

## **Subchapter 15 - Temporary Manager Or Receiver**

### **310:675-15-1. Qualifications**

To be qualified as a temporary manager, any individual involved shall:

- (1) be at least twenty-one (21) years of age;
- (2) Meet the requirements for certificate of need as specified in 63 O.S. § 1-853 and in OAC 310:4-1-7.1;
- (3) have never been convicted of a felony that would have a bearing on the operation of a facility or any offense involving dishonesty or any crime as listed in 63 O.S. §1-1950.1;
- (4) have never been disciplined for misconduct by any licensing board or professional society in any state;
- (5) have no financial interest, either direct or through an immediate family member as detailed in OAC 310:675-15-2(a)(6), in the facility proposed to be managed;
- (6) have not served within the past two (2) years as a member of the staff or as an owner of the facility proposed to be managed, or as an employee of the owner of the facility proposed to be managed; and
- (7) be an Oklahoma licensed nursing home administrator or employ an Oklahoma licensed nursing home administrator.

[Source: Added at 13 Ok Reg 2511, eff 6-27-96; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-2. Temporary manager list**

(a) Any person may apply to be a qualified temporary manager by filing a written request with the Department. The request shall be made on a form published by the Department that shall require information sufficient to establish the person's or corporation's qualifications, including:

- (1) age of each person with a controlling interest;
- (2) education of each person with a controlling interest;
- (3) names and locations of facilities with which the person or corporation has been involved, dates of involvement and descriptions of responsibilities and duties and specific deficiencies which required significant corrections in a timely or emergency manner;
- (4) disclosure of any felony conviction of each person to work in the facility or be responsible for resident or facility funds, regardless of whether or not the person believes the conviction bears on the operation of a facility and submission of the results of a check, conducted no more than thirty (30) days prior to application, of criminal arrest records maintained by the Oklahoma State Bureau of Investigation;
- (5) disclosure of any disciplinary action against any person who will provide services to the facility by any licensing board or professional society in any state;
- (6) disclosure of any financial interest in any facility in Oklahoma on the part of the proposed manager or the manager's immediate family, including the manager's husband or wife, child or sibling, stepparent, stepchild, stepbrother or stepsister, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, grandparent or grandchild or of any other person who will provide services to the facility;
- (7) the Oklahoma nursing home administrator's license number of the manager or the nursing home administrator to be employed;
- (8) a list of any person who will work at a the facility along with their qualifications and information as listed above;
- (9) a statement of the expected involvement in the operation of the facility of each principal, including an estimate of the amount of time that will be spent by each principal at the facility and the services to be provided by you or your company as part of the temporary manager fee or as additional costs to the facility;

- (10) the basis on which the amount of the fee will be calculated;
  - (11) an attestation to the truthfulness of the information submitted; and
  - (12) the address, telephone number, fax number, and email address for contacting the temporary manager at all times.
- (b) Within thirty (30) days after receipt of the complete request, the Commissioner shall approve or deny the person's request to be included on the temporary manager list. The criteria for approval to serve as a temporary manager shall be:
- (1) Evaluation of the information submitted and the requirements of the temporary manager program as specified in OAC 310:675-15-1;
  - (2) If the applicant has operated a facility, the operational history of the applicant;
  - (3) If the applicant has served as a temporary manager anywhere in the United States, the operational history of any managership;
  - (4) The history of the applicant in complying with orders of the Department or Commissioner or those of other states or the federal government or a final order of a court of record.
- (c) The approval or denial of inclusion on the list of temporary managers is a discretionary function and does not create any rights to due process for the applicant.
- (d) The Commissioner shall specify the reasons the applicant is disqualified from managing any facility.
- (e) No former employee of the Department shall be eligible to serve as a temporary manager or be employed by a temporary manager until at least twelve (12) months has passed since the termination of that employment. The circumstances of that termination shall be considered in the review of the application.
- (f) No person who has been convicted of any crime listed in 63 O.S. §1-1950.1 shall be appointed as a temporary manager nor shall any such person be an employee of a temporary manager or work for the temporary manager in the service of the facility.
- (g) Placement of a person or corporation on the temporary manager list does not ensure that that entity will ever be appointed. Placement on the list of temporary managers does not create a right to appointment.
- [Source: Added at 13 Ok Reg 2511, eff 6-27-96; Amended at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-3. Power and duties of temporary manager**

