

SHORT TITLE: Public health and safety; establishment and licensure of prescribed pediatric extended care centers; codification; effective date.

STATE OF OKLAHOMA

1st Session of the 44th Legislature (1993)

SENATE BILL NO. 181

By: Easley

AS INTRODUCED

An Act relating to pediatric health care; providing for the establishment and licensure of prescribed pediatric extended care centers; providing legislative intent; providing definitions; limiting facilities to be licensed; providing exemptions; declaring it unlawful to fail to obtain license; stating penalties; requiring licensure; providing a license fee; providing for exemption from payment of fees for certain centers; stating manner of license display; providing for validity of licensure and prohibiting sale, assign or transfer of same; stating information requirement of licensure; prescribing requirements for license applications; requiring State Department of Health to make reasonable attempt to discuss violations of act; allowing department to request correction action plan; providing grounds for the State Department of Health to deny, revoke or suspend a license, or impose an administrative fine; requiring department to be responsible for certain investigation and inspection; providing for imposition and disposition of fines and fees; requiring department to consider certain factors in determining imposition and amount of fine; establishing the Prescribed Pediatric Extended Care Center Trust Fund; providing for license expiration

and renewal and for a conditional license; allowing court to issue conditional permit for certain time period; authorizing temporary or permanent injunctions and stating reasons for such injunctions; prescribing prerequisites to voluntarily closing a center; providing the department with a right of entry and inspection; requiring a search warrant under certain circumstances; stating the application for license constitutes permission to enter and inspect premises; providing for the adoption of rules and enforcement of standards; giving state laws preemption over local ordinances; setting out criteria for standards; stating effective date of enforcement of standards; prohibiting certain acts; providing penalties; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

It is the intent of the Oklahoma State Legislature to develop, establish and enforce licensure and basic standards for prescribed pediatric extended care centers in order to ensure that the centers provide the necessary family-centered medical, developmental, physiological, nutritional, psychosocial and family training services.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Prescribed pediatric extended care center", hereinafter referred to as a "PPEC center", means any building or buildings, or other place, whether operated for profit or not, which undertakes through its ownership or management to provide, for a part of the day, basic services to three or more medically dependent or technologically dependent children who are not related to the owner or operator by blood, marriage or adoption and who require such services. Infants and children considered for admission to a PPEC center must have complex medical conditions that require continual care. Prerequisites for admission are a prescription from the child's attending physician and consent of a parent or guardian;

2. "Basic services" includes, but is not limited to, development, implementation and monitoring of a comprehensive protocol of care, developed in conjunction with the parent or guardian, which specifies the medical, nursing, psychosocial and developmental therapies required by the medically dependent or technologically dependent child served as well as the caregiver training needs of the child's legal guardian;

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

4. "Owner or operator" means any individual who has general administrative charge of a PPEC center;

5. "Medical records" means medical records maintained in accordance with accepted professional standards and practices as specified in the rules implementing this act;

6. "Medically dependent or technologically dependent child" means a child who because of a medical condition requires continuous therapeutic interventions or skilled nursing supervision which must be prescribed by a licensed physician and administered by, or under the direct supervision of, a licensed registered nurse; and

7. "Supportive services or contracted services" include, but are not limited to, speech therapy, occupational therapy, physical

therapy, social work, developmental, child life and psychological services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

For the administration of this act, facilities to be licensed by the Department shall include all prescribed pediatric extended care centers as defined in this act which are not otherwise exempt as provided in Section 4 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A facility, institution or other place operated by the federal government or any agency thereof is exempt from the provisions of this act.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. It shall be unlawful to operate or maintain a prescribed pediatric extended care (PPEC) center without first obtaining from the State Department of Health a license authorizing such operation. The Department is responsible for licensing PPEC centers in accordance with the provisions of this act.

2. Any person who violates paragraph 1 of subsection A of this section, upon conviction, shall be guilty of a felony punishable by a fine of Five Thousand Dollars (\$5,000.00) or by imprisonment in the State Penitentiary for one (1) year, or by both such fine and imprisonment.

B. Separate licenses shall be required for PPEC centers maintained on separate premises, even though they are operated under the same management. Separate licenses shall not be required for separate buildings on the same grounds.

C. The annual license fee required for a PPEC center shall be in an amount determined by the Department to be sufficient to cover the Department's costs in carrying out its responsibilities under this act but not to exceed Five Hundred Dollars (\$500.00).

