

STATE OF OKLAHOMA

1st Session of the 43rd Legislature (1991)

HOUSE BILL NO. 1616

BY: BENSON

AS INTRODUCED

AN ACT RELATING TO PUBLIC HEALTH AND SAFETY; AMENDING  
63 O.S. 1981, SECTION 1-1902, AS LAST AMENDED BY  
SECTION 17, CHAPTER 337, O.S.L. 1990, 1-1903, AS  
LAST AMENDED BY SECTION 23, CHAPTER 98, O.S.L.  
1987, 1-1904, AS AMENDED BY SECTION 25, CHAPTER 98,  
O.S.L. 1987, 1-1905, 1-1906, AS AMENDED BY SECTION  
26, CHAPTER 98, O.S.L. 1987, 1-1911, AS LAST  
AMENDED BY SECTION 21, CHAPTER 98, O.S.L. 1987, 1-  
1912, 1-1915, 1-1918, AS AMENDED BY SECTION 1,  
CHAPTER 171, O.S.L. 1982, 1-1931, 1-1932, AND  
SECTION 30 AND 31, CHAPTER 227, O.S.L. 1989 (63  
O.S. SUPP. 1990, SECTION 1-1902, 1-1903, 1-1904, 1-  
1906, 1-1911, 1-1916.1, 1-1916.2 AND 1-1918), WHICH  
RELATE TO THE NURSING HOME CARE ACT; DELETING  
CERTAIN DEFINITION; CLARIFYING LANGUAGE; MODIFYING  
INFORMATION REQUIRED; PROVIDING FOR INITIAL  
LICENSES; ADDING TO AND MODIFYING PENALTIES;  
MODIFYING APPLICATION AND LICENSING PROCEDURES;  
MODIFYING REASONS FOR DENYING A LICENSE; MODIFYING  
INSPECTION PROCEDURES AND CERTAIN REPORTING  
REQUIREMENTS; MODIFYING BASIS FOR PENALTY  
ASSESSMENT; ADDING TO, MODIFYING AND CLARIFYING  
CERTAIN RIGHTS AND RESPONSIBILITIES; PROVIDING FOR  
APPOINTMENT OF TEMPORARY MANAGER, RECEIVER OR

MONITOR AND MODIFICATION OF THEIR DUTIES; ADDING TO  
AND MODIFYING REASONS FOR CERTAIN APPOINTMENTS;  
ADDING TO POWERS AND DUTIES OF DEPARTMENT OF  
HEALTH; MODIFYING POWERS OF CERTAIN COURTS;  
PROVIDING FOR DEPOSIT OF CERTAIN FUNDS; REPEALING  
63 O.S. 1981, SECTION 1-1907 AND 1-1913, WHICH  
RELATE TO CERTAIN STATEMENT OF OWNERSHIP AND  
CERTAIN MONTHLY LISTS; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 63 O.S. 1981, Section 1-1902, as last amended by Section 17, Chapter 337, O.S.L. 1990 (63 O.S. Supp. 1990, Section 1-1902), is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act:

1. "Abuse" means any intentional physical or mental injury or sexual assault inflicted on a resident of a facility by any person;
2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when invited to do so by a resident. The state or local "ombudsman", as that term is defined by the Special Unit on Aging of the Department of Human Services pursuant to the Older Americans' Act, as amended, and a case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies shall have right of access to enter a facility, communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate privately and without restriction with any resident and to observe all areas of the facility that directly pertain to the patient care of the resident without infringing upon the privacy of the other residents without first obtaining their consent;

3. "Administrator" means the person licensed by the State of Oklahoma who is in charge of a facility and who devotes at least one-third (1/3) of his full working time to on-the-job supervision of such facility, provided that this requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or less beds (ICF-MR/16), provided said ICF-MR/16 facility or facilities are physically located on one campus owned and operated by an organization or institution that has a qualified administrator and each ICF-MR/16 facility shall be supervised by a qualified mental retardation professional;

4. "Advisory Board" means the Long-Term Care Advisory Board;

5. "Board" means State Board of Health;

6. "Commissioner" means Commissioner of Health;

7. "Department" means the State Department of Health;

8. "Facility" means a nursing facility and a specialized home.

