

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 635. CERTIFICATE OF NEED STANDARDS FOR PSYCHIATRIC  
AND CHEMICAL DEPENDENCY SERVICE BEDS**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Chapter 635. Certificate of Need Standards for Psychiatric and Chemical Dependency Service 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 635 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. § 1-880.4

**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 635. CERTIFICATE OF NEED STANDARDS FOR PSYCHIATRIC AND CHEMICAL DEPENDENCY SERVICE 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 635 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 635. CERTIFICATE OF NEED STANDARDS FOR PSYCHIATRIC AND  
CHEMICAL DEPENDENCY SERVICE BEDS [REVOKED]**

**310:635-1-1. Purpose [REVOKED]**

~~This Chapter implements the Psychiatric and Chemical Dependency Facility Certificate of Need Act (63 O.S. Supp. 1990, Section 1-880.1 et seq.). Section 1-880.4 of the Act authorizes the Board of Health to adopt rules and regulations necessary to carry out its functions under this program, and to establish and administer review criteria and standards.~~

**310:635-1-1.1. Definitions [REVOKED]**

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

~~"**Emergency**" means the urgent need to admit a person under 18 years of age for psychiatric or chemical dependency treatment services due to the imminent threat to life, health and/or safety of the person to be admitted and/or others.~~

~~"**Temporary**" means the period of time, but not to exceed 72 hours, from when a person under 18 years of age presents at the hospital for emergency psychiatric or chemical dependency treatment services in a bed ordinarily used for an adult until the earliest time as determined by the physician that the person can be transferred appropriately within the hospital to a bed that is certified for persons under 18 years of age, or to another hospital where such a bed is available, or the emergency ceases.~~

~~"**Appropriate transfer**" means a transfer in which the transferring hospital or unit provides the required treatment within its capability which minimizes the risks to the person's life, health and safety and such risks that may relate to others; and, in which the receiving hospital or unit has available space and qualified personnel for the psychiatric or chemical dependency treatment of persons under 18 years of age, and has agreed to accept transfer of the patient and to provide the indicated treatment.~~

**310:635-1-2. Applicability [REVOKED]**

~~These standards apply to psychiatric or chemical dependency facilities, and to psychiatric or chemical dependency units or services operated in any hospital or related institution as defined in Section 1-701 et seq. of Title 63.~~

**310:635-1-3. Burden on applicant [REVOKED]**

~~Each applicant who proposes psychiatric or chemical dependency service beds has the burden to clearly demonstrate conformity to these standards.~~

**310:635-1-4. Service area [REVOKED]**

~~The service area for a psychiatric and/or chemical dependency application shall be the mental health service area in which the service is to be located. The mental health service areas as most recently adopted by the Department of Mental Health are shown in Appendix A.~~

~~(1) **Alternative service areas.** The Department may consider an alternative service area if the applicant clearly demonstrates the applicability of a different service area, based on the following factors:~~

~~(A) The availability or lack of practicing psychiatrists, psychologists, and other counseling~~

or support personnel.

(B) The existence of an underserved population large enough to support an adequately sized hospital-based and/or freestanding psychiatric or chemical dependency service.

(C) The availability of appropriate community mental health services to ensure a continuum of treatment.

(2) **Determination of beds.** In determining the number and occupancy of existing beds in a service area, licensed beds from one of the three state hospitals shall be prorated to the service area based upon the service area population as a percentage of the population of the Hospital Service Region in which the service area is located. The Hospital Service Regions published by the Oklahoma Department of Mental Health and Substance Abuse Services are shown in Appendix B.

(3) **Excluded beds.** In determining the number and occupancy of existing beds in a service area, beds which are dedicated to Department of Corrections patients shall be excluded.

### 310:635-1-5. Population-based need [REVOKED]

The applicant shall demonstrate that existing psychiatric and chemical dependency service beds are not and will not be adequate to meet the needs in the service area described in 310:635-1-4.

(1) **Need.** 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 psychiatric and chemical dependency service beds.

(2) **Impact.** The applicant shall demonstrate the probable impact of the proposed beds on the ratio of psychiatric and chemical dependency beds to the population statewide. The statewide ratio must not exceed 145 beds per 100,000 persons, while moving towards an optimal target ratio of 117 beds per 100,000 persons.

