

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH  
CHAPTER 4. CERTIFICATE OF NEED REGULATIONS**

**SUBCHAPTER 1. GENERAL**

**310:4-1-1. Purpose**

The purpose of this Chapter is to implement the following laws:

- (1) Title 63 O.S. Sections 1-850 et seq., (Long-term Care Certificate of Need Act); and
- (2) ~~Title 63 O.S. Sections 1-880.1 et seq., (Psychiatric and Chemical Dependency Facility Certificate of Need Act); and~~
- (3) Title 75 O.S. Sections 250.1 through 323, (Administrative Procedures Act).

**310:4-1-2. Applicability and burden of proof**

(a) This Chapter applies to the following types of Certificate of Need applications that are reviewed by the State Commissioner of Health (Commissioner) or the State Department of Health (Department):

- (1) long-term care facilities as defined in 63 O.S. Section 1-851.1;
- (2) ~~psychiatric or chemical dependency facilities, services or units developed or offered in hospitals or related institutions as defined in 63 O.S. Sections 1-701 et seq.;~~
- (3) Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID) beds and that is in a facility that has more than 16s and subject to 63 O.S. Sections 1-850 et seq.; and
- (4) (3) Licensed nursing facility (LNF) beds as defined in 63 O.S. Sections 1-1901 et seq. (Nursing Home Care Act), excluding any facility certified for service to individuals with intellectual disabilities.

(b) The applicant has the burden of proof to demonstrate compliance with all rules and conformance with all applicable standards stated in this Chapter.

**310:4-1-5. Review process**

This Section governs the review of Certificate of Need applications.

(1) **Capital Cost.** For purposes of determining filing fees, capital cost means one or more of the following:

(A) For construction, the total cost of the project includes the following components as applicable:

- (i) land acquisition and site development;
- (ii) soil survey and investigation ;
- (iii) construction ;
- (iv) equipment ;
- (v) architect fees ;
- (vi) engineering fees ;
- (vii) supervision ;
- (viii) performance and payment bonds ;
- (ix) contingency ; and
- (x) inflation factor.

(B) For acquisition by purchase, the total cost of the project is the greater of the building and equipment's current book value or total contract price, including any exchanges or other consideration.

(C) For acquisition by lease, the total cost of the project is the current book value of the facility to be leased plus any additional capital expenditures, such as equipment purchases.

(D) For a sale and leaseback, or a combination lease and purchase, the total cost of the project is the greater of the purchase cost or the facility's current book value.

(E) For a non-monetary transfer of stock, the total capital cost of the project is zero dollars (\$0).

(F) For a transfer of stock in which one party pays or exchanges other consideration to acquire the stock of another party, the total cost of the project is the greater of the value of the consideration given for the stock or the facility's book value on the seller's books.

(G) For a management contract the capital cost is zero dollars (\$0), if it includes none of the following:

- (i) purchase;
- (ii) lease ;
- (iii) donation ;
- (iv) transfer of stock ;
- (v) corporate merger ;and
- (vi) assignment or foreclosure of building, equipment or other assets.

(H) For any other type of project, the project cost is the greater of the book value or the fair market value of the assets required to accomplish the project. This includes but is not limited to an addition of beds through conversion of a previously constructed physical plant,.

(I) For any type of project in which book value is used to establish the capital cost, the book value is based on audited financial statements or upon generally accepted accounting principles.

(2) **Applicant.** The applicant for a Certificate of Need must include:

(A) for a long-term care facility:

- (i) the person or entity that is or will be the owner, as defined in 63 O.S. Section 1-1902;
- (ii) the person or entity that is or will be the licensee, as defined in 63 O.S. Section 1-1902;
- (iii) the person or entity that is or will be the manager as defined in OAC 310:675-1-2; and
- (iv) any person with a controlling interest as defined in 63 O.S. Section 1-851.1; or

(B) for a hospital, the entity operating the hospital as defined in OAC 310:667-1-3.

(3) **Application fees and refunds.** The applicant must use the Department's form and pay the appropriate filing fee to the Department.

(A) The following fees are required to be submitted in accordance with 63 O.S. Section 1-852.1.

- (i) the application fee for a new Certificate of Need is three thousand dollars (\$3,000.00); and
- (ii) an application for acquisition of healthcare facility fee is one half of one percent (.50%) of the capital cost of the project with a maximum fee of five thousand dollars (\$5,000.00).

