STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 1080 By: Snyder

COMMITTEE SUBSTITUTE

(Public health and safety - Oklahoma Hospice Licensing Act and the Nursing Home Care Act - effective date -

emergency)

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-860.6, as amended by Section 3, Chapter 236, O.S.L. 1992 (63 O.S. Supp. 1995, Section 1-860.6), is amended to read as follows:

Section 1-860.6 A. No public or private agency or person located in a municipality with a population in excess of twenty-five thousand (25,000) shall establish, conduct or maintain a hospice or hold itself out to the public as a hospice without first obtaining a license therefor from the State Department of Health; provided, however, nothing in this act shall be construed to prohibit a public or private agency or person located in a municipality with a population of less than twenty-five thousand (25,000) from establishing, conducting or maintaining a hospice or holding itself out to be public as a hospice if licensed therefor by the Department.

B. An application for a hospice license shall be filed on a form prescribed by the Department and shall be accompanied by:

1. The license fee required by Section 1-860.15 of this title;

2. Complete disclosure for the applicant which shall include, but not be limited to, the name, mailing address and finding address of every stockholder with at least five percent (5%) ownership interest;

3. Satisfactory proof that the hospice is in compliance with the provisions of the Oklahoma Hospice Licensing Act, Section 1-860.1 et seq. of this title, and any rules and minimum standards promulgated by the Department pursuant to the Oklahoma Hospice Licensing Act; and

~~3.~~ 4. Proof of sufficient financial ability to operate and conduct the hospice in accordance with the requirements of the Oklahoma Hospice Licensing Act.

C. The initial application shall be accompanied by a plan for the delivery of home and inpatient hospice services to patients and their families. Such plan shall contain, but not be limited to:

1. The estimated average number of patients to be served monthly;

2. The geographic area in which hospice services will be available;

3. A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing providers;

4. Provisions for the implementation of hospice home care within three (3) months of licensure;

5. The name and qualifications of any existing or potential health care provider with whom the hospice may enter into a contract; and

6. The projected annual operating cost of the hospice.

D. A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire automatically one (1) year from the date of issuance. At least sixty (60) days prior to the expiration date, an application for renewal shall be

submitted to the Department on forms furnished by the Department. The license shall be renewed if the applicant has met the requirements established pursuant to the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Department pursuant to the provisions of the Oklahoma Hospice Licensing Act. The application for license renewal shall be accompanied by an update of the plan for delivery of hospice services only if information contained in the plan submitted pursuant to subsection C of this section is no longer applicable or up-to-date.

E. A hospice for which 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 proceeding. 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.

F. The license shall:

1. Be displayed in a conspicuous place inside the hospice program office;

2. Be valid only in the possession of the person or public agency to which it is issued;

3. Not be subject to sale, assignment, or other transfer, voluntary or involuntary; and

4. Not be valid for any hospice other than the hospice for which originally issued.

G. Any person who prior to January 1, 1991, provided hospice services to any patient shall be entitled to operate as a hospice pursuant to the provisions of the Oklahoma Hospice Licensing Act without making application and obtaining a license pursuant to the provisions of the Oklahoma Hospice Licensing Act for one (1) year after ~~the effective date of this act~~ September 1, 1991, provided such person otherwise complies with the provisions of the Oklahoma Hospice Licensing Act. Thereafter any person providing hospice

services shall make application, obtain a license, and comply with the provisions of the Oklahoma Hospice Licensing Act.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-1918, as amended by Section 1, Chapter 173, O.S.L. 1992 (63 O.S. Supp. 1995, 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 <u>or her</u> choice, and may send and promptly receive, unopened, his <u>or her</u> 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~~ <u>the resident</u> 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 or her 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~~ the resident's 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~~ the resident's attending physician of his or her 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 or her 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 include such documentation or information so 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 or her 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~~ the 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~~ the resident's 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 State Department of Health with respect to the facility and any plan of correction in effect with respect to the facility.

C. A facility shall, at the point that a resident requires hospice services, inform the resident of the right to choose a provider for hospice services. If the facility also provides hospice services or has an ownership interest of five percent (5%) or more in a hospice program, the facility shall disclose the same to the resident.

D. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

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

~~E.~~ F. 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.~~ G. 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.~~ H. 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.~~ I. 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 3. This act shall become effective July 1, 1996.

SECTION 4. 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.

45-2-2506 CJ