(3) **Ratio.** The applicant shall demonstrate the probable impact of the proposed beds on the ratio of psychiatric and chemical dependency beds to the population 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 in 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) **Population projection.** The most recent population figures 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) **Target population.** If the applicant proposes a special service area under 310:635-1-4, then the applicant shall demonstrate that the target population will have access to the proposed services through public or private transportation.

### 310:635-1-6. Availability of alternative services [REVOKED]

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) **Alternatives.** The applicant's demonstration shall include consideration of residential, halfway house, outpatient, day hospitalization, or other less restrictive care settings in the service area.

(2) **Mean occupancy.** An overall mean occupancy rate of 75% shall be maintained in psychiatric and chemical dependency beds in the service area described in 310:635-3-1, above,

as a prerequisite to the approval of additional beds whether in new or existing facilities. This mean must be based upon data from all psychiatric and chemical dependency beds in the service area using month reports submitted to the Department of Health. This mean shall be calculated using data for the most recent six month period for which reports are available as of the first day of the month during which an application is initially filed.

(3) **Outstanding beds.** The applicant shall demonstrate that the proposed beds are needed in addition to any beds previously approved or exempted from review under the State Certificate of Need law but not yet in operation in the service area.

(4) **Availability.** The applicant must demonstrate the availability of appropriate linkages such as referral protocols or joint venture agreements with similar or complementary services.

### **310:635-1-7. Financial resources [REVOKED]**

(a) The applicant shall demonstrate adequate financial resources for the new or expanded services and for the continued operation thereof.

(b) Sufficient capital must be available to initiate and operate the proposed project.

(c) Financial arrangements shall be reasonable and secure.

(d) The project shall be financially viable through three years beyond completion.

(e) Proposed charges must be in line with prevailing rates of similar institutions providing similar services in the general area.

### **310:635-1-8. Staffing [REVOKED]**

The applicant shall demonstrate that sufficient personnel will be retained or employed to meet the needs of all residents and to comply with all requirements for licensure and/or certification, if applicable. That demonstration shall include documentation of the availability or plans for recruitment of the following personnel as applicable to meet the program's needs:

(1) The medical administrator (supervisor) or treatment coordinator must be a psychiatrist in a psychiatric program, and may be an internist or family practice physician for chemical dependency programs. This person may be retained on contract, or used through referral for non-medical subacute programs. The number of medical administrators or treatment coordinators shall be sufficient to meet program needs.

(2) The Director/Administrator may be in lieu of or in addition to the medical administrator, subject to training and experience.

(3) The numbers of case workers, family therapists, psychologists, and social workers shall be adequate to meet the demands of the program design.

(4) The activities assistant will organize and supervise occupational and recreational programming.

(5) The applicant shall provide for at least one R.N. on duty at all times, with additional R.N.s adequate to meet program needs.

(6) Psychiatric technicians/mental health workers may be non-licensed staff in addition to licensed nursing staff, and the number shall be commensurate with the intensity of illness to be treated.

(7) Medical records clerks shall be sufficient to meet program needs.

(8) The applicant shall provide an education specialist for school age patients.

(9) Clerical and support staff shall be sufficient to meet program needs.

(10) Ancillary support personnel shall be sufficient to meet program needs.

**310:635-1-9. Other [REVOKED]**

~~(a) A ten-bed psychiatric or chemical dependency unit is assumed to be the minimum size to sustain services and staffing for an acute care hospital-based psychiatric or chemical dependency unit.~~

~~(b) If coordination with a teaching or training program in the area is a part of the proposed project, the applicant shall submit documentation of the participation by, and the probable impact on, health personnel teaching or training programs.~~

**310:635-1-10. Temporary emergency admissions [REVOKED]**

~~(a) Any temporary emergency shall be fully documented by the physician and the hospital to include an explanation of the emergency, the services rendered to the patient, an explanation of why an adult bed was used, and the length of stay in the bed ordinarily used for an adult.~~

