, which may be considered no sooner than twelve (12) months from the previous appeal of a determination of ineligibility.

(d) **Inaccuracy of criminal history record.** To demonstrate that the criminal history record is inaccurate, the applicant shall submit to the Department written documents, issued and certified by a governmental entity that demonstrate that the information contained in the criminal history report is inaccurate.

(e) **Criteria for consideration in a waiver review.** Pursuant to ~~Title 63 O.S. Section 1-1947(T)(2),~~ The Department shall consider the following criteria in considering whether the

applicant merits a waiver of the applicant's determination of ineligibility:

(1) The time elapsed since the disqualifying criminal conviction, whether the applicant has fulfilled the sentence requirements, and whether there are any subsequent arrests or convictions of any nature;

(2) Any extenuating circumstances such as the offender's age at the time of conviction, substance abuse history and treatment, or mental health issues and treatment;

(3) Rehabilitation as demonstrated by character references and recommendation letters from past employers, the applicant's record of employment history, education, and training subsequent to conviction; ~~and~~

(4) The relevancy of the particular disqualifying information with respect to the proposed employment of the individual to include the job type and duties, and the extent to which the applicant has unsupervised access to service recipients,; and

(5) For appeals under the authority of 63 O.S. 1-1947(T)(2), whether the crime was committed against a vulnerable child or adult, and whether the conviction was related to an employer subject to the requirements of the Long Term Care Security Act.

(f) **Where to file.** The applicant's appeal shall be submitted in writing to the Administrative Hearings Clerk for the Oklahoma State Department of Health, 1000 Northeast 10<sup>th</sup> Street, Oklahoma City, OK 73117, and shall address the criteria specified in (d) of this Section and how the applicant merits a waiver of the disqualification from employment.

(g) **Conduct of hearing.** The appeal shall be conducted as an individual proceeding pursuant to this Chapter and the Administrative Procedures Act.

### **SUBCHAPTER 37. INITIAL DETERMINATION ON CRIMINAL HISTORY AS A DISQUALIFICATION FOR LICENSE OR CERTIFICATION**

#### **310:2-37-1. Purpose**

These rules implement Section 4000.1 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

#### **310:2-37-2. Requesting a Determination**

The process for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from

obtaining an occupational license, permit or certification is defined in the Oklahoma Statutes at Title 59, Section 4000.1

**310:2-37-3. Fee**

The fee for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit or certification is forty-five dollars (\$45.00) for each initial determination.

**SUBCHAPTER 39. MILITARY RECIPROCITY LICENSURE**

**310:2-39-1. Purpose**

These rules implement Section 4100.8 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

**310:2-39-2. Requesting a temporary, reciprocal or comity license**

Active duty military personnel and their spouses seeking a temporary, reciprocal or comity license shall complete an application as established by the occupational program and shall provide satisfactory evidence of equivalent education, training and experience from another state program. The Department shall evaluate an applicant's education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state [59 O.S. 4100.8(B)].

**310:2-39-3. Fee**

Pursuant to Title 59 O.S. 4100.8(D), there will be no application fee for a temporary, reciprocal or comity license for active duty military personnel and the license or certification fee for the first period of issuance is waived.

**310:2-39-4. Appeals**

Pursuant to Title 59 O.S. 4100.8(C), any active duty military applicant, and their spouses, receiving a notice of denial of full licensure or certification shall have the right to obtain and submit the documentation required to complete full license or certificate requirements in this state or to appeal the denial determination pursuant to the Administrative Procedures Act [75 O.S. 250 et seq.] and OAC 310:2-21, relating to Department procedure governing individual proceedings.

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

SUBCHAPTER 37. INITIAL DETERMINATION ON CRIMINAL HISTORY AS A  
DISQUALIFICATION FOR LICENSE OR CERTIFICATION

310:2-37-1. Purpose

These rules implement Section 4000.1 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an initial determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license or certification. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

310:2-37-2. Requesting a Determination

The process for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit or certification is defined in the Oklahoma Statutes at Title 59, Section 4000.1

310:2-37-3. Fee

The fee for requesting a determination of whether an applicant's criminal history record would potentially disqualify him or her from obtaining an occupational license, permit or certification is Ninety-five Dollars (\$95.00) for each initial determination.

**59 O.S. Section 4000.1 - Definitions - Requests for Initial Determination - Procedure - Requirements - Response Requirements – Fees**

**Annotated**

1. "Substantially relate" means the nature of the criminal conduct for which the person was convicted has a direct bearing on the fitness or ability to perform one or more of the duties or responsibilities necessarily related to the occupation; and

2. "Pose a reasonable threat" means the nature of the criminal conduct for which the person was convicted involved an act or threat of harm against another and has a bearing on the fitness or ability to serve the public or work with others in the occupation.

B. A person with a criminal history record may request an initial determination of whether his or her criminal history record would potentially disqualify him or her from obtaining the desired license or certification in the occupation from a state licensing or certification authority:

1. at any time, including before obtaining any required education or training for such occupation.
2. The request shall be in writing and shall include:
  - a. either a copy of the person's criminal history record with explanation of each conviction mentioned in the criminal history record or
  - b. a statement describing each criminal conviction including the date of each conviction, the court of jurisdiction and the sentence imposed.
3. The person may include a statement with his or her request describing additional information for consideration by the licensing authority including, but not limited to:
  - a. information about his or her current circumstances,
  - b. the length of time since conviction and what has changed since the conviction,
  - c. evidence of rehabilitation, testimonials or personal reference statements and
  - d. his or her employment aspirations.

C. Each state entity charged with oversight of an occupational license or certification shall list with specificity any criminal offense that is a disqualifying offense for such occupation.

1. Any disqualifying offense shall substantially relate to the duties and responsibilities of the occupation and pose a reasonable threat to public safety as defined in subsection A of this section.
2. Disqualifying offenses shall be provided to applicants and others upon request.

