I. CALL TO ORDER AND OPENING REMARKS

II. REVIEW OF MINUTES
   Approval of Minutes for January 10, 2017, Regular Meeting

III. PROPOSED RULEMAKING ACTIONS

   A. CHAPTER 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICES - Lynette Jordan
      [PERMANENT]
      PROPOSED 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 [AMENDED]
      310:250-3-7. Application fee [AMENDED]
      AUTHORITY: Oklahoma State Board of Health, Title 63 O.S. Section 1-104; Public Health and Safety, Title 63 § 1-1118; Title 63 § 1-1119; Title 63 § 1-1201; Title 63 § 1-1013; and Title 63 § 1-1501.1
      SUMMARY: The current rule applies to application and licensure fees for programs overseen by the Consumer Health Service specific to: food establishments (Title 63 § 1-1118 & 1-1119), drug manufacturers (Title 63 § 1-1119), lodging establishments (Title 63 § 1-1201), diagnostic x-ray facilities (Title 63 § 1-1501.1), and public bathing places (Title 63 § 1-1013.1). The proposed changes will 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 this Rule change will 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.

   B. CHAPTER 615. AMBULATORY SURGICAL CENTERS - Lee Martin
      [PERMANENT]
      PROPOSED RULES:
      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. Section 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 2662.
      SUMMARY: The proposal amends physical plant requirements in Subchapter 1 by updating references to the Facility

The proposal revises the requirements for stage one, stage two, and special construction plan submittals, and gives ambulatory surgical centers the option to move directly to the 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 ambulatory surgical centers to self-certify compliance of their plans for certain types of projects.

C. CHAPTER 667. HOSPITAL STANDARDS - Lee Martin

PROPOSED 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. Section 1-104; 63 O.S. Section 1-106.1; 63 O.S. Section 1-705; and 63 O.S. Section 1-707.


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 the 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.

D. CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING - Mike Cook

PROPOSED RULES:

Subchapter 7. Physical Plant Design
310:663-7-3. Submission of plans and specifications and related requests for services [NEW]
310:663-7-4. Preparation of plans and specifications [NEW]
310:663-7-5. Self-certification of plans [NEW]
310:663-7-6. Exceptions and temporary waivers [NEW]

Subchapter 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).

SUMMARY: The proposal amends construction and physical plant requirements in Subchapter 7. The proposal requires submittal of plans and specifications for new buildings or major alterations; 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.

This proposal adds OAC 310:663-15-4 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 proposed change amends the Subchapter 19 requirements for reporting incidents.

E. CHAPTER 675. NURSING AND SPECIALIZED FACILITIES - Mike Cook

PROPOSED RULES:
Subchapter 5. Physical Plant
310:675-5-18. Design and construction [AMENDED]
310:675-5-22. Exceptions and temporary waivers [NEW]
310:675-5-23. Submission of plans and specifications and related requests for services [NEW]
310:675-5-24. Preparation of plans and specifications [NEW]
310:675-5-25. Self-certification of plans [NEW]
Subchapter 7. Administration
310:675-7-5.1 Reports to state and federal agencies [AMENDED]
310:675-7-6.1. Complaints [AMENDED]
310:675-7-12.1 Incident Reports [AMENDED]
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. Section 1-104; 63 O.S. Section 1-106.1; 63 O.S. Section 1-1908; and 63 O.S. Section 1-1942.

SUMMARY: Amends physical plant requirements by updating references to the most recent Life Safety Code adopted by the Centers for Medicare & Medicaid Services. Provides 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 the stage two plan submittal. Establishes requirements and a process for nursing facilities to self-certify compliance of their plans for certain types of projects.

Amends requirement relating to reportable incidents and updates language for reporting utility failures. Clarifies 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.

F. CHAPTER 680. RESIDENTIAL CARE HOMES - Mike Cook

PROPOSED RULES:
Subchapter 3. Licensure Requirements
310:680-3-3. Applications [AMENDED]
310:680-3-6. Records and reports [AMENDED]
310:680-3-9. Complaints [AMENDED]
310:680-3-14. Appropriate occupancy [AMENDED]
Subchapter 5. Construction Requirements and Physical Plant
310:680-5-6. Building elements [AMENDED]
310:680-5-7. Resident rooms [AMENDED]
310:680-5-9. Submission of plans and specifications and related requests for services [NEW]
310:680-5-10. Preparation of plans and specifications [NEW]
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. Section 1-104; 63 O.S. Section 1-106.1; and 63 O.S. Section 1-821.
SUMMARY: 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. 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 as are staffing training requirements for first aid and CPR for direct care staff.

IV. STRATEGIC MAP UPDATE PRESENTATION
Derek Pate, Dr.P.H., Director of Health Care Information; Julie Cox-Kain, M.P.A., Senior Deputy Commissioner; Tina Johnson, M.P.H., R.N., Deputy Commissioner, Community and Family Health Services

V. CONSIDERATION OF STANDING COMMITTEES’ REPORTS AND ACTION
A. Executive Committee - Ms. Hart-Wolfe, Chair
Discussion and possible action on the following: Update
B. Finance Committee - Mr. Starkey, Chair
Discussion and possible action on the following: Update
C. Accountability, Ethics, & Audit Committee - Dr. Grim, Chair
Discussion and possible action on the following: Update
D. Public Health Policy Committee - Dr. Stewart, Chair
Discussion and possible action on the following: Update

VI. PRESIDENT’S REPORT
Discussion and possible action

VII. COMMISSIONER’S REPORT
Discussion and possible action

VIII. NEW BUSINESS
Not reasonably anticipated 24 hours in advance of meeting.

IX. PROPOSED EXECUTIVE SESSION
Proposed Executive Session pursuant to 25 O.S. Section 307(B)(4) for confidential communications to discuss pending department litigation, investigation, claim, or action; pursuant to 25 O.S. Section 307(B)(1) to discuss the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee and pursuant to 25 O.S. Section 307 (B)(7) for discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law.

OAS 2016-029
Possible action taken as a result of Executive Session.

X. ADJOURNMENT
CALL TO ORDER

Martha Burger, President of the Oklahoma State Board of Health, called the 414th special meeting of the Oklahoma State Board of Health to order on Tuesday, January 10, 2017, at 11:04 a.m. The final agenda was posted at 11:00 a.m. on the OSDH website on January 9, 2017; and at 11:00 a.m. on the Oklahoma State Department of Health building entrance on January 9, 2017.

ROLL CALL

Members in Attendance: Martha A. Burger, M.B.A, President; Cris Hart-Wolfe, Vice-President; Robert S. Stewart, M.D., Secretary-Treasurer; Ronald Woodson, M.D., Immediate Past President; Terry R. Gerard, D.O.; Charles W. Grim, D.D.S.; R. Murali Krishna, M.D., Timothy E. Starkey, M.B.A.

Absent: Jenny Alexopulos, D.O.;

Staff present were: Terry Cline, Commissioner; Julie Cox-Kain, Senior Deputy Commissioner; Henry F. Hartsell, Deputy Commissioner, Protective Health Services; Tina Johnson, Deputy Commissioner, Community and Family Health Services; Carter Kimble, Office of State and Federal Policy; Don Maisch, Office of General Counsel; Jay Holland, Director, Office of Accountability; VaLauna Grissom, Secretary to the State Board of Health.

Visitors in attendance: See list

Visitors in attendance: (see sign in sheet)

Call to Order and Opening Remarks

Martha Burger called the meeting to order and thanked guests in attendance.

REVIEW OF MINUTES – OSBH

Martha Burger directed attention toward approval of the Minutes for December 13, 2016, Regular meeting. Dr. Gerard moved Board approval of the December 13, 2016 meeting minutes as presented. Second Ms. Wolfe. Motion Carried.

AYE: Burger, Gerard, Grim, Krishna, Starkey, Stewart, Wolfe, Woodson

ABSENT: Alexopulos

APPOINTMENTS

Advancement of Wellness Advisory Council (Presented by Julie Cox-Kain)

Appointment: John Woods

Authority: 63 O.S., § 1-103a.1

Members: The Advisory Council shall consist of seven (7) members. Membership is defined in statute. One member, who is the Executive Director of the Tobacco Settlement Endowment, shall be appointed by the State Board of Health.

Dr. Grim moved Board approval of the recommended appointment, as presented. Second Dr.
Woodson. Motion Carried.

AYE: Burger, Gerard, Grim, Krishna, Starkey, Stewart, Wolfe, Woodson
ABSENT: Alexopulos

STRATEGIC MAP UPDATE PRESENTATION
Henry F. Hartsell, Jr., Ph.D., Deputy Commissioner for Protective Health Services
See attachment A.

CONSIDERATION OF STANDING COMMITTEES’ REPORTS AND ACTION
Executive Committee
Ms. Burger reminded the Board that the March meeting will be held in Comanche County. Members of the Board discussed the possibility of rescheduling the March meeting should there be a lack of quorum. The Board members will soon receive 2017 conflict of interest forms to be completed and submitted.

Finance Committee
Ms. Wolfe directed attention to the Financial Brief provided to each Board member and presented the following SFY 2017 Finance Report and Board Brief as of December 23, 2016:
• The Agency is in “Green Light” status overall
• November’s performance rating was 94.86%. December’s performance rating is 97.15%. A net increase in performance of 2.29%

Finance Brief
The brief focuses on Net Reimbursement from Medicaid claims billing. The Medicaid program is jointly funded with federal and state dollars. The federal share is determined by the FMAP (Federal Medical Assistance Percentage) which compares the state’s per capita income relative to the U.S. per capita income.
• OSDH provides the following services to Medicaid eligible clients:
  o Newborn Screening Lab Testing
  o Public Health Lab Tests
  o Early Intervention (SoonerStart)
  o Maternity services (limited number of counties)
  o Children First (C1)
  o Family Planning
  o Early and Period Screening, Diagnosis, and Treatment (EPSDT) for children consisting of:
    ▪ Immunization
    ▪ Child Health
    ▪ Child Guidance
• The FMAP has decreased 3.94% from 2012 – 2017 and will decrease another 1.37% beginning October 1, 2017. This requires a higher amount of state match dollars for every dollar of federal funds received and results in a decrease in our net reimbursement dollars.

• OSDH is actively pursuing contracts with private insurance companies to increase the number of clients we can serve and the amount of reimbursement we can receive through medical claims billing.

• OSDH is working closely with Oklahoma Health Care Authority to ensure we are accurately billing and receiving appropriate reimbursement for services provided to Medicaid clients.

Accountability, Ethics, & Audit Committee
The Accountability, Ethics, & Audit Committee met with Jay Holland. Dr. Grim indicated there were no known significant audit issues to report at this time.

Public Health Policy Committee
The Policy Committee met with Carter Kimble. Dr. Stewart indicated 1st session of 56th legislature will begin in February and the overarch theme again appears to be budget and lack of funding. The OSDH has introduced a bill as a first step toward the renovation of our public health lab in order to continue to be accredited and protect the public health.

NO PRESIDENT’S REPORT
Ms. Burger encouraged the Board to attend the Annual Certified Healthy Awards Ceremony in March. The program received a record breaking number of applications in 2016, more than 2,100 applications for business, schools, congregations, communities, early childhood centers & restaurants combined. The program has led to voluntary policy changes in communities and other organizations so we are very excited that it continues to grow each year in every category. VaLauna will provide the information via email.

COMMISSIONER’S REPORT
Dr. Cline highlighted the Veterans Corner in Newcastle. This impressive volunteer program was recognized by Champions of Health in 2015 for their efforts to connect veterans with resources available. Dr. Cline encouraged all to visit.

Next, he briefly highlighted the transfer and sale of the Health Science Center to SSM and a meeting with Dr. Jason Sanders, Senior Vice President and Provost, University of Oklahoma Health Sciences Center, Dean Gandy, University Hospitals Trust Authority and Trust to discuss possible implications. SSM is the parent company to Saint Anthony’s. SSM brings mission focus to the table. Part of conversation was focused on nonprofit hospitals providing community benefits required by the IRS.

Lastly, he highlighted a recent meeting of the 1332 Task Force which, under the direction of Julie Cox-Kain, explores the option of developing a 1332 waiver to address healthcare coverage needs in Oklahomans. The 1332 concept paper is open to the public for review and input. Dr. Cline encouraged all to review the document and provide input.

NO NEW BUSINESS

PROPOSED EXECUTIVE SESSION
Dr. Krishna moved Board approval to go in to Executive Session at 11:53 AM Proposed Executive Session pursuant to 25 O.S. Section 307(B)(4) for confidential communications to discuss pending
department litigation, investigation, claim, or action; pursuant to 25 O.S. Section 307(B)(1) to discuss the employment, hiring, appointment, promotion, demotion, disciplining or resignation of any individual salaried public officer or employee and pursuant to 25 O.S. Section 307(B)(7) for discussing any matter where disclosure of information would violate confidentiality requirements of state or federal law.

- Annual performance evaluation for the Commissioner of Health.

**Second Ms. Wolfe/ Motion carried.**

AYE: Burger, Gerard, Grim, Krishna, Starkey, Stewart, Wolfe, Woodson

ABSENT: Alexopulos

Ms. Wolfe moved Board approval to move out of Executive Session at 12:23 PM. Second Dr. Stewart. Motion carried.

AYE: Burger, Gerard, Grim, Krishna, Starkey, Stewart, Wolfe, Woodson

ABSENT: Alexopulos

**ADJOURNMENT**

Dr. Grim moved board approval to adjourn. Second Ms. Wolfe. Motion Carried

AYE: Burger, Gerard, Grim, Krishna, Starkey, Stewart, Wolfe, Woodson

ABSENT: Alexopulos

The meeting adjourned at 12:24 p.m.

Approved

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Martha Burger

President, Oklahoma State Board of Health

February 14, 2017
Improve Population Health
Improve Targeted Health Outcomes for Oklahomans
Focus on Core Public Health Priorities

OKLAHOMA STATE DEPARTMENT OF HEALTH
January 10, 2017

Henry F. Hartwell Jr., Ph.D.
Deputy Commissioner
Protective Health Services

Kesley Bradley, DVM, MPH
State Epidemiologist,
Office of the State Epidemiologist

OKLAHOMA STATE DEPARTMENT OF HEALTH
Strategic Map: SFY 2015-2020

Strengthen the Department’s Effectiveness and Adaptability
Foster Excellence Through Continuous Quality Improvement and Accreditation
Cultivate a Competent, Adaptive, Customer-Oriented OSDH Workforce
Evaluate and Improve Agency Processes and Communication
Leverage Technology Solutions
Evaluate and Reduce Regulatory Barriers to Health
Educate & Strategically Plan for Health Systems Change

Improve Targeted Health Outcomes for Oklahomans
Expand and Deepen Partner Engagement
Mitigate and Address Public Health Disparities
Reduce Mortality
Identify and Reduce Health Disparities
Use a Life Course Approach to Health and Wellness
Leverage Shared Resources to Achieve Population Health Improvements
Promote Health in All Policies (HiAP) Across Sectors
Optimize Resources By Targeting High-Value Outcomes

What are the core public health priorities?
- Injury Prevention
- Regulatory/Mandates
- Childhood and Adolescent Immunization
- All Hazards Preparedness and Response
- Viral Hepatitis and STD Prevention
- Surveillance and Response to General Infectious Disease and TB

Team Planning and Goal Setting
Improve Targeted Health Outcomes for Oklahomans

Injury prevention
- Decrease intentional injury deaths
  - CDC National Violent Death Reporting System
  - Community-based sexual violence prevention
- Decrease unintentional injury deaths
  - Fall-related fatalities age 65+
  - Female mortality down 9% since 2012
  - Prescription drug poisoning deaths
  - Unintentional poisoning down 7%, 2014 to 2015
  - Drug death ranking improved from 45th to 43rd
  - Motor vehicle crashes
  - Mortality down 10% since 2012

Age-Adjusted Motor Vehicle Traffic Mortality Rates by Year of Death and Gender, Oklahoma, 2010-2015
Fall-Related Mortality Rates Among Adults Aged 65 and Older by Year of Death and Gender, Oklahoma, 2010-2015
Regulatory/Mandates

- Inspection, investigation deadlines
  - 100% compliance in 2016

- Mandated process deadlines
  - 73 of 80 scored processes comply September 2016
  - 95% of all 195 processes to comply July 2019

- Population-based services PHAB compliant by March 2017

Childhood and Adolescent Immunization

- Immunization coverage of children 19-35 months old
  - Recommended childhood series
  - Child care centers with low coverage levels

- Immunization coverage of adolescents 13-17 years old
  - Meningococcal vaccine
  - Human papillomavirus vaccine (HPV) series completion

Adolescent Immunization Coverage

Estimated Percentage of Oklahoma Children 13-17 Years of Age Receiving Recommended Adolescent Immunizations by Type of Vaccine, 2011 – 2015*

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<td>45.2</td>
<td>43.2</td>
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</table>

* Data source = National Immunization Survey

Tdap = Tetanus, diphtheria, acellular pertussis vaccine; 1 dose required for 7th grade entry in Oklahoma

MCV4 = Meningococcal conjugate quadrivalent vaccine (Serogroups A, C, W, and Y)

HPV = Human papillomavirus vaccine; effective 10/20/2016, 2 doses of HPV are recommended for adolescents who begin the vaccination series before age 15.

All Hazards Preparedness and Response

- State and local levels
  - Alternative worksites and telework opportunities
  - Continued testing and enhancement of COOP Plan
    - Rapid notification system
    - Restoration of health information systems based on Mission Essential Functions prioritization

- Activation of the Incident Command System
  - Identify staff to fulfill C&GS roles with sufficient depth for longer term or intensive activations
  - Provide training on Incident Management for each role
    - State and local CHD level
    - Example: mumps outbreak response in Garfield county

Viral Hepatitis and STD Prevention

- Syphilis and gonorrhea
  - Improve case and contact investigations
    - OK ranked 5th in nation in gonorrhea incidence (2015)
    - 77% increase of 1st and 2nd syphilis (2013-2015)
  - Antimicrobial resistant strains of gonorrhea
    - 470% increase in STD medication costs

- Hepatitis B and C
  - Enhance hepatitis vaccine outreach
    - STD clinics, DOC
  - Hepatitis C testing in high risk settings
Surveillance and Response to General Infectious Disease and TB

**Surveillance**
- Tuberculosis, pertussis, salmonellosis
- Electronic Laboratory Reporting (ELR)
  - Increase receipt of ELR HL7 v.2.5.1 messages into PHIDDO from 3 labs (2015 baseline) to 22 labs by 2020

**Investigation and control**
- After-hours consultations
- Timeliness of initiating case investigations
- Improving identification of at-risk contacts
- Completion rates of TB treatment
- Implementation of electronic outbreak management system

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![Incidence Rate of Tuberculosis, Pertussis and Salmonella, Oklahoma, 2010-2016*](image)

*Preliminary Data

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**Surveillance and Response to General Infectious Disease and TB**

**Investigation and control**
- 99% (8623/8725) of requests for after-hours consultations were returned by Acute Disease Service (ADS) epidemiologists within 15 minutes of initial notification.
  - 2012-2016: Responded to at least 98% of after-hours requests within 15 minutes annually.
- ADS epidemiologists initiated investigations for 93% (151/159) of immediately notifiable reports within 15 minutes of disease report notification during 2016.