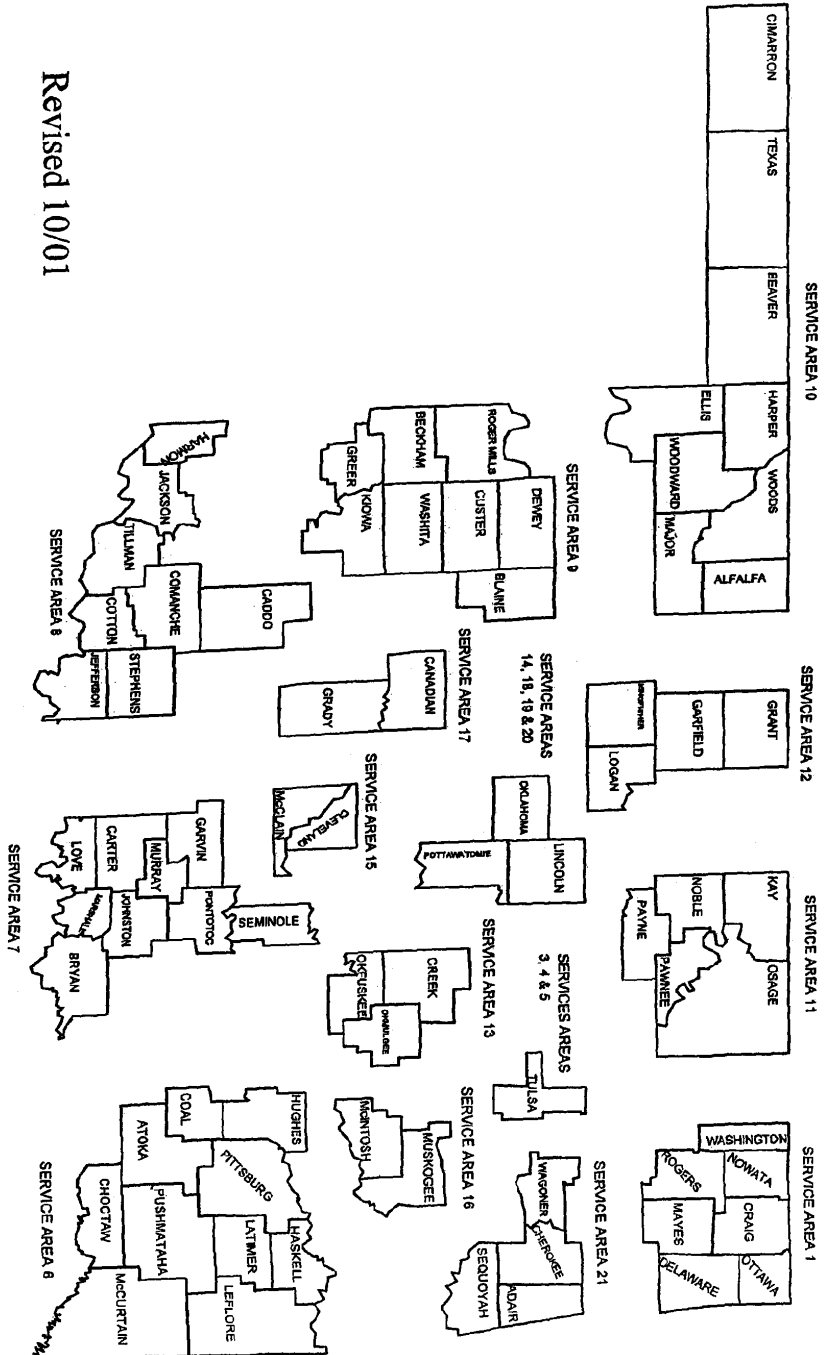
~~(b) A report on each admission under the provisions for temporary emergency shall be made to the Department at the end of the month of such admission. The report shall be on a form provided by the Department. The form shall include length of stay, discharge date, diagnosis, and patient record number.~~

~~(c) An admission in accordance with the rules governing temporary emergencies, when utilized and fully documented by the admitting physician and hospital, shall not be considered a violation of the act.~~



OKLAHOMA DEPARTMENT OF MENTAL HEALTH  
AND SUBSTANCE ABUSE SERVICES

# Community Mental Health Center Service Areas



Revised 10/01

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