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# The Oklahoma Register

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Oklahoma  
Secretary of State  
Office of Administrative Rules



**Mary Fallin, Governor**  
**Dave Lopez,**  
**Secretary of State**  
**Peggy Coe, Editor-in-Chief**

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one-half hour after sunrise. Any vehicle utilizing light bars shall turn them off upon the approach of another vehicle.

**300:35-23-6. Roll bar, helmet, and seat belt requirements**

Dune buggies and 4x4 vehicles must have a ~~roll bar~~ROPS sufficient to support the weight of the vehicle and must have a seat belt for each passenger. Helmets shall be required for the driver and passenger of motorcycles, ATVs or bikes.

[OAR Docket #17-638; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 15. CLINICAL TRIALS ON THE  
USE OF CANNABIDIOL**

[OAR Docket #17-652]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Purpose and Definitions
- 310:15-1-2. Definitions [AMENDED]
- Subchapter 3. Physician Application and Reporting
- 310:15-3-1. Physician application [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104, and Title 63 O.S. §§ 2-801 through 2-805

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

September 8, 2016

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October 1, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These rules implement the agency's requirements from House Bill Number 2835, from the 2nd Session of the 55th Oklahoma Legislature (2016), codified at 63 O.S. §§ 2-801 through 2-805. The regulations remove the age limitation for clinical trials on the use of cannabidiol as required by the House Bill.

**CONTACT PERSON:**

Donald D. Maisch, 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: DonM@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 1. PURPOSE AND DEFINITIONS**

**310:15-1-2. Definitions**

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

"**Clinical Trial**" means a trial at an academic medical center of the use of cannabidiol at an academic medical center on patients ~~eighteen (18) years of age or younger~~ pursuant to the requirements of Katie and Cayman's Law, codified at 63 O.S. §§ 2-801 through 2-805.

"**O.S.**" means Oklahoma Statute.

"**Severe forms of epilepsy**" means refractory epilepsy that is not adequately treated by traditional medical therapies, including Lennox-Gastaut Syndrome and Dravet Syndrome, also known as Severe Myoclonic Epilepsy of Infancy.

**SUBCHAPTER 3. PHYSICIAN APPLICATION AND REPORTING**

**310:15-3-1. Physician application**

Any physician, who has been designated a principal investigator of a clinical trial concerning *Lennox-Gastaut Syndrome*, also known as *Severe Myoclonic Epilepsy of Infancy*; any other severe form of epilepsy not adequately treated by traditional medical therapies (63 O.S. § 2-101 (23)), or any other form of refractory epilepsy that is not adequately treated by traditional medical therapies, spasticity due to multiple sclerosis or due to paraplegia; intractable nausea and vomiting; or appetite stimulation with chronic wasting diseases (63 O.S. § 2-801 (5)) on individuals ~~eighteen (18) years of age or younger~~, and who requests approval from the Commissioner of Health, or designee shall:

- (1) Submit an application on a form provided by the Commissioner of Health, which shall include the name, address and other contact information for the principal investigator;
- (2) Submit a statement from either the Oklahoma State Board of Medical Licensure or the Oklahoma State Board of Osteopathic Examiners that the physician is licensed and in good standing with said licensure board;
- (3) Submit a copy of the documents from the United States Food and Drug Administration naming the physician as the principal investigator;
- (4) Submit a copy of the license obtained by the United States Drug Enforcement Administration;
- (5) Submit and maintain a current Oklahoma State Bureau of Narcotics and Dangerous Drugs Control registration;
- (6) Demonstrate registration with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
- (7) Submit the names, addresses and other contact information of any subinvestigators who will be assisting the principal investigator and include with the submission:
  - (A) A copy of the license obtained by the United States Drug Enforcement Administration; and

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- (B) Information demonstrating registration of the subinvestigator with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control;
- (8) Submit the following information concerning the clinical trial to be performed:
- (A) Name, address and contact information of the academic medical center where the clinical trial will occur;
  - (B) Statement from Institutional Review Board (IRB) of the academic medical center where the clinical trial will occur, concurring with the requirements for said clinical trial;
  - (C) Statement from the United States Food and Drug Administration allowing cannabidiol to be used as an investigation new drug on qualified patients with severe forms of epilepsy;
  - (D) Name, address and other contact information of the source of the cannabidiol to be used for the study. The submission of the information of the source of the cannabidiol shall include:
    - (i) Information that the cannabidiol was manufactured at a facility in the United States or in a foreign country that was approved by the United States Food and Drug Administration; and
    - (ii) Information that the cannabidiol has been tested on animals to:
      - (I) demonstrate preliminary effectiveness; and
      - (II) ensure the cannabidiol is safe to administer to humans;
  - (E) Submit a statement that the clinical trial will be performed at the highest standards of clinical research; and
  - (F) Submit a statement that the clinical trial will conclude no later than December 31, 2017;
- (9) Submit a statement that the principal investigator and all subinvestigators shall adhere to the rules and regulations established by the relevant Institutional Review Board for the clinical trial; and
- (10) Submit an attestation by the principal investigator as to the accuracy and completeness of the information provided in the application.

[OAR Docket #17-652; filed 7-13-17]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 233. BODY PIERCING AND TATTOOING

[OAR Docket #17-651]

**RULEMAKING ACTION:**  
PERMANENT final adoption

**RULES:**  
Subchapter 9. License Requirements  
310:233-9-2. Artist license [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and Title 21 O.S. Section 842.3

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

September 22, 2016

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**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These amendments are enacted pursuant to authority found in Title 21 of the Oklahoma statutes, section 842.3, which authorize the State Board of Health to promulgate rules regulating tattooing and the requirements for license. They modify the proof of training and experience required before an applicant is approved to take the license examination as a tattoo artist. They delete the requirement for proof of two years' license from another state, and substitute a requirement for documentation of two years' experience from another state. A licensure candidate will be allowed to submit proof of completion of training that is substantially equivalent to the requirements for apprentice programs in Oklahoma. The changes give candidates credit for experience or training in a state that does not license artists and clarify the process for approving an applicant to take the license examination and issue the permanent artist license.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-5243, e-mail [lynnette@health.ok.gov](mailto:lynnette@health.ok.gov).

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

### SUBCHAPTER 9. LICENSE REQUIREMENTS

**310:233-9-2. Artist license**

- (a) The artist must be a minimum of eighteen (18) years of age to be eligible for a license.
- (b) No person shall practice body piercing or tattooing procedures without first obtaining an artist license from the Department.
- (c) The artist license shall be valid from the date of issuance and shall automatically expire one (1) year from the date of issuance unless revoked or suspended by the Department. The artist shall have a current bloodborne pathogen certificate, CPR certificate and current first aid certification for license or renewal of license.
- (d) The application for an artist license shall include:

- (1) Name;
  - (2) Date of birth;
  - (3) Sex;
  - (4) Residence address;
  - (5) Mailing address;
  - (6) Telephone number;
  - (7) Place(s) and licensed license number of employment as an artist;
  - (8) Proof of training and experience which shall include one of the following:
    - (A) ~~Two (2) years license from another state~~ Documentation of two (2) years' experience acquired in another state in compliance with applicable requirements of that state. Documentation may include copies of licenses, statements from the state's regulatory authority, statements from the facility operator where the applicant worked, membership in an entity for which practice as an artist is a requisite, or government forms such as tax returns filed by the artist showing employment as an artist; or
    - (B) ~~Proof~~ Documentation of a completed approved completion of an Oklahoma apprentice program; that has been accepted by the Department complies with 310:233-9-5, 310:233-9-6 and 310:233-9-7, or documentation from another state showing completion of training that is substantially equivalent to an Oklahoma apprentice program and sponsorship per 310:233-9-5, 310:233-9-6 and 310:233-9-7;
  - (9) Current bloodborne pathogen certification recognized from a nationally accredited program compliant with 310:233-9-2(m); and
  - (10) Current first aid certification compliant with 310:233-9-2(n); and
  - (11) Current CPR certification compliant with 310:233-9-2(o).
- (e) Each artist license shall be conditioned upon continued compliance with the provisions of this section as well as all applicable provisions of OAC 310:233.
- (f) Each artist license shall be posted in a prominent and conspicuous area where it may be readily observed by clients.
- (g) License fees shall be as follows:
- (1) \$250.00 for an initial license;
  - (2) \$250.00 for a renewal license;
  - (3) \$350.00 for late renewal when the license is not renewed within thirty (30) days after expiration; and
  - (4) \$50.00 temporary artist license, not to exceed 7 days.
- (h) A person who has acceptable proof of experience or training as stated required in 310:233-9-2(d)(8)(A and B) in performing tattooing may be ~~deemed to have met the Department approved preparedness requirements status as per 310:233-9-2(d)(8)(A and B)~~ approved by the Department to take the test specified in 310:233-9-2(j). A candidate shall have a minimum passing score of 70% on the written examination that will include:
- (1) Knowledge of Anatomy, Physiology, and Disease;
  - (2) Theory and application of ink;
  - (3) Safety and Aseptic Technique;
  - (4) Professionalism; and
  - (5) Client Consultation Services.
- (i) A candidate who does not meet this score can retest up to two (2) times. A candidate who does not pass the written examination must wait at least seven (7) days before retesting. Any candidate who is unable to attain competency after three attempts shall be required to enroll or re-enroll in an apprentice program. To apply, the candidate shall submit an application that requires the following:
- (1) Notarized copy of the applicant's certificate of birth;
  - (2) Notarized copy of the applicant's driver's license or other similar photo identification;
  - (3) Notarized copy of his/her credentials and professional resume of satisfactory completion of any programs they have completed for proof of experience; and
  - (4) Proof of experience as required in 310:233-9-2(d)(8)(A and B).
- (j) The Department shall accept the test administered by the Oklahoma Department of Career Technology with results to be evidenced by a completed testing verification provided to the Department by the Oklahoma Department of Career Technology.
- (k) ~~The~~ Within 30 days after receipt of a completed application, the Department shall notify the applicant in writing of its decision to approve or disapprove the applicant to take the examination within 30 days after receipt of a completed application. An applicant who is eligible for the testing process must present a letter of notification from the Department to administer the test given by Oklahoma Department of Career and Technology Education.
- (l) Upon successful completion of the testing process, the applicant is eligible ~~to apply for an Artist~~ issuance of a permanent artist license. In order to ~~apply for request~~ request issuance of a license, the candidate applicant must submit the following to the Department:
- (1) ~~Completed~~ Any changes in the application previously submitted as specified required in 310:233-9-2(i)(1-4) 310:233-9-2(d); and
  - (2) Completed Testing Verification Form provided by the Department which includes:
    - (A) Skills evaluation information; and
    - (B) Written certification examination records.
- (m) Bloodborne training certification shall contain at a minimum the following elements:
- (1) A general explanation of the epidemiology and symptoms of bloodborne diseases;
  - (2) An explanation of the modes of transmission of bloodborne pathogens;
  - (3) An explanation of the employer's exposure control plan and the means by which the employee can obtain a copy of the written plan;
  - (4) An explanation of the appropriate methods for recognizing tasks and other activities that may involve exposure to blood and other potentially infectious materials;

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- (5) An explanation of the use and limitations of methods that will prevent or reduce exposure including appropriate engineering controls, work practices, and personal protective equipment;
  - (6) Information on the types, proper use, location, removal, handling, decontamination and disposal of personal protective equipment;
  - (7) An explanation of the basis for selection of personal protective equipment;
  - (8) Information on the Hepatitis B vaccine, including information on its efficacy, safety, method of administration, the benefits of being vaccinated;
  - (9) Information on the appropriate actions to take and persons to contact in an emergency involving blood or other potentially infectious materials;
  - (10) An explanation of the procedure to follow if an exposure incident occurs, including the method of reporting the incident and the medical follow-up that will be made available;
  - (11) Information on the post-exposure evaluation and follow-up that the employer is required to provide for the employee following an exposure incident; and
  - (12) An explanation of the signs and labels and/or color coding required.
- (n) First aid certification shall include instruction in:
- (1) Injury and acute illness as a health problem;
  - (2) Interactions with the local emergency medical services system;
  - (3) Responsibility for maintaining a current list of emergency telephone numbers (police, fire, ambulance, poison control) easily accessible to all employees;
  - (4) Instruction in the principles and performance of bandaging of the head, chest, shoulder, arm, leg, wrist, elbow, foot, ankle, fingers, toes, and knee; and
  - (5) Apprentices shall be provided with adequate instruction on the need for and use of universal precautions that should include:
    - (A) The meaning of universal precautions;
    - (B) Which body fluids are considered potentially infectious, and which are regarded as hazardous;
    - (C) The value of universal precautions for infectious diseases;
    - (D) The necessity for keeping gloves and other protective equipment readily available and the appropriate use of them; and
    - (E) The appropriate tagging and disposal of any sharp item or instrument requiring special disposal measures such as blood soaked material, and the appropriate management of blood spills.
- (o) CPR training certification shall include instruction in:
- (1) Performing a primary survey of each victim including airway, breathing, and circulation assessments;
  - (2) The presence of any bleeding, establishing and maintaining adult airway patency;
  - (3) Performing adult breathing resuscitation; and

- (4) Performing choking assessments and appropriate first aid intervention.

[OAR Docket #17-651; filed 7-13-17]

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICES SERVICE

[OAR Docket #17-650]

#### RULEMAKING ACTION:

PERMANENT final adoption

#### RULES:

Subchapter 3. License Classifications and Associated Fees for Consumer Health Services

310:250-3-1. Food service establishments' permits fees [AMENDED]

310:250-3-2. Drug operational permits [AMENDED]

310:250-3-3. Lodging establishment operational permits [AMENDED]

310:250-3-4. Late renewal [AMENDED]

310:250-3-5. Radiation producing machine permits [AMENDED]

310:250-3-6. Public Bathing Places bathing places [AMENDED]

310:250-3-7. Application fee [AMENDED]

#### AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104; and 63 O.S. § 1-1119, 63 O.S. § 1-1201, 63 O.S. § 1-1013; and 63 O.S. § 1-1501.1

#### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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October 1, 2017

#### SUPERSEDED EMERGENCY ACTIONS:

n/a

#### INCORPORATIONS BY REFERENCE:

n/a

#### GIST/ANALYSIS:

These rules apply to application and licensure fees for programs overseen by the Consumer Health Service specific to: food establishments (Title 63 O.S. § 1-1118 & 1-1119), drug manufacturers (Title 63 O.S. § 1-1119), lodging establishments (Title 63 O.S. § 1-1201), diagnostic x-ray facilities (Title 63 O.S. § 1-1501.1), and public bathing places (Title 63 O.S. § 1-1013.1). These statutes authorize the Department of Health to establish fees for licenses. The changes modify the fee schedule for establishments licensed in these areas. The changes are necessary to cover increasing costs for these programs, to allow flexibility to better track types of establishments for reporting purposes and streamline application processes. The effect of these changes increase fees for licensed establishments. The effect will also allow flexibility to better identify types of businesses which will assist in the focused identification of hazards to specific establishment types.

#### CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lynnette Jordan, Service Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-5243, e-mail [lynnette@health.ok.gov](mailto:lynnette@health.ok.gov).

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

**SUBCHAPTER 3. LICENSE CLASSIFICATIONS AND ASSOCIATED FEES FOR CONSUMER HEALTH SERVICES**

**310:250-3-1. Food service establishments' permits-fees**

(a) The following are license classifications and associated fees for food ~~service~~ establishments, ~~manufacturers, or wholesalers~~ regulated by Title 63 O.S. § 1-915, Title 63 O.S. § 1-1118, Title 63 O.S. § 1-1119, or Title 63 O.S. § 1-1120 et seq., and the rules promulgated thereunder.:

- (1) Food service, manufacturing, or wholesale.
  - (A) Initial - \$425.00
  - (B) Renewal - \$335.00
  - (C) Late Renewal - \$375.00
- (2) State Operated, Non-Profit or Health Facilities not meeting exempt status.
  - (A) Initial - \$175.00
  - (B) Renewal - \$125.00
  - (C) Late Renewal - \$150.00
- (3) Seasonal includes any establishment that meets the definition of "Seasonal food establishment" outlined in OAC 310:257-1-2 where the license is valid for only one hundred eighty (180) consecutive days per year. The license may be reinstated no sooner than one hundred eighty 180 days after the expiration of the previous license.
  - (A) Initial - \$250.00
  - (B) Reinstatement - \$250.00
- (4) The fee for a temporary food establishment, as defined in OAC 310:257-1-2, shall be \$100.00 for a three (3) day period plus \$40.00 for each additional day.
  - (1) Type 45 Class A "Frozen Food Locker":
    - (A) ~~Initial \$350.00~~
    - (B) ~~Renewal \$250.00~~
    - (C) ~~Late Renewal \$300.00~~
  - (2) Type 45 Class B "Bar":
    - (A) ~~Initial \$350.00~~
    - (B) ~~Renewal \$250.00~~
    - (C) ~~Late Renewal \$300.00~~
  - (3) Class C "Combination Retail Food":
    - (A) ~~Initial \$350.00~~
    - (B) ~~Renewal \$250.00~~
    - (C) ~~Late Renewal \$300.00~~
  - (4) Class E "Health Facilities, State Prisons, Schools, or Non-Profit Institutions":
    - (A) ~~Initial \$100.00~~
    - (B) ~~Renewal \$100.00~~
    - (C) ~~Late Renewal \$150.00~~
  - (5) Class F "Food Service Establishment":
    - (A) ~~Initial \$350.00~~
    - (B) ~~Renewal \$250.00~~

- (C) ~~Late Renewal \$300.00~~
- (6) Class G "Food Service with Bar":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (7) Class M "Mobile Food Service and Vendor":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (8) Class R "Retail Food Store":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (9) Class S "Seasonal Food Service":
  - (A) ~~Non-Renewable \$200.00 for one hundred eighty (180) consecutive days only~~
- (10) Class T "Temporary Food Service":
  - (A) ~~\$30.00 up to three (3) days + \$15.00 each day in excess of three (3) days~~
- (11) Class P "Food Processors":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (12) Class W "Food Wholesaler":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (13) Class X "Privately Owned Prisons":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (14) Class Y "Salvage Food":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~
- (15) Class Z "Water Bottling Facilities":
  - (A) ~~Initial \$350.00~~
  - (B) ~~Renewal \$250.00~~
  - (C) ~~Late Renewal \$300.00~~

(b) An establishment qualifies for a fee exempt license if it is a "food ~~service~~ establishment – fee exempt" as that term is defined in OAC 310:257-1-2.

