

**INITIAL RULE IMPACT STATEMENT**

**(This document may be revised based on comment received during the public comment period.)**

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

**1. DESCRIPTION:**

SB 654 was passed and became effective November 1, 2021. This bill changed the licensure renewal from annual to every three years. This changes the fee for licensure to (number of beds) x (\$10.00) x (3 years), which will vary from facility to facility.

**2. DESCRIPTION OF PERSONS AFFECTED AND COST IMPACT RESPONSE:**

The Continuum of Care and Assisted Living Centers are affected in that the cost has shifted from an annual basis to every three years. The cost of licensure did not change cumulatively. Over the duration of time, there is minimal to no impact of cost.

**3. DESCRIPTION OF PERSONS BENEFITING, VALUE OF BENEFIT AND EXPECTED HEALTH OUTCOMES:**

There are no expected health outcomes affiliated with the licensure renewal change. Continuum of Care and Assisted Living Centers will benefit from extended timeline in renewing their licenses. This will provide additional time for client care and focus on services provided.

**4. ECONOMIC IMPACT, COST OF COMPLIANCE, AND FEE CHANGES: COST OF COMPLIANCE AND FEE CHANGES**

This changes the fee for licensure to (number of beds) x (\$10.00) x (3 years), which will vary from facility to facility.

**5. COST AND BENEFITS OF IMPLEMENTATION AND ENFORCEMENT TO THE AGENCY:**

There will be administrative benefits over time, with the decreased frequency of licensure renewal for Continuum of Care and Assisted Living Centers.

**6. IMPACT ON POLITICAL SUBDIVISIONS:**

There will be no impact on political subdivisions.

**7. ADVERSE EFFECT ON SMALL BUSINESS:**

There is the possibility of an adverse effect to the cost of renewal initially being the sum of three years; with the expectation that the adverse effect may not be lasting.

**8. EFFORTS TO MINIMIZE COSTS OF THE RULE:**

There are no less costly means currently identified.

9. **EFFECT ON PUBLIC HEALTH AND SAFETY:**

No effect on public health and safety is projected.

10. **DETRIMENTAL EFFECTS ON PUBLIC HEALTH AND SAFETY WITHOUT ADOPTION:**

There are no detrimental effects on public health and safety.

11. **PREPARATION AND MODIFICATION DATES:**

This rule impact statement was prepared on November 30, 2021.

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

**RULEMAKING ACTION:**

Notice of proposed PERMANENT rulemaking

**PROPOSED RULES:**

Subchapter 3. Service and Care

310:663-3-5 [AMENDED]

Subchapter 21. Applying for a License

310:663-21-2 [AMENDED]

310:663-21-4 [AMENDED]

**SUMMARY:**

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

**AUTHORITY:**

Commissioner of Health; Title 63 O.S. § 1-104; Title 63 O.S. § 1-890.4

**COMMENT PERIOD:**

January 18, 2022 through the close of the Department's normal business hours, 5 PM, on February 18, 2022. Interested persons may informally discuss the proposed rules with the contact person identified below; or may, through the close of the Department's normal business hours, 5 PM, on February 18, 2022, submit written comment to the contact person identified below, or may, at the hearing, ask to present written or oral views.

**PUBLIC HEARING:**

Pursuant to 75 O.S. § 303(A), the public hearing for the proposed rulemaking in this chapter shall be on February 18, 2022 at the Oklahoma State Department of Health Auditorium, 123 Robert S. Kerr Avenue, Oklahoma City, Oklahoma 73102 from 9:30 AM to 12:30 PM. The meeting may adjourn earlier if all attendees who signed up to comment have completed giving their comments. The alternate date and time in the event of an office closure due to inclement weather is February 22, 2022 in the Auditorium, from 9:30 AM to 12:30 PM. Those wishing to present oral comments should be present at that time to register to speak. The hearing will close at the conclusion of those registering to speak. Interested persons may attend for the purpose of submitting data, views or concerns, orally or in writing, about the rule proposal described and summarized in this Notice. Validated parking will be provided for the parking lot located at the east corner of Broadway and Robert S. Kerr Avenue, subject to availability.

**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, on the increase in the level of direct costs such as fees, and indirect costs such as reporting, recordkeeping, equipment, construction, labor, professional services, revenue loss, or other costs expected to be incurred by a particular entity due to compliance with the proposed rule. Business entities may submit this information in writing through the close of the Department's normal business hours, 5 PM, on February 18, 2022, to the contact person identified below.

