

CHAPTER 4. CERTIFICATE OF NEED REGULATIONS

[Authority: 63 O.S., §§ 1-104, 1-850 et seq., and 1-880.1 et seq.; 75 O.S., §§ 250 et seq.]

[Source: Codified 12-31-91]

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);
- (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).

[Source: Amended at 12 Ok Reg 3025, eff 7-27-95; Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 38 Ok Reg 1929, eff 9-11-21]

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) 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.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 19 Ok Reg 2042, eff 6-27-02; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-3. Types of reviews [REVOKED]

[Source: Amended at 9 Ok Reg 1973, eff 6-11-92; Revoked at 14 Ok Reg 2247, eff 6-12-97]

310:4-1-4. Short review process [REVOKED]

[Source: Amended at 10 Ok Reg 3437, eff 7-1-93 (emergency); Amended at 11 Ok Reg 2609, eff 6-25-94; Amended at 12 Ok Reg 3025, eff 7-27-95; Revoked at 14 Ok Reg 2247, eff 6-12-97]

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.

(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.

[Source: Amended at 10 Ok Reg 3437, eff 7-1-93 (emergency); Amended at 11 Ok Reg 2609, eff 6-25-94; Amended at 12 Ok Reg 3025, eff 7-27-95; Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 16 Ok Reg 2450, eff 6-25-99; Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 19 Ok Reg 2042, eff 6-27-02; Amended at 22 Ok Reg 2363, eff 7-11-05; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-6. Subpoenas and attendance of witnesses [REVOKED]

[Source: Revoked at 14 Ok Reg 2247, eff 6-12-97]

310:4-1-7. Conduct of public hearings [REVOKED]

[Source: Revoked at 14 Ok Reg 2247, eff 6-12-97]

310:4-1-7.1. Applicant's holdings and history

During the investigation under 63 O.S. Section 1-852(G) and findings under 63 O.S. Section 1-853(D), the Department and the Commissioner will consider the following:

(1) If the licensee has not established a record of performance in long-term care facility operations in the State of Oklahoma for at least sixty (60) months immediately preceding the filing of the application, then the Department and the Commissioner will investigate and make required findings on the holdings and long-term care facility operations of each person with a controlling interest. In determining the relevance of prior holdings and operations, the Commissioner will consider whether the person as an individual:

(A) has authority to adopt or substantially influence governing policies that affect the financial performance or quality of care of the proposed facility for which a Certificate of Need has been applied; and

(B) had authority to adopt or substantially influence governing policies that affected the financial performance or quality of care of the prior holding or operation.

(2) A history of noncompliance as defined in 63 O.S. Section 1-851.1(6).

[Source: Added at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 22 Ok Reg 2363, eff 7-11-05; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-8. Reconsideration of decision

The applicant or any party may request reconsideration of the Commissioner's decision to issue or deny a Certificate of Need.

(1) **Filing a request.** The request for reconsideration must be written and received by the Department within the applicable time frame specified in 63 O.S. Sections 1-853 and 1-880.7. The request must demonstrate conformity to at least one (1) of the grounds for a reconsideration hearing specified in 75 O.S. Section 317 of the Administrative Procedures Act.

(2) **Determining good cause.** Within ten (10) days after receipt of the request, the Commissioner will approve or deny the request for reconsideration, based on whether or not the request has shown good cause for reconsideration.

(A) If good cause is not shown, the Commissioner will notify the applicant and other parties of this fact. No further action will be taken by the Commissioner.

(B) If the Commissioner does find good cause for reconsideration, the Commissioner will notify the applicant and other parties, and schedule a public hearing.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-9. Judicial review [REVOKED]

[Source: Revoked at 14 Ok Reg 2247, eff 6-12-97]

310:4-1-10. Ex parte contacts

Applicants and other parties must not attempt to discuss the merits of a particular case with the Commissioner or the hearing officer except during a preliminary conference or public hearing. Contacts concerning Certificate of Need projects may be directed to the Department staff.

(1) **Procedure.** If the Commissioner or hearing officer is a party to a discussion on the merits of a particular case, then they must document the contact in writing in the record of the case with the names of the parties and the essence of the conversation.

(2) **Penalty.** Any party who attempts to make an improper ex parte communication with the Commissioner or the hearing officer may be disqualified from further participation in the review of the case.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-11. Effectiveness of issued Certificates of Need

A Certificate of Need can only be issued to the person who applied for the Certificate. A Certificate of Need cannot be transferred in whole or part to another person. Any transfer of a Certificate of Need renders the certificate invalid.