(c) Late renewal fees apply to any renewal application post-marked and/or received thirty (30) days after the expiration date of the license.

(d) A license not renewed within ninety (90) days of the date shall be ineligible for the renewal. Thereafter, the establishment shall be required to pay an initial fee. The establishment that has not had a valid license for one (1) year is considered a new establishment.

**310:250-3-2. Drug operational permits**

The following are ~~license classifications and associated fees for over-the-counter wholesalers, brokers, and drug manufacturers; regulated by the Drugs, Medical Devices and Cosmetics Article of the Public Health Code, Title 63 O.S. Sections 1-1119 and 1-1401 et seq. and the rules promulgated thereunder.~~

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(1) ~~Type 48 Class M "Drug Manufacturers, over the counter"~~ Drug Operational Category includes any over-the-counter wholesalers, brokers and manufacturers of drugs:

- (A) Initial - ~~\$350.00~~\$375.00
- (B) Renewal - ~~\$250.00~~\$325.00
- (C) Late Renewal - ~~\$300.00~~\$350.00

(2) ~~Type 48 Class W "Drug Warehouse":~~

- (A) ~~Initial~~ - \$350.00
- (B) ~~Renewal~~ - \$250.00
- (C) ~~Late Renewal~~ - \$300.00

### 310:250-3-3. Lodging establishment operational permits

~~Fees~~The following are associated fees for lodging establishment operational permits ~~are as follows: regulated by the lodging establishment statute at Title 63 O.S. § 1-1201 and the rules promulgated thereunder.~~

(1) ~~Type 51 Class Category A "Hotels and Motels" (Not more than 20 units):~~

- (A) Initial - ~~\$250.00~~\$300.00
- (B) Renewal - ~~\$150.00~~\$225.00
- (C) Late Renewal - ~~\$200.00~~\$250.00

(2) ~~Type 51 Class Category B "Hotels and Motels" (Not more than 100 units):~~

- (A) Initial - ~~\$300.00~~\$350.00
- (B) Renewal - ~~\$200.00~~\$275.00
- (C) Late Renewal - ~~\$250.00~~\$300.00

(3) ~~Type 51 Class Category C "Hotels and Motels" (More than 100 units):~~

- (A) Initial - ~~\$350.00~~\$400.00
- (B) Renewal - ~~\$250.00~~\$325.00
- (C) Late Renewal - ~~\$300.00~~\$350.00

### 310:250-3-4. Late renewal

(a) When a Consumer Health Service's license renewal fee is required by statute or regulation to be paid by a date certain and such fee was paid more than thirty (30) days after the date certain, there shall be assessed a late fee to cover the cost of non-routine processing. The late renewal fee unless specifically set shall equal one-half of the renewal fee for any given type and class, unless the maximum authorized by law would be exceeded thereby.

(b) Late renewal fees apply to renewal applications received by the Department more than thirty (30) days after the expiration date of the license.

(c) If the license holder does not file with the Department a renewal application and fee within ninety (90) days after the expiration date of the license, the Department shall not renew the license. The license may be re-instated with payment of an initial license fee.

### 310:250-3-5. Radiation producing machine permits

(a) ~~The Annual~~ annual permit fee for facilities to use radiation machines shall be based on type of facility and the number of x-ray tubes.

(1) All facilities except dental, podiatric and veterinary with:

- (A) ~~first tube \$100.00; and~~
- (B) each ~~additional tube \$90.00~~\$95.00; but
- (C) a maximum permit fee of \$500.00.

(2) Dental and podiatric facilities with:

- (A) ~~first tube \$40.00; and~~
- (B) each ~~additional tube \$25.00~~\$30.00; but
- (C) a maximum permit fee of \$500.00.

(3) Veterinary facilities with:

- (A) ~~first tube \$30.00; and~~
- (B) each ~~additional tube \$20.00~~\$25.00; but
- (C) a maximum permit fee of \$500.00.

(b) Diagnostic radiation producing machine permit renewal fees for applications received by the Department more than thirty (30) days after the expiration date of the current permit shall be assessed a late fee to cover the cost of non-routine processing. The late renewal fee shall equal one-half of the renewal fee, unless the maximum authorized by law would be exceeded. If the permit holder does not file with the Department a renewal application and fee within ninety (90) days after the expiration date of the license, the Department shall not renew the permit. An initial permit application and initial permit fee shall be required.

### 310:250-3-6. Public Bathing Places ~~bathing places~~

(a) The following are license classifications and associated fees for Public Bathing Places:

(1) ~~Type 82 Class~~ Public Bathing Category I "Indoor Facility"

- (A) Public Bathing Places Initial License Fee - ~~\$50.00~~\$125.00
- (B) Public Bathing Places Renewal License Fee - \$75.00
- (C) Public Bathing Places Re-inspection Fee - \$250.00

(2) ~~Type 82 Class~~ Public Bathing Category O "Outdoor Facility"

- (A) Public Bathing Places Initial License Fee - ~~\$50.00~~\$125.00
- (B) Public Bathing Places Renewal License Fee - \$75.00
- (C) Public Bathing Places Re-inspection Fee - \$250.00

(3) Pool Category M "Municipality of 5,000 or less population"

- (A) Public Bathing Places Annual License Fee - \$50.00
- (B) Public Bathing Places Re-inspection Fee - \$250.00

(b) Each filter system for a construction project shall require a separate permit. One project may contain several construction items and require more than one permit. The maximum fee for each public bathing place construction permit will be \$2000.00

(1) New Construction

- (A) Pool - Rounded to the nearest 5000 gallons volume - \$100.00 per 5000 gallons (minimum \$500.00 fee)
- (B) Spray Pool -Rounded to the nearest 5000 gallons volume - \$100.00 per 5000 gallons (minimum \$500.00 fee)
- (C) Spas - Rounded to nearest 100 gallons volume - \$50.00 per 100 gallons (minimum \$250.00 fee)
- (2) Modification to Existing Permit
  - (A) Pool - Rounded to the nearest 5000 gallons volume - \$50.00 per 5000 gallons (minimum \$250.00 fee)
  - (B) Spray Pool - Rounded to the nearest 5000 gallons volume -50.00 per 5000 gallons (minimum \$250.00 fee)
  - (C) Spas - Rounded to the Nearest 100 gallons volume - \$25.00 per 100 gallons (minimum \$125.00 fee)
- (c) An annual securing fee of \$50.00 will be applied to each public bathing place that is placed out of service and is not maintaining annual licensure. This pertains to a secured public bathing place permanently out of service where the current owner has no intention to reopen and does not fill in the public bathing place. It also applies to a public bathing place closed for longer than a year with the intent of re-opening. A securing fee will be due at the same time as the original license expiration and each year thereafter while the facility remains permanently out of service. When a public bathing place resumes operation, the local county health department shall be notified by the owner and any remaining license fee will be required for that year of operation.

**310:250-3-7. Application fee**

- (a) Applicant shall submit the prepared plans and specifications for review and approval as stated in "Food Service Establishment Regulations" OAC 310:257-15-6 thru 310:257-15-17 or OAC 310:260 "Good Manufacturing Practice Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health, or respective County Health Department in which the establishment shall operate as instructed on a plan review application prescribed by the Department.
  - (1) Food service, manufacturing, wholesale, or brokers of food - \$425.00
  - (2) State Operated, Non-Profit or Health Facilities not meeting exempt status - \$425.00
  - (3) Seasonal establishment - \$425.00
  - (4) Food establishment - Fee Exempt as an establishment meeting the definition outlined in OAC 310:257-1-2 - \$425.00
  - Type 45 Class A - "Frozen Food Locker" \$200.00
  - (2) Type 45 Class B - "Bar" \$200.00
  - (3) Type 45 Class C - "Combination Retail Food" \$200.00
  - (4) Type 45 Class E - "Health Facilities, State Prisons, Schools, Non Profit Institutions \$200.00
  - (5) Type 45 Class F - "Food Service Establishment" \$200.00
  - (6) Type 45 Class G - "Food Service with Bar" \$200.00

- (7) Type 45 Class M - "Mobile Food Service and Vendor" \$200.00
- (8) Type 45 Class R - "Retail Food Store" \$200.00
- (9) Type 45 Class S - "Seasonal Food Service" \$200.00
- (b) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:260 "Good Manufacturing Practice Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health. The drug operational category fee is \$425.00.
  - (1) Type 45 Class A - "Frozen Food Locker" \$200.00
  - (2) Type 45 Class E - "Health Facilities, State Prisons, Non Profit Institutions \$200.00
  - (3) Type 45 Class P - "Food Processors" \$200.00
  - (4) Type 45 Class W - "Food Wholesalers" \$200.00
  - (5) Type 45 Class X - "Privately Owned Prisons" \$200.00
  - (6) Type 45 Class Y - "Salvage Food" \$200.00
  - (7) Type 45 Class Z - "Water Bottling Facilities"
  - (8) Type 48 Class M - "Drug Manufacturers, over the counter" \$200.00
  - (9) Type 48 Class W - "Drug Warehouse" \$200.00
- (c) Applicant shall submit the prepared plans and specifications for review and approval as stated in OAC 310:285 "Lodging Establishment Regulations". The application fee and plans shall be submitted to the Oklahoma State Department of Health, respective County Health Department in which the establishment shall operate.
  - (1) Type 51 Class A - "Hotels and Motels" ~~\$200.00~~ \$425.00
  - (2) Type 51 Class B - "Hotels and Motels" ~~\$200.00~~ \$425.00
  - (3) Type 51 Class C - "Hotels and Motels" ~~\$200.00~~ \$425.00

[OAR Docket #17-650; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 512. CHILDHOOD LEAD POISONING PREVENTION RULES**

[OAR Docket #17-649]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 1. General Provisions

310:512-1-1 [AMENDED]

310:512-1-2 [AMENDED]

310:512-1-3 [AMENDED]

310:512-1-4 [AMENDED]

Subchapter 3. ~~Specimen~~ Risk Assessment, Screening and Management

310:512-3-1 [AMENDED]

310:512-3-2 [REVOKED]

310:512-3-2.1 [NEW]

310:512-3-3 [AMENDED]

310:512-3-4 [REVOKED]

310:512-3-4.1 [NEW]

310:512-3-5 [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and Title 63 O.S. § 1-114.1

# Permanent Final Adoptions

## SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

September 22, 2016

## COMMENT PERIOD:

October 17, 2016 through November 17, 2016

## PUBLIC HEARING:

November 17, 2016

## ADOPTION:

December 13, 2016

## SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:

December 23, 2016

## APPROVED BY GOVERNOR'S DECLARATION:

Approved by Governor's declaration on June 13, 2017

## FINAL ADOPTION:

June 13, 2017

## EFFECTIVE:

October 1, 2017

## SUPERSEDED EMERGENCY ACTIONS:

n/a

## INCORPORATIONS BY REFERENCE:

n/a

## GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-114.1. This law established the Comprehensive Childhood Lead Poisoning Prevention Program to be administered by the State Department of Health and authorizes the Department to enact rules for lead toxicity screening. The amended rules address changes enacted in House Bill 1467 (2013) that created the Infant and Children's Health Advisory Council as the advisory body, replacing the legislatively struck lead poisoning advisory board; clarify that the Oklahoma Childhood Lead Poisoning Prevention Program maintains a statewide surveillance system of elevated blood lead levels only; adds definitions and terms used in the updated rules to ensure that all terms are defined; removes definitions of terms that are no longer used; adds the term for the risk assessment questionnaire to refer to the document as the Lead Exposure Risk Assessment Questionnaire (LERAQ) and allows for an alternative risk assessment questionnaire. The changes clarify the appropriate ages and times for lead screening for children up to the age of 72 months; amend and renumber sections where extensive rewrite occurs; define the role of the health care provider in assessment and screening of children under the age of 72 months for lead exposure; clarify the process regarding a refusal by a parent or guardian for blood lead testing of their child; clarify continuing follow-up requirements and health care provider responsibilities as they pertain to blood lead screening and aftercare; and add language indicating the domain and responsibility among health care providers to follow screening requirements.

The amended rules change guidance that a capillary blood lead sample may be obtained for confirmation of an elevated blood lead level when a venous sample is not obtainable; venous sample testing is required for confirmation of blood lead concentration equal to or greater than 10 µg/dL; and add information regarding the use of Point-of-Care instruments for on-site lead testing and clarify that Point-of-Care instruments are not to be used to confirm elevated blood lead levels.

The amended rules provides clarification regarding primary prevention, the use of chelation therapy, developmental screening and directs providers to the Oklahoma Childhood Lead Poisoning Prevention Program's Clinical Management Guidelines which are available on the program's website.

The rule is amended to address the procedure and terms of blood lead screening reporting requirements to clearly state the method of reporting the results to the Oklahoma Childhood Lead Poisoning Prevention Program; clarify procedures for reporting by providers who use the Point-of-Care devices for blood lead testing; and promotes electronic reporting. Various amendments are provided for improved clarity in terminology and references.

## CONTACT PERSON:

Information regarding this rule may be obtained by contacting Susan Quigley, Administrative Programs Manager, Childhood Lead Poisoning Prevention Program, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-6711, e-mail susanq@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S.,**

## SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

### SUBCHAPTER 1. GENERAL PROVISIONS

#### 310:512-1-1. Purpose

~~Under 63 O.S. 1991, Sections 1-114.1 the following rules are established concerning the screening of all Oklahoma children, ages 6 months to 72 months of age, for lead poisoning, designated by the Oklahoma State Board of Health. The rules in this Chapter establish procedures and standards for childhood lead screening, assessment, poison prevention, and reporting as authorized under the provisions of Title 63 O.S. Section 1-114.1.~~

#### 310:512-1-2. Criteria

(a) ~~The Oklahoma State Board of Health shall establish procedures for blood lead screening which shall include risk assessment, laboratory assays, sample collection, reporting, follow-up, and parent education. The Infant and Children's Health Advisory Council shall advise the Oklahoma State Board of Health on the establishment of rules for the prevention of childhood lead poisoning which shall include risk assessment, blood lead screening, laboratory assays, sample collection, reporting, lead hazard control, and rules related to the role of the provider such as: follow-up, diagnosis and treatment, developmental screening, referral for environmental assessments and lead hazard control, and parent education.~~

(b) All health care providers shall comply with the following procedures for blood lead screening established by the Oklahoma State Board of Health.

(c) After sufficient statewide data collection and documented incidence of low lead exposure, the Commissioner of Health may exempt a community or county from universal lead screening.

#### 310:512-1-3. Lead poisoning prevention program

(a) The Department shall ~~establish~~ maintain a lead poisoning prevention program. This program shall be responsible for establishing and coordinating activities to prevent lead poisoning and to minimize risk of exposure to lead.

(b) The Department shall ~~promulgate and~~ enforce rules for screening children for lead poisoning, and for follow-up of children who have elevated blood lead levels.

(c) The Department may enter into interagency agreements to coordinate lead poisoning prevention, exposure reduction, identification and treatment activities and lead reduction activities with other federal, state and local agencies and programs.

(d) The Department shall ~~establish~~ maintain a statewide ~~registry surveillance system of children with elevated lead levels~~ all Oklahoma children's blood lead levels provided such information is monitored as confidential except for disclosure for medical treatment purposes ~~and~~ or disclosure of non-identifying epidemiological data.

(e) The Department shall develop and implement public education and community outreach programs on lead exposure, detection and risk reduction.

**310:512-1-4. Definitions**

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

**"Advisory Council"** means the ~~advisory council on lead poisoning prevention~~ Infant and Children's Health Advisory Council.

**"Anticipatory guidance"** means providing parents or guardians of children under the age of six with information regarding the major causes of lead poisoning and means of preventing lead exposure. Such guidance shall be pertinent to the environment of the child.

**"Blood lead screening"** refers to measuring lead concentration by capillary or venous blood collection to identify elevated blood lead levels.

**"Case Management"** refers to providing a collaborative process to assess, educate, coordinate, monitor, or evaluate options and services required to meet the child's environmental health and human service needs.

~~"CLIA '88"~~ **"CLIA"** means the Clinical Laboratory Improvement Amendments. These amendments apply to the Federal Law that governs laboratories who examine human specimens for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of the health of human beings.

**"Clinical Management Guidelines"** means voluntary guidelines produced by the Department for clinical management and treatment decisions based on the initial or confirmed blood lead level.

~~"Confirmatory testing"~~ refers to ~~a blood lead concentration measured on venous blood~~ the collection of a venous blood sample to confirm an initial elevated capillary blood lead screening result. The collection of a capillary sample within 12 weeks to confirm an initial elevated capillary blood lead screening test result may be used if the initial capillary level is less than 10 µg/dL.

**"Confirmed elevated blood lead level"** refers to a concentration of lead in the blood taken from a venous sample which is above the reference level. It may also refer to a second capillary test as described in "confirmatory testing".