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**Improve Population Health**
**Improve Targeted Health Outcomes for Oklahomans**
**Focus on Core Public Health Priorities**

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OKLAHOMA STATE DEPARTMENT OF HEALTH
January 10, 2017

Henry F. Hartsell Jr., Ph.D.
Deputy Commissioner
Protective Health Services

Kristy Bradley, DVM, MPH
State Epidemiologist
Office of the State Epidemiologist
To: Board of Health Secretary

Through: Terry Cline, Ph.D.
Commissioner

Through: James Joslin, Chief
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Lynnette Jordan, Director
Consumer Health Service

Date: January 25, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
Chapter 250. FEE SCHEDULE FOR CONSUMER HEALTH SERVICES

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text. Please be advised, the public comment period was extended to February 9, 2017 at 1:00 p.m.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment & Response Summary (based on comments received by 1/25/17)

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

1. **DESCRIPTION:** (a brief description of the purpose of the proposed rule [75 O.S. §303.D.2(a)])

The current rule applies to application and licensure fees for programs overseen by the Consumer Health Service specific to: food establishments (Title 63 § 1-1118 & 1-1119), drug manufacturers (Title 63 § 1-1119), lodging establishments (Title 63 § 1-1201), diagnostic x-ray facilities (Title 63 § 1-1501.1), and public bathing places (Title 63 § 1-1013.1). The proposed changes will 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 this Rule change will 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.

2. **DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:** (a description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities [75 O.S. §303.D.2(b)])

Those classes of persons affected are entities or individuals seeking to be or currently licensed in the food establishment industry (i.e. restaurants, food manufacturers, grocers, bars, convenient stores, etc), public bathing places, lodging establishments, drug manufacturing and diagnostic x-ray tube program (hospitals, physicians, chiropractors, podiatrists, veterinarians and clinics).

The Department has had comments and discussions from interested parties regarding the high increase on annual costs. Based on comments, the Department has made attempts to moderate annual renewal fees to reduce the impact on business and revert back to a single, streamlined licensing system. Other discussions with the health department also posed concern about the high initial up-front cost and revocation of the application fee in 310:250-3-7. The Department, based on comments during those discussions re-instated a separate application fee from the license fee for all programs to decrease the upfront costs and impact on new business.

3. **DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:** (a description of the classes of persons who will benefit from the proposed rule [75 O.S. §303.D.2(c)])

The general public will benefit as the increase in fees will ensure services remain at current levels. It also will allow for better tracking of the type of food establishment or combination food establishments thereby ensuring appropriate inspections for the type of facility.

In addition, licensees in the diagnostic x-ray program will benefit with a more simple licensing process and some will benefit with a slightly decreased licensing fee. Changes to the fee structure will streamline the annual licensing process by simplifying the calculation and thereby decrease administrative resources used to educate applicants and issue refunds for overpayment.

The increased fees ensure continued inspection, education and assistance for all licensed establishments thereby decreasing possible disease outbreaks that may occur should services decrease or be discontinued.
4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES**: (a description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change [75 O.S. §303.D.2(d)])

**FOOD**
The last increase for food licenses was in 2009 which was a 150% increase for annual renewal costs across the board for establishments not falling in a reduced license class or exempt class. To cover increasing costs of the program and to ensure services remain consistent, the following fees within the program were reviewed with proposed increases:

<table>
<thead>
<tr>
<th>Proposed Section</th>
<th>Fee Description</th>
<th>Current</th>
<th>Proposed Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td>OAC 310:250-3-1(a)(1)</td>
<td>Initial Food / Manufacturing / Warehousing</td>
<td>$350</td>
<td>$425</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(1)</td>
<td>Renewal Food / Manufacturing / Warehousing</td>
<td>$250</td>
<td>$335</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(1)</td>
<td>Late Renewal Food / Manufacturing / Warehousing</td>
<td>$300</td>
<td>$375</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(2)</td>
<td>Initial State Operated / Non-Profit / Health</td>
<td>$100</td>
<td>$175</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(2)</td>
<td>Renewal State Operated / Non-Profit / Health</td>
<td>$100</td>
<td>$125</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(2)</td>
<td>Late Renewal State Operated / Non-Profit / Health</td>
<td>$150</td>
<td>$150</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(3)</td>
<td>Initial &amp; Reinstatement Seasonal</td>
<td>$200</td>
<td>$250</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(4)</td>
<td>Temporary (for 3 days)</td>
<td>$30</td>
<td>$100</td>
</tr>
<tr>
<td>OAC 310:250-3-1(a)(4)</td>
<td>Temporary (each additional day)</td>
<td>$15</td>
<td>$40</td>
</tr>
<tr>
<td>OAC 310:250-3-7(a)</td>
<td>Application fee (Plan Review) – Food / Manufacturing / Warehousing / State Operated / Non-Profit / Health / License Exempt</td>
<td>$200</td>
<td>$425</td>
</tr>
</tbody>
</table>

Temporary food establishment as defined in OAC 310:257-1-2. $100.00 up to three (3) days plus $40.00 each day in excess of three (3) days. The proposed increases will offset agency costs for events that routinely occur outside of normal operating hours. The increase in price will still remain cost effective for entities operating less than four (4) special events per year (3 days per event) as it will remain below the cost of a full operating initial license.

**LODGING**
The proposal increases annual renewal fees by $75 for each class. This affects nearly 2,000 licensees. The percentage increase for establishments:
- With less than 21 rooms is about a 50% increase affecting around 250 licensees.
- Between 21-100 rooms is a 38% increase affecting around 740 licensees.
- More than 100 rooms is a 30% increase affecting around 200 licensees.

The initial license fee (310:250-3-3) has been increased by $50 for each category of lodging. The application fee for plan review (310:250-3-7(c)) has been increased from $200 to $425.

**DRUG OPERATIONS**
This proposal increases renewal fees to be consistent with the food Category I accounting for a $75 increase annually for renewal and a $25 increase in the initial fee. This change will affect minimal licensees at this point in time. There is only one such operation in the State. (OAC 310:250-3-2)

**PUBLIC BATHING**
To offset costs of operating the program currently, the proposal is increasing initial licenses by $75. This is estimated to affect less than 105 licensed public bathing places annually.
Renewal pools fees are proposed to increase $25 annually (50% increase) which is estimated to affect around 3,000 licensees.

DIAGNOSTIC X-RAY
The diagnostic x-ray program costs are being restructured to streamline the licensing process. Currently, the fee structure identifies an initial tube fee with a decreased fee for each additional tube. Based on current data, about 1,400 facilities will pay less than previous annual fees; about 630 will pay the same amount. Less than 900 will pay more; on average, the increase will be $15 annually. Changes to the fee structure will streamline the annual licensing process by simplifying the calculation and thereby decrease administrative resources used to educate applicants and issue refunds for overpayment.

5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:
(the probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency [75 O.S. §303.D.2(e)])

The cost to the Department to implement the amendments will be approximately $8,453.70 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules are projected to have the following revenue impacts.

<table>
<thead>
<tr>
<th>Description</th>
<th>Revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td>Estimated deficit for FY 2017</td>
<td>($2,926,704)</td>
</tr>
<tr>
<td>Estimated Public Health Specialists attrition/vacancies (N=5 @ $71,011)</td>
<td>$355,055</td>
</tr>
<tr>
<td>Proposed Food Application Fee Increase Revenue (OAC 310:250-3-7)</td>
<td>$337,500</td>
</tr>
<tr>
<td>Proposed Food Initial Fee Increase Revenue (OAC 310:250-3-1)</td>
<td>$102,650</td>
</tr>
<tr>
<td>Proposed Food Renewal Fee Increase Revenue (OAC 310:250-3-1)</td>
<td>$1,763,350</td>
</tr>
<tr>
<td>Proposed Food Temporary License Increase Revenue (OAC 310:250-3-1)</td>
<td>$268,790</td>
</tr>
<tr>
<td>Proposed Food Re-Inspection Fee</td>
<td>$0</td>
</tr>
<tr>
<td>Proposed Lodging Application Fee Increase Revenue (OAC 310:250-3-7)</td>
<td>$11,250</td>
</tr>
<tr>
<td>Proposed Lodging Initial Fee Increase Revenue (OAC 310:250-3-3)</td>
<td>$2,500</td>
</tr>
<tr>
<td>Proposed Lodging Renewal Fee Increase Revenue (OAC 310:250-3-3)</td>
<td>$89,850</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$4,241</strong></td>
</tr>
</tbody>
</table>

6. IMPACT ON POLITICAL SUBDIVISIONS: (a determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule [75 O.S. §303.D.2(f)])

There is a potential anticipated impact on primary and secondary school districts and institutions of higher education for kitchens and pools. Other political subdivisions may also be impacted. An example is state lodging facilities for kitchens, hotel/motel rooms and pools.

7. ADVERSE EFFECT ON SMALL BUSINESS: (a determination of whether implementation of the proposed rule may have an adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act [75 O.S. §303(D)(2)(g)])

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1. 75 O.S. § 502. As used in the Oklahoma Small Business Regulatory Flexibility Act:

4. "Small business" means a for-profit enterprise consisting of fifty or fewer full-time or part-time employees.

2. 75 O.S. § 504(B). If the proposed rules may have an adverse economic effect upon small business, the agency shall submit a copy of the proposed rules and a rule impact statement to the Small Business Regulatory Review Committee for its review and comment pursuant to the review and comment provisions of paragraph 2 of subsection A and paragraph 6 of subsection B of Section 303 of this title.
The increase in fees may have an adverse effect on small businesses whose license fees are governed by Chapter 250. OSDH requested comments by January 17, 2017, but extended the comment period to February 9, 2017 at 1:00 p.m., from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from businesses entities were considered over the course of the rule development and through meetings with the Restaurant Association and the Department's Food Service Advisory Council.

8. **EFFECTS TO MINIMIZE COSTS OF RULE:** (an explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule [75 O.S. §303.D.2(h)])

**FOOD**
The Department researched surrounding states to identify possible tiered approaches that may be more cost effective for the different types of food services provided. The food service was identified and currently used in Kansas and does not require additional reporting and tracking of gross annual sales, square footage, number of employees or number of seats.

The Department has held discussions and received comments and has moderated fees based on those comments in an effort to reduce impact and costs.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:** (a determination of the effect of the proposed rule on the public health, safety and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk [75 O.S. §303.D.2(i)])

The inspection programs for food, lodging, drug manufacturers, and public bathing places are currently not covering expenses. With a decrease in state funding, this affects salary for statewide coverage. Without this change, decreased inspections will be anticipated thereby increasing possible imminent health hazards at the licensed establishments.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:** (a determination of any detrimental effect on the public health, safety and environment if the proposed rule is not implemented [75 O.S. §303.D.2(j)])

The inspection programs for food, lodging, drug manufacturers, and public bathing places are currently not covering expenses. With a decrease in state funding, this affects salary for statewide coverage. Without this change, decreased inspections will be anticipated thereby increasing possible imminent health hazards at the licensed establishments.

11. This initial rule impact statement was prepared on December 14, 2016. Modifications were made on January 8, 2017 and January 25, 2017 based on comments received from interested parties and discussions held with the Department. The statement was modified on January 31, 2017 to clarify the impact on political subdivisions. (the date the rule impact statement was prepared and if modified, the date modified [75 O.S. §303.D.2(k)])
RULE COMMENT SUMMARY AND RESPONSE

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing.[75:303.1(E)(9)&(10)]

Rule Section 310:250-3-1. Food service establishments’ permits fees

Summary of Comments:
Representative Rick West from District 3, in discussion with Oklahoma State Department of Health (OSDH) staff Lynnette Jordan on January 12, 2017, expressed concern about a fee increase for small businesses in his district. Further, it was mentioned small businesses should not be paying the same amount as those businesses with higher gross annual sales.

Carrie Well with Simple Simon’s Pizza, Wister, OK in discussion with OSDH staff Lynnette Jordan on January 17, 2017, expressed concern of such a large increase in annual fees, referencing an $800 annual fee. That as a small business in a small town, any increase would be difficult on small business. It was also stated that $325 annual fee was not as bad as $800 annual fee.

Beverly Lewis with Bev’s Home Cooking, Wister, OK in discussion with OSDH staff Lynnette Jordan on January 17, 2017, expressed concern and protest to any fee increase. Wister is a small town with a population of 900 and the small businesses were doing good to keep their head above water. The restaurant is a family oriented restaurant and they are trying to maintain business for the hometown. This is a place for the community, especially the elderly, to get out and socialize, even sometimes just to have a cup of coffee. Any increase makes it difficult to maintain and the rural areas are going to be hit hard and may end up having to close their doors.

At a January 18, 2017 public meeting of the Food Service Advisory Council (FSAC), a commenter suggested further evaluation and moderation of annual renewal fees to reduce adverse effects on the food industry; specifically subsections 310:250-3-1(a)(1)(B), (a)(2)(B) and (a)(3)(B). Comments were also discussed about the tiered category proposal and the complexity it may pose to keep consistent licensing procedures.

OSDH Evaluation:
In developing the December 15, 2016 proposed rule, OSDH Staff reviewed surrounding state food fee schedules and researched the correlation of inspections with food safety. Based on that evaluation, OSDH categorized the establishments, based on their food operations, into a Category I, II, or III similar to the U.S. Food and Drug Administration (FDA) Hazard Analysis Critical
Control Points (HACCP). Under that categorization, establishments with a higher complex food processes require more in-depth inspections. All but one of the states reviewed had some sort of categorization (i.e. Gross Annual Sales, Size of Establishment, Number of Seats, and Food Processes). The State of Kansas had the most closely related categorization based on the level of complexity of the food processes.

OSDH developed multiple calculations to attempt to cover the cost of the food safety program which includes licensing and inspections. Each attempt was moderated to decrease the overall Category III cost and attempt as little annual impact on business while attempting to cover the cost of the program.

<table>
<thead>
<tr>
<th>Renewal Fee Amounts</th>
<th>Category III</th>
<th>Category II</th>
<th>Category I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Initial Draft (before 12/15/2016)</td>
<td>$450</td>
<td>$350</td>
<td>$250</td>
</tr>
<tr>
<td>Rule Published with Notice of Intent (12/15/16)</td>
<td>$375</td>
<td>$350</td>
<td>$325</td>
</tr>
<tr>
<td>Revised Proposal for FSAC Review (1/8/17)</td>
<td>$350</td>
<td>$325</td>
<td>$300</td>
</tr>
<tr>
<td>January 31, 2017</td>
<td>$250</td>
<td>$250</td>
<td>$250</td>
</tr>
</tbody>
</table>

Based on further comments, OSDH looked at the five current inspector vacancies (N=5 @ an average overall cost $71,011 each). If not filled for the remainder of the year and into the following fiscal year, there would be an estimated savings of $355,055 annually. Though inspections may decrease in the vacant areas and require additional travel, this could entail a $15 decrease in overall annual renewal fees for each of the proposed Categories.

<table>
<thead>
<tr>
<th>Renewal Fee Amounts</th>
<th>Category III</th>
<th>Category II</th>
<th>Category I</th>
</tr>
</thead>
<tbody>
<tr>
<td>Revised Proposal (1/17/17)</td>
<td>$335</td>
<td>$310</td>
<td>$285</td>
</tr>
</tbody>
</table>

One commenter requested clarification about the categorization of mobile establishments. Depending on the mobile establishment’s operation, any one of the three categories proposed might apply.

Upon further review and moderation, and based on comments and the FSAC public meeting, OSDH proposes removing the food categories and using a single fee increase for all food establishments, warehousing and manufacturing. OSDH recommends an annual renewal fee of $335, which is an increase of $85 per year.

**Change:** OSDH recommends further moderating the renewal fees to minimize the impact on businesses and combine food categories I – III into a single classification, as follows:

**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.

Summary of Comments:
At a January 18, 2017 public meeting of the FSAC, a commenter expressed support for re-inspection fees and stated that re-inspections were additional services and establishments should expect an additional fee. Another commenter expressed concern that a re-inspection fee could be used as a revenue generating program and might be inconsistently applied across the state.

OSDH Evaluation:
Based on comments and lack of accurate historical data on facilities with multiple re-inspections for the same violations, OSDH agrees to remove the re-inspection fees from the proposed rule. OSDH will update databases and data collection and further evaluate the volume of repeated violations and re-inspections.

Change:
OSDH proposes removing proposed language at OAC 310:250-3-1(e), establishing a re-inspection fee.

Rule Section 310:250-3-7. Application fee

Summary of Comment:
At the January 18, 2017 public meeting of the FSAC, a commenter expressed support for the fees for plan and specification applications; these are additional services and applicants should expect an increased fee. One commenter expressed concern that a business might decide to not carry through with the business after the plan and specification application, and combining the application fee with the license fee created an undue financial burden.

OSDH Evaluation:
Based on comments and to provide new businesses an opportunity to separate costs for
assessment of the establishment and issuance of a license, OSDH recommends not deleting the application fee section as originally proposed on December 15, 2016. This in turn affects Sections 3-1, 3-2 and 3-3 in the reduction of the upfront cost from the originally proposed language. Instead of adding the application fees to the license fees and increasing the combined fees, as proposed on December 15, 2016, OSDH proposes increasing the application fee for plans and specifications in OAC 310:250-3-7.

Changes: OSDH proposes amending OAC 310:250-3-7 to preserve the fee for plans and specifications, and include an increase to offset the reduction in the license fees proposed in OAC 310:250-3-1. The categories are also updated to reflect each licensing/permitting section updated within the fee schedule.

(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
5. Type 45 Class A – "Frozen Food Locker" $200.00
6. Type 45 Class B – "Bar" $200.00
7. Type 45 Class C – "Combination Retail Food" $200.00
8. Type 45 Class E – "Health Facilities, State Prisons, Schools, Non-Profit Institutions" $200.00
9. Type 45 Class F – "Food Service Establishment" $200.00
10. Type 45 Class G – "Food Service with Bar" $200.00
11. Type 45 Class P – "Mobile Food Service and Vendor" $200.00
12. Type 45 Class R – "Retail Food Store" $200.00
13. 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.

1. Drug operational category - $425.00
2. Type 45 Class A – "Frozen Food Locker" $200.00
3. Type 45 Class E – "Health Facilities, State Prisons, Non-Profit Institutions" $200.00
4. Type 45 Class P – "Food Processors" $200.00
5. Type 45 Class W – "Food Wholesalers" $200.00
6. Type 45 Class X – "Privately Owned Prisons" $200.00
7. Type 45 Class Y – "Salvage Food" $200.00
8. Type 45 Class Z – "Water Bottling Facilities"
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

Summary of Comment:
At a January 18, 2017 public meeting of the FSAC, one commenter recommended that OSDH should develop a verified self-inspection program to identify establishments that would be candidates for reduced numbers of routine OSDH inspections. This approach could serve to reduce OSDH inspection costs for establishments remaining in compliance with OSDH requirements.

