

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE BILL NO. 2648

By: Mitchell of the House
and
Monson of the Senate

(public health and safety - amending 63 O.S., Sections 1-
1964 and 1-1965 - Home Care Act - rules - effective
date)

AUTHOR: Add the following House Coauthor: Staggs

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

"[public health and safety - amending 63 O.S., Sections 1-
1964 and 1-1965 -
Home Care Act -
rules -
codification -
effective date]

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

SECTION 1. AMENDATORY Section 6, Chapter 139, O.S.L.
1992 (63 O.S. Supp. 1995, Section 1-1964), is amended to read as
follows:

Section 1-1964. The State Board of Health shall promulgate
rules necessary ~~for the accomplishment of~~ to enact the purposes
provisions of the Home Care Act, ~~including.~~ Such rules shall
include, but not be 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~~ state and national home care associations;

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

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

4. ~~Provisions for~~ A requirement that each licensed agency ~~to~~ create and ~~to~~ disclose to its clients a statement of clients' rights and responsibilities;

5. Standards for numbers and qualification of personnel to care for the population proposed to be served;

6. Requirements for financial resources to ensure a home care agency's ability to provide adequate home care services;

7. Standards for assessing an applicant's business and professional experience as demonstrated in prior operations and in previous compliance with all lawful orders of suspension, receivership, administrative penalty or negative sanction issued by the State Department of Health or by other departments in other states with similar responsibilities;

8. Provisions for restricting any agency, agency employee, or agency contractor from providing skilled care or assessing a client to determine the need for skilled care unless and until the agency receives a physician's order to provide skilled care or to assess the client; provided, however, such provisions shall not restrict an agency's ability to provide personal care to a client without a physician's order; and

9. Provisions for restricting any agency, agency employee, or agency contractor from soliciting, coercing, or harassing a client who receives skilled care from another agency.

SECTION 2. AMENDATORY Section 7, Chapter 139, O.S.L. 1992, as last amended by Section 30, Chapter 382, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-1965), is amended to read as follows:

Section 1-1965. A. Every entity desiring to establish or operate a home care agency in this state shall make application to the State Department of Health in such form and accompanied by such information as the State Commissioner of Health shall prescribe. Such information shall include, but not be limited to:

1. The name and location of the home care agency for which a license is sought;

2. The name and address of the person or persons under whose ownership, operation, management or supervision the home care agency will be conducted;

3. The number and characteristics of clients for which home care agency services are to be provided; and

4. A projected staffing pattern for providing home care.

B. An application for an initial license to establish or operate a home care agency shall be accompanied by a nonrefundable licensing fee of One Thousand Five Hundred Dollars (\$1,500.00). An application for a license, ~~or renewal thereof, to establish or~~ operate a home care agency shall be accompanied by a nonrefundable licensing fee of Five Hundred Dollars (\$500.00). An application for license, or renewal thereof, to establish or operate a home care agency branch office shall be accompanied by a nonrefundable licensing fee of Twenty-five Dollars (\$25.00). ~~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.~~ Funds collected pursuant to this section shall be deposited in the Home Health Care Revolving Fund ~~created in Section 19 of Enrolled Senate Bill No. 911 of the 2nd Session of the 44th Oklahoma Legislature.~~

C. Complete disclosures for the applicant's owner, operator and manager shall be a part of the application, which shall include, but not be limited to, the following:

1. The name, mailing address and finding address of:

- a. the owner, operator and manager, if an individual,
- b. every member, if a firm, partnership or association,
and
- c. every stockholder with at least five percent (5%)
ownership interest, every officer, and the registered
agent, if a corporation; and

2. The names, locations and dates of involvement for all current and prior home care agencies owned, operated or managed in this state or in any other state by the applicant or by any of its principals.

D. An application for a license for a home care agency may be denied by the Commissioner for any of the following reasons:

1. Failure to meet any of the minimum standards of the Home Care Act or rules promulgated thereto by the Board; or

2. Conviction of:

- a. the owner, operator or manager, if an individual,
- b. any member, if a firm, partnership or association, or
- c. any officer, or any stockholder with at least five
percent (5%) ownership interest, if a corporation,

for any offense listed in subsection F of Section 1-1950.1 of this title.

E. The license issued by the Commissioner shall:

- 1. Not be transferable or assignable;
- 2. Be posted in a conspicuous place on the licensed premises;
- 3. Be issued only for the premises named in the application;

and

4. Expire on July 31 of each year, provided an initial license shall expire one hundred eighty (180) days after the date of issuance.

F. After issuing a license, the Commissioner may revoke or suspend the license based on any of the following grounds:

1. Violation of any of the provisions of the Home Care Act or the rules or standards promulgated by the Board thereto; or

2. Permitting, aiding or abetting the commission of any illegal act by a licensed home care agency.

G. The issuance or renewal of a license after notice of a violation shall not constitute a waiver by the Department of its power to rely on the violation as the basis for subsequent revocation of such license or other enforcement action pursuant to the Home Care Act.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1967a of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person or government agency may bring a civil action to restrain a provider of home health care services or a person acting on behalf of the provider or under the provider's control from:

1. Making or enforcing unconscionable terms or provisions of a provider agreement;

2. Fraudulent or unconscionable conduct in inducing a patient to enter into an agreement; or

3. Fraudulent or unconscionable conduct in collecting fees for services.

B. In an action brought pursuant to this section, the court may grant relief if it finds:

1. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct;

2. That the agreements or conduct of the defendant has caused or is likely to cause injury to a patient; or

3. That the defendant has been able to cause or will be able to cause injury primarily because of the nature of the services involved.

C. In applying this section, consideration shall be given to each of the following factors:

1. Belief by the defendant at the time the services were provided that there was no reasonable probability of injury;

2. Knowledge by the defendant at the time the services were provided of the inability of the patient to receive substantial benefit from the services provided;

3. In the case of gross disparity between the price of the services provided measured by the price at which similar services are readily available or obtainable by like patients;

4. The fact that the defendant contracted for or received separate or additional charges for services with the effect of making the cost for the services provided, considered as a whole, unconscionable;

5. The fact that the defendant has knowingly taken advantage of the inability of the patient reasonably to protect the patient's interests by reason of physical or mental infirmities, ignorance, illiteracy, or inability to understand the language of the agreements or similar factors; and

6. Any other fact.

D. In an action brought pursuant to this section, a charge or practice expressly permitted by this section shall not in itself be deemed unconscionable.

E. With respect to an action brought to restrain violations of this act, or unconscionable agreements or fraudulent or unconscionable conduct, a person may apply to the court for temporary relief against a defendant, pending final determination.

If the court finds after a hearing held upon notice to the defendant that there is reasonable cause to believe that the defendant should be restrained, it may grant any temporary relief or restraining order it deems appropriate.

F. After demand, a person may bring a civil action against a defendant or person acting in the defendant's behalf to recover a civil penalty for willful violations of the provisions of this act and, if the court finds that the defendant has engaged in a course of repeated and willful violations of the provisions of this act, it may assess a civil penalty of no more than Five Thousand Dollars (\$5,000.00). No civil penalty pursuant to this subsection may be imposed for violations of the provisions of this act which occur more than two (2) years before the action is brought.

G. 1. In an action brought under this act, no person has the right to trial by jury.

2. The grant of authority under this act shall not affect remedies available under other principles of law or equity.

SECTION 4. This act shall become effective November 1, 1996."

Passed the Senate the 16th day of April, 1996.

President of the Senate

Passed the House of Representatives the ____ day of

_____, 1996.

Speaker of the House of Representatives