**"Department"** refers to the Oklahoma State Department of Health.

**"Dwelling"** refers to a building or structure thereof, including the property occupied by and appurtenant to such dwelling, which is occupied in whole or in part as the home, residence or sleeping place of one or more human beings and shall without limiting the foregoing, include child care facilities for children under six years of age, schools and nursery schools.

**"Elevated blood lead level"** means a ~~confirmed~~ concentration of lead of 10 micrograms (µg) per deciliter (dL) or greater in blood at or above the current reference level as defined by the Centers for Disease Control.

~~"Environmental management investigation"~~ refers to on-site dwelling environmental investigation and exposure assessment, sampling for lead, environmental testing and reporting, notice of conditions conducive to lead poisoning, environmental intervention means an on-site dwelling investigation to determine the existence, nature, severity, and location of lead or lead-based paint hazards, completed by a person licensed as a certified risk assessor by the Oklahoma Department of Environmental Quality.

**"Follow-up"** refers to actions by local health departments and health care providers which, depending on the blood lead level and exposure history of the child, shall include as appropriate: risk reduction education, follow-up testing, confirmatory testing, medical evaluation, medical management, ~~environmental management investigation,~~ and case management, in accordance with generally accepted medical standards and public health guidelines.

**"Follow-up testing"** refers to repeat blood lead testing by venous blood draw for any child with a previously confirmed elevated blood lead level.

**"Health care provider"** means any health professional or facility authorized to conduct blood lead screening. Health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurses, city-county health departments, county health departments, medical clinics, medical offices, hospitals, and Head Start programs.

**"High risk lead exposure"** refers to any positive response on the LERAQ or other suitable risk assessment questionnaire.

**"Laboratory"** ~~refers to the Oklahoma State Department of Health Laboratory or a laboratory approved by the Oklahoma State Department of Health to conduct blood lead measurement~~ any in-state CLIA approved laboratory or out-of-state CLIA approved laboratory providing blood lead testing for residents of Oklahoma. Laboratory may also refer to any entity using a point of care instrument for the purpose of blood lead testing of Oklahoma residents.

**"LERAQ"** refers to the Lead Exposure Risk Assessment Questionnaire which consists of a model set of questions developed by the Department to assess a child's risk of exposure to lead and includes information regarding areas of the state with higher than average risks for lead exposure.

**"Low risk lead exposure"** refers to negative responses to all questions on the LERAQ or other suitable risk assessment questionnaire.

**"Person"** means any natural person.

**"Point-of-Care Instrument"** refers to a blood lead testing device designed for the quantitative measurement of lead in fresh whole blood.

**"Primary Health Care Provider"** refers to any person or government entity that provides well child health care services, such as annual examinations and immunizations, to children under six years of age. Primary health care provider includes, but is not limited to, physicians, physician assistants, advance practice registered nurse, local health departments, medical clinics, medical offices, and hospital outpatient clinics.

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**"Program"** refers to the Oklahoma Childhood Lead Poisoning Prevention Program (OCLPPP) lead poisoning prevention program in of the Department.

**"Reference Level"** means a level of lead in the blood measured in micrograms per deciliter used to identify children with lead levels that are much higher than most children's lead levels. This level is based on the U.S. population of children ages 1-5 years who are in the highest 2.5% of children when tested for lead in their blood based on the 97.5 percentile of the National Health and Nutrition Examination Survey (NHANES) for the two most recent surveys. The reference level currently in use is 5 micrograms per deciliter.

**"Risk Assessment Questionnaire"** means a set of questions designed to determine an individual's risk for lead exposure and lead poisoning, as approved by the Department and based on recommendations from the CDC.

**"Satisfactory specimen"** means a specimen collected using an appropriate procedure which is suitable in both blood quantity and quality to perform screening for Blood Lead measurement. ~~Federal CLIA '88 regulations require that the laboratory requisitions contain sufficient patient data that must include patient's name, date of birth, date of collection, test(s) to be performed, and name and address of person requesting the test.~~

**"Submitter"** any health care provider (primary and non-primary), hospital, physician, laboratory, or other facility that submits blood specimens for blood lead measurements.

**"Target population"** refers to any infant or child, 6 months to 72 months of age.

**"Unsatisfactory specimen"** means a blood specimen which is not suitable in quality or quantity to perform blood lead measurements.

## SUBCHAPTER 3. SPECIMEN RISK ASSESSMENT, SCREENING AND MANAGEMENT

### **310:512-3-1. Screening Parameters Risk assessment and screening criteria**

(a) All children in Oklahoma, 6 months to 72 months of age shall be assessed for blood lead exposure utilizing the risk assessment questionnaire as defined in paragraph (c) ~~and should have access to service which will assess the exposure to lead in their environments as part of each periodic health care visit occurring at age 6, 12, and 24 months and age 3 years, 4 years and 5 years. An initial capillary or venous sample should be done at 12 months and 24 months of age, anytime the child has not had a baseline before the age of 72 months, or with any change in the child's assessment.~~

(b) ~~A parent or guardian who refuses blood lead testing screening of their child shall also indicate in writing this refusal in the child's record. All children in Oklahoma shall have a blood lead screening test as part of each periodic health care visit occurring at age 12 and 24 months of age or at any age after age 24 months up to age 72 months, if not previously tested for blood lead.~~

(c) A risk assessment questionnaire is based on recommendations from the CDC and shall be approved by the Department prior to implementation. The questionnaire should include questions related to the following:

(1) Does the child live in or frequently visit a home built before 1978?

(2) Does the child have a sibling or playmate with an elevated blood lead level?

(3) Is the child eligible for Medicaid, WIC, or Head Start?

(4) Does the child live with someone who has a job or hobby that may involve lead (example: jewelry making, building renovation or repair, working with automobile batteries, lead solder, or battery recycling)?

(5) Does the child eat or mouth trinkets or items that contain lead?

(6) Does the child live in an area identified as a high risk target area by the Program?

(d) A "Yes" or "Don't know" answer to the questions in paragraph (c) is considered a positive answer and requires the child to have a blood lead test.

(e) The Department publishes current high risk target areas on its website located at: <http://lpp.health.ok.gov>.

(f) The Department publishes the LERAQ as an approved risk assessment questionnaire on its website.

### **310:512-3-2. Screening criteria [REVOKED]**

(a) ~~For children at low risk for lead exposure, according to risk assessment questions, the health care provider should perform an initial blood lead test at 12 months of age, or when initially assessed if older.~~

(1) ~~If the result is <10 µg/dL, the child should be retested at 24 months of age.~~

(2) ~~If the result is between 10-19 µg/dL, the child should be retested every 3-4 months until two consecutive measurements are <10 µg/dL or three consecutive measurements are <15 µg/dL. At this point, the child should be retested in one year.~~

(3) ~~If the result is ≥20 µg/dL, retest every 3-4 months and individual case management should be provided.~~

(b) ~~For children at high risk for lead exposure, according to risk assessment questions, the health care provider should perform an initial blood lead test at 6 months of age, or when initially assessed if older.~~

(1) ~~If the result is <10 µg/dL, the child should be retested every 6 months until two consecutive measurements are <10 µg/dL or three consecutive measurements are <15 µg/dL. At this point, retested yearly, if the child remains at high risk for lead exposure.~~

(2) ~~If the result is between 10-19 µg/dL, the child shall be retested every 3-4 months until two consecutive measurements are <10 µg/dL or three consecutive measurements are <15 µg/dL. At this point, retested yearly, if the child remains at high risk for lead exposure.~~

(3) ~~If the result is ≥20 µg/dL, the child should be retested every 3-4 months and individual case management shall be provided.~~

**310:512-3-2.1. Primary health care provider responsibilities for risk assessment and screening**

(a) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4 and 5 years shall assess the child for risk of lead exposure using the LERAQ, or suitable risk assessment questionnaire approved by the Department.

(b) For children at high risk for lead exposure according to the LERAQ, or suitable risk assessment questionnaire, the primary health care provider shall perform a blood lead test beginning at 6 months of age, or when initially assessed, if older.

(c) Every primary health care provider who provides a periodic health care visit to a child shall order an initial capillary or venous blood lead screening test at age 12 and 24 months, or at any age after age 24 months up to age 72 months if never tested.

(d) Every primary health care provider who provides a periodic health care visit to a child at age 6, 12, and 24 months and age 3, age 4, and 5 years shall:

- (1) Give oral or written anticipatory guidance to a parent or guardian on prevention of childhood lead poisoning, including, at minimum, the information that children can be harmed by exposure to lead, especially deteriorating or disturbed lead-based paint and the dust from it, and are particularly at risk of lead poisoning from the time the child begins to crawl until 72 months of age; and
- (2) Discuss the child's blood lead test results with the child's family and any necessary follow up.

(e) Any health care provider who performs blood lead screening of a child who is six months of age to six years of age and who is not the child's ongoing primary health care provider shall forward the blood lead test result, if elevated at or above the reference level, to the child's primary health care provider.

(f) If a parent or guardian refuses blood lead testing screening of their child, the health care provider shall have the parent or guardian indicate in writing this refusal in the child's medical record and provide a copy via mail or by fax to the Oklahoma Childhood Lead Poisoning Prevention Program.

**310:512-3-3. Blood collection-lead screening tests**

(a) **Capillary sample for blood lead testing.** Capillary blood specimens are acceptable for initial blood lead screening if appropriate collection procedures are followed; to minimize the risk of environmental lead contamination. A capillary blood lead sample may be obtained for confirmation of an elevated blood lead level less than 10 µg/dL when a venous sample is not obtainable.

(b) **Venous sample for blood lead testing.** Venous blood is the preferred specimen for blood lead analysis and should be used for lead measurement whenever practical. A venous sample is required for confirmation of blood lead concentration equal to or greater than 10 µg/dL and preferred for confirmation of an elevated blood lead level less than 10 µg/dL.

(c) **Point-of-Care instruments.** Point-of-Care instruments shall not be used to confirm elevated blood lead levels even if the sample is collected by venipuncture.

**310:512-3-4. Providers screening and follow-up [REVOKED]**

**(a) Primary provider screening and follow-up.**

(1) At each routine well child visit or at least annually if a child has not had routine well child visits, primary health care providers should assess each child who is at least six months of age but under six years of age for high dose lead exposure using a risk assessment tool based on currently accepted public health guidelines. Each child at high risk for lead exposure should be tested.

(2) Primary health care providers should provide the parent or guardian of each child under six years of age anticipatory guidance on lead poisoning prevention as part of routine care.

(3) Primary health care providers should screen each child for lead exposure starting at 6 months of age, as part of routine well child care.

(4) Each primary health care provider who screens a child for an elevated blood lead level should explain the blood lead test results and any necessary follow up.

(5) Primary health care providers should provide or make reasonable efforts to ensure the provision of follow up testing for each child with an elevated blood lead level  $\geq 10$  µg/dL.

(6) Primary health care providers should confirm blood lead levels  $\geq 10$  µg/dL of blood obtained on a capillary fingerstick specimen from a child using a venous blood sample.

(7) For each child who has a confirmed blood lead level of  $\geq 20$  µg/dL (micrograms per deciliter), the primary health care providers should provide or make reasonable efforts to ensure the provision of medical evaluation, or referral for medical evaluation; medical treatment if necessary; and referral to the appropriate local or state health department for environmental management. Medical evaluation should include at a minimum: a detailed lead exposure assessment, a nutritional assessment, including iron status, and a developmental screening.

**(b) Non-Primary provider screening and follow up.**

(1) A health care provider who provides services to a child who is at least six months of age but under six years of age and who is not the child's ongoing primary care provider, (such as a hospital inpatient facility, an emergency service if the child's condition permits, or another facility or practitioner which provides services to the child on a one time or walk in basis), should inquire if the child has been appropriately screened for lead exposure.

(2) If the child, under 72 months of age, has not received such appropriate lead assessment and screening, the health care provider should screen the child for a blood lead level.

(3) If screening is performed, the blood lead test result should be sent to the child's primary care provider or, if not available, to the local health department for appropriate follow up.

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### 310:512-3-4.1. Health care provider responsibilities for follow-up after screening

(a) Health care providers shall provide or make reasonable efforts to ensure the provision of confirmation and follow-up testing for each child with an elevated blood lead level above the reference level.

(b) If the initial blood lead test result is below the reference level on either a venous or capillary sample, the health care provider shall retest the child annually if answers on the LERAQ or suitable risk assessment questionnaire indicate continuing high risk for lead exposure.

(c) For each child who has an elevated blood lead level at or above the reference level, the health care provider shall take those actions that are reasonably and medically necessary and appropriate based upon the child's blood lead level to reduce, to the extent possible, the child's blood lead level below the reference level. Such actions may include the following:

(1) Education of a parent or guardian on lead hazards and lead poisoning;

(2) Clinical evaluation for complication of lead poisoning;

(3) Follow-up blood lead analyses as indicated based on level of elevation and period of time;

(4) Developmental screening;

(5) Referral to the Department for an environmental investigation for a single venous blood lead test result equal to or greater than 20 µg/dL; and

(6) Chelation therapy should be considered and, when possible, a medical toxicologist, provider experienced in chelation therapy, or pediatric environmental health specialist should be consulted for a child with a blood lead test greater than 45 µg/dL.

(d) If the initial capillary blood lead test result is elevated, the health care provider shall obtain a venous confirmation test in accordance with the Clinical Management Guidelines as established by the Department.

(e) If the initial venous blood lead test result or the confirmation test is elevated, the health care provider shall obtain venous follow-up testing in accordance with the Clinical Management Guidelines as set forth by the Department.

### 310:512-3-5. Reporting requirements

#### (a) Laboratory.

(1) Laboratories shall report the results of all blood lead tests performed on ~~children 6 months to 72 months of age~~ persons ~~that~~ who are residents of Oklahoma to the Childhood Lead Poisoning Prevention Program. These reports shall be confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

(2) Federal CLIA regulations at Title 42, of the Code of Federal Regulations, Section 493.1241 (relating to standards for test requests), require that laboratory requisitions contain sufficient patient data that must include patient's name, sex, date of birth, date of collection, test(s) to be performed, the source of the specimen, name and address of person requesting the test, as well as "Any additional information relevant and necessary for a

specific test to ensure accurate and timely testing and reporting of results, including interpretation, if applicable." Laboratories shall report the following information to the Childhood Lead Poisoning Prevention Program by ~~mail, telephone, facsimile, or~~ electronic data transmission: name, date of birth, ~~sex,~~ address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected, ~~and~~ the date of analysis, and additional information already available such as race, ethnicity, Medicaid status and/or Medicaid Number. The laboratory receiving the sample from the health care provider taking the sample shall assure that the laboratory requisition slip is fully completed and includes the information required pursuant to the Subsection. In the event electronic submission is not available, lab reports must be submitted by a method and format approved by the Oklahoma Childhood Lead Poisoning Prevention Program.

(3) Time limits for reporting test results to the Childhood Lead Poisoning Prevention Program shall be as follows:

(A) Results of all blood lead levels ~~<10 µg/dL less than the reference level~~ at a minimum of a monthly basis.

(B) Results of all blood lead levels equal to or ~~>10 µg/dL greater than the reference level~~ at a minimum of a weekly basis and if possible daily.

(4) All clinical laboratories shall notify the health care provider ordering the blood lead test by ~~telephone or fax~~ when the results of any analysis in a child up to 72 months of age is ~~=equal to or greater than~~ 20 µg/dL within 24 hours of the date of the analysis.

(5) Nothing in this Subsection shall be construed to relieve any laboratory from reporting results of any blood lead analysis to the physician, or other health care provider ~~that~~ who ordered the test or to any other entity as required by State, Federal or local statutes or regulations or in accordance with accepted standard of practice.

#### (b) Health care providers.

(1) All health care providers ~~should~~ shall ensure that all of the information as specified in 310:512-3-5(b) (relating to standards for test requests), is completed for all blood lead analyses ordered by health care providers and that this information accompanies the sample to the testing laboratory.

(2) On written or verbal notification of an elevated capillary lead level, ~~=10 mg/dL equal to or greater than the reference level,~~ the child's health care provider will obtain a ~~confirmatory test by venous sample~~ confirmatory testing.

(3) All health care providers shall notify the Childhood Lead Poisoning ~~and~~ Prevention Program of any blood lead level in a child up to 72 months of age ~~equal to or >10 µg/dL equal to or greater than the reference level~~ within 1 week and equal to or ~~greater than~~ > 20 µg/dL within 24 hours of having been notified of this result by the testing

laboratory; ~~the~~ The following information shall be provided when reporting: name, date of birth, sex, address, county of residence, type of sample (venous or capillary), blood lead level, health care provider ordering the test, laboratory identifiers, date the sample was collected and the date of analysis.

(4) ~~Upon notification of a blood lead level  $\geq 20$   $\mu\text{g}/\text{dL}$ , an environmental investigation and public health followup will be carried out by the Oklahoma State Department of Health. Any health care provider utilizing a point-of-care instrument to test blood lead samples is required to report all such results, regardless of the level, to the Childhood Lead Poisoning Prevention Program, and follow the guidelines for reporting as stated in 310:512-3-5(a) (relating to laboratory reporting).~~

(5) ~~On~~ Upon written notification of unsatisfactory specimens, the child's health care provider will obtain a repeat specimen.

(6) These reports shall be confidential and may be utilized only for the purpose of assuring service delivery, program administration, data analysis, and evaluation.