OSDH Evaluation:
OSDH agrees with the recommendation to consider recognizing effective self-inspection programs. This could enable OSDH to reduce resources required to inspect facilities that effectively maintain compliance with food establishment requirements. OSDH recommends a collaborative effort with the FSAC and the food industry to conduct an administrative review of OSDH scheduling practices. The goal would be to make the inspection program more efficient and effective. The administrative review will enable OSDH and the industry to develop and evaluate a self-inspection method based on risk and need, and reach consensus on best practices for OSDH scheduling of inspections. OSDH will work with the FSAC and the food industry in the future to develop rules if needed to implement an updated inspection-scheduling model.

Changes: No changes were made to OAC 310:250.

Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:

No persons or organizations appeared or registered for or against the adopted rule at the public hearing held by OSDH on January 17, 2017.

Agency Rule Contact:
Lynnette Jordan, Director, Consumer Health Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-1207, telephone (405) 271 5243, or by e-mail to Lynnette@health.ok.gov.
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.

Type 45 Class A - "Frozen Food Locker":
   (A) Initial - $350.00
   (B) Renewal - $250.00
   (C) Late Renewal - $300.00

Type 45 Class B - "Bar":
   (A) Initial - $350.00
   (B) Renewal - $250.00
   (C) Late Renewal - $300.00

Type 45 Class C - "Combination Retail Food":
   (A) Initial - $350.00
   (B) Renewal - $250.00
   (C) Late Renewal - $300.00

Type 45 Class E - "Health Facilities, State Prisons, Schools, or Non-Profit Institutions":
   (A) Initial - $100.00
   (B) Renewal - $100.00
   (C) Late Renewal - $150.00

Type 45 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 postmarked 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.

(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
(B) Renewal - $250.00
(C) Late Renewal - $300.00

(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

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

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

(A) Initial - $250.00
(B) Renewal - $150.00
(C) Late Renewal - $200.00

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

(A) Initial - $300.00
(B) Renewal - $200.00
(C) Late Renewal - $250.00

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

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

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 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

(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
   Type 45 Class B - "Bar" $200.00
   Type 45 Class C - "Combination Retail Food" $200.00
   Type 45 Class E - "Health Facilities, State Prisons, Schools, Non-Profit Institutions" $200.00
   Type 45 Class F - "Food Service Establishment" $200.00
   Type 45 Class G - "Food Service with Bar" $200.00
   Type 45 Class M - "Mobile Food Service and Vendor" $200.00
   Type 45 Class R - "Retail Food Store" $200.00
   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.

(1) Drug operational category - $425.00
   Type 45 Class A - "Frozen Food Locker" $200.00
   Type 45 Class E - "Health Facilities, State Prisons, Non-Profit Institutions" $200.00
   Type 45 Class P - "Food Processors" $200.00
   Type 45 Class W - "Food Wholesalers" $200.00
   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
To: Board of Health Secretary

Through: Terry Cline, Ph.D.
Commissioner

Through: James Joslin, Chief
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Lee Martin, Director
Medical Facilities Service

Date: January 25, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
Chapter 615. AMBULATORY SURGICAL CENTERS

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment Summary

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

1. DESCRIPTION:

The proposal amends 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 proposal revises the requirements for stage one, stage two, and special construction plan submittals, and gives ambulatory surgical centers the option to move directly to the 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 ambulatory surgical centers to self-certify compliance of their plans for certain types of projects.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

The classes of persons affected are ambulatory surgical centers proposing to construct new buildings or make major alterations to existing buildings. Additionally, affected professionals working with ambulatory surgical centers may include architects, engineers, clinicians, and attorneys. The OSDH requested in the notice of rulemaking intent information from businesses on cost impacts. As noted in the rule comment summary, those commenting sought clarification on the rule but were supportive of the revisions and additional review options and their associated fees.

The proposed rules were developed over the course of 18 months in cooperation with representatives of health care facilities, architects, attorneys and engineers. The goal of the working group was to reduce the time from concept to market for health services, by ensuring that OSDH reviews are timely completed while reducing the proportion of plans denied or requiring rework. Those participating sought the changes based on their assertions that health facility customers will benefit from more timely access to health services with lower project development and implementation costs.

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

Persons benefiting will include ambulatory surgical centers, associated professionals, and customers of ambulatory surgical centers. The benefits include updating the rule to incorporate current life-safety codes adopted by the Centers for Medicare & Medicaid Services, and design and construction requirements adopted by the Facility Guidelines Institute. Persons visiting ambulatory surgical centers also benefit from the changes in health and safety protections due to the adoption of the new codes. The addition of the exception and waiver process affords ambulatory surgical centers a method to resolve differences between national standards and Oklahoma State Department of Health (OSDH) requirements. Ambulatory surgical centers will benefit from access to an optional and expedited self-certification process to reduce the time required for review and approval of design and construction documents. The proposal was developed in cooperation with representatives of health care facilities, architects, attorneys and engineers. The goal of the working group is to reduce the time from concept to market for health services, by ensuring that OSDH reviews are timely completed while reducing the proportion of plans denied or requiring rework.
Health facility customers will benefit from more timely access to health services with lower project development and implementation costs.

For the period from July 2015 to August 2016, the average time from submittal of plans to approval by the OSDH was 94 days for design documents, with 27% completed in less than 45 days. For final construction documents, the time from original submittal to OSDH approval averaged 60 days, with 50% completed in less than 45 days. The objective of the proposed changes is to complete all reviews within 45 days after submittal.

The average time from original submittal of plans to completion of construction averaged just over 400 days from July to December 2015. The average improved slightly to 380 days from July to September 2016. An objective of the project is to achieve 15% annual reductions in total project completion times until the review process demonstrates statistical control.

Note: The data above are for projects submitted by hospitals and ambulatory surgical centers. The OSDH processing times referenced include time taken by facilities to correct or revise plans following comments or rejections by OSDH. Actual OSDH review days are about one-third of total construction completion statistics.

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**
   Ambulatory surgical centers may benefit economically from reduced times required to obtain clearance to start construction. The upgraded codes and guidelines are anticipated to include a combination of cost increases and decreases because of new construction technologies and methods. The rule includes fee increases for operational services. The fee increases are as follows:
   (A) Request for exception or temporary waiver fee: Five Hundred Dollars ($500.00);
   (B) Application for self-certification fee: One Thousand Dollars ($1,000.00);
   (C) Courtesy construction inspection fee: Five Hundred Dollars ($500.00);
   (D) Professional consultation or technical assistance fee: Five Hundred Dollars ($500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

   Based on State Fiscal Year (SFY) 2016 experience, the changes are projected to generate a total of $4,500 for SFY2018, based on the following:
   - $1,000 in exception or temporary waiver fees, assuming 2 requests at $500
   - $1,000 in self-certification fees, assuming 1 certification at $1,000 each
   - $3,000 in courtesy inspection fees, assuming 6 inspections at $500 each
   - $500 in professional consultation fees, assuming 1 projects at $500 each
   - $4,500 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**
   The cost to the OSDH to implement the amendments will be approximately $3,252.32 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel. For SFY2017, health facility plan review expenses of $469,349 are projected to exceed fees of $162,958, for a deficit of $306,391. The deficit in SFY2017 and subsequent years must be covered by state appropriations. This proposal has the potential to reduce the required state appropriations subsidy by approximately $4,500 in FY 2018 and subsequent years. No impacts on other agencies are anticipated.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
   Ambulatory surgical centers operated by political subdivisions may be affected by the upgrade in codes and guidelines, the new review process, and the fees for optional services.
7. **ADVERSE EFFECT ON SMALL BUSINESS:**
   The new fees for optional construction-related services may have an adverse effect on small businesses that engage in construction projects. Additionally, the costs of commissioning required in the updated construction guidelines may have an adverse effect on small businesses. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from business entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
   The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**
   This change will enable health care facilities to use the most current national codes and guidelines, which represent enhancements to patient safety and health care quality. Additionally, the rule makes provisions to ensure that OSDH reviews are timely accomplished.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
    If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. The OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Without this change, the OSDH will continue to review and approve functional programs, which in the past have contributed to project delays and uses the OSDH’s limited clinical staff resources that would otherwise be performing ambulatory surgical center surveys. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the ambulatory surgical center licensure program and may be unable to continue to support the optional services provided by OSDH for construction projects undertaken to improve patient health and safety.

11. **PREPARATION AND MODIFICATION DATES:**
    This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. Final formatting and conclusions were completed January 26, 2017.
RULE COMMENT SUMMARY AND RESPONSE

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing. [75:303.1(E)(9)&(10)]

Rule Section 310:615-1-3. General considerations

Summary of Comment: Ms. Rebecca Anderson of McFarland Architects, P.C., in a January 4, 2017 email to Oklahoma State Department of Health (OSDH) staff, questioned proposed requirements in the Oklahoma Administrative Code (OAC) 310:615-1-3(b). That subsection states the Oklahoma statutes prevail if there is conflict between the Facility Guidelines Institute (FGI) Guidelines and Oklahoma statutes. Ms. Anderson asked if facilities should not use OAC OAC 310:615-5 and instead use the FGI Guidelines. Ms. Anderson also asked whether there would always be a conflict between Oklahoma statutes and FGI Guidelines because the Oklahoma statutes are out of date.

OSDH Explanation: An explanation of the difference between statutes and rules should resolve these concerns. The Oklahoma statutes referenced in OAC 310:615-1-3(b) are Oklahoma laws passed by the Legislature and codified in the Oklahoma Statutes (O.S.). The statutes differ from the rules, which are promulgated by the State Board of Health in OAC Chapter 310:615. Ms. Anderson is correct that the FGI Guidelines, 2014 Edition, incorporated by reference in OAC 310:615-1-3(a) will prevail over other conflicting provisions in OAC 310:615. However, if conflicts are identified between Oklahoma statutes and the FGI Guidelines, Oklahoma statutes will prevail. OSDH currently is not aware of conflicts between Oklahoma statutes and the FGI Guidelines.

Change: No change is required.

Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH staff and attended by representatives of ambulatory surgical centers, one commenter asked whether OSDH would publish the decisions on exception and waiver requests.

OSDH Explanation: Publication of decisions on exception and waiver requests would be of benefit to facilities, architects and engineers designing and building facilities, it would serve to make the process more transparent, and would serve as the basis for future rule amendments to enable innovation and improvement.

Change: Subsection 310:615-1-3(d) should be amended with a new paragraph (7) to read as follows:

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public.
Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH staff and attended by representatives of ambulatory surgical centers, one commenter asked about the documentation and process to demonstrate compliance with the FGI Guidelines. What format would be used, what documents would be submitted to OSDH or maintained at the facility, and how would the rule be enforced? Several commenters suggested OSDH and health care providers should continue to work together to develop administrative practices and educational materials while the rule moves towards final adoption.

OSDH Explanation: OSDH agrees that it will be beneficial to work collaboratively with the industry to transition to the updated guidelines. OSDH will consult with industry representatives to develop administrative practices and templates to standardize the plan review process. Additionally, OSDH will collaborate with the industry to offer public training events on the updated guidelines and codes.

Change: No change is required.

Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH staff and attended by representatives of ambulatory surgical centers, one commenter asked whether Part 2 of the FGI Guidelines would apply to ambulatory surgical centers.

OSDH Explanation: Part 2 of the FGI Guidelines applies to hospitals and would not apply to ambulatory surgical centers licensed under OAC 310:615. Part 3 of the FGI Guidelines, including standards incorporated by reference in Part 3, applies to outpatient facilities and would be used in the design and construction of ambulatory surgical centers if the amendments to OAC 310:615-1-3 are adopted.

Change: No change is required.

Summary of Comment: This issue was identified by OSDH staff during a discussion with representatives of ambulatory surgical centers. The proposed new language in OAC 310:615-1-3(d)(2)(i) referenced the ambulatory surgical center licensing law as 63 O.S. Section 1-2567. The correct reference is 63 O.S. Section 2657.

OSDH Explanation: This error does not change the intent or effect of the rule and should be corrected. In the process of this correction an error in numbering was identified for this paragraph. Subparagraphs (i) through (v) will be re renumbered to (A) through (E)

Change: Subparagraph 310:615-1-3(d)(2)(A) should be revised to read as follows:

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

Rule Section 310:615-1-3.1 Submission of plans and specifications and related requests for services

Summary of Comment: Ms. Esther Houser, in a January 5, 2017 email to OSDH staff, identified a drafting error in a rule proposal for OAC 310:675-5-23(a)(1)(x), which is repeated in the present Chapter at OAC 310:615-1-3.1(a)(1)(x).
OSDH Explanation: The proposal included a drafting error and correction of the error results in clarification but no substantive alteration of the rule. In the process of this correction an error in number sequence was identified for this paragraph as well as an error in numbering for the subparagraphs.

Change: Subparagraphs (i) through (xii) will be re-sequenced and renumbered (A) through (K).

Subparagraph (x) was changed to (I) and corrected as follows:

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

Summary of Comment: Ms. Rebecca Anderson of McFarland Architects, P.C., in a January 4, 2017 email to OSDH staff, questioned 310:615-1-3.1(a)(i through xii) which relate to the types of major alterations required to be submitted to OSDH. Ms. Anderson requested asterisks by the types of alterations that would be appropriate for self-certification.

OSDH Explanation: The types of design and construction plans eligible for self-certification are specified in a proposed new section, OAC 310-615-1-5. The proposed rule includes a maximum cost of $5,000,000 for projects affecting areas where patients are intended to be examined or treated.

Change: As noted above, subparagraphs (i) through (xii) will be re-sequenced and renumbered (A) through (K). No other change is required.

Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH staff and attended by representatives of ambulatory surgical centers, several commenters questioned the fee for self-certification in OAC 310:615-1-3.1(e). They asked whether the self-certification fee is in addition to the review fees specified in OAC 310:615-1-3.1(b).

Mr. Curtis Wilson in a January 17, 2017 email to OSDH staff noted a typographical error in existing rule language in OAC 310:615-1-3.1(b)(5).

OSDH Explanation: The self-certification fee is not intended to be added to the fee charged for review of design and construction plans. The rule should be amended to clarify that the plan review fees in OAC 310:615-1-3.1(b) apply to plans and specifications for stage one, stage two, and fast-track projects submitted pursuant to OAC 310:615-1-3.2.

The typographical error in OAC 310:615-1-3.1(b)(5) should be corrected.

Change: Subsection 310:615-1-3.1(b) should be amended to read as follows:

(b) Each construction project 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
Summary of Comment: A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:615-1-3.1(d)(1)(A) as proposed includes the same 15-day review time frame.

OSDH Explanation: For consistency with other health-facility plan review processes, including OAC 310:675, OSDH proposes reducing the 15-day administrative review time for resubmitted materials.

Change: Subparagraph 310:615-1-3.1(d)(1)(A) should be revised to read as follows:

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

Rule Section 310:615-1-5. Self-certification of plans

Summary of Comment: Ms. Rebecca Anderson of McFarland Architects, P.C., in a January 4, 2017 email to OSDH staff and recommended adding a monetary value to limit the types of projects submitted for self-certification

OSDH Explanation: The proposed rule includes a maximum cost of $5,000,000 for projects affecting areas where patients are intended to be examined or treated.

In reviewing these comments on OAC 310:615-1-5, OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a comment on OAC 310:667 identified a need to clarify the items required in the form to request self-certification in that the form includes the items in 310:615-1-5(c). OSDH proposes an amendment to subsection (b), as shown below.

Change: To clarify that the form includes the items in 310:615-1-5(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

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: 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

(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.

Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:

OSDH received written comments from:

- Ms. Rebecca Anderson of McFarland Architects, P.C.;

Agency Rule Contact:
Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, telephone (405) 271 6576, or by e-mail to LeeM@health.ok.gov.
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 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:


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

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

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

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

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

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

   (D) **Extensions.** 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 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.
     - (i) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications.
     - (ii) Complete architectural plans and specifications.
     - (iii) All mechanical, electrical, and plumbing plans and specifications.
     - (iv) Equipment and furnishings.

(2) **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.
To: Board of Health Secretary

Through: Terry Cline, Ph.D.
Commissioner

Through: James Joslin, Service Director
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Lee Martin, Serviced Director
Medical Facilities Service

Date: January 25, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
Chapter 667. HOSPITAL STANDARDS

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment Summary

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

1. DESCRIPTION:
   The proposal amends physical plant requirements in Subchapter 41 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 the 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.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:
   The classes of persons affected are hospitals proposing to construct new buildings or make major alterations to existing buildings. Additionally, affected professionals working with hospitals may include architects, engineers, clinicians, and attorneys. The OSDH requested in the notice of rulemaking intent information from businesses on cost impacts. The OSDH received written comment from three individuals who commented on other aspects of the rule but did not express concern with the cost impact. The Hospital Advisory Board reviewed the proposed rule and voted to approve recommendation of the rule to the Board of Health. The OSDH convened an industry working group examining the plan review process which met over the last 18 months. This work group was the genesis for the proposed rule.

3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:
   Persons benefiting will include hospitals, associated professionals, and customers of hospitals. The benefits include updating the rule to incorporate current life-safety codes adopted by the Centers for Medicare & Medicaid Services, and design and construction requirements adopted by the Facility Guidelines Institute. Persons admitted or visiting a hospital also benefit from the changes in health and safety protections due to the adoption of the new codes. The addition of the exception and waiver process affords hospitals a method to resolve differences between national standards and Oklahoma State Department of Health (OSDH) requirements. Hospitals will benefit from access to an optional and expedited self-certification process to reduce the time required for review and approval of design and construction documents. The proposal was developed in cooperation with representatives of health care facilities, architects, attorneys and engineers. The goal of the working group is to reduce the time from concept to market for health services, by ensuring that OSDH reviews are timely completed while reducing the proportion of plans denied or requiring rework. Health facility customers will benefit from more timely access to health services with lower project development and implementation costs.
For the period from July 2015 to August 2016, the average time from submittal of plans to approval by the OSDH was 94 days for design documents, with 27% completed in less than 45 days. For final construction documents, the time from original submittal to OSDH approval averaged 60 days, with 50% completed in less than 45 days. The objective of the proposed changes is to complete all reviews within 45 days after submittal.

The average time from original submittal of plans to completion of construction averaged just over 400 days from July to December 2015. The average improved slightly to about 380 days from July to September 2016. An objective of the project is to achieve 15% annual reductions in total project completion times until the review process demonstrates statistical control.

Note: The data above are for projects submitted by hospitals and ambulatory surgical centers. The OSDH processing times referenced include time taken by facilities to correct or revise plans following comments or rejections by OSDH. Actual OSDH review days are about one-third of total construction completion statistics.

