

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

RULEMAKING ACTION:

PERMANENT final adoption

RULES:

Subchapter 1. General Provisions
310:662-1-2 [AMENDED]
Subchapter 3. Administration
310:662-3-5(e) [AMENDED]
310:662-3-5(e)(1) [AMENDED]
310:662-3-5(e)(3) [AMENDED]
Subchapter 5. Client Services
310:662-5(e)(4) [AMENDED]
310:662-3-6(c)(2) [AMENDED]
310:662-5-1(a) [AMENDED]
310:662-5-1(c) [AMENDED]
310:662-5-2(a) [AMENDED]
310:662-5-2(b) [AMENDED]
310:662-5-3(c) [AMENDED]
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310:662-5-3(c)(2)(B) [AMENDED]
310:662-5-3(d) [AMENDED]

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

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n/a

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n/a

GIST/ANALYSIS:

Through the CARES Act, COVID-19 flexibilities for home care agencies, CMS allowed home care agencies to accept orders for home care services from physician assistants (PA), nurse practitioners (NP) and clinical nurse specialists (CNS). On May 7, 2020, CMS announced the change would be permanent. Chapter 662 currently requires a physician to order skilled home care services. In an effort to unify State home care rules with current CARES Act COVID-19 flexibilities, and pending permanent changes to the

Conditions of Participation (COPs) for home care agencies that allow PAs, NPs and CNSs to order home care services and oversee the plan of care after the public health emergency (PHE) ends, changes to defined terms were made to achieve consistency with CMS regulations.

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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, 2021:

SUBCHAPTER 1. GENERAL PROVISIONS

310:662-1-2. Definitions

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

"Act" means the Home Care Act, 63 O.S. Supp. 1996, §1-1960 et seq.

"Affiliated person" means:

(A) any officer, director or partner of the applicant,

(B) any person employed by the applicant as a general or key 2/25/2021 manager who directs the operations of the facility which is the subject of the application, and

(C) any person owning or controlling more than five percent (5%) of the applicant's debt or equity.

[63 O.S. Supp. 1998, Section 1-1965]

"Autonomy" means capacity to be self-determining, to make choices in accord with one's own goals and values.

"Branch office" means a business location from which a home care agency located in Oklahoma provides service within a portion of the total geographic area served by the parent agency. Branch offices from out of state parent agencies shall be licensed as home care agencies as required by this Chapter. Branch offices from in state parent agencies may be licensed as a part of the parent agency. Each home care agency branch office shall operate under the same name(s) as the parent agency.

"Certified/accredited agency" means any home care agency located in Oklahoma which is certified or accredited by:

(A) Title XVIII or XIX of the federal Social Security Act;

(B) the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO); or

(C) the Community Health Accreditation Program of the National League for Nursing (CHAP).

"Client" means the consumer/patient/individual who receives the services of a home care agency and/or a companion or sitter service.

"Client's representative" means the client's legal guardian or person authorized by the client or client's legal guardian to assist the client in receiving home care services.

"Coercion" means compelling, pressuring or otherwise improperly influencing the free will decisions made by a consumer(s) or a potential consumer(s) of home care services by an agency representative or affiliate. Coercive means include, but are not limited to, presentation of false and/or misleading information.

"Department" means the Oklahoma State Department of Health. [63 O.S. Supp. 1996, § 1-1961(3)]

"Evaluation" means documentation of a need for services based on the client self-report.

"Governing body" means the person(s) having ultimate responsibility, including fiscal and legal authority for the home care agency.

"Harassment" means repetitive, intimidating, or otherwise distressing contact directed at a specific consumer(s) or potential consumer(s) of home care by a specific home care agency seeking to recruit clients.

"Home care agency" means any sole proprietorship, partnership, association, corporation, or other organization which administers, offers, or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides. [63 O.S. Supp. 1996, § 1-1961(4)]

"Home care agency administrator" means a person who operates, manages, or supervises, or is in charge of a home care agency; [63 O.S. Supp. 1996]

"Home care services" means skilled or personal care services provided to clients in their place of residence for a fee. [63 O.S. Supp. 1996, § 1-1961(5)]

"Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee. [63 O.S. Supp. 1996, § 1-1961(6)]

"Individual Service Plan" means documentation by the individual responsible for supervision of the companion or sitter services, or a designee, of the services requested by and agreed to be provided for a client.

"Infectious wastes" means waste capable of producing an infectious disease because it contains pathogens of sufficient virulence and quantity so that exposure to the waste by a susceptible human host could result in an infectious disease.