[OAR Docket #17-649; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 515. COMMUNICABLE DISEASE  
AND INJURY REPORTING**

[OAR Docket #17-648]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. Disease and Injury Reporting
- 310:515-1-1.1. Definitions [AMENDED]
- 310:515-1-2. Diseases to be reported [AMENDED]
- 310:515-1-3. Diseases to be reported immediately [AMENDED]
- 310:515-1-4. Additional diseases, conditions, and injuries to be reported [AMENDED]
- 310:515-1-6. Additional diseases may be designated [AMENDED]
- 310:515-1-7. Control of Communicable Diseases Manual [AMENDED]
- 310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and 63 O.S. §§ 1-502 and 1-503

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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Approved by Governor's declaration on June 13, 2017

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June 13, 2017

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October 1, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at sections 1-502 and 1-503. These sections authorize the Department to adopt such rules as it deems necessary to aid in the prevention and control of communicable disease and for establishing a system of reporting of cases of diseases. These changes amend the lists of reportable diseases in order to clarify those conditions and diseases that are required to be reported to the Department. The amendments add conditions of public health importance that require investigation and implementation of prevention activities. These changes minimally increase the reporting burden placed upon clinicians, have no impact on the reporting burden placed upon laboratories, and do not adversely affect the public health disease control and prevention activities.

The amendments remove the reference to a "non-versioned/non-codified" document which could further specify requirements of reporting. This change will eliminate any possibility of requirements that are not stated in rule. The duplicative requirements at OAC 310:515-1-4(3) (relating to occupational or environmental diseases) are amended by removing the requirements listed and adding a reference to the amended rules on reporting blood lead levels in OAC 310:512, Childhood Lead Poisoning Prevention Rules. Amendments change the current reporting guidance for hepatitis C to include persons of all ages, and lower the alanine aminotransferase (ALT) levels for reporting from 400 to 200. This modification is in accordance with the Council of State and Territorial Epidemiologists case definition for hepatitis C that was revised effective January 1, 2016. Lastly, the revisions more clearly specify which syphilis tests are required for reporting to the Department.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Kristy Bradley, State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail KristyB@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 1. DISEASE AND INJURY REPORTING**

**310:515-1-1.1. 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:

"AIDS" means Acquired Immunodeficiency Syndrome.

"Anti-HAV-IgM+" means a positive test result for the hepatitis A virus immunoglobulin M antibody.

"Anti-HBc-IgM+" means a positive test result for the hepatitis B core immunoglobulin M antibody.

"CD4" means cluster of differentiation 4 glycoprotein that serves as a receptor for HIV on T helper cells.

"Department" or "OSDH" means the Oklahoma State Department of Health.

"E. coli" means *Escherichia coli*.

"EIA" means enzyme immunoassay.

"HBsAg+" means a positive test result for the hepatitis B "e" antigen.

"HBsAg+" means a positive test result for the hepatitis B surface antigen.

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"HBV DNA+" means a positive test result for deoxyribonucleic acid of the hepatitis B virus.

"HIV" means Human Immunodeficiency Virus.

"PHIDDO" or "PHIDDO system" means Public Health Investigation and Disease Detection of Oklahoma system.

"NAT for HCV RNA+" means a nucleic acid amplification test with a positive test result for hepatitis C virus ribonucleic acid.

"Outbreak of disease" means two or more cases residing in different households that have a similar clinical syndrome of a potentially infectious disease, toxin, or agent of known or unknown etiology.

"RIBA" means recombinant immunoblot assay.

"S/co" means the signal-to-cut-off-ratio.

"Spp." is an abbreviation referring to the term "species," and is used to broaden the antecedent term in order to include all organisms that may be found or described within a given genus.

"Unusual disease or syndrome" means a case of an uncommon, possibly infectious disease of known or unknown etiology, even if laboratory testing may be pending or inconclusive, or if testing for common etiologies is negative. Such cases of disease may not normally be endemic to Oklahoma, may be an emerging or re-emerging disease, and/or represent diseases for which a public health intervention may be needed. Examples of such unusual diseases or syndromes include but are not limited to, unexplained adult respiratory distress syndrome, rash illness with atypical presentation, or an illness occurring along with an unusual pattern of illness or death among animals.

~~"VISA" means vancomycin intermediate *Staphylococcus aureus*.~~

~~"VRSA" means vancomycin resistant *Staphylococcus aureus*.~~

### 310:515-1-2. Diseases to be reported

The diseases listed in this Chapter must be reported, along with patient identifiers, demographics, and contact information, to the Department upon discovery as dictated in sections OAC 310:515-1-3 and OAC 310:515-1-4. ~~The current "Oklahoma Disease Reporting Manual" shall serve as the standard for disease specific diagnostic test results to be reported. Ancillary laboratory test results, signs, and symptoms must be reported upon request. The current edition of the "Oklahoma Disease Reporting Manual" may be accessed from the Acute Disease Service disease reporting and alerts web page of the OSDH web site at <http://IDReportingAndAlerts.health.ok.gov>. Laboratories having greater than 400 positive tests performed on-site per year for reportable diseases described in 310:515-1-3, 310:515-1-4(1) and 310:515-1-4(2), or as may be otherwise required to be reported by OSDH, shall begin electronic laboratory reporting no later than August 30, 2010 using secure electronic data transmission meaningful use standards.~~

### 310:515-1-3. Diseases to be reported immediately

The following diseases must be reported by any health practitioner or laboratory personnel to the OSDH electronically via the secure web-based Public Health Investigation and Disease Detection of Oklahoma system or by telephone (405-271-4060 or 800-234-5963) immediately upon suspicion, diagnosis, or testing ~~as specified in the "Oklahoma Disease Reporting Manual"~~.

- (1) Anthrax (*Bacillus anthracis*).
- (2) Bioterrorism - suspected disease.
- (3) Botulism (*Clostridium botulinum*).
- (4) Diphtheria (*Corynebacterium diphtheriae*).
- (5) Haemophilus influenzae invasive disease.
- (6) Hepatitis A (Anti HAV IgM+).
- (5) Free-living amebae infections causing primary amebic meningoencephalitis (*Naegleria fowleri*).
- ~~(7)~~ Hepatitis B during pregnancy (HBsAg+).
- ~~(8)~~ Measles (Rubeola).
- ~~(9)~~ Meningococcal invasive disease (*Neisseria meningitidis*).
- ~~(10)~~ Novel coronavirus.
- ~~(11)~~ Novel influenza A.
- ~~(12)~~ Outbreaks of apparent infectious disease.
- ~~(13)~~ Plague (*Yersinia pestis*).
- ~~(14)~~ Poliomyelitis.
- ~~(15)~~ Rabies.
- ~~(16)~~ Smallpox.
- ~~(17)~~ Tularemia (*Francisella tularensis*).
- ~~(18)~~ Typhoid fever (*Salmonella* Typhi).
- ~~(19)~~ Viral hemorrhagic fever.

### 310:515-1-4. Additional diseases, conditions, and injuries to be reported

The following diseases, conditions and injuries must be reported by physicians, laboratories, and hospitals (by infection control practitioners, medical records personnel, and other designees) to the OSDH as dictated in the following subsections:

- (1) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be submitted electronically via the PHIDDO system, telephoned, or submitted via secure electronic data transmission to the OSDH within one (1) working day (Monday through Friday, state holidays excepted) of diagnosis or positive test ~~as specified in the "Oklahoma Disease Reporting Manual"~~.
  - (A) Acid Fast Bacillus (AFB) positive smear. Report only if no additional testing is performed or subsequent testing is indicative of *Mycobacterium tuberculosis* Complex.
  - (B) AIDS (Acquired Immunodeficiency Syndrome).
  - (C) Anaplasma phagocytophilum infection.
  - ~~(D)~~ Arboviral infections (West Nile virus, St. Louis encephalitis virus, Eastern equine encephalitis virus, Western equine encephalitis virus, Powassan virus, California serogroup virus, chikungunya virus, Zika virus).
  - ~~(E)~~ Brucellosis (*Brucella* spp.).

- (~~EF~~) Campylobacteriosis (*Campylobacter* spp.).
- (~~FG~~) Congenital rubella syndrome.
- (~~GH~~) Cryptosporidiosis (*Cryptosporidium* spp.).
- (~~HI~~) Dengue Fever.
- (~~HJ~~) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*.
- (~~JK~~) Ehrlichiosis (*Ehrlichia* or *Anaplasma* spp.).
- (L) *Haemophilus influenzae* invasive disease.
- (M) Hantavirus infection, without pulmonary syndrome.
- (~~KN~~) Hantavirus pulmonary syndrome.
- (~~LO~~) Hemolytic uremic syndrome, postdiarrheal.
- (P) Hepatitis A (Anti-HAV-IgM+).
- (~~MQ~~) Hepatitis B. If HBsAg+, anti-HBc-IgM+, HBsAg+, or HBV DNA+ then report results of the entire hepatitis panel.
- (~~NR~~) Hepatitis C in persons ~~< or = 40 years or in persons~~ having jaundice or ALT > or = 400 ~~200~~ regardless of age with laboratory confirmation. If hepatitis C EIA is confirmed by NAT for HCV RNA, or signal-to-cut-off (s/co) ratio or index is predictive of a true positive then report results of the entire hepatitis panel.
- (~~OS~~) Human Immunodeficiency Virus (HIV) infection.
- (~~PT~~) Influenza associated hospitalization or death.
- (~~QU~~) Legionellosis (*Legionella* spp.).
- (~~RV~~) Leptospirosis (*Leptospira interrogans*).
- (~~SW~~) Listeriosis (*Listeria monocytogenes*).
- (~~TX~~) Lyme disease (*Borrelia burgdorferi*).
- (~~UY~~) Malaria (*Plasmodium* spp.).
- (~~VZ~~) Mumps.
- (~~WAA~~) Pertussis (*Bordetella pertussis*).
- (~~XBB~~) Psittacosis (*Chlamydophila psittaci*).
- (~~YCC~~) Q Fever (*Coxiella burnetii*).
- (~~ZDD~~) Rocky Mountain Spotted Fever (*Rickettsia rickettsii*).
- (~~AAEE~~) Rubella.
- (~~BBFF~~) Salmonellosis (*Salmonella* spp.).
- (~~CCGG~~) Shigellosis (*Shigella* spp.).
- (~~DD~~) ~~*Staphylococcus aureus* with reduced susceptibility to vancomycin (VISA or VRSA).~~
- (~~HH~~) Streptococcal disease, invasive, Group A (GAS) (*Streptococcus pyogenes*).
- (~~EEII~~) *Streptococcus pneumoniae* invasive disease, in persons less than 5 years of age.
- (~~FFJJ~~) Syphilis (*Treponema pallidum*). Nontreponemal and treponemal tests are reportable. If any syphilis test is positive, then all syphilis test results on the panel must be reported. For infants < or = 12 months, all syphilis tests ordered, regardless of test result, must be reported.
- (~~GGKK~~) Tetanus (*Clostridium tetani*).
- (~~HHLL~~) Trichinellosis (*Trichinella spiralis*).
- (~~HMM~~) Tuberculosis (*Mycobacterium tuberculosis*).
- (~~JNN~~) Unusual disease or syndrome.

- (~~KKOO~~) Vibriosis (*Vibrionaceae* family: *Vibrio* spp. (including cholera), *Grimontia* spp., *Photobacterium* spp., and other genera in the family).
- (~~LLPP~~) Yellow Fever.
- (2) **Infectious diseases.** Reports of infectious diseases and conditions listed in this subsection must be reported to the OSDH within one (1) month of diagnosis or test result as specified in the OSDH Disease Reporting Manual.
  - (A) CD4 cell count with corresponding CD4 cell count percentage of total (by laboratories only).
  - (B) Chlamydia infections (*Chlamydia trachomatis*).
  - (C) Creutzfeldt-Jakob disease.
  - (D) Gonorrhea (*Neisseria gonorrhoeae*).
  - (E) HIV viral load (by laboratories only).
- (3) **Occupational or Environmental diseases.** Laboratories ~~must report blood lead level results greater than 105 ug/dL within one (1) week and results less than 10 ug/dL within one (1) month and~~ health care providers must report blood lead level results pursuant to the requirements established in Title 310, Chapter 512, Childhood Lead Poisoning Prevention Rules ~~20 ug/dL or greater within twenty four (24) hours and results 10-19 ug/dL within one (1) week.~~
  - (4) **Injuries (hospitalized and fatal cases only).**
    - (A) Burns.
    - (B) Drownings and Near Drownings.
    - (C) Traumatic Brain Injuries.
    - (D) Traumatic Spinal Cord Injuries.

**310:515-1-6. Additional diseases may be designated**

The Commissioner of Health may designate any disease or condition as reportable for a designated period of time for the purpose of enhanced public health surveillance or special investigation.

**310:515-1-7. Control of Communicable Diseases Manual**

The OSDH adopts the most recently published edition of the publication, "Control of Communicable Diseases Manual," published by the American Public Health Association, as a guideline for the prevention and control of communicable diseases. ~~In order to determine the most recently published edition of the "Control of Communicable Diseases Manual," access the American Public Health Association web site at <https://secure.apha.org/source/orders/index.cfm>.~~

**310:515-1-8. Organisms/specimens to be sent to the Public Health Laboratory**

- (a) Isolates or appropriate specimens of the following organisms shall be sent to the OSDH Public Health Laboratory for typing.
  - (1) *Bacillus anthracis*.
  - (2) *Brucella* spp.
  - (3) Carbapenem-resistant *Enterobacteriaceae*.
  - (~~3~~4) *E. coli* O157, O157:H7, or a Shiga toxin producing *E. coli*.

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- (45) *Francisella tularensis*.
- (56) *Haemophilus influenzae* (sterile site).
- (67) *Listeria monocytogenes* (sterile site).
- (78) *Mycobacterium tuberculosis*.
- (89) *Neisseria meningitidis* (sterile site).
- (910) *Plasmodium* spp.
- (1011) *Salmonella* spp.
- (11) ~~*Staphylococcus aureus* that are VISA or VRSA~~
- (12) *Vibrionaceae* family (*Vibrio* spp., *Grimontia* spp., *Photobacterium* spp. and other genera in the family).
- (13) *Yersinia* spp.

(b) Following consultation with an OSDH epidemiologist, clinical specimens from suspected cases of Botulism must be sent to the OSDH Public Health Laboratory for referral and testing.

[OAR Docket #17-648; filed 7-13-17]

## TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 599. ZOO NOTIC DISEASE CONTROL

[OAR Docket #17-647]

### RULEMAKING ACTION:

PERMANENT final adoption

### RULES:

- Subchapter 1. General Provisions
- 310:599-1-2. Definitions [AMENDED]
- Subchapter 3. Rabies Control
- 310:599-3-1. Management of dogs, cats, or ferrets that bite a person [AMENDED]
- 310:599-3-2. Supervising veterinarian's responsibility [AMENDED]
- 310:599-3-5. Vaccinated domestic animals exposed to a rabid animal [AMENDED]
- 310:599-3-6. Unvaccinated domestic animals exposed to a rabid animal [AMENDED]
- 310:599-3-9. Administration of rabies vaccine [AMENDED]

### AUTHORITY:

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and Title 63 O.S. § 1-508

### SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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Approved by Governor's declaration on June 13, 2017

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n/a

### INCORPORATIONS BY REFERENCE:

n/a

### GIST/ANALYSIS:

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-508. This section authorizes the State

Board of Health to adopt such rules as it deems necessary for the quarantine, isolation, impounding, immunization and disposal of an animal to prevent and control any zoonotic disease. These amendments update Subchapter 3, Rabies Control, to align with new scientific findings which indicate that dogs and cats with an out-of-date rabies vaccination status that are exposed to a rabid animal can be effectively managed by immediate vaccination booster and observation for 45 days similar to the method currently in place for management of currently vaccinated dogs, cats and ferrets that are exposed to a rabid animal. Minor revisions to the rules were made to update sections for alignment with current national guidance on animal rabies control and changes in animal rabies vaccine products.

### CONTACT PERSON:

Information regarding this rule may be obtained by contacting Kristy Bradley, State Epidemiologist, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207; phone (405) 271-7637, e-mail KristyB@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

## SUBCHAPTER 1. GENERAL PROVISIONS

### 310:599-1-2. Definitions

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"**Animal**" means any warm-blooded mammal.

"**Cat**" means any *Felis catus*.

"**Currently vaccinated**" means properly immunized by or under the supervision of a licensed veterinarian with an antirabies vaccine licensed and approved by the United States Department of Agriculture for use in that animal species, or meeting conditions specified in OAC 310:599-3-8. Vaccine must have been given at appropriate time interval(s) for the age of the animal and type of vaccine administered. Within 28 days after initial vaccination, a peak rabies antibody titer is expected, and the animal is considered immunized. Regardless of the age of the animal at initial vaccination, a booster vaccination should be administered one year later, then at appropriate time intervals based on the type of vaccine administered.

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

"**Department designee**" means an employee of the Oklahoma State Department of Health, or a county health department, who is acting within their scope of rabies control authority designated through the Commissioner of Health.

"**Dog**" means any *Canis familiaris*, excluding hybrids.

"**Domestic animal**" means a companion animal including dogs, cats, and ferrets; an equine animal; or a livestock animal.

"**Euthanize**" means the humane killing of an animal generally performed by a veterinarian, or personnel at an animal control facility under the indirect supervision of a veterinarian.

"**Exposure to rabies**" means a bite or introduction of saliva or neural tissue into open cuts in skin, or onto mucous membranes ~~physical contact with the saliva or other potentially~~

infectious tissues from by an animal confirmed or suspected of being infected with rabies.

"**Ferret**" means any *Mustela putorius furo*.

"**First party ownership**" means a situation where the owner of a biting animal is directly related to the bite victim, that is parent-child, sibling-sibling, grandparent-child; or when the legal residence of the animal owner and the bite victim are the same.