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

   Hospitals may benefit economically from reduced times required to obtain clearance to start construction. The upgraded codes and guidelines are anticipated to include a combination of cost increases and decreases because of new construction technologies and methods. The rule includes fee increases for operational services. The fee increases are as follows:
   
   (A) Request for exception or temporary waiver fee: Five Hundred Dollars ($500.00);
   
   (B) Application for self-certification fee: One Thousand Dollars ($1,000.00);
   
   (C) Courtesy construction inspection fee: Five Hundred Dollars ($500.00);
   
   (D) Professional consultation or technical assistance fee: Five Hundred Dollars ($500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the OSDH's costs for travel.

   Based on State Fiscal Year (SFY) 2016 experience, the changes are projected to generate a total of $62,500 for SFY2018, based on the following:

   - $2,500 in exception or temporary waiver fees, assuming 5 requests at $500
   - $15,000 in self-certification fees, assuming 15 certifications at $1,000 each
   - $40,000 in courtesy inspection fees, assuming 80 inspections at $500 each
   - $5,000 in professional consultation fees, assuming 10 projects at $500 each
   - $62,500 total increased fees.

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

   The cost to the OSDH to implement the amendments will be approximately $3,252.32 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rules will be implemented and enforced by existing OSDH personnel and will not result in an increase in authorized full-time equivalent personnel. For SFY2017, health facility plan review expenses of $469,349 are projected to exceed fees of $162,958, for a deficit of $330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. This proposal has the potential to reduce the required state appropriations subsidy by approximately $60,000 in FY 2018 and subsequent years. No impacts on other agencies are anticipated.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
Hospitals operated by political subdivisions may be affected by the upgrade in codes and guidelines, the new review process, and the fees for optional services.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**
   The new fees for optional construction-related services may have an adverse effect on small businesses that engage in construction projects. Additionally, the costs of commissioning required in the updated construction guidelines may have an adverse effect on small businesses. OSDH has requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from business entities will be considered by OSDH and the State Board of Health and may result in additional modifications to the rule proposal prior to adoption.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
   The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**
   This change will enable health care facilities to use the most current national codes and guidelines, which represent enhancements to patient safety and health care quality. Additionally, the rule makes provisions to ensure OSDH reviews are timely accomplished.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
    If this change is not made, Oklahoma will continue to have outdated life safety and design and construction requirements. The OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Without this change, the OSDH will continue to review and approve functional programs, which in the past have contributed to project delays and uses the OSDH’s limited clinical staff resources that would otherwise be performing hospital surveys. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the hospital licensure program and may be unable to continue to support the optional services provided by OSDH for construction projects undertaken to improve patient health and safety.

11. **PREPARATION AND MODIFICATION DATES:**
    This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. The statement was modified on January 25, 2017, to incorporate public comment.
RULE COMMENT SUMMARY AND RESPONSE

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing.[75:303.1(E)(9)&(10)]

Rule Section 310:667-41-1. General

Summary of Comment: Ms. Rebecca Anderson of McFarland Architects, P.C., in a January 4, 2017 email to Oklahoma State Department of Health (OSDH) staff, questioned proposed requirements in the Oklahoma Administrative Code (OAC) 310:667-41-1(b). That subsection states the Oklahoma statutes prevail if there is conflict between the Facility Guidelines Institute (FGI) Guidelines and Oklahoma statutes. Ms. Anderson asked if facilities should not use OAC 310:667-49-56 and instead use the FGI Guidelines. Ms. Anderson also asked whether there would always be a conflict between Oklahoma statutes and FGI Guidelines because the Oklahoma statutes are out of date.

OSDH Explanation: An explanation of the difference between statutes and rules should resolve these concerns. The Oklahoma statutes referenced in OAC 310:667-41-1(b) are Oklahoma laws passed by the Legislature and codified in the Oklahoma Statutes (O.S.). The statutes differ from the rules, which are promulgated by the State Board of Health in OAC Chapter 310:667. Ms. Anderson is correct that the FGI Guidelines, 2014 Edition, incorporated by reference in OAC 310:667-41-1(a) will prevail over other conflicting provisions in OAC 310:667. However, if conflicts are identified between Oklahoma statutes and the FGI Guidelines, Oklahoma statutes will prevail. OSDH currently is not aware of conflicts between Oklahoma statutes and the FGI Guidelines.

Change: No change is required.


Change: No change is required.

Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH with the Oklahoma Hospital Association and other interested persons, one commenter asked whether OSDH would publish the decisions on exception and waiver requests.

OSDH Explanation: Publication of decisions on exception and waiver requests could benefit facilities, architects and engineers designing and building facilities, serve to make the process more transparent, and serve as the basis for future rule amendments to foster innovation and improvement.

Change: Subsection 310:667-41-1(e) should be amended with a new paragraph (7) to read as follows:

(7) The Department shall publish decisions on requests for exceptions and waivers and make them available to facilities and the public. The Department shall remove facility identifying information to maintain confidentiality pursuant to 63 O.S. Section 1-709.

Summary of Comment: At a January 7, 2017 meeting sponsored by the OSDH with the Oklahoma Hospital Association and other interested persons, one commenter asked about the documentation and process to demonstrate compliance with the FGI Guidelines. What format would be used, what documents would be submitted to OSDH or maintained at the facility, and how would the rule be enforced? Several commenters suggested OSDH and the hospital industry should continue to work together to develop administrative practices and educational materials while the rule moves towards final adoption.

OSDH Explanation: OSDH agrees that it will be beneficial to work collaboratively with the hospital industry to transition to the updated guidelines. OSDH will consult with industry representatives to develop administrative practices and templates to standardize the plan review process. Additionally, OSDH will collaborate with the hospital industry to offer public training events on the updated guidelines and codes.

Change: No change is required.

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

Summary of Comment: Ms. Esther Houser, in a January 5, 2017 email to OSDH staff, identified a drafting error in a rule proposal for another chapter, OAC 310:675-5-23(a)(1)(x). That error is repeated in the present Chapter at OAC 310:667-47-1(a)(1)(x).

OSDH Explanation: The proposal included a drafting error and correction of the error results in clarification but no substantive alteration of the rule. Although Ms. Houser was not
commenting specifically on the proposed changes to OAC 310:667, the correction is made here for consistency across the Chapters in OAC Title 310 dealing with health facility plan reviews. In the process of this correction an error in number sequence was identified for this paragraph as well as an error in numbering for the subparagraphs.

**Change:** Subparagraphs (i) through (xii) will be re-sequenced and renumbered to (A) through (K)

Subparagraph (x) was changed to (I) and corrected as follows:

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

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**Summary of Comment:** Ms. Rebecca Anderson of McFarland Architects, P.C., in a January 4, 2017 email to OSDH staff, questioned OAC 310:667-47-1(a)(1)(i through xii) which relate to the types of major alterations required to be submitted to OSDH. Ms. Anderson requested identification of the types of alterations that would be appropriate for self-certification, and recommended adding a monetary value to limit the types of projects submitted for self-certification.

**OSDH Explanation:** The types of design and construction plans eligible for self-certification are specified in a proposed new section, OAC 310-667-47-10(c). The proposed rule includes a maximum cost of $15,000,000 for projects affecting areas where patients are intended to be examined or treated.

**Change:** As noted above, subparagraphs (i) through (xii) will be re-sequenced and renumbered to (A) through (K). No other change is required.

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**Summary of Comment:** At a January 9, 2017 meeting sponsored by the OSDH with the Oklahoma Hospital Association and other interested persons, several commenters questioned the fee for self-certification in OAC 310:667-47-10. They asked whether the self-certification fee is in addition to the review fees specified in OAC 310:667-47-1(b).

Mr. Curtis Wilson in a January 17, 2017 email to OSDH staff noted a typographical error in existing rule language in 310:667-47-1 (b)(5). Mr. Wilson recommended adding fees in excess of $2,500.

**OSDH Explanation:** The self-certification fee is not intended to be added to the fee charged for review of design and construction plans. The rule should be amended to clarify that the plan review fees in OAC 310:667-47-1 apply to plans and specifications for stage one, stage two, and fast-track projects submitted pursuant to OAC 310:667-47-2. Additionally, OSDH notes that instead of requiring a check for the fee, the rule should be more flexible to allow for other methods of payment. The typographical error in 310:667-47-1(b)(5) should be corrected. Pursuant to 63 O.S. Section 1-707, fees for submission or resubmission of
architectural and building plans are not to exceed $2,000; increasing fees to $2,500 or higher would require a statutory change.

Change: Subsection 310:667-47-1(b) should be amended to read as follows:

(b) 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

Summary of Comment: Mr. Curtis Wilson in a January 17, 2017 email to OSDH commented that adding fees for additional services and re-inspections are fair because the overall review fees have not increased.

Ms. Betsy Guthrie-Brunsteter of ADG, PC, in a January 17, 2017 email to OSDH supported the proposed changes to the fee structure.

Change: No change is required.

Summary of Comment: A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:667-47-1(d)(1)(A) as proposed includes the same 15-day review time frame.

OSDH Explanation: For consistency with other health-facility plan review processes, including OAC 310:675, OSDH proposes reducing the 15-day administrative review time for resubmitted materials.

Change: Subparagraph OAC 310:667-47-1(d)(1)(A) should be revised to read as follows:

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

Rule Section 310:667-47-2. Preparation of plans and specifications [AMENDED]
Summary of Comment: Mr. Curtis Wilson, in a January 17, 2017 email to OSDH, recommended a $1,000,000 maximum on projects eligible to bypass the stage 1 plan review per 310:667-47-2(a), based on the increased risk to hospitals and complexity of the functional-narrative review.

The Hospital Advisory Council in a public meeting on January 26, 2017, recommended the following changes:

- Clarify that the option to bypass stage one submittal does not apply if the project is being fast-tracked;
- Clarify that fast-track process is a method for phased approval of projects that allows hospitals to start work on packages as they are approved by the Department.

The Hospital Advisory Council recommended adoption of the proposed amendments to OAC 310:667, with the clarifications added to the fast-track project language.

OSDH Explanation: The option to bypass stage 1 plan reviews gives hospitals the flexibility to move more expeditiously through the OSDH approval process. The change reflects current practice and puts all hospitals on notice that they have the option if they accept the risk to modify items in the stage 2 review that might have been identified in a stage 1 review. Proposed changes in OAC 310:667-41-1-(e) recognize the authority of the hospital's governing body to approve the functional narrative, which will alleviate use of OSDH resources to review and approve functional narratives.

OSDH agrees with the clarifications recommended by the Hospital Advisory Council.

Change: Modify 310:667-47-2(a) and (c) to read as follows:

(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.

(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 separate packages.

(A)(i) Site work, foundation, structural, underslab 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.

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**Rule Section 310:667-47-10. Self-certification of plans [NEW]**

**Summary of Comment:** Mr. Curtis Wilson in a January 17, 2017 email to OSDH commented that the expedited reviews will "increase the outcome and health, safety and welfare of the patients served by the medical community within Oklahoma." Mr. Wilson recommended amendment of OAC 310:667-47-10 by setting a $1,000,000 maximum on projects eligible for self-certification, and disallowing self-certification for new facilities, new beds, operating rooms and advanced technologies. The purpose is to protect hospitals against losses if a project is later found to be out of compliance.

Ms. Betsy Guthrie-Brunsteter of ADG, PC, in a January 17, 2017 email to OSDH staff, expressed concern regarding the attestation requirement in OAC 310:667-47-10(c)(3). Ms. Guthrie-Brunsteter said that the attestation "may require a contractual assumption of liability by Architect that exceed Architect’s liability under law." Ms. Guthrie-Brunsteter recommended adding this language: “Architect’s attestation is an expression of Architect’s professional opinion having applied the standard of professional due care prevailing in Oklahoma for architectural services of the kind and at the time provided by Architect and shall neither state nor imply a warranty or guarantee in any form. Such extra-legal assumptions of liability may be excluded from available professional liability insurance.”

Additionally, Ms. Guthrie-Brunsteter stated that self-certification benefits the hospital, but the architect’s only benefit is that willingness to apply for self-certification may weigh favorably in the hospital’s selection of the architect.

**OSDH Explanation:** The option for self-certification was requested by persons with experience in hospital design and construction who have used the self-certification process successfully in other states, including Kansas. OSDH research found that states using self-certification (including Massachusetts, New York, Texas, Virginia, and Arkansas) were able to reduce the workload of their plan review staff and to reduce processing times while maintaining appropriate standards of oversight. The eligibility criteria proposed by OSDH will ensure that higher-risk projects are disqualified from self-certification and that experienced, licensed architects or engineers are used to certify plans for compliance with OAC 310:657. The self-certification review is optional and would only be used by hospitals, architects and engineers willing to assume the risk associated with constructing a facility not in compliance with the OAC 310:657, including the FGI Guidelines and the Life Safety Code incorporated by reference.

OSDH was unable to find in Oklahoma law or rules governing architects a liability limitation that would conflict with the proposed attestation requirement in OAC 310:667-47-10. OSDH believes liability could be addressed in the contract between the architect and the hospital.
Given that the provision is an option for expedited review, if the architect chooses not to attest to the self-certification process, then the default will be the plan review and approval process in OAC 310:667-47-2.

The requirements for the self-certification request form and eligibility criteria, including the language to be used for the attestation are set out in OAC 310:667-47-10. OSDH will be obligated to use language in the form that closely parallels the rule.

In reviewing these comments on OAC 310:667-47-10, OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below.

**Change:** To clarify that the form includes the items in 310:667-47-10(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below. This change also incorporates a renumbering of subparagraphs (c)(4)(i) through (iv) to (c)(4)(A) through (D).

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

(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).

Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:

OSDH received written comments from:
- Ms. Rebecca Anderson of McFarland Architects, P.C.;
- Ms. Betsy Guthrie-Brunsteter of ADG, PC; and
- Mr. Curtis Wilson.

Agency Rule Contact:
Lee Martin, Director, Medical Facilities Service, Oklahoma State Department of Health, 1000 N.E. 10th Street, Oklahoma City, OK 73117-6576, telephone (405) 271 6576, or by e-mail to LeeM@health.ok.gov.
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:

(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) 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) 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

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

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

(2) Technical review. The Department shall have forty-five (45) calendar days from the date
    a completed application is filed to review each application for technical compliance with the
    relevant regulations and reach a final determination.
(A) When times are tolled. The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.

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

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

(D) Extensions. 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, underslab 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 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

(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).
To: Board of Health Secretary

Through: Terry Cline, Ph.D,
Commissioner

Through: James Joslin, Chief
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Mike Cook, Director
Long Term Care Service

Date: January 27, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment Summary

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

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

This proposal adds OAC 310:663-15-4 as new rule to address requirements in statute related to a resident's freedom of choice in physician and all other providers of medical services and supplies 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). This change enumerates the resident rights and defines the responsibilities to be observed by each facility and its staff.

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

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:
Affected persons will be residents and their families as well as owners, operators, and staff of assisted living centers. The proposed construction and physical plant requirements will increase fees for owners and operators. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spends on preparing, filing and reporting, therefore allowing more time to be spent on resident care. Residents and their families will benefit from improved access to physicians and all other providers of medical services and supplies; this increased access may save them money. Owners, operators and staff of Assisted Living Centers will have increased responsibility for coordinating with resident choices. This increased coordination activity may cost operators in staff time and lost revenue. Cost impacts were sought during the comment period and none received. There were comments on other aspects of the proposed rules as addressed in the Rule Comment Summary.

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

Residents and their families are expected to benefit from improved access to physicians and all other providers of medical services and supplies. Maintaining access to current physicians and all other providers of medical services and supplies may reduce resident costs and eliminate resident and family stress associated with changing physicians and pharmacists. Comment on cost impacts were sought during the comment period and none received.

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

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

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

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

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

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

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

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

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

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

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

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

- For SFY2017, health facility plan review expenses of $469,349 are projected to exceed fees of $162,958, for a deficit of $306,391. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The continuum of care and assisted living center plan review fees have the potential to reduce the required state appropriations subsidy by $13,000.

- The proposed reporting of incidents will benefit residents, family and staff of nursing and specialized facilities by reducing duplicative reporting to the OSDH and local...
emergency response managers by approximately 1,600 reports. The proposal has the potential to reduce the required state appropriations subsidy by $3,535.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
   There will be no impact on political subdivisions and the proposed changes will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**
   The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH requested public comment from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. The comments received did not identify further adverse effects beyond those identified by the Department.

8. **EFFORTS TO MINIMIZE COSTS OF RULE:**
   The proposed changes add flexibility and minimize costs by providing a waiver and exception process, by allowing for self-certification of plans, and by providing fees for optional services.

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

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
   If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the facilities' efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services that assist facilities in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the required state appropriations subsidy for the continuum of care and assisted living licensure program. OSDH may be unable to continue to provide current levels of services for construction projects. The changes position OSDH to support timely completion of construction projects.

11. **PREPARATION AND MODIFICATION DATES:**
   This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; correct an error in section 5 of this statement regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriations subsidy referenced in sections 5 and 10; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. Final formatting and conclusions were written January 27, 2017.
RULE COMMENT SUMMARY AND RESPONSE

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing. [75:303.1(E)(9)&(10)]

Rule Section 663-7-3. Submission of plans and specifications and related requests for services

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310:680-5-9(a)(1)(I) and correction of the error results in clarification but no substantive alteration of the rule.

Change: Subparagraph 310:663-7-3(a)(1)(I) should be corrected as follows:

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

Summary of Comment: A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:663-7-3(d)(1)(A) as proposed includes the same 15-day review time frame.

OSDH Explanation: For consistency with other health-facility plan review processes, including OAC 310:675, OSDH proposes reducing the 15-day administrative review time for resubmitted materials.

Change: Subparagraph 310:663-7-3(d)(1)(A) should be revised to read as follows:

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

Rule Section 310:663-7-5. Self-certification of plans

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a comment on OAC 310:667 identified a need to clarify the items required in the form to request self-certification in that the form includes the items in 310:680-5-11(c). OSDH proposes an amendment to subsection (b), as shown below.

Change: To clarify that the form includes the items in 310:663-7-5(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

(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 one million dollars ($1,000,000) or less; or
2. The project involves only portions of the assisted living center where residents are not intended to be examined or treated; and
3. The project architect 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.

Rule Section 663-7-6. Exceptions and temporary waivers

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH staff questioned whether the "intent or objective" referred to in 310:663-7-6(a) is that of the rule or the facility or center.

OSDH Analysis: The intent or objective referenced is that of the standards in Chapter 310:663.

Change: Subparagraph (a) should be amended to clarify the intent or objective, as follows:

(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.

Summary of Comment: OSDH received comments on other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675, with provisions similar to OAC 310:663. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:663.

OSDH Explanation: Publication of decisions on exception and waiver requests would be of benefit to assisted living centers, architects and engineers designing and building facilities, it would serve to make the process more transparent, and would serve as the basis for future rule amendments to enable innovation and improvement.

