STATE OF OKLAHOMA

2nd Session of the 43rd Legislature (1992)

SENATE BILL NO. 969 BY: CHANDLER

AS INTRODUCED

AN ACT RELATING TO NURSING HOMES; AMENDING 63 O.S. 1991, SECTION 1-1918, WHICH RELATES TO RIGHTS AND RESPONSIBILITIES; MODIFYING STATEMENT OF RIGHTS AND RESPONSIBILITIES; AND DECLARING AN EMERGENCY.

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

SECTION 1. AMENDATORY 63 O.S. 1991, 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 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 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, and shall be coded in such a manner as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;

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 and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

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;

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;

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;

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;

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;

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

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;

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; and

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 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 2. 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.

43-2-1426 CJ