

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

1ST CONFERENCE COMMITTEE SUBSTITUTE

FOR ENGROSSED

SENATE BILL NO. 1177

By: Williams (Penny),  
Campbell and Cole of the  
Senate

and

McCorkell and Toure of  
the House

1ST CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-851.1, 1-851.2, 1-851.3, 1-852, as amended by Section 14, Chapter 269, O.S.L. 1993, 1-853, as amended by Section 1, Chapter 48, O.S.L. 1994 and 1-854.1, as last amended by Section 2, Chapter 48, O.S.L. 1994 (63 O.S. Supp. 1995, Sections 1-852, 1-853 and 1-854.1), which relate to the powers and duties of the State Commissioner of Health and to the Long-term Care Certificate of Need Act; clarifying references and language; adding and modifying definitions; providing for exemption from certificate of need under certain circumstances; requiring applicants for certificate of need to file certain information; requiring certain application and filing fees; requiring certain application be signed under oath and accompanied by filing fee; requiring Department of Health to determine application is complete and conduct certain investigation; requiring notice; limiting time for decision on certificate of need; stating criteria the Commissioner must use to issue or deny certificate of need; modifying findings to be made by the State Commissioner of Health; modifying grounds for disapproval of certificate of need for certain capital expenditures; deleting language relating to scheduling of certain review cycles; prohibiting issuance of certificate of need for acquisition of an existing facility under certain conditions; modifying criteria to be met for certificate of need for replacing existing facility; modifying criteria for certificate of need for increase in number of licensed beds in existing facility; stating grounds for refusal of certificate of need; stating that noncompliance with certain order shall not be considered final order or judgment; deleting language relating to decision of Commissioner of Department of Health; increasing powers and duties of the State Department of Health; requiring promulgation of certain rules and providing for power to assess fees; requiring payment of certification and recertification fees and certain other fees; authorizing certain revenues be deposited into the Public Health Special Fund; limiting use of title of

Certified Nursing Aide and providing penalty; requiring establishment and maintenance of certain registry; stating information to be contained in registry; requiring certain information remain in registry unless certain conditions are met; requiring placement and removal of pending notation in registry under certain circumstances; requiring certain notice, hearing and finding; requiring certain check of registry; prohibiting hiring of persons under certain circumstances; requiring certain notification by the Department of Health; requiring certain information upon written request; requiring disclosure of certain information; providing protection from certain liability; requiring wearing of certain badge; specifying purpose of State Long-Term Care Ombudsman Program; specifying powers and duties; providing legislative intent; requiring the Commission for Human Services to continue the State Long-Term Ombudsman Program with same scope of authority and direction and at present level of funding regardless of federal action; amending 63 O.S. 1991, Sections 1-2212, 1-2213, as amended by Section 1, Chapter 89, O.S.L. 1994, and 1-2216 (63 O.S. Supp. 1995, Section 1-2213), which relate to the Long-Term Care Ombudsman Act; providing for alternate basis of powers and duties; adding definition; specifying powers and duties of the State Long-Term Care Ombudsman; authorizing designation of certain area or local ombudsman; providing for duties, activities and authority; providing eligibility criteria; requiring rules relating to disclosure; providing for contents; providing for certain disclosures; providing for a study to determine proper nursing home rates; requiring completion date and written report; providing specific comparisons and examinations; requiring cooperation; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-851.1, is amended to read as follows:

Section 1-851.1 For purposes of the Long-term Care Certificate of Need Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Department" means the State Department of Health; ~~and~~
4. "Long-term care service" means service provided by a nursing ~~home~~ facility, or a specialized facility, as such terms are defined by Section 1-1902 of Title 63 of the Oklahoma Statutes

or skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by this act,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the three (3) years immediately preceding the filing of the application for civil actions and five (5) years immediately preceding the filing of the application for criminal actions. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the federal Health Care Financing Administration, and
- e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution,

federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

7. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest,
- c. serves on the board of the entity involved,
- d. serves as an officer of the entity involved, or
- e. actively participates in the management of the entity involved or actively participates in the management of the entity in the relevant time period.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-851.2, is amended to read as follows:

