

STATE OF OKLAHOMA

1st Session of the 45th Legislature (1995)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1293

By: Fields of the House
and
Cain of the Senate

COMMITTEE SUBSTITUTE

(public health and safety - Nursing Home Care Act -
amending sections in Title 63 - codification - repealing
sections in Title 63 - effective date -
emergency)

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-206, as amended by Section 303, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-206), is amended to read as follows:

Section 1-206. A. A county department of health, a district department of health, a cooperative department of health, and a city-county department of health shall, in their respective jurisdictions, maintain programs for disease prevention and control, health education, guidance, maternal and child health, including school health services, health in the working environment, nutrition and other matters affecting the public health; provide preventive services to the chronically ill and aged; maintain vital records and statistics; ~~supervise nursing, convalescent and rest homes, and related institutions;~~ assist the State Commissioner of Health in the performance of ~~his~~ official duties, and perform such other acts as

may be required by the Commissioner; and may maintain programs for mental health and day care for children.

B. Nothing contained herein relating to pollution shall be in conflict with the existing jurisdiction of any other state environmental agency.

C. Responsibility for the licensing and inspection of nursing facilities and specialized facilities, as defined in the Nursing Home Care Act, Section 1-1901 et seq. of this title, and for the enforcement of health and safety standards applicable to such facilities, shall be reserved to the State Department of Health and shall be exercised pursuant to the provisions of the Nursing Home Care Act.

SECTION 2. AMENDATORY 633 O.S. 1991, Section 1-209, as amended by Section 305, Chapter 145, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-209), is amended to read as follows:

Section 1-209. A. 1. Except as may be otherwise provided by city charter, the governing board of each city or incorporated town shall serve, ex officio, as the board of health for such city or town, and shall appoint, and fix the duties and compensation of, a health officer and other personnel to enforce the ordinances of such city or town relating to public health.

2. ~~The~~ Except as otherwise provided by this subsection, the governing board may adopt such ordinances, and rules ~~and regulations~~ as it deems necessary for the protection of the public health, ~~as;~~ provided such ordinances and rules are not inconsistent with state laws or rules ~~and regulations~~ of the State Board of Health, ~~and.~~ The governing board shall enforce such laws and rules as may be required by the State Commissioner of Health, ~~and it~~ and it may, by agreement with the medical director of the county or district department of health, delegate to such department the authority to enforce ordinances of the city or town relating to public health. Responsibility for licensing, regulation and inspection of nursing

facilities and specialized facilities, as defined in the Nursing Home Care Act, Section 1-1901 et seq. of this title, and for enforcement of health and safety standards applicable to such facilities, shall be reserved to the State Department of Health and shall be exercised pursuant to the provisions of the Nursing Home Care Act.

B. The governing board of each city or incorporated town may adopt and enforce such ordinances as it deems necessary for the protection of the environment, provided such ordinances are not inconsistent with state laws or rules of the Environmental Quality Board. ~~Such~~ The governing board may, by agreement with the Department of Environmental Quality (DEQ), delegate to ~~such Department's~~ the local DEQ representative the authority to investigate ordinances of the city or town relating to the environment and submit such investigative results to the clerk of the city or town.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-841 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall require as a condition of licensure that an accounting be made of financial records of each client for which the facility is the payee in each residential facility. Such records may be inspected by any employee of the Department during any regular inspection or at any time a complaint is received by the Department regarding a client's finances.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-842 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any contract or application for admission to a residential care facility shall include provisions for the applicant to designate an individual to be the "volunteer representative of the resident". The individual so designated shall have a fiduciary duty

to the resident to act at all times in the best interests of the resident. Any resident of a residential care facility may change the designation of a volunteer representative at any time and for any reason. No volunteer representative shall be required to serve in such capacity if the person objects to serving, and may resign as volunteer representative upon written notice to the resident and the facility.

B. Upon admission or the signing of a contract for admission to a residential care facility, or any modifications to the contract for admission, the volunteer representative of the resident shall be notified of the admission, the contract or any modifications to the contract.

C. No owner, administrator, employee or person with a pecuniary interest in the residential care facility, or relative thereof, shall be eligible to serve as the volunteer representative of the resident.