~~(B) The Psychiatric and Chemical Dependency Facility Certificate of Need Act's application fee is three fourths of one percent (.75%) of the capital cost of the project, with a minimum of One Thousand Five Hundred Dollars (\$1,500.00) and a maximum of Ten Thousand Dollars (\$10,000.00).~~

~~(C)~~ If an application is withdrawn before the Department approves or denies the application, one of the following refunds will apply:

- (i) The refund is seventy five percent (75%) of the fee paid when an application is withdrawn before the Department determines if the application is complete or incomplete.
- (ii) The refund is fifty percent (50%) of the fee paid when an application is withdrawn before the "participation by parties" deadline, as defined in subparagraph (6) of this subsection.
- (iii) The refund is twenty five percent (25%) of the fee paid when an application is withdrawn before the Commissioner issues a final decision.

~~(C)~~~~(D)~~ The applicant's refund, in accordance with subparagraph (3)(C) of this subsection will not cause the total fee paid by the applicant to be less than the applicable minimum fee set in 63 O.S. Section 1-852.1 or subparagraph (3)(B) of this subsection.

(4) **Completing the application.**

(A) Within fifteen (15) days after the application is filed, the Department must determine if the application is complete, clear, consistent and accurate.

(B) When the Department determines an application is incomplete, it will send the applicant written notice requesting the additional or clarifying information needed to complete the application.

(C) The applicant must submit all requested information to the Department within 90 days after the date of the notice of incomplete application. If the applicant fails to do so, then the application is summarily dismissed.

(D) The Department's finding of completeness does not prevent the Department from subsequently denying a Certificate of Need based on such incompleteness, lack of clarity, inconsistency, or inaccuracy that may be discovered by the Department as the result of the investigation conducted pursuant to 63 O.S. Section 1-852 or 63 O.S. Section 1-880.6.

(5) **Notice of readiness for review.** When the Department determines that an application is complete and ready for review, it will send the following notices:

(A) mail the applicant notification that the application is determined complete and ready for review.

(B) mail health care facilities that provide the same type of service in the service area notification that an application is complete and ready for review.

(C) publish notice in a newspaper of general circulation near the facility, and in a newspaper of general circulation in the area where the application is available for inspection.

(D) These notices must include:

- (i) the name and location of the facility,
- (ii) a brief description of the project,
- (iii) information on where the full application can be viewed, and
- (iv) an explanation of how parties may participate in the review.

(6) **Participation by parties.** Any person or agency may participate in the review process. Any evidence or argument that a participating party proposes to have the Commissioner consider before making a final decision shall be submitted to the Department in writing within twenty (20) days after the date of publication of the paid public notice as described in subparagraph (5) (C) of this subsection.

(7) **Decision deadlines.**

~~(A) The decision to approve or deny a Certificate of Need for acquisition of a psychiatric or chemical dependency facility is made within fifteen (15) days after the deadline for submitting evidence and argument as provided in subparagraph (6) of this subsection.~~

~~(B) The decision to approve or deny any other type of Certificate of Need application, except the Certificate of Need listed in subparagraph (7)(A) of this subsection, is made within forty-five (45) days after the deadline for submitting evidence and argument as provided in subparagraph (6) of this subsection.~~

(8) **Report of investigation.**

(A) If the Department's investigation indicates that the application is inconsistent with applicable criteria and standards, then the Department will notify the applicant in writing of the inconsistencies before the decision deadline stated in paragraph (7) of this subsection.

(B) The applicant shall be offered an opportunity to respond in writing to the Department's notice. To allow the applicant sufficient time to respond, the decision deadline may be extended to a date certain by agreement between the Department and the applicant.

(C) On receipt of the applicant's response, the Department may amend the investigation report but is not required to offer the applicant a second opportunity to respond.

(D) The Commissioner will consider the applicant's response when making a decision on the Certificate of Need application.

(E) The provisions of this subsection do not apply if any person has knowingly given false, misleading, or intentionally incomplete information in the application.