Section 1-851.2 A. The ~~Department~~ State Commissioner of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke certificates of need;
2. Establish and enforce standards and requirements for certificates of need;
3. Require the submission of and to review reports from any person requesting or obtaining a certificate of need;
4. Employ or designate personnel necessary to implement the provisions of the Long-term Care Certificate of Need Act;
5. Report to the district attorney having jurisdiction or the Attorney General, any act committed by any person which may constitute a ~~misdemeanor~~ violation pursuant to the provisions of the Long-term Care Certificate of Need Act;

6. Advise, consult and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of the Long-term Care Certificate of Need Act;

7. ~~Develop~~ Promulgate and enforce rules ~~and regulations~~ subject to the approval of the State Board of Health to implement the provisions of the Long-term Care Certificate of Need Act;

8. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for a certificate of need;

9. Establish administrative penalties for violations of the provisions of the Long-term Care Certificate of Need Act as authorized by the Board;

10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department pursuant to the Long-term Care Certificate of Need Act;

11. Develop and administer plans for health services, including ~~manpower~~, but not limited to, staffing, facilities and other resources;

12. Develop and publish, once every four (4) years, a Quadrennial State Health Plan, following guidelines and procedures adopted by the Board which specify the method of adoption of the plan document, its format, provisions for developing and publishing plan amendments and the role of the State Department of Health, local health planning advisory councils and the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Boards of each mental health catchment area in its development;

13. Establish and administer criteria and standards for the delineation and approval of areas and regions for health planning purposes;

14. Promote and maintain plans for providing health services including, but not limited to, health, ~~manpower~~ staffing and health facilities, in ~~the State of Oklahoma~~ this state; and

15. Exercise all incidental powers as necessary and proper for the administration of the Long-term Care Certificate of Need Act.

B. The State Department of Health shall be the single state agency to participate in federal programs for health planning and to apply for and administer federal funds for health planning, provided, that the Long-term Care Certificate of Need Act, and any other law vesting planning functions in any other state agency, shall not apply to health planning functions vested by law in the Department of Mental Health and Substance Abuse Services, the Oklahoma Health Care Authority and the Department of Human Services.

C. The Department shall establish forms and provide for the collection of monthly data necessary for the computation of occupancy rates from licensed long-term care facilities which do not provide services to Medicaid recipients. Data shall include, but not be limited to, licensed bed capacity, average daily census, days on which beds were reserved for residents temporarily absent, and the number, if any, of semi-private units rented as private rooms.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-851.3, is amended to read as follows:

Section 1-851.3 No long-term care facility shall be developed, acquired or offered unless a certificate of need therefor has been issued as provided in the Long-term Care Certificate of Need Act. No governmental entity shall approve any grant of funds, issue any debentures or issue or renew any license for the operation of a long-term care facility, nor shall any third-party purchasers, licensed or operated by this state, issue reimbursement for services provided to its insurers or clients, unless the certificate of need as provided in the Long-term Care Certificate of Need Act has been obtained.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-852, as amended by Section 14, Chapter 269, O.S.L. 1993 (63 O.S. Supp. 1995, Section 1-852), is amended to read as follows:

Section 1-852. A. Every entity desiring to establish a new long-term care service ~~or,~~ to expand an existing service whether through construction or conversion of facilities, or to acquire an existing long-term care service shall make application to the State Department of Health for a certificate of need. The application for a certificate of need shall be in such form and accompanied by such information, including a complete list of stockholders, partners, and owners and any other information the Commission as the State Commissioner of Health shall prescribe.

B. ~~1.~~ Long-term care service shall include ~~any:~~

1. Any capital investment or lease of Five Hundred Thousand Dollars (\$500,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications, and site acquisition; provided, that this dollar limit shall not apply to a change in bed capacity; and

~~2. Long-term care service shall include any acquisition~~  
Acquisition of the ownership or operation of a facility by purchase, lease, donation ~~or through,~~ transfer of stock ~~or,~~ corporate merger, assignment, or through foreclosure. ~~If the Department finds that a proposed acquisition is consistent with the criteria and standards for review of such projects, then the Department shall issue a certificate of need. If the Department finds that the proposed acquisition is not consistent with the criteria, the project will be referred to the Commissioner of Health for final determination.~~ Acquisition through management contract shall be subject to a certificate of need unless said management contract is part of a purchase or lease proceeding. In such case the management contract shall be exempt from the certificate of need for a single term of up to nine (9) months, with no more than one three-month extension. A copy of the purchase contract shall be included by the applicant in the request for the management contract certificate of need exemption.