"**Home quarantine**" means confinement and observation of an animal allowed at the animal owner's property for a specified time period, where one of the following acceptable methods of confinement for a dog are used: (a) complete indoor housing, (b) caging or kenneling in an enclosure with a securely latched door, or (c) yard confinement with perimeter fencing that the dog is unable to climb over or dig under. Acceptable methods of confinement for a cat or ferret are: (a) complete indoor housing, or (b) caging in an enclosure that prevents escape. The animal's needs for ambient temperature control, water, nutrition, elimination, and space to comfortably stand up and lie down must be adequately provided by the selected confinement method. Should the animal exhibit neurologic signs, die, or disappear during the specified period, an Oklahoma licensed veterinarian and the Department shall be immediately notified.

"**Hybrid**" means an offspring of wild animals crossbred to domestic dogs or cats; considered to be wild animals in the enforcement of OAC 310:599.

"**Quarantine**" means physical confinement of an animal during a specified time period when the animal is monitored for the development of disease. During this time period, the animal is prevented from having contact with other animals, and human contact is limited to as few caretakers as possible.

"**Rabies**" means an acute disease of humans and warm-blooded mammals caused by the rabies virus (genus *Lyssavirus*) that affects the central nervous system and is almost always fatal.

"**Recognized animal control facility**" means any facility operating for the purpose of stray animal control and/or animal welfare that is under contract or letter of agreement which identifies a licensed veterinarian responsible for animal quarantines.

"**Recognized zoological park**" means any member of the American Association of Zoological Parks.

"**Severe injury**" means any physical injury that results in broken bones or lacerations requiring multiple sutures or cosmetic surgery. [4 O.S. Supp. 1991, § 44 (3)]

"**Wild animal**" means an animal considered as wildlife; any animal not normally adapted to live in intimate association with humans nor raised for consumption by humans.

"**Zoonotic disease**" means a disease that is transmissible from animals to humans under natural conditions.

**SUBCHAPTER 3. RABIES CONTROL**

**310:599-3-1. Management of dogs, cats, or ferrets that bite a person**

(a) Any person or entity owning, harboring, or keeping a dog, cat or ferret which in the preceding ten (10) days has bitten any person, shall upon receipt of written notice by the local animal control authority or Department designee, place such animal in quarantine under the supervision of a licensed veterinarian for a period of ten (10) days from the date the person was bitten. The impoundment and observation of the dog, cat, or ferret shall be conducted at the veterinarian's facility, or a recognized animal control facility. Unvaccinated animals shall be vaccinated against rabies on the final day of the ten (10) day observation period prior to discharge from the veterinarian's supervision.

(b) Exceptions to this rule include the following circumstances:

(1) Dogs, cats, or ferrets involved in a first party ownership may be allowed to be placed in a home quarantine for a ten (10) day period immediately following the bite.

(2) Dogs, cats, and ferrets meeting the criteria of currently vaccinated against rabies, and not inflicting a severe injury, shall be placed in a home quarantine until the end of a 10 day period from the bite. In some instances, a certification of animal health obtained after examination by a licensed veterinarian on the tenth day may be required by the Department or local animal control authority.

(3) Animals in service to the blind or hearing-impaired, and search and rescue dogs or other animals used for police enforcement duties shall be exempt from the quarantine when a bite exposure occurs and proper record of immunization against rabies is presented. A certification of animal health obtained after examination by a licensed veterinarian at the end of 10 days may be required by the Department.

(4) Stray or unwanted dogs, cats, or ferrets that have bitten any person may either be quarantined for ten (10) days at a veterinary facility or a recognized animal control facility; or immediately euthanized and the brain tissue submitted to the Oklahoma State Department of Health Public Health Laboratory for rabies testing. Upon successful completion of the ten (10) day period, a stray animal may be placed for adoption at the discretion of the animal control authority.

(5) Dogs, cats, and ferrets that bite a veterinarian or staff member under their supervision during a routine examination or elective procedure may be considered eligible for home quarantine if the bite victim and owner agree the animal will be examined by a licensed veterinarian at the end of the ten (10) day period from the bite to confirm the animal's health status.

~~(5)~~ In rare instances, other good and valid health reasons of the owner or animal may be considered for justification to home quarantine (e.g., a bitch with a litter of very young puppies, an animal with a contagious disease, etc.). Approval for home quarantine will be determined by the Department or its ~~its~~ designee.

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### 310:599-3-2. Supervising veterinarian's responsibility

It shall be the duty of the veterinarian in whose supervision the dog, cat, or ferret is placed to keep the animal isolated and secured in a separate cage or kennel and under observation for any symptoms of rabies. The veterinarian shall report immediately to the Department designee any changes occurring in the condition of the dog, cat, or ferret. In the event the animal being observed dies, or develops rabies-like symptoms within the specified period of confinement, the head of the animal shall be removed immediately and packed in a shipping container in accordance with instructions published on the rabies laboratory form, ODH Form 460, and sent to the Oklahoma State Department of Health Public Health Laboratory, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73117-1299, for rabies testing.

### 310:599-3-5. Vaccinated domestic animals exposed to a rabid animal

Any domestic animal which is currently vaccinated against rabies and is exposed to a rabid animal shall be re-vaccinated within three (3) days of notification and isolated, by leashing or confinement under the owner's supervision, for a period of at least forty-five (45) days from exposure date.

### 310:599-3-6. Unvaccinated domestic animals exposed to a rabid animal

(a) Any dog, cat, or ferret ~~which is not currently~~ that has never been vaccinated against rabies and is exposed to a rabid animal shall be:

(1) Euthanized immediately either by a veterinarian of the owner's choice, or the local animal control officer ~~or his/her agent; or~~

(2) Placed in strict quarantine and observed for a period of ~~four (4) months for dogs and cats~~ or six (6) months ~~for ferrets~~ under the supervision of a licensed veterinarian, either at a veterinary facility or a recognized animal control facility. The exposed animal shall be immediately vaccinated against rabies upon entry into quarantine and then given booster vaccinations at the third and eighth week of the quarantine period. Animals less than 16 weeks of age at the time of entry into quarantine may be required to receive a booster vaccine in addition to the above protocol.

(b) Any dog or cat that is overdue for a booster vaccination, and has documentation of receiving a USDA-licensed rabies vaccine at least once previously by or under the supervision of a licensed veterinarian, shall be re-vaccinated and isolated, by leashing or confinement under the owner's supervision, for a period of at least 45 days from exposure date. Ferrets that are overdue for rabies booster vaccination shall be evaluated on a case-by-case basis by the Department, taking into consideration factors such as the severity of exposure, time elapsed since last vaccination, number of previous vaccinations, and current health status to determine the need for euthanasia or immediate booster vaccination and isolation for a period of at least 45 days from exposure date.

(c) Any dog or cat that is overdue for a booster vaccination and without appropriate documentation of having received a USDA-licensed rabies vaccine at least once by or under the supervision of a licensed veterinarian shall be:

(1) Treated as unvaccinated by the Department and either euthanized as described in (a) of this section; or

(2) Immediately given a booster vaccination and placed in strict quarantine for a period of four months under the supervision of a licensed veterinarian; or

(3) Prior to booster vaccination, the owner may work with the licensed veterinarian to conduct prospective serologic monitoring. Serologic monitoring shall include collecting paired blood samples to document prior vaccination by providing evidence of an anamnestic response to booster vaccination. If an adequate anamnestic response is documented, the animal can be considered to be overdue for booster vaccination as described in (b) of this section. If there is inadequate anamnestic response, the animal is considered to have never been vaccinated and managed as described in (a) of this section.

(d) Any livestock or equine animal which is not currently vaccinated and is exposed to a rabid animal will be managed according to the most current Compendium of Animal Rabies Control published by the National Association of State Public Health Veterinarians, Inc. and any State Department of Agriculture guidelines that may apply.

### 310:599-3-9. Administration of rabies vaccine

(a) It is prohibited for anyone to administer rabies vaccine to any animal unless said vaccine is licensed for use in the particular animal species in question. Exceptions to this include:

(1) The vaccination of wolf-dog hybrids with a rabies vaccine approved for dogs; or

(2) Use at recognized nonprofit zoological parks, or research institutions; or

(3) Special approval by the Commissioner of Health permitting the vaccination in a particular species where the preponderance of scientific literature suggests vaccine efficacy, and vaccine usage is determined to protect public health and safety.

(b) Animals vaccinated per these exceptions will still be considered as a wild animal species if involved in a bite to a person, and will be handled according to OAC 310:599-3-4.

(c) Rabies vaccines presently licensed are listed in the most current Compendium of Animal Rabies Control published annually by the National Association of State Public Health Veterinarians. ~~Copies shall be available from the Communicable Disease Division, Oklahoma State Department of Health, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73117-1299.~~

[OAR Docket #17-647; filed 7-13-17]

**TITLE 310. OKLAHOMA STATE  
DEPARTMENT OF HEALTH  
CHAPTER 615. AMBULATORY SURGICAL  
CENTERS**

[OAR Docket #17-646]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 1. General Provisions
- 310:615-1-3. General considerations [AMENDED]
- 310:615-1-3.1. Submission of plans and specifications and related requests for services [AMENDED]
- 310:615-1-3.2. Preparation of plans and specifications [AMENDED]
- 310:615-1-5. Self-certification of plans [NEW]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104 and 63 O.S. Section 1-106.1; and 63 O.S. Section 2662.

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 23, 2016

**COMMENT PERIOD:**

December 15, 2016 through January 17, 2017

**PUBLIC HEARING:**

January 17, 2017

**ADOPTION:**

February 14, 2017

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 24, 2017

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 13, 2017

**FINAL ADOPTION:**

June 13, 2017

**EFFECTIVE:**

October 1, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

**Incorporated standards:**

Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition.

National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

**Incorporating rules:**

310:615-1-3

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

**GIST/ANALYSIS:**

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-106.1. This section authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 2662 of the Public Health Code authorizes the State Board of Health to adopt rules necessary to insure that the quality of medical care in ambulatory surgical centers is the same as that required in hospitals licensed in the State of Oklahoma. These changes amend physical plant requirements in Subchapter 1 by updating references to the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition, and the Life Safety Code adopted by the Centers for Medicare & Medicaid Services on July 5, 2016. Added are criteria and a process for ambulatory surgical centers to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements.

The amendments revise the requirements for stage one, stage two, and special construction plan submittals, and give ambulatory surgical centers the option to move directly to stage two plan submittal. The changes set fees

for related services including review of temporary waivers and applications for self-certification; establish a process to ensure timely review of design and construction documents; and, establish requirements and a process for ambulatory surgical centers to self-certify compliance of their plans for certain types of projects.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, or by e-mail to LeeM@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 1. GENERAL PROVISIONS**

**310:615-1-3. General considerations**

(a) **Narrative program.** ~~The sponsor for each ambulatory surgical center shall provide a narrative program which describes the functional requirements, staffing patterns, departmental relationships, and other basic information relating to the fulfillment of the institution's objectives.~~

(b) **Services.** ~~Ambulatory surgical centers shall contain but not be limited to all the elements described herein, or the narrative program shall indicate the manner in which the services are to be made available to the ambulatory patient. When services are to be shared or purchased, appropriate modifications or deletions in space and equipment requirements should be made to avoid duplication. Each element provided in the ambulatory surgical center must meet the requirements outlined herein as a minimum, with the understanding that in some instances the elements will need to be expanded to fulfill the program requirements.~~

(c) **Location.** ~~An ambulatory surgical center may be located within a hospital setting, but it may be located apart from a hospital.~~

(d) **Size.** ~~The number and types of clinical facilities to be provided will be determined by the services contemplated and the estimated patient load as described in the narrative program.~~

(e) **Applicable requirements.** ~~If the facility is an integral part of the hospital and is intended to accommodate hospital inpatients as well as outpatients, the applicable requirements relating to general hospital facilities shall apply. If an ambulatory surgical center is not part of a hospital building, the facilities listed herein shall be provided unless they are available for convenient use by the patients in an associated health facility.~~

(f) **Privacy for patient.** ~~The planning of ambulatory surgical centers shall provide for the privacy and dignity of the patient during interview, examination, and treatment. The facilities shall be located so that ambulatory patients do not traverse inpatient areas.~~

(g) **Parking.** ~~In the absence of a formal parking study, off-street vehicle parking for ambulatory surgical centers shall be provided at the ratio of two spaces for each recovery bed plus~~

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sufficient parking spaces to accommodate the maximum number of staff on duty at one time. Exceptions may be made with approval of the appropriate State agency for facilities located in areas with a high population density if adequate public parking is available or if the facility is accessible to a public transportation system.

(h) **Environmental pollution control.** In accordance with the National Environmental Policy Act, the site and project shall be developed to minimize any adverse environmental effects on the neighborhood and community.

(i) **Equipment.** All equipment necessary for the operation of the facility as planned shall be shown on the drawings or equipment list.

(a) The following national standards are incorporated by reference:

(1) Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition; and

(2) National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

(b) Oklahoma statutes prevail if there is conflict between the FGI Guidelines and Oklahoma statutes. For Medicare-certified ambulatory surgical centers, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(c) An ambulatory surgical center may submit a request for exception or temporary waiver if the FGI Guidelines create an unreasonable hardship, or if the design and construction for the ambulatory surgical center property offers improved or compensating features with equivalent outcomes to the FGI Guidelines.

(d) The Department may permit exceptions and temporary waivers of the FGI Guidelines if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 2657 et seq., this Chapter, and the following:

(1) Any ambulatory surgical center requesting an exception or temporary waiver shall apply in writing on a form provided by the Department and pay the exception to or temporary waiver of FGI Guidelines fee set in OAC 310:615-1-3.1. The form shall include:

(A) The FGI Guidelines section(s) for which the exception or temporary waiver is requested;

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

(C) The specific relief requested; and

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

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

(A) Compliance with 63 O.S. Section 2657 et seq.;

(B) The level of care provided;

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

(D) Alternative policies or procedures proposed; and

(E) Compliance history with provisions of the FGI Guidelines, Life Safety Code and this Chapter.

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

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

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

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

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.

(e) Documentation of the ambulatory surgical center governing body's approval of the functional program shall be sufficient to meet the requirements in this Chapter relating to Department approval of the functional program.

### 310:615-1-3.1. Submission of plans and specifications and related requests for services

(a) **Submission of Plans.** Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the Oklahoma State Department of Health for review and approval as provided in OAC 310:615-1-3.2 or 310:615-1-5.

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

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

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

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

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

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

- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of, or modifications to, any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.
- (2) Plans and specifications are not required for the following alterations:
  - (A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
  - (B) Ordinary repairs and maintenance;
  - (C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
  - (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.
- (b) **Fees.** Each construction project ~~submission~~ submitted for approval under OAC 310:615-1-3.2 shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Review fees are as follows:
  - (1) Project cost less than \$10,000.00: \$250.00 Fee
  - (2) Project cost \$10,000.00 to \$50,000.00: \$500.00 Fee
  - (3) Project cost \$50,000.00 to \$250,000.00: \$1000.00 Fee
  - (4) Project cost \$250,000.00 to \$1,000,000.00: \$1500.00 Fee
  - (5) Project cost greater than \$1,000,000.00: \$2000.00 Fee
- (c) **Fees when greater than two (2) submittals required.** The review fee shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee based on the cost of the project shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.
- (d) **Review process.** ~~All construction project submittals~~ Design and construction plans and specifications shall be reviewed ~~within 45 calendar days of receipt by the Oklahoma State Department of Health~~ in accordance with the following process.
  - (1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to determine if the filed application is administratively complete
    - (A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall

- indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.
  - (B) Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.
  - (2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.
    - (A) The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.
    - (B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified
    - (C) An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.
    - (D) Extensions may be made as provided by law.
  - (e) **Fees for other services.** Fees for other services related to construction projects are as follows:
    - (1) Request for exception to, or temporary waiver of, FGI Guidelines fee: Five Hundred Dollars (\$500.00);
    - (2) Application for self-certification fee: One Thousand Dollars (\$1,000.00);
    - (3) Courtesy inspection, prior to final inspection for approval of occupancy, fee: Five Hundred Dollars (\$500.00);
    - (4) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight staff hours or major fraction thereof. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.
- 310:615-1-3.2. Preparation of plans and specifications**
- (a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information ~~to establish~~ for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including

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the basement. An ambulatory surgical center has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents.

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

(c) **Special submittals.**

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

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

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

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

(A~~i~~) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(B~~ii~~) Complete architectural plans and specifications.

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

(D~~iv~~) Equipment and furnishings.

(2) ~~**Automatic sprinkler systems.** At least two (2) sets of sprinkler system show drawings, specifications, and calculations (if applicable), prepared by the installer, shall be submitted to the Office of the State Fire Marshal for review and approval prior to installation of the proposed system in the project.~~

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

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

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

### **310:615-1-5. Self-certification of plans**

(a) The Department shall make available professional consultation and technical assistance services covering the requirements of this section to an ambulatory surgical center considering self-certification of plans. The consultation and technical assistance is subject to the fee for professional consultation and technical assistance services set in OAC 310: 310:615-1-3.1. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The ambulatory surgical center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The ambulatory surgical center and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with a self-certification application fee set in OAC 310: 310:615-1-3.1. The form shall be signed by the ambulatory surgical center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:615-1-5(c).