- (a) The temporary manager shall have the power and duty to:
- (1) be oriented to the facility's conditions, including uncorrected deficiencies;
  - (2) hire, terminate, or reassign staff;
  - (3) obligate facility funds;
  - (4) alter facility procedures;
  - (5) manage the facility in order to correct deficiencies in the facility's operation;
  - (6) assure health and safety of the facility's residents while corrections are being made;
  - (7) oversee the facility's orderly closure, if necessary;
  - (8) maintain confidentiality of facility information; and
  - (9) Pay all usual and customary operating expenses incurred during the managership in an orderly business fashion.
- (b) A temporary manager shall not:
- (1) Commingle the funds of one facility with the funds of another;
  - (2) Loan the funds derived from the operation of the facility;
  - (3) Contract with any entity in which he has any ownership interest or in which he serves as an officer or director or in which a person related to him by blood or marriage has an ownership interest or in which the family member serves as an officer or director unless the Commissioner reviews and approves the contract as on common terms within the industry; or

- (4) Use a method of accounting other than the accrual method unless approved in advance in writing by the Commissioner. The temporary manager's use of any other accounting method not approved by the Commissioner is a material breach of the temporary manager's fiduciary duty.
- (c) The temporary manager shall report to the Commissioner on a monthly basis as specified in OAC 310:675-15-12. The report shall include at least the following:
- (1) Resident census and staffing levels at the facility during the last month;
  - (2) A statement of income and expenses during the last month using the accrual method of accounting, unless the Commissioner approves the use of another accounting method;
  - (3) A financial statement of the residents' trust funds;
  - (4) A list of all persons provided to the facility by the temporary manager and, if any were not included in the original application, current information as required in OAC 310:675-15-1;
  - (5) Any changes needed in the approved work plan; and
  - (6) The specific number of hours the temporary manager and each person employed by the temporary manager was in the facility and a list of the services provided to the facility.
- (d) The temporary manager shall provide a preliminary work plan to the Department within 5 business days of assuming control of the facility and a final plan within 14 days. The Department shall review the plan and make any recommended changes at the first status conference.
- (e) The temporary manager shall contract with the owner of the building and the licensee in which the facility is being operated. Those contract(s) shall be presented at the first status conference. The Department shall have the opportunity to evaluate the contract and make suggestions. The Commissioner must approve or reject the contract by the second status conference.
- (f) If immediate jeopardy exists in the facility, the first status conference shall be conducted on or before the fourteenth day of control by the temporary manager.
- (g) In using the accrual method of accounting, the temporary manager shall recognize revenue in the period earned whether actually received or not. Additionally, the temporary manager shall recognize expenses when incurred and matched with the related revenue of the period, whether such expenses are actually paid or not.
- [Source: Added at 13 Ok Reg 2511, eff 6-27-96; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

### **310:675-15-3.1. Advance of funds to temporary manager**

- (a) A temporary manager appointed by the Commissioner may request an advance of funds from the Department pursuant to 63 O.S. Supp. 2005 Section 1-1914.2(G) to assist in the continuation of care to facility residents if sufficient funds are not available from other sources. Continuation of care to facility residents may include closure of the facility and transfer of residents to another facility.
- (b) The temporary manager shall submit the request for an advance of funds to the Department on the form described in (c) of this section. The request shall include a demonstration to the Commissioner's satisfaction that funds are needed but not available from sources including but not limited to:
- (1) The facility's owner;
  - (2) Revenues due from residents and third-party payers, including Medicare and Medicaid revenues; and
  - (3) The facility's operating accounts.
- (c) The application form for request of funds shall require the following:
- (1) Documentation that the temporary manager has attempted to secure funds from other sources, including documentation showing that the temporary manager has made a funding request to the facility's owner;