Management contracts for a period of six (6) months or less shall not be subject to certificate of need review. Such

management contracts cannot be renewed unless the applicant files for a certificate of need.

C. All applicants for the issuance of a certificate of need, at such time and in such manner as required by the Department, shall file:

1. A disclosure statement with their applications unless the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company. In such case, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved; 2. Copies of residents council minutes and family council minutes, if any, and the facility's written response to the councils' requests or grievances, for the three (3) months prior to the date of application, for each of the applicant's current holdings in the State of Oklahoma; and

3. Such other relevant information required by the Department pursuant to the Long-term Care Certificate of Need Act that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

D. An application for a certificate of need thereof shall be signed under oath by the applicant.

E. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewing bodies selected by the Department to assist the Department in determining whether the application is complete. Once the Department has determined that the application is complete, it shall notify the affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of the new or any long-term care service acquisition, expansion, or establishment of a new facility.

F. The investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of long-term care services in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;

2. The availability of services which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care service and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed acquisition, expansion, or establishment of a new long-term care service;

5. The record of the applicant's current and prior ownership, operation and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the State Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

6. Review of minutes of family councils and residents councils, and the facilities' responses, from each of the applicant's holdings in Oklahoma; and

7. Any other matter which the Department deems appropriate.

G. Before making a final determination on an acquisition application, the Commissioner shall cause paid public notices to be published in a newspaper of general circulation near the facility and in a newspaper of general circulation in the area where the application is available for public inspection. A notice in a form prescribed by the Department also shall be posted by the applicant in a public area in each facility operated by the applicant in Oklahoma, to inform residents and families of the applicant's proposed action. The public notices shall offer participating parties an opportunity to submit written comments.

H. The Commissioner's ~~determination~~ decision to approve or deny the proposed acquisition ~~or to refer it to the Department,~~ expansion, or establishment of a new facility shall be made ~~no~~ ~~later than fifteen (15)~~ within forty-five (45) days following the ~~day the application is determined to be complete and review ready~~

deadline for submitting written comments, or the proposed acquisition, expansion, or establishment shall be automatically approved, unless otherwise prohibited pursuant to the provisions of the Long-term Care Certificate of Need Act. ~~Proposed acquisitions shall be reviewed against standards adopted by the Department which relate only to the acquirer's capability to operate a long-term facility.~~

~~C. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewers it may select to determine whether the application is complete. Once the Department has determined that the application is complete, it shall notify affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of such expanded long-term care service. The investigation made pursuant to an application for a certificate of need shall include the following:~~

~~1. The adequacy of long-term care services in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;~~

~~2. The availability of services which may serve as alternatives or substitutes;~~

~~3. The adequacy of financial resources for the new or expanded long-term care services and for the continued operation thereof;~~

~~4. The availability of sufficient manpower to properly staff and operate the proposed new or expanded long-term care service; and~~

~~5. Any other matter which the Department deems appropriate.~~

~~D. Each application for a certificate of need applied for pursuant to the provisions of this section except for those applications filed by state agencies shall be accompanied by an application fee equal to one percent (1%), with a minimum of One Thousand Dollars (\$1,000.00).~~

I. If the Commissioner finds that a proposed acquisition, expansion, or establishment of a new facility is consistent with the criteria and standards for review of such projects, and is

otherwise in compliance with the provision of the Long-term Care Certificate of Need Act, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition, expansion, or establishment of a new facility is not consistent with the criteria and standards, or is otherwise not in compliance with the provisions of the Long-term Care Certificate of Need Act, the Commissioner shall deny the certificate of need.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-852.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each application for a certificate of need applied for pursuant to the provisions of Section 4 of this act, except for those applications filed by state agencies, shall be accompanied by an application fee equal to one percent (1%) of the capital cost of the project, with a minimum fee of One Thousand Dollars (\$1,000.00).

