

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 662. HOME CARE AGENCIES**

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking.

**PROPOSED RULES:**

Subchapter 5. Client Services  
310:662-5-3(f) [AMENDED]

**SUMMARY:**

310:662-5-3(f) is amended to remove the reference to certification that is no longer required for personal caregivers. The rule amendment is necessary as it is contradictory to new language in the Home Care Act since SB 42 was passed. The change removes the sentence that reads as follows, "All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver."

**AUTHORITY:**

Commissioner of Health, Title 63 O.S. § 1-104; SB 42

**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](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**

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

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
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**1. DESCRIPTION:**

SB42 excludes the provisions of the Home Care Act to an individual who is: 1. employed by a licensed home care agency exclusively to provide personal care services in the home; 2. has no convictions pursuant to a criminal history investigation; 3 is being continuously trained by a registered nurse to provide care that is specific to the need of the particular client receiving the care, and 4. is supervised by a registered nurse via an on-site visit at least once each month. This change by SB42 necessitates the following change:

The second sentence of 310:662-5-3(f) that reads: "All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver" will be stricken from the rule.

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

Cost impact would be minimal and limited to possible rewriting of policies for home care agency owners and continual training of staff 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 limited to home care agency owners who could hire employees at a lower rate of pay as they would no longer be required (by the Act) to hires certified personnel to provide immediate care to their clientele.

**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.

**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:**  
Potential for negative effect on sick, fragile and elderly by removing publicly accepted required certification put in place to ensure qualified personnel provide care to this population.
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.

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**SUBCHAPTER 5. CLIENT SERVICES**

**310:662-5-3. Services provided**

(a) **Available services.** Home care services provided by the agency shall be available on a visiting basis in the place of residence used as a client's home. If the client's home is a licensed facility, services provided by the licensed facility shall not be duplicated by the agency. Additional personal care services provided shall not be considered a duplicate service.

(b) **Coordination of services.** All personnel furnishing services shall maintain liaison to ensure their efforts are coordinated effectively, documented and support the objectives in the plan of care. If services are provided in a licensed facility, the agency shall advise facility staff of services provided to ensure care is coordinated. If an agency client is transferred to another health care provider or facility, a summary of the services provided and condition of the client shall be forwarded to the receiving provider/facility if requested.

(c) **Skilled nursing.** The agency shall furnish skilled nursing services by, or under the supervision of, a registered nurse and in accordance with the physician's or non-physician practitioner's orders.

(1) The duties of the registered nurse shall include, but not be limited to the following:

- (A) Performing the initial evaluation visit.
- (B) Regularly reevaluating the client's nursing needs.
- (C) Initiating the plan of care and necessary revisions.
- (D) Furnishing those services requiring specialized nursing skills.
- (E) Coordinating services.
- (F) Informing the physician or non-physician practitioner and other personnel in a timely manner of changes in the client's condition and needs.
- (G) Supervision and teaching.

(2) Duties of the licensed practical nurse shall include, but not be limited to:

- (A) Furnishing services in accordance with agency policy.
- (B) Assisting the physician, non-physician practitioner and registered nurse in performing specialized procedures.
- (C) Assisting the client in learning appropriate self-care techniques.

(d) **Therapy services.** Any therapy services offered by the home care agency shall be given by a qualified therapist or by a qualified therapy assistant under the supervision of a qualified therapist in accordance with the plan of care. The qualified therapist shall assist the physician or non-physician practitioner in evaluating the level of function and participate in the development of the plan of care and any necessary revisions.

(e) **Medical social services.** If the agency furnishes medical social work services, those services shall be provided by a qualified social worker or by a qualified social work assistant under the supervision of a qualified social worker, in accordance with the plan of care. All providers of medical social services in Oklahoma shall be licensed if required and meet all defined education and experience criteria required by the Oklahoma State

Board of Licensed Social Workers.

(f) **Home health aide.** Home health aides shall be certified by the Department and placed on the Home Health Aide Registry maintained by the Department. ~~All unlicensed, non-skilled providers of personal care to home care clients shall be certified by the Department as home health aides, regardless of the job title of the personal caregiver.~~ Home health aides shall be in compliance with all requirements of the Act and the rules promulgated thereto. No home care agency shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless

such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the Department.

(g) **Supportive home assistant.** If supportive home assistants are utilized, they shall be employed, trained, tested, and supervised as required at 63 O.S Supp. 2009 § 1-1962(B).

(h) **Supervision of services.** All personnel providing home care services shall have periodic evaluations of performance on file in agency records. Appropriate supervision shall be available during all hours services are provided.

(1) When home health aide or personal care services are provided in conjunction with a skilled service, a registered nurse shall make a supervisory visit to the client's home at least every sixty (60) days to assess relationships, client care and determine whether goals are met. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.

(2) If a client is receiving only skilled therapy services and home health aide or personal care services as an extension of the therapy services, a skilled therapist may make the supervisory visit at least every sixty (60) days, in lieu of a registered nurse. The frequency of these supervisory visits shall also be increased if the acuity of the client's illness requires more frequent visits.

(3) When only home health aide or personal care services are furnished to a client, a physician or a licensed nurse shall make a supervisory visit to the client's residence at least once every six (6) months. The frequency of supervisory visits shall be increased if the acuity of the client's illness requires more frequent visits.

(4) Services furnished by a qualified physical therapy assistant or qualified occupational therapy assistant shall be provided only under the supervision of a qualified physical or occupational therapist according to agency policy and consistent with current standards of practice.