D. County-operated or municipally-operated PPEC centers applying for licensure under this act shall be exempt from the payment of license fees.

E. The license shall be displayed in a conspicuous place inside the PPEC center.

F. A license shall be valid only in the possession of the individual, firm, partnership, association or corporation to whom it is issued and shall not be subject to sale, assignment or other transfer, voluntary or involuntary. A license shall not be valid for any premises other than that for which originally issued.

G. Any license granted by the Department shall state the maximum capacity of the facility, the date the license was issued, the expiration date of the license, and any other information deemed necessary by the Department.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Application for license shall be made to the State Department of Health on forms furnished by the Department and shall be accompanied by the appropriate license fee unless the applicant is exempt from payment of the fee as provided in Section 5 of this act.

B. The application shall be made under written oath and shall contain the following:

1. The name and address of the applicant and the name by which the facility is to be known. Pursuant thereto:

- a. if the applicant is a firm, partnership or association, the application shall contain the name and address of every member thereof,
- b. if the applicant is a corporation, the application shall contain its name and address, the names and addresses of its directors and officers, and the name and address of each person having at least a ten percent (10%) interest in the corporation;

2. Information which provides a source to establish the suitable character and competency of the applicant, and, if applicable, of the owner or operator, including the name and address of any licensed facility with which the applicant or owner or operator has been affiliated through ownership or employment within five (5) years of the date of the application for a license;

3. The names and addresses of other persons of whom the Department may inquire as to the character and reputation of the applicant and, if applicable, of the owner or operator;

4. The names and addresses of other persons of whom the Department may inquire as to the financial responsibility of the applicant;

5. Such other reasonable information as may be required by the Department to evaluate the ability of the applicant to meet the responsibilities entailed under this part; and

6. The location of the facility for which a license is sought and documentation, signed by the appropriate local government official, which states that the applicant has met local zoning requirements.

C. The applicant for licensure shall furnish satisfactory proof of financial ability to operate and conduct the PPEC center in accordance with the requirements of this act.

D. The applicant for licensure shall furnish proof of adequate liability insurance coverage or protection.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall have the power to deny, revoke or suspend a license of or impose an administrative fine on a prescribed pediatric extended care (PPEC) center pursuant to rules promulgated by the Department.

B. Any of the following actions by a PPEC center or its employee shall be grounds for action by the Department against a PPEC center or its employee:

1. An intentional or negligent act materially affecting the health or safety of a child or children in the PPEC center;

2. A violation of the provisions of this act or of any standards or rules adopted pursuant to this act; and

3. Multiple and repeated violations of this act or of minimum standards or rules adopted pursuant to this act.

C. The Department shall be responsible for all investigations and inspections conducted pursuant to this act.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. If the State Department of Health determines that a prescribed pediatric extended care center is being operated without a license or is otherwise not in compliance with rules adopted under this act, the Department, notwithstanding any other administrative action it takes, shall make a reasonable attempt to discuss each violation and recommended corrective action with the owner of the PPEC center prior to written notification thereof. The Department may request that the PPEC center submit a corrective action plan which demonstrates a good faith effort to remedy each violation by a specific date, subject to the approval of the Department.

2. The Department may fine a PPEC center or employee found in violation of rules adopted pursuant to this act in an amount not to exceed Five Hundred Dollars (\$500.00) for each violation. Such fine shall not exceed Five Thousand Dollars (\$5,000.00) in the aggregate.

3. The failure to correct a violation by the date set by the Department, or the failure to comply with an approved corrective action plan, shall constitute a separate violation for each day such failure continues, unless the Department approves an extension to a specific date.

4. If a PPEC center desires to appeal any departmental action under this section and the fine is upheld, the violator shall pay the fine for each day beyond the date set by the Department for payment of the fine.

B. In determining if a fine is to be imposed and in fixing the amount of any fine, the Department shall consider the following factors:

1. The gravity of the violation, including the probability that death or serious physical or emotional harm to a child will result or has resulted, the severity of the actual or potential harm, and the extent to which the provisions of the applicable statutes or rules were violated;

2. Actions taken by the owner or operator to correct violations;

3. Any previous violations; and

4. The financial benefit to the PPEC center of committing or continuing the violation.

C. Fees and fines received by the Department under this act shall be deposited in the Prescribed Pediatric Extended Care Center Trust Fund created in Section 9 of this act.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "Prescribed Pediatric Extended Care Center Trust Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received from administrative fines pursuant to Section 8 of this act, and all monies received from fees collected pursuant to Section 5 of this act. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the State Department of Health for prescribed pediatric extended care centers. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A license issued for the operation of a prescribed pediatric extended care (PPEC) center, unless sooner suspended or revoked, shall expire one (1) year after the date of issuance. At least sixty (60) days prior to the expiration date, an application for renewal shall be submitted to the State Department of Health. The Department shall renew the license, upon the filing of an application on forms furnished by the Department, if the applicant has met the requirements established under this act and all rules adopted pursuant to this act. The PPEC center shall file with the application satisfactory proof of financial ability to operate and conduct the facility in accordance with this act.

