

**TITLE 485. OKLAHOMA BOARD OF NURSING
CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES**

RULEMAKING ACTION:

Notice of proposed PERMANENT rulemaking

PROPOSED RULES:

Subchapter 8. Criminal Background Checks For Applicants For
Licensure/Certification

485:10-8-1. [AMENDED]

Subchapter 10. Advanced Unlicensed Assistant

485:10-10-1. [AMENDED]

485:10-10-2. [AMENDED]

Subchapter 11. Disciplinary Action

485:10-11-4. [AMENDED]

SUMMARY:

Proposed revisions to 485:10-8-1 align rule language with HB 3328 (2024) revisions to the Oklahoma Nursing Practice Act related to fingerprint-based background check requirements.

The revisions to 485:10-10-1 correct an outdated statutory reference and the proper title name of AUAs, changing the title from advanced unlicensed assistive personnel to Advanced Unlicensed Assistant as has already occurred in other areas of this subchapter. The change made in 485:10-10-2 was only to also correct the proper title to Advanced Unlicensed Assistant.

Emergency rules expiring September 14, 2025, are being made permanent in 485:10-11-4, to align rule language with state statute in the Oklahoma Nursing Practice Act. The proposed changes will ensure protection of the general public through nursing regulation and minimize barriers to licensing and certification in a way that is consistent with state statute.

AUTHORITY:

Oklahoma Board of Nursing; 59 O.S., §§ 567.2(A), 567.6a, 567.18(B)

COMMENT PERIOD:

Persons wishing to present their views in writing may do so before 4:30 p.m. on January 23, 2025, at the following address: Oklahoma Board of Nursing, P.O. Box 52926, Oklahoma City, Oklahoma 73152, Attn: Mike Starchman, RN, CPA, Deputy Executive Director

PUBLIC HEARING:

A public hearing will be held at 8:00 a.m. on Wednesday, January 29, 2025, at The M.C. Connors Building, 2501 N. Lincoln Blvd., Ste. 400 Arc Conference Room, Oklahoma City, Oklahoma. Anyone who wishes to speak at this public hearing must sign in with the Oklahoma Board of Nursing by 8:00 a.m., January 29, 2025.

REQUESTS FOR COMMENTS FROM BUSINESS ENTITIES:

Business entities affected by these proposed rules are requested to provide the agency with information, in dollar amounts if possible, about the increase in the level of direct costs, indirect costs, or other costs expected to be incurred by the business entity due to compliance with the proposed rules. Business entities may submit this information in writing by January 23, 2025, at 4:30 p.m., to the Oklahoma Board of Nursing, P.O. Box 52926, Oklahoma City, OK 73152, Attn: Mike Starchman, RN, CPA,

Deputy Executive Director

COPIES OF PROPOSED RULES:

Copies of the proposed *Rules* may be obtained by contacting Mike Starchman, RN, CPA, Deputy Executive Director, at the Oklahoma Board of Nursing, physical address: 2501 N. Lincoln Blvd., Ste. 207, Oklahoma City, Oklahoma 73105, mailing address: P.O. Box 52926, Oklahoma City, OK 73152, (405) 962-1809. The proposed amendments may also be viewed on the Oklahoma Board of Nursing web site at: <https://oklahoma.gov/nursing/title-485-rules.html>

RULE IMPACT STATEMENT:

Pursuant to 75 O.S. Section 303(D), a rule impact statement has been prepared. The rule impact statement may be obtained by contacting Mike Starchman, RN, CPA, Deputy Executive Director, at the Oklahoma Board of Nursing, physical address: 2501 N. Lincoln Blvd., Ste. 207, Oklahoma City, OK 73105, mailing address: P.O. Box 52926, Oklahoma City, OK 73152, (405) 962-1809. The Rule Impact Statement may also be viewed on the Oklahoma Board of Nursing web site at: <https://oklahoma.gov/nursing/title-485-rules.html>

CONTACT PERSON:

Mike Starchman, RN, CPA, Deputy Executive Director, (405) 962-1809.

Sandra Ellis

Sent:
To:
Cc:
Subject:

This is confirmation that the Office of Administrative Rules has accepted the following filing(s) from your agency:

Type of filing: Notice_NRI Notice of Rulemaking Intent

Title: 485. Oklahoma Board of Nursing

Chapter: 10. Licensure of Practical and Registered Nurses

Docket number: 24-1273

Date accepted by Office of Administrative Rules: 11/21/2024

We will reach out to you if we need anything. If you have questions, please call us at 405-521-4911 or email us at oar@sos.ok.gov. Thank you!