"Licensed practical nurse" means a person currently licensed to practice practical nursing in Oklahoma.

"Non-physician practitioner" means nurse practitioner, clinical nurse specialist, or physician assistant providing primary or specialty care to a home care patient.

"Nurse registry" means any person that procures, offers, promises, or attempts contracts for registered nurses, licensed practical nurses, home health aides, or other providers of personal care who are compensated by fees as independent contractors, for the provision of home care services.

"Parent agency" means that part of a home care agency which develops and maintains administrative and professional control of subunits and/or branch offices.

"Personal care" means assistance with dressing, bathing, ambulation, exercise or other personal needs. [63 O.S. Supp. 1996, § 1-1961(7)]

"Personal needs" means assistance with activities of daily living such as getting out of bed, ambulation, exercise, toileting, dressing, eating, or bathing. Personal needs do not include domestic or maintenance services provided on a fee basis to maintain the home.

"Physician" means a medical doctor (MD), doctor of osteopathic medicine (DO), or doctor of podiatric medicine (DPM).

"Primary home care agency" means the agency that is responsible for the services furnished to clients and for implementation of the plan of care.

"Qualified therapist" means a trained respiratory therapist or technician, or a physical therapist, occupational therapist, or speech therapist who is currently licensed to practice their profession in Oklahoma.

"Qualified therapy assistant" means a physical therapy assistant or occupational therapy assistant who is currently licensed to assist physical therapists or occupational therapists in Oklahoma.

"Registered nurse" means a person currently licensed to practice registered nursing in Oklahoma.

"Sharps" means any discarded objects that can penetrate the skin including, but not limited to, hypodermic needles, syringes, lancet and scalpel blades. This definition includes broken glass or other sharp items that have come in contact with material defined as infectious wastes.

"Skilled care" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this State, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker. [63 O.S. Supp. 1996, § 1-1961(8)]

"Solicitation" means coercion or harassment of any person or contact with a patient knowingly being treated by another home care agency for the purpose of attempting to persuade the patient to change home care agencies.

"Standby assistance" means supervision of client directed activities with verbal prompting and infrequent, incidental hands-on intervention only. [63 O.S Supp. 2009 § 1-1961]

"Subsidiary" means any person, firm, corporation or other legal entity which:

- (A) controls or is controlled by the applicant,
- (B) is controlled by an entity that also controls the applicant, or
- (C) the applicant or an entity controlling the applicant has directly or indirectly the power to control. [63 O.S. Supp. 1996]

"Subunit" means a semi-autonomous organization that serves clients in a geographic area different from that of the parent agency. A subunit is required to independently meet requirements of this Chapter and shall be licensed separately because it is too far from the parent agency to share administration, supervision, and services on a daily basis.

"Supportive home assistant" means an individual employed by a home care agency who provides standby assistance to ambulatory clients, in conjunction with other companionship or homemaker services, in the temporary or permanent place of residence of the client for a fee. [63 O.S Supp. 2009 § 1-1961]

SUBCHAPTER 3. ADMINISTRATION

310:662-3-5. Clinical records

- (a) The agency shall establish and maintain a clinical record for each client receiving care and services. The record shall be complete, timely, accurately documented and readily accessible. Clinical records shall be kept confidential. The agency shall ensure confidentiality of client information in accordance with written policies and procedures. Records shall be stored in a locked area and only authorized personnel shall have access to the records.
- (b) Clinical records are the property of the home care agency and may be released only upon the written consent of the client, the court appointed guardian, by a court order, or as otherwise authorized by law. Any person who has been a client of a home care agency shall be entitled to obtain copies of their clinical record as allowed by law. [76 O.S. 1991, §19]
- (c) Clinical records shall be retained at least five (5) years beyond the date the client was last seen or longer as otherwise required by law.
- (d) In addition to a plan of care, the clinical record shall contain:
 - (1) Appropriate identifying information for the client, household members and/or client representative(s), including telephone numbers to be used in the event of an emergency.
 - (2) Initial assessment including health history, and current findings.
 - (3) A description of the client's functional limitations and activity restrictions, if any.
 - (4) Documentation of any change in the client's condition.
 - (5) Notes for each service provided including the date, service provided, and the name and title of the person providing the service and the person's signature.
- (e) If skilled care is provided or if personal care is provided by an order of a physician or non-physician practitioner, the clinical record shall also contain:
 - (1) The name of the client's physician or non-physician practitioner and telephone number.
 - (2) Signed and dated clinical notes which accurately document services provided, treatments and/or medications administered and client response to the services provided.
 - (3) Physician or non-physician practitioner orders which shall be sent by the agency within ten (10) days to the ordering physician or non-physician practitioner to be signed and returned in a timely manner.
 - (4) Upon discharge, a summary of the services provided and the resulting status of the client at the time of discharge. A copy of the discharge summary shall be provided to the client's physician or non-physician practitioner.