Change: Subsection 310:663-7-6(c) should be amended with a new paragraph (7) to read as follows:

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

Rule Section 310:663-19-1. Incident reports

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH recommended restoring language on utility failures, storm damage and fires in subsections
310:680-3-6(d), and clarifying the language regarding contacts with the local emergency manager.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association appeared at the public hearing on January 17, 2017 and spoke on proposed amendments on incident reporting in Chapter 310:680. Ms. Wilson commented that it would be beneficial to use similar language on reporting for each long-term care facility being considered.

Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association expressed concern that fires are dangerous and utility failures are important. While utility failures may not cause damage, they can point to potential problems with residents and the facility.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended amending the continuum of care and assisted living rules to be consistent with the nursing facility rules in OAC 310:675. OSDH recommended restoring language on storm damage and fires, and revising the utility failure report to include utility failures of more than 8 hours. OSDH also recommended an allowance for facilities to work with local emergency managers in response to natural or man-made disasters, with the written report to the Oklahoma State Department of Health to be made within 10 days after conclusion of the emergency response situation. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

OSDH Explanation: Incident reports on utility failures, storm damage and fires represent only (1%) of total incident reports annually, and maintaining the requirements would not present an undue burden on OSDH or facilities. In emergency responses to situations such as hazardous weather, wildfires, outages of municipal water systems, a communication system is activated through local emergency managers, the state Office of Emergency Management, and the Oklahoma State Department Emergency Response and Preparedness Services. Essential status information and assistance requests are communicated timely and effectively through that communication network, and additional reports to the OSDH Long Term Care Service in times of crisis may be counter-productive. The rule should be revised to provide facilities some relief from filing required incident reports while they are engaged with local emergency managers in an emergency response mode.

Change: Subsections 310:663-19-1(a), (b) and (h) should be revised to read as follows:

(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 center that the resident is missing;
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.

(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 facility's local emergency response coordinator, and file a final report with the Department within ten (10) days after conclusion of the emergency response.

**Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:**

Persons appearing at the January 17, 2017 public hearing were:

- Ms. Denise Wilson, Oklahoma Residential Assisted Living Association, (speaking on Chapter 310:680 and requesting consistency across three chapters of rules for long-term care facilities.)

OSDH received written comments from:

- Ms. Esther Houser
- Mary Brinkley, LeadingAge Oklahoma

**Agency Rule Contact:**
Michael Cook, 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.
310:663-7-3. Submission of plans and specifications and related requests for services

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

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

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

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

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

1. **Administrative completeness review.** Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete.
   - **Not complete.** Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.
   - **Complete.** Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

2. **Technical review.** The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination.
   - **When times are tolled.** The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.
   - **Supplements.** To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental information is a second or later request that identifies new deficiencies not previously identified.
   - **Delays.** An application shall be deemed withdrawn if the applicant fails to supplement an application within 90 calendar days after the Department's request, unless the time is extended by agreement for good cause.
   - **Extensions.** 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, underslab mechanical, electrical, plumbing work, and related specifications.  
     - (ii) Complete architectural plans and specifications.  
     - (iii) All mechanical, electrical, and plumbing plans and specifications.  
     - (iv) Equipment and furnishings.

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

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

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

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

(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.
(c) Within twenty-one (21) calendar after receipt of a complete application, the Department shall approve or deny the application for self-certification and send notification to the assisted living center. If the application is denied, the assisted living center shall have thirty (30) calendar to submit additional or supplemental information demonstrating that the application complies with the requirements for self-certification of plans and specifications. The Department shall have fourteen (14) calendar after receipt of supplemental information to reconsider the initial denial and issue a final approval or denial of the self-certification request.
(d) After denial of the application for self-certification and prior to the start of construction, the assisted living center shall pay the applicable fee for plan review specified in OAC 310:663-7-3. Upon receipt of the plan review fee, the Department shall review the assisted living center's plans in accordance with the process in OAC 310:663-7-3.

310:663-7-6. Exceptions and temporary waivers
(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;
   (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 center;
(8) utility failure for more than 48 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 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.
To: Board of Health Secretary

Through: Terry Cline, Ph.D.
Commissioner

Through: James Joslin, Chief
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Mike Cook, Director
Long Term Care Service

Date: January 30, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
CHAPTER 675. NURSING AND SPECIALIZED FACILITIES

e-approved 1/30/2017

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment Summary

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
Nursing facilities and specialized facilities operated by political subdivisions may be affected by the upgrade in codes and guidelines, the new review process, and the fees for optional services.

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

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

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

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

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

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

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

11. **PREPARATION AND MODIFICATION DATES:**

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

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing. [75:303.1(E)(9)&(10)]

Rule Section 310:675-5-18. Design and construction

Oklahoma Administrative Code (OAC)

Summary of Comment: Mr. Kenyon Morgan in written comments submitted to the Oklahoma State Department of Health (OSDH) on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted to OSDH on January 17, 2017 recommended at modification to the Oklahoma Administrative Code (OAC) 310:675-5-18(1). The commenters recommended inserting a generic reference to the latest edition of the National Fire Protection Association standards, as follows:

(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, or latest edition.

The commenters proposed a similar change in OAC 310:675-5-22 for a reference to the most recent version of national design and construction guidelines.

OSDH Explanation: OSDH agrees with the proposal to use the latest standards. In the proposed rule, OSDH has attempted to provide flexibility for facilities which choose to use the most current nationally recognized standards. This flexibility is provided in a new section of rule at 310:675-5-22. The new section acknowledges the potential for innovations and improvements in design and construction techniques, and provides criteria and a process for requesting exceptions and waivers of OAC 310:675.

This approach was taken because of limits on the agency's authority to require compliance with the latest edition of national standards. Rules adopted by the State Board of Health are required to confirm with rule drafting requirements promulgated by the Secretary of State. Those rules require an agency to identify the specific issue or issues of publication of incorporated standards. An agency may not incorporate standards as they may be amended in the future. The text of the Secretary of State rule governing rulemaking is as follows:
Oklahoma Administrative Code  
Title 655 - Secretary of State  
Chapter 10 - Administrative Rules on Rulemaking  
Subchapter 5 - Rule Drafting Requirements  
655:10-5-15. Incorporations by reference  

For purposes of this Section, "standards" shall mean the published standards [or rules] established by organizations and technical societies of recognized national standing, other state agencies, or federal agencies [75:251(D)].  

(1) **Lengthy standards.** When imposing standards of recognized organizations and technical societies, or state or federal agencies, the preferred method is to rewrite the standards as part of the rule. However, if the standard is lengthy, in order to avoid unnecessary expense, an agency may ... incorporate[e] the standards ... in its rules ... by reference ... without reproducing the standards in full [75:251(D)]. The agency rule which incorporates the standards shall identify the specific issue or issues of publications in which the standards are published [75:251(D)].  

(2) **Text not submitted.** Agencies submitting rules which incorporate standards by reference should not submit the text of such standards for publication.  

(3) **Availability to public.** The standards shall be readily available to the public for examination at the administrative offices of the agency. [75:251(D)] The agency shall cite the hours when and the place where the standards are available to the public for examination. Such citation shall appear in the preamble [see 655:10-7-11(b)(6)]. A copy of such standards shall be kept and maintained by the agency pursuant to the provisions of the Preservation of Essential Records Act. [75:251(D)]  

(4) **Future amendments.** Agencies may not incorporate by reference standards as they may be amended in the future. If the standard is updated, the agency may update the rule to reflect the updated standards only by promulgating another rule, or an amendment to the existing rule, which incorporates the new material.  

**Change:** No change is required.  

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

**Summary of Comment:** At a January 9, 2017 meeting sponsored by the OSDH with representatives of nursing facilities, one commenter questioned whether OAC 310:675 provides for waivers of federal Centers for Medicare & Medicaid Services (CMS) requirements.  

**OSDH Explanation:** The exceptions and waivers authorized in OAC 310:675-5-22 apply to Oklahoma state requirements in OAC 310:675. Requests for waivers of federal CMS requirements may be requested in accordance with criteria and procedures established by CMS.  

**Change:** No change is required.  

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**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH staff
questioned whether the "intent or objective" referred to in 310:675-5-22(a) is that of the rule or the facility.

**OSDH Explanation:** The intent or objective referenced is of the standards in Chapter 310:675.

**Change:** Subparagraph (a) should be amended to clarify the intent or objective, as follows:

(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.

**Summary of Comment:** Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended inserting references to the Facility Guidelines Institute (FGI) Guidelines for Residential Facilities in subsection 310:675-5-22(c).

**OSDH Explanation:** The Facility Guidelines Institute (FGI): Guidelines for Design and Construction of Residential Health, Care, and Support Facilities, 2014 Edition, are the most current nationally recognized standards for design and construction of nursing facilities. Nursing facilities should be encouraged to design and construct to the FGI Guidelines. OSDH did not propose adopting the FGI Guidelines by reference based on concerns expressed by nursing facilities about cost impacts on facilities. However, recognizing the FGI Guidelines in the exception and waiver section will promote use of the FGI Guidelines and may serve as a step to formal incorporation of the FGI Guidelines as the Oklahoma standard as more facilities adopt their use.

**Change:** Amend subsection OAC 310:675-5-22(c) to read as follows:

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

Summary of Comment: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended amending subsection 310:675-5-22(c). They proposed reducing the time for OSDH to permit or disallow exceptions and waivers from 45 days to 21 days.

OSDH Explanation: OSDH proposed the 45 day time frame anticipating that the first year of implementation will require OSDH and nursing facilities to undergo extensive education and practice with the 2012 Life Safety Code and the 2014 FGI Guidelines. Initially, OSDH expects complex requests for exceptions and waivers may require as much or more OSDH time than design and construction plans based on older versions of the code and guidelines. OSDH expects requests of limited scope and complexity to take fewer working hours to process. However, the exception and waiver requests must be administered and integrated with other pending reviews, including stage one and two plans, fast track reviews, self-certification and consultation requests, construction site inspections, and other responses to customer service inquiries. Since 2015, OSDH has worked with the health facility industry to streamline the design and construction review process in order to reduce the overall time "from concept to market." The exception and waiver process is one component of that effort. OSDH will work collaboratively with the industry to transition to the updated guidelines. OSDH will consult with industry representatives to develop OSDH administrative practices and forms to standardize the processes and drive down OSDH review times. OSDH will collaborate with the industry to offer training on the updated guidelines and codes. As experience is gained with the updated requirements, OSDH will work with the industry to revise the processing times mandated in the rules.

Change: No change is recommended by OSDH.

Summary of Comment: Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended an addition to subsection 675-5-22(c), requiring OSDH to make available lists of exceptions granted.

OSDH Explanation: Publication of decisions on exception and waiver requests would be of benefit to assisted living centers, architects and engineers designing and building facilities, it would serve to make the process more transparent, and would serve as the basis for future rule amendments to enable innovation and improvement.
Change: Subsection 310:675-5-22(c) should be amended with a new paragraph (7) to read as follows:

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

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

Summary of Comment: Ms. Esther Houser, in a January 5, 2017 email to OSDH staff identified a drafting error at subparagraph 310:675-5-23(a)(1)(I).

Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended these additions:

- Providing for fees based on a proportionate share of the package as part of the total cost, for resubmittal of fast track packages after two disapproved submittals;
- Decreasing the time for OSDH to complete the administrative review on resubmitted materials, from 15 days to 10 days; and
- Providing for a meeting to review deficiencies cited on a technical review by OSDH, within 10 days.

OSDH Explanation: The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310: 675-5-23(1)(I) and correction of the error results in clarification but no substantive alteration of the rule.

OSDH with the recommendation for OSDH to provide written notice on technical reviews and offer an opportunity for discussion of deficiencies, but does not agree to a required 10-day time frame for such discussions. OSDH will work to timely process all workload; however, the discussions of deficiencies must be administered and integrated with other pending reviews, including stage one and two plans, fast track reviews, self-certification and consultation requests, construction site inspections, exception and waiver requests, and other responses to customer service inquiries.

OSDH respectfully disagrees with the request to prorate fees for resubmittal of fast-track plans after two disapprovals. One consideration is that fast-track projects may receive up to eight reviews, compared with two reviews for standard stage two submittals; OSDH time and expense for fast-track reviews actually may be greater than for stage two submittals. A second consideration is that overall fees do not cover the cost of OSDH plan reviews for health facilities and require subsidization with state appropriations. The proposed plan review fee for nursing facilities is based on the statutory maximum of 0.02% (0.0002 multiplied by the design and construction costs). This fee is relatively low compared to fees for hospital and ambulatory surgical centers with similar design and construction costs. The review fee for a $1,000,000 hospital project is $2,000; the fee for a nursing facility project of the same cost would be $200. If OSDH were to reduce the fees for resubmittals of fast-track projects, the review costs would have to subsidized with state appropriations. OSDH will revisit this recommendation with the health facility industry in a collaborative effort to streamline and
increase the speed of the review process and bring OSDH costs into line with fees.

**Changes:** Subparagraph 310:675-5-23(a)(1)(I) should be corrected as follows:

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

Subparagraph 310:675-5-23(d)(1)(A) should be amended as follows:

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

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

Paragraph 310:675-5-23(d)(2) should be amended as follows:

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

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

**Summary of Comment:** Mr. Kenyon Morgan in written comments submitted on January 9, 2017, and the Oklahoma Association of Health Care Providers in written comments submitted on January 17, 2017 recommended a provision allowing an applicant to move to stage two submittal after the first submittal of stage one plans, at the applicant's risk.

**OSDH Explanation:** OSDH accepts the proposed change based on the recommendation to make the requirement based on the applicant accepting the risk of moving to the stage two process.

**Changes:** Subsection 310:675-5-24(a) should be amended as follows:

(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.

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

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH staff recommended changing the words "patients" to "residents" in OAC 310:675-5-25(b).

The Oklahoma Association of Health Care Providers and members at January 9, 2017 rule discussion with OSDH staff, and through written comment on January 17, 2017 requested an increase in the eligibility threshold in paragraph 310:675-5-25(c)(1) for self-certification of projects affecting resident areas. Additionally, they requested an addition to the end of paragraph 310:675-5-25(b)(5): "for any item involving Life Safety or not meeting the Building Code as determined by the Authority Having Jurisdiction."

OSDH Explanation: "Residents" is the correct term to be used for nursing facilities and patients should be changed to residents.

OSDH agrees with the OAHCP request to raise the eligibility threshold for self-certification of projects.

OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a public comment on a similar provision in OAC 310:667 identified a need to clarify the items required in the form to request self-certification.

OSDH does not recommend the requested change to paragraph 310:675-5-25(b)(5). The proposed rule includes provisions for exceptions and waivers to resolve differences between OAC 310:675 and building codes administered by other authorities having jurisdiction.

Changes: To clarify that the form includes the items in 310:675-5-25(c), OSDH proposes an amendment to subsection (b), as shown below. The threshold for self-certification of projects involving resident areas is raised from $1,000,000 to $2,500,000. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.

(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.

Rule Sections:
310:675-5-3. Nursing unit
310:675-5-4. Service areas
310:675-5-5. Resident's dining and reception areas
310:675-5-6. Physical therapy facilities
310:675-5-7. Occupational therapy facilities
310:675-5-9. Dietary facilities
310:675-5-12. Linen services

Summary of Comments: Mr. Kenyon Morgan in written comments submitted to the Oklahoma State Department of Health (OSDH) on January 9, 2017 provided suggested changes to the above listed sections. The changes included updating to current building practices and codes, accommodating trends towards smaller and more home-like facilities, and improving the efficiency and cost-effectiveness of space.

OSDH Explanation: The above listed sections in Subchapter 5, Physical Plant, were not included in the notice of rulemaking intent published on December 15, 2016. A total of 17 sections dealing with physical plant requirements in Subchapter 5 were not included in the notice of intent. The central purpose of the amendments proposed by OSDH is to update the Chapter by incorporating the most recent Life Safety Code, 2012 Edition, to replace the 1981 Edition. Time is of the essence because the Life Safety Code changes were adopted by the
Centers for Medicare & Medicaid Services in July 2016 and were effective for certified facilities in November 2016. Rather than attempting at this time to modify Chapter 675 to identify and reconcile all possible conflicts with the 2012 Life Safety Code, OSDH proposes to amend Section 310:675-5-18 to incorporate the 2012 Life Safety Code and to specify that the Code will prevail over conflicting provisions in other sections of the rule, including those referenced by Mr. Morgan.

In order to allow generally for innovations and improvements in construction and design, OSDH proposed the new Section 310:675-5-23, establishing criteria and a process for approving deviations from Chapter 675. This will allow OSDH to consider and approve changes such as those proposed in Mr. Morgan's comments, as well as those not yet identified. OSDH agrees with the recommendation to make public its decisions on exception and waiver requests. As experience builds in implementing the exception and waiver process and the Life Safety Code, OSDH will work with the nursing facility industry to develop comprehensive changes to the Chapter to remove regulatory barriers to innovation and improvement in facility design and construction.

Change: At this time, no changes are proposed. OSDH will work collaboratively with nursing facilities to transition to the updated Life Safety Code. OSDH will consult with industry representatives to develop administrative practices and templates to standardize the plan review process. Additionally, OSDH will collaborate with the nursing facility industry to offer public training events on the updated guidelines and codes. OSDH intends to revisit with the industry additional rule changes necessary to ensure that facilities and the Department have the flexibility to incorporate and recognize innovations and improvements in design and construction techniques.

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

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH recommended restoring language on utility failures, storm damage and fires in subsections 310:675-7-5.1(h), (j) and (k), and clarifying the language regarding contacts with the local emergency manager.

Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association expressed concern that fires are dangerous and utility failures are important. While utility failures may not cause damage, they can point to potential problems with residents and the facility.

Ms. Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association recommended restoring utility failures and revising the time to eight hours. The association agreed with the change in reporting small head injuries. The association recommended restoring storm damage and fire reporting.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended restoring language on storm damage and fires, and revising the utility failure report to include utility failures of more than eight hours. OSDH also recommended an
allowance for facilities to work with local emergency managers in response to natural or man-made disasters, with the written report to the Oklahoma State Department of Health to be made within 10 days after conclusion of the emergency response situation. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association appeared at the public hearing on January 17, 2017 and spoke on proposed amendments on incident reporting in Chapter 310:680. Ms. Wilson commented that it would be beneficial to use similar language on reporting for each long-term care facility being considered.

OSDH Explanation: Incident reports on utility failures, storm damage and fires represent only (1%) of total incident reports annually, and maintaining the requirements would not present an undue burden on OSDH or facilities. In emergency responses to situations such as hazardous weather, wildfires, outages of municipal water systems, a communication system is activated through local emergency managers, the state Office of Emergency Management, and the Oklahoma State Department Emergency Response and Preparedness Services. Essential status information and assistance requests are communicated timely and effectively through that communication network, and additional reports to the OSDH Long Term Care Service in times of crisis may be counter-productive. The rule should be revised to provide facilities some relief from filing required incident reports while they are engaged with local emergency managers in an emergency response mode.