(1) The process for reviewing a plan cannot exceed twelve (12) months from preliminary or initial plan submittal to the Department's approval. If the applicant's submitted plan does not satisfy requirements to receive approval within twelve (12) months, then the Certificate of Need is void.

The review process is as follows:

(A) Preliminary plans and outline specifications must be submitted to the Department within six (6) months after approval of a Certificate of Need. The plans and specifications must include sufficient information to establish the following:

(i) scope of project;

(ii) project location;

(iii) required fire-safety and exiting criteria;

(iv) building-construction type, compartmentation showing fire and smoke barriers, bed count and services; and

(v) the assignment of all spaces, areas, and rooms for each floor level, including the basement.

(B) A proposed construction document must be submitted and include final drawings and specifications adequate for proposed contract purposes. All final plans and specifications must be appropriately sealed and signed by an architect registered by the State of

Oklahoma. All construction modifications of approved documents are subject to review and approval, and must be submitted timely.

(C) All construction project submittals must be reviewed and approved or disapproved within 30 calendar days after receipt by the Department.

(2) Commencement of construction for a new or relocated facility, or for an addition to an existing facility, is evidenced by the following:

(A) a building permit, if one is required by local government;

(B) proof of excavations for foundations, footings or pilings; and

(C) proof of an incurred financial obligation in the form of an invoice for the excavation work, dated not later than the required construction start date.

(3) For a new or relocated facility, the Department and applicant or applicant's representative, will visit the new or relocated facility site together. The applicant shall agree to be present or represented at the visit.

(4) For a construction project that does not involve the addition of space, the start of construction is demonstrated with a building permit, if one is required locally, and an invoice for construction work done at the facility.

(5) Completion of a facility structure or modification must include at least the completion of exterior walls, all interior load-bearing members, and the facility roof. The Department will visit the facility site within fifteen (15) working days after receiving a written request from the applicant to confirm the completion of the structure.

[Source: Amended at 14 Ok Reg 2247, eff 6-12-97; Amended at 19 Ok Reg 2042, eff 6-27-02; Amended at 20 Ok Reg 2352, eff 7-11-03; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-12. Penalties

(a) No person may acquire, establish, construct, expand, or begin to acquire, establish, construct or expand a covered health care facility unless that person has first obtained a required Certificate of Need or an exemption from review.

(b) Any person who engages in a reviewable activity without first having obtained a Certificate of Need is subject to an administrative penalty of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00).

(c) Each day the person continues a reviewable activity without a Certificate of Need to acquire, establish, construct, or expand the health care facility service is treated as a separate offense, and additional fines may be imposed.

(d) An administrative penalty may also be imposed through an order by the Department after notice and opportunity for hearing as required in the Administrative Procedures Act.

[Source: Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 38 Ok Reg 1929, eff 9-11-21]

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) **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) **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.

[Source: Added at 14 Ok Reg 2247, eff 6-12-97; Amended at 18 Ok Reg 2468, eff 6-25-01; Amended at 19 Ok Reg 2042, eff 6-27-02; Amended at 22 Ok Reg 2363, eff 7-11-05; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-14. Confidentiality of records

Financial data submitted by an applicant for the purpose of obtaining a Certificate of Need is not considered a "record" as defined in Title 51 O.S. Section 24A.3, and is therefore not subject to public inspection, copying, or mechanical reproduction.

[Source: Added at 19 Ok Reg 2042, eff 6-27-02; Amended at 38 Ok Reg 1929, eff 9-11-21]

310:4-1-15. Management contract exemption [REVOKED]

[Source: Added at 19 Ok Reg 2042, eff 6-27-02; Revoked at 22 Ok Reg 2363, eff 7-11-05]

SUBCHAPTER 3. STANDARDS FOR HEALTH CARE FACILITY ACQUISITIONS

310:4-3-1. Financial

The applicant must provide proof of sufficient financial resources to complete the acquisition and to maintain services and staffing that meet licensure standards for at least twelve (12) months following the acquisition.

(1) **Financial proof of acquisition.** Proof of sufficient financial resources to complete the acquisition must be provided in the following forms, as applicable:

- (A) Conventional, bank, seller-carried, third party, or bond financing, see 310:4-1-13(a)(9)(A);
- (B) Equity financing, see 310:4-1-13 (a)(9)(B); and
- (C) Financing or other funding from or guaranteed by a third party that is not duly authorized or chartered as a bank, see 310:4-1-13(a)(9)(C).