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

(1) The project involves any portion of the ambulatory surgical center where patients are intended to be examined or treated and the total of design and construction cost is five million dollars (\$5,000,000.00) or less; or

(2) The project involves only portions of the ambulatory surgical center where patients are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The ambulatory surgical center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

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

(D) Withdraw approval based on the failure of the ambulatory surgical center or project architect or engineer to comply with the requirements of this Chapter; and

(5) The ambulatory surgical center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

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

(e) After denial of the application for self-certification and prior to the start of construction, the ambulatory surgical center shall pay the applicable fee for plan review specified in OAC 310: 310:615-1-3.1. Upon receipt of the plan review fee, the Department shall review the ambulatory surgical center's plans in accordance with the process in 310:615-1-3.1.

[OAR Docket #17-646; filed 7-13-17]

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

[OAR Docket #17-645]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

- Subchapter 7. Physical Plant Design
- 310:663-7-3. Submission of plans and specifications and related requests for services [NEW]
- 310:663-7-4. Preparation of plans and specifications [NEW]
- 310:663-7-5. Self-certification of plans [NEW]
- 310:663-7-6. Exceptions and temporary waivers [NEW]
- Subchapter 15. Resident Rights and Responsibilities
- 310:663-15-4. Prohibited restrictions and fees [NEW]
- Subchapter 19. Administration, Records and Policies
- 310:663-19-1. Incident reports [AMENDED]

**AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. Section 1-104, 63 O.S. Section 1-106.1; 63 O.S. Section 1-890.3, and 63 O.S. Section 1-890.3(A)(8)

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

September 8, 2016 and November 23, 2016

**COMMENT PERIOD:**

October 3, 2016 through November 3, 2016 and December 15, 2016 through January 17, 2017

**PUBLIC HEARING:**

November 3, 2016 and January 17, 2017

**ADOPTION:**

February 14, 2017

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 24, 2017

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 13, 2017

**FINAL ADOPTION:**

June 13, 2017

**EFFECTIVE:**

October 1, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

These amendments are enacted pursuant to authority found in Title 63 of the Public Health Code at section 1-106.1. This section authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-890.3 of the Public Health Code authorizes the State Board of Health to adopt rules necessary to implement the provisions of the Continuum of Care and Assisted Living Act. This authorization includes requirements for the physical plant to meet construction and life safety codes. These changes amend construction and physical plant requirements in Subchapter 7. The changes require submittal of plans and specifications for new buildings or major alterations; establishes fees for review of design and construction plans and specifications; sets fees for related services including

review of temporary waivers and applications for self-certification; establishes a process to ensure timely review of design and construction documents; and establishes requirements and a process for assisted living centers to self-certify compliance of their plans for certain types of projects. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give assisted living centers the option to move directly to the stage two plan submittal. Added are criteria and a process for assisted living centers to request exceptions and temporary waivers of the requirements of this Chapter to allow for design or construction techniques that represent innovations or improvements.

Section 310:663-15-4 is added as new rule to address requirements in statute related to a resident's freedom of choice in physician and pharmacist and prohibits any financial penalty or fee for their choice. This change enacts the authorizing statute at Title 63 O.S. Section 1-890.3(A)(8). The change amends section 310:663-19-1 to reduce the unnecessary reporting of certain incidents.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Michael Cook, Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, or by e-mail to MikeC@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 7. PHYSICAL PLANT DESIGN**

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

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

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

- (A) Changes that affect path of egress;**
- (B) Change of use or occupancy;**
- (C) Repurposing of spaces;**
- (D) Structural modifications;**
- (E) Heating, ventilation and air conditioning (HVAC) modifications;**
- (F) Electrical modifications that affect the essential electrical system;**
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;**
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;**
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;**
- (J) Replacement of or modifications to any required magnetic or radiation shielding;**
- (K) Changes to or addition of any egress control devices or systems.**

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

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- (A) Painting, papering tiling, carpeting, cabinets, counter tops and similar finish work provided that the new finishes shall meet the requirements of this Chapter;
- (B) Ordinary repairs and maintenance;
- (C) Modifications to nurse call or other signaling/communication/information technology systems provided the modifications meet the requirements of this Chapter; or
- (D) Replacement of fixed or moveable medical equipment that does not affect electrical, HVAC, or shielding requirements noted above.
- (b) **Fees.** Each construction project submission shall be accompanied by the appropriate review fee based on the cost of design and construction of the project. Fees for plan and specification reviews and related Department services are as follows:
- (1) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars (\$50.00) and a maximum fee of One Thousand Dollars (\$1,000.00);
- (2) Request for exception or temporary waiver fee: Five Hundred Dollars (\$500.00);
- (3) Application for self-certification fee: Five Hundred Dollars (\$500.00);
- (4) Courtesy construction inspection fee: Five Hundred Dollars (\$500.00);
- (5) Professional consultation or technical assistance fee: Five Hundred Dollars (\$500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.
- (c) **Fees when greater than two (2) submittals required.** The fee for review of design and construction plans and specifications shall cover the cost of review for up to two (2) stage one and two (2) stage two submittals and one final inspection. If a stage one or stage two submittal is not approved after two (2) submissions, another review fee shall be required with the third submittal. Fast-track projects shall be allowed two reviews for each package submitted. If a fast-track stage package is not approved after the second submittal, another review fee based on the cost of the project shall be required with the third submittal of the package.
- (d) **Review process.** Design and construction plans and specifications shall be reviewed in accordance with the following process.
- (1) Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete
- (A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for

specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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

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

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

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

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

(D) Extensions may be made as provided by law.

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

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

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

(c) **Special submittals.**

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

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

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

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

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

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

(iv) Equipment and furnishings.

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

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

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

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

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

(b) The assisted living center and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The assisted living center and the project architect or engineer submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:663-7-3. The form shall be signed by the assisted living center and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:665-7-5(c).

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

(1) The project involves any portion of the assisted living center where residents are intended to be examined or treated and the total cost of design and construction is two million five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the assisted living center where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The assisted living center owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

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

(D) Withdraw approval based on the failure of the assisted living center or project architect or engineer to comply with the requirements of this Chapter; and

(5) The assisted living center agrees to make changes required by the Department to bring the construction project into compliance with this Chapter.

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

(e) After denial of the application for self-certification and prior to the start of construction, the assisted living center shall pay the applicable fee for plan review specified in OAC 310:663-7-3. Upon receipt of the plan review fee, the Department shall review the assisted living center's plans in accordance with the process in OAC 310:663-7-3.

**310:663-7-6. Exceptions and temporary waivers**

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

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

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

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

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

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- (B) Reason(s) for requesting an exception or temporary waiver;
  - (C) The specific relief requested; and
  - (D) Any documentation which supports the application for exception.
- (2) In consideration of a request for exception or temporary waiver, the Department shall consider the following:
- (A) Compliance with 63 O.S. Section 1-1901 et seq.;
  - (B) The level of care provided;
  - (C) The impact of an exception on care provided;
  - (D) Alternative policies or procedures proposed; and
  - (E) Compliance history with provisions of this Chapter.
- (3) The Department shall permit or disallow the exception or waiver in writing within forty-five (45) calendar days after receipt of the request.
- (4) If the Department finds that a request is incomplete, the Department shall advise the assisted living center in writing and offer an opportunity to submit additional or clarifying information. The applicant shall have thirty (30) calendar days after receipt of notification to submit additional or clarifying information in writing to the Department of Health, or the request shall be considered withdrawn.
- (5) An assisted living center which disagrees with the Department's decision regarding the exception or temporary waiver may file a written petition requesting relief through an individual proceeding pursuant to OAC 310:2 (relating to Procedures of the State Department of Health).
- (6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the assisted living center is operating in violation of the exception or temporary waiver, or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.
- (7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and centers and the public.

### SUBCHAPTER 15. RESIDENT RIGHTS AND RESPONSIBILITIES

#### **310:663-15-4. Prohibited restrictions and fees**

*Residents shall have the freedom of choice regarding any personal attending physicians and all other providers of medical services and supplies without a financial penalty or fee charged by the assisted living center [Title 63 O.S. Section 1-890.3 (A)(8)].*

### SUBCHAPTER 19. ADMINISTRATION, RECORDS AND POLICIES

#### **310:663-19-1. Incident reports**

- (a) **Timeline for reporting.** All reports to the Department shall be made ~~via facsimile or by telephone~~ within one (1) Department business day of the reportable incident's discovery. A follow-up report of the incident shall be submitted ~~via facsimile or mail~~ to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department when the full investigation is complete, not to exceed ten (10) Department business days after the incident. Notifications to the Nurse Aide Registry using the ODH Form 718 must be made within one (1) Department business day of the reportable incident's discovery.
- (b) **Incidents requiring report.** Each continuum of care facility and assisted living center shall prepare a written incident report for the following incidents:
- (1) allegations and incidents of resident abuse;
  - (2) allegations and incidents of resident neglect;
  - (3) allegations and incidents of misappropriation of resident's property;
  - (4) accidental fires and fires not planned or supervised by facility staff, occurring on the licensed real estate;
  - (5) storm damage resulting in relocation of a resident from a currently assigned room;
  - (6) deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes;
  - (7) residents missing from the assisted living center upon determination by the assisted living
  - (8) utility failure for more than 4 ~~eight~~ (8) hours;
  - (9) incidents occurring at the assisted living center, on the assisted living center grounds or during assisted living center sponsored events, that result in fractures, ~~head injury or require~~ injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid;
  - (10) reportable diseases and injuries as specified by the Department in OAC 310:515 (relating to communicable disease and injury reporting); and,
  - (11) situations arising where a criminal act is suspected. Such situations shall also be reported to local law enforcement.
- (c) **Incidents involving another provider.** Each continuum of care facility and assisted living center shall promptly refer incidents involving another provider, including a hospice or home health agency, to the certification or licensure agency having jurisdiction over the provider.
- (d) **Reports to the Department.** Each assisted living center shall report to the Department those incidents specified in 310:663-19-1(b). An assisted living center may use the Department's Long Term Care Incident Report Form.
- (e) **Licensing boards.** Each assisted living center shall report allegations and incidents of resident abuse, neglect, or misappropriation of resident's property by licensed personnel to the appropriate licensing board within five (5) business days.
- (f) **Notification of nurse aide registry.** Each continuum of care facility and assisted living center shall report allegations and occurrences of resident abuse, neglect, or misappropriation of resident's property by a nurse aide to the Nurse Aide Registry by submitting a completed "Notification of Nurse Aide Abuse,

Neglect, Mistreatment or Misappropriation of Property" form (ODH Form 718), which requires the following:

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

(g) Content of incident report.

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

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

[OAR Docket #17-645; filed 7-13-17]

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 667. HOSPITAL STANDARDS

[OAR Docket #17-642]

RULEMAKING ACTION: PERMANENT final adoption

- RULES:
Subchapter 41. General Construction Provisions
310:667-41-1. General [AMENDED]
Subchapter 47. Submittal Requirements
310:667-47-1. Submission of plans and specifications and related requests for services [AMENDED]
310:667-47-2. Preparation of plans and specifications [AMENDED]
310:667-47-10. Self-certification of plans [NEW]

AUTHORITY: Oklahoma State Board of Health; Title 63 O.S. § 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-705; and 63 O.S. Section 1-707.

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY: November 23, 2016

COMMENT PERIOD: December 15, 2016 through January 17, 2017

PUBLIC HEARING: January 17, 2017

ADOPTION: February 14, 2017

SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE: February 24, 2017

APPROVED BY GOVERNOR'S DECLARATION: Approved by Governor's declaration on June 13, 2017

FINAL ADOPTION: June 13, 2017

EFFECTIVE: October 1, 2017

SUPERSEDED EMERGENCY ACTIONS: n/a

INCORPORATIONS BY REFERENCE: Incorporated standards:

Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition. National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

Incorporating rules: 310:667-41-1

Availability:

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

GIST/ANALYSIS:

Title 63 of the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Sections 1-705 and 1-707 of the Public Health Code authorize the State Board of Health to promulgate rules for the construction and operation of hospitals and for the review of plans and the assessment of fees for plan review.

The physical plant requirements in Subchapter 41 are amended by updating references to the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition, and the Life Safety Code adopted by the Centers for Medicare & Medicaid Services on July 5, 2016. Added are criteria and a process for hospitals to request exceptions and temporary waivers of the requirements of this Chapter for design or construction techniques that represent innovations or improvements.

Subchapter 47 is updated by revising the requirements for stage one, stage two, and special construction plan submittals, and by giving hospitals the option to move directly to stage two plan submittal. The proposal sets fees for related services including review of temporary waivers and applications for self-certification. The proposal establishes a process to ensure timely review of design and construction documents. The proposal establishes requirements and a process for hospitals to self-certify compliance of their plans for certain types of projects.

CONTACT PERSON:

Information regarding this rule may be obtained by contacting Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, or by e-mail to LeeM@health.ok.gov.

PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:

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## SUBCHAPTER 41. GENERAL CONSTRUCTION PROVISIONS

### 310:667-41-1. General

(a) These requirements are intended as minimum standards for constructing and equipping hospital and specialized hospital projects. For brevity and convenience these standards are presented in "code language". Use of words such as "shall" is mandatory. Insofar as practical, these standards relate to desired performance or results or both. Details of construction and engineering are assumed to be part of good design practice and local building regulations. Design and construction shall conform to the requirements of these standards. Requirements set forth in these standards shall be considered as minimum. For aspects of design and construction not included, local governing building codes shall apply. Where there is no local governing building code, the prevailing model code used within the geographic area is hereby specified for all requirements not otherwise specified in these standards. (See OAC 310:667-41-4(b) for wind and seismic local requirements.) Where American Society of Civil Engineers (ASCE 9-72) is referenced, similar provisions in the model building code are considered substantially equivalent.

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

(c) Some projects may be subject to the regulations of several different programs, including those of other state agencies, local agencies, and federal authorities. While every effort has been made for coordination, individual project requirements shall be verified, as appropriate.

(d) The Centers for Medicare & Medicaid Services (CMS), which is responsible for Medicare and Medicaid reimbursement, has adopted the National Fire Protection Association 101 Life Safety Code (NFPA 101). To ensure non-conflicting requirements, the 2000 version of this code is hereby adopted by the Department and all new construction shall comply with that code. Existing construction may continue to comply with the version of NFPA 101 for which construction was approved.

(e) The health care provider shall supply for each project a functional program for the facility that describes the purpose of the project, the projected demand or utilization, staffing patterns, departmental relationships, space requirements, and other basic information relating to fulfillment of the institution's objectives. This program shall include a description of each function or service; the operational space required for each function; the quantity of staff or other occupants of the various spaces; the numbers, types, and areas (in net square feet) of all spaces; the special design features; the systems of operation; and the interrelationships of various functions and spaces. The functional program shall include a description of those services necessary for the complete operation of the facility and shall also include the Infection Control Risk Assessment (ICRA). Services available elsewhere in the institution or community need not be duplicated in the facility. The functional program shall also address the potential future expansion

of essential services which may be needed to accommodate increased demand. The approved functional program shall be available for use in the development of project design and construction documents.

(f) An ICRA is a determination of the potential risk of transmission of various agents in the facility. This continuous process is an essential component of a facility functional or master program to provide a safe environment of care. The ICRA shall be conducted by a panel with expertise in infection control, risk management, facility design, construction, ventilation, safety, and epidemiology. The design professional shall incorporate the specific, construction related requirements of the ICRA in the contract documents. The contract documents shall require the contractor to implement these specific requirements during construction. The ICRA is initiated in design and planning and continues through construction and renovation. After considering the facility's patient population and programs, The ICRA shall address but not be limited to the following key elements:

- (1) The impact of disrupting essential services to patients and employees;
- (2) Patient placement or relocation;
- (3) Placement of effective barriers to protect susceptible patients from airborne contaminants such as *Aspergillus* sp.
- (4) Air handling and ventilation needs in surgical services, airborne infection isolation and protective environment rooms, laboratories, local exhaust systems for hazardous agents, and other special areas;
- (5) Determination of additional numbers of airborne infection isolation or protective environment room requirements;
- (6) Consideration of the domestic water system to limit *Legionella* sp. and waterborne opportunistic pathogens.

(a) The following national standards are incorporated by reference:

- (1) Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Hospitals and Outpatient Facilities, 2014 Edition; and
- (2) National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

(b) Oklahoma statutes prevail if there is conflict between the FGI Guidelines and Oklahoma statutes. For Medicare-certified hospitals, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

(c) A hospital may submit a request for exception or temporary waiver if the FGI Guidelines create an unreasonable hardship, or if the design and construction for the hospital property offers improved or compensating features with equivalent outcomes to the FGI Guidelines.

(d) The Department may permit exceptions and temporary waivers of the FGI Guidelines if the Department determines that such exceptions or temporary waivers comply with the requirements of 63 O.S. Section 1-701 et seq., this Chapter, and the following:

(1) Any hospital requesting an exception or temporary waiver shall apply in writing on a form provided by the Department and pay the exception to, or temporary waiver of, FGI Guidelines fee set in OAC 310:667-47-1. The form shall include:

- (A) The FGI Guidelines section(s) for which the exception or temporary waiver is requested;
- (B) Reason(s) for requesting an exception or temporary waiver;
- (C) The specific relief requested; and
- (D) Any documentation which supports the application for exception.

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

- (A) Compliance with 63 O.S. Section 1-701 et seq.;
- (B) The level of care provided;
- (C) The impact of an exception on care provided;
- (D) Alternative policies or procedures proposed; and
- (E) Compliance history with provisions of the FGI Guidelines, Life Safety Code and this Chapter.

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

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

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

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

(7) The Department shall publish decisions on requests for exceptions and waivers, subject to the confidentiality provisions of 63 O.S. Section 1-709.

(e) Documentation of the hospital governing body's approval of the functional program shall be sufficient to meet the requirements in this Chapter relating to Department approval of the functional program.

