

LONG-TERM CARE FACILITY ADVISORY COUNCIL

Regular Meeting

April 17, 2024

1:30pm

**123 Robert S Kerr Ave,
Oklahoma City, OK 73102**

28th Floor

1. Call to Order..... OSDH
2. Roll Call..... Inez Bennett
3. Open Meetings Act.....John Clark
4. Meeting Dates (Vote to accept or change)Inez Bennett
5. Nomination of Officers..... OSDH
6. Election of Officers..... OSDH
7. Orientation on LTCFAC..... John Clark
8. Public Comment
9. Adjournment



Nurse Aide Registry Report
Long Term Care Facility Advisory Board Meeting – April 17, 2024

CURRENT CERTIFICATIONS					
CERTIFICATION TYPE	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
Adult Day Care (ADC)	30	27	28	25	25
Long Term Care (LTC)	41,632	43,756	44,037	46,048	46,319
Certified Medication Aide (CMA)	5,966	6,029	6,096	6,089	5,915
Advanced CMA Gastrology (CMA/G)	2,909	2,976	3,037	3,059	2,935
Advanced CMA Glucose Monitoring (CMA/GM)	1,389	1,417	1,429	1,465	1,421
Advanced CMA Insulin Administration (CMA/IA)	951	978	987	1,026	1,003
Advanced CMA Respiratory (CMA/R)	2,968	3,027	3,075	3,107	2,971
Feeding Assistant (FA)	159	148	143	117	98
Home Health Aide (HHA)	9,971	9,622	9,617	9,566	9,559
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IIDA)	915	916	926	953	965
Residential Care Aide (RCA)	24	22	22	20	19
TOTALS	67,137	69,217	69,406	71,475	71,230

NATCEP/TRAINING EXCEPTION/WAIVER/DEEMING					
	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
LTC	1,020	1,087	1,518	906	1,140
HHA	594	630	811	524	645
ICF/IID	53	56	44	86	57
RCA	0	0	0	0	0
ADCA	4	0	0	0	0
CMA	223	290	296	239	261
FA	8	1	8	5	7
TOTALS	2,077	2,356	2,997	2,057	2,381

NEW CERTIFICATIONS					
INBOUND RECIPROCITY	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
LTC	1,793	1,692	1,642	2,014	1,237



RETEST	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
LTC	9	10	12	16	7
CMA	11	9	10	12	12
TOTALS	20	22	22	28	19

LTC AND HOME HEALTH ABUSE	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1
Misappropriation	7	3	2	1
Neglect	1	1	6	1
Physical/Verbal/Sexual	1	1	3	0
Mistreatment	0	1	4	1
Exploitation	1	1	0	0
TOTALS	10	7	15	3

TRAINING PROGRAMS					
APPROVED TRAINING PROGRAMS	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
LTCA	158	153	147	161	163
HHA-Deeming	38	38	39	41	43
ICF/IID	11	11	12	12	12
RCA	0	0	0	0	0
ADC	0	0	0	1	1
CMA	50	52	56	55	56
CMA/CEUs	43	41	40	43	44
CMA/IA	27	28	29	30	31
CMA/GM	6	6	6	6	6
CMA/R	2	1	1	1	1
CMA/RG	32	32	31	34	35
CMA/G	1	1	1	1	1
TOTALS	368	363	363	385	393

ONSITE SURVEYS PERFORMED	FY23 Qtr-2	FY23 Qtr-3	FY23 Qtr-4	FY24 Qtr-1	FY24 Qtr-2
TOTALS	11	44	107	96	35



**Health Facility Systems- Long Term Care Facilities
Long Term Care Facility Advisory Board Meeting – April 17, 2024**

Long Term Care Facilities	As of April 1, 2024
Number of Facilities	646
Closed Facilities	36
Summary	Facilities
Nursing Home	288
Nursing Home Veterans Center	6
Nursing Home Licensed Only	1
Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICF/IID)	98
Assisted Living	187
Residential Care	26
Adult Day Care	37
Unlicensed Facilities	3
Facility Totals	646

