

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED
NURSING FACILITY BEDS**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Chapter 630. Certificate of Need Standards for Licensed Nursing Facility Beds [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 630 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. 1-850; and Title 63 O.S. § 1-851.2

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 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING FACILITY BEDS

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 630 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 630. CERTIFICATE OF NEED STANDARDS FOR LICENSED NURSING
FACILITY BEDS [REVOKED]**

310:630-1-1. Purpose [REVOKED]

This Chapter shall apply to Certificate of Need applications reviewed by the Department for proposed licensed nursing facility (LNF) beds. This Chapter establishes review criteria and standards as authorized pursuant to Title 63 O.S. Section 1-851.2(A)(7).

- (1) The Department shall use these standards in considering an application's conformity to the Long Term Care Certificate of Need Act.
- (2) Each applicant who proposes licensed nursing facility beds has the burden to clearly demonstrate conformity to these standards.
- (3) For purposes of this Chapter, licensed nursing facility (LNF) beds shall include all facilities defined under the Nursing Home Care Act, 63 O.S. Section 1-1901 et seq., excluding any facility certified for service to individuals with intellectual disabilities.

310:630-1-2. Service areas [REVOKED]

(a) The applicant shall demonstrate that existing licensed nursing facility beds are not and will not be adequate in the service area described in 310:630-1-2, based on the need of the population.

- (1) The applicant shall demonstrate that there are persons who need services in the area but are unable to obtain those services due to the inadequacy of existing LNF facilities in the area.
- (2) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over statewide. The applicant must show that the proposed new beds likely will not cause the statewide ratio to exceed 179 beds per 1000 persons age 75 and over, and that the project is consistent with the achievement of an optimal target ratio of 152 beds per 1000 persons age 75 and over.
- (3) The applicant shall demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age 75 and over in the service area. No application shall cause an excessive increase in the bed to population ratio of a service area. The determination of whether or not an increase is excessive shall be based on the percentage of increase a project will cause in an area's bed to population ratio, and on a comparison of the area's bed to population ratio against the statewide ratio.
- (4) The most recent population data published at the time the application is filed shall be used. The source of population projections for current and future years shall be based on year 2000 census data as published by the Oklahoma Department of Commerce.
- (5) If the applicant proposes a special service area under 310:630-1-2, then the applicant shall demonstrate that the target population will have access to the proposed services through public or private transportation.

(b) The applicant shall demonstrate that alternative or substitute services are not and will not be available or are and will be inadequate to meet the needs of the population.

~~(1) An overall mean occupancy rate of 85% should be maintained in LNF beds in the Service Area described in OAC 310:630-1-2.~~

~~(A) This mean shall be based upon data from all similarly licensed facilities in the Service Area using monthly reports filed with the Department of Health, taking into consideration the following:~~

- ~~(i) any specialized facility for individuals with intellectual disabilities or intermediate care facility for individuals with intellectual disabilities in the area shall be excluded;~~
- ~~(ii) in the case of a nursing facility application, any hospital-based skilled nursing unit shown to serve a different health service need shall be excluded;~~
- ~~(iii) in the case of a hospital-based skilled nursing unit application, any nursing facility shown to serve a different health service need shall be excluded;~~
- ~~(iv) in the case of a facility demonstrating a special service area under OAC 310:630-1-2(b), each facility not shown to be adequate or appropriate to meet the needs of the facility's special population shall be excluded.~~

~~(B) The mean shall be calculated using data for the most recent six month period for which reports are published by the Department of Health, as of the first day of the month during which an application is initially filed.~~

~~(i) Beds reserved for residents who were temporarily absent from facilities for hospitalization or other therapeutic purposes shall be considered to have been occupied.~~

~~(ii) The area bed capacity used to calculate the occupancy rate shall be reduced by the number of beds that are not available because rooms licensed for multiple occupants have been reserved for single occupants throughout the six month period.~~

~~(C) In determining the service area's conformity to the occupancy goal specified in this subsection, the Department shall investigate the causes for low occupancy operation of other facilities in the service area. The Department shall exclude such low occupancy facility from the service area calculations if the facility has been in operation continuously under the current licensee for twenty-four (24) or more months and:~~

~~(i) The facility's state license or federal certification during the sixty (60) months preceding the filing of the application has been revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal;~~

~~(ii) The facility has a history of noncompliance as defined in 63:1-851.1(6); or~~

~~(iii) The facility has not complied with all lawful orders of suspension, temporary management, or administrative penalty issued by the Department, another state agency, or by the federal Health Care Financing Administration;~~

~~(iv) The facility's owner, operator, manager, or medical director has been convicted of a criminal offense related to the operation or management of a long-term care facility;~~

~~or~~

~~(v) The facility has been assessed an administrative penalty above the level of deficiency with one or more of the following unfavorable factors:~~

~~(I) The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;~~

~~(II) The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident; or~~

~~(III) — Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at the facility within the preceding 60 months.~~

~~(2) The applicant shall demonstrate that the proposed beds are needed in addition to any beds previously approved under the State Certificate of Need laws but not yet in operation in the service area.~~

~~(3) The applicant's demonstration shall include consideration of the adequacy of such alternative services as residential care facilities, Eldercare, home health care, hospice, assisted living and adult day care.~~

~~(c) The applicant shall demonstrate adequate financial resources for the new or expanded long-term care services and for the continued operation thereof.~~

~~(1) Reimbursement shall be structured to realistically provide for care and services to persons living in the service area.~~

~~(2) The proposed charges shall be in line with the prevailing rate of similar institutions and services within the health service area.~~

~~(3) The projected utilization rates shall be sufficient to maintain cost-effectiveness.~~

~~(4) The projected cash flow shall give the proposed project financial viability within three years.~~

~~(5) The relationship of the institution's assets to liabilities shall not be increased by the proposed project to the point of threatening the financial viability of the institution.~~

~~(6) The applicant shall supply a cost/benefit analysis to justify the cost-effectiveness of the proposed project.~~

~~(d) The applicant shall demonstrate that sufficient personnel will be available to properly staff and operate the proposed new or expanded long-term care service.~~

~~(1) A proposal to provide new or expanded long-term care service must provide assurances that the appropriate numbers and types of staff will be available to comply with licensure requirements.~~

~~(2) Professional and paraprofessional staffing of new or expanded long-term care services must not compromise the staffing of existing long-term care services.~~

~~(3) The applicant shall disclose all current and prior experience in the operation of health care facilities, giving names of facilities, locations, and dates. If the applicant has less than sixty (60) months experience in health care facility operations immediately preceding the filing of the application, then the applicant shall:~~

~~(i) Provide a plan which details how experienced and competent staffing and leadership, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, will be placed in charge of facility operations; and~~

~~(ii) Agree to advise the OSDH, prior to any change in the staffing and leadership during the first six months of operation of the new or expanded facility.~~