B. The maximum filing fee on an application for replacement of an existing facility, pursuant to subsection D of Section 1-853 of this title, shall be One Thousand Dollars (\$1,000.00).

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-853, as amended by Section 1, Chapter 48, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-853), is amended to read as follows:

Section 1-853. A. Except as provided in ~~subsection~~ subsections B, C, D and E of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the ~~Department~~ State Commissioner of Health makes the following findings:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality; ~~and~~

4. The applicant is or ~~has in his employ~~ employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds:

- a. that the facility or service is not needed; or
- b. that the applicant is found to be out of compliance with the provisions of subsection F of this section.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

~~C. The Department shall schedule review cycles of equal duration in each calendar year, for the review of completed applications, but may make provision in its procedures for the granting of variances from the schedule for reasons of hardship.~~ No certificate of need shall be issued for the acquisition of an existing facility unless after investigation the Commissioner finds that the applicant:

- 1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and
- 2. Is found to be in compliance with the provisions of subsection F of this section.

D. Any application seeking a certificate of need for the construction of a long-term care facility in replacement of an existing facility shall be ~~reviewed by the Department and shall be~~ granted a certificate of need if the application meets the following criteria:

- 1. The replacement facility involves no increase in licensed beds; ~~and~~

2. The replacement facility shall be located no farther than three (3) miles from the facility it is replacing; ~~and~~

3. A plan for the use of the facility to be replaced is provided which assures that its use as a Nursing Facility, or a Specialized Facility will be discontinued upon licensure of the replacement facility; and

4. The provisions of subsection F of this section shall not apply to replacement facilities.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing nursing or specialized facility currently licensed under Section 1-1906 of this title shall be ~~reviewed and~~ approved by the ~~Department Commissioner~~ if the application meets the following criteria:

1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater; ~~and~~

2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00); ~~and~~

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the ~~six~~ (6) twelve (12) months preceding the filing of the application; and

4. The applicant is found to be in compliance with the provisions of subsection F of this section.

F. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding twenty-four (24) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action

or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding twenty-four (24) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by rule, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities, or
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Health Care Financing Administration.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding twenty-four (24) months, an administrative penalty above the level of a deficiency, other than any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest.

G. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

H. When the ~~Department completes its investigation and~~ Commissioner makes a determination to issue or deny a certificate of need, ~~it~~ the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their

request. The certificate of need shall establish the maximum capital expenditure for the project. The ~~Department~~ State Board of Health shall adopt rules ~~and regulations~~ concerning the time in which a decision must be made ~~by the Department~~ on an application.

~~G. I.~~ Any person may request a reconsideration of a ~~Department~~ the Commissioner's determination for good cause shown, the grounds for which shall be established by the ~~Department~~ Board by rule. A request for reconsideration shall be filed within ~~thirty (30)~~ ten (10) days of the Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-854.1, as last amended by Section 2, Chapter 48, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-854.1), is amended to read as follows:

Section 1-854.1 Any final determination by the State Department of Health under ~~this act~~ the Long-term Care Certificate of Need Act, except for a determination made pursuant to subsection D of Section 1-853 of this title, may be appealed by the applicant, or any other aggrieved party under the provisions of Sections 317 and 318 of Article II of the Administrative Procedures Act, ~~Section 308a et seq. of Title 75 of the Oklahoma Statutes~~; provided, that the venue for such appeal shall be in Oklahoma County or in the county in which the facility at issue in the application is located. ~~The decision of the Department shall be upheld by the court unless it is arbitrary or capricious or is not in accordance with applicable law.~~

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1951 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 certificates of training for nursing aides;
2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs;

3. Determine curriculum for training and competency programs;

4. Establish and maintain a registry for certified nursing aides and for nursing aide trainees; and

5. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of this section.

B. The State Board of Health shall promulgate rules to implement the provisions of this section and shall have power to assess fees.

1. Each person certified as a nursing aide pursuant to the provisions of this section shall be required to pay certification and recertification fees in amounts to be determined by the State Board of Health, not to exceed Fifteen Dollars (\$15.00).