CHAPTER 10. LICENSURE OF PRACTICAL AND REGISTERED NURSES

SUBCHAPTER 8. CRIMINAL BACKGROUND CHECKS FOR APPLICANTS FOR LICENSURE/CERTIFICATION

485:10-8-1. Requirements for criminal background checks for ~~initial~~ licensure/certification in this state

- (a) All applications for advanced practice registered nurse, registered nurse or practical nurse licensure by examination, reinstatement, or endorsement or for certification as an Advanced Unlicensed Assistant shall include a state and ~~national~~ federal fingerprint-based criminal history records search.
- ~~(b)~~ Renewal applicants who have not previously submitted a state and federal fingerprint-based criminal records search may be required by the Board to submit a state and federal fingerprint-based criminal history records search as described below.
- ~~(c)~~ Each applicant for licensure and certification shall have a state and federal fingerprint-based background check not more than ninety (90) days old at the time of submission of the application for initial, reinstatement, renewal (if requested by the Board), endorsement, or higher level of licensure.
- ~~(d)~~ After submission of their application, applicants will follow instructions provided to them by the Board to obtain fingerprints using The fingerprint images will be accompanied by an electronic payment, money order or cashier's check made payable to the OSBI or the Board's designated vendor for the fee established by or the OSBI and/or vendor.

SUBCHAPTER 10. ADVANCED UNLICENSED ASSISTANT

485:10-10-1. Purpose

The rules of this Subchapter have been adopted for the purpose of complying with the provisions of the Oklahoma Nursing Practice Act [59 O.S. § ~~567.3~~567.6a]. This Subchapter sets forth standards for ~~advanced~~ Advanced Unlicensed ~~unlicensed~~ Unlicensed assistive personnel Assistants employed in acute health-care settings.

485:10-10-2. Certification training program

Advanced Unlicensed Assistant certification training programs shall:

- (1) Consist of classroom and clinical instruction in the performance of specific core skills that have been selected and approved by the Board;
- (2) Meet the following requirements:
 - (A) Any health-care facility, educational institution or education provider that meets the Board's criteria for approved programs and is approved by the Board may provide the certification training program.
 - (B) Any health-care facility, educational institution or education provider wishing to establish a certification training program for ~~advanced unlicensed assistive personnel~~ Advanced Unlicensed Assistants will file the appropriate forms with the Board. The application will include, but is not limited to:
 - (i) program plan following the curriculum approved by the Board;
 - (ii) clock hours of classroom and supervised clinical instruction;
 - (iii) description of classroom and skills training facility;
 - (iv) evidence of adequate learning resources; and
 - (v) faculty qualification record for each instructor.
 - (C) The Board will advise the institution in writing of its decision to:
 - (i) approve proceeding with the program; or
 - (ii) defer approval pending a site visit and/or receipt of further information; or
 - (iii) deny approval specifying reasons for denial.
 - (D) The application is limited to fifteen (15), single-sided pages, with at least a one inch margin, no less than 1.5 line spacing and no less than an 11 point font size.
 - (E) An approved program shall notify the Board when there are substantive changes in the program that alter the length of the program, reorganize course offerings or change in instructors.

SUBCHAPTER 11. DISCIPLINARY ACTION

485:10-11-4. Licensure or certification of individuals with criminal history

(a) This section establishes the criteria utilized by the Board in determining the effect of criminal history on eligibility for nursing licensure or Advanced Unlicensed Assistant (AUA) certification and implements the requirements of Oklahoma Statutes Title 59 Sections 567.1. *et seq.* and 4000.1 (2022). This section applies to:

- (1) all currently licensed nurses and holders of an AUA certificate;
- (2) all individuals seeking to obtain a nursing license or AUA certificate; and

(3) all individuals seeking a determination of their eligibility for nursing licensure or AUA certification.