Oklahoma's Open Meeting Act

Title 25 O.S. §§ 301-314



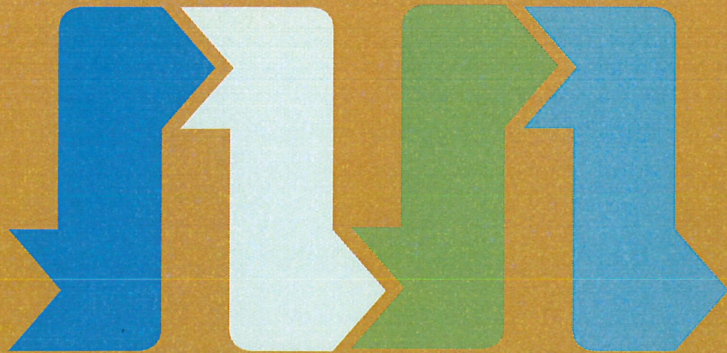
OKLAHOMA
State Department of Health

For OSDH Central Office Use Only

Public Purpose of OMA

- ✓ Encouraging citizens to know more about public bodies, governmental processes, and governmental problems (advance notice, agenda, and minutes)
- ✓ Creating space for citizens to come and watch government in action as the public body tackles the issues of the day (open meetings to the public at convenient times and places)

OVERVIEW



- 1 When is the OMA triggered?
 - 2 What actions must be taken before meetings?
 - 3 What procedures must be followed during meetings?
 - 4 What consequences may result from violations of the OMA?
-



- Every regular, special, emergency, or reconvened **meeting** of a **public body** shall be open, except as provided by the Act
- The Act applies when there is a:
 - ✓ majority of a public body together, AND
 - ✓ the business of the public body is being conducted
- “**Public body**” and “**meeting**” are both defined by statute

Public Body

- A governing body that is supported in whole or in part by public funds or entrusted with expending public funds, or administering public property.
- A statutorily created body that receives staff support from an agency is subject to the OMA



“Public Body” defined as all:

- Boards
- Bureaus
- Commissions
- Agencies
- Trusteeships
- Authorities
- Councils
- Committees
- Public Trusts
- Entities created by Public Trusts
- Task forces or study groups supported by public funds, spending public funds, or administering public property
- Committees or Subcommittees of any public body

Public Body Does Not Include:

- ⊘ Judiciary
- ⊘ Legislature and legislators
- ⊘ Administrative staff of public bodies
 - Includes meetings of higher ed faculty and athletic staff when not meeting with public body
- ⊘ Other specific exceptions per statute such as:
 - Racing stewards
 - Council on Judicial Complaints

Quorum

Majority of Members

Your quorum DOES
NOT decrease because
of a vacancy

- 1982 OK AG 165

Note: Confirm attendance as
early as possible BEFORE
the meeting



“Meeting” defined:

- When conducting business of a public body
- By a majority of its members
- Being personally together
- **Note:** a “meeting” does not include informal gatherings of a majority of members where no business of the public body is discussed



“Business” includes:

- The entire decision-making process including deliberation, decision or formal action
 - 2002 OK AG 26
- If a public body meets with an expert to gain insight into a matter, they are involved in the deliberation process
 - 1982 OK AG 212



Note: Even if a vote does not occur the meeting will likely be subject to the OMA



Electronic and Telephonic Communications

- Prohibits deciding or taking action (voting) on any matter by phone or email
- Prohibits deciding or taking action on any matter at an “informal gathering”



Caution! Discussion in a group email, text, or social media group can create a virtual meeting subject to OMA

- Includes setting the agenda and meeting dates

Hypothetical

Post-Board Meeting Lunch

- Does the OMA apply?
- Best Practice: majority of body's members should not attend lunch together



Note: If members insist on a group lunch, announce it at the end of the meeting, and invite attendees

Required Pre-Meeting Actions

Provide Notice

Post Agenda


Four Types of Meetings




Regularly Scheduled Meetings



Special Meetings



Emergency Meetings



Continued or Reconvened Meetings



Provide Notice: Regular Meetings



When?