B. A license against whom a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the Department of such proceedings. If judicial relief is sought from

the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health may institute injunction proceedings in a court of competent jurisdiction to:

1. Enforce the provisions of this act or any standard, rule or order issued or entered into pursuant thereto; or

2. Terminate the operation of a prescribed pediatric extended care (PPEC) center if the licensee has:

- a. not taken preventive or corrective measures in accordance with any order of the Department,
- b. failed to abide by any final order of the Department once it has become effective and binding, or
- c. committed a violation of any provision of this act or of any rule adopted pursuant thereto, which violation constitutes an emergency requiring immediate action.

B. Such injunctive relief may be temporary or permanent.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Whenever a prescribed pediatric extended care (PPEC) center voluntarily discontinues operation, it shall inform the Department in writing at least thirty (30) days prior to the discontinuance of operation. The PPEC center shall also, at such time, inform each child's legal guardian of the fact and the proposed time of such discontinuance.

B. Immediately upon discontinuance of the operation of a PPEC center, the owner or operator shall surrender the license therefor to the Department and the license shall be canceled.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any duly designated officer or employee of the State Department of Health shall have the right to enter upon and into the premises of any prescribed pediatric extended care (PPEC) center licensed pursuant to this act, at any reasonable time, in order to determine the state of compliance with the provisions of this act and of rules or standards in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the Department has reason to believe are being operated or maintained as a PPEC center without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or operator in charge thereof unless a warrant is first obtained from the district court authorizing the entry and inspection. Any application for a PPEC center license or renewal made pursuant to this act shall constitute permission for, and complete acquiescence in, any entry or inspection of the premises for which the license is sought in order to facilitate verification of the information submitted on or in connection with the application.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Pursuant to the intent of the Oklahoma State Legislature to provide safe and sanitary facilities and healthful programs, the State Department of Health, on or before July 1, 1994, shall adopt and publish rules to implement the provisions of this act, which shall include reasonable and fair standards. Any conflict between these standards and those that may be set forth in local, county or city ordinances shall be resolved in favor of those having statewide effect. Such standards shall relate to:

1. The assurance that prescribed pediatric extended care (PPEC) services are family-centered and provide individualized medical, developmental and family training services;

2. The maintenance of PPEC centers, and based upon the size of the structure and number of children, relating to plumbing, heating, lighting, ventilation and other building conditions, including adequate space, which will ensure the health, safety, comfort and protection from fire of the children served;

3. The number and qualifications of all personnel who have responsibility for the care of the children served;

4. All sanitary conditions within the PPEC center and its surroundings, including water supply, sewage disposal, food handling and general hygiene, and maintenance thereof, which will ensure the health and comfort of children served;

5. Programs and basic services promoting and maintaining the health and development of the children served and meeting the training needs of the children's legal guardians;

6. Supportive, contracted, other operational and transportation services; and

7. Maintenance of appropriate medical records, data and information relative to the children and programs. Such records shall be maintained in the facility for inspection by the Department.

B. Enforcement of standards pursuant to the adoption of rules under this act shall not take effect until six (6) months after the adoption of such rules.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It is unlawful for any person or public body to offer or advertise to the public, in any way or by any medium, basic services as defined in this act without obtaining a valid current license.

It is unlawful for any holder of a license issued pursuant to this act to advertise or hold out to the public that it holds a license for a prescribed pediatric extended care (PPEC) center other than that for which it actually holds a license.

B. Any person who violates the provisions of subsection A of this section, upon conviction, is guilty of a misdemeanor punishable by a fine of One Thousand Dollars (\$1,000.00) or by imprisonment for one (1) year in the county jail, or by both such fine and imprisonment. Each day of continuing violation shall be considered a separate offense.

SECTION 16. This act shall become effective September 1, 1993.

44-1-0078

CJ