(2) **Projected budget.** Each application must include a projected budget of revenues and expenses for the first 12 months of operation of the facility after the anticipated issuance of the Certificate of Need. The Department may require the applicant to justify the difference between the applicant's projected budget and the facility's expenses and revenues as reported to the Oklahoma Health Care Authority pursuant to 56 O.S. Section 2002 or OAC 317:30-5.

(3) **Balance sheets.** All balance sheets must include a release authorizing the Department to verify the financial information submitted in the Certificate of Need application. The Department may make independent inquiry into the financial condition of the applicant.

(4) **Financial proof for services and staffing.** To ensure the maintenance of services and staffing, the applicant must prove the availability of reserves equivalent to the average monthly projected expenses, in addition to funds needed to complete the acquisition. The amount of the average monthly expenses is calculated based on a per-month average of the projected twelve (12) month budget of revenues and expenses submitted with the application. Proof of the availability of reserves must conform to the following:

- (A) for reserves to be provided or maintained through letter of credit, line of credit, or conventional, bank or bond financing:
 - (i) 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 or authority;
 - (ii) a statement of provisions for terminating or rescinding a letter of credit or line of credit;
- (B) for reserves to be maintained through the applicant's equity or net worth:
 - (i) an attested balance sheet that is dated within the past twelve (12) months for the acquiring party and that reflects cash or cash equivalents sufficient to meet the one-month reserves requirement; or
 - (ii) a certificate of deposit or other proof that funds are available and have not been pledged for some other purpose;
- (C) for reserves to be funded 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.

(5) **Attested documents.** For the purpose of this Section, the term "attest" has the same meaning as it is defined in 59 O.S. Section 15.1A.

310:4-3-2. Staffing

The applicant must provide documentation that sufficient personnel will be retained or employed to meet the needs of all residents to comply with all requirements for state licensure and Medicare/Medicaid certification, if applicable. The documentation of staffing must include written statements from the administrator, the director of nursing, the pharmacist, and the medical director, indicating the intention to contract or accept employment with the applicant.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-3-3. Experience

If the applicant has less than sixty (60) months experience in health care facility operation immediately preceding the filing of the application, the applicant must provide a plan that details how experienced and competent staffing and leadership will be responsible for the facility operations. The operational plan must include:

- (1) Organizational papers, bylaws, articles of incorporation, partnership agreements, business plans, or other documents which confirm the applicant's claims about the policies, rights, duties and responsibilities of the applicant and its principals;
- (2) Statements from the person or persons who will fill management or administrative staffing and leadership positions, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, with said statements to specifying the minimum amount of time those persons will spend working at the facility; and
- (3) A statement from the applicant agreeing to advise the Department before any change in the staffing and leadership during the first six (6) months of operation after the acquisition is finalized; and
- (4) A statement from the applicant agreeing that any person added to or replacing another person in the staffing or leadership plan during the first six (6) months of operation will comply with 63 O.S. Section 1-853(D) and OAC 310:4-1-7.1.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-3-4. Description of notice to residents and families

The form used to notify residents and families as required in 63 O.S. Section 1-852(l) requires the following information:

- (1) The name of the applicant;
- (2) The name and location of the facility to be acquired;
- (3) A brief explanation of the public's opportunity to participate in the review of the Certificate of Need application;
- (4) The location where and the times when the Certificate of Need application will be available for public inspection; and
- (5) The address and deadline for submitting written comments to the Department.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

SUBCHAPTER 5. CERTIFICATE OF NEED STANDARDS FOR ICF/IID**310:4-5-1. Service area**

For review purposes under the standards in this Subchapter 5, the service area for an Intermediate Care Facility/Individuals with Intellectual Disabilities (ICF/IID) is the service region or area, as designated by the State Department of Human Services, in which it is located or proposed for location. If an application for Certificate of Need is considered for a specialized ICF/IID facility for which only one or two facilities may be needed, or where no service area is designated, then the Department may treat the entire State as the service area.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-5-2. Standards for ICF/IID