D. Upon receipt of a written request for consideration of a criminal history record for an occupation as provided in subsection B of this section,

1. the licensing authority shall evaluate the request and make an initial determination based upon the information provided in such request whether the stated conviction is a disqualifying offense for the occupation.
2. A notice of initial determination shall be issued to the petitioner within sixty (60) days from the date such request was received by the licensing authority, except however, a licensing authority regulating fifty thousand or more members in its occupation shall be allowed ninety (90) days to make its initial determination and issue notice to the requestor.

E. The notice of initial determination shall be in writing and mailed to the requestor at the address provided in his or her request, and shall contain the following statements:

1. Whether the person appears eligible for licensure or certification in the occupation at the current time based upon the information submitted by the requestor;
2. Whether there is a disqualifying offense prohibiting the person's engagement in the occupation at any time and a statement identifying such offense in the criminal history record or information submitted for consideration;
3. Any actions the person may take to remedy what appears to be a temporary disqualification, if any;
4. The earliest date the person may submit another request for consideration, if any; and
5. A statement that the notice of initial determination is only an initial determination for eligibility for licensure or certification in the occupation based upon the information provided by the requestor.

F. A state entity charged with oversight of an occupational license or certification may promulgate forms for requests for initial determinations for the occupation as authorized in subsection B of this section. Each state licensing authority may charge a fee not to exceed Ninety-five Dollars (\$95.00) for each initial determination of eligibility it makes for the occupation based upon the information provided by the requestor.

***Historical Data***

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 2. PROCEDURES OF THE STATE DEPARTMENT OF HEALTH

SUBCHAPTER 39. MILITARY RECIPROCITY LICENSURE

310:2-39-1. Purpose

These rules implement Section 4100.8 of Title 59 (2019) of the Oklahoma Statutes relating to processes to request an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification. This process shall apply to all occupational licenses, permits or certifications issued by the Oklahoma State Department of Health.

310:2-39-2. Requesting a temporary, reciprocal or comity license

Active duty military personnel and their spouses seeking a temporary, reciprocal or comity license shall complete an application as established by the occupational program and shall provide satisfactory evidence of equivalent education, training and experience from another state program. The Department shall evaluate an applicant's education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state [59 O.S. 4100.8(B)].

310:2-39-3. Fee

Pursuant to Title 59 O.S. 4100.8(D), there will be no application fee for a temporary, reciprocal or comity license for active duty military personnel and the license or certification fee for the first period of issuance is waived.

310:2-39-4. Appeals

Pursuant to Title 59 O.S. 4100.8(C), any active duty military applicant, and their spouses, receiving a notice of denial of full licensure or certification shall have the right to obtain and submit the documentation required to complete full license or certificate requirements in this state or to appeal the denial determination pursuant to the Administrative Procedures Act [75 O.S. 250 et seq.] and OAC 310:2-21, relating to Department procedure governing individual proceedings.

## **Title 59. Professions and Occupations**

### **Chapter 58A - Post-Military Service Occupation, Education and Credentialing Act**

#### **Section 4100.8 - Licensed or Certified Professional Military Personnel or Spouse Request for Temporary, Reciprocal, or Comity License**

Cite as: 59 O.S. § 4100.8 (OSCN 2019)

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A. Every active duty military personnel and their spouse who is licensed or certified in any occupation or profession in another state, upon receiving notice or orders for military transfer or honorable discharge to this state, may in advance of actual transfer or discharge submit a completed application to the appropriate licensing or credentialing agency in this state to request an expedited temporary, reciprocal or comity license or certification for their currently held valid license or certification from another state or territory of the United States so such person may upon entering this state be authorized to continue their licensed or certified occupation or profession without delay.

B. Every administrative body, state agency director or official with authority over any occupational or professional license or certification, and each of the respective examining and licensing boards, agencies and commissions in this state, shall, upon receipt of an active duty military application submitted as authorized in subsection A of this section, and presentation of satisfactory evidence of equivalent education, training and experience on such valid license or certification from another state, accept the valid license or certification and apply all its education, training and experience in the manner most favorable toward satisfying the qualifications for issuance of the requested license or certification in this state, and shall issue the requested Oklahoma license or certification within thirty (30) days provided the license or certification from the other state is found to be in good standing and reasonably equivalent to the requirements of this state.

C. The temporary, reciprocal or comity license or certification issued pursuant to this section shall be valid for the same period as authorized for full license or certification in this state, unless the person is notified by the credentialing authority that there is cause for a denial of the application or that certain documentation required by this state is lacking or unavailable. In such case, a temporary credential shall be issued to allow the person time to obtain the necessary requirement while continuing to be employed in his or her occupation or profession in this state. Any active duty military applicant receiving a notice of denial of full licensure or certification shall have the right to appeal the denial determination as provided in the Administrative Procedures Act or to obtain and submit the documentation required to complete full license or certificate requirements in this state.

D. Each credentialing authority in this state shall waive the application fee for active duty military personnel and their spouse and shall further waived the license or certificate fees for the first period of issuance for such temporary, reciprocal or comity license or certificate.

E. Any active duty military personnel who pursuant to any federal or military law, rule or regulation is not required to be licensed or credentialed while employed and performing their occupation or profession only on the premises of an assigned military base shall not be required to be licensed or credentialed in this state pursuant to the same law, rule or regulation.

F. Each agency shall promulgate rules to implement the provisions of this section and establish application forms as required.

#### ***Historical Data***

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Laws 2019, SB 670, c. 257, § 2, eff. November 1, 2019.

# An Act

ENROLLED SENATE  
BILL NO. 142

By: Bice of the Senate

and

West (Tammy), Bush, Stark,  
Blancett, Munson, Grego,  
Dills, Provenzano,  
Luttrell, Hill, Goodwin and  
West (Josh) of the House

An Act relating to long-term care; defining terms; prohibiting prescribing and administration of certain drugs to long-term care facility residents except under certain conditions; requiring informed consent; setting forth provisions related to prescriptions and administration; setting forth certain patient protections; specifying applicability of act; providing for codification; and providing an effective date.