- Annually by December 15th for the next calendar year
- Include date, time, and place of meetings
- Regular meetings can be changed with 10 days notice to the appropriate office and limited new business is permitted

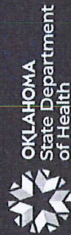
Provide Notice: Regular Meetings



To whom?



State public bodies
Submit to Secretary of State



OKLAHOMA
State Department
of Health

25 O.S. § 311

ANNUAL NOTICE OF REGULARLY SCHEDULED PUBLIC MEETINGS

(This form may be used for annual reporting of regularly scheduled public meetings for the following year. For reporting special meetings and changes to regularly scheduled meetings, see Notice of Special Meetings or Changes to Regular Meetings Standard Meeting form.)

To be filed with Secretary of State's Office of Administrative Rules by **December 15**
As required by Open Meeting Act [25 O.S., §§ 301 et seq.]

NAME OF PUBLIC BODY:

(NOTE: The public body's name should be typed exactly the same each time you file a notice. If not, words the same each time, notices may be posted and filed under alternate forms of the name, rather than all together under one name. If no certain of wording previously used, go to Meeting Notices Online at <http://sos.ok.gov/meetings/agency> and search by key word for find wording used on website.)

ADDRESS: 1915 North Stiles Avenue - Suite 200
Oklahoma City, OK 73105-4915

CONTACT PERSON:
TELEPHONE:

RECEIVED

NOV 02 2018

OKLAHOMA SECRETARY
OF STATE

3:59 PM

SIGNATURE:

(If EMAILING FORMAL TYPE NAME OF PERSON AUTHORIZED TO SIGN FORM) DATE: November 2, 2018

Regularly Scheduled Meetings for: 2019
(calendar year)

Date	Time	Location
January 9	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
February 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
March 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
April 10	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
May 8	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
June 12	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
July 10	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
August 14	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
September 11	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
October 9	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
November 13	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915
December 11	9:30 am	1915 North Stiles Avenue - Suite 200 - Oklahoma City 73105-4915

(Attach additional pages, if needed)

MAIL DELIVER OR EMAIL AS FOLLOWS:
Secretary of State's Office of Administrative Rules
421 NW 13th Street, Suite 220
Oklahoma City, OK 73103
Phone: 405-521-4911
Email: meetingnotices@sos.ok.gov

NOTE: IF YOU WOULD LIKE TO POST FUTURE MEETING NOTICES DIRECTLY TO THE WEBSITE AND ELIMINATE THE NEED FOR FILING PAPER COPIES, CLICK HERE OR CONTACT THE OFFICE OF ADMINISTRATIVE RULES FOR A USER ID AND PASSWORD.

Provide Notice: Special Meetings

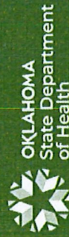


When: 48 hours notice of date, time, and place
Excludes Saturdays, Sundays, and State holidays



Form: Includes Notice

In writing, in person, or by telephonic means to the proper record keeping official (SOS) AND to those who have filed written requests to receive notice of meeting



25 O.S. § 311(A)(12)

Emergency Meetings

Defined: “[A] situation involving injury to persons or injury and damages to public or personal property or immediate financial loss when the time requirements for public notice of a special meeting would make such procedure impractical and increase the likelihood of injury or damages or immediate financial loss”

Provide Notice: Continued or Reconvened Meetings



When: Announce date, time, and place of continued/reconvened meeting at original meeting



25 O.S. § 311(A)(11)

Posting Agenda



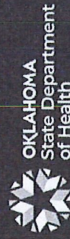
When:



Regular and Special Meetings

- Posted 24 hours prior to meeting, excluding Saturday, Sunday, and state holidays

Ex: Meeting at 10:00 a.m. on Monday, must be posted no later than 10:00 a.m. the Friday before



25 O.S. §§ 311(A)(9)-(10), (12)

Posting Agenda



Where:

At principal office or meeting location if no office exists

- ! *Must be visible to the public the entire 24 hours before the meeting begins*

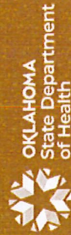
! Post Agenda By Both Doors in the Lobby

OR On public body's website

- ! *Must also maintain an email distribution system and send notice at least 24 hours in advance*

AND

- ! *Post notice and agenda at principal office or meeting location during normal business hours at least 24 hours in advance*



25 O.S. §§ 311(A)(9)-(10), (12)

Posting Agenda



What:



Must contain sufficient information for the public to identify the items of business and purpose
25 O.S. § 311(B)



“Agendas [must] be worded in plain language, directly stating the purpose The language used should be simple, direct and comprehensible to a person of ordinary education and intelligence.”

Haworth Bd. of Ed. v. Havens, 637 P.2d 902, 904 (Okla. Civ. App. 1981)

Agendas

- ✘ Cannot take action if the item is not on the agenda
- ✘ Cannot be vague
 - Ex: “Executive Director’s Report”
 - Needs more detail on what the report will cover
- ✔ List *proposed* executive sessions
- ✔ New business permitted only at regularly scheduled meetings
- ✔ Ensure that Agenda Items fall within the Advisory Council’s statutory authority

Statutory Authority (63 O.S. 1-1923)

D. The Advisory Council shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to and care and treatment of residents of facilities subject to the provisions of the Nursing Home Care Act, homes subject to the provisions of the Residential Care Act and facilities subject to the provisions of the Adult Day Care Act;
2. Review and make recommendations regarding quality of services, care, and treatment provided to individuals receiving services from entities that are subject to the Nursing Home Care Act, the Residential Care Act and the Adult Day Care Act; and
3. Evaluate and review the standards, practices, and procedures regarding the administration and enforcement of the provisions of the Nursing Home Care Act, the Residential Care Act and the Adult Day Care Act

New Business

- **Defined:** “Any matter not known about or which could not have been reasonably foreseen prior to the time of posting [the agenda]”
- NOT what someone forgot to put on the agenda
- ONLY allowed at regular meetings
- Agenda must include item as “new business”



Caution! Use sparingly, only when not reasonably foreseeable prior to posting the agenda

Old Business

Does Not Exist for Open Meeting Purposes

List All Agenda Items Separately

Failed Agenda Example



Agenda said purpose of the meeting was to:

- 1) Appoint new board member
- 2) Interview new administrator
- 3) Hire principals



Court ruled the agenda was **deceptively vague and a willful violation when the school board hired a superintendent.**

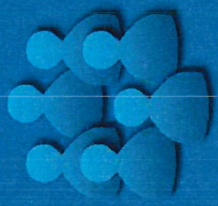
Haworth Bd. of Ed. v. Havens, 637 P.2d 902 (Okla. Civ. App. 1981)



Best Practice: Be specific and clear. Do not vaguely refer to the action planned to be taken or discussed.

What actions must be taken during meetings?

Recording Votes



Vote of each member must be both:
Publicly cast AND recorded



Section 306's prohibition on informal gatherings ensures actions are taken publicly and recorded



Caution! Failure to meet both requirements results in the action being invalid.

Oldham v. Drummond Bd. of Ed., 1975 OK 147, 542 P.2d 1309



25 O.S. § 305

Recording Votes

- Must record vote of each individual member
- If vote is unanimous, it is sufficient to record “5-0 in favor of...”