(b) The felonies listed below in subsections (d) and (e) disqualify an individual from retaining licensure or becoming licensed as a nurse or retaining certification or becoming certified as an AUA in Oklahoma. When making a determination the Board will give consideration as set forth within 59 O.S. § 4000.1(B). Subsections (d) and (e) are not an exhaustive or exclusive list of crimes, both felonies and misdemeanors resulting in a conviction or a deferred sentence, that may result in discipline from the Board of Nursing, up to and including revocation. The felonies listed in subsections (d) and (e) disqualify an individual because they substantially relate to the practice of nursing and pose a reasonable threat to public safety for the reasons stated below.

(1) **The practice of nursing is a unique profession.** Licensees and certificate holders practice nursing autonomously in a wide variety of settings and provide care to patients who are, by virtue of their illness or injury, physically, emotionally, and/or financially vulnerable. These patients often include the elderly, children, those with mental or cognitive disorders, sedated or anesthetized patients, and/or disabled or immobilized individuals. Individuals who have engaged in criminal conduct place patients, healthcare employers and employees, and the public at risk of harm.

(2) **Crimes involving fraud and/or theft.** Licensees and certificate holders often have unfettered access to patients' privileged information, financial information, and valuables, including but not limited to medications, money, jewelry, credit cards/checkbook, and/or sentimental items. The practice of nursing continues 24 hours per day in all healthcare settings, including those where there is often no direct supervision of the individual. Patients in these healthcare settings are particularly vulnerable to the unethical, deceitful, and illegal conduct of a licensee or certificate holder. When an individual has engaged in criminal behavior involving fraud and/or theft, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk. As such, crimes involving any type of fraud and/or theft are highly relevant to an individual's ability to provide safe nursing care.

(3) **Crimes involving sexual misconduct.** Licensees and certificate holders frequently provide nursing care to partially clothed or fully undressed patients, who are particularly vulnerable to exploitation. Due to the intimate nature of nursing care, professional boundaries in the practice of nursing are extremely important. When an individual has engaged in criminal behavior involving any type of sexual misconduct, the Board is mindful that similar misconduct may be repeated in healthcare settings. As such, crimes involving any type of sexual misconduct are highly relevant to an individual's ability to provide safe nursing care.

(4) **Crimes involving lying, falsification, and/or deception.** Licensees and certificate holders are required to accurately and honestly report and record information in a variety of places, such as medical records, pharmacy records, billing records, nursing notes, and plans of care, as well as to report errors in their own nursing practice. When an individual has engaged in criminal behavior involving lying, falsification, and/or deceptive conduct, the Board is mindful that similar misconduct may be repeated in healthcare settings, thereby placing patients, healthcare employers and employees, and the public at risk of harm. As such, crimes involving any type of lying, falsification and/or deception are highly relevant to an individual's ability to provide safe nursing care.

(5) **Crimes involving drugs and/or alcohol.** Licensees and certificate holders have a duty to their patients to provide safe, effective nursing care and to be able to practice safely. Individuals who have a substance use disorder may have impaired judgment and motor skills and are at risk for harming their patients and/or the public. Licensees and certificate holders have access to many medications and drugs and those with substance use disorders may misuse or steal drugs. Individuals affected by a substance use disorder may be unable to accurately assess patients, make appropriate judgments, or intervene in a timely and appropriate manner, thus putting their patients at risk. This danger is heightened when the licensee or certificate holder works in an autonomous setting where other healthcare providers are not present to intervene for the patient or the public. As such, crimes related to the use or possession of drugs or alcohol are highly relevant to an individual's fitness to practice.

(6) **Crimes involving violence and/or threatening behavior.** Licensees and certificate holders provide care to the most vulnerable of populations, including patients who often have no voice of their own and cannot advocate for themselves. Further, patients are dependent on the caregiver-patient relationship for their daily care. When an individual has engaged in violent or threatening criminal behavior, the Board is mindful that patients may be at risk for similar behavior in a healthcare setting. As such, crimes involving violence and threatening behavior are highly relevant to an individual's fitness to practice.

(c) All crimes listed in this subsections (d) and (e) are as described in Titles 21, 47 and 63 of the Oklahoma Statutes. In addition, the Board recognizes and gives similar treatment to similar offenses charged in other jurisdictions.

(d) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma include:

(1) Crimes involving fraud, theft, lying and/or falsification. Robbery 21 O.S. § 791 et seq.

(2) Crimes involving sexual misconduct.

(A) Human Trafficking 21 O.S. § 748.

(B) Trafficking in children 21 O.S. § 866.

(C) Incest 21 O.S. § 885.

(D) Forcible sodomy 21 O.S. § 888.