310:662-3-6. Client care policies

- (a) Each agency shall adopt, implement and enforce written client care policies, specific to, and consistent

with the scope and range of client care services offered. Client care policies and client care practices shall be consistent with current standards of practice and shall be reviewed and revised as necessary.

- (b) Client care policies shall include but not be limited to:
 - (1) Infection control in the home care setting, including the prevention and spread of infectious and communicable diseases from agency personnel to clients;
 - (2) Safety assessment and teaching on injury prevention in the home environment;
 - (3) Management of emergency medical situations by home care staff in the home; and
 - (4) Efforts to maximize client autonomy.
- (c) An agency providing home infusion therapy directly or under arrangement shall:
 - (1) Ensure the availability of written policies and procedures for all home infusion therapy;
 - (2) Maintain a written physician's or non-physician practitioner's order specific to home infusion therapy;
 - (3) Develop and adopt minimum competency requirements for nursing staff, and maintain documentation of individual proficiency/competence;
 - (4) Ensure twenty-four (24) hour per day availability of a registered nurse to provide in-home clinical assistance as needed, to clients receiving home infusion therapy;
 - (5) Assess the client and/or caregiver's abilities to safely comply with the plan of care;
 - (6) Provide for client and/or caregiver education as indicated; and
 - (7) Provide ongoing assessment of client and/or caregiver's compliance with therapy-related procedures, completed at intervals dependent on the condition of the client and mode of therapy.

SUBCHAPTER 5. CLIENT SERVICES

310:662-5-1. Initiation of services

- (a) **In-home assessment.** The home care agency shall accept a client for services on the basis of a reasonable expectation that the client's needs can be met adequately in the client's residence. An initial assessment shall be performed in the client's residence by a physician, non-physician provider, registered nurse or qualified therapist as indicated by the service to be provided.
- (b) **Initial assessment.** The initial assessment shall occur prior to, or at the time that home care services are initially provided. The assessment shall determine whether the agency has the ability to provide the necessary services in the home.
- (c) **In-home assessment - skilled care.** No in-home assessment of the need for skilled care shall be conducted by any agency, agency employee, or agency contractor unless and until the agency receives a physician's or non-physician practitioner's order to provide skilled care, or to conduct an in-home assessment of the need for skilled care. Skilled care shall not be provided by any agency, agency employee, or agency contractor unless and until the agency receives a physician's or non-physician practitioner's order to provide skilled care.
- (d) **Solicitation, coercion, harassment.** No agency, agency employee, or agency contractor shall solicit, coerce or harass a consumer of home care services or an individual who may need home care services in order to initiate services with the agency.

310:662-5-2. Plan of care

- (a) **Non-skilled care.** If only personal care is provided, the physician, non-physician practitioner or registered nurse shall prepare a plan of care at the time of initial assessment. The plan of care shall be developed after consultation with the client and/or the client's representative and shall include potential services to be provided; the frequency of visits and/or hours of service; as well as identified problems, method of intervention, and date of resolution. The plan of care for the client shall be communicated to the caregiver prior to or at the time of the delivery of non-skilled care. The plan of care shall be revised as necessary, but it shall be reviewed and updated by the registered nurse and all appropriate staff involved in care delivery at least every six (6) months.
- (b) **Skilled care.** If skilled care is ordered, the order shall be sent by the agency within ten (10) days to the

ordering physician or non-physician practitioner to be signed and returned in a timely manner. The plan of care shall be developed at the time of admission in conjunction with all appropriate disciplines and shall cover all pertinent diagnoses, including mental status, types of services and equipment required, frequency of visits/hours, prognoses, functional limitations, activities permitted, nutritional requirements, medications and treatments, any safety measures to protect against injury, and any other appropriate items. Orders for therapy services shall include the specific procedures and modalities to be used and, as appropriate, the amount, frequency and duration. Services delivered shall be consistent with the services ordered in the plan of care. There shall be a continuing review of clinical records for each sixty-two (62) day period that a client receives home care services to determine adequacy of the plan of care and appropriateness of continuation of care.

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.