- (2) Projections of the funds needed to support the facility's operations based on information reasonably available to the temporary manager such as the facility's financial records and/or cost reports filed with third-party payers;
  - (3) An affidavit to be completed by the temporary manager if the owner fails to provide funds to the temporary manager as required by order of the Commissioner; and
  - (4) A statement to be signed under oath by the temporary manager that the information provided in the application is true and complete.
- (d) Upon receipt of a completed application that demonstrates to the Commissioner's satisfaction the unavailability of sufficient funds from other sources, the Commissioner shall issue a written order with the following provisions:
- (1) Direction to the facility owner to respond to the Department in writing and to make funds available to the temporary manager within 48 hours of issuance of the order;
  - (2) Notice to the facility owner that the owner's failure to provide sufficient funds shall result in action against the owner under the Nursing Home Care Act to suspend, revoke, and/or refuse to issue or renew the facility's license, and to impose an administrative penalty;
  - (3) Notice to the facility owner of the provision in 63 O.S. Supp. Section 1-1914.2(G) that such advances by the Department if not repaid in full shall constitute a lien against any and all assets of the owner; and
  - (4) Direction to the temporary manager to advise the Department immediately if funds are provided as required by the facility owner, and/or to submit to the Department the completed and sworn form confirming that funds were not provided to the temporary manager as ordered in (f)(1) of this section.
- (e) If the Commissioner determines that the Department will advance funds to the temporary manager, the amount of funds advanced by the Department shall not exceed one month of projected operating expenses for the facility.
- (f) The temporary manager shall notify the Department within 24 hours after a change in the information presented in the application, including changes in the operating budget or in the availability of funds from other sources.
- (g) The advance of funds pursuant to this section is solely at the discretion of the Commissioner. The request may be denied for reasons including but not limited to the Commissioner's assessment that the Department does not have discretionary funds adequate to support the request, that other funding sources are available to the temporary manager, or that the funds are not needed to support operation of the facility. The temporary manager has no right to funds from the Department.

[Source: Added at 23 Ok Reg 2415, eff 6-25-06]

#### **310:675-15-4. Conditions for a temporary manager**

- (a) The owner of the building and the licensee of a facility which is placed under a temporary manager shall:
- (1) relinquish control of the facility and the building, equipment, food and supplies to the temporary manager which makes the temporary manager an agent of the licensee;
  - (2) not attempt to retain final authority to approve personnel changes or expenditures of facility funds; and
  - (3) give the temporary manager access to all facility financial accounts, including access to Medicare and Medicaid receipts and resident trust funds.
- (b) The owner of the building and the licensee shall contract with the temporary manager subject to the approval of the Department. The contract(s) shall include the method by which the temporary manager shall be paid for particular services, the use of facility funds by the temporary manager for the cost incurred for operation of the facility and payment to the building owner for use of the building as a usual cost of operation of a facility.

(c) Should an existing lease be cancelled by the owner of the building, the owner shall contract with the temporary manager for use of the facility on terms not to exceed the original lease.

(d) Should a licensee be unable to contract with the temporary manager, the owner of the building will be asked to contract with the temporary manager for operations of the facility. The licensee and any individual owners of the licensee remain responsible for any liability incurred in the operation of the facility. If the temporary manager cannot contract with the licensee or owner of the facility, the temporary manager shall move to close the facility following the procedures established otherwise in this Chapter.

[Source: Added at 13 Ok Reg 2511, eff 6-27-96; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-5. Notice of placing a temporary manager**

(a) Before placing a temporary manager in a facility, the Department shall give the owner of the building and the licensee, if different, advance written notice of intent as follows:

(1) fifteen (15) days notice if residents have experienced widespread actual harm but are not in immediate jeopardy; or

(2) two (2) days notice if residents are in immediate jeopardy; or

(3) two (2) days notice if the facility is operating without a license.

(b) If the Commissioner determines that conditions at a facility represent immediate jeopardy to residents and that the notice required in (a) of this section is likely to result in irreparable harm to residents, the Commissioner shall declare an emergency and appoint a temporary manager without prior notice to the owner of the building or the licensee. Upon appointing a temporary manager without prior notice, the Commissioner shall notify the owner of the building and the licensee of the right to a hearing as provided in 63 O.S. Section 1-1914.2(B) and (C).

(c) Written notice shall also be given to the Oklahoma Health Care Authority.