(E) Indecent exposure, indecent exhibitions, obscene material or child pornography, solicitation of minors 21 O.S. § 1021.

- (F) Procure, cause the participation of a minor in any child pornography, buys, or knowingly possesses, procures, manufactures, or causes to be sold or distributed child pornography 21 O.S. §§ 1021.2 and 1024.2
- (G) Commercial sale or distribution of pornography 21 O.S. § 1040.13.
- (H) Soliciting/offering sex with minor 21 O.S. § 1040.13a.
- (I) Offering or transporting one under 18 for sex 21 O.S. § 1087.
- (J) Child Prostitution - unlawful detainment in prostitution house 21 O.S. § 1088.
- (K) Lewd or indecent proposals to minor, sexual battery of minor 21 O.S. § 1123.

(3) Crimes involving drugs and/or alcohol.

Aggravated trafficking in subsection C of 63 O.S. § 2-415.

(4) Crimes involving threats, violence and/or harm to another individual.

- (A) Assault, battery, or assault and battery with a dangerous or deadly weapon or by other means likely to produce death or great bodily harm 21 O.S. §§ 645 and 652.
- (B) Aggravated assault and battery 21 O.S. § 646.
- (C) Aggravated assault and battery on a law officer 21 O.S. § 650.
- (D) Murder, first or second degree 21 O.S. §§ 701.7 and 701.8.
- (E) Manslaughter, first degree 21 O.S. § 711.
- (F) Kidnapping 21 O.S. § 741.
- (G) Extortionate kidnapping 21 O.S. § 745.
- (H) Child endangerment by permitting child abuse 21 O.S. § 852.1.
- (I) Rape by instrumentation and Rape, first or second degree 21 O.S. §§ 1111.1 and 1114.
- ~~(J) Mistreatment of a mental patient, as provided for in 21 O.S. § 843.1.~~
- ~~(K) Abuse of a vulnerable adult as defined in 43A O.S. § 10-103.~~
- ~~(L) A felony involving domestic assault, domestic assault and battery, or domestic abuse as defined in Section 644 of Title 21 of the Oklahoma Statutes.~~
- ~~(M) Poisoning with intent to kill, as provided for in Section 651 of Title 21 of the Oklahoma Statutes.~~

(5) Crimes involving harm to property.

- (A) Violation of Oklahoma Antiterrorism Act 21 O.S. §§ 1268 et seq.
- (B) Arson, first degree 21 O.S. § 1401.
- (C) Burglary, first degree 21 O.S. § 1431.

(e) Felony convictions that disqualify an individual from retaining licensure or becoming licensed as a nurse, or retaining certification or becoming certified as an AUA in Oklahoma if a conviction or plea of guilty or nolo contendere for which less than five (5) years has elapsed since the date of conviction, plea, or release from incarceration, whichever is later, include:

(1) Crimes involving fraud, theft, lying and/or falsification.

- (A) Falsely personating another to gain money or property 21 O.S. § 1532.
- (B) Identity theft 21 O.S. § 1533.1.

(2) Crimes involving sexual misconduct. Knowingly engaging in acts likely to spread Human Immunodeficiency Virus 21 O.S. § 1192.1.

(3) Crimes involving drugs and/or alcohol.

- (A) Causing, aiding, abetting minor to commit controlled dangerous substance crimes 21 O.S. § 856.1.
- (B) Drug trafficking 63 O.S. § 2-415.

(4) Crimes involving threats, violence and/or harm to another individual.

- (A) Aggravated assault and battery on medical personnel with firearm or other dangerous weapon 21 O.S. § 650.5.
- (B) Malicious intentional intimidation or harassment based on suspect classification 21 O.S. § 850.
- (C) Desertion - abandonment of child under ten 21 O.S. § 851.
- ~~(D) Rape in the second degree 21 O.S. § 1114.~~
- ~~(E) Mistreatment of a mental patient, as provided for in 21 O.S. § 843.1.~~
- ~~(F) Abuse of a vulnerable adult as defined in 43A O.S. § 10-103.~~
- ~~(G)(D)~~ Endangering or injuring a person during arson or attempt 21 O.S. § 1405.
- ~~(H)(E)~~ Failure to stop after fatal accident 47 O.S. § 10-102.1.
- ~~(I)(E)~~ Mingling poison, drugs, or sharp objects with food, drink 21 O.S. § 832.