2. In addition to the certification and recertification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Board.

3. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

C. Only a person who has qualified as a certified nursing aide and who holds a valid current nursing aide certificate for use in this state shall have the right and privilege of using the title Certified Nursing Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

D. 1. The State Department of Health shall establish and maintain a certified nursing aide and nursing aide trainee registry that:

- a. is sufficiently accessible to promptly meet the needs of the public and employers, and
- b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home or clients of an agency or center.

2. The registry shall contain information as to whether a nursing aide has:

- a. successfully completed a certified nursing aide training and competency examination,
  - b. met all the requirements for certification, or
  - c. received a waiver from the Board.
3. a. The registry shall include, but not be limited to, the following information on each certified nursing aide or nursing aide trainee:
- (1) the individual's full name,
  - (2) information necessary to identify each individual,
  - (3) the date the individual became eligible for placement in the registry,
  - (4) information on any finding of the Department of abuse, neglect or exploitation by the certified nursing aide or nursing aide trainee, including:
    - (a) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,
    - (b) the date of the hearing, if requested by the certified nursing aide or nursing aide trainee,
    - (c) a statement by the individual disputing the finding if the individual chooses to make one.

4. The Department shall include the information specified in division (4) of subparagraph a of paragraph 3 of this subsection in the registry within ten (10) working days of the substantiating finding and it shall remain in the registry, unless:

- a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or
- b. the Board is notified of the death of the certified nursing aide or nursing aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client by a certified nursing aide or

nursing aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nursing aide or nursing aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

6. The Department shall, after notice to the individuals involved and a reasonable opportunity for a hearing, make a finding as to the accuracy of the allegations.

7. If the investigation determines with clear and convincing evidence that abuse, neglect or exploitation has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the nursing aide and to the district attorney for the county where the abuse, neglect or exploitation occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a nursing assistant in a long-term care facility, and notice of any further appeal rights shall also be sent to the nursing aide.

8. The Department shall require that each facility check the nurse aide registry before hiring a person to work as a nursing aide. If the registry indicates that an individual has been found, as a result of a hearing, to be personally responsible for abuse, neglect or exploitation, that individual shall not be hired by the facility.

9. If the state finds that any other individual employed by the facility has neglected, abused or exploited in a facility, the Department shall notify the appropriate licensing authority and the district attorney for the county where the abuse, neglect or exploitation occurred.

10. Upon a written request by a certified nursing aide or nursing aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified nursing aide or nursing aide trainee when a finding of abuse, exploited or neglect is confirmed and placed in the registry.

11. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified nursing aide or nursing aide trainee to the person requesting such information, and may disclose additional information the Department determines necessary.

12. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune from liability for reporting allegations of abuse, neglect or exploitation.

E. All nursing aide trainees shall wear a badge which designates them as a nursing aide trainee. Such badge shall be furnished by the Department. The badge shall be nontransferable.

SECTION 9. A. 1. The purpose of the State Long-Term Care Ombudsman Program is to improve the quality of life and the quality of care of elderly citizens residing in long-term care facilities in Oklahoma.

2. Specifically, through the State Long-Term Care Ombudsman Program complaints made by or in behalf of the elderly citizens residing in long-term care facilities are resolved. Often, in order to resolve such complaints, investigations of action or inaction of long-term care service providers or of public or service agencies which may adversely affect the health, safety, welfare or rights of residents of long-term care facilities are made by the State Long-Term Care Ombudsman.

3. Another responsibility of the State Long-Term Care Ombudsman Program is to publish an annual report which includes:

- a. the number and categories of complaints regarding abuse and neglect of elderly citizens residing in long-term care facilities received, using the state's complaint documentation system,
- b. the percentage of complaints which were verified,
- c. other statistical data, and
- d. identification of significant long-term care issues and recommendations for resolution.

B. The State Long-Term Care Ombudsman Program is the most cost-effective program in this state due to the utilization of volunteers who worked over twenty-five thousand (25,000) hours in fiscal year 1995. This resulted in a savings for the state and the public of over Three Hundred Thousand Dollars (\$300,000.00).

