

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2008

BY: PILGRIM of the HOUSE

and

HOBSON of the SENATE

(PUBLIC HEALTH AND SAFETY - CREATING THE HOME

CARE ACT -

EFFECTIVE DATE)

AUTHORS: Add the following Senate Coauthors: WILLIAMS (Penny),
CAIN and SHEDRICK

AMENDMENT NO. 1. Strike the stricken title, enacting clause and
entire bill and insert

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING
63 O.S. 1991, SECTION 1-1950.1, WHICH RELATES TO
CRIMINAL ARREST CHECKS; PROVIDING EXCEPTION TO
CERTAIN REQUIREMENT; CREATING THE HOME CARE ACT;
PROVIDING SHORT TITLE; DEFINING TERMS; PROHIBITING
CERTAIN ACTIONS; PROVIDING FOR CERTAIN
CERTIFICATION OF CERTAIN PERSONS; EXEMPTING CERTAIN
ENTITIES AND PERSONS FROM PROVISIONS OF THE ACT;
PROVIDING FOR POWERS AND DUTIES OF THE DEPARTMENT;
PROVIDING THAT CERTAIN HOME CARE AGENCIES NOT BE
SUBJECT TO INSPECTION OR EXAMINATION UNLESS UNDER
CERTAIN CIRCUMSTANCES; PROVIDING FOR PROCEDURES FOR
INVESTIGATION OF COMPLAINTS; REQUIRING PROMULGATION
OF CERTAIN RULES; PROVIDING FOR ISSUANCE AND
RENEWAL OF LICENSES AND CERTIFICATIONS; PROVIDING

FOR CERTAIN FEES; PROVIDING FOR ADMINISTRATIVE PENALTY; PROVIDING FOR CERTAIN ACTIONS IN A COURT OF COMPETENT JURISDICTION; PROHIBITING CERTAIN SERVICE; SUBJECTING CERTAIN RULES AND PROCEDURES TO THE ADMINISTRATIVE PROCEDURES ACT; CREATING THE HOME HEALTH ADVISORY BOARD; PROVIDING FOR MEMBERSHIP, THEIR METHOD OF APPOINTMENT AND TERMS; PROVIDING FOR CERTAIN STAFF SUPPORT AND MEETING SPACE; PROVIDING FOR OFFICERS AND MEETING TIMES; PROVIDING FOR POWERS AND DUTIES OF THE ADVISORY BOARD; PROVIDING FOR CODIFICATION; AND PROVIDING AN EFFECTIVE DATE.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-1950.1, is amended to read as follows:

Section 1-1950.1 A. For purposes of this section:

1. "Nurses aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Nontechnical Medical Care Program of the Oklahoma Department of Human Services;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
- b. an adult day care center as such term is defined in Section 1-872 of this title,
- c. a home health or home care agency, and
- d. the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers of the Nontechnical Medical Care Program;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency; and

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a nurses aide or other person to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal arrest check to be made on the nurses aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal arrest check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection D of this section, an employer is authorized to obtain any criminal arrest

records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The employer shall request the Bureau to conduct a criminal arrest check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Ten Dollars (\$10.00) to the Bureau for each criminal arrest check that is conducted pursuant to such a request.

4. The requirement of a criminal arrest check shall not apply to an offer of employment made to:

- a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title;
- b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts;
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act;
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act;
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act;
- f. a social worker licensed pursuant to the provisions of the Social Workers' Licensing Act;
- g. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act;
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act;
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act; or
- j. an individual who is to be employed by a nursing service conducted by and for the adherents of any

religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal arrest check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a nurses aide or other person pending the results of the criminal arrest check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with a person on a permanent basis until the results of the criminal arrest check are received.

2. An employer may accept a criminal arrest report less than one (1) year old of a person to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person.

D. 1. The Bureau shall not provide to the employer the criminal arrest records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person;
- b. any felony or misdemeanor classified as a crime against public decency or morality;
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act;
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I

through V drug pursuant to the Uniform Controlled Dangerous Substances Act; and

- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving a request to conduct a criminal arrest check, the Bureau shall complete the criminal arrest check and report the results of the check to the requesting employer.

E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal arrest record before making an offer of permanent employment or contract to a nurses aide or other person described in subsection B of this section.