**310:4-1-13. Description of application forms**

(a) **Standard Application.** The standard application for a Certificate of Need requires the following:

- (1) The names and addresses of the facility and contact person;
- (2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* [63:1-853(D)(2)(d)], including but not limited to:

- (A) Sworn and notarized statements confirming the lack of any such conviction from the applicant and each person with controlling interest;
- (B) Social security numbers for the applicant and each person with a controlling interest;
- (C) Birth dates for the applicant and each person with a controlling interest;
- (D) Copies of certificates of incorporation, bylaws, articles of organization, company operating agreements, certificates of limited partnership, or equivalent documents maintained pursuant to state or federal law, and any amendments of such documents. In lieu of submitting a document that is not a public record previously filed with a local, state or federal government agency, an applicant may submit a sworn and notarized statement that includes all of the following information:

- (i) Name and date of the document;
- (ii) Name and address of each person or entity that has current or proposed interests, responsibilities or participation in the ownership, operation or management of the facility or that otherwise makes or influences any decision relating to expenditures or operations affecting the facility, whether the person or entity is identified in the disclosed document by proper name or by function;
- (iii) Description of the interest, responsibility, and nature of participation of each person and entity named pursuant to (a)(2)(D)(ii) of this Section; and
- (iv) Location, address, and telephone number of the place of business in Oklahoma where the applicant will make the documents available for inspection by the Department, upon the Department's written request;

- (3) Historical operating and financial information for the applicant and the facility;
- (4) Residents council and family council minutes for the applicant's facilities;
- (5) A detailed description of the project;
- (6) Projections of personnel needs and identification of the medical director;
- (7) Construction and building information;
- (8) Justification of need for the project; and
- (9) Data and projections on financial and economic feasibility, including but not limited to the following as applicable:

(A) For conventional, bank, seller-carried, third party, or bond financing, a statement of the proposed principal amount, interest rate and repayment terms, and that the applicant has access to the required funds, signed under oath by a representative of the lending institution, seller, third party, or authority;

(B) For equity financing:

- (i) An attested balance sheet for the applicant that is dated within the past twelve (12) months that reflects cash or cash equivalents sufficient to fund the project; or
- (ii) A certificate of deposit or other proof that funds are available and have not been pledged for another purpose.

(C) For financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank:

- (i) An attested balance sheet, certificate of deposit or other attested proof that is dated within the past twelve (12) months for the third party, unless the third party is a licensed insurer or surplus lines insurer, the United States of America, a state of the United States of America, or an agency or instrumentality thereof; and

- (ii) Copies of organizational documents and contracts necessary to substantiate the relationship between the applicant and the third party.
- (b) **Exemption for ten (10) beds or ten percent (10%) expansion.** The Certificate of Need application for exemption for a ten (10) bed or ten percent (10%) expansion of a licensed nursing or specialized facility requires the following:
  - (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity;
  - (3) Historical occupancy information for the facility;
  - (4) The number and types of beds to be added; and
  - (5) The projected capital cost.
- (c) **Facility replacement exemption.** The Certificate of Need application for exemption for facility replacement requires the following:
  - (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity;
  - (3) A detail of the number of beds to be replaced;
  - (4) The projected capital cost;
  - (5) A plan for future use of the facility to be replaced; and
  - (6) The distance from the current and proposed sites and a map of the area.
- (d) **Facility acquisition.** The Certificate of Need application for facility acquisition requires the following:
  - (1) The names and addresses of the facility and contact person;
  - (2) Disclosure of the applicant's identity and information sufficient for the Department to determine whether *the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility* [63:1-853(D)(2)(d)], and all items as fully described in paragraph (a)(2) of this Section.
  - (3) A description of the proposed transaction and a copy of the contract or agreement;
  - (4) A plan for operating the facility including identification of the medical director;
  - (5) The projected capital cost;
  - (6) Financial proof of the applicant's ability to complete the acquisition and to continue services and staffing; and
  - (7) Residents council and family council minutes for the applicant's facilities.
- ~~(e) **Notice of decrease of beds or change in continuum of care.** The Certificate of Need notice for a decrease of beds or a change in continuum of care at a psychiatric or chemical dependency treatment facility or unit requires the following:~~
  - ~~(1) The names and addresses of the facility and contact person;~~
  - ~~(2) A description of the change in beds or change in continuum of care; and~~
  - ~~(3) The anticipated date of the decrease or change.~~
- ~~(f) **Exemption for management agreement.** The Certificate of Need application for exemption of a management agreement requires the following:~~
  - ~~(1) The names and addresses of the facility, manager and contact person;~~
  - ~~(2) A copy of the executed management agreement that details the manager's responsibilities and duties;~~
  - ~~(3) Disclosure of the applicant's identity and experience that is sufficient to determine if the management entity and any person with a controlling interest has a history of noncompliance;~~
  - ~~(4) Copies of the business entity documents as described in paragraph (a)(2)(D) of this Section.~~
  - ~~(5) The anticipated date of commencement of the management agreement.~~
- ~~(g)~~**(f) Exemption for ownership change or transfer.** The Certificate of Need application for exemption for ownership change or transfer requires the following:
  - (1) The names and addresses of the facility and contact person; and
  - (2) A description of the transfer and disclosure of persons and entities involved or affected;
  - (3) Copies of agreements or contracts by which ownership is changed or transferred; and

