

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 625. CERTIFICATE OF NEED STANDARDS FOR ICF/IID**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 625. Certificate of Need Standards for ICF/IID [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 625 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.

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.

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.

INITIAL RULE IMPACT STATEMENT

TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH CHAPTER 625. CERTIFICATE OF NEED STANDARDS FOR ICF/IID

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 625 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 effect 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 625. CERTIFICATE OF NEED STANDARDS FOR ICF/IID [REVOKED]**

310:625-1-1. Purpose [REVOKED]

~~This Chapter shall apply to Certificate of Need applications reviewed by the Department for proposed Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID) beds and implements part of the Long-term Care Certificate of Need Act. This Chapter shall not apply to ICF/IID 16s and smaller facilities.~~

310:625-1-2. Service area [REVOKED]

~~For review purposes under these standards, the service area for an ICF/IID shall be the service region or area, as designated by the State Department of Human Services, in which it is located or proposed for location. In the event an application for Certificate of Need is considered for a specialized ICF/IID facility for which only one or two facilities may be needed, or where no service area is designated, in the State, then the Department may treat the entire State as the service area.~~

310:625-1-3. Burden of proof [REVOKED]

~~It shall be incumbent on each applicant to clearly demonstrate an unmet need for additional ICF/IID beds in the applicable service area and to demonstrate conformance with all standards specified herein.~~

310:625-1-4. Standards [REVOKED]

- ~~(a) No new ICF/IID beds, except ICF/IID 16s and smaller, shall be approved in the service area unless the total number of ICF/IID beds in the service area falls below the following standard: 84 ICF/IID beds per 100,000 general population.~~
- ~~(b) An application for ICF/IID beds shall not be approved unless the applicant demonstrates familiarity with and understanding of certification standards for an ICF/IID, specified in 42 CFR Section 442.400, relating to Standards for Payment to Nursing Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities.~~
- ~~(c) The identity of the licensed administrator of the existing or proposed facility must be provided by the applicant as a prerequisite to issuance of a Certificate of Need.~~
- ~~(d) No additional ICF/IID beds, whether proposed through construction or conversion of existing space, shall be approved for any existing ICF/IID unless it has maintained an occupancy rate of at least 95%, based upon a calculation of occupancy reflected in the monthly average daily census reports of the Department of Human Services, or the Department, for the most recent six month period for which official data is available when the application is filed.~~
- ~~(e) Any ICF/IID beds approved, but not yet in place in the service area, shall be included in the evaluation for determining bed need specified in subsection (a).~~
- ~~(f) Any existing ICF/IID which proposes an expansion of beds by conversion or construction and which has a record of questionable quality of care, as demonstrated through complaint investigation records, or other means, may be denied a Certificate of Need despite the conformity of the proposal to other standards delineated herein.~~
- ~~(g) The Department shall consider the relationship of a Certificate of Need application to any plan adopted by the Department of Human Services concerning the distribution and allocation of services for individuals with intellectual or developmental disabilities.~~