F. 1. If the results of a criminal arrest check reveal that the subject person has been convicted of any of the following offenses, the employer shall not hire or contract with the person:

- a. assault, battery, or assault and battery with a dangerous weapon;
- b. aggravated assault and battery;
- c. murder or attempted murder;
- d. manslaughter, except involuntary manslaughter;
- e. rape, incest or sodomy;
- f. indecent exposure and indecent exhibition;
- g. pandering;
- h. child abuse;
- i. abuse, neglect or financial exploitation of any person entrusted to his care or possession;
- j. burglary in the first or second degree;
- k. robbery in the first or second degree;
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm;

- m. arson in the first or second degree;
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;
- o. grand larceny; or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal arrest check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract; provided, however, this requirement shall not apply to an employee or contract provider who has completed the requirements for certification and placement on the nurse aide registry and who was employed prior to January 1, 1992.

G. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

H. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

I. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

J. As part of the inspections required by the Nursing Home Care Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility or home required to obtain criminal records to ensure such facilities or homes are in compliance with the provisions of this section.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1960 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Home Care Act".

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1961 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Home Care Act:

1. "Board" means the State Board of Health;
2. "Certification" means verification of appropriate training and competence for the provision of personal care;
3. "Department" means the State Department of Health;
4. "Home care agency" means any sole proprietorship, partnership, association, corporation or other organization which administers, offers or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence;
5. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;
6. "Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee;

7. "Personal care" means assistance with dressing, bathing, ambulation, exercise or other personal needs; and

8. "Skilled care" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this state, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1962 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. On and after July 1, 1993, no home care agency as such term is defined by this act shall operate without first obtaining a license as required by the Home Care Act.

B. On and after July 1, 1993:

1. No employer or contractor, except as otherwise provided by this subsection, shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the State Department of Health; and

2. a. Any person in the employment of a home care agency as a home health aide on June 30, 1992, with continuous employment through June 30, 1993, shall be granted home health aide certification by the Department on July 1, 1993. The home care agency shall maintain responsibility for assurance of specific competencies of the home health aide and shall only assign the home health aide to tasks for which the aide has been determined to be competent.

b. Any home health aide employed between the dates of July 1, 1992, and June 30, 1993, shall be eligible for

certification by passing a competency evaluation and testing as required by the Department.

- c. Any home health aide employed on and after July 1, 1993, shall complete any specified training, competency evaluation and testing required by the Department.

C. The provisions of the Home Care Act shall not apply to:

- 1. A person acting alone who provides services in the home of a relative, neighbor or friend;
- 2. A person who provides maid services only;
- 3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;
- 4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act; or
- 5. A nurse-midwife.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1963 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall have the power and duty to:

- 1. Issue, renew, deny, modify, suspend and revoke licenses and deny renewal of licenses for agencies, and issue, renew, deny, modify, suspend and revoke certificates and deny renewal of certificates for home health aides pursuant to the provisions of the Home Care Act;
- 2. Establish and enforce qualifications, standards and requirements for licensure of home care agencies and certification of home health aides;
- 3. Issue or renew a license to establish or operate a home care agency if the Department determines that the agency meets the

requirements of or is accredited or certified by one of the following accrediting or certifying organizations or programs. In addition, the accredited home care agency through this paragraph will not be subject to an inspection or examination by the Department unless necessary to investigate complaints under subsection B of this section:

- a. Title XVIII or XIX of the federal Social Security Act,
- b. the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO), or
- c. the Community Health Accreditation Program of the National League for Nursing (CHAP);

4. Establish and maintain a registry of certified home health aides;

5. Enter any home care agency when reasonably necessary for the sole purpose of inspecting and investigating conditions of the agency for compliance with the provisions of the Home Care Act, or compliance with the standards and requirements for licensure or certification developed by the Department pursuant to the provisions of the Home Care Act;

6. Establish administrative penalties for violations of the provisions of the Home Care Act; and

7. Exercise all incidental powers as necessary and proper for the administration of the Home Care Act.

B. 1. The State Board of Health shall promulgate rules necessary for the investigation and hearing of complaints regarding a home care agency or home health aide.

2. The Department shall establish procedures for receipt and investigation of complaints regarding a home care agency or home health aide.