D. If a resident is subject to a special, limited or full guardianship, pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act, Section 1-101 et seq. of Title 30 of the Oklahoma Statutes, or the Protective Services for the Elderly and for Incapacitated Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes, the volunteer representative of the resident shall be the court-appointed guardian.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-1118, is amended to read as follows:

Section 1-1118. ~~(a)~~ A. It shall be unlawful for any person to operate or maintain any establishment, stationary or otherwise, where food or drink is offered for sale, or sold, to the public, unless ~~he~~ the person is the holder of a license issued for such purpose by the State Commissioner of Health.

B. Unless otherwise provided by rule by the State Board of Health, each such license shall expire on the 30th day of June

following its issuance, ~~and the~~. The Commissioner shall charge and collect for each such license an annual fee to be fixed by the State Board of Health. A license shall not be required of a nonprofit civic, charitable or religious organization, using nonpaid persons to prepare or serve food on its behalf, for occasional fund-raising events sponsored and conducted by the organization. The Commissioner shall provide guidelines for safeguarding the health of customers of such events. The Board may by rule provide that a license which is fee-exempt under rules adopted by the Board pursuant to subsection D of Section 1-106.1 of this title shall not expire but shall remain in full force and effect until affirmatively revoked, suspended, annulled or withdrawn by the Commissioner ~~of Health~~ in accordance with applicable law. ~~Notwithstanding any other provision of law, the~~ The Board may by rule also provide that licenses for establishments serving events of limited duration or operating on a seasonal basis shall extend only for the term of the event or season, and may by rule adjust the fees for such licenses accordingly.

~~(b)~~ C. The State Board of Health shall adopt reasonable standards, and rules ~~and regulations~~ for sanitation of establishments required to be licensed, ~~including~~ which shall include the following ~~items~~: buildings, vehicles, and appurtenances thereto, including plumbing, ventilation and lighting; construction, cleanliness and bactericidal treatment of equipment and utensils; cleanliness, wholesomeness, storage and refrigeration of food and drink sold or served; cleanliness and hygiene of personnel; toilet facilities; disposal of waste; water supply; and other items deemed necessary to safeguard the health, comfort, and safety of customers.

~~(c)~~ D. Day care centers or family day care centers, and all other child care facilities as defined ~~in Section 402 of Title 10 of the Oklahoma Statutes,~~ and licensed pursuant to the provisions of the Oklahoma Child Care Facilities Licensing Act, Section 401 et

seq. of Title 10 of the Oklahoma Statutes, shall not be deemed to be a food service establishment establishments.

E. Nursing facilities and specialized facilities, as defined in and licensed pursuant to the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of this title, shall not be deemed to be food service establishments.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-1902, as amended by Section 16, Chapter 159, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-1902), is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act, Section 1-1901 et seq. of this title:

1. "Abuse" means ~~any intentional physical or mental injury or sexual assault inflicted on a resident of a facility by any person~~ the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when invited to do so by a resident. The state or local "ombudsman", as that term is defined by the Aging Services Division of the Department of Human Services pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies shall have right of access to enter a facility, communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate privately and without restriction with any resident, and to observe all areas of the facility that directly pertain to the patient care of the resident without infringing upon the privacy of the other residents without first obtaining their consent;

3. "Administrator" means the person licensed by the State of Oklahoma who is in charge of a facility and who devotes at least one-third (1/3) of his or her full working time to on-the-job supervision of such facility, ~~provided that this.~~ This requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or less beds (ICF-MR/16), provided ~~said~~ the ICF-MR/16 facility or facilities are physically located on one campus that is owned and operated by an organization or institution that has a qualified administrator, and each ICF-MR/16 facility ~~shall be~~ is supervised by a qualified mental retardation professional;

4. "Advisory Board" means the Long-Term Care Facility Advisory Board;

5. "Adult Companion Home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three or fewer mentally retarded or developmentally disabled adults;

6. "Board" means State Board of Health;

7. "Commissioner" means Commissioner of Health;

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

9. "Facility" means a nursing facility and a specialized home. ~~The~~; provided this term shall not include a residential care home or an adult companion home;

10. "Nursing facility" means a home, an establishment or an institution, a distinct part ~~thereof~~ of which is primarily engaged in providing:

- a. skilled nursing care and related services for residents who require medical or nursing care,
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home and which can be made available to them only through a nursing facility;

11. "Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for mentally retarded or developmentally disabled persons;

