

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 661. HOSPICE**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking.

PROPOSED RULES:

Subchapter 1. General Provisions

310:661-1-2 [AMENDED]

Subchapter 2. Licenses

310:661-2-1 [AMENDED]

SUMMARY:

The Home Care, Hospice and Palliative Care Advisory Council in conjunction with the Commissioner of Health recommended removal of the hospice alternate administrative location (AAO) 50-mile radius limitation, inclusion of locations in the definition of AAO and removing where employees should be supervised.

310:661-2 modified the definition of AAO to include the verbiage, "stores supplies, and/or is used for documentation."

310:661-2-1(f) modified base of operation by removing the verbiage, "at that location."

310:661-2-1(f)(A) removed the requirement for AAO to be located within a geographical area of 50 miles from the main hospice.

310:661-2-1(f)(B) Removed the criteria for determination of 50 miles.

AUTHORITY:

Commissioner of Health; Title 63 O.S. § 1-104

COMMENT PERIOD:

November 15, 2022 through the close of the Department's normal business hours, 5 PM, on December 15, 2022. 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 December 15, 2022 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 December 15, 2022 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. 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 an office closure due to inclement weather is December 19, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

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 December 15, 2022, 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

(This document may be revised based on comment received during the public comment period.)

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 661. HOSPICE**

1. DESCRIPTION:

This proposal is in compliance with the Home Care, Hospice and Palliative Care Advisory Council’s recommendation to redefine the meaning of Alternate Administrative Office (AAO) and remove the 50 mile alternate alternative office (AAO) limitation in conjunction with the recommendation of the Commissioner of Health: Changes are as follows:

310:1-2 “Alternate Administrative office” was amended to include, “stores supplies, and/or is used for documentation” and will read as “Alternate Administrative Offices” means an approved location from which the hospice provides the same full range of hospice care and services that is required of the hospice issued the license, stores, supplies, and/or is used for documentation and meets the requirements of 310:661-2-1(f)(2). Each location shall meet all of the applicable requirements of Chapter 661. Hospice.

310:661-2-1 removed, “at that location” from the end of sentence.

2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:

Persons and cost impact would be minimal and limited to possible rewriting of policies for hospice owners and/or administrators as well as man hours for implementing the rule change process by OSDH personnel.

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

There are no expected health outcomes affiliated with adoption of rule changes. Persons benefiting would be hospice personnel who regularly refer to the rule for compliance and potential stakeholders with an interest in opening an agency. It is possible that the change may increase access and patient choice.

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

There are no fee changes affiliated with the proposed rule to the department or stakeholders.

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

There are no immediate benefits of implementation and costs associated with implementation are limited to administrative hours, time and labor of the department. Potential benefit to hospice owners is avoidance of billing errors related to providing services from an unrecognized location.

6. **IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no 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 is no known adverse economic effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

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

There are no less costly means currently identified.

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

No effect on public health is projected. The rule changes will have no direct impact on risk reduction to the public.

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

There are no detrimental effects on public health and safety without adoption.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on September 27, 2022.

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 661. HOSPICE**

SUBCHAPTER 1. GENERAL PROVISIONS

310:661-1-2. Definitions

The following words and terms, when used in this Chapter, shall have the following meaning, unless the context clearly indicates otherwise.

"Act" means the Oklahoma Hospice Licensing Act, 63 O.S. 1991, §§ 1-860.1 et seq.

"Alternate Administrative Office" means an approved location from which the hospice provides the same full range of hospice care and services that is required of the hospice issued, stores supplies, and/or is used for documentation ~~the license~~ and meets the requirements of 310:661-2-1(f)(2). Each location shall meet all of the applicable requirements of Chapter 661. Hospice.

"Attending physician" means a doctor of medicine or osteopathy, identified by the patient or representative at the time the patient or representative elects to receive hospice care, as having the most significant role in the determination and delivery of the patient's medical care.

"Bereavement counseling" means emotional, psychosocial, and spiritual support and services provided before and after the death of the patient to assist with issues related to grief, loss, and adjustment.

"Clinical note" means a notation of a contact with the patient and/or the family that is written and dated by any person providing services and that describes signs and symptoms, treatments and medications administered, including the patient's reaction and/or response, and any changes in physical, emotional, psychosocial or spiritual condition during a given period of time.

"Comprehensive assessment" means an evaluation of the patient's physical, psychosocial, emotional and spiritual status related to the terminal illness and related conditions. This includes an evaluation of the caregiver's and family's willingness and capability to care for the patient.

"Continuous care" means nursing care that is provided by a skilled nurse or a qualified hospice aide for as much as 24-hours a day during periods of medical crisis as necessary to maintain a hospice patient at their place of residence.

"Department" means the Oklahoma State Department of Health.

"Dietary counseling" means education and interventions provided to the patient and family regarding nutritional intake as the patient's condition changes. Dietary counseling is provided by qualified individuals, which may include a registered nurse or dietitian, when identified in the patient's plan of care.

"Employed" means contracting with a person for services, regardless of compensation. This term also includes volunteers.

"Employee" means a person who: (1) Works for the hospice and for whom the hospice is required to issue a W-2 form on his or her behalf; (2) if the hospice is a subdivision of an agency or organization, an employee of the agency or organization who is assigned to the hospice; or (3) is a volunteer under the jurisdiction of the hospice.

"Fast-track" The process where advance approval may be secured for construction starts while design details are completed.

"First-year license" means a license issued for the initial twelve (12) month license period.

"Follow-up inspection" means the inspection by representatives of the Department that shall occur after a hospice has provided hospice services for at least six (6) months.

"Governing body" means a person, persons, or legal entity that is legally responsible for the conduct of the facility as an institution and carries out the functions, ownership, and governance in accordance with these regulations and the laws of this state.