[Source: Added at 13 Ok Reg 2511, eff 6-27-96; Amended at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-6. Procedures for appointing qualified temporary managers**

(a) Prior to appointing a temporary manager, the Commissioner shall serve a written notice and request for information to be sent by facsimile or electronic mail to each qualified temporary manager, to include:

(1) A statement of the size, location and current occupancy of the facility, and a general statement of the anticipated justification for appointing a temporary manager;

(2) A request for confirmation of the temporary manager's current availability to accept appointment;

(3) A request for confirmation of the temporary manager's lack of financial interest in the facility, in other facilities operated by the same entity that operated the facility to be managed, or in any entity related to the entity that operated the facility to be managed; and

(4) A deadline for reply from each potential temporary manager.

(b) The potential temporary manager shall reply by the date and time specified on the notice and shall include all information requested in the notice. The Department may give short notice in the case of an emergency and the temporary manager may be required to take over a facility in less than 24 hours. This information shall be included in the notice of pending appointment.

(c) The decision of the Commissioner and Department to appoint a specific temporary manager is a discretionary decision and does not create any individual rights including the right to an administrative hearing or appeal of that decision.

[Source: Added at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-7. Criteria for appointment**

The Commissioner shall not appoint a temporary manager to a facility unless the Commissioner determines in writing that:

- (1) The temporary manager has submitted a complete application as required in OAC 310:675-15-2;
- (2) The temporary manager meets all qualifications required in OAC 310:675-15-1;
- (3) The temporary manager has the requisite resources to provide for the continued protection of the health and safety of all residents of the facility;
- (4) The temporary manager has not been given undue preference in the appointment, taking into consideration the length of time since the qualified temporary manager was last appointed relative to the appointments of other temporary managers; and
- (5) If the temporary manager is a corporation it has:
  - (A) Disclosed for all the persons with a controlling interest, officers and directors of the corporation in the application along with the information required for each individual in 310:15-1-1;
  - (B) Disclosed a list of all persons who will serve in the facility as part of the services provided by or through the temporary manager along with attestation that each person serving in the facility meets the qualification in 310:675-15-1(a)(1), (3), (4), (5) & (7) above; and
  - (C) Provided evidence of the experience of the corporation and the team in providing services to a facility in danger of decertification or loss of license.

[Source: Added at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-8. Procedures for appointment**

- (a) Prior to appointing a temporary manager the Department shall contact the Office of the Long Term Care Ombudsman to advise of the likely appointment, and to request information from that office concerning the temporary manager's record of involvement with the Ombudsman.
- (b) Failure of the Office of the Long Term Care Ombudsman to respond by the deadline shall not prohibit the Commissioner from appointing the temporary manager.
- (c) The Department shall comply with applicable requirements in 42 CFR Sections 488.410, 488.415 and 488.424 when appointing a temporary manager to correct deficiencies or remove an immediate jeopardy to resident health or safety in a facility pursuant to Title XVIII or XIX of the Social Security Act.

[Source: Added at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

### **310:675-15-9. Required findings**

The Commissioner shall not appoint a temporary manager to a facility unless the Commissioner determines in writing that:

- (1) The temporary manager has submitted a complete application as required in OAC 310:675-15-2;
- (2) The temporary manager meets all qualifications required in OAC 310:675-15-1 and 15-7; and
- (3) The temporary manager has the requisite resources to provide for the continued protection of the health and safety of all residents of the facility.

[Source: Added at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-10. Periodic review**

A potential temporary manager's qualification shall be effective for one year from the date of approval of the application to be listed as a qualified temporary manager. In order to be renewed for qualification, the potential temporary manager shall submit a new application for review and approval pursuant to OAC 310:675-15-2.

[Source: Added at 18 Ok Reg 2533, eff 6-25-01; Amended at 19 Ok Reg 524, eff 1-3-02 (emergency); Amended at 19 Ok Reg 2099, eff 6-27-02]

### **310:675-15-11. Bond**

(a) A temporary manager may be required to obtain a bond in the amount of up to \$100,000.00 or 150% of the average revenue of the facility for the last three full months before placement of the temporary manager, whichever is greater, as necessary to ensure that the assets relinquished by the facility to the temporary manager are used for the benefit of residents.

(b) A bond shall be posted upon appointment and payable to the Department.