3. A complaint regarding a home care agency or home health aide shall not be made public unless a completed investigation substantiates the violations alleged in the complaint.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1964 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Board of Health shall promulgate rules necessary for the accomplishment of the purposes of the Home Care Act, including but not limited to:

1. Minimum standards for home care services. In establishing such standards, the Board shall consider those standards adopted by the Oklahoma Association for Home Care and national home care associations;

2. Requirements for the certification and continued certification of home health aides;

3. Provisions for transfer of ownership of a licensed agency; and

4. Provisions for each licensed agency to create and to disclose to its clients a statement of clients' rights and responsibilities.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1965 of Title 63, unless there is created a duplication in numbering, reads as follows:

An application for a license, or renewal thereof, to establish or operate a home care agency shall be accompanied by a nonrefundable licensing fee in an amount not exceeding Fifty Dollars (\$50.00). Upon payment of the required licensing fee, an initial license may be issued for not less than six (6) months nor more than eighteen (18) months from the date of issuance and may be renewed annually thereafter for a fee not to exceed Fifty Dollars (\$50.00).

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1966 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any home care agency or home health aide covered by the Home Care Act that has been determined by the State Department of Health to have violated any provision of the Home Care Act or any rule promulgated thereto may be liable for an administrative penalty of not more than One Hundred Dollars (\$100.00) per violation for each day on which a violation occurs or continues. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1967 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Home Care Act or any rule promulgated pursuant to the provisions of the Home Care Act. Said court shall have jurisdiction to determine said action, and to grant the necessary or appropriate relief, including but not limited to mandatory or prohibitive injunctive relief or interim equitable relief.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1968 of Title 63, unless there is created a duplication in numbering, reads as follows:

No agency, employee of any agency, or home health aide shall serve as the guardian of a client unless such home care provider is related to the client by blood or marriage and is otherwise eligible to serve as a guardian.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1969 of Title 63, unless there is created a duplication in numbering, reads as follows:

The provisions of the Administrative Procedures Act shall apply to all administrative rules and procedures of the State Board of Health promulgated pursuant to the Home Care Act.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1970 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created a Home Health Advisory Board which shall be composed of seven (7) members as follows:

1. One member who shall be a family practice physician or general practitioner of the medical professions licensed pursuant to the laws of this state and with a practice which includes home health service;

2. One member who shall be a registered nurse licensed pursuant to the laws of this state and whose practice includes home health services;

3. Two members who shall be administrators of home health agencies which shall, subsequent to the effective date of this act and its regulation, be licensed pursuant to this act; and

4. Three members who shall represent the general public and who shall, within twenty-four (24) months of their appointment, be consumers of home health services for themselves or for family members within the third degree of consanguinity.

B. The members of the Home Health Advisory Board shall be appointed by the Commissioner of Health from a list of names submitted to the Commissioner by any statewide organization comprised exclusively of home care agencies. The lists submitted to the Commissioner shall contain a number of names equal to twice the number of positions to be appointed for each required membership category on the Home Health Advisory Board. Each member shall be appointed for a term of three (3) years except that the initial appointment of the physician and one administrator shall be for one (1) year and the initial appointment of one administrator and one

consumer shall be for two (2) years. Vacancies shall be filled in like manner.

C. The State Department of Health shall provide professional and clerical staff to perform the designated duties of the Home Health Advisory Board. The Department shall also provide meeting space for the Advisory Board.

D. The Advisory Board shall annually elect from among its membership a chairman. The Home Health Advisory Board shall meet at least quarterly and at such other times as necessary. The members shall serve without compensation but may be reimbursed for expenses by the Department pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

E. The Home Health Advisory Board shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to patients of home health agencies;

2. Review and make recommendations to the State Board of Health regarding rules promulgated by the Board and standards promulgated by the Department;

3. Approve, in its advisory capacity, rules and standards promulgated by the Board and the Department; and

4. Evaluate and review the standards, practices and procedures of the Department regarding the administration and enforcement of the provisions of this act.

SECTION 13. This act shall become effective September 1, 1992."

Passed the Senate the 20th day of April, 1992.

President of the Senate

Passed the House of Representatives the ____ day of
_____, 1992.

Speaker of the House of
Representatives