"Initial assessment" means an evaluation of the patient's physical, psychosocial and emotional status related to the terminal illness and related conditions to determine the patient's immediate care and support needs.

"License" means a first-year or permanent hospice license issued pursuant to the Act and these rules.

"Licensed independent practitioner" means any individual permitted by law and by the licensed hospice to provide care and services, without direct supervision, within the scope of the individual's license and consistent with clinical privileges individually granted by the licensed hospice. Licensed independent practitioners may include advanced practice nurses with prescriptive authority, physician assistants, dentists, podiatrists, optometrists, chiropractors, and psychologists.

"Medical Crisis" means an event or situation in which a registered nurse, through direct assessment of the hospice patient, determines that the patient has entered into a period of crisis which requires a physician's intervention and continuous nursing care to achieve palliation or management of acute medical symptoms. Peaceful symptom controlled death is an expected patient outcome and is not considered a medical crisis. A medical crisis would include, but not be limited to the following: uncontrolled terminal agitation as demonstrated by hallucinations, confusion, and combativeness; uncontrolled pain; uncontrolled respiratory distress; uncontrolled nausea and vomiting; hemorrhaging; uncontrolled seizures; family distress as a result of ongoing symptom management for the patient requiring administration of medications to maintain the patient's comfort; and, any uncontrolled symptom that requires the administration of medications with ongoing assessment of the effectiveness and adjustment of the medication regimen to achieve control of symptoms.

"Palliative care" means patient and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and to facilitate patient autonomy, access to information, and choice.

"Permanent license" means a license first issued to a hospice program after the first-year license period has been completed and the required follow-up inspection has been conducted.

"Physician designee" means a doctor of medicine or osteopathy designated by the hospice who assumes the same responsibilities and obligations as the medical advisor when the medical advisor is not available.

"Registered nurse" means a person who is currently licensed to practice registered nursing in the State of Oklahoma.

"Representative" or **"Court appointed guardian"** means a person who is authorized in accordance with State law to execute or revoke an election for hospice care or terminate medical care on behalf of the terminally ill individual.

"Skilled nurse" means a person who is currently licensed to practice registered nursing or practical nursing in the State of Oklahoma.

"Social worker" means a person who has a degree from a school accredited or approved by the Council on Social Work Education and conforms to the requirements of the State Licensure Laws of Oklahoma for Social Workers.

SUBCHAPTER 2. LICENSES

310:661-2-1. Licensure

- (a) **Applicant.** Any public or private agency or person desiring to establish a hospice in Oklahoma shall apply for and obtain a license from the Department.
- (b) **Application.** An application for a hospice license shall be filed on a form prescribed by the Department and shall be accompanied by the information required by the Act.
- (c) **Plan of delivery.** The initial application shall be accompanied by a plan of delivery of home and inpatient hospice services to patients and their families. The plan shall include, but not be limited to, those items listed in the Act.
- (d) **Expiration/renewal.**
 - (1) **First-year license.**

- (A) The first-year license shall expire one (1) year from the date of issuance unless suspended or revoked. A hospice holding a first-year license is required to successfully complete an initial inspection by representatives of the Department prior to the provision of services and shall be subject to a follow-up inspection after providing hospice services for at least six (6) months. The Department may require any hospice to renew the first-year license for one additional year. A hospice shall not hold a first-year license for more than twenty-four (24) months.
- (B) A follow-up survey that demonstrates compliance with the Act and these rules shall be required prior to a hospice program being issued a permanent license.
- (2) **Permanent license.** The permanent license shall expire one (1) year from the date of issuance, unless suspended or revoked. An application for renewal shall be submitted according to the Act. Only hospice programs in compliance with the Act and these rules shall be issued a permanent license.
- (e) **Base of operation.** Every hospice providing hospice services shall operate from a place of business which is accessible to the public and physically located in Oklahoma. Staff providing services from the hospice shall be supervised by personnel at that location.
- (f) **Eligibility for license.**
- (1) A hospice making appropriate application that has been determined to be compliant with this Chapter and the Act is eligible for a license.
- (2) A hospice may operate alternate administrative offices under one (1) license as long as the following requirements are met:
- ~~(A) The offices shall be located within a geographical area with a radius of no more than fifty (50) miles from the main hospice.~~
- ~~(B) The mileage limit used for approval of each administrative office shall be the mileage between town centers of the parent location town and the proposed administrative office location town as reported by the Oklahoma Department of Transportation as approximately the shortest route between town centers utilizing both State Highways System (free) and State Turnpike System (toll) roads.~~
- ~~(C) (A)~~ The alternate administrative offices shall be operated under the same administration and governing body as an extension site for services of the main hospice. These offices shall operate under the same name(s) as the licensee.
- ~~(D) (B)~~ An application for license, or renewal thereof, to establish or operate each hospice alternate administrative office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of five hundred dollars (\$500.00) and application at least thirty (30) days before beginning operations.
- (g) **Compliance with Federal, State and local laws and regulations.** The hospice and its staff shall operate and furnish services that comply with all applicable Federal, State, and local laws and rules. The hospice shall ensure that staff comply with applicable State practice acts and rules in the provision of hospice services.
- (h) **Hospice inpatient facility.**
- (1) Each licensed hospice program may operate one (1) hospice inpatient facility with twelve (12) or fewer inpatient beds as long as the facility complies with hospice inpatient facility service requirements at OAC 310:661-6 and hospice inpatient facility physical plant requirements at OAC 310:661-8.
- (2) A hospice inpatient facility may not be independently licensed as a hospice unless the hospice provides a full continuum of hospice program services to patients in their homes and temporary places of residence including the inpatient hospice facility.