Change: Restore (h), (j) and (k), modify the utility failure period to eight hours, and revise reporting allowances during emergency response situations. To correct an error in drafting, a proposed new section detailing the required incident report form, ODH 283, was moved to a new paragraph (o) and edited for clarity, to read as follows:

(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 treatment at a hospital, a physician’s diagnosis of closed head injury or concussion, or head injuries that require more than first aid.

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

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

(l) **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 facility’s 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.

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.

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.

Rule Section 310:675-7-6.1. Complaints

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH commented on paragraph 310:675-7-6.1(b)(4). Contrary to statements in the notice of rulemaking intent, the language relating to an allegation of harm or discomfort is present in proposed changes to 4 (C) and 4 (D) making the intent confusing. The recommendation is to remove language from 4 (C) and 4 (D) that makes reference to harm or discomfort having occurred. The proposed rule amendment regarding continuing violations sets a maximum of 180 days for investigations, but OSDH should consider a shorter time frame.

Ms. Mary Brinkley with LeadingAge Oklahoma provided written comment on January 16, 2017. The association expressed concerning that lengthening the time frames for investigations could result in larger fines if fines are assessed retroactively to the date of the incident. The association recommended clarifying that OSDH has authority to investigate a complaint earlier.
than the next onsite survey if OSDH deems necessary.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended deleting proposed references to harm in subparagraphs 310:680-3-9(b)(4)(C) and (D), and revising the investigation time frame for continuing complaints to 90 days. The Long Term Care Facility Advisory Board recommended approval of the rule changes as presented by OSDH.

**OSDH Explanation:** Removing the proposed language on harm in (4)(C) and 4(D) referencing harm will make the rule clearer and ensure that complaints alleging violations that relate to harm will be investigated in no more than 10 days. Changing the proposed investigation deadlines for repeated violations from 180 days to 90 days will serve to better protect residents in situations were previously cited violations are suspected to have recurred.

Additionally, to make the changes to OAC 310:680 consistent with changes to OAC 310:675, OSDH recommends adding the phrase "or sooner if deemed necessary by the Department" to (4)(C). This clarifies that the Department has discretion to conduct an investigation earlier than the next onsite survey.

**Change:** Subparagraphs 675-7-6.1(b)(4)(C) and (D) should be revised to read as follows.

(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.

**Rule Section 310:675-7-12.1 Incident Reports**

**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH commented on section 310:675-7-12.1, and commented at the January 11, 2017 public meeting of the Long Term Care Facility Advisory Board. Ms. Houser commented that the section needs to be clearer that it relates to internal incident reports, not the reports required to be filed with OSDH under 310:675-7-5.1. Ms. Houser commented that it also seems to indicate that facilities will no longer be expected to develop internal incident reports on such occurrences as Medication Errors and Treatment Errors.

Nico Gomez with the Oklahoma Association of Health Care Providers through written comment on January 17, 2017 recommended striking “which are subject to the reporting requirements in
310:675-7-5.1 (relating to reportable incidents).” Also, the association recommended striking unclear language related to reporting, and strike incident reporting; Just use word Scope or combine (a) & (e) and delete (e). The association recommended adding the language “apparent injury, or where injury may or may not have occurred.”

Ms. Mary Brinkley with Leading Age provided written comment on 1/16/2017. Ms. Brinkley recommended reinserting the language to use Long Term Care’s Incident Report Form ODH Form 283.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended modifying the rule to specify 310:675-7-12.1 for internal incident reporting, while 310:675-7-5.1 covers incident reports to OSDH. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

**OSDH Explanation:** OSDH agrees that the language of this section could be clarified to show that it relates to each facility's internal incident reports, and not the reports required to be made to the Department under a separate section. OSDH recommends renaming the section to Internal Facility Incident Reports. The facility is expected to develop internal records on any accident, unusual occurrence where there is apparent injury or where injury may or may not have occurred. In addition, the language includes unusual occurrences affecting residents. Striking the reference to “310:675-7-5.1” and combining (a) with (e) should provide more clarity.

Medication errors and treatment errors that result in accident where there is apparent injury or where injury may or may not have occurred would be covered. Additionally, other provisions in the Chapter specifically address medication errors. OSDH disagrees with the request to require the use of the ODH Form 283 for internal incident reports; reporting on ODH Form 283 is required in OAC 310:675-7-5.1, and the revisions to OAC 310:675-7-12.1 give facilities flexibility to use their own internal incident documentation and quality assurance systems.

**Change:** Rename the section to “Internal Facility Incident Reports.” Add the language “or where injury may or may not have occurred” to (a). Strike the language “subject to the reporting requirements in 310:675-7-5.1 (relating to reportable incidents)” in (a). Combine the language at (e) with (a) and strike (e).

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 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.

Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:

Persons appearing at the January 17, 2017 public hearing were:

- Ms. Denise Wilson, Oklahoma Residential Assisted Living Association, (speaking on Chapter 310:680 and requesting consistency across three chapters of rules for long-term care facilities.)

OSDH received written comments from:

- Ms. Esther Houser
- Mary Brinkley, LeadingAge Oklahoma

Agency Rule Contact:
Michael Cook, 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.
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 30" (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.

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

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

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

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

1. Administrative completeness review. Unless otherwise provided in this Subchapter, the Department shall have ten (10) calendar days in which to initially determine if the filed application is administratively complete.
   (A) Not complete. Upon determining that the application is not administratively complete, the Department shall immediately notify the applicant in writing and shall indicate with reasonable specificity the inadequacies and measures necessary to complete the application. Such notification shall not require nor preclude further review of the application and further requests for specific information. If the Department fails to notify the applicant as specified in this Paragraph, the period for technical review shall begin at the close of the administrative completeness review period. Upon submission of correction of inadequacies, the Department shall have an additional ten (10) calendar days to review the application for completeness.
   (B) Complete. Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

2. Technical review. The Department shall have forty-five (45) calendar days from the date a completed application is filed to review each application for technical compliance with the relevant regulations and reach a final determination. 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) When times are tolled. The time period for technical review is tolled (the clock stops) when the Department has asked for supplemental information and advised the applicant that the time period is tolled pending receipt.
   (B) Supplements. To make up for time lost in reviewing inadequate materials, a request for supplemental information may specify that up to 30 additional calendar days may be added to the deadline for technical review, unless the request for supplemental
information is a second or later request that identifies new deficiencies not previously identified.

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

(D) **Extensions.** 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, underslab mechanical, electrical, plumbing work, and related specifications.

(ii) Complete architectural plans and specifications.

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

(iv) Equipment and furnishings.

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

(d) **Floor plan scale.** Floor plans are to be submitted at a scale of one-eighth (1/8) inch equals one 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
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.

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).

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.

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).

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.

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)].

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.

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

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.

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

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.

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.

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.

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.

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 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.

### 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.

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

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


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

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

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

2) **Service areas.** The following shall be provided:
   (A) Toilet and bathing facilities shall be provided in an arrangement similar to general domestic residential facilities, except that bathrooms combining toilet, lavatory, tub and/or shower shall be no less than 60 square feet in size.
   (B) Bathing and toilet facilities shall be provided on a ratio of one facility for each five residents.
   (C) Resident staff offices shall be provided at the facility in sufficient size and number to permit the safe storage and handling of prescription medications used by the individual residents, space for private counseling of residents, space for the business affairs of the ICF-MR-16 to be conducted in private, and space for the maintenance of records pertaining to resident care.
   (D) Linen and supply areas shall be provided in a manner which permits the separation of the clean and soiled materials. Clean linen and supplies shall be stored separately from the area in which the soiled materials are collected.
   (E) Meal service space shall be provided as follows:
       (i) Kitchen. Space for conventional food preparation and baking with sufficient storage for maintaining at least a four day supply of all foods required for a general diet, including cold storage.
       (ii) Dining. There shall be 15 square feet per person allocated to permit residents and on-duty staff to dine at the same time.
       (iii) Warewashing shall be in accordance with the requirements of the care facilities as stated in Chapter 257 (relating to Food Service Establishments) of this Title.
   (F) Housekeeping materials and supplies shall be maintained in a designated area which is apart from the food service and sleeping areas.

3) **Recreation, lounge and public areas.** Each ICF/MR-16 shall provide interior lounge and recreation space at a rate of no less than 20 square feet per bed. If public visitation areas are included, the lounge and recreation space shall be no less than 25 square feet per bed. Outside recreation lounge areas shall be provided. These areas shall have sufficient lighting to permit utilization after sundown.
(4) **Natural lighting and ventilation of rooms.** All habitable and occupiable rooms or spaces shall contain windows, skylights, monitors, glazed doors, transoms, glass block panels or other light transmitting media opening to the sky or on a public street, yard or court. The light transmitting properties and the area of the devices used shall be adequate to meet the minimum day lighting and ventilating requirements specified herein.

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

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

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).
To: Board of Health Secretary

Through: Terry Cline, Ph.D.
Commissioner

Through: James Joslin, Chief
Health Resources Development Service
Agency Rule Liaison

Through: Don Maisch
General Counsel

Through: Henry F. Hartsell Jr.
Deputy Commissioner
Protective Health Services

From: Mike Cook, Director
Long Term Care Service

Date: January 26, 2017

Subject: Rule Packet Submission for Distribution to Board of Health
CHAPTER 680. RESIDENTIAL CARE HOMES

The attached documents are submitted for PERMANENT ADOPTION by the State Board of Health at their February 14, 2017 meeting.

The proposed rule was originally published on December 15, 2016. Based on comments and OSDH staff discussions with interested persons, the changes as described in the rule comment summary have been incorporated into the attached rule text.

Attachments:
- RIS (Rule Impact Statement)
- Rule Text
- Rule Comment Summary

(Please contact Crystal Rushing at x57933 for corrections, pick-up and delivery.)
RULE IMPACT STATEMENT

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

1. **DESCRIPTION:**

   Subchapter 3 is amended to authorize the use of a physician assistant or advanced practice registered nurse to provide services and consultation; zoning submissions with licensure are revised to be consistent with the Residential Care Act; requirements for records and reports to be kept in the home are updated to reflect current laws. Language on reporting utility failures, storm damage and fires is amended to encourage coordination with local emergency response managers and delay reporting to the Department. Language is inserted to clarify reporting of injuries that have certain physician diagnoses or require treatment at a hospital.

   OAC 310:680-3-9(b)(4)(C) is amended to authorize the Department to investigate, during the next required onsite inspection at the home, those complaints that do not represent immediate jeopardy or actual harm to the resident. OAC 310:680-3-9(b)(4)(D) is amended to define continuing complaints and require the investigation of those complaints within 90 days. This change will allow investigators to combine certain complaints with other required inspections to better utilize state resources and reduce disruption for homes and residents. This proposal makes no change to the current requirement to investigate immediate jeopardy situations within two days or actual harm situations within ten days.

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

   Within Subchapter 5, provisions for storage of resident's belongings are revised to allow for resident choice in room furnishings. There are new requirements for submittal of plans and specifications for new buildings or major alterations. The proposal establishes fees for review of design and construction plans and specifications and sets 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. The proposal establishes a process to ensure timely review of design and construction documents. A section is added to set requirements for stage one, stage two, and special construction plan submittals, and to give residential care homes the option to move directly to the stage two plan submittal.

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

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

   Affected persons will be residents and their families as well as owners, operators, and staff of residential care homes. The proposed reporting of incidents will affect owners and operators by reducing the amount of time staff spend on preparing and filing oral and written reports with OSDH. Therefore allowing more time to be spent on resident care. The proposed construction and physical plant requirements will increase fees for owners and operators desiring to engage in new construction. No cost is anticipated to impact these parties for the proposal relating to zoning, requirements for records, occupancy, housekeeping, complaints or CPR training.
Comments from the Oklahoma Residential and Assisted Living Association were favorable for the rule. These comments were considered by OSDH in the final rule.

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

4. **ECONOMIC IMPACT, COST OF COMPLIANCE AND FEE CHANGES:**
   These rules involve additional fees. This rule change will reduce costs to the agency and the public. The fees proposed for increase are as follows:
   (A) Design and construction plans and specifications fee: two one-hundredths percent (0.02%) of the cost of design and construction of the project, with a minimum fee of Fifty Dollars ($50.00) and a maximum fee of One Thousand Dollars ($1,000.00);
   (B) Request for exception or temporary waiver fee: Five Hundred Dollars ($500.00);
   (C) Application for self-certification fee: Five Hundred Dollars ($500.00);
   (D) Courtesy construction inspection fee: Five Hundred Dollars ($500.00);
   (E) Professional consultation or technical assistance fee: Five Hundred Dollars ($500.00) for each eight hours or major fraction thereof of staff time. For technical assistance requiring travel, the fee may be increased to include the Department's costs for travel.

   Based on SFY 2016 experience, the fee changes are projected to generate a total of $4,050 in additional fee revenue, based on the following:
   • $50 in plan review fees, assuming 1 project at $50 each
   • $500 in exception or temporary waiver fees, assuming 1 project at $500
   • $500 in self-certification fees, assuming one certification at $500 each
   • $500 in courtesy inspection fees, assuming one inspection at $500 each
   • $500 in professional consultation fees, assuming no projects at $500 each
   • $4,050 total increased fees.

5. **COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**
   The cost to the Department to implement the amendments will be approximately $4,000 to cover the costs of rule drafting, adoption, publication, distribution, and education. The proposed rule will be implemented and enforced by existing Department personnel.
The fee changes and complaint investigation and incident reporting modifications are projected to reduce the required state appropriations subsidy by $8,779, as follows:

- For State Fiscal Year (SFY) 2017, health facility plan review expenses of $469,349 are projected to exceed fees of $162,958, for a deficit of $330,836. The deficits in SFY2017 and subsequent years must be covered by state appropriations. The residential care home plan review fees have the potential to reduce the required state appropriations subsidy by $4,050.

- The fees for optional construction-related services will generate anticipated revenue of $4,050 per year.

- The changes in incident reporting requirements are projected to result in fewer incident reports filed with OSDH, with administrative savings of $1,000 for OSDH. For Federal Fiscal Year 2016, 25 complaints were triaged for investigation under the requirements at OAC 310:680-3-9(b)(4)(C) and (D). Of those, 17 were investigated individually. These investigations average 6.71 hours of investigator staff time each. By implementing this rule change these individual investigations can be combined with other investigations. This would avoid duplicate travel and investigation time and is anticipated to reduce the hours spent on these investigations by 114 hours. The proposal has the potential to reduce the required state appropriations subsidy by $4,729.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**
   There will be no impact on political subdivisions and the rule will not require their cooperation in implementing or enforcing the proposed amendment.

7. **ADVERSE EFFECT ON SMALL BUSINESS:**
   The increase in fees may have an adverse effect on small businesses that engage in construction projects. OSDH requested comments by January 17, 2017 from businesses identifying direct and indirect costs expected to be incurred to comply with this rule. Comments from the Oklahoma Residential and Assisted Living Association were favorable for the rule. These comments were considered by OSDH in the final rule.

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

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**
   The enhanced optional construction-related services will support homes in their efforts to enhance resident safety. Negative effects on resident safety have been minimized by modifying requirements for reporting to enable centers and OSDH to focus efforts on allegations of actual harm and immediate jeopardy.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**
If this change is not made, the OSDH review process will not offer a predictable method for resolving discrepancies, and it will not include a provision for expedited self-certification. Failure to make those changes will cause delays in construction projects and hamper the homes’ efforts to provide safe living environments. If the optional fees are not authorized, OSDH may be unable to continue offering the construction-related services that assist homes in protecting resident safety. If this change is not adopted, OSDH will lose an opportunity to prepare for anticipated reductions in the state appropriations subsidy for the residential care home licensure program. OSDH may be unable to continue to provide current levels of services for construction projects, incident reports, and complaint investigations. The changes position OSDH to focus on the most serious allegations of harm and immediate jeopardy to residents.

11. **PREPARATION AND MODIFICATION DATES:**

   This rule impact statement was prepared on December 15, 2016. This rule impact statement was modified on December 21, 2016 to: correct non-substantive spelling and grammatical errors; to clarify in section 3 of this statement the benefits of reducing the required state appropriation subsidy for the residential care home licensure program; correct an error in section 5 regarding the revenues, expenses and deficits for health facility plan reviews; clarify the reduction of the required state appropriation subsidy referenced in sections 5 and 10; update section 8 to clarify the effect of reducing the required state appropriation subsidy on minimizing the cost of the proposed change; and clarify the detrimental effects of failure to adopt the fees for optional services referenced in section 10. Final formatting and conclusions were prepared January 26, 2017.
RULE COMMENT SUMMARY AND RESPONSE

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

The rule report submitted to the Governor, the Speaker of the House of Representatives and the President Pro Tempore of the Senate, pursuant 75:303.1(A) of the Administrative Procedures Act, shall include: (9) A summary of the comments and explanation of changes or lack of any change made in the adopted rules as a result of testimony received at all hearings or meetings held or sponsored by an agency for the purpose of providing the public an opportunity to comment on the rules or of any written comments received prior to the adoption of the rule. The summary shall include all comments received about the cost impact of the proposed rules; (10) A list of persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing.[75:303.1(E)(9)&(10)]

Rule Section 310:680-3-3. Applications

Summary of Comment: The Long Term Care Facility Advisory Board at a January 22, 2017 public meeting discussed the appropriateness of the phrase “emergency medical services” in the Oklahoma Administrative Code (OAC) 310:680-3-3. The Board agreed that a residential care home should contact 911 in the event of an emergency. A residential care home is not licensed to provide medical services to residents. The consensus of the group was to remove the reference to "emergency" and to allow for consultation.

OSDH Explanation: The Oklahoma State Department of Health (OSDH) originally proposed to delete "emergency" because a home likely would contact an emergency medical service instead of a physician in an emergency. OSDH agrees with the advisory board's consensus and recommends removal of the reference to emergency services.

Change: Paragraph 310:680-3-3(e)(1) should be amended to read as follows:

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

Rule Section 310:680-3-6. Records and reports

Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH recommended restoring language on utility failures, storm damage and fires in subsections 310:680-3-6(d), and clarifying the language regarding contacts with the local emergency manager.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. Ms. Wilson commented that it would be beneficial to use similar language on reporting for each
long-term care facility being considered. Reporting to the emergency response manager for residential care homes should be consistent with other facility types.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended amending the residential care home rules to be consistent with the nursing facility rules in OAC 310:675. OSDH recommended restoring language on storm damage and fires, and revising the utility failure report to include utility failures of more than 8 hours. OSDH also recommended an allowance for facilities to work with local emergency managers in response to natural or man-made disasters, with the written report to the Oklahoma State Department of Health to be made within 10 days after conclusion of the emergency response situation. The Long Term Care Facility Advisory Board at the January 11, 2017 public meeting approved the proposed changes.