- (a) No new ICF/IID beds, except ICF/IID 16s and smaller, will be approved in the service area unless
- (b) An application for ICF/IID beds will not be approved unless the applicant demonstrates familiarity with and understanding of certification standards for an ICF/IID, specified in 42 CFR Section 442.400, relating to Standards for Payment to Nursing Facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities.
- (c) The identity of the licensed administrator of the existing or proposed facility must be provided by the applicant as a prerequisite to issuance of a Certificate of Need.
- (d) No additional ICF/IID beds, whether proposed through construction or conversion of existing space, will be approved for any existing ICF/IID unless it has maintained an occupancy rate of at least ninety five percent (95%), based upon a calculation of occupancy reflected in the monthly average daily census reports of the Department of Human Services, or the Department, for the most recent six (6) month period for which official data is available when the application is filed.
- (e) Any ICF/IID beds approved, but not yet in place in the service area, must be included in the evaluation for determining bed need specified in subsection (a) of this Section.
- (f) Any existing ICF/IID that proposes an expansion of beds by conversion or construction and which has a record of questionable quality of care, as demonstrated through complaint investigation records, or other means, may be denied a Certificate of Need despite the conformity of the proposal to other standards delineated herein.
- (g) The Department will consider the relationship of a Certificate of Need application to any plan adopted by the Department of Human Services concerning the distribution and allocation of services for individuals with intellectual or developmental disabilities.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

SUBCHAPTER 7. STANDARDS FOR LICENSED NURSING FACILITY BEDS**310:4-7-1. Service areas**

- (a) The service area for a Licensed Nursing Facility (LNF) is presumed to be a map mileage of fifteen (15) miles from the location of the facility, except that the service area is a radius of seven and one half (7.5) miles for any facility located in the corporate limits of Tulsa or Oklahoma City, and any municipality contiguous with boundaries of Tulsa or Oklahoma City.
- (1) The map mileage for LNFs is calculated based on the minimum distance on hard surface, all weather roads from LNF to LNF using the State Transportation Department Planning Division's current official General Highway Map by County or City which provides sufficient detail for calculations of the distance between facilities.
- (2) The calculation of the service area population includes population data for the cities and towns that fall within the service area, and an estimate of the service area population that does not live in area cities or towns. If detailed official population data is not available for a rural portion of the service area, the estimate of the rural population is a prorated share of the county's rural population based on the geographic size of the portion of the county which is included in the facility's service area.
- (b) An applicant may define and describe a service area other than that presumed in (a) of this Section by showing through a clear and convincing demonstration one or more of the following:
- (1) the facility is providing or will provide services exclusively to religious groups in which membership is restricted;
- (2) the facility is responding or will respond to a regional, statewide or national population with special health service needs;
- (3) the facility is or will be a qualified continuing care facility as such term is defined in Internal Revenue Code Section 7872(g)(4)(A) and is serving or will serve individuals who are residing or will reside in a separate independent living unit owned by the applicant;

- (4) the facility is serving or will serve a rural area where residents must drive more than 30 minutes to reach adequate nursing facility services; or
- (5) the facility is the nursing care component of a life care community.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-7-2. Standards for LNF beds

(a) The applicant must demonstrate that existing licensed nursing facility beds are not and will not be adequate in the service area described in 310:4-7-1, based on the need of the population.

- (1) 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 LNF facilities in the area.
- (2) The applicant must demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age seventy-five (75) and over statewide. The applicant must show that the proposed new beds likely will not cause the statewide ratio to exceed one hundred seventy-nine (179) beds per one thousand (1000) persons age seventy-five (75) and over, and that the project is consistent with the achievement of an optimal target ratio of one hundred fifty-two (152) beds per one thousand (1000) persons age seventy-five (75) and over.
- (3) The applicant must demonstrate the probable impact of the proposed beds on the ratio of LNF beds to the number of persons age seventy-five (75) and over 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) The most recent population data published at the time the application is filed must be used. 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) If the applicant proposes a special service area under 310:4-7-1, then the applicant must demonstrate that the target population will have access to the proposed services through public or private transportation.

(b) 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) An overall mean occupancy rate of eighty-five percent (85%) should be maintained in LNF beds in the service area described in OAC 310:4-7-1.

(A) This mean is based on data from all similarly-licensed facilities in the service area using monthly reports filed with the Department of Health, taking into consideration the following:

- (i) any specialized facility for individuals with intellectual disabilities or intermediate care facility for individuals with intellectual disabilities in the area is excluded;
- (ii) in the case of a nursing facility application, any hospital-based skilled nursing unit shown to serve a different health service need is excluded;
- (iii) in the case of a hospital-based skilled nursing unit application, any nursing facility shown to serve a different health service need is excluded;
- (iv) in the case of a facility demonstrating a special service area under OAC 310:4-7-1(b), each facility not shown to be adequate or appropriate to meet the needs of the facility's special population is excluded.