12. "Residential care home" means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act, Section 1-819 et seq. of this title, other than a hotel, motel, fraternity or sorority house, or college or university dormitory, which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. ~~Said~~ The residents shall be persons who are ambulatory and essentially capable of managing their own affairs, but who do not routinely require nursing care; provided, the term residential care home shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory ~~providing such,~~ if the facility operates in a manner customary to its description and does not house three or more persons who require supportive assistance from ~~said~~ the facility in order to meet an adequate level of daily living;

13. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by the Department pursuant to the provisions of the Nursing Home Care Act;

14. "Maintenance" means meals, shelter, and laundry services;

15. "Neglect" means a failure to provide adequate medical or personal care or maintenance, which results in physical or mental injury to a resident;

16. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the facility;

17. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his or her person, whether or not a guardian has been appointed for such person;

18. "Resident" means a person residing in a facility due to illness, physical or mental infirmity, or advanced age;

19. "Representative of a resident" means a court-appointed guardian, ~~or,~~ if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident. ~~Provided;~~ provided, that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of this title, the Residential Home Care Act, Section 1-819 et seq. of this title, or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act, Section 1-818.1 et seq. of this title, shall not be appointed guardian or limited guardian of a resident of ~~such~~ the facility unless ~~said~~ the owner, operator, administrator or employee is the spouse of ~~said~~ the resident, or a relative of ~~said~~ the resident within the second degree of consanguinity and is otherwise eligible for appointment; and

20. "Supportive assistance" means the service rendered to any person which is less than the service provided by a nursing facility

but which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution, and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. Supportive assistance shall not include medical service.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-1905, as amended by Section 12, Chapter 269, O.S.L. 1993 (63 O.S. Supp. 1994, Section 1-1905), is amended to read as follows:

Section 1-1905. A. An application for a license, or renewal thereof, to operate a facility shall be accompanied by a fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such facility. All licenses shall be on a form prescribed by the State Commissioner of Health, which shall include, but not be limited to, the maximum bed capacity for which it is granted and the date the license was issued. The license shall:

1. ~~Shall not~~ Not be transferable or assignable;
2. ~~Shall be~~ Be posted in a conspicuous place on the licensed premises;
3. ~~Shall be~~ Be issued only for the premises named in the application; and
4. ~~May be renewed for periods not to exceed fifteen (15) months established by the Commissioner upon application, inspection and payment of the license fee, as in the procurement of the original license~~ Expire on July 30 of each year, provided an initial license shall expire one hundred eighty (180) days after the date of issuance.

B. The fee for a license renewal following an initial license, or for a license amendment to reflect a change in bed capacity, shall be prorated based on the number of days remaining until July

30, and, in the case of a change in the number of beds, the total number of beds.

C. The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this act arising out of the notice of violation.

~~C.~~ D. 1. When transfer of ownership or operation of a facility is proposed, the transferee shall notify the Department of the transfer and apply for a new license at least thirty (30) days prior to final transfer.

2. The transferor shall remain responsible for the operation of the facility until such time as a license is issued to the transferee.

3. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction as provided in this act.

4. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

E. Nursing and specialized facilities, as defined and licensed pursuant to the Nursing Home Care Act, Section 1-1901 et seq. of this title, shall be surveyed at least once every fifteen (15) months, with a statewide average survey cycle of twelve (12) months.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1908.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority shall amend the state Medicaid plan to provide a funding source for payment of temporary managers or state monitors in facilities certified to provide long-term care services under Medicaid, upon request of the State Department of Health pursuant to 42 U.S.C.A., Section 1396r(h)(z).

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-1911, is amended to read as follows:

Section 1-1911. A. Every building, institution, or establishment for which a license has been issued shall be periodically inspected by a duly appointed representative of the State Commissioner of Health, pursuant to rules ~~and regulations~~ adopted by the State Board of Health with the advice and counsel of the Long-Term Care Facility Advisory Board, ~~created pursuant to the provisions of~~ in Section 1-1923 of this title. Inspection reports shall be prepared on forms prescribed by the Commissioner with the advice and counsel of the Advisory Board.