SUBJECT: Long-term care

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-881 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. As used in this section:

1. "Antipsychotic drug" means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric

disorders, including but not limited to schizophrenia and bipolar disorder;

2. "Long-term care facility" means:

- a. a nursing facility as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes,
- b. a continuum of care facility as defined under the Continuum of Care and Assisted Living Act, or
- c. the nursing care component of a life care community as defined by the Long-term Care Insurance Act;

3. "Resident" means a resident as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes;

4. "Representative of a resident" means a representative of a resident as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes; and

5. "Prescribing clinician" means:

- a. an allopathic or osteopathic physician licensed by and in good standing with the State Board of Medical Licensure and Supervision or the State Board of Osteopathic Examiners, as appropriate,
- b. a physician assistant licensed by and in good standing with the State Board of Medical Licensure and Supervision, or
- c. an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

B. Except in case of an emergency in which the resident poses harm to the resident or others, no long-term care facility resident shall be prescribed or administered an antipsychotic drug that was not already prescribed to the resident prior to admission to the facility unless each of the following conditions has been satisfied:

1. The resident has been examined by the prescribing clinician and diagnosed with a psychiatric condition and the prescribed drug

is approved by the United States Food and Drug Administration for that condition or prescribed in accordance with generally accepted clinical practices;

2. The prescribing clinician, or a previous prescribing clinician, has unsuccessfully attempted to accomplish the drug's intended effect using contemporary and generally accepted nonpharmacological care options, and has documented those attempts and their results in the resident's medical record or has deemed that those attempts would not be medically appropriate based upon a physical examination by the prescribing clinician and documented the rationale in the resident's medical record;

3. The facility has provided to the resident or representative of a resident a written explanation of applicable informed consent laws. The explanation shall be written in language that the resident or representative of a resident can be reasonably expected to understand;

4. The prescribing clinician has confirmed with the nursing facility verbally or otherwise that written, informed consent has been obtained from the resident or representative of the resident that meets the requirements of subsection C of this section; and

5. In the event a long-term care facility resident is prescribed an antipsychotic medication in the case of an emergency, the prescribing physician shall prescribe the minimum dosage and duration that is prudent for the resident's condition and shall examine the patient in person within thirty (30) days.

C. Except in the case of an emergency as provided for in subsection B of this section, the prescribing clinician shall confirm that written, voluntary informed consent to authorize the administration of an antipsychotic drug to a facility resident has been obtained from the resident or the representative of the resident prior to the initial administration of the antipsychotic drug. Voluntary informed consent shall, at minimum, consist of the following:

1. The prescribing clinician has confirmed that a signed, written affirmation has been obtained from the resident or the representative of the resident that the resident has been informed

of all pertinent information concerning the administration of an antipsychotic drug in language that the signer can reasonably be expected to understand. Pertinent information shall include, but not be limited to:

- a. the reason for the drug's prescription and the intended effect of the drug on the resident's condition,
- b. the nature of the drug and the procedure for its administration, including dosage, administration schedule, method of delivery and expected duration for the drug to be administered,
- c. risks, common side effects and potential severe adverse reactions associated with the administration of the drug,
- d. the right of the resident or representative of the resident to refuse the administration of the antipsychotic drug and the medical consequences of such refusal, and
- e. an explanation of pharmacological and nonpharmacological alternatives to the administration of antipsychotic drugs and the resident's right to choose such alternatives; and

2. Except in the case of an emergency as provided for in subsection B of this section, the prescribing clinician shall inform the resident or the representative of the resident of the existence of the long-term care facility's policies and procedures for compliance with informed consent requirements. The facility shall make these available to the resident or representative of the resident prior to administering any antipsychotic drug upon request.

D. 1. Antipsychotic drug prescriptions and administration shall be consistent with standards for dosage, duration and frequency of administration that are generally accepted for the resident's condition.

2. Throughout the duration of the administration of an antipsychotic drug and at generally accepted intervals approved for the resident's condition, the prescribing clinician or designee shall monitor the resident's condition and evaluate drug performance with respect to the condition for which the drug was prescribed. The prescribing clinician shall provide documentation of the status of the resident's condition to the resident or the representative of the resident upon request and without unreasonable delay.

3. Any change in dosage or duration of the administration of an antipsychotic drug shall be justified by the prescribing clinician with documentation on the resident's record of the clinical observations that warranted the change.

E. 1. No long-term care facility shall deny admission or continued residency to a person on the basis of the person's or his or her representative's refusal to the administration of antipsychotic drugs, unless the prescribing clinician or care facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents or visitors at risk.

2. Any care facility that alleges that the resident's refusal to consent to the administration of antipsychotic drugs will place the health and safety of the resident, the facility staff, other residents or visitors at risk shall document the alleged risk in detail and shall present this documentation to the resident or the representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman; and shall inform the resident or the representative of the resident of the resident's right to appeal to the State Department of Health. The documentation of the alleged risk shall include a description of all nonpharmacological or alternative care options attempted and why they were unsuccessful or why the prescribing clinician determined alternative treatments were not medically appropriate for the condition following a physical examination.

F. The provisions of this section shall not apply to a hospice patient as defined in Section 1-860.2 of Title 63 of the Oklahoma Statutes.

SECTION 2. This act shall become effective November 1, 2019.

Passed the Senate the 1st day of May, 2019.

\_\_\_\_\_  
Presiding Officer of the Senate

Passed the House of Representatives the 17th day of April, 2019.

\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

Approved by the Governor of the State of Oklahoma this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

\_\_\_\_\_  
Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this \_\_\_\_\_

day of \_\_\_\_\_, 20\_\_\_\_\_, at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

By: \_\_\_\_\_

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

**SUBCHAPTER 1. GENERAL PROVISIONS**

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

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

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

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

**"Antipsychotic drug"** means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric disorders, including but not limited to schizophrenia and bipolar disorder.

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

(A) are domiciled therein;

(B) are unrelated to the operator;

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

(D) may need intermittent or unscheduled nursing care;

(E) may need medication assistance; and

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

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

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

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

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

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

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

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

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

**"Long-term care facility"** means:

(A) a nursing facility as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes;

(B) a continuum of care facility as defined under the Continuum of Care and Assisted Living Act; or

(C) the nursing care component of a life care community as defined by the Long-term Care Insurance Act.