(B) The mean is calculated using data for the most recent six (6) month period reports are published by the Department of Health, as of the first day of the month during which an application is initially filed.

- (i) Beds reserved for residents who were temporarily absent from facilities for hospitalization or other therapeutic purposes is considered to have been occupied.

(ii) The area bed capacity used to calculate the occupancy rate is reduced by the number of beds that are not available because rooms licensed for multiple occupants have been reserved for single occupants throughout the six (6) month period.

(C) In determining the service area's conformity to the occupancy goal specified in this subsection, the Department will investigate the causes for low-occupancy operation of other facilities in the service area. The Department must exclude such low-occupancy facility from the service area calculations if the facility has been in operation continuously under the current licensee for 24 or more months and:

- (i) The facility's state license or federal certification during the sixty (60) months preceding the filing of the application has been revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal;
- (ii) The facility has a history of noncompliance as defined in 63 O.S. Section 1-851.1(6); or
- (iii) The facility has not complied with all lawful orders of suspension, temporary management, or administrative penalty issued by the Department, another state agency, or by the federal Health Care Financing Administration;
- (iv) The facility's owner, operator, manager, or medical director has been convicted of a criminal offense related to the operation or management of a long-term care facility; or
- (v) The facility has been assessed an administrative penalty above the level of deficiency with one or more of the following unfavorable factors:
 - (I) The administrative penalty included a citation of immediate jeopardy or actual harm to a resident;
 - (II) The circumstance cited in connection with a civil money penalty or other administrative penalty resulted in the death of a resident; or
 - (III) Multiple civil money penalties, denials of payment, or other administrative penalty have been assessed based on findings of substandard quality of care, actual harm, or potential for more than minimal harm, at the facility within the preceding sixty (60) months.

(2) The applicant must demonstrate that the proposed beds are needed in addition to any beds previously approved under the State Certificate of Need laws but not yet in operation in the service area.

(3) The applicant's demonstration must include consideration of the adequacy of such alternative services as residential care facilities, eldercare, home health care, hospice, assisted living and adult day care.

(c) The applicant must demonstrate adequate financial resources for the new or expanded long-term care services and for the continued operation thereof.

- (1) Reimbursement is structured to realistically provide for care and services to persons living in the service area.
- (2) The proposed charges must be in line with the prevailing rate of similar institutions and services within the health service area.
- (3) The projected utilization rates are sufficient to maintain cost-effectiveness.
- (4) The projected cash flow must give the proposed project financial viability within three years.
- (5) The relationship of the institution's assets to liabilities cannot be increased by the proposed project to the point of threatening the financial viability of the institution.
- (6) The applicant must supply a cost/benefit analysis to justify the cost-effectiveness of the proposed project.

(d) The applicant must demonstrate that sufficient personnel will be available to properly staff and operate the proposed new or expanded long-term care service.

- (1) A proposal to provide new or expanded long-term care service must provide assurances that the appropriate numbers and types of staff will be available to comply with licensure requirements.
- (2) Professional and paraprofessional staffing of new or expanded long-term care services must not compromise the staffing of existing long-term care services.
- (3) The applicant must disclose all current and prior experience in the operation of health care facilities, giving names of facilities, locations, and dates. If the applicant has less than sixty (60) months experience in health care facility operations immediately preceding the filing of the application, then the applicant must:
 - (A) Provide a plan that details how experienced and competent staffing and leadership, including but not limited to the director of nursing, the medical director, the administrator, and the applicant's policy body, will be placed in charge of facility operations; and
 - (B) Agree to advise the Department, before any change in the staffing and leadership during the first six (6) months of operation of the new or expanded facility.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

SUBCHAPTER 9. STANDARDS FOR PSYCHIATRIC AND CHEMICAL DEPENDENCY SERVICE BEDS

310:4-9-1. Definitions

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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-2. Service area

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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-3. Population-based need

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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-4. Availability of alternative services

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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-5. Financial resources

- (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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-6. Staffing

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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-7. Other

- (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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

310:4-9-8. Temporary emergency admissions

- (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.

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]

APPENDIX A. MENTAL HEALTH SERVICE AREAS

[Figure 1](#)

[Source: Added at 38 Ok Reg 1929, eff 9-11-21]