~~Facilities licensed pursuant to the provisions of the Nursing Home Care Act shall not be exempt from being inspected or licensed pursuant to the laws of this state relating to hotels, restaurants, lodging houses, boarding houses, and places of refreshment. Inspections of residential care homes shall be conducted in accordance with the standards established by the Commissioner pursuant to the provisions of the Residential Care Act.~~

B. The State Department of Health, whenever it deems necessary, shall inspect, survey, and evaluate every facility to determine compliance with applicable licensure and certification requirements and standards. All inspections of facilities shall be unannounced. The Department may have as many unannounced inspections as it deems necessary. The Department may periodically visit a facility for the purpose of consultation and may notify the facility in advance of such a visit. An inspection, survey, or evaluation, other than an inspection of financial records or a consultation visit, shall be

conducted without prior notice to the facility. One person shall be invited from a statewide organization of the elderly by the Department to act as a citizen observer in an unannounced inspection; ~~the~~. The individual may be a state or local ombudsman as defined by the ~~Special Unit on Aging established by Services Division of~~ the Department of Human Services, acting pursuant to the provisions of the Older Americans Act of 1965, Public Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as amended. The citizen observer shall receive expenses as provided for in the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. An employee of a state or unit of a local government agency, charged with inspecting, surveying, and evaluating facilities, who aids, abets, assists, conceals, or conspires with a facility administrator or employee in violation of the provisions of the Nursing Home Care Act, Section 1-1901 et seq. of this title, shall be guilty of a misdemeanor and shall be subject to dismissal from employment.

C. The Department shall hold open meetings ~~at least once every four (4) years,~~ as part of its routine licensure survey, in each of the licensed facilities to advise and to facilitate communication and cooperation between facility personnel and the residents of facilities in their mutual efforts to improve patient care. Administrators, employees of the facility, residents, residents' relatives, friends, residents' representatives, and employees from appropriate state and federal agencies shall be encouraged to attend these meetings to contribute to this process.

D. The Department shall require periodic reports and shall have access to books, records, and other documents maintained by the facility to the extent necessary to implement the provisions of the Nursing Home Care Act and the rules promulgated pursuant to ~~said provisions~~ the act.

Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect the facility in accordance with the provisions of the Nursing Home Care Act. Refusal to permit said entry or inspection, except for good cause, shall constitute grounds for ~~denial, nonrenewal, or revocation of a license~~ remedial action and/or administrative penalty as provided in the ~~provisions of the~~ Nursing Home Care Act.

E. The Department shall ~~make at least one annual report~~ maintain a file on each facility in the state. All conditions and practices not in compliance with applicable standards ~~within the year for which the report is made~~ shall be specifically stated. If a violation is corrected or is subject to an approved plan of correction, such action shall be ~~specified~~ contained in the ~~annual report~~. ~~Upon receiving a written request for a copy of the annual report, the Department shall send a copy of the report to any person making the written request. The Department may charge a reasonable fee for copying costs~~ file.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-1912, is amended to read as follows:

Section 1-1912. A. If upon inspection or investigation, the State Department of Health determines that a facility is in violation of this act ~~or of,~~ any rule promulgated thereunder, or applicable federal certification criteria, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision ~~or,~~ rule or standard alleged to have been violated. The notice of violation shall inform the licensee of ~~any action the Department intends to take including the requirement of a facility~~ its obligation to file a plan of correction, imposition of within ten (10) working days of receipt of the notice of violation.

B. The Department shall notify the licensee of its intent to take any remedial action, impose administrative penalties, placement of place a monitor, or temporary manager or receiver in the facility, issue a conditional license, or suspend or revoke a license suspension or revocation. The Department shall also inform the licensee of ~~rights~~ the right to a hearing.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-1914, is amended to read as follows:

Section 1-1914. A. A facility shall have ten (10) working days after receipt of notice of violation in which to prepare and submit a plan of correction. The plan of correction shall include a fixed time period, not to exceed sixty (60) days within which the violations are to be corrected. The Department may extend this period ~~up to thirty (30) days~~ where correction involves substantial capital structural improvement. ~~The plan shall include a fixed time period not in excess of ninety (90) days within which violations are to be corrected.~~ If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection to the facility. The facility shall have ten (10) working days after receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not timely submitted, or if the modified plan is rejected, the Department shall impose a plan of correction which the facility shall follow ~~an approved plan of correction imposed by the Department.~~

B. If the violation has been corrected prior to submission and approval of a plan of correction, the facility may submit a report of correction in place of a plan of correction. ~~Such report shall be signed by the administrator under oath.~~

C. Upon a licensee's ~~petition~~ written request, the Department shall determine whether to grant a licensee's request for an extended correction time. Such ~~petition~~ request shall be served on the Department prior to expiration of the correction time originally

approved. The burden of proof ~~is~~ shall be on the ~~petitioning~~ licensee to show good cause for not being able to comply with the original correction time approved.