**"Misappropriation of resident's property"** means the taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal authority, or the taking of any action

contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of resident's property.

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

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

"Prescribing clinician" means:

(A) an allopathic or osteopathic physician licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners, as appropriate;

(B) a physician assistant licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision; or

(C) an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

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

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

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

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

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

## SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

### 310:663-19-2. Medication administration

(a) Each assisted living center shall adopt written procedures to ensure safe administration of medications.

- (1) Medications shall be administered only on a physician's order.
- (2) The person responsible for administering medications shall personally prepare the dose, observe the swallowing of oral medication, and record the medication. Medications shall be prepared within one hour prior to administration.
- (3) An accurate written record of medications administered shall be maintained. The medication record shall include:
  - (A) The identity and signature of the person administering the medication.
  - (B) The medication administered within one hour of the scheduled time.
  - (C) Medications administered as the resident's condition may require (p.r.n.) are recorded immediately, including the date, time, dose, medication, and administration method.
  - (D) Adverse reactions or results.
  - (E) Injection sites.
  - (F) An individual inventory record shall be maintained for each Schedule II medication prescribed for a resident.

(G) Medication error incident reports.

(4) A resident's adverse reactions shall be reported at once to the attending physician.

(b) An assisted living center may maintain nonprescription drugs for dispensing from a common or bulk supply if all of the following are accomplished.

(1) The assisted living center shall have and follow a written policy and procedure to assure safety in dispensing and documenting medications given to each resident.

(2) The assisted living center shall maintain records which document the name of the medication acquired, the acquisition date, the amount and the strength received for each medication maintained in bulk.

(3) Only a licensed nurse, physician, pharmacist, certified medication aide or medication aide technician may dispense for administration these medications and only upon a physician's written order for as needed or nonscheduled dosage regimens. The physician's written order shall be maintained in the resident's clinical record.

(4) Bulk medications shall be stored in the medication area and not in resident rooms.

(5) The assisted living center shall maintain records of all bulk medications that are dispensed on an individual signed medication administration record.

(6) The assisted living center shall maintain the original label on the container as it comes from the manufacturer or on the unit-of-use or blister package.

(7) The assisted living center shall establish in its policy and procedure the maximum size of packaging and shall ensure that each resident receives the correct dosage. The assisted living center shall not acquire nor maintain a liquid medication in a package size that exceeds 16 fluid ounces.

(8) An assisted living center shall have only oral analgesics, antacids, and laxatives for bulk dispensing. No other category of medication shall be maintained as bulk medication.

(c) Antipsychotic drug administration shall be consistent with 63 O.S. 1-881.

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

**SUBCHAPTER 1. GENERAL PROVISIONS**

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

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

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

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

"**Antipsychotic drug**" means a drug, sometimes called a major tranquilizer, used to treat symptoms of severe psychiatric disorders, including but not limited to schizophrenia and bipolar disorder.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) refuses to remedy the situation.

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

(A) Positioning and turning of residents; ;

(B) Self-help skill training; ;

(C) Assistance with prosthetic/assistive devices. ;

(D) Medication administration; ;

(E) Nutrition and hydration; ;

(F) Monitoring of resident vital signs; ;

- (G) Catheter and nasogastric care;
- (H) Behavior modification programs;
- (I) Administering a medically related care plan; and
- (J) Restorative services.

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

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

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

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

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

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

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

**"Local law enforcement"** means:

- (A) The municipal police department, if the facility is within the jurisdiction of any municipality of this state, or
- (B) The county sheriff, if the facility is outside the jurisdiction of any municipality within this state.

**"Long-term care facility" means:**

- (A) a nursing facility as defined in 63 O.S. 1-1902;
- (B) a continuum of care facility as defined under the Continuum of Care and Assisted Living Act;
- or
- (C) the nursing care component of a life care community as defined by the Long-term Care Insurance Act.

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

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

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

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

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

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

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

**"Prescribing clinician" means:**

(A) an allopathic or osteopathic physician licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision or the Oklahoma State Board of Osteopathic Examiners, as appropriate;

(B) a physician assistant licensed by and in good standing with the Oklahoma State Board of Medical Licensure and Supervision; or

(C) an Advanced Practice Registered Nurse licensed by and in good standing with the Oklahoma Board of Nursing.

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

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

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

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

**"Representative of a resident"** means a representative of a resident as defined by 63 O.S. § 1-1902 of the Oklahoma Statutes.

**"Resident"** means a resident as defined by 63 O. S. § 1-1902 of the Oklahoma Statutes.

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

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

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

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

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

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

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

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

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

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

"Willful violation" means:

- (A) a pattern of violation of the ~~direct care~~ staffing requirement;
- (B) a violation of the ~~direct care~~ staffing requirement in which the facility knew or should have known staffing would be insufficient to meet the requirement yet took no action to avert the violation; or
- (C) the reporting of materially inaccurate or misleading information of ~~direct care~~ staffing to the Health Care Authority.

## SUBCHAPTER 7. ADMINISTRATION

### 310:675-7-4.1 Resident admission and continued residency based on administration of antipsychotic drugs

(a) Reasons for denial of admission or continued residency. No long-term care facility shall deny admission or continued residency to a person on the basis of the person's or his or her representative's refusal to the administration of antipsychotic drugs, unless:

(1) The prescribing clinician or care facility can demonstrate that the resident's refusal would place the health and safety of the resident, the facility staff, other residents or visitors at risk.

(2) The alleged risk shall be documented in detail and presented to the resident or the representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman; and shall inform the resident or the representative of the resident of the resident's right to appeal.

(b) Procedures. Procedures for resident appeal are as follows:

(1) Written documentation of the alleged risk associated with the administration of antipsychotic drugs shall be provided to the resident or representative of the resident, to the State Department of Health and to the Long-Term Care Ombudsman; and shall inform the resident or the representative of the resident of the resident's right to appeal the denial of admission or denial of continued residency to the State Department of Health. The documentation of the alleged risk shall include:

- (A) A description of all nonpharmacological or alternative care options attempted; and
- (B) Why all nonpharmacological or alternative care options attempted were unsuccessful; and
- (C) Why the prescribing clinician determined alternative treatments were not medically appropriate for the condition following a physical examination.