The term shall not include a residential care home;

9. "Nursing facility" means a home, an establishment or an institution a distinct part thereof which is primarily engaged in providing:

- a. skilled nursing care and related services for residents who require medical or nursing care,
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
- c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home which can be made available to them only through a nursing facility;

10. "Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of

persons requiring such services, including but not limited to a facility providing health or habilitation services for mentally retarded or developmentally disabled persons;

11. "Residential care home" means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act other than a hotel, motel, fraternity or sorority house, or college or university dormitory which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require nursing care; provided, residential care home shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory providing such facility operates in a manner customary to its description and does not house three or more persons who require supportive assistance from said facility in order to meet an adequate level of daily living;

12. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by the Department pursuant to the provisions of the Nursing Home Care Act;

13. "Maintenance" means meals, shelter, and laundry services;

14. "Neglect" means a failure to provide adequate medical or personal care or maintenance, which results in physical or mental injury to a resident;

15. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the facility;

16. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general

supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person, whether or not a guardian has been appointed for such person;

17. "Resident" means a person residing in a facility due to illness, physical or mental infirmity, or advanced age;

18. "Representative of a resident" means a court-appointed guardian, or if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident. Provided that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, ~~Section 1-1902 et seq. of this title,~~ the Residential Home Care Act, ~~Section 1-819 et seq. of this title,~~ or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act, ~~Section 1-818.1 et seq. of this title,~~ shall not be appointed guardian or limited guardian of a resident of such facility unless said owner, operator, administrator or employee is the spouse of said resident, or a relative of said resident within the second degree of consanguinity and is otherwise eligible for appointment; and

19. "Supportive assistance" means the service rendered to any person which is less than the service provided by a nursing facility but which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution, and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. Supportive assistance shall not include medical service; ~~and~~

~~20. "Transfer" means a change in location of living arrangements of a resident from one facility to another facility.~~

SECTION 2. AMENDATORY 63 O.S. 1981, Section 1-1903, as last amended by Section 23, Chapter 98, O.S.L. 1987 (63 O.S. Supp. 1990, Section 1-1903), is amended to read as follows:

Section 1-1903. A. No person shall establish, operate, or maintain in this state any facility without first obtaining a license as required by the Nursing Home Care Act.

B. The Nursing Home Care Act shall not apply to residential care homes or to hotels, motels, boarding houses or rooming houses, or other places that furnish board or room to their residents. The Nursing Home Care Act shall not apply to Oklahoma State Veterans Centers and such other facilities which are under control of the Oklahoma War Veterans Commission.

C. The Nursing Home Care Act shall not authorize any person to engage in any manner in the practice of the healing arts or the practice of medicine, as defined by law.

D. The Nursing Home Care Act shall not apply to a facility which is not charging or receiving periodic compensation for services rendered, ~~or~~ and not receiving any county, state, or federal assistance.

SECTION 3. AMENDATORY 63 O.S. 1981, Section 1-1904, as amended by Section 25, Chapter 98, O.S.L. 1987 (63 O.S. Supp. 1990, Section 1-1904), is amended to read as follows:

Section 1-1904. A. The Department shall establish a comprehensive system of licensure and certification for facilities in accordance with this act for the purposes of:

1. Protecting the health, welfare and safety of residents; and
2. Assuring the accountability for reimbursed care provided in certified facilities participating in a federal or state health program as provided by or through the Department of Human Services.

B. The licensing and certification procedures and standards provided in this act, or by rules and regulations of the Department,

shall be no less than provided in statute and rules currently governing nursing homes.

C. It shall be unlawful for any person to operate or open a facility as defined in this act unless such operation shall have been approved and regularly licensed as hereinafter provided.

