

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 620. CERTIFICATE OF NEED STANDARDS FOR HEALTH CARE  
FACILITY ACQUISITIONS**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Chapter 620. Certificate of Need Standards for Health Care Facility Acquisitions [REVOKED]

**SUMMARY:**

This rule revocation is in response to the Governor's Executive Order 2020-03 to streamline content and remove unnecessary and duplicative wording. The Department has proposed the consolidation of its certificate of need requirements into one chapter of its rules. The substantive requirements of Chapter 620 have not been changed and will appear in one consolidated certificate of need regulations chapter.

**AUTHORITY:**

Commissioner of Health, Title 63 O.S. §§ 1-104; Title 63 O.S. § 1-851.2 and Title 63 O.S. § 1-880.4

**COMMENT PERIOD:**

January 15, 2021 through the close of the Department's normal business hours, 5 PM, on February 16, 2021. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on February 16, 2021, submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on February 16, 2021, via WebEx accessible from the site

<https://oklahoma.gov/health/organization/public-hearings.html>, from 9AM to noon.

The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of extreme inclement weather or technical difficulties disrupting or preventing the meeting is February 23, 2021, via WebEx accessible from the site <https://oklahoma.gov/health/organization/public-hearings.html>, from 9AM to noon. Those wishing to present oral comments should be registered to speak by 9:15 a.m. Directions for comment registration will be provided on the website. The hearing will close at the conclusion of comments from those registered to speak. Interested persons may attend for the purpose of orally submitting data, views, or concerns about the rule proposal described and summarized in this Notice.

**REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through the close of the Department's normal business hours, 5 PM, on February 16, 2021, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

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

**RULE IMPACT STATEMENT:**

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

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail [AudreyT@health.ok.gov](mailto:AudreyT@health.ok.gov).

## INITIAL RULE IMPACT STATEMENT

### TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 620. CERTIFICATE OF NEED STANDARDS FOR HEALTH CARE FACILITY ACQUISITIONS [REVOKED]

1. **DESCRIPTION:**

This rule revocation is in response to the Governor's Executive Order 2020-03 to streamline content and remove unnecessary and duplicative wording. The Department has proposed the consolidation of its certificate of need requirements in one chapter of its rules. The substantive requirements of Chapter 620 have not been changed and will appear in one consolidated certificate of need regulations chapter.

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

It is anticipated that those persons affected by the changes will be certificate of need applicants. With the changes made as a result of the Governor's Executive Order, finding certificate of need information should be easier to access for the people potentially affected by the revisions. There will be no cost impact since the substantive certificate of need requirements have not changed.

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

It is anticipated that those persons benefitting from the changes will be the public, licensees of the Department, and the Department through the consolidation of chapters and clarity in rule provisions.

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

It is anticipated there will be no economic impact or cost of compliance.

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

There are anticipated no costs associated with implementation.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

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

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

There are no anticipated or known adverse economic effects on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

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

There are no less costly means currently identified.

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

No effect on public health is expected as result of these rule changes.

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

It is expected that there are no detrimental effects on public health and safety would be experienced without adoption of this rule.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on November 18, 2020.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 620. CERTIFICATE OF NEED STANDARDS FOR HEALTH CARE  
FACILITY ACQUISITIONS [REVOKED]**

**SUBCHAPTER 1. GENERAL [REVOKED]**

**310:620-1-1. Purpose [REVOKED]**

~~This Chapter sets the standards against which the Department shall review proposed acquisitions of facilities under the authority of 63 O.S. Sections 1-850 et seq., (Long Term Care Certificate of Need Act) and 63 O.S. Sections 1-880.1 et seq., (Psychiatric and Chemical Dependency Facility Certificate of Need Act) and 75 O.S. Sections 250.1 through 323, (Administrative Procedures Act).~~

**SUBCHAPTER 3. STANDARDS [REVOKED]**

**310:620-3-1. Financial [REVOKED]**

~~The applicant shall provide proof of sufficient financial resources to complete the acquisition and to maintain services and staffing that meet licensure standards for at least twelve (12) months following acquisition.~~

~~(1) **Financial proof for acquisition.** Proof of sufficient financial resources to complete the acquisition shall be provided in the following forms, as applicable:~~