(5) Crimes involving harm to property. Arson, second or third degree 21 O.S. §§ 1402, and 1403.

(f) To obtain a Determination of Eligibility pursuant to 59 O.S. § 4000.1(G-J), the required form shall be completed and filed with the Board. The fee for a Determination of Eligibility shall be \$95.00 and shall be submitted with the required form.

(g) The Executive Director is authorized to close a file requesting determination of eligibility when the person seeking determination of eligibility for licensure or certification has failed to respond to a written request from the Board for information, within sixty (60) days of the written request.

RULE IMPACT STATEMENT: Oklahoma Board of Nursing; OAC Title 485., Chapter 10. Licensure of Practical and Registered Nurses, Subchapter 8. Criminal Background Checks For Applicants For Licensure/Certification; Subchapter 10. Advanced Unlicensed Assistant; Subchapter 11. Disciplinary Action

- a. Description of the purpose of the proposed rule:
 - 485:10-11-4, through amended language, aligns Rules with State statutes regarding licensure or certification of individuals with criminal history.
 - 485:10-10-1 and 485:10-10-2, through amended language, correct an outdated statutory reference and the proper title name of AUAs, changing the title from advanced unlicensed assistive personnel to Advanced Unlicensed Assistant as has already occurred in other areas of this subchapter.
- b. Description of the classes of persons who most likely will be affected by the proposed rule, including classes that will bear the costs of the proposed rule, and any information on cost impacts received by the agency from any private or public entities:
 - Applicants for licensure and current licensees as an Advanced Practice Registered Nurse, Registered Nurse, Licensed Practical Nurse and/or Authorization for Prescriptive Authority or Authority to Order, Select, Obtain, and Administer Drugs, or as an Advanced Unlicensed Assistant. All individuals seeking to obtain a determination of their eligibility for nursing licensure or Advanced Unlicensed Assistant certification.
 - Applicants for certification as an Advanced Unlicensed Assistant.
- c. Description of classes of persons who will benefit from the proposed rule:
 - Ensures protection of the general public through nursing regulation and minimizes barriers to licensing and certification in a way that is consistent and in alignment with State statutes.
- d. Description of the probable economic impact of the proposed rule upon affected classes of persons or political subdivisions, including a listing of all fee changes and, whenever possible, a separate justification for each fee change.
 - There will be no economic impact on political subdivisions. There are no fee changes associated with the rules.
- e. Probable costs and benefits to the agency and to any other agency of the implementation and enforcement of the proposed rule, the source of revenue to be used for implementation and enforcement of the proposed rule, and any anticipated effect on state revenues, including a projected net loss or gain in such revenues if it can be projected by the agency.
 - There are no additional costs to the agency or any other agency because of the proposed rules, nor is there a projected net loss or gain.
- f. Determination of whether implementation of the proposed rule will have an economic impact on any political subdivisions or require their cooperation in implementing or enforcing the rule:

The implementation of the proposed rules will have no economic impact on a political subdivision or require cooperation in implementing or enforcing the rules.

- g. Determination of whether implementation of the proposed rule will have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

The proposed rules will have no adverse impact on small business.

- h. Explanation of the measures the agency has taken to minimize compliance costs and a determination of whether there are less costly or nonregulatory methods or less intrusive methods for achieving the purpose of the proposed rule:

The agency carefully considered the proposed rules to ensure there were no less costly, non-regulatory, or less intrusive methods to implement the statutory requirements and meet the agency's mission of protection of the public. It was determined that the proposed rules provide the most effective and fiscally responsible method for achieving the purpose.

- i. Determination of the effect of the proposed rule on the public health, safety, and environment and, if the proposed rule is designed to reduce significant risks to the public health, safety and environment, an explanation of the nature of the risk and to what extent the proposed rule will reduce the risk:

Ensures the agency's licensing and certification of individuals with criminal history are in alignment with State statutes which ultimately protects the public health and safety of those cared for by licensees and certificate holders.

- j. Determination of any detrimental effect on the public health, safety, and environment if the proposed rule is not implemented:

If the proposed rule is not implemented, the agency's licensing and certification rules will not be in alignment with State statutes which may ultimately jeopardize public health and safety of those cared for by licensees and certificate holders.

- k. Date the rule impact statement was prepared and if modified, the date modified:

Prepared: October 31, 2024