D. Before a an initial license shall be issued under this act to operate a facility the following shall be provided before an application is approved and a license issued:

1. An application shall be under oath and shall contain, at a minimum, the following information:

- a. The name and address of the applicant, if an individual, and that he is not less than twenty-one (21) years of age, of reputable and responsible character, and in sound physical and mental health; and if a firm, partnership, or association, of every member thereof; and in the case of a corporation, the name and address thereof and of its officers and its registered agent and like evidence for officers, as submitted for an individual,
- b. The name and location of the facility for which a license is sought,
- c. The name and address of the person or persons under whose management or supervision the facility will be conducted,
- d. The name and address of any other person holding an interest of at least five percent (5%) in the ownership, operation or management of the facility,
- e. The number and type of residents for which maintenance, personal care, specialized or nursing ~~is~~ facility services are to be provided, and
- ~~e.~~ f. A projected staffing pattern for providing patient care;

2. Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance;

3. The Commissioner shall determine that the administrator of a facility other than a residential care home is the holder of a current license as a Nursing Home Administrator issued by the State Board of Nursing Homes; and

4. That the individual applicant, or the corporation, partnership or other entity, if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a, suspension, receivership, administrative penalties, or any other penalty against its license during the previous five (5) years.

SECTION 4. AMENDATORY 63 O.S. 1981, Section 1-1905, is amended to read as follows:

Section 1-1905. A. An application for a license, or renewal thereof, to operate a facility shall be accompanied by a fee of Twenty-five Dollars (\$25.00) ~~for each calendar year, or a lesser amount based upon the number of months to be used if the Commissioner determines the same to be just in any particular case. No such fee shall be refunded unless licensure is refused. All licenses shall be for a period of twelve (12) months from the date of issue. 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 act in order to permit an equitable distribution of license expiration dates to all months of the year. Fees for the extended licensure period shall be prorated according to the total months to be~~

~~licensed with the amounts to be calculated to the nearest dollar.~~

All licenses shall be on a form prescribed by the Commissioner, which shall include, but not be limited to, the maximum bed capacity for which it is granted, and the date the license was issued ~~and the expiration date and.~~ The license:

1. shall not be transferable or assignable, i

2. shall be posted in a conspicuous place on the licensed premises, i

3. shall be issued only for the premises named in the application, i and

4. may be renewed for twelve-month periods not to exceed fifteen (15) months established by the Commissioner upon application, inspection and payment of the license fee, as in the procurement of the original license.

B. The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the Department of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this act arising out of the notice of violation.

C. ~~1. Whenever ownership of a facility is transferred from the person named in the license to another person who does not have a current facility license for another facility, the transferee must obtain a new probationary license which license shall be for a period of one hundred eighty (180) days. The~~ When transfer of ownership or operation of a facility is proposed, the transferee shall notify the Department of the transfer and apply for a new license at least thirty (30) days prior to final transfer;

~~2. The transferor shall notify the Department at least thirty (30) days prior to final transfer.~~ The transferor shall remain responsible for the operation of the facility until such time as a license is issued to the transferee;

3. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction as provided in this act; and

4. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

SECTION 5. AMENDATORY 63 O.S. 1981, Section 1-1906, as amended by Section 26, Chapter 98, O.S.L. 1987 (63 O.S. Supp. 1990, Section 1-1906), is amended to read as follows:

Section 1-1906. A. ~~1.~~ The Commissioner shall issue and renew licenses for the operation of facilities which are found to comply with the provisions of this act, and standards, rules and regulations of the Board.

~~2. At least one hundred twenty (120) days but not more than one hundred fifty (150) days prior to license expiration, the licensee shall submit an application for renewal of the license in such form and containing such information as the Department requires. If the application is approved, the license shall be renewed for an additional one-year period. If the application for renewal is not timely filed, the Department shall so inform the licensee.~~

B. ~~If the applicant has not been previously licensed or if the facility is not in operation at the time application is made, For~~ any new facility or for any facility which has undergone a transfer of ownership or operation the Department shall issue only a ~~probationary~~ an initial license. ~~A probationary~~ An initial license shall be valid for ~~one hundred twenty (120)~~ one hundred eighty (180) days unless sooner suspended or revoked under this act. ~~Within~~ Prior ~~thirty (30) days prior~~ to the termination of a ~~probationary~~ an

initial license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under this act. If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the initial license may be ~~renewed~~ extended once for a period not to exceed one hundred twenty (120) days from the expiration date of the initial ~~probationary~~ license.