D. If a facility desires to contest any Department action under this section, it shall send a written request for a hearing to the Department within ten (10) working days of receipt of notice of the contested action and the Department shall commence the hearing. ~~Whenever possible, all action of the Department under this section arising out of a violation shall be determined at a single hearing. Issues decided after a hearing may not be reheard at subsequent hearings under this section.~~

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For violations of the Nursing Home Care Act, Section 1-1901 et seq. of this title, the rules adopted thereunder, or Medicare/Medicaid certification regulations:

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a facility and may, after notice and opportunity for hearing, impose the remedy most likely to gain and ensure continued compliance with this act, the rules promulgated hereunder, and/or federal certification standards. In the alternative or in addition to any remedial action, the State Commissioner of Health may direct the Oklahoma Health Care Authority to withhold vendor payments due to a facility under its programs until such time as the corrections are made; and

2. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a facility, assess administrative penalties, or issue a conditional license.

B. Remedial action shall be based on current and past noncompliance or incomplete or partial compliance; repeated violations; or failure to substantially comply with the act and

rules. In determining the most appropriate remedy, the Department shall consider at least the following:

1. The nature, circumstances and gravity of the violations;
2. The repetitive nature of the violations at the facility or others operated by the same or related entities;
3. The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and
4. Any showing of good faith in attempting to achieve compliance with the provisions of the Nursing Home Care Act.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Commissioner of Health may place a qualified person in a facility as a temporary manager to assume operating control of the facility and to ensure that the health and safety of the residents of the facility are protected when any of the following conditions exist:

1. The conditions at the facility pose immediate jeopardy to the health and safety of the residents of the facility;
2. The facility is operating without a license;
3. The State Department of Health has suspended, revoked or refused to renew the existing license of the facility;

4. The facility has closed or has informed the Department that it intends to close and adequate arrangements for the relocation of residents have not been made at least thirty (30) days prior to closure; or

5. The Department has terminated certification status under Medicare/Medicaid.

B. The Department shall notify the owner or operator of the action taken, the reason or reasons why such action was taken, and the right of the owner or operator to have a hearing on the matter.

C. Any owner or operator subject to placement of a temporary manager may appeal such by filing a petition for hearing with the district court. The court shall conduct the hearing within five (5) working days of such action by the Department. On the basis of the hearing, the court may continue the order in effect, revoke it or modify it. The petition for hearing, when docketed, shall have priority over all cases pending on the docket except criminal cases.

D. All funds due or available to the facility from any source during the pendency of the temporary management shall be made available to the temporary manager who shall use the funds to ensure the health and safety of the residents of the facility.

E. The Commissioner shall establish qualifications for persons to be appointed as temporary managers and shall maintain a list of all such qualified persons. The Commissioner may appoint any person from the list to serve as a temporary manager, provided that the Commissioner shall not appoint any owner or affiliate of the facility as its temporary manager.

F. The temporary manager shall make provisions for the continued protection of the health and safety of all residents of the facility. The temporary manager appointed under this act shall exercise those powers and shall perform those duties set out by the Commissioner. The Commissioner shall provide for the temporary manager to have sufficient power and duties to ensure that the residents of the facility receive adequate care.

G. If funds are insufficient to meet the expenses of performing the powers and duties conferred on the temporary manager, the temporary manager may borrow the funds as necessary. The Department may reimburse the temporary manager for such expenses from funds appropriated or otherwise available to the Department for this particular purpose.

H. The Commissioner shall set the compensation of the temporary manager, who shall be paid by the facility. The temporary manager shall be considered an agent of the state for purposes of liability.

I. A temporary manager may be held liable in a personal capacity only for his or her own gross negligence, intentional acts or breaches of fiduciary duty. Any claim shall be filed under the Tort Claims Act. The Commissioner may require a temporary manager to post a bond or may purchase a bond from funds available for this purpose.