(4) Copies of the business entity documents as described in paragraph (a)(2)(D) of this Section. ~~(h)(g)~~ **Attest.** For the purpose of this Section, the term "attest" has the same meaning as it is defined in 59 O.S. Section 15.1A.

## SUBCHAPTER 9. STANDARDS FOR PSYCHIATRIC AND CHEMICAL DEPENDENCY SERVICE BEDS [REVOKED]

### 310:4-9-1. Definitions [REVOKED]

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

**"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 eighteen (18) years of age, and has agreed to accept transfer of the patient and to provide the indicated treatment.

**"Emergency"** means the urgent need to admit a person under eighteen (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 seventy two (72) hours, from when a person under eighteen (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 eighteen (18) years of age, or to another hospital where such a bed is available, or the emergency ceases.

### 310:4-9-2. Service area [REVOKED]

The service area for a psychiatric or chemical dependency application is the mental health service area in which the service will be located. The mental health service areas as most recently adopted by the Department of Mental Health and Substance Abuse Services 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 is 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 maintained by the Oklahoma Department of Mental Health and Substance Abuse Services may be obtained from that state agency.

(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 is excluded.

### 310:4-9-3. Population-based need [REVOKED]

The applicant must 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 310:4-9-2.

~~(1) **Need.** The applicant must 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 must 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 one hundred forty five (145) beds per one hundred thousand (100,000) persons, while moving towards an optimal target ratio of one hundred seventeen (117) beds per one hundred thousand (100,000) persons.~~

~~(3) **Ratio.** The applicant must demonstrate the probable impact of the proposed beds on the ratio of psychiatric and chemical dependency beds to the population in the service area. The application cannot cause an excessive increase in the bed to population ratio of a service area. The determination of whether or not an increase is excessive is 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) **Population projection.** The most recent published population figures are used for the application. The source of population projections for current and future years is 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 310:4-9-2, then the applicant must demonstrate that the target population will have access to the proposed services through public or private transportation.~~

#### **310:4-9-4. Availability of alternative services [REVOKED]**

~~The applicant must 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 must 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 seventy five percent (75%) must be maintained in psychiatric and chemical dependency beds in the service area described in 310:635-9-2, 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. This mean must be calculated using data for the most recent six (6) 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 must 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.~~

#### **310:4-9-5. Financial resources [REVOKED]**

~~(a) The applicant must 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 must be reasonable and secure.~~

~~(d) The project must 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.~~

#### **310:4-9-6. Staffing [REVOKED]**

~~The applicant must 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 must 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 must 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 must 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 must 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 corresponding with the intensity of illness to be treated.
- (7) Medical records clerks sufficient to meet program needs.
- (8) The applicant must provide an education specialist for school-age patients.
- (9) Clerical and support staff sufficient to meet program needs.
- (10) Ancillary support personnel sufficient to meet program needs.

#### **310:4-9-7. Other [REVOKED]**

- (a) A ten (10) 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 must submit documentation of the participation by, and the probable impact on, health personnel teaching or training programs.

#### **310:4-9-8. Temporary emergency admissions [REVOKED]**

- (a) Any temporary emergency must be fully documented by the physician and the hospital to include:
  - (1) an explanation of the emergency;
  - (2) the services rendered to the patient;
  - (3) an explanation of why an adult bed was used; and
  - (4) the length of stay in the bed ordinarily used for an adult.
- (b) A report on each admission under the provisions for temporary emergency must be made to the Department at the end of the month of such admission. The report must be on a form provided by the Department. The form includes:
  - (1) length of stay;
  - (2) discharge date;
  - (3) diagnosis; and
  - (4) 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, is not considered a violation of the act.



# APPENDIX A. Mental Health Service Areas [REVOKED]

Figure 1.