C. An application for a license may be denied for any of the following reasons:

1. Failure to meet any of the minimum standards set forth by this act or by rules and regulations promulgated by the Department under this act;

2. Conviction of the applicant, or of any member of an applicant that is a firm, partnership or association or, if a corporation, the conviction of the corporation or any of its officers or a majority stockholder, or of a person designated to manage or supervise a facility, of a felony, meaning a crime that would have a bearing on the operation of a nursing home, the conviction to be shown by a certified copy of the record of the court of conviction, if the Department determines, after investigation, that such applicant has not been sufficiently rehabilitated to warrant the public trust, or other satisfactory evidence that the moral character of the applicant, or administrator, or manager, or supervisor of the facility is not reputable;

3. Personnel insufficient in number or unqualified by training or experience properly to care for the proposed number and type of residents ~~to be determined by standards set by the Department of Human Services for its Medicaid program;~~ or

4. Insufficient financial or other resources that would render a facility incapable of providing adequate patient care.

D. Immediately upon the denial of any application or reapplication for a license under this act, the Department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing. If the applicant desires to contest the denial of a license, it shall provide written notice to the Department of a request for a hearing within ten (10) days after receipt of the notice of denial and the Department shall commence the hearing.

E. The Commissioner may suspend or revoke a license on any of the following grounds:

1. Violation of any of the provisions of this act or the rules, regulations and standards issued pursuant thereto;

2. Permitting, aiding or abetting the commission of any illegal act in a licensed facility; or

3. Conduct of practices deemed by the Commissioner to be detrimental to the welfare of the patients or residents of a facility.

F. 1. The Department, after notice to the applicant or licensee, may suspend, revoke ~~or~~, refuse to renew a license or assess administrative penalties in any case in which the Department finds that there has been a substantial failure to comply with this act or the rules and regulations promulgated by the Department under this act;

2. Notice under this section shall include a clear and concise statement of the violations on which the nonrenewal ~~or~~, revocation or administrative penalty is based, the statute or rule violated and notice of the opportunity for a hearing;

3. If a facility desires to contest the nonrenewal or revocation of a license or the assessment of administrative penalties, the facility shall, within ten (10) days after receipt of notice under paragraph 2 of this section, notify the Commissioner in

writing of its request for a hearing. Upon receipt of the request the Commissioner shall send notice to the facility and hold a hearing;

4. The effective date of nonrenewal or revocation of a license by the Commissioner shall be any of the following:

- a. until otherwise ordered by the district court, revocation is effective on the date set by the Commissioner in the notice of revocation, or upon final action after hearing, whichever is later,
- b. until otherwise ordered by the district court, nonrenewal is effective on the date of expiration of any existing license, or upon final action after hearing, whichever is later, or
- c. the Department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of residents.

G. A new application, following revocation, shall be considered by the Commissioner on receipt of evidence that the conditions upon which revocation was based have been corrected; and a new license may then be granted after proper inspection has been made and all provisions of this act have been complied with, and the rules, regulations and standards of the Board have been satisfied.

SECTION 6. AMENDATORY 63 O.S. 1981, Section 1-1911, as last amended by Section 24, Chapter 98, O.S.L. 1987 (63 O.S. Supp. 1990, Section 1-1911), is amended to read as follows:

Section 1-1911. A. Every building, institution, or establishment for which a license has been issued shall be periodically inspected by a duly appointed representative of the Commissioner, pursuant to rules and regulations adopted by the Board with the advice and counsel of the Long-Term Care Facility Advisory Board created pursuant to the provisions of Section 1-1923 of this

title. Inspection reports shall be prepared on forms prescribed by the Commissioner with the advice and counsel of the Advisory Board.

Facilities licensed pursuant to the provisions of the Nursing Home Care Act shall not be exempt from being inspected or licensed pursuant to the laws of this state relating to hotels, restaurants, lodging houses, boarding houses, and places of refreshment.

Inspections of residential care homes shall be conducted in accordance with the standards established by the Commissioner pursuant to the provisions of the Residential Care Act.

