

**TITLE 310. OKLAHOMA STATE DEPARTMENT OF HEALTH
CHAPTER 663. CONTINUUM OF CARE AND ASSISTED LIVING**

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 3. Services and Care

310:663-3-5 [AMENDED]

Subchapter 21. Applying for a License

310:663-21-2 [AMENDED]

310:663-21-4 [AMENDED]

AUTHORITY:

Commissioner of the Oklahoma State Department of Health; 63 O.S. § 1-104

SUBMISSION OF PROPOSED RULES TO GOVERNOR AND CABINET SECRETARY:

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APPROVED BY GOVERNOR'S DECLARATION:

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FINAL ADOPTION:

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EFFECTIVE:

September 11, 2022

SUPERSEDED EMERGENCY ACTIONS:

n/a

INCORPORATIONS BY REFERENCE:

n/a

GIST/ANALYSIS:

The proposed rule amendments will change the licensure renewal from annual to every three years. The rule change aligns rule requirements with SB 654, which became effective November 1, 2021. This legislation changed the licensure renewal from annual to every three years. This changes the fee for licensure to (number of beds) x (\$10.00) x (3 years), which will vary from facility to facility.

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PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING RULES ARE CONSIDERED FINALLY ADOPTED AS SET FORTH IN 75 O.S., SECTIONS 250.3 (5) AND 308 (E), WITH AN EFFECTIVE DATE OF SEPTEMBER 11, 2022:

SUBCHAPTER 3. SERVICES AND CARE

310:663-3-5. Involuntary termination of residency

(a) **Termination of residency when inappropriately placed.** If an assisted living center finds pursuant to 310:663-3-4 (relating to appropriate placement) that a resident is inappropriately placed, the assisted living center shall inform the resident and/or the resident's representative if any. If voluntary termination of residency is not arranged, the assisted living center shall provide written notice to the resident and to the resident's representative, giving the resident thirty (30) days notice of the assisted living center's intent to terminate the residency agreement and move the resident to an appropriate care provider. The thirty (30) day requirement shall not apply:

- (1) when emergency termination of the residency agreement is mandated by the resident's immediate health needs; or
- (2) when termination of the residency agreement is necessary for the physical safety of the resident or other residents.

(b) **Written notice of involuntary termination of residency for reasons of inappropriate placement.** The written notice of involuntary termination of residency for reasons of inappropriate placement shall include:

- (1) A full explanation of the reasons for the termination of residency;
- (2) The date of the notice;
- (3) The date notice was given to the resident and the resident's representative; and,
- (4) The date by which the resident must leave the assisted living center.

(c) **Involuntary termination of residency for reasons other than inappropriate placement.** Procedures for involuntary termination of residency for reasons other than inappropriate placement, by an assisted living center, are as follows:

- (1) Written notice shall be provided to the resident, the resident's representative, the person responsible for payment of charges for the resident's care, if different from any of the foregoing, and the Department, at least thirty (30) days in advance of the termination of residency date.
- (2) The written notice shall include:
 - (A) A full explanation of the reasons for the termination of residency;
 - (B) The date of the notice;
 - (C) The date notice was given to the resident and the resident's representative;
 - (D) The date by which the resident must leave the assisted living center;
 - (E) Notice that the resident, the resident's representative or person responsible for payment of the resident's care may request a hearing with the Department;
 - (F) Notice that the request for hearing with the Department must be filed within ten (10) Department business days of receipt of the facility notice; and
 - (G) Notice that a written or verbal request for a hearing with the Department should be directed to the Hearing Clerk, Oklahoma State Department of Health, ~~1000 NE Tenth Street~~ 123 Robert S. Kerr Ave., Oklahoma City, OK ~~73117~~ 73102, telephone (405) 271-1269.
- (3) An assisted living center shall not involuntarily terminate a residency agreement for reasons other than inappropriate placement without following the procedures in this section.
- (4) If a written or verbal request for a hearing is timely filed by an eligible aggrieved party, the Department shall convene a hearing within ten (10) Department business days of receipt of the request. The request may be in the form of a written or verbal request for hearing from the resident or the resident's representative. In the event that the resident is unable to write, a verbal request made to the hearing clerk shall be sufficient. The Department shall reduce the verbal request to writing and send a copy to the resident. The request shall state the reason for the termination of residency and attach a copy of the letter from the assisted living center.
- (5) While waiting for the hearing, the assisted living center shall not terminate the residency agreement unless the termination is an emergency situation. If the resident relocates from the assisted living center but wants to be readmitted, the Department may proceed with the hearing and the assisted living center shall be required to readmit the resident if the discharge is found not to meet the requirements of OAC 310:663.