J. Other provisions of this act notwithstanding, the Department shall issue a conditional license to a facility in which a temporary manager is placed. The duration of a license issued under this section is limited to the duration of the temporary managership.

K. The Commissioner shall require that the temporary manager report to the Department on a regular basis as to the progress of the facility in reaching substantial compliance with the act and the rules adopted hereunder, and the establishment of mechanisms which will ensure the continued compliance of the facility.

L. 1. The Commissioner may release the temporary manager when the Commissioner determines that the facility is and will continue to be in substantial compliance with the applicable rules.

2. Within thirty (30) days after release, the temporary manager shall give the Department a complete accounting of all property of which the temporary manager has taken possession, of all funds collected, and of the expenses of the temporary managership.

3. If the operating funds exceed the reasonable expenses of the temporary managership, the Commissioner shall order payment of the surplus to the owner, after reimbursement of funds drawn from the contingency fund provided for in this act. If the operating funds are insufficient to cover the reasonable expenses of the temporary manager, the owner shall be liable for the deficiency. Any funds

recovered from the owner may be used to reimburse the temporary manager under this act.

4. The Department shall have a lien for any payment made under this act upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the facility is located,
- b. any fixtures, equipment or goods used in the operation of the facility,
- c. the land on which the facility is located, or
- d. the proceeds from any conveyance of property described in subparagraphs a, b, or c of this paragraph made by the owner prior to the order placing the temporary manager.

M. Nothing in this act shall be deemed to relieve any owner, administrator or employee of a facility in which a temporary manager is placed of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator or employee prior to the appointment of a temporary manager; provided, nothing contained in this act shall be construed to suspend during the temporary managership any obligation of the owner, administrator or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee or any other person for the payment of mortgages or liens.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-1916.1, is amended to read as follows:

Section 1-1916.1 A. Any person who has been determined by the State Department of Health to have violated any provision of the Nursing Home Care Act, Section 1-1901 et seq. of this title, or any rule, ~~regulation~~ or order issued pursuant to the provisions of the Nursing Home Care Act, may be liable for an administrative penalty ~~of not more than One Hundred Dollars (\$100.00)~~ for each day that

said violation ~~continues~~ or violations continue to exist. ~~The maximum administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.~~ Penalties of not less than Fifty Dollars (\$50.00) per day or more than Three Thousand Dollars (\$3,000.00) per day may be imposed for deficiencies that do not constitute immediate jeopardy to residents. Penalties of not less than Three Thousand Fifty Dollars (\$3,050.00) per day or more than Ten Thousand Dollars (\$10,000.00) per day may be imposed for deficiencies constituting immediate jeopardy to residents; provided, however, that specialized facilities for the developmentally disabled or nursing facilities licensed pursuant to this act, which do not participate in Medicaid or Medicare, shall be liable for the maximum penalty, not to exceed Ten Thousand Dollars (\$10,000.00) for any related violations.

B. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and opportunity for hearing. Within ten (10) working days of the inspection documenting the violation, the facility may appeal this decision pursuant to Article II of the Administrative Procedures Act, Section ~~309~~ 308a et seq. of Title 75 of the Oklahoma Statutes. In determining the amount of the penalty, the Department shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation, the repetitive nature of the violation at this facility or others operated by the same entity, the previous degree of difficulty in obtaining compliance with the rules, and, with respect to the person found to have committed the violation, the degree of culpability, ~~the effect on ability of the person to continue to do business,~~ the facility's financial condition and ~~any~~ substantial show of good faith in attempting to achieve compliance with the provisions of the Nursing Home Care Act.

C. Any license holder may elect to surrender his or her license in lieu of said fine but shall be forever barred from obtaining a reissuance of ~~said~~ the license or any other license under this act.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-1923, as amended by Section 1, Chapter 109, O.S.L. 1992 (63 O.S. Supp. 1994, Section 1-1923), is amended to read as follows:

Section 1-1923. A. There is hereby re-created, to continue until July 1, 1998, in accordance with the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes, a Long-Term Care Facility Advisory Board which shall be composed as follows:

1. The Governor shall appoint a twenty-three-member Long-Term Care Facility Advisory Board which shall advise the State Commissioner of Health. The Advisory Board shall be comprised of the following persons: ~~One~~