B. The Department, whenever it deems necessary, ~~but not less than annually,~~ shall inspect, survey, and evaluate every facility to determine compliance with applicable licensure and certification requirements and standards. ~~The annual inspection shall occur within one hundred twenty (120) days prior to license renewal.~~ All inspections of facilities shall be unannounced. The Department may have as many unannounced inspections as it deems necessary. The Department may periodically visit a facility for the purpose of consultation. An inspection, survey, or evaluation, other than an inspection of financial records, shall be conducted without prior notice to the facility. One person shall be invited from a statewide organization of the elderly by the Department to act as a citizen observer in an unannounced inspection; the individual may be a state or local ombudsman as defined by the Special Unit on Aging established by the Department of Human Services acting pursuant to the provisions of the Older Americans Act of 1965, Public Law No. 89-73, as amended. The citizen observer shall receive expenses as provided for in the State Travel Reimbursement Act. An employee of a state or unit of a local government agency charged with inspecting, surveying, and evaluating facilities who aids, abets, assists, conceals, or conspires with a facility administrator or employee in violation of the provisions of the Nursing Home Care Act

shall be guilty of a misdemeanor and shall be subject to dismissal from employment.

C. The Department shall hold open meetings at least once every four (4) years in each of the licensed facilities to advise and to facilitate communication and cooperation between facility personnel and the residents of facilities in their mutual efforts to improve patient care. Administrators, employees of the facility, residents, residents' relatives, friends, residents' representatives, employees from appropriate state and federal agencies shall be encouraged to attend these meetings to contribute to this process.

D. The Department shall require periodic reports and shall have access to books, records, and other documents maintained by the facility to the extent necessary to implement the provisions of the Nursing Home Care Act and the rules promulgated pursuant to said provisions.

Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect the facility in accordance with the provisions of the Nursing Home Care Act. Refusal to permit said entry or inspection, except for good cause, shall constitute grounds for denial, nonrenewal, or revocation of a license as provided in the provisions of the Nursing Home Care Act.

~~E. The Department shall make at least one annual report on each facility in the state. All conditions and practices not in compliance with applicable standards within the year for which the report is made shall be specifically stated. If a violation is corrected or is subject to an approved plan of correction, such action shall be specified in the annual report. Upon receiving a written request for a copy of the annual report, the Department shall send a copy of the report to any person making the written request. The Department may charge a reasonable fee for copying costs.~~

SECTION 7. AMENDATORY 63 O.S. 1981, Section 1-1912, is amended to read as follows:

Section 1-1912. If upon inspection or investigation, the Department determines that a facility is in violation of this act or of any rule promulgated thereunder, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision or rule alleged to have been violated. The notice shall inform the licensee of any action the Department intends to take including the requirement of a facility plan of correction, ~~placement of the facility on a list~~ imposition of administrative penalties, placement of a monitor, temporary manager or receiver in the facility, a conditional license, or license suspension or revocation. The Department shall also inform the licensee of rights to a hearing.

SECTION 8. AMENDATORY 63 O.S. 1981, Section 1-1915, is amended to read as follows:

Section 1-1915. A. In addition the Department may issue a conditional license to any facility if the Department finds that a violation exists in such facility. The issuance of a conditional license shall revoke any license held by the facility.

B. Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent full licensure and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction. In the alternative or in addition to a conditional license, the Commissioner may direct the Department of Human Services to withhold vendor payments due to a facility under its programs until such time as the corrections are made or a plan of correction for all deficiencies is approved by the Department.

C. Written notice of the decision to issue a conditional license shall be sent to the facility together with the proposed plan of correction. The notice shall inform the facility of its right to an informal conference prior to issuance of the conditional license and its right to a full hearing.

D. If the facility desires to have an informal conference it shall, within four (4) working days of receipt of notice send a written request for an informal conference to the Department. The Department shall, within four (4) working days from the receipt of the request, hold an informal conference. Following the conference, the Department may affirm or overrule its previous decision, or modify the terms of the conditional license and plan of correction. The conditional license may be issued after the informal conference or after the time for requesting an informal conference has expired, prior to any further hearing.

E. If after the informal conference the facility desires to contest the basis for issuance of a conditional license, or the terms of the license or plan of correction, the facility shall send a written request for hearing to the Department ~~within ten (10) days after issuance of the conditional license and the Department shall then hold the hearing~~ pursuant to the provisions of Section 1-1912 of this title.

F. A conditional license shall be issued for a period specified by the Department, but in no event for more than one (1) year. The Department shall periodically, but not less than semi-annually, inspect any facility operating under a conditional license. If the Department finds substantial failure by the facility to follow the plan of correction, the conditional license may be revoked.

