

ENROLLED HOUSE
BILL NO. 2648

By: Mitchell and Staggs of
the House

and

Monson of the Senate

An Act relating to public health and safety; amending Section 3, Chapter 139, O.S.L. 1992, as amended by Section 1, Chapter 169, O.S.L. 1995, Section 6, Chapter 139, O.S.L. 1992, and Section 