**COPIES OF PROPOSED RULES:**

The proposed rules may be obtained for review from the contact person identified below or via the agency website at [www.ok.gov/health](http://www.ok.gov/health).

**RULE IMPACT STATEMENT:**

Pursuant to 75 O.S., § 303(D), a rule impact statement is available through the contact person identified below or via the agency website at [www.ok.gov/health](http://www.ok.gov/health).

**CONTACT PERSON:**

Audrey C. Talley, Agency Rule Liaison, Oklahoma State Department of Health, 123 Robert S. Kerr Avenue, Oklahoma City, OK 73102, phone (405) 426-8563, e-mail [AudreyT@health.ok.gov](mailto:AudreyT@health.ok.gov).

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

**SUBCHAPTER 3. SERVICES AND CARE**

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

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

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

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

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

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

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

send a copy to the resident. The request shall state the reason for the termination of residency and attach a copy of the letter from the assisted living center.

(5) While waiting for the hearing, the assisted living center shall not terminate the residency agreement unless the termination is an emergency situation. If the resident relocates from the assisted living center but wants to be readmitted, the Department may proceed with the hearing and the assisted living center shall be required to readmit the resident if the discharge is found not to meet the requirements of OAC 310:663.

(6) The Department shall provide the Administrative Law Judge and the space for the hearing. The parties, including the resident and the assisted living center, may be represented by counsel or may represent themselves. Assisted living centers operating as a corporation or limited liability company shall be represented by counsel.

(7) The hearing shall be conducted at the Oklahoma State Department of Health building unless there is a request for the hearing to be held at the assisted living center or at another place. If the hearing is conducted at another location the parties are responsible for providing the hearing room. The Department shall maintain a record on the case in accordance with the Administrative Procedures Act.

(8) The hearing shall be conducted in accordance with the Administrative Procedures Act. The Administrative Law Judge's order shall include findings of fact, conclusions of law and an order as to whether or not the termination of the residency was according to law.

(9) If the Administrative Law Judge finds that the termination of residency was not according to law, the Department shall review, investigate and issue deficiencies as appropriate.

(10) If the termination of residency is according to law, the order shall give the assisted living center the right to terminate the residency agreement.

(11) The scope of the hearing may include:

- (A) Inadequate notice;
- (B) Discharge based on reason not stated in the law;
- (C) Sufficiency of the evidence to support the termination of residency; or
- (D) The finding of emergency.

(12) The Administrative Law Judge shall render a written decision within ten (10) Department business days of the close of the record.

(13) If the Administrative Law Judge sustains the decision of the assisted living center, the assisted living center may proceed with the termination of residency. If the Administrative Law Judge finds in favor of the resident, the assisted living center shall withdraw its notice of intent to terminate the residency agreement. The decision of the Administrative Law Judge shall be final and binding on all parties unless appealed in accordance with the provisions of the Administrative Procedures Act.

## **SUBCHAPTER 21. APPLYING FOR A LICENSE**

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

(a) The application for establishment of a continuum of care facility or assisted living center shall be filed at or before the time when the application for an initial license is filed. Provided, however, that an application for establishment is not required in conjunction with the transfer of ownership or operation of a facility or center that is currently licensed under the Act and OAC 310:663.

(b) The license application shall be filed in accordance with the following deadlines.

(1) The application for an initial license of a new continuum of care facility or assisted living center shall be filed at least thirty (30) days before beginning operations.

(2) The application for an initial license, following a transfer of ownership or operation, shall be filed at least thirty (30) days before the final transfer. In the case of the appointment of a receiver as operator, this thirty (30) day advance filing requirement may be waived if the Department finds that

an emergency exists which threatens the welfare of the residents. If an emergency is found to exist, the receiver shall file the license application before beginning operation of the assisted living center or continuum of care facility.

(3) The application for renewal of the license of an existing continuum of care facility or assisted living center, with no transfer of ownership or operation, shall be filed by the renewal date specified on the existing license. ~~Each initial license shall be effective for one hundred eighty (180) days from the issue date. The renewal license shall be issued for a period of twelve (12) months from the date of issue. Provided that licenses may be issued for a period of more than twelve (12) months, but not more than twenty four (24) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates to all months of the year.~~

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

### **310:663-21-4. Filing fees**

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

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

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

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