- (6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the assisted living center, may be represented by counsel or may represent themselves. Assisted living centers operating as a corporation or limited liability company shall be represented by counsel.
- (7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the assisted living center or at another place. If the hearing is conducted at another location the parties are responsible for providing the hearing room. The Department shall maintain a record on the case in accordance with the Administrative Procedures Act.
- (8) The hearing shall be conducted in accordance with the Administrative Procedures Act. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the termination of the residency was according to law.
- (9) If the Administrative Law Judge finds that the termination of residency was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.
- (10) If the termination of residency is according to law, the order shall give the assisted living center the right to terminate the residency agreement.
- (11) The scope of the hearing may include:
 - (A) Inadequate notice;
 - (B) Discharge based on reason not stated in the law;
 - (C) Sufficiency of the evidence to support the termination of residency; or
 - (D) The finding of emergency.
- (12) The Administrative Law Judge shall render a written decision within ten (10) Department business days of the close of the record.
- (13) If the Administrative Law Judge sustains the decision of the assisted living center, the assisted living center may proceed with the termination of residency. If the Administrative Law Judge finds in favor of the resident, the assisted living center shall withdraw its notice of intent to terminate the residency agreement. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed in accordance with the provisions of the Administrative Procedures Act.

SUBCHAPTER 21. APPLYING FOR A LICENSE

310:663-21-2. Deadlines for filing and period of license validity

- (a) The application for establishment of a continuum of care facility or assisted living center shall be filed at or before the time when the application for an initial license is filed. Provided, however, that an application for establishment is not required in conjunction with the transfer of ownership or operation of a facility or center that is currently licensed under the Act and OAC 310:663.
- (b) The license application shall be filed in accordance with the following deadlines.
 - (1) The application for an initial license of a new continuum of care facility or assisted living center shall be filed at least thirty (30) days before beginning operations.
 - (2) The application for an initial license, following a transfer of ownership or operation, shall be filed at least thirty (30) days before the final transfer. In the case of the appointment of a receiver as operator, this thirty (30) day advance filing requirement may be waived if the Department finds that an emergency exists which threatens the welfare of the residents. If an emergency is found to exist, the receiver shall file the license application before beginning operation of the assisted living center or continuum of care facility.
 - (3) The application for renewal of the license of an existing continuum of care facility or assisted living center, with no transfer of ownership or operation, shall be filed by the renewal date specified on the existing license. ~~Each initial license shall be effective for one hundred eighty (180) days from the issue date. The renewal license shall be issued for a period of twelve (12) months from the date of~~

issue. Provided that licenses may be issued for a period of more than twelve (12) months, but not more than twenty four (24) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates to all months of the year.

(c) The renewal license shall expire three (3) years from the date of issuance. An initial license shall expire one hundred eighty (180) days after the date of issuance. Renewal licenses may be issued for a period of more than twelve (12) months, but not more than thirty-six (36) months, for the license period immediately following November 1, 2021, in order to permit an equitable distribution of license expiration dates. [63 O.S. § 1-890.4 (D)].

310:663-21-4. Filing fees

(a) Each application to establish a continuum of care facility or assisted living center shall be accompanied by a non-refundable application fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center. The maximum application fee for each facility or center shall be One Thousand Dollars (\$1000.00). ~~The application fee for establishment of a facility or center shall be in addition to the license fee required under the Act and OAC 310:663-21-4(b).~~

~~(b) Each application for an initial license or for an annual renewal license to operate an assisted living center or a continuum of care facility shall be accompanied by a non-refundable license fee. The license fee shall be in the amount set in the Act.~~ Each application for an initial license, or renewal of the license, to operate a continuum of care facility or assisted living center shall be accompanied by a license fee. The initial license fee shall be Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center and the renewal license fee shall be Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility or center, per year of licensure, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from these fees. [63 O.S. § 1-890.4 (B)].

~~(c) The application and license fees shall be paid by check to the Oklahoma State Department of Health.~~ If an application for an initial or renewal license includes an adult day care component, then an application for an adult day care license (OAC 310:605), must also be filed.

(d) The fee for a license renewal following an initial license, or for a license amendment to reflect a change in bed capacity, shall be prorated based on the number of days remaining until the current license expires, and, in the case of a change in bed capacity, the number of beds being added.