**OSDH Explanation:** Incident reports on utility failures, storm damage and fires represent only (1%) of total incident reports annually, and maintaining the requirements would not present an undue burden on OSDH or facilities. In emergency responses to situations such as hazardous weather, wildfires, outages of municipal water systems, a communication system is activated through local emergency managers, the state Office of Emergency Management, and the Oklahoma State Department Emergency Response and Preparedness Services. Essential status information and assistance requests are communicated timely and effectively through that communication network, and additional reports to the OSDH Long Term Care Service in times of crisis may be counter-productive. The rule should be revised to provide facilities some relief from filing required incident reports while they are engaged with local emergency managers in an emergency response mode.

**Changes:** Subsection 310:680-3-6(d) should be revised to read as follows:

(d) The Department shall be notified of all incidents pertaining to fire, storm damage, death other than natural, residents missing, or utilities failure for more than eight (8) or four (4) hours, and incidents that result in fractures, head injuries or require treatment at a hospital. The home shall report to the Department incidents that result in: fractures, 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.

**Rule Section 310:680-3-9. Complaints**

**Summary of Comment:** Ms. Esther Houser in a January 5, 2017 email to OSDH commented on paragraph 310:680-3-9(b)(4). Contrary to statements in the notice of rulemaking intent, the language relating to an allegation of harm or discomfort is present in proposed changes to 4 (C) and 4 (D) making the intent confusing. The recommendation is to remove language from 4 (C)
and 4 (D) that makes reference to harm or discomfort having occurred. The proposed rule amendment regarding continuing violations sets a maximum of 180 days for investigations, but OSDH should consider a shorter time frame.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017. The Association agreed with the proposed changes to the complaint investigation requirements.

At the Long Term Care Facility Advisory Board meeting on January 11, 2017, OSDH staff recommended deleting proposed references to harm in subparagraphs 310:680-3-9(b)(4)(C) and (D), and revising the investigation time frame for continuing complaints to 90 days.

**OSDH Explanation:** Removing the proposed language on harm in (4)(C) and 4(D) referencing harm will make the rule clearer and ensure that complaints alleging violations that relate to harm will be investigated in no more than 10 days. Changing the proposed investigation deadlines for repeated violations from 180 days to 90 days will serve to better protect residents in situations were previously cited violations are suspected to have recurred.

Additionally, to make the changes to OAC 310:680 consistent with changes to OAC 310:675, OSDH recommends adding the phrase "or sooner if deemed necessary by the Department" to (4)(C). This clarifies that the Department has discretion to conduct an investigation earlier than the next onsite survey.

**Change:** Subparagraphs 310:680-3-9(b)(4)(C) and (D) should be revised to read as follows.

(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 and 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.

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**Rule Section 310:680-3-14. Appropriate occupancy**
Summary of Comment: Ms. Esther Houser in a January 5, 2017 email to OSDH recommended clarifying that the nursing care is not being provided by the home and that the care is not continuous.

Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. The association recommends approval of the changes as proposed.

The Long Term Care Facility Advisory Board at its January 11, 2017 public meeting discussed the requirement that residents must be ambulatory and essentially capable of participating in their activities of daily living. The advisory board recommended approval of the section as proposed.

OSDH Explanation: This provision will allow residents to receive care from home health agencies and similar providers of nursing services such as periodic injections of medications, but it does not authorize continuous nursing services, or nursing services to be provided by the residential care home. The Residential Care Act requires residents to be ambulatory and essentially capable of participating in their activities of daily living. OSDH will monitor the implementation of this proposed change to OAC 310:680-3-14 to ensure that residents are appropriate for occupancy in residential care homes.

Change: No change is required.

Rule Section 310:680-5-6. Building elements

Summary of Comment: Ms. Denise Wilson with the Oklahoma Residential Assisted Living Association provided written comment on January 17, 2017 and appeared at the public hearing on January 17, 2017. The association recommends approval of the changes as proposed.

The Long Term Care Facility Advisory Board at its January 11, 2017 public meeting discussed resident storage space and the need to make it secure. The consensus was to change the language to “enclosed secure storage space.”

OSDH Explanation: OSDH concurs with the advisory board's recommendation. Allowing the residents to have an enclosed secure space for storage should not present an undue burden on the Department or facilities.

Change: The proposed rule amendment in subsection 310:680(d) should be modified by restoring “enclosed” and adding “secure,” to read as follows:

(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.
Rule Section 310:680-5-9. Submission of plans and specifications and related requests for services

Summary of Comment: One commenter noted an error in language regarding fixed medical equipment projects in 310:680-5-9(a)(1)(x).

A commenter on OAC 310:675, Nursing and Specialized Facilities, requested a reduction in the time, from 15 days to 10 days, for OSDH to complete the administrative review on resubmitted materials. OAC 310:680-5-9(d)(1)(A) as proposed includes the same 15-day review time frame.

OSDH Explanation: The proposal included a drafting error regarding replacement of medical equipment in Subparagraph 310:680-5-9(a)(1)(x) and correction of the error results in clarification but no substantive alteration of the rule. In the process of this correction an error in number sequence was identified for this paragraph as well as an error in numbering for the subparagraphs.

For consistency with other health-facility plan review processes, including OAC 310:675, OSDH proposes reducing the 15-day administrative review time for resubmitted materials.

Changes: Subparagraphs (i) through (xii) will be re-sequenced and renumbered (A) through (K). Subparagraph (x) was changed to (I) and corrected as follows:

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

Subparagraph 310:680-5-9(d)(1)(A) should be revised to read as follows:

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

Rule Section 310:680-5-11. Self-certification of plans

Summary of Comment: OSDH received comments on similar modifications to other chapters of rules proposed for modification at this time, including OAC 310:615, OAC 310:667 and OAC 310:675. For consistency in the review of health facility design and construction plans, OSDH recommends application of those changes to OAC 310:680.

OSDH Explanation: OSDH noted an inconsistency in references to architects and engineers, which should be corrected as noted below. Additionally, a comment on OAC 310:667
identified a need to clarify the items required in the form to request self-certification in that the form includes the items in 310:680-5-11(c). OSDH proposes an amendment to subsection (b), as shown below.

**Change:** To clarify that the form includes the items in 310:680-5-11(c), OSDH proposes an amendment to subsection (b), as shown below. To make the references to architects and engineers consistent, OSDH proposes to add the phrase term "or engineer" as indicated below.


(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 dollars ($2,000,000) or less; or
2. The project involves only portions of the residential care home where residents are not intended to be examined or treated; and
3. The project architect or engineer attesting the application has held a license to practice architecture or engineering for at least five (5) years prior to the submittal of the application, is licensed to practice in Oklahoma; and
4. The residential care home owner/operator acknowledges that the Department retains the authority to:
   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.

Persons or organizations who appeared or registered for or against the adopted rule at any public hearing held by the agency or those who have commented in writing before or after the hearing were:

Persons appearing at the January 17, 2017 public hearing were:
• Ms. Denise Wilson, Oklahoma Residential Assisted Living Association

OSDH received written comments from:
• Ms. Esther Houser
• Ms. Denise Wilson, Oklahoma Residential Assisted Living Association

Agency Rule Contact:
Michael Cook, 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.
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 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 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 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 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) 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 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 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' 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 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) Unless the resident elects otherwise, each resident shall have a comfortable chair, a bedside table and a bureau or its equivalent for storing personal belongings.

(k) When residents' personal furniture is used, it shall be clean and in good repair.

(l) Each resident's bed shall have a comfortable mattress and bed linens which are clean and in good condition.

(m) Clean towels and wash cloths shall be available to meet the needs of all residents. Towels and wash cloths shall be in good condition.

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

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

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

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

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

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

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

(A) Not complete. Upon determining that the application is not administratively
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) **Complete.** Upon determination that the application is administratively complete, the Department shall immediately notify the applicant in writing. The period for technical review begins.

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

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

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

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

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

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**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,
   (A) Site work, foundation, structural, underslab mechanical, electrical, plumbing work, and related specifications,
   (B) Complete architectural plans and specifications,
   (C) All mechanical, electrical, and plumbing plans and specifications,
   (D) 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.


(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.

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

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

SUBCHAPTER 7. ENVIRONMENTAL HEALTH AND SANITARY REQUIREMENTS

310:680-7-5. Housekeeping

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

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

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

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

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

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

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

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

SUBCHAPTER 11. STAFFING REQUIREMENTS

310:680-11-1. Requirements

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 institution of higher learning whose program has been reviewed by the Department is licensed in accordance with Title 63 O.S. Section 330.51 et seq.

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

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

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

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

(A) All employees At all times there shall be in the home at least one staff person shall be currently certified trained in first-aid and cardiopulmonary resuscitation (that is Red Cross training or equivalent training with a hands-on component). Proof of certification and training shall be kept on file in the home. First-Aid and CPR certificates training shall be renewed annually, or as required to be kept current.

(B) Administrators shall have sixteen (16) hours of job-related training annually. First-aid and CPR training do not count for the sixteen (16) hours obtain continuing education training as required to maintain an administrator's license pursuant to Title 63 O.S. Section 330.51 et seq. All training shall be documented and the record kept in the home.

(C) Direct care staff who are responsible for administering or monitoring medication shall annually be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care program and operation.

(D) All direct care staff shall begin eight (8) hours of inservice by the administrator of the home or other person designated by the administrator of the home within ninety (90) days of employment and completed within twelve (12) months of employment. Eight (8) hours of inservice shall be required annually thereafter.

(E) All residential care programs shall provide a new employee orientation program which includes instruction in policies and procedures regarding the areas of abuse and neglect, resident rights, confidentiality, procedure for handling emergencies, and job descriptions.

(4) **Personnel practices**

(A) Residents shall not supervise other residents.

(B) The behavior of staff reflects sensitivity to the needs of the individuals served for privacy and dignity. For example, confidentiality and normal sensibility are exercised in speaking about an individual, and undignified displays, exhibitions, or exposure of
individuals served, whether deliberate or unintentional, do not occur.
(C) The home shall have written personnel policies and procedures which address such
issues as: job description, terms of employment, authorized leave procedures, grievance
procedures, and professional conduct.
OKLAHOMA STATE DEPARTMENT OF HEALTH

STRATEGIC MAP UPDATE PRESENTATION
STATE OF THE STATE’S HEALTH REPORT
AMERICA’S HEALTH RANKINGS
OPERATIONALIZE OHIP FLAGSHIP PRIORITIES

FEBRUARY 14, 2017

Tina Johnson
Julie Cox-Kain
Derek Pate
## 2016 America’s Health Rankings®

### Top Ten
1. Hawaii (IX)
2. Massachusetts (I)
3. Connecticut (I)
4. Minnesota (V)
5. Vermont (I)
6. New Hampshire (I)
7. Washington (X)
8. Utah (VIII)
9. New Jersey (II)
10. Colorado (VIII)

### Bottom Ten
41. Georgia (IV)
42. S Carolina (IV)
43. W Virginia (III)
44. Tennessee (IV)
45. Kentucky (IV)
46. Oklahoma (VI)
47. Alabama (IV)
48. Arkansas (VI)
49. Louisiana (VI)
50. Mississippi (IV)

### Other (Region VI)
33. Texas (VI)
38. New Mexico (VI)
46. Oklahoma (VI)
48. Arkansas (VI)
49. Louisiana (VI)
AHR CHANGES

- Poor mental health replaced by frequent mental distress
- Poor physical health days replaced by frequent physical distress
- Primary care physician definition amended. New data source (Redi-Data, Inc.) and limited to active physicians instead of total within the identified practices.
- Air pollution, corrected an error for estimating emission in counties without monitors.
- Added new supplemental measures:
  - Colorectal Cancer Screening
  - Seat Belt use
  - Water Fluoridation
## BEHAVIORS

<table>
<thead>
<tr>
<th>Metric</th>
<th>2016 Value Rank</th>
<th>2015 Value Rank</th>
<th>2014 Value Rank</th>
<th>2013 Value Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Smoking (Percent of Population)</td>
<td>22.2 (45)</td>
<td>21.1 (40)</td>
<td>23.7 (45)</td>
<td>23.3 (39)</td>
</tr>
<tr>
<td>Excessive Drinking (Percent of Population)</td>
<td>13.9 (7)</td>
<td>13.5 (5)</td>
<td>13.4 (5)</td>
<td>-</td>
</tr>
<tr>
<td>Drug Deaths (deaths per 100,000 population)</td>
<td>20.9 (43)</td>
<td>20.3 (45)</td>
<td>19.8 (45)</td>
<td>18.8 (46)</td>
</tr>
<tr>
<td>Obesity (Percent of Population)</td>
<td>33.9 (43)</td>
<td>33.0 (45)</td>
<td>32.5 (44)</td>
<td>32.2 (45)</td>
</tr>
<tr>
<td>Physical Inactivity (Percent of adult population)</td>
<td>33.2 (48)</td>
<td>28.3 (46)</td>
<td>33.0 (47)</td>
<td>28.3 (44)</td>
</tr>
<tr>
<td>HS Graduation (Percent of Students)</td>
<td>82.5 (30)</td>
<td>84.8 (21)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Metric</td>
<td>2016 Value (Rank)</td>
<td>2015 Value (Rank)</td>
<td>2014 Value (Rank)</td>
<td>2013 Value (Rank)</td>
</tr>
<tr>
<td>---------------------------------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
<td>-------------------</td>
</tr>
<tr>
<td>Violent Crimes (Offenses /100,000 population)</td>
<td>422 (37)</td>
<td>441.2 (39)</td>
<td>469.3 (40)</td>
<td>469.3 (40)</td>
</tr>
<tr>
<td>Occupational Fatalities (/100,000 workers)</td>
<td>7.8 (37)</td>
<td>7.6 (46)</td>
<td>7.1 (44)</td>
<td>7.8 (42)</td>
</tr>
<tr>
<td>Children in Poverty (% of children)</td>
<td>19.0 (27)</td>
<td>25.0 (40)</td>
<td>17.8 (26)</td>
<td>27.4 (46)</td>
</tr>
<tr>
<td>Infectious Disease (/100,000)</td>
<td>0.300 (37)</td>
<td>0.49 (42)</td>
<td>(25)</td>
<td>-</td>
</tr>
<tr>
<td>- Chlamydia (cases per 100,000 population)</td>
<td>536.6 (44)</td>
<td>479.1 (37)</td>
<td>444.2 (27)</td>
<td>377.9 (19)</td>
</tr>
<tr>
<td>- Pertussis (cases per 100,000 population)</td>
<td>3.7 (8)</td>
<td>6.7 (22)</td>
<td>4.1 (6)</td>
<td>1.8 (7)</td>
</tr>
<tr>
<td>- Salmonella (cases per 100,000 population)</td>
<td>20.7 (41)</td>
<td>23.9 (44)</td>
<td>20.1 (39)</td>
<td>22.2 (41)</td>
</tr>
<tr>
<td>Air Pollution (micrograms of fine particles/cubic meter)</td>
<td>8.7 (32)</td>
<td>9.5 (34)</td>
<td>9.7 (33)</td>
<td>9.7 (32)</td>
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## Policy

<table>
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<th>2014 Value (Rank)</th>
<th>2013 Value (Rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lack of Health Insurance (percent of population)</td>
<td>14.7 (46)</td>
<td>16.5 (44)</td>
<td>18.0 (44)</td>
<td>17.1 (39)</td>
</tr>
<tr>
<td>PH Funding ($/person)</td>
<td>$80 (24)</td>
<td>$74 (24)</td>
<td>$79 (24)</td>
<td>$80 (26)</td>
</tr>
<tr>
<td>Immunizations—Children (% of children aged 19 to 35 months)</td>
<td>75.4 (14)</td>
<td>73.3 (18)</td>
<td>62.7 (47)</td>
<td>61.0 (48)</td>
</tr>
<tr>
<td>Adolescents (combined value)</td>
<td>(40)</td>
<td>(36)</td>
<td>-</td>
<td>-</td>
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<tr>
<td>- HPV Females (% of females aged 13 to 17 yrs)</td>
<td>32.2 (43)</td>
<td>36.4 (32)</td>
<td>35.4 (29)</td>
<td>-</td>
</tr>
<tr>
<td>- HPV Males (% of males aged 13 to 17 yrs)</td>
<td>35.7 (13)</td>
<td>19.9 (29)</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>- MCV4 (% of adolescents aged 13 to 17 yrs)</td>
<td>68.1 (43)</td>
<td>70.8 (37)</td>
<td>66.2 (37)</td>
<td>-</td>
</tr>
<tr>
<td>- Tdap (% of adolescents aged 13 to 17 yrs)</td>
<td>84.4 (38)</td>
<td>82.6 (39)</td>
<td>78.1 (43)</td>
<td>-</td>
</tr>
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</table>
## CLINICAL CARE

<table>
<thead>
<tr>
<th>Metric</th>
<th>2016 Value (Rank)</th>
<th>2015 Value (Rank)</th>
<th>2014 Value (Rank)</th>
<th>2013 Value (Rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low Birthweight (% of live births)</td>
<td>8.0 (25)</td>
<td>8.1 (28)</td>
<td>8.0 (24)</td>
<td>8.5 (33)</td>
</tr>
<tr>
<td>Primary Care Physicians (number per 100,000 population)</td>
<td>123.7 (36)</td>
<td>(48)*</td>
<td>(48)*</td>
<td>(48)*</td>
</tr>
<tr>
<td>Dentists (number per 100,000 population)</td>
<td>50.3 (38)</td>
<td>50.4 (38)</td>
<td>50.4 (35)</td>
<td>50.5 (33)</td>
</tr>
<tr>
<td>Preventable Hospitalizations (discharges per 1,000 in Medicare)</td>
<td>59.2 (42)</td>
<td>62.6 (41)</td>
<td>71.4 (42)</td>
<td>76.9 (43)</td>
</tr>
</tbody>
</table>

* Different data source/method
<table>
<thead>
<tr>
<th>Metric</th>
<th>2016 Value (Rank)</th>
<th>2015 Value (Rank)</th>
<th>2014 Value (Rank)</th>
<th>2013 Value (Rank)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Diabetes (% of adult population)</td>
<td>11.7 (42)</td>
<td>12.0 (43)</td>
<td>11.0 (39)</td>
<td>11.5 (43)</td>
</tr>
<tr>
<td>Frequent Mental Distress (% of adults)</td>
<td>13.1 (41)</td>
<td>(39*)</td>
<td>(44*)</td>
<td>(41*)</td>
</tr>
<tr>
<td>Frequent Physical Distress (% of adults)</td>
<td>14.8 (44)</td>
<td>(44*)</td>
<td>(42*)</td>
<td>(42*)</td>
</tr>
<tr>
<td>Disparity in Health Status (% difference by education level)</td>
<td>19.9 (2)</td>
<td>25.1 (11)</td>
<td>32.1 (38)</td>
<td>29.8 (27)</td>
</tr>
<tr>
<td>Infant Mortality (deaths per 1,000 live births)</td>
<td>7.5 (46)</td>
<td>7.1 (41)</td>
<td>7.4 (43)</td>
<td>7.7 (44)</td>
</tr>
<tr>
<td>Cardiovascular Deaths (deaths per 100,000 population)</td>
<td>325.9 (48)</td>
<td>322.5 (48)</td>
<td>322.0 (48)</td>
<td>330.5 (48)</td>
</tr>
<tr>
<td>Cancer Deaths (deaths per 100,000 population)</td>
<td>215.2 (44)</td>
<td>215.8 (45)</td>
<td>214.1 (45)</td>
<td>209.6 (43)</td>
</tr>
<tr>
<td>Premature Death (years lost per 100,000 population)</td>
<td>9,895 (46)</td>
<td>9,799 (46)</td>
<td>9,654 (46)</td>
<td>9,838 (47)</td>
</tr>
</tbody>
</table>
Oklahoma State Department of Health
Strategic Map: 2015-2020