G. If the Department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the Department shall so notify the licensee at least thirty (30) days prior to expiration of the

license. The licensee is entitled to a hearing if requested prior to expiration of the conditional license pursuant to the provisions of Section 1-1912 of this title.

SECTION 9. AMENDATORY Section 30, Chapter 227, O.S.L. 1989 (63 O.S. Supp. 1990, Section 1-1916.1), is amended to read as follows:

Section 1-1916.1 A. Any person who has been determined by the State Department of Health to have violated any provision of the Nursing Home Care Act or any rule, regulation or order issued pursuant to the provisions of the Nursing Home Care Act may be liable for an administrative penalty of not more than One Hundred Dollars (\$100.00) for each day that said violation continues. The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Department ~~pursuant to the provisions of subsection A of this section, after notice and hearing~~ within ten (10) days of the inspection documenting the violation, the facility may appeal this decision as any other order of the Department. In determining the amount of the penalty, the Department shall include but not be limited to consideration of the nature, circumstances and gravity of the violation, the repetitive nature of the violation at this facility or others operated by the same entity, the previous degree of difficulty in obtaining compliance with the rules, and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of the Nursing Home Care Act.

C. Any license holder may elect to surrender his license in lieu of said fine but shall be forever barred from obtaining a reissuance of said license.

SECTION 10. AMENDATORY Section 31, Chapter 227, O.S.L. 1989 (63 O.S. Supp. 1990, Section 1-1916.2), is amended to read as follows:

Section 1-1916.2 The State Department of Health may deny, refuse to renew, suspend or revoke a license or assess administrative penalties to an applicant, licensee, or facility which has a history of noncompliance or incomplete or partial compliance with or repeated violations of the provisions of the Nursing Home Care Act or the standards, rules or regulations of the Board issued pursuant to the provisions of the Nursing Home Care Act or other satisfactory evidence which demonstrates that the applicant or licensee is unlikely to manage or operate a facility or to provide care or treatment to the residents of a home in a manner which warrants public trust.

SECTION 11. AMENDATORY 63 O.S. 1981, Section 1-1918, as amended by Section 1, Chapter 171, O.S.L. 1982 (63 O.S. Supp. 1990, Section 1-1918), is amended to read as follows:

Section 1-1918. A. All principles enunciated in this section shall be posted in a conspicuous, easily accessible place in each facility and each resident and personally appointed representative, if any, shall be provided a copy of these principles and advised verbally prior to or upon admission. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable requests, a current written statement of such rights.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and the facility shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with the physician, attorney, meetings of family and resident groups or any other person or groups of persons of his choice, and may send and promptly receive, unopened, his personal mail;

3. Every resident shall have the right, without fear of reprisal or discrimination, to present grievances with respect to treatment or care that is or fails to be furnished on behalf of himself or others to the facility's staff or administrator, to governmental officials or to any other person and to organize to join with other ~~patients~~ residents or individuals within or outside of the facility to work for improvements in resident care. The family of a resident shall have the right to meet in the facility with other residents' families. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Every resident shall have the right to manage his own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in his behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident unless adjudged to be mentally incapacitated shall be fully informed by his attending physician of his medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and

treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;

6. Every resident shall receive respect and privacy in his medical care program. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential;

7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;

8. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed;

9. Every resident shall have the right to retain and use his personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

~~8.~~ 10. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including any costs for services not covered under medicare or medicaid, or not covered by the facility's basic per diem rate;

~~9.~~ 11. Every resident shall be free from mental and physical abuse, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of

said physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

~~10.~~ 12. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

~~11.~~ 13. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

~~12.~~ 14. No resident shall be required to perform services for a facility;

~~13.~~ 15. Every resident shall have privacy for spousal visits. Every resident may share a room with their spouse, if the spouse is residing in the same facility; ~~and~~

~~14.~~ 16. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

17. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility;

18. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Department with respect to the facility and any plan of correction in effect with respect to the facility.

C. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations.

D. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00) or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

F. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit, and the reasonable attorney fees incurred by the plaintiff. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

G. Any employee of a state agency that inspects any nursing home, ~~rest home or special home~~ facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

H. Upon the death of a resident who has no sources of payment for funeral services, the facility shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

SECTION 12. AMENDATORY 63 O.S. 1981, Section 1-1931, is amended to read as follows:

Section 1-1931. A. The Department may place an employee or agent ~~to serve as a monitor in a facility or may petition the district court for appointment of a receiver for a facility, or both,~~ to serve as an advisor to the administrator, director of nursing or operator when any of the following conditions exist:

1. The facility has failed to provide an adequate plan of correction indicating a lack of understanding of the problems and their solutions; or

2. Substantial verified complaints have been filed with the Department indicating the need for intensive consultation.

B. The Department may place an employee or agent as a temporary manager in a facility to serve as an overseer of the operation of the facility when any of the following conditions exist:

1. The facility is operating without a license;

2. The Department has suspended, revoked or refused to renew the existing license of the facility;

3. The facility has closed or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure; or

4. The Department determines that ~~an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency the Department believes a monitor or receiver is necessary~~ improvements are needed to bring the facility into

compliance with all the requirements of the Nursing Home Care Act and the rules adopted thereunder and that the licensee is unwilling or unable to remedy the situation without temporary management.

~~B. In any situation described in subsection A of this section, the Department may place a qualified person to act as monitor in the facility. The monitor shall observe the operation of the facility, assist the facility by advising it on how to comply with the state regulations and shall report periodically to the Department on the operation of the facility.~~ C. The Department may place an employee or agent in a facility as a receiver to assume operating control of the facility and to assure that the health and safety of the facility's residents are protected when the conditions at the facility pose an imminent peril to the health, safety and welfare of the residents of the facility.

D. All funds due to the facility from any source during the pendency of the temporary management or receivership shall be made available to the temporary manager or receiver who shall use the funds to assure the health and safety of the facility's residents.

SECTION 13. AMENDATORY 63 O.S. 1981, Section 1-1932, is amended to read as follows:

Section 1-1932. A. Where a resident, a resident's representative or a resident's next of kin believes that an emergency exists, each of them, collectively or separately, may file a ~~verified~~ statement with the Commissioner who shall immediately investigate. If the Commissioner determines that proper cause exists, he shall take whatever steps are necessary to protect the health, welfare and safety of the residents including, if necessary, ~~petitioning the court to place the facility under the control of~~ filing an administrative petition to place a monitor, temporary manager or receiver to ensure that the residents receive adequate care.

B. The ~~court~~ Department shall hold a hearing within ~~five (5)~~ ten (10) working days of the filing of the petition. The petition and notice of the hearing shall be served on the owner, administrator or designated agent of the facility and the petition and notice of hearing shall be posted in a conspicuous place in the facility not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the ~~court~~ Department. ~~The court shall appoint a receiver for a limited time period, not to exceed one hundred eighty (180) days, which shall automatically terminate the receivership unless extended by the court, if it finds that:~~

~~1. The facility is operating without a license;~~

~~2. The Department has suspended, revoked or refused to renew the existing license of the facility;~~

~~3. The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure;~~

~~4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency, the appointment of a receiver is necessary; or~~

~~5. It is necessary to ensure that the residents get adequate care in a situation in which the residents' health, welfare and safety are threatened.~~

C. ~~If a petition filed under this section alleges that the conditions listed in subsection B of this section exist within a facility, the court may set the matter for hearing at the earliest possible time. The petitioner shall notify the licensee, administrator of the facility or registered agent of the licensee more than five (5) days prior to the hearing. Any form of written notice may be used. A receivership shall not be established ex~~

~~parte by the court unless the Commissioner, under oath, has provided a statement that he has personally determined that there is a life endangering situation~~ A monitor, temporary manager or receiver may be appointed if the Department finds at a hearing that the conditions for any such action meet the requirements of Section 1-1931 of this title. A waiver of the five-day notice requirement may be approved by the ~~court~~ Commissioner in life endangering situations ~~as determined and confirmed under oath, by the Commissioner.~~

D. The provisions of this act shall not limit rights or remedies which are otherwise available to any person under any other law.

SECTION 14. REPEALER 63 O.S. 1981, Sections 1-1907 and 1-1913, are hereby repealed.

SECTION 15. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

43-1-6060

KSM