- a. one representative from the Office of the State Fire Marshal, designated by the State Fire Marshal~~†~~†
- b. one representative from the State Department of Health, designated by the Commissioner~~†~~†
- c. one representative from the Department of Mental Health and Substance Abuse Services, designated by the ~~Director†~~ Commissioner of Mental Health and Substance Abuse Services,
- d. one representative from the Department of Human Services, designated by the Director~~†~~ of Human Services,
- e. one member who shall be a licensed general practitioner of the medical profession~~†~~†
- f. one member who shall be a general practitioner of the osteopathic profession~~†~~†
- g. one member who shall be a registered pharmacist~~†~~†
- h. one member who shall be a licensed registered nurse~~†~~†

- i. one member who shall be a licensed practical nurse~~;~~
- j. three members who shall be of reputable and responsible character and sound physical and mental health and shall be operator-administrators of nursing homes which have current licenses issued pursuant to the Nursing Home Care Act, Section 1-1901 et seq. of this title and who shall have had five (5) years' experience in the nursing home profession as operator-administrators~~;~~
- k. three members who shall be residential care home operator-administrators licensed pursuant to the provisions of the Residential Care Act, Section ~~1-820~~ 1-819 et seq. of this title,
- l. three members who shall be adult day care facility owner-operators licensed pursuant to the provisions of the Adult Day Care Act, Section 1-871 et seq. of this title~~;~~ and
- m. five members~~,~~ who shall be over the age of sixty-five (65)~~,~~ who shall represent the general public~~;~~

~~1- 2.~~ 2. The designated representative from the Office of the State Fire Marshal, the designated representative from the Department of Mental Health and Substance Abuse Services, the designated representative from the Department of Human Services, and the designated representative from the State ~~Health~~ Department of Health shall serve at the pleasure of their ~~designator~~ designators.

3. The initial appointments of the Governor shall be for the following terms: ~~The~~

- a. the initial term of the member of the medical profession shall be for a three-year term~~;~~
- b. the initial term of the member of the osteopathic profession shall be for a three-year term~~;~~

- c. the initial term of the registered pharmacist shall be for a two-year term~~;~~
- d. the initial term of the licensed registered nurse shall be for a two-year term~~;~~
- e. the initial term of the licensed practical nurse shall be for a one-year term~~;~~
- f. of the initial terms for the nine members who are licensed operator-administrators for facilities pursuant to the Nursing Home Care Act, residential care homes pursuant to the Residential Care Act and adult day care facilities pursuant to the Adult Day Care Act, three shall be for one-year terms, three shall be for two-year terms, and three shall be for three-year terms; provided that representatives for each of the terms shall include one individual representing facilities subject to the provisions of the Nursing Home Care Act, one individual representing residential care homes subject to the Residential Care Act and one individual representing facilities subject to the provisions of the Adult Day Care Act~~;~~ and
- g. the initial terms for the five members of the general public over the age of sixty-five (65) shall be for one-, two-, three-, four- and five-year terms respectively~~;~~

~~2.~~ 4. After the initial designations or appointments, the designated representative from the Office of the State Fire Marshal, ~~the designated representative of the Oklahoma State Health Department,~~ the designated representative of the Department of Human Services and the designated representative of the Department of Mental Health and Substance Abuse Services shall each serve at the pleasure of their ~~designator~~ designators. All other terms shall be

for a three-year period. In case of a vacancy, the Governor shall appoint individuals to fill the ~~rest~~ remainder of the term.

~~3.~~ B. The State Department of Health shall provide a clerical staff worker to perform designated duties of the Advisory Board. ~~Also, the~~ The Department shall also provide space for meetings of the Advisory Board.

~~B.~~ C. The Advisory Board shall annually elect a ~~chairman,~~ ~~vice-chairman,~~ chair, vice-chair and secretary-treasurer, shall meet at least quarterly, and may hold such special meetings as may be necessary. The members of the Advisory Board shall be reimbursed as provided for by the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

~~C.~~ D. The Advisory Board shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to and care and treatment of residents of facilities subject to the provisions of the Nursing Home Care Act, homes subject to the provisions of the Residential Care Act and facilities subject to the provisions of the Adult Day Care Act; ~~and~~

2. Review, make recommendations regarding, and approve in its advisory capacity the system of standards developed by the Department; ~~and~~