Improve Population Health

A

Improve Targeted Health Outcomes for Oklahomans

- Operationalize OHIP Flagship Priorities
- Focus on Core Public Health Priorities
- Identify and Reduce Health Disparities
- Use a Life Course Approach to Health and Wellness

B

Expand and Deepen Partner Engagement

- Identify and Develop Public Health Champions
- Develop Strategic Partnerships to Achieve Prioritized Health Outcomes
- Engage Communities in Policy and Health Improvement Initiatives
- Leverage Shared Resources to Achieve Population Health Improvements
- Promote Health in All Policies (HiAP) Across Sectors

C

Strengthen Oklahoma’s Health System Infrastructure

- Reduce Barriers to Accessible Care
- Champion Health Workforce Transformation
- Align Health System Goals and Incentives Across the Spectrum
- Achieve Compatible HIE Across Public and Private Sectors
- Evaluate and Reduce Regulatory Barriers to Health Outcome Improvement

D

Strengthen the Department’s Effectiveness and Adaptability

- Cultivate a Competent, Adaptive, Customer-Oriented OSDH Workforce
- Foster Excellence Through Continuous Quality Improvement and Accreditation
- Evaluate and Improve Agency Processes and Communication
- Leverage Technology Solutions
- Encourage a Culture of Innovation
- Optimize Resources by Targeting High-Value Outcomes

Address the Social Determinants of Health and Improve Health Equity

Promote Health Improvement Through Policy, Education and Healthy Behavior

Foster Data-Driven Decision Making and Evidence-Based Practices
OKLAHOMA HEALTH IMPROVEMENT PLAN (OHIP) FLAGSHIP ISSUES

• Tobacco Use Prevention
• Obesity Reduction
• Children’s Health Improvement
• Behavioral Health
3-4-60

Three Behaviors
- Tobacco Use
- Poor Diet
- Sedentary Lifestyle

Contribute to Four Conditions
- Cardiovascular Disease
- Cancer
- Chronic Lower Respiratory Disease
- Diabetes

That Cause 60 percent of Deaths in Oklahoma
Including Many Premature Deaths
ADULT SMOKING

America's Health Rankings® Edition

Oklahoma vs Nation

Percent of Adult Population

Years:

Oklahoma vs Nation
CIGARETTE TAX STAMPS SOLD TO WHOLESALERS
## TOBACCO CONTROL
### WHAT WORKS

<table>
<thead>
<tr>
<th>RECOMMENDED</th>
<th>INTERVENTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Comprehensive Tobacco Control</td>
<td>• TSET/OSDH</td>
</tr>
<tr>
<td>• Increase Price of Products</td>
<td>• Tax Policy</td>
</tr>
<tr>
<td>• Mass Reach Health Communication</td>
<td>• Tobacco Stops With Me/Helpline Ads</td>
</tr>
<tr>
<td>• Tobacco Quitlines/Reduce Barriers to Cessation Products</td>
<td>• Oklahoma Tobacco Helpline/OHCA Policy Change</td>
</tr>
<tr>
<td>• Smoke Free Policies</td>
<td>• Certified Healthy Oklahoma/Incentive Grants/Healthy Living</td>
</tr>
</tbody>
</table>
Figure 1: Tobacco Control Spending as Percent of CDC Recommended Amount

Source: “History of Spending for State Tobacco Prevention Programs” Campaign for Tobacco-Free Kids
Figure 2: Oklahoma vs. Peer Group: Adult Smoking Prevalence 2001 - 2014 (Model 1)

-60 annual percent change

-.17 annual percent change

Source: Behavioral Risk Factor Surveillance System (BRFSS)
## TOBACCO HELPLINE EVALUATION

7/1/2015 – 6/30/2016

<table>
<thead>
<tr>
<th>All Callers</th>
<th>Medicaid Callers</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Utilization increased 43%</td>
<td>• Utilization increased 37%</td>
</tr>
<tr>
<td>• 37,000 registrants</td>
<td>• 5,700 registrants</td>
</tr>
<tr>
<td>• 13,165 referred from health system/provider</td>
<td>• 88% increase in pregnant, planning pregnancy or breastfeeding women</td>
</tr>
<tr>
<td>• 80% received NRT</td>
<td>• 76% received NRT</td>
</tr>
<tr>
<td>• 30.3% quit rate at 7 months</td>
<td>• 27% quit rate at 7 months</td>
</tr>
</tbody>
</table>
ADULT OBESITY

Oklahoma

Nation

America’s Health Rankings® Edition

Percent of Adult Population
ADOLESCENT OBESITY

The graph shows the percentage of adolescent obesity in Oklahoma and the United States from 2003 to 2015.

- Oklahoma: 11.0% in 2003, 15.1% in 2005, 14.6% in 2007, 14.0% in 2009, 16.7% in 2011, 13.7% in 2013, 11.8% in 2015.
- United States: 12.0% in 2003, 13.0% in 2005, 12.8% in 2007, 11.8% in 2009, 13.0% in 2011, 13.7% in 2013, 13.9% in 2015.

The trend shows an overall increase in adolescent obesity in both Oklahoma and the United States, with fluctuations over the years.
MORE THAN 3 HOURS OF SCREEN TIME

Percent

- Oklahoma
- United States

2007: 19.1
2009: 22.5
2011: 27.0
2013: 41.3
2015: 41.7
HIGH SCHOOL SODA CONSUMPTION

† Not including diet soda or diet pop
TSET Healthy Living Grant Recipients

Legend
- Three Sectors
- Four Sectors

Notes:
Oklahoma Tobacco Settlement Endowment Trust (TSET) seeks to prevent and reduce tobacco use and obesity through strategic actions across four sectors:
- Business
- Cities and Government
- Community Institutions and Organizations
- School

Coverage statewide includes:
- 62 counties are working across all four sectors
- 1 county is working across three sectors

Each county has one lead organization. However, Carter, Comanche and Jackson counties have two lead organizations.

Data Source: Tobacco Settlement Endowment Trust

Projection/Coordinate System: USGS Albers Equal Area Conic

Created: 06.10.2015

Disclaimer: This map is a compilation of records, information and data from various city, county and state offices and other sources, affecting the area shown, and is the best representation of the data available at the time. The map and data are to be used for reference purposes only. The user acknowledges and accepts all inherent limitations of the map, including the fact that the data are dynamic and in a constant state of maintenance.
CERTIFIED HEALTHY
OKLAHOMA

Certifications

Excellence

Applications  Certifications
## Compendium of Obesity Prevention

<table>
<thead>
<tr>
<th>Program or Policy</th>
<th>Social Ecological Level</th>
<th>Level of Recommendation</th>
<th>Strength of Evidence</th>
<th>Cost Effectiveness</th>
<th>Population Reach</th>
<th>Score</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Care Physician Interventions</td>
<td>📡</td>
<td>💡 💡 💡 💡 💡</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>✨</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>83.3%</td>
</tr>
<tr>
<td>Point of Decision Prompts</td>
<td>🏛</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>✨</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>92.3%</td>
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<tr>
<td>Availability of Parks and Recreational facilities</td>
<td>❑ ❑ ❑ ❑ ❑</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>✨</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>81.5%</td>
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<tr>
<td>School Locations</td>
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<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>☢</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>87.8%</td>
</tr>
<tr>
<td>Age-appropriate nutrition in ECE</td>
<td>❑ ❑ ❑ ❑ ❑</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>✨</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>87.8%</td>
</tr>
<tr>
<td>Coordinated School Health</td>
<td>❑ ❑ ❑ ❑ ❑</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>☢</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>86.2%</td>
</tr>
<tr>
<td>Consider Food Access in Community Planning</td>
<td>❑ ❑ ❑ ❑ ❑</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>☢</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>82.1%</td>
</tr>
<tr>
<td>Healthy Corner Store Initiative</td>
<td>❑ ❑ ❑ ❑ ❑</td>
<td>💡 💡 💡 💡 💡 ⊙ ⊙ ⊙</td>
<td>💡 💡 💡 💡 💡 💡 ⊙ ⊙</td>
<td>☢</td>
<td>🐶 🐶 🐶 🐶 🐶 🐶</td>
<td>82.7%</td>
</tr>
</tbody>
</table>
NATIONAL INITIATIVES

Infant Mortality Collaborative Improvement & Innovation Network (CoIIN)
- Infant Safe Sleep
- Preconception/Interconception
- Prematurity
- Social Determinants of Health

Association of Maternal & Child Health Programs (AMCHP)
- Improving Birth Outcomes
- Every Mother Initiative

Association of State & Territorial Health Officials (ASTHO)
- Breastfeeding
- Long Acting Reversible Contraception (LARC)
PREPARING FOR A LIFETIME, IT’S EVERYONE’S RESPONSIBILITY

Statewide initiative to decrease infant mortality rates & reduce racial disparities

Priority areas:

• Preconception health
• Premature birth
• Tobacco & pregnancy
• Breastfeeding
• Postpartum depression
• Infant safe sleep
• Infant injury prevention
INFANT MORTALITY RATE

[Graph showing infant mortality rates from 1990-1992 to 2013-2015 for Nation and Oklahoma.]
EARLY ELECTIVE DELIVERIES

- 96% decrease in early elective deliveries from 2011-2014.
- Minimum of $4.49 saved for every $1.00 spent in program proving success from both a health and economic standpoint!
In January, 2017 the Oklahoma State Department of Health received the March of Dimes Virginia Apgar Award for reducing pre-term births by 8% in the last five years!
OKLAHOMA TEEN BIRTHS

Births per 1000 to Teens 15-17 Years of Age

- 2010: 25.9
- 2011: 22.9
- 2012: 22.8
- 2013: 20.5
- 2014: 16.8
- 2015: 15.9

Source: OK2SHARE. Rate is per 1000 live births
Each life stage influences the next
TEEN SUICIDE


Source: CDC Wonder

Percent of Oklahoma students (grades 9-12) who have seriously considered attempting suicide

Source: Oklahoma YRBS
CHILD GUIDANCE ROLE IN SYSTEM OF CARE

Birth to 13  9-13  13 to 25
EARLY CHILDHOOD SYSTEM OF CARE

- Maternal & Child Health
- Sooner Start
- Child Care
- Early Head Start/Head Start
- Adult MH/SA Services
- Judicial System
- Primary Care
- Child Welfare
- Child Guidance
- Infant MH Specialist
- Home Visitation
- Preschool Special Education
PROTECTIVE FACTORS INFORM OUR WORK

**Parental Resilience**
- Parenting Education
- Therapeutic Interventions

**Social Connections**
- Circle of Parents (COP)
- Education Groups

**Concrete Supports in Time of Need**
- Referrals for Immediate Needs
- Mental Health Consultation to Child Care

**Knowledge of Parenting/Child Development**
- Incredible Years Groups
- Topical Parenting Groups
- Developmental Screening
- WIC PLUS+

**Social Emotional Competence of Children**
- Circle of Security
- TF-CBT
- PCIT

1,592 persons served through 850 hours of EBP
Project LAUNCH Matched Pre and Post Surveys

- Family Functioning
- Social Support
- Concrete Support
- Nurturing/Attachment
- Parenting Knowledge

Chart showing the comparison between pre and post means for various factors.
Project LAUNCH Community Parent Surveys

- Family Functioning
- Social Support
- Concrete Support
- Nurturing/Attachment
- Parenting Knowledge

- First Survey
- Second Survey
QUESTIONS
### FY 2017 Budget and Expenditure Forecast: As of 01/24/2017

<table>
<thead>
<tr>
<th>Division</th>
<th>Current Budget</th>
<th>Expenditures</th>
<th>Obligations</th>
<th>Forecasted Expenditures</th>
<th>Not Obligated or Forecasted</th>
<th>Performance Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Health Infrastructure</td>
<td>$ 21,759,045</td>
<td>$ 8,268,432</td>
<td>$ 6,623,221</td>
<td>$ 6,388,980</td>
<td>$ 478,412</td>
<td>97.80%</td>
</tr>
<tr>
<td>Protective Health Services</td>
<td>$ 62,712,085</td>
<td>$ 28,976,136</td>
<td>$ 7,004,734</td>
<td>$ 24,495,072</td>
<td>$ 2,236,143</td>
<td>96.43%</td>
</tr>
<tr>
<td>Office of State Epidemiologist</td>
<td>$ 55,660,200</td>
<td>$ 21,356,030</td>
<td>$ 20,094,262</td>
<td>$ 12,202,489</td>
<td>$ 2,007,419</td>
<td>96.39%</td>
</tr>
<tr>
<td>Health Improvement Services</td>
<td>$ 32,190,087</td>
<td>$ 10,952,878</td>
<td>$ 6,630,329</td>
<td>$ 13,120,080</td>
<td>$ 1,486,800</td>
<td>95.38%</td>
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<tr>
<td>Community &amp; Family Health Services</td>
<td>$ 226,251,964</td>
<td>$ 89,122,492</td>
<td>$ 25,193,295</td>
<td>$ 108,800,292</td>
<td>$ 3,135,885</td>
<td>98.61%</td>
</tr>
<tr>
<td><strong>Totals:</strong></td>
<td><strong>$ 398,573,381</strong></td>
<td><strong>$ 158,675,968</strong></td>
<td><strong>$ 65,545,842</strong></td>
<td><strong>$ 165,006,912</strong></td>
<td><strong>$ 9,344,660</strong></td>
<td><strong>97.66%</strong></td>
</tr>
</tbody>
</table>

**Expenditure Forecast Assumptions**

- Payroll forecasted through June 30, 2017
- Budgeted vacant positions are forecasted at 50% of budgeted cost
- Forecasted expenditures includes the unencumbered amounts budgeted for:
  - Travel reimbursements
  - WIC food instrument payments
  - Trauma fund distributions
  - Amounts budgeted for county millage
  - Amount budgeted to support rural EMS agencies
  - Budget amounts for fiscal periods other than state fiscal year not yet active

**Budget and Expenditure Explanation**

- The amounts reported as 'Not Obligated or Forecasted' are not an estimate of lapsing funds. This represents planned expenditures that OSDH is currently taking action to execute.
- The agency has a current overall performance rating of 97.66%, a net change of .51% from January’s report.
The Center for the Advancement of Wellness (CAW) is responsible for the OHIP flagship issues of tobacco use and obesity.

CAW employees specialize in tobacco control, physical activity, nutrition, obesity, wellness policies across multiple environmental sectors, cancer prevention and control, diabetes and cardiovascular disease.

Activities include the following:
- Advancing effective wellness policies and programs in communities, early childhood education, schools, worksites and faith based organizations
- Tobacco prevention, promotion of cessation services, and protection from secondhand smoke exposure
- Improving access and participation in physical activity and good nutrition
- Surveillance, evaluation, training and community based strategic planning
- Researching disparities and implementing programs to reduce disparities
- Social marketing campaigns
- Cancer prevention, screening and surveillance through Take Charge! (breast and cervical cancer), colorectal cancer screening, and cancer registry programs
- Preventable hospitalizations for diabetes, heart disease and stroke

### Center for the Advancement of Wellness - FY17 Budget

<table>
<thead>
<tr>
<th>Budgeted Funds</th>
<th>Federal</th>
<th>Revolving</th>
<th>TSET</th>
<th>State</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>$5,936,620</td>
<td>$1,511,294</td>
<td>$1,470,952</td>
<td>$915,421</td>
<td>$9,834,287</td>
</tr>
</tbody>
</table>

### CHALLENGES:
- Oklahoma’s tobacco control efforts are significantly dependent on CDC and TSET funding.
- OSDH has been notified by the CDC Office on Smoking and Health to expect a 10%-50% reduction in federal tobacco funding beginning March 31, 2017. This reduction will result in an approximate loss of federal dollars in the amount of $109,032 to $545,162.
- If the Prevention and Public Health fund is repealed with the Affordable Care Act the OSDH will lose its Quitline funding completely ($256,273).

### OPPORTUNITIES:
- The best opportunity for significant, rapid reductions in smoking is House Bill 1841 introduced by Representative Leslie Osborn that calls for a $1.50 per pack increase in the cigarette excise tax
- A 31% increase in the number of entities certified at the Excellence level under Certified Healthy Oklahoma between 2015 and 2016 indicates this program is successfully encouraging voluntary adoption of evidence based tobacco control policies.
PUBLIC RELATIONS/COMMUNICATIONS

American Heart Association Reception  
OU College of Public Health Spring Orientation – presenter  
Greater Oklahoma City Chamber, State of the City Luncheon  
Red Tie Night Video  
Oklahoma Perinatal Quality Improvement Collaborative Meeting – Virginia Apgar Award

STATE/FEDERAL AGENCIES/OFFICIAL

Governor Mary Fallin; Chris Benge, Chief of Staff; Katie Altshuler, Policy Director, Governor’s Office  
Doug Elliott, Deputy Executive Director, Department of Veterans Affairs; Ed Lake, Director, Department of Human Services; Henry Hartsell, Jr., Deputy Commissioner, Protective Health Services, Oklahoma State Department of Health  
Mike Hunter, Secretary of State  
Noel Tyler, Interim Director, Department of Rehabilitation Services  
Governor’s Cabinet Meeting

SITE VISITS

Atoka County Health Department  
Choctaw County Health Department  
Coal County Health Department  
McCurtain County Health Department  
Pontotoc County Health Department  
Pushmataha County Health Department

OTHERS:

Teresa Rose Crook, Director of Community Programs, Oklahoma City Community Foundation  
   Ed Lake, Director, Department of Human Services; Terri White, Commissioner, Department of Mental Health and Substance Abuse Services  
Reforming States Group Steering Committee  
Kayse Shrum, President, OSU Center for Health Sciences; Dr. Sanjeeu Arora, Founder and Director, Project ECHO  
Jim Lyall, Associate Director, Community Service Council Tulsa  
Doug Gibson, Executive Director, HeartLine, Inc.  
Cooper Barghols, SMU Student  
Lab CAP Inspectors  
Oklahoma City County Health Department Board Meeting  
Desiree Doherty, Executive Director and Kristine Bridges, Incoming Executive Director, The Parent Child Care Center of Tulsa  
Tulsa Health Department Board Meeting  
Oklahoma Health Improvement Plan Executive Committee Meeting