C. Because elderly citizens of this state who reside in long-term care facilities at times need advocacy assistance and since no other program in this state duplicates the State Long-Term Care Ombudsman Program, it is the intent of the Legislature that the State Long-Term Care Ombudsman Program be continued by the Commission for Human Services with the present scope of authority and direction and at the present level of funding regardless of whether the existing federal regulations or laws protecting the care of elderly and incapacitated residents of long-term care facilities are downgraded or eliminated by the federal government.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-2212, is amended to read as follows:

Section 1-2212. As used in the Long-Term Care Ombudsman Act:

1. "Office" means the Office of the State Long-Term Care Ombudsman. For purposes of the Long-Term Care Ombudsman Act, any area or local ombudsman entity designated by the State Long-Term Care Ombudsman shall be deemed to be a subdivision of this Office;
2. "State Long-Term Care Ombudsman" means the individual employed by the Department of Human Services to be the chief administrative officer of the Office;
3. "Department" means the Department of Human Services; ~~and~~
4. "Representative" means the State Long-Term Care Ombudsman, and any state, area or local long-term care ombudsman designated by the State Long-Term Care Ombudsman, whether paid or unpaid; and
5. "Resident" means any person residing in a long-term care facility.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-2213, as amended by Section 1, Chapter 89, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-2213), is amended to read as follows:

Section 1-2213. A. There is hereby created within the Department of Human Services the Office of the State Long-Term

Care Ombudsman. The Office, under the auspices and general direction of the State Long-Term Care Ombudsman, shall carry out a long-term care ombudsman program in accordance with the Older Americans Act of 1965, as amended, and in accordance with federal regulations issued pursuant to the Older Americans Act or as provided by the Long-Term Care Ombudsman Act.

B. The State Long-Term Care Ombudsman shall, personally or through representatives of the Office:

1. Identify, investigate and resolve complaints that:

a. are made by, or on behalf of, residents, and

b. relate to action, inaction or decisions, of:

(1) providers, or representatives of providers, of long-term care services,

(2) public agencies, or

(3) health and social service agencies,

that may adversely affect the health, safety, welfare or rights of the residents;

2. Provide services to assist the residents in protecting their health, safety, welfare and rights;

3. Inform residents about means of obtaining services offered by providers or agencies;

4. Ensure that the residents have regular and timely access to the services provided through the Office;

5. Ensure that the residents and complainant receive timely responses from the Office and representatives of the Office regarding complaints;

6. Represent the interests of residents before governmental agencies and seek administrative, legal and other remedies to protect the health, safety, welfare and rights of the residents;

7. Provide administrative and technical assistance to area or local ombudsman entities to assist the entities in participating in the State Long-Term Care Ombudsman Program;

8. a. analyze, comment on and monitor the development and implementation of federal, state and local laws, rules and other government policies and actions that pertain to the health, safety, welfare and rights of

the residents, with respect to the adequacy of long-term care facilities and services in this state,

b. recommend any changes in such laws, rules, policies and actions as the Office determines to be appropriate, and

c. facilitate public comment on the laws, rules, policies and actions;

9. a. provide for training representatives of the Office,

b. promote the development of citizen organizations, to participate in the State Long-Term Care Ombudsman Program, and

c. provide technical support for the development of resident and family councils to protect the well-being and rights of residents; and

10. Carry out such other activities as the Commission for Human Services determines to be appropriate.

C. 1. In carrying out the duties of the Office, the State Long-Term Care Ombudsman may designate an entity as an area or local Ombudsman entity, and may designate an employee or volunteer to represent the entity.

2. An individual so designated shall, in accordance with the policies and procedures established by the Office and Commission for Human Services, carry out such duties and activities as required by the State Long-Term Care Ombudsman pursuant to the authority granted by the Long-Term Care Ombudsman Act and rules promulgated by the Commission thereto.

3. Entities eligible to be designated as area or local Ombudsman entities, and individuals eligible to be designated as representatives of such entities, shall:

a. have demonstrated capability to carry out the responsibilities of the Office,

b. be free of conflicts of interest,

c. in the case of the entities, be public or nonprofit private entities, and

d. meet such additional requirements as the Ombudsman may specify.