**SUBCHAPTER 47. SUBMITTAL  
REQUIREMENTS**

**310:667-47-1. Submission of plans and specifications and related requests for services**

(a) **Submission of plans.** Before construction is begun, plans and specifications, covering the construction of new buildings or major alterations to existing buildings, shall be submitted to the Department for review and approval as provided in OAC 310:667-47-2 or OAC 310:667-47-10.

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

- (A) Changes that affect path of egress;
- (B) Change of use or occupancy;
- (C) Repurposing of spaces;
- (D) Structural modifications;
- (E) Heating, ventilation and air conditioning (HVAC) modifications;
- (F) Electrical modifications that affect the essential electrical system;
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of or modifications to any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.

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

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

(b) **Fees.** Each construction project ~~submission~~ submitted for approval under OAC 310:667-47-2 shall be accompanied by a ~~check~~ for the appropriate review fee based on the cost of design and construction of the project. Review fees are as follows:

- (1) Project cost less than \$10,000.00: \$250.00 Fee
- (2) Project cost \$10,000.00 to \$50,000.00: \$500.00 Fee
- (3) Project cost \$50,000.00 to \$250,000.00: \$1000.00 Fee
- (4) Project cost \$250,000.00 to \$1,000,000.00: \$1500.00 Fee
- (5) Project cost greater than \$1,000,000.00: \$2000.00 Fee

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(c) **Fees when greater than two (2) submittals required.**

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

(d) **Review process.** ~~All construction project submittals.~~ Design and construction plans and specifications shall be reviewed within 45 calendar days of receipt by the Department in accordance with the following process.

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

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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

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

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

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

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

(D) Extensions may be made as provided by law.

(e) **Fees for other services.** Fees for other services related to construction projects are as follows:

(1) Request for exception to or temporary waiver of FGI Guidelines fee: Five Hundred Dollars (\$500.00);

(2) Application for self-certification fee: One Thousand Dollars (\$1,000.00);

(3) Courtesy inspection, prior to final inspection for approval of occupancy, fee: Five Hundred Dollars (\$500.00);

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

### 310:667-47-2. Preparation of plans and specifications

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information ~~to establish for approval by the Department of~~ the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A hospital has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. The option to bypass the stage one submittal does not apply if the project is being submitted for the stage two fast-track project review.

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

(c) **Special submittals.**

(1) ~~Fast-track~~ **Stage two fast-track projects.** The fast track process is a method for phased approval of a project as specified in this paragraph.

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

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

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

(A*i*) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(B*ii*) Complete architectural plans and specifications.

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

(D*iv*) Equipment and furnishings.

(D) The hospital may begin site work on packages after approval by the Department.

(2) ~~Automatic sprinkler systems.~~ At least two (2) sets of sprinkler system show drawings, specifications, and calculations (if applicable), prepared by the installer, shall be submitted to the Office of the State Fire Marshal for review and approval prior to installation of the proposed system in the project.

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

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

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

**310:667-47-10. Self-certification of plans**

(a) The Department shall make available professional consultation and technical assistance services covering the requirements of this section to a hospital considering self-certification of plans. The consultation and technical assistance is subject to the fee for professional consultation and technical assistance services set in OAC 310:667-47-1. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The hospital and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The hospital and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with a self-certification application fee set in OAC 310:667-47-1. The form shall be signed by the hospital and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:667-47-10(c).

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

(1) The project involves any portion of the hospital where patients are intended to be examined or treated and the total cost of design and construction is fifteen million dollars (\$15,000,000.00) or less; or

(2) The project involves only portions of the hospital where patients are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The hospital owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

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

(D) Withdraw approval based on the failure of the hospital or project architect or engineer to comply with the requirements of this Chapter; and

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

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

(e) After denial of the application for self-certification and prior to the start of construction, the hospital shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the hospital's plans in accordance with the process in OAC 310:667-47-1(d).

*[OAR Docket #17-642; filed 7-13-17]*

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

*[OAR Docket #17-644]*

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

Subchapter 5. Physical Plant

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

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

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

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

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

Subchapter 7. Administration

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

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

310:675-7-12.1. ~~Incident~~ Internal facility incident reports [AMENDED]

Subchapter 11. Intermediate Care Facilities ~~for the mentally retarded~~ (16 beds and less (ICF/MR 16) of 16 Beds and Less for Individuals with Intellectual Disabilities (ICF/IID-16)

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

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

**AUTHORITY:**

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

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 23, 2016

**COMMENT PERIOD:**

December 15, 2016 through January 17, 2017

# Permanent Final Adoptions

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**PUBLIC HEARING:**

January 17, 2017

**ADOPTION:**

February 14, 2017

**SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 24, 2017

**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 13, 2017

**FINAL ADOPTION:**

June 13, 2017

**EFFECTIVE:**

October 1, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:****Incorporated standards:**

National Fire Protection Association (NFPA) 101: Life Safety Code, 2012 Edition, adopted in 81 Federal Register 26871 by the Centers for Medicare & Medicaid Services on July 5, 2016.

**Incorporating rules:**

310:675-5-18

**Availability:**

8:00 a.m. to 5:00 p.m., Monday through Friday at Medical Facilities Division, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1299, 405-271-6576.

**GIST/ANALYSIS:**

Title 63, the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-1908 of the Public Health Code authorizes the State Board of Health to promulgate rules for the submission and resubmission of construction plans and the assessment of fees for the review. Section 1-1942 authorizes the adoption of rules in furtherance of the Nursing Home Care Act, which includes provisions for complaint investigations and incident reporting.

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

Subchapter 7 is amended relating to reportable incidents and updates language for reporting utility failures. The changes clarify the reporting of injuries that have certain physician diagnoses or require treatment at a hospital. Certain complaint investigation timeframes are amended and definitions added.

Subchapter 11 is updated to use current terminology for individuals with intellectual disabilities, and to incorporate the most recent Life Safety Code and the updated plans and specifications requirements of Subchapter 5.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Michael Cook, Service Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 6868, or by e-mail to MikeC@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

## SUBCHAPTER 5. PHYSICAL PLANT

### 310:675-5-18. Design and construction

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

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

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

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

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

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

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

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

(F) Resident rooms intended for occupancy of 24 hours or more shall have windows operable without the use of tools and shall have sills not more than 3'0" (91 cm.) above the floor. Windows in buildings designed with an engineered smoke control system

in accordance with NFPA 90A are not required to be operable. However, attention is called to the fact that natural ventilation possible with operable windows may in some areas permit a reduction in energy requirements.

(G) Doors, except doors to spaces such as small closets which are not subject to occupancy, shall not swing into corridors in a manner that might obstruct traffic flow or reduce the required corridor width. (Large walk-in type closets are considered as occupiable spaces.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) **Finishes.**

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

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

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

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

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

**310:675-5-22. Exceptions and temporary waivers**

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

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

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

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

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

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

(C) The specific relief requested;

(D) Any supporting requirements in the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

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

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

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

(B) The level of care provided;

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

(D) Alternative policies or procedures proposed;

(E) Compliance with the Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition; and

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

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

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

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

(6) The Department may revoke an exception or temporary waiver through an administrative proceeding in accordance with OAC 310:2 and the Oklahoma Administrative Procedures Act upon finding the nursing facility is operating in violation of the exception or temporary waiver,

or the exception or temporary waiver jeopardizes patient care and safety or constitutes a distinct hazard to life.

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.

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

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

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

(A) Changes that affect path of egress;

(B) Change of use or occupancy;

(C) Repurposing of spaces;

(D) Structural modifications;

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

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

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

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

(I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;

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

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

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

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

(B) Ordinary repairs and maintenance;

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

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

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

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

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

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

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

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

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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

(2) The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination. The Department shall provide the results of the review, including a statement of any deficiencies, in writing. The written notice shall offer the applicant an opportunity to discuss the results of the review with the Department.

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

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

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

(D) Extensions may be made as provided by law.

**310:675-5-24. Preparation of plans and specifications**

(a) **Stage one.** Preliminary plans and outline specifications shall be submitted and include sufficient information for approval by the Department of the following: scope of project; project location; required fire-safety and exiting criteria; building-construction type, compartmentation showing fire and smoke barriers, bed count and services; the assignment of all spaces, areas, and rooms for each floor level, including the basement. A nursing facility has the option, at its own risk, to bypass the stage one submittal and proceed directly to submittal of stage two documents. After the first review and before Department approval of stage one plans, the nursing facility at its own risk may choose to make a stage two submittal; a nursing facility electing this option would not be eligible for the fast track process.

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

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

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

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

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

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

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

(iv) Equipment and furnishings.

(2) **Radiation protection.** Any project that includes radiology or special imaging equipment used in medical

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diagnosis, treatment, and therapy of residents, shall include plans, specifications, and shielding criteria, prepared by a qualified medical physicist. These plans shall be submitted and approved by the Department prior to installation of the equipment.

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

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

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

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

(b) The nursing facility and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The nursing facility and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:675-5-23. The form shall be signed by the nursing facility and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:675-5-25(c).

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

(1) The project involves any portion of the nursing facility where residents are intended to be examined or treated and the total cost of design and construction is two million and five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the nursing facility where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The nursing facility owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

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

(D) Withdraw approval based on the failure of the nursing facility or project architect or engineer to comply with the requirements of this Chapter; and

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

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

(e) After denial of the application for self-certification and prior to the start of construction, the nursing facility shall pay the applicable fee for plan review specified in OAC 310:667-47-1(b)(1) through (5). Upon receipt of the plan review fee, the Department shall review the nursing facility's plans in accordance with the process in OAC 310:675-5-23.

## SUBCHAPTER 7. ADMINISTRATION

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

(a) **Timeline for reporting.** All reports to the Department shall be made ~~by telephone or facsimile~~ within twenty-four (24) hours of the reportable incident unless otherwise noted. A follow-up report of the incident shall be ~~mailed or faxed~~ submitted to the Department within five (5) Department business days after the incident. The final report shall be filed with the Department within ten (10) Department business days after the incident.

(b) **Reporting abuse, neglect or misappropriation.** The facility shall report to the Department allegations and incidents of *resident abuse, neglect or misappropriation of residents' property* [63 O.S. §1-1939(A)(1)(e)]. This requirement does not supersede reporting requirements in Title 43A of the Oklahoma Statutes (relating to the Protective Services for the Elderly and for Incapacitated Adults Act).

(d) **Reporting to licensing boards.** The facility shall also report allegations and incidents of resident abuse, neglect, or misappropriation of residents' property by licensed personnel to the appropriate licensing board.

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

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

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

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

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

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

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

(k) **Reporting fires.** The facility shall report to the Department all ~~fires~~ accidental fires and fires not planned or supervised by facility staff occurring on the licensed real estate.

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

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

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

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

- (1) The preliminary report shall, at the minimum, include:
  - (A) who, what, when, and where; and
  - (B) measures taken to protect the resident(s) during the investigation.

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

- (A) preliminary information;
- (B) the extent of the injury or damage if any; and
- (C) preliminary findings of the investigation.

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

- (A) a summary of investigative actions;
- (B) investigative findings and conclusions based on findings; and
- (C) corrective measures to prevent future occurrences.
- (D) if items are omitted, why the items are omitted and when they will be provided.

**(o) Form for incident reports to the Department.** Facilities shall use the Incident Report Form, ODH Form 283, to report incidents required to be reported to the Department under OAC 310:675-7-5.1. The ODH Form 283 shall require: the facility name, address and identification number; the date, location and type of incident; parties notified in response to the incident; description of the incident; the relevant resident history; summary of the investigation; and name of person completing the report.

**310:675-7-6.1. Complaints**

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

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

- (A) The names, addresses and telephone numbers of facility staff persons designated to receive complaints for the facility;
- (B) Notice that a good faith complaint made against the facility shall not result in reprisal against the person making the complaint; and
- (C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the facility's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the facility.

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

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

(1) The Department shall provide to each facility a notice identifying the telephone number and location of the Department's central call center to which complaints

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may be submitted. The facility shall post such notice in a conspicuous place outside the administrator's office area.

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

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

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

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

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

(C) A complaint alleging other than immediate jeopardy or actual harm ~~to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department;~~ and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days~~A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Nursing Home Care Act, any rules promulgated under authority of the Act, or any federal certification laws or rules, if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

(A) Protect the identity of the complainant if a current or past resident or resident's representative or

designated guardian or a current or past employee of the facility by conforming to the following:

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and  
(ii) The investigator shall interview or observe at least three (3) residents during the facility observation or tour, which will include the resident referenced in the complaint if identified. If no resident is identified, then the observations used of the three residents shall be used to assist in either substantiating or refuting the complaint;

(B) Review the facility's quality indicator profile using resident assessments filed pursuant to OAC 310:675-9-5.1 to determine whether the facility has been "flagged", if the complaint involves resident abuse, pressure ulcers, weight loss or hydration;

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

(D) Attempt to contact the State or Local Ombudsman prior to the survey; and

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

(7) The Department shall limit the complaint report to the Health Care Financing Administration Form 2567 if applicable and the formal report of complaint investigation.

(A) The Form 2567 shall be issued to the facility within ten (10) business days after completion of the investigation.

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

- (i) Nature of the allegation(s);
- (ii) Written findings;
- (iii) Deficiencies, if any, related to the complaint investigation;
- (iv) Warning notice, if any;
- (v) Correction order, if any; and
- (vi) Other relevant information.

### **310:675-7-12.1. ~~Incident~~Internal facility incident reports**

(a) **Incident defined.** An incident is any accident or unusual occurrence where there is apparent injury, ~~or~~ where injury may ~~or may not~~ have occurred, ~~including but not limited to, head injuries, medication, treatment errors or events subject to the reporting requirements in 310:675-7-5.1 (relating to reportable~~

incidents). The incident report shall cover all unusual occurrences within the facility, or on the premises, affecting residents, and incidents within the facility or on the premises affecting visitors or employees.

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

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

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

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

(f) **Incident records on file.** A copy of each incident report shall be on file in the facility.

(g) **Incident in clinical record.** The resident's clinical record shall describe the incident and indicate the findings on evaluation of the resident for injury.

(h) **Incidents: reviewers.** All incident reports shall be reviewed by the director of nursing and the administrator and shall include corrective action taken where health and safety are affected.

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

**310:675-11-5. Physical plant**

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

Handbook, Third Edition: based on the "Life Safety Code; NFPA 101, 1985", shall be the official interpretation for the Code. For Medicare or Medicaid certified ICF/IID-16s, the Life Safety Code adopted by the Centers for Medicare & Medicaid Services prevails if there is a conflict between the Life Safety Code and this Chapter.

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

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

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

- (A) Capacity shall be a maximum of four (4) residents.
- (B) Minimum area shall be 80 square feet per occupant in multi-bed rooms and 100 square feet in single bed rooms.
- (C) Each resident shall have a minimum of three square feet of closet or locker space which shall contain at least a clothes rod and one adjustable shelf.

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

- (A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.
- (B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.
- (C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ~~ICF MR-16~~ICF/IID-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.
- (D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.
- (E) Meal service space shall be provided as follows:

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

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

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

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

(3) **Recreation, lounge and public areas.** Each ~~ICF/MR 16~~ICF/IID-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed. Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.

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

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

### **310:675-11-5.1. Plans and specifications requirements applicable to ICF/IID-16**

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

*[OAR Docket #17-644; filed 7-13-17]*

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

*[OAR Docket #17-643]*

### **RULEMAKING ACTION:**

PERMANENT final adoption

### **RULES:**

Subchapter 3. Licensure Requirements  
310:680-3-3. Applications [AMENDED]  
310:680-3-6. Records and reports [AMENDED]  
310:680-3-9. Complaints [AMENDED]  
310:680-3-14. Appropriate occupancy [AMENDED]  
Subchapter 5. Construction Requirements and Physical Plant  
310:680-5-6. Building elements [AMENDED]  
310:680-5-7. Resident rooms [AMENDED]  
310:680-5-9. Submission of plans and specifications and related requests for services [NEW]  
310:680-5-10. Preparation of plans and specifications [NEW]  
310:680-5-11. Self-certification of plans [NEW]  
Subchapter 7. Environmental Health and Sanitary Requirements  
310:680-7-5. Housekeeping [AMENDED]  
Subchapter 11. Staffing Requirements  
310:680-11-1. Requirements [AMENDED]

### **AUTHORITY:**

Oklahoma State Board of Health; Title 63 O.S. § 1-104, 63 O.S. Sections 1-106.1, 1-1908 and 1-821

### **SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

November 23, 2016

### **COMMENT PERIOD:**

December 15, 2016 through January 17, 2017

### **PUBLIC HEARING:**

January 17, 2017

### **ADOPTION:**

February 14, 2017

### **SUBMISSION OF ADOPTED RULES TO GOVERNOR AND LEGISLATURE:**

February 24, 2017

### **APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 13, 2017

### **FINAL ADOPTION:**

June 13, 2017

### **EFFECTIVE:**

October 1, 2017

### **SUPERSEDED EMERGENCY ACTIONS:**

n/a

### **INCORPORATIONS BY REFERENCE:**

n/a

### **GIST/ANALYSIS:**

Title 63, the Public Health Code, at section 1-106.1, authorizes the State Board of Health to establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. Section 1-1908 of the Public Health Code authorizes the State Board of Health to promulgate rules for the submission and resubmission of construction plans and the assessment of fees for the review. Section 1-821 authorizes the adoption of rules in furtherance of the Residential Care Act, which includes provisions for issuance of licenses, complaint investigations, incident reporting, housekeeping and staffing.