(c) The requirement for the amount of the bond may be established and modified from time to time by the Commissioner based on the amount of revenue and other financial assets relinquished by the facility to the temporary manager.

[Source: Reserved at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

### **310:675-15-12. Monthly status conference**

(a) Whenever a temporary manager is appointed, the Commissioner shall establish a schedule for the submission and review of monthly reports. Each monthly report shall be filed in the Department by the temporary manager not later than 25 days following the end of each month. The temporary manager shall send a copy of each report to the licensee and owner of the facility.

(b) The temporary manager shall provide:

(1) All information to be submitted as specified in OAC 310:675-15-3.

(2) Progress report or amendments to a plan of correction for outstanding deficiencies or violations of the law;

(3) Any desired amendments to the management plan and reasons therefore;

(c) The Department shall present to the Commissioner, the temporary manager, and the licensee and owner:

(1) An independent report on the status of the facility based on a visit to the facility by a team sufficient to evaluate the current status.

(2) Recommendations on any changes to the management plan;

(d) The Commissioner may schedule hearings for presentations and decisions on differences between the Department and the Temporary Manager.

[Source: Added at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

### **310:675-15-13. Removal of the temporary manager**

(a) A temporary manager may be removed at the discretion of the Commissioner.

(b) A temporary manager shall be removed in the following situations:

(1) A conflict of interest arises which would have prohibited the initial appointment;

(2) Another facility owned or operated by the temporary manager has been given notice of potential termination or other enforcement action taken by the Department;

(3) The temporary manager has filed for bankruptcy protection for any business or personal operation during the pendency of the managership;

(4) Conviction of a crime as specified in 63 O.S. § 1-1950.1;

(5) Failure to comply with requirements of this subchapter; or

(6) *The facility is and will continue to be in substantial compliance with the Nursing Home Care Act [63:1-1914.2(L)(1)] and OAC 310:675.*

(c) A temporary manager shall be removed when the Department approves a new owner or operator.

(d) The temporary managership continues and the temporary manager remains responsible for facility funds until released by the Department after distribution of all assets held by the temporary manager.

[Source: Added at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02]

#### **310:675-15-14. Administrative penalties**

The Department may assess administrative penalties against a temporary manager for failure to follow the Nursing Home Care Act or this Chapter under the procedure used for all licensees unless the responsibility was that of the former operator.

[Source: Added at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02]

#### **310:675-15-15. License**

Upon the temporary manager's appointment, compliance with the bonding provisions of section 15-11 above, and submittal of a license application, the Department shall issue a license to the facility identifying the temporary manager. Such license shall not create any property rights with the temporary manager and shall terminate with termination of the managership.

[Source: Added at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

#### **310:675-15-16. Final accounting**

(a) Within 30 days of the end of a temporary managership for any reason, the temporary manager shall file a written final accounting with the Department. The temporary manager shall use the accrual method of accounting, unless the Commissioner finds good cause for the temporary manager to use another method of accounting. The accounting shall include all documents specified in the "Administrative Order Removing the Temporary Manager and Revoking the Conditional License" which is issued by the Commissioner of Health.

(b) No funds shall be paid to the former licensee, the owner of the building or the new licensee without the express consent of the Commissioner. The Commissioner shall issue an order for distribution of any excess operating revenue over expenses at the close of the managership.

(c) The temporary manager shall continue to report to the Department until released by the Commissioner.

[Source: Added at 19 Ok Reg 524, eff 1-3-02 (emergency); Added at 19 Ok Reg 2099, eff 6-27-02; Amended at 20 Ok Reg 2399, eff 7-11-03]

#### **310:675-15-17. Receiver**

(a) The Department may petition the court to place a facility under control of a receiver pursuant to 63:1-1930.2, instead of or in addition to appointing a temporary manager.

(b) Any person may submit a written request to the Department to be included as a receiver on the list maintained by the Department pursuant to 63 O.S. Section 1-1930.3. A person's inclusion on the receiver list shall not be represented as an approval or qualification by the Department to operate a facility. The list provided by the Department to the court may include information on the requirements for a facility license.

[Source: Added at 20 Ok Reg 2399, eff 7-11-03]