(2) Procedures for antipsychotic drug refusal and the facility's notice of admission denial or continued residency are as follows:

(A) If a resident or a resident's representative is aggrieved by the facility's decision to deny admission or continued residency regarding the refusal of antipsychotic drugs at 63 O.S. 1-881(E)(2) the resident or resident's representative may file within ten (10) days of notice a written request for a hearing with the Department by sending a letter to the Hearing Clerk, Oklahoma State Department of Health, 1000 NE Tenth Street, Oklahoma City, OK 73117.

(B) The written notice shall include:

- (i) A full explanation of the reason for the denial of admission of residency or denial of continued residency;
- (ii) The date of the notice; and
- (iii) The date notice was given to the resident and the resident's representative.

(3) Failure of the facility to give the notice as substantially specified shall result in an order without hearing from the Department denying the right of the facility to discharge or deny admission to the resident.

(4) If a written request for a hearing is properly filed by an eligible aggrieved party, the Department shall convene a hearing within ten working days of receipt of the request. The request may be in the form of a letter or a formal request for hearing from the resident or resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request

shall state the objection to the notice of denial of admission of residency or denial of continued residency and attach a copy of the notice from the facility.

(5) During the pendency of the hearing, the facility shall not discharge or deny admission or readmission for the resident unless the discharge or admission denial was required by the Department or is an emergency situation. If the resident relocates from the facility but wants to be admitted or readmitted, the Department may proceed with the hearing and the facility shall be required to admit or readmit the resident to the first available bed in a semi-private room if the discharge is found not to meet the requirements of the Nursing Home Care Act and OAC 310:675.

(6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the facility, may be represented by counsel or may represent themselves.

(7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the facility or at another place. Providing the hearing room in such a case shall be the responsibility of the parties. The Department shall maintain a record on the case as it does for any other individual proceeding.

(8) The hearing shall be conducted in accordance with the Department's procedures, Chapter 2 of this Title. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the transfer or discharge was according to law. If a facility receives federal funds for services, it shall also comply with the certification standards. The more restrictive rule toward the facility shall be applied.

(9) If the Administrative Law Judge finds the notice of continued residency or denied admission was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(10) If the notice of continued residency or denied admission is according to law, the order shall give the facility the right to discharge or deny admission to the resident.

(11) The scope of the hearing may include:

(A) Inadequate notice;

(B) Continued residency or admission denial based on reason not stated in the law;

(C) Sufficiency of the evidence to support the continued residency or admission denial; or

(D) The finding of emergency.

(12) The Administrative Law Judge shall render a written decision within ten working days of the close of the record.

(13) If the Administrative Law Judge sustains the facility, the facility may proceed with the discharge. If the Administrative Law Judge finds in favor of the resident, the facility shall withdraw its notice of intent to transfer, discharge or deny admission of the resident. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed under the Administrative Procedures Act.

### **310:675-7-17.1 Infection Control**

(a) The facility shall have an infection control policy and procedures to provide a safe environment. The policy shall address the prevention and transmission of disease and infection. The facility, and its personnel, shall practice the universal precautions identified by the Centers for Disease Control. All personnel shall demonstrate their knowledge of universal precautions through performance of duties.

(b) The facility shall maintain a sanitary environment and prevent the development and transmission of infection in the following areas.

- (1) Food handling practices;
- (2) Laundry practices including linen handling.
- (3) Disposal of environmental and resident wastes.
- (4) Pest control measures.
- (5) Traffic control for high-risk areas.
- (6) Visiting rules for high-risk residents.
- (7) Sources of air-borne infections.

- (8) Health status of all employees and residents.
- (9) Isolation area for residents with communicable diseases.
- (c) Infection control policies to prevent the transmission of infection shall include the following:
  - (1) Excluding Personnel and visitors with communicable infections.
  - (2) Limiting traffic in dietary and medication rooms.
  - (3) Using aseptic and isolation techniques including hand washing techniques.
  - (4) Bagging each resident's trash and refuse.
  - (5) Issuing daily damp wipe cloths, treated dust cloths and clean wet mops, as needed.
  - (6) Laundering the used wet mops and cleaning cloths every day.
  - (7) Cleaning the equipment for resident use daily, and the proper disposal of infected materials.
  - (8) Providing properly identifiable plastic bags for the proper disposal of infected
  - (9) **Tuberculosis risk assessment.** An annual facility tuberculosis risk assessment is to be performed by a licensed nurse or physician using a Department approved risk assessment tool.
- (d) When scheduled to be cleaned, the toilet areas, utility rooms, and work closets, shall be cleaned with a disinfectant solution and fresh air shall be introduced to deodorize.
- (e) ~~Tuberculin Test for tuberculosis and tuberculin skin test for residents.~~ Within thirty (30) days from admission, all residents admitted to the facility after the adoption of this rule shall receive a ~~two-step tuberculin skin test in conformance with the "guidelines for preventing the transmission of Mycobacterium tuberculosis in Health Care Settings," Centers for Disease Control and Prevention Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in health care settings, 2005. MMWR 2005; 54 (No. RR 17).~~ test for tuberculosis. All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.
  - (1) ~~Tuberculin skin tests~~ Tests for tuberculosis shall be administered by a licensed nurse or physician.
  - (2) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.
  - (3) Residents claiming a prior positive tuberculin skin test shall have documentation in their medical record, obtained from a licensed health care professional, of their test results and interpretation; otherwise, a two-step tuberculin skin test shall be done.