Graybill v. Oklahoma State Bd. of Educ., 1978 OK 124, 585 P.2d 1358



Best practice: Record how each individual voted including yes and no votes and whether there were any abstentions



OKLAHOMA
State Department
of Health

25 O.S. § 305

Public Comment

Public bodies are not required to provide opportunity for citizens to speak

2002 OK AG 26; 1998 OK AG 45

If public body chooses to allow public comment, it is advisable to set policy

May limit comments to agenda items and/or set time limit

Public body should be careful not to discuss topics on the agenda during public comment portion of meeting

Executive Sessions

General Rule: No executive sessions unless specifically authorized in §307 or another statute

Rarely will an advisory committee enter Executive Session
Limited Permissible Purposes:

Personnel matters 25 O.S. §307(B)(1) construed narrowly

- Must identify individual or unique position 1997 OK AG 61
- Confidential communications with attorney concerning pending investigation, claim or action 25 O.S. § 307(B)(4)
- **Violation:** Criminal liability and minutes and records of the executive session shall be made public

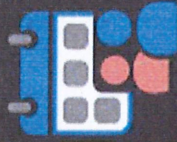
Executive Sessions

- **Special Procedures - Convening Executive Session:**
 - Proposed executive session must be noted on agenda
25 O.S. § 311(B) and 82 OK AG 114
 - Include specific citation to which provision of § 307 authorizes the executive session
25 O.S. § 311(B)(2)(C)
- Must take vote at the meeting to go into executive session and have quorum to convene

Executive Sessions

- **Special Procedures-Deliberation Only:**
- Votes cannot be taken in executive session
- Can discuss, but actions arising out of executive session must be taken in open meeting
- Must take and keep minutes (i.e. what happened, who was there). *Berry v. Bd. of Gov. of Registered Dentists*, 1980 OK 45, 611 P.2d 628.
- Must vote to come out of executive session and record those votes publicly

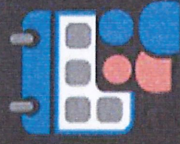
Minutes



- Must be written and include:
 - Official summary of the proceeding
 - Identification of all:
 - Members present and absent
 - Matters considered
 - Actions taken
 - Should reflect manner and time notice was given
- Note:** Minutes should be a summary of each agenda item and are open records.



Minutes



- Must be taken in Executive Session
Berry v. Bd. of Gov. of Registered Dentists, 1980 OK 45, 611 P.2d 628
- Minutes taken in Executive Session may be kept confidential under the Open Records Act
51 O.S. § 24A.5(1)(b)
- Minutes for Emergency Meetings: § 312(B)
 - Must state nature of emergency
 - Must include reasons for declaring emergency meeting

What consequences may ensue from violations of the OMA?

Penalties and Remedies Under OMA

Civil Implications

- ❖ Actions taken in willful violation are invalid. 25 O.S. § 313.
- ❖ Minutes of an Executive Session will be made public where the OMA is willfully violated. 25 O.S. § 307(F)(2).
- ❖ Any person can bring a civil action. 25 O.S. § 314(B).
- ❖ Successful party is entitled to reasonable attorney fees



Criminal Penalties

- ❖ Any willful violation of the provisions of the Act are punishable
- ❖ Misdemeanor offense
- ❖ Fine up to \$500 and/or up to one (1) year in the county jail. 25 O.S. § 314.

Willful Violation

“The Act provides that any action taken in willful violation shall be invalid. Willfulness does not require a showing of bad faith, malice, or wantonness, but rather, encompasses **conscious, purposeful violations of law** or **blatant or deliberate disregard of the law by those who know, or should know** . . . Notice of meetings of public bodies which are deceptively vague or likely to mislead constitute a willful violation.”

Rogers v. Excise Bd. of Greer County, 1984 OK 95, 701 P.2d 754

How to Correct an OMA Mistake

- If not in compliance with OMA when an action is taken, the act will be invalid
- The public body should redo its action in conformity with OMA
- Depends on the type of mistake
 - Give proper public notice and put item on next meeting's agenda
 - Re-vote and record decision in the public meeting