3. Evaluate and review the standards, practices, and procedures of the Department regarding the administration and enforcement of the provisions of the Nursing Home Care Act, the Residential Care Act and the Adult Day Care Act, and the quality of services and care and treatment provided to residents of facilities and residential care homes and participants in adult day care centers. The Board may make recommendations to the Department as necessary and appropriate; ~~and~~

4. Evaluate and review financial accountability standards, policies and practices of residential care facilities regarding

residents' funds for which the facility is the payee, and evaluate and review expenditures made on behalf of the resident by the facility to ensure that such funds are managed appropriately and in the best interests of the resident; and

5. Publish and distribute an annual report of its activities and any recommendations for the improvement of services and care and treatment to residents of facilities and residential care homes and participants in adult day care centers on or before January 1 of each year to the Governor, the Commissioner, the State Board of Health, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the chief administrative officer of each agency affected by the report.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1923.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall:

1. Establish a Residents and Family State Council which shall be composed of fifteen (15) members who are, or who have been within the last twelve (12) months, residents, family members, resident representatives or guardians of residents of nursing facilities licensed pursuant to this act, but shall not include persons representing residents in facilities for the developmentally disabled. The Council shall annually elect a chair and vice-chair, and shall meet at least quarterly. Meetings shall be conducted in the various areas of the state with at least one meeting in each of the four quadrants of the state to allow for participation by family members and residents where possible. The members of the Council shall be reimbursed pursuant to the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes. The Council shall have the power and duty to advise the State Department of Health concerning the development and improvement of services to and care and treatment of residents of facilities subject to the

provisions of the Nursing Home Care Act, Section 1-1901 et seq. of this title, and make recommendations to the Department as necessary and appropriate. The members shall serve at the pleasure of the State Commissioner of Health; and

2. Establish a toll free, twenty-four-hour hotline for filing of complaints against facilities licensed under this act.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-1940, is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of this act, or of the rules ~~and regulations~~ promulgated by the Department, is hereby declared a public nuisance, inimical to the public welfare. The ~~Director~~ State Commissioner of Health, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

B. 1. Any person with personal knowledge or substantial specific information who believes that this act, a rule promulgated under this act, or a federal certification rule applying to a facility may have been violated may ~~request an investigation~~ file a complaint. The ~~request~~ complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department. ~~Provided;~~ provided that any person who willfully or recklessly makes a false ~~request~~ complaint or a report without a reasonable basis in fact for such a ~~request~~ complaint, under the provisions of this act, shall be liable in a civil suit for any actual damages suffered by a facility ~~so requested to be investigated~~ for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

2. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

3. The Department shall promulgate rules ~~and regulations~~ to protect the identity of the complainant, provided that said person is a present resident or resident's representative or designated guardian or a present employee.

4. Upon receipt of a complaint, the Department shall determine whether this act, a rule promulgated under this act, or a federal certification rule for facilities has been or is being violated. If the complaint does not contain allegations of violations of the act, rules or certification standards, the complaint shall not be investigated and notice of the decision not to investigate shall be given to the complainant. A ~~determination about a report summarizing the~~ complaint which alleges a violation investigation shall be made in writing, ~~within thirty (30) days after the complaint's receipt of the complaint.~~ The ~~determination shall state the reasons therefor~~ Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

5. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant, and the complainant may direct the Department to send a copy of such findings to one other person. The notice of such findings shall include a copy of the written determination, ~~the correction order, if any, the warning notice, the remedial action taken,~~ if any, and the state licensure ~~of~~ or federal certification ~~for~~, or both, on which the violation is listed.

6. A written determination, ~~correction order or warning~~ notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

7. The Department shall ~~issue a written determination signed by the Commissioner which shall serve as a final appealable order subject to trial de novo in the appropriate district court~~ seek any remedial action provided under this act for violations documented during complaint investigations.

8. The Department shall establish any additional rules ~~and regulations~~ necessary for the investigation ~~and hearing~~ of complaints as provided herein, and is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are being properly executed.

SECTION 18. REPEALER 63 O.S. 1991, Sections 1-1915, 1-1931, 1-1932, 1-1933, 1-1934, 1-1935, 1-1936, 1-1937 and 1-1938, are hereby repealed.

SECTION 19. This act shall become effective July 1, 1995.

SECTION 20. 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.

45-1-1137

CJ