Subchapter 3 is amended to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation; requirements for records and reports for licensure are updated to reflect current law. Certain incident reporting is amended to encourage coordination with local emergency response managers. Reporting of injuries that have certain physician diagnoses or require treatment at a hospital are addressed.

Certain complaint investigation timeframes are amended and definitions added. Statutory requirements for appropriate occupancy are clarified in the rule. Resident choice in room furnishings is asserted. In Subchapter 5 a process for reviewing plans and specifications for new buildings or major alterations is defined with fees for review of design and construction

plans and specifications and fees for related services including applications for self-certification, a process for residential care homes to self-certify compliance of their plans for certain types of projects. Housekeeping requirements are clarified in Subchapter 7 as are staff training requirements for first aid and CPR for direct care staff in Subchapter 11.

**CONTACT PERSON:**

Information regarding this rule may be obtained by contacting Michael Cook, Service Director, Long Term Care Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 6868, or by e-mail to MikeC@health.ok.gov.

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E), WITH AN EFFECTIVE DATE OF OCTOBER 1, 2017:**

**SUBCHAPTER 3. LICENSURE REQUIREMENTS**

**310:680-3-3. Applications**

- (a) An applicant for license or renewal thereof to operate a residential care home shall submit to the Department a completed application along with the fifty dollar (\$50.00) license fee and documents required by the Commissioner to determine that the applicant is of reputable and responsible character and otherwise demonstrates the skill and fitness to provide the necessary services. In addition, the applicant shall have appropriate business or professional experience in dealing with the type of residents in the home. The license fee of fifty dollars (\$50.00) is not refundable.
- (b) A license fee of twenty dollars (\$20.00) shall accompany any application for modification of a license.
- (c) An application for license, or renewal, shall include a copy of all agreements with the professional consultants utilized by the home.
- (d) An application for an initial license to operate a residential care home shall include documentation that the State Fire Marshal or the State Fire Marshal's representative has inspected and approved the home. Each application for renewal of a license for a residential care home with more than six beds shall include documentation of annual inspection and approval by the State Fire Marshal or the State Fire Marshal's representative.
- (e) The following items must be renewed annually:
  - (1) An ~~Agreement~~ agreement with a physician, physician assistant or advanced practice registered nurse to provide ~~emergency medical services and~~ clinical consultation.
  - (2) Agreements with registered nurse, registered dietitian, and registered pharmacist, as required based on the needs of the residents.
  - (3) Licensed plumber or building inspector's report.
  - (4) Licensed electrician or municipal inspector's report.
  - (5) ~~Kitchen inspection report made by a registered sanitarian.~~

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

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

**310:680-3-6. Records and reports**

- (a) Every residential care home shall conspicuously post in an area of its offices accessible to residents, employees, and visitors, the following:
  - (1) Its current license.
  - (2) The name of the current administrator and their ~~certificate~~ license posted.
  - (3) A copy of Residents' Rights.
  - (4) Complaint procedure, established by the Nursing Home Care Act and provided by the Department which includes name, address, and telephone number of a person within the Department who is authorized to receive complaints.
  - (5) A copy of any order pertaining to the ~~facility~~ home issued by the Department or a court, which is currently in effect.
- (b) Every residential care home shall retain the following for public inspection:
  - (1) A complete copy of every inspection report of the residential care home received from the Department during the past three (3) years.
  - (2) A copy of every order pertaining to the residential care home issued by the Department or a court during the past three (3) years.
  - (3) A description of the services provided by the residential care home, the rates charged for those services, and items for which a resident may be separately charged.
  - (4) A copy of the statement of ownership.
  - (5) A list of personnel who are licensed, certified, or registered and employed or retained by the residential care home, including area in which individual is credentialed.
  - (6) ~~If source of payment for resident's care is from public funds, the contract with the agency providing the funds.~~
- (c) Reports of communicable disease shall be made in accordance with 63 O.S. ~~1971~~ Section 1-501, et seq.
- (d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or ~~utilities~~ utility failure for more than ~~eight (8)~~ four (4) hours, ~~and incidents that result in fractures, head injuries or require treatment at a hospital. The home shall report to the~~

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Department incidents that result in: fractures, injury requiring treatment at a hospital, a physician's diagnosis of closed head injury or concussion, or head injuries that require more than first aid. Notice shall be made no later than the next working day. In lieu of making incident reports during an emergency response to a natural or man-made disaster, the home may coordinate its communications, status reports and assistance requests through the home's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

(e) An evacuation plan shall be developed and permanently displayed in the hallways and sitting room. Fire drills shall be conducted at least quarterly.

(f) ~~Facility~~The home shall have a written plan for temporary living arrangements in case of fire, climatic conditions that warrant evacuation and/or other natural disasters that may render the home unsuitable.

### 310:680-3-9. Complaints

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

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

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

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

(C) Notice that any person with a complaint is encouraged to attempt to resolve the complaint with the home's designated complaint staff, but that the person may submit a complaint to the Department without prior notice to the home.

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

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

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

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

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

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

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

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

(C) A complaint alleging other than immediate jeopardy or actual harm ~~to a resident but that represents a repeated or ongoing violation shall be classified as a continuing complaint and investigated within twenty five (25) days shall be scheduled for an onsite survey and investigated during the next onsite survey or sooner if deemed necessary by the Department;~~ and

(D) ~~A complaint alleging other than immediate jeopardy or actual harm to a resident and that is not a continuing complaint shall be classified as a primary complaint and shall be investigated within thirty (30) days.~~ A complaint alleging a violation that caused no actual harm but the potential for more than minimal harm to a resident, that repeats a violation cited by the Department within the preceding twelve (12) months, and that is alleged to have occurred after the Department determined the facility corrected the previous violation, shall be classified as continuing and investigated the earlier of the next onsite survey or ninety (90) calendar days.

(5) In addition to scheduling investigations as provided in paragraph (4) of this subsection, the Department shall take necessary immediate action to remedy a situation that alleges a violation of the Residential Care Act or any rules promulgated under authority of the Act if that situation represents a serious threat to the health, safety and welfare of a resident.

(6) In investigating complaints, the Department shall:

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

(i) The investigator shall select at least three (3) records for review, including the record of the resident identified in the complaint. The three records shall be selected based on residents with similar circumstances as detailed in the complaint

if possible. All three (3) records shall be reviewed to determine whether the complaint is substantiated and if the alleged deficient practice exists; and

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

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

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

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

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

- (A) Nature of the allegation(s);
- (B) Written findings;
- (C) Deficiencies, if any, related to the complaint investigation;
- (D) Warning notice, if any;
- (E) Correction order, if any; and
- (F) Other relevant information.

**310:680-3-14. Appropriate occupancy**

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

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

**310:680-5-6. Building elements**

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

(b) At least two (2) flashlights in working order shall be maintained for emergency lighting.

(c) All doors and windows opening to the outside for ventilation shall be screened. Screens shall be well fitted and in good repair.

(d) Adequate enclosed secure storage space shall be provided for items belonging to residents. ~~Clothing, bedding, and residents's personal belongings shall be stored off the floor.~~

(e) Each residential care home shall have one toilet facility for every six (6) residents. Toilet facility shall contain one (1) stool and one (1) lavatory.

(f) Bathtubs or showers shall be provided at the rate of one (1) for each ten (10) residents.

(g) Hot water temperatures at faucets accessible to residents shall be maintained within a range of 100° to 120° Fahrenheit.

(h) Laundry equipment, if on premises, shall be housed in a safe, well-ventilated and clean area. Laundry equipment shall be kept clean and dryer shall be vented to outside.

(i) Linen storage areas shall be provided and be clean and organized.

(j) Cleaning supplies and equipment shall be stored in a separate, clean, and locked area.

(k) Telephone service must be available within the building. Pay phones are not acceptable as the only telephone service.

**310:680-5-7. Resident rooms**

(a) Each resident shall be provided with clean, comfortable orderly, and reasonably private living accommodations.

(b) Each resident's room shall have direct access to exits and other areas of the home without passing through another resident's room, the kitchen, laundry, or bathroom.

(c) Each single resident room shall contain a minimum of 80 square feet of floor space.

(d) Each resident room containing multiple beds shall provide a minimum of 60 square feet per bed.

(e) Each resident room shall have at least one (1) outside operable window installed in a vertical wall which can be used as an emergency exit. However, if a ~~facility~~home has a sprinkler system approved by the State Fire Marshall, it shall be exempt from the requirement of an outside operable window in each resident room useable as an emergency exit but shall be required to have a window. Minimum dimension of this window shall be 22 inches and the area shall be minimum of 5 square feet. Windows shall have adjustable coverings to provide privacy.

(f) Each resident room shall have a full door which can be closed to provide privacy.

(g) Male and female residents shall not be housed in the same or adjoining rooms which do not have a full floor-to-ceiling partition and door which can be locked, except immediate family may occupy the same room.

(h) Each resident room shall have an electrical outlet.

(i) Each resident room shall have a minimum of 20 foot candle power of lighting.

(j) ~~Each~~Unless the resident elects otherwise, each resident shall have a comfortable chair, a bedside table and a bureau or its equivalent for storing personal belongings.

(k) When residents' personal furniture is used, it shall be clean and in good repair.

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- (l) Each resident's bed shall have a comfortable mattress and bed linens which are clean and in good condition.
- (m) Clean towels and wash cloths shall be available to meet the needs of all residents. Towels and wash cloths shall be in good condition.

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

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

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

- (A) Changes that affect path of egress;
- (B) Change of use or occupancy;
- (C) Repurposing of spaces;
- (D) Structural modifications;
- (E) Heating, ventilation and air conditioning (HVAC) modifications;
- (F) Electrical modifications that affect the essential electrical system;
- (G) Changes that require modification or relocation of fire alarm initiation or notification devices;
- (H) Changes that require modification or relocation of any portion of the automatic fire sprinkler system;
- (I) Replacement of fixed medical equipment if the alteration requires any work noted in (A) through (H) of this paragraph;
- (J) Replacement of or modifications to any required magnetic or radiation shielding;
- (K) Changes to or addition of any egress control devices or systems.

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

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

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

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

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

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

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

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

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

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

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

(A) Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.

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

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

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

(B) To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar

days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.

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

(D) Extensions may be made as provided by law.

**310:680-5-10. Preparation of plans and specifications**

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

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

(c) **Special submittals.**

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

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

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

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

(i) Site work, foundation, structural, under-slab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

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

(iv) Equipment and furnishings.

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

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

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

**310:680-5-11. Self-certification of plans**

(a) The Department shall make available consultation and technical assistance services covering the requirements of this section to a residential care home considering self-certification of plans. The consultation and technical assistance is subject to the fees specified in OAC 310: 680-5-9. The consultation is optional and not a prerequisite for filing a request through the self-certification review process.

(b) The residential care home and the project architect or engineer may elect to request approval of design and construction plans through a self-certification review process. The residential care home and the project architect or engineer shall submit a self-certification request on a form provided by the Department, along with the review fee specified in OAC 310:680-5-9. The form shall be signed by the residential care home and the project architect or engineer attesting that the plans and specifications are based upon and comply with the requirements of this Chapter. The form shall require information necessary to demonstrate compliance with OAC 310:680-5-11(c).

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

(1) The project involves any portion of the residential care home where residents are intended to be examined or treated and the total cost of design and construction is two million five hundred thousand dollars (\$2,500,000) or less; or

(2) The project involves only portions of the residential care home where residents are not intended to be examined or treated; and

(3) The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and

(4) The residential care home owner/operator acknowledges that the Department retains the authority to:

(A) Perform audits of the self-certification review program and select projects at random for review;

(B) Review final construction documents;

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

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

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

(d) Within twenty-one (21) calendar days after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the residential care home. If the application is denied, the residential care home shall have thirty (30) calendar days to submit

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additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar days after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.

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

### SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS

#### 310:680-7-5. Housekeeping

- (a) The interior and exterior of the home shall be safe, clean and sanitary.
- (b) Practices and procedures shall be utilized to keep the home free from offensive odors, accumulation of dirt, rubbish, dust, and safety hazards.
- (c) Floors and floor coverings shall be clean and in good condition. Floor polishes shall provide for a non-slip finish.
- (d) Walls and ceilings shall be in good condition and shall be cleaned regularly. All homes shall have walls capable of being cleaned.
- (e) Deodorizers shall not be used to cover up odors caused by unsanitary conditions or poor housekeeping practices.
- (f) Home and surrounding areas shall be kept free from refuse, discarded furniture, and old newspaper. Combustibles such as cleaning rags and compounds must be kept in closed metal containers in areas away from residents' rooms. No items shall be stored in the hot water heater closet or furnace closet.
- (g) General laundry shall be placed in linen ~~hampers/carts with the lids closed~~ hampers, carts, laundry bags, or similar containers suitable for laundry not soiled by body fluids.
- (h) Soiled linens or clothing shall be placed in bags or non-porous containers with lids tightly closed.

### SUBCHAPTER 11. STAFFING REQUIREMENTS

#### 310:680-11-1. Requirements

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

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

- (A) Each residential care home shall have one (1) person who is administratively responsible for the home.
- (B) There shall be at least one (1) person in charge of the home and its operation on duty in the home whenever residents are present.

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

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

##### (2) Staff qualifications.

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

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

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

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

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

~~(A) All employees~~ At all times there shall be in the home at least one staff person shall be currently certified trained in first-aid and cardiopulmonary resuscitation ~~(that is Red Cross training or equivalent training with a hands-on component).~~ Proof of certification ~~and training shall be kept on file in the home. First-Aid and CPR certificate training shall be renewed annually, or as required to be kept current.~~

~~(B) Administrators shall have sixteen (16) hours of job related training annually. First aid and CPR training do not count for the sixteen (16) hours obtain continuing education training as required to maintain an administrator's license pursuant to Title 63 O.S. Section 330.51 et seq.~~ All training shall be documented and the record kept in the home.

(C) Direct care staff who are responsible for administering or monitoring medication shall annually be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care program and operation.

(D) All direct care staff shall begin eight (8) hours of inservice by the administrator of the home or other person designated by the administrator of the home

within ninety (90) days of employment and completed within twelve (12) months of employment. Eight (8) hours of inservice shall be required annually thereafter.

(E) All residential care programs shall provide a new employee orientation program which includes instruction in policies and procedures regarding the areas of abuse and neglect, resident rights, confidentiality, procedure for handling emergencies, and job descriptions.

(4) **Personnel practices.**

(A) Residents shall not supervise other residents.

(B) The behavior of staff reflects sensitivity to the needs of the individuals served for privacy and dignity. For example, confidentiality and normal sensibility are exercised in speaking about an individual, and undignified displays, exhibitions, or exposure of individuals served, whether deliberate or unintentional, do not occur.

(C) The home shall have written personnel policies and procedures which address such issues as: job description, terms of employment, authorized leave procedures, grievance procedures, and professional conduct.

[OAR Docket #17-643; filed 7-13-17]

**TITLE 325. OKLAHOMA HORSE RACING COMMISSION  
CHAPTER 1. COMMISSION POWERS AND JURISDICTION**

[OAR Docket #17-564A]

**RULEMAKING ACTION:**

PERMANENT final adoption

**RULES:**

325:1-1-7 [AMENDED]

**AUTHORITY:**

3A O.S. § 200 et seq.; Oklahoma Horse Racing Commission

**SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:**

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**APPROVED BY GOVERNOR'S DECLARATION:**

Approved by Governor's declaration on June 13, 2017

**FINAL ADOPTION:**

June 13, 2017

**EFFECTIVE:**

September 11, 2017

**SUPERSEDED EMERGENCY ACTIONS:**

n/a

**INCORPORATIONS BY REFERENCE:**

n/a

**GIST/ANALYSIS:**

The proposed amendments redefine the range of fines that may be imposed against licensees by the Boards of Stewards for violations of racing rules.

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**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3(5) AND 308(E) WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2017:**

**325:1-1-7. Jurisdiction of Stewards to suspend or fine**

(a) The Stewards' jurisdiction in any matter ~~is continuous~~ continuous. The Stewards may deny, refuse to issue, or refer to the Commission for revocation, or suspend for not more than one year per violation the occupation license of any person whom they have the authority to supervise; or they may impose a fine not to exceed ~~Two Thousand Five Hundred Dollars (\$2,500.00)~~ Ten Thousand Dollars (\$10,000) per violation; or they may exclude from all enclosures in this state; or they may suspend and fine and/or exclude; or they may order that a person be ineligible for a license. All such suspensions, fines, denials, refusals to issue, referrals or exclusions shall be reported immediately to the Commission.

(b) Upon a first offense for the following rule violations, the Stewards shall assess no less than the Stewards' maximum fine and suspension authorization to any person found to be in violation of Commission rules concerning:

- (1) a positive laboratory report involving a United States Drug Enforcement Agency Schedule I or II controlled substance, or
- (2) possession of a United States Drug Enforcement Agency Schedule I or II controlled substance within the enclosure, or
- (3) possession or use within the enclosure of a prohibited electrical or mechanical device. Any person whose racing record(s) reflects such prior rule violation(s) shall, upon a subsequent violation, be referred by the Stewards to the Commission with the Stewards' recommendation for specific fine and suspension above the Stewards' authorized fine and suspension maximums.

(c) The Stewards may suspend a horse from participating in races if the horse has been involved in violation(s) of the Rules promulgated by the Commission or the provisions of the Oklahoma Horse Racing Act under the following circumstances:

- (1) A horse is a confirmed Bleeder as determined by the Official Veterinarian, and the Official Veterinarian recommends to the Stewards that the horse be suspended from participation.
- (2) A horse is involved with:
  - (A) Any violation of medication laws and rules;
  - (B) Any suspension or revocation of an occupation license by the Stewards or the Commission or any