D. 1. In accordance with the Older Americans Act of 1965, as amended and in accordance with federal regulations issued pursuant thereto, or as otherwise provided by the Long-Term Care Ombudsman Act, the State Long-Term Care Ombudsman and representatives of the Office shall have:

- a. access to long-term care facilities and residents,
- b. (1) access to review the medical and social records of a resident, if:
  - (a) the representative of the Office has the permission of the resident, or the legal representative of the resident, or
  - (b) the resident is unable to consent to the review and has no legal representative and the representative of the Office obtains the approval of the State Long-Term Care Ombudsman, or
- (2) access to the records as is necessary to investigate a complaint if:
  - (a) a legal guardian of the resident refuses to give the permission,
  - (b) a representative of the Office has reasonable cause to believe that the guardian is not acting in the best interests of the resident, and
  - (c) the representative obtains the approval of the State Long-Term Care Ombudsman,
- c. access to the administrative records, policies and documents, to which the residents have, or the general public has access, of long-term care facilities, and
- d. access to copies of all licensing and certification records maintained by the Department or any other agency of this state with respect to long-term care facilities.

2. For purposes of this subsection, the term "Representative of the Office" shall not include any unpaid or volunteer state, area, or local ombudsman.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-2216, is amended to read as follows:

Section 1-2216. A. The Commission for Human Services shall ~~establish by rule or regulation~~ promulgate rules regarding:

1. The powers and official duties of the State Long-Term Care Ombudsman consistent with applicable federal law and ~~regulations~~ rules or as provided by the Long-Term Care Ombudsman Act;

2. Minimum qualifications for persons to serve as representatives of the Office of the State Long-Term Care Ombudsman; 3. Initial and continuing training requirements for ombudsman staff and volunteers; ~~and~~

4. Procedures to ensure that ~~no officer~~ officers, employee employees or other ~~representative~~ representatives of the Office ~~is~~ are not subject to a conflict of interest which would impair ~~the ability~~ their ability ~~of any such person~~ to carry out ~~his or her~~ their official duties in an impartial manner; and

5. The disclosure by the State Long-Term Care Ombudsman or area or local Ombudsman entities of files maintained by the State Long-Term Care Ombudsman Program. Such rules shall:

- a. provide that such files and records may be disclosed only at the discretion of the State Long-Term Care Ombudsman or the person designated by the State Long-Term Care Ombudsman to disclose the files and records, and
- b. prohibit the disclosure of the identity of any complainant or resident with respect to whom the Office maintains such files or records unless:
  - (1) the complainant or resident, or the legal representative of the complainant or resident, consents to the disclosure and the consent is given in writing,
  - (2) (a) the complainant or resident gives consent orally, and

(b) the consent is documented contemporaneously in a writing made by a State Long-Term Care Ombudsman representative of the Office in accordance with such rules as the Commission shall promulgate, or

(3) the disclosure is required by court order.

B. The Oklahoma State Council on Aging, established by the Commission for Human Services to review, monitor and evaluate programs targeted to older persons, shall serve in an advisory capacity to the State Long-Term Care Ombudsman through establishment of a committee with equal provider and consumer representation.

SECTION 13. A. The Oklahoma Health Care Authority shall prepare a written report to the Oklahoma Legislature containing the following information:

1. The reimbursement rates for nursing homes established by the regional states: Missouri, Arkansas, Colorado, Texas, Kansas and New Mexico;

2. The levels of reimbursement rates for nursing homes established by each state of the United States;

3. The regional and a national average for levels of reimbursement rates for nursing homes;

4. The cost to the state of a reimbursement rate to nursing homes, in a graduated scale not to exceed the regional average by the year 2000.

B. The Oklahoma Health Care Authority shall submit such report to the Speaker of the House of Representatives and President Pro Tempore of the Senate by January 1, 1997.

C. The Authority, in determining an Oklahoma reimbursement rate, shall use for comparison purposes the number of nursing homes and nursing home beds that exist as of July 1, 1996. The Authority shall also include any increases that are anticipated, when calculating the reimbursement rate.

D. The Authority shall work with the nursing home industry in the drafting of said proposal.

SECTION 14. NONCODIFICATION The provisions of Sections 9 and 13 of this act shall not be codified in the Oklahoma Statutes.

SECTION 15. Sections 1, 2, 3, 4, 6, 7 and 8 of this act shall become effective November 1, 1996.

SECTION 16. 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.

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