~~(A) For conventional, bank, seller-carried, third party, or bond financing, a statement of the proposed principal amount, interest rate and repayment terms, and that the applicant has access to the required funds, signed under oath by a representative of the lending institution, seller, third party, or authority;~~

~~(B) For equity financing:~~

~~(i) An attested balance sheet for the acquiring party that is dated within the past twelve (12) months and that reflects cash or cash equivalents sufficient to fund the project; or~~

~~(ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose.~~

~~(C) For financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank:~~

~~(i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and~~

~~(ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.~~

~~(2) **Projected Budget.** Each application shall include a projected budget of revenues and expenses for the first twelve (12) months of operation of the facility after the anticipated issuance of the Certificate of Need. The Department may require the applicant to justify the difference between the applicant's projected budget and the facility's expenses and revenues as reported to the Oklahoma Health Care Authority pursuant to 56 O.S. Section 2002 or OAC 317:30-5.~~

~~(3) **Balance sheets.** All balance sheets shall include a release authorizing the Department to verify the financial information submitted in the certificate of need application. The Department may make independent inquiry into the financial condition of the applicant.~~

~~(4) **Financial proof for services and staffing.** To ensure the maintenance of services and staffing, the applicant shall prove the availability of reserves equivalent to the average monthly projected expenses, in addition to funds needed to complete the acquisition. The amount of the average monthly expenses shall be calculated based on a per month average of the projected twelve month budget of revenues and expenses submitted with the application. Proof of the availability of reserves shall conform to the following:~~

~~(A) For reserves to be provided or maintained through letter of credit, line of credit, or conventional, bank or bond financing:~~

~~(i) A statement of the proposed principal amount, interest rate and repayment terms, and that the applicant has access to the required funds, signed under oath by a representative of the lending institution or authority;~~

~~(ii) A statement of provisions for terminating or rescinding a letter of credit or line of credit;~~

~~(B) For reserves to be maintained through the applicant's equity or net worth:~~

~~(i) An attested balance sheet that is dated within the past twelve (12) months for the acquiring party and that reflects cash or cash equivalents sufficient to meet the one-month reserves requirement; or~~

~~(ii) A certificate of deposit or other proof that funds are available and have not been pledged for some other purpose;~~

~~(C) For reserves to be funded or guaranteed by a third party that is not duly authorized or chartered as a bank:~~

~~(i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and~~

~~(ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.~~

~~(5) **Attested documents.** For the purposes of this section, the term "attest" shall have the meanings as defined in 59 O.S. Supp. 2004, Section 15.1A.~~

### **310:620-3-2. Staffing [REVOKED]**

~~The applicant shall provide documentation that sufficient personnel shall be retained or employed to meet the needs of all residents and to comply with all requirements for state licensure and Medicare/Medicaid certification, if applicable. The documentation of staffing shall include written statements from the administrator, the director of nursing, the pharmacist, and the medical director, indicating their intentions to contract or accept employment with the applicant.~~

### **310:620-3-3. Experience [REVOKED]**

~~If the applicant has less than sixty (60) months experience in health care facility operation immediately preceding the filing of the application, the applicant shall provide a plan which details how experienced and competent staffing and leadership shall be responsible for the facility~~

operations. The operational plan shall include:

- (1) Organizational papers, bylaws, articles of incorporation, partnership agreements, business plans, or other documents which confirm the applicant's claims about the policies, rights, duties and responsibilities of the applicant and its principals;
- (2) Statements from the person or persons who shall fill management or administrative staffing and leadership positions, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, with said statements to specify the minimum amount of time those persons shall spend working at the facility; and
- (3) A statement from the applicant agreeing to advise the Department prior to any change in the staffing and leadership during the first six months of operation after the acquisition is finalized.
- (4) A statement from the applicant agreeing that any person added to or replacing another person in the staffing or leadership plan during the first six months of operation shall comply with 63 O.S. Section 1-853.F and OAC 310:4-1-7.1.

### **310:620-3-4.1. Description of notice to residents and families [REVOKED]**

The form used to notify residents and families as required in 63 O.S. Section 1-852(I) requires the following information:

- (1) The name of the applicant;
- (2) The name and location of the facility to be acquired;
- (3) A brief explanation of the public's opportunity to participate in the review of the certificate of need application;
- (4) The location where and the times when the certificate of need application shall be available for public inspection; and
- (5) The address and deadline for submitting written comments to the Department.