### 310:675-7-18.1. Personnel records

Each facility shall maintain a personnel record for each current employee containing:

- (1) **Application for employment.** An application for employment which contains employee's full name, social security number, professional license or registration number, if any, employment classification, and information about past employment, including: place of employment, position held, length of employment, and reason for leaving.
- (2) **Employee time records.** Copies of current employee time records, signed by the employee, shall be maintained by the facility for at least thirty-six (36) months.
- (3) **Training, arrest check, and certification.** Documentation of orientation and training (may be kept in separate file), continuing education, a copy of the criminal arrest check, and appropriate certification and licensure.
- (4) **Health examination on hire.** Record of health examination conducted within thirty days of employment which shall include, but not be limited to, a complete medical history, physical examination by body system and, a ~~two-step tuberculin skin test in conformance with the "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings," Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings, 2005. MMWR 2005; 54(No. RR 17)~~ test for tuberculosis. All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis

Controllars Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.

- (A) ~~Tuberculin skin tests~~ Tests for tuberculosis shall be administered by a licensed nurse or physician.
- (B) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.
- (C) Employees claiming a prior positive tuberculin skin test shall have documentation in their file, obtained from a licensed health care professional, of their test results and interpretation, otherwise, a two-step tuberculin skin test shall be done.
- (5) Tests for tuberculosis. Results of subsequent ~~tuberculin tests~~ for tuberculosis performed based on facility TB risk classification established in OAC 310:675-7-17(c)(9) (relating to annual facility tuberculosis risk assessment) or results of a physician's examination for signs and symptoms of tuberculosis for those employees who react significantly to a tuberculin skin test. ~~All tests and examinations shall be in conformance with the "Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in Health Care Settings;" Centers for Disease Control and Prevention Guidelines for Preventing the Transmission of Mycobacterium tuberculosis in health care settings, 2005. MMWR 2005; 54 (No. RR-17). All tests and examinations shall be in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllars Association and CDC, 2019" guidelines for preventing the transmissions of mycobacterium tuberculosis in healthcare settings as published by the Centers for Disease Control and Prevention.~~

## SUBCHAPTER 9. RESIDENT CARE SERVICES

### 310:675-9-6.1. Restraints

- (a) The resident has the right to be free from any physical or chemical restraints imposed for discipline or convenience. Restraints may be used in emergency situations, or for the purpose of treating a resident's medical condition. All physical restraints shall allow for quick release. Locked restraints shall not be used.
- (b) In an emergency situation, physical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When restraints are used in an emergency, the facility shall comply with the following process:
- (1) A licensed nurse may use physical restraints, without a physician's order, if necessary to prevent injury to the resident, or to other residents, when alternative measures are not effective. The licensed nurse shall document in the clinical record the application of the physical restraint and the alternative measures that were not effective. A licensed nurse shall contact the physician for physical restraint orders within six hours after application.
  - (2) The facility staff shall continually monitor the resident during the restraint period. An interdisciplinary team shall evaluate alternative placement if the resident requires physical restraints for longer than forty-eight consecutive hours.
  - (3) Circumstances requiring the physical restraints shall be re-evaluated every thirty minutes and documented in the clinical record.
  - (4) A resident who is physically restrained shall have the restraints released for at least ten minutes every two hours. Such residents shall also be repositioned, exercised and toileted as needed.
- (c) In an emergency situation, chemical restraints may be used only to ensure the physical safety of the resident, staff, or other residents. When chemical restraints are used, the facility shall comply with the following process:
- (1) The written order for the use of a chemical restraint shall be signed by a physician who specifies the duration and circumstances under which the chemical restraint is to be used.

- (2) The physician's orders may be oral when an emergency necessitates parenteral administration of the chemical restraint but is valid only until a written order can be obtained within forty-eight hours.
  - (3) An emergency order for chemical restraints shall not be in effect for more than twelve hours and may be administered only if the resident is continually monitored for the first thirty minutes after administration and every fifteen minutes until such time as the resident appears stable to ensure that any adverse side effects are noticed and appropriate action taken as soon as possible. The clinical record shall accurately reflect monitoring.
  - (4) A licensed nurse shall document in the resident's clinical record any alternative measures that were not effective and precipitated the use of the chemical restraint.
  - (5) An interdisciplinary evaluation shall be made to consider alternative placement if the resident requires chemical restraints for longer than twelve continuous hours.
- (d) When restraints are required for the resident's medical symptoms, the nursing staff shall ensure that physical and chemical restraints are administered only in accordance with the resident's care plan and under the following circumstances.
- (1) When restraints are used to prevent falling, or for the purpose of positioning the resident, the resident and resident's representative shall be informed of the risk and benefits, and written consent shall be obtained.
  - (2) Restraints may be applied only on a physician's written order and shall identify the type and reason for the restraint. The physician shall also specify the period of time, and the circumstances under which the restraint may be applied.
  - (3) Alternative measures to the use of restraints shall be evaluated prior to their use. Circumstances requiring the restraints, and alternative measures, shall be re-evaluated and documented in the clinical record every thirty days.
  - (4) A restrained resident shall have the restraints released every two hours for at least ten minutes; and the resident shall be repositioned, exercised, or provided range of motion and toileted as necessary.
- (e) Antipsychotic drug administration shall be consistent with 63 O.S. 1-881.

### SUBCHAPTER 13. STAFF REQUIREMENTS

#### **310:675-13-14. Flexible Twenty-four-hour-based staff-scheduling and eligibility requirements.**

- (a) **Implementing flexible twenty-four-hour-based staff scheduling.** Each facility seeking to implement the flexible staff scheduling provisions of 63:1-1925.2(B)(5) shall request in writing a determination from the Department that the facility is in compliance with the staffing requirements of 63:1-1925.2(B)(3). On or after January 1, 2020, a facility may implement twenty-four-hour-based staff scheduling; provided:
- (1) such facility shall continue to maintain a direct-care service rate of at least two and nine tenths (2.9) hours of direct-care service per resident per day, the same to be calculated based on average direct care staff maintained over a twenty-four-hour period, and
  - (2) at no time shall direct-care staffing ratios in a facility with twenty-four-hour-based staff-scheduling privileges fall below one direct-care staff to every fifteen residents or major fraction thereof, and
  - (3) at least two direct-care staff shall be on duty and awake at all times.
- (b) **Requirements for eligibility.** ~~Determination of flexible staff scheduling privileges shall be based on compliance with the requirements at 63:1-1925.2(B)(6) and review of the staffing hours reported to the Oklahoma Health Care Authority. Reports shall be submitted to the Oklahoma Health Care Authority either through electronic mail or three and one-quarter inch diskette in an electronic format approved by that agency. The reviewed hours shall be for the previous three (3) calendar months from the date the request for determination is received.~~

**Loss of twenty-four-hour-based staffing privileges.** On and after January 1, 2004, the State Department of Health shall require a facility to maintain the shift based staff-to-resident ratios provided in 63 O.S. 1-1925.2(B) if the facility has been determined by the Department to be deficient with regard to:

- (1) Twenty-four-hour-based schedule in 63 O.S. 1-1925.2(B)(5) (a) – (c).
  - (A) Shall maintain a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident per day rate of not less than two and ninety one-hundredths (2.90) hours per day;
  - (B) at no time shall direct-care staffing ratios fall below one direct-care staff to every fifteen residents or major fraction thereof; and
  - (C) at least two direct-care staff shall be on duty and awake at all times.
- (2) Fraudulent reporting of staffing on the Quality of Care Report, or
- (3) A complaint or survey investigation that has determined substandard quality of care as a result of insufficient staffing. For intermediate care facilities for individuals with intellectual disabilities, loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing.

(c) ~~**Determination of compliance.** A determination of compliance with the requirements at 63:1-1925.2(B)(6)(a)(2) (4) will be based on staffing reports and surveys for the three (3) months preceding the date the request for determination is received by the Department. For intermediate care facilities for the mentally retarded loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing.~~

**Eligibility requirements for twenty-four-hour-based staffing following deficient practice.**

- (1) The Department shall require a facility to achieve and maintain the shift-based, staff-to-resident ratios found at in 63 O.S. 1-1925.2(B)(3), for a minimum of three (3) calendar months before being considered eligible to implement twenty-four-hour-based staff scheduling.
- (2) Determination by the Department that the facility has achieved and maintained for at least three
- (3) months the shift-based, staff-to-resident ratios, and has corrected any deficiency described in OAC 310:675-13-14 (c), the Department shall notify the facility of its eligibility to implement flexible twenty-four-hour-based staff-scheduling privileges.

(d) ~~**Failure to meet the direct care service rate.** Facilities that have been granted flexible staff-scheduling privileges and receive a determination they have not met the direct care service rate shall lose their flexible staff-scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c). *Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance.* [63:1-1925.2(E)].~~

**Right to Appeal.** Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance. [63:1-1925.2(E)].

(e) ~~**Loss of eligibility based on surveys or fraud.** Facilities seeking to re-establish flexible staff-scheduling privileges after a loss of eligibility under 63:1-1925.2(B)(7) shall be subject to the requirements at OAC 310:675-13-14(a), (b) and (c). For intermediate care facilities for the mentally retarded loss of eligibility shall include findings of non-compliance with the Condition of Participation at 42 CFR 483.430, Facility Staffing.~~

**Quality of Care Report Requirement.** Staffing hours reported to the Oklahoma Health Care Authority shall be submitted electronically through OHCA's Quality of Care (QOC) portal.

(f) ~~**Minimum staff in flexible staffing.** A facility failing to meet the flexible staff-scheduling requirement at 63:1-1925.2(B)(5)(b) shall be ineligible for flexible staff-scheduling privileges until the facility re-establishes their eligibility under the requirements at 63:1-1925.2(B)(6)(b) and (c).~~

**Monitoring and evaluating twenty-four-hour-based staffing facilities.** The department will monitor staffing reports of twenty-four-hour-based staffing facilities that fail to meet the requirements at 63 O.S. 1-1925.2(B)(5)(a) – (c).

(g) **Notification requirements.** The Department shall notify the facility and Oklahoma Health Care Authority on all decisions of eligibility.

(h) **Re-establishing eligibility.** A facility seeking to re-establish eligibility shall submit a written request to the Department. A request to re-establish eligibility is subject to the requirements at OAC ~~310:675-13-14(b)~~.

(i) **Shift-based ratios for noncompliant facilities.** This paragraph implements 63:1-1925.2(F)(4).

(1) When the provisions of 63:1-1925.2(F)(1) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

- (A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,
- (B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every seven residents, and
- (C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every thirteen residents.

(2) When the provisions of 63:1-1925.2(F)(2) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

- (A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every five residents,
- (B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and
- (C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

(3) When the provisions of 63:1-1925.2(F)(3) are in effect, pursuant to 63:1-1925.2(B)(7), the following minimum direct-care-staff-to-resident ratios for non-compliant facilities shall apply in addition to other state and federal requirements related to the staffing of nursing facilities:

- (A) From 7:00 a.m. to 3:00 p.m., one direct-care staff to every four residents,
- (B) From 3:00 p.m. to 11:00 p.m., one direct-care staff to every six residents, and
- (C) From 11:00 p.m. to 7:00 a.m., one direct-care staff to every eleven residents.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 605. ADULT DAY CARE**

**310:675-7-18.1. Personnel records**

Each facility shall maintain a personnel record for each current employee containing:

- (1) Application for employment. An application for employment which contains employee's full name, social security number, professional license or registration number, if any, employment classification, and information about past employment, including: place of employment, position held, length of employment, and reason for leaving.
- (2) **Employee time records.** Copies of current employee time records, signed by the employee, shall be maintained by the facility for at least thirty-six (36) months.
- (3) **Training, arrest check, and certification.** Documentation of orientation and training (may be kept in separate file), continuing education, a copy of the criminal arrest check, and appropriate certification and licensure.
- (4) **Health examination on hire.** Record of health examination conducted within thirty days of employment which shall include, but not be limited to, a complete medical history, physical examination by body system and, a ~~two-step tuberculin skin~~ tuberculosis test in conformance with the "Tuberculosis Screening, Testing, and Treatment of U.S. Health Care Personnel: Recommendations from the National Tuberculosis Controllers Association and CDC", 2019 ("2019 Guidelines"). ~~Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings;~~ "Centers for Disease Control and Prevention. Guidelines for Preventing the Transmission of *Mycobacterium tuberculosis* in Health-Care Settings, 2005. MMWR 2005; 54(No. RR-17)."
  - (A) Tests for tuberculosis shall be administered by a licensed nurse or physician.
  - (B) Where a skin test is contra-indicated, a chest radiograph, interpreted by a medical consultant in collaboration with the city, county or state health department, is acceptable.
  - (C) Employees claiming a prior positive tuberculin skin test shall have documentation in their file, obtained from a licensed health care professional, of their test results and interpretation, otherwise, a two-step tuberculin skin test shall be done.
- (5) Tests for tuberculosis. Results of subsequent ~~tuberculin~~ tuberculosis skin test performed based on facility TB risk classification established in OAC 310:675-7-17(c)(9) (relating to annual facility tuberculosis risk assessment) or results of a physician's examination for signs and symptoms of tuberculosis for those employees who react significantly to a tuberculin skin test. All tests and examinations shall be in conformance with the most current guidelines for preventing the transmission of *mycobacterium tuberculosis* in healthcare settings as published by the Centers for Disease Control and Prevention.

**310:605-11-1. Staffing requirements**

Each adult day care center shall have a staff adequate in number, and appropriately qualified and trained to provide the essential services of the center.

- (1) Each adult day care center shall have the following positions:
  - (A) A director who shall have the authority and responsibility for managing and implementing the day care program.
  - (B) An activity director.
  - (C) A social services coordinator or case manager.
  - (D) A dietary supervisor. Centers that are a part of larger organization which provides food service to the center, or centers that contract with an outside service for food service may employ a part time dietary supervisor.
- (2) Each center shall employ additional staff, such as nurses, therapists, consultants, drivers, etc., as needed.
- (3) Staff who serve in more than one staff position shall meet the minimum qualifications for each position served.

- (4) Centers that administer medication shall have a registered nurse (R.N.), licensed practical nurse (L.P.N.), certified medication aide (CMA), or a medication administration technician (MAT) who has successfully completed a course of training in administration of medications approved by the Department. Monthly consultation by an R.N. or L.P.N. shall be required for centers where medications are administered by a certified medication aide (CMA), or a medication administration technician.
- (5) Staff who have direct contact with participants shall be free of communicable disease.
- (6) Each center shall be in compliance with the criminal arrest check, training, examination, application, registration and certification requirements in 63 O.S. Section 1-1950.1, 1-1950.3, 1-1950.4, and 1-1951.
- (7) Each paid day care center staff person (professional or non-professional) shall arrange for an employment examination within 72 hours of employment which shall include but not be limited to a test for tuberculosis. All tests and examinations shall be in conformance with the 2019 Guidelines for preventing the transmission of *mycobacterium tuberculosis* in healthcare settings as published by the Centers for Disease Control and Prevention.

## Long Term Care Update January 8, 2020

<b>Assisted Living Centers</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	160	167	175	183	183	184
Inspections:	494	537	529	457	460	357
ReLicensure	142	147	165	169	178	181
Initial	15	13	24	13	11	5
Complaints	165	136	145	111	147	89
Revisits	172	241	195	164	124	82
<b>Residential Care Homes</b>						
	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	75	68	55	51	47	44
Inspections:	311	270	173	179	126	105
ReLicensure	71	83	58	83	44	43
Initial	4	8	4	1	1	3
Complaints	42	33	32	22	21	28
Revisits	194	146	79	73	60	31
<b>Adult Day Care Centers</b>						
	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	38	41	38	41	41	42
Inspections:	52	70	71	76	59	59
ReLicensure	36	34	38	38	34	37
Initial	2	4	2	7	6	5
Complaints	3	3	3	0	2	4
Revisits	11	29	28	31	17	13

<b>Nursing Homes (Medicare/Medicaid)</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	313	309	310	305	306	303
Inspections:	2,812	2,573	2,551	2,189	2,279	2,217
ReCertifications (Health)	296	288	298	263	272	268
Initial (Health)	8	2	6	5	6	2
Complaints (Health)	1,215	1,061	1,074	862	955	961
Revisits (Health)	675	654	594	521	487	445
ReCertifications (Life Safety Code)	297	290	294	265	272	268
Initial (Life Safety Code)	8	2	6	5	6	2
Revisits (Life Safety Code)	313	276	279	268	281	271
<b>Nursing Homes (Private Pay)</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	2	2	1	2	2	1
Inspections:	1	1	2	5	3	1
ReLicensure	1	1	0	1	1	1
Initial	0	0	0	0	0	0
Complaints	0	0	1	2	1	0
Revisits	0	0	1	2	1	0
<b>Nursing Homes (Combined)</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of licensed beds	30,553	30,175	28,838	28,510	28,794	28,675
Number of residents	19,006	18,987	18,880	18,467	18,135	18,059
Occupancy Rate	62.2%	62.9%	65.5%	64.8%	63.0%	63.0%
<b>Veterans Centers</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	7	7	7	7	7	4
Inspections:	28	60	37	41	22	19
ReLicensure	7	6	5	6	5	4
Initial	0	0	0	0	1	0
Complaints	13	27	21	23	12	8
Revisits	8	27	11	12	4	7
<b>Intermediate Care Facilities for IID</b>	<b>SFY14</b>	<b>SFY15</b>	<b>SFY16</b>	<b>SFY17</b>	<b>SFY18</b>	<b>SFY19</b>
Number of facilities	88	88	86	87	89	91
Inspections:	359	388	413	390	350	382
ReCertifications (Health)	85	99	94	92	88	92
Initial (Health)	1	1	0	2	2	2
Complaints (Health)	45	26	40	26	29	35
Revisits (Health)	108	116	130	125	97	111
ReCertifications (Life Safety Code)	86	97	95	92	88	90
Initial (Life Safety Code)	1	1	0	2	2	2
Revisits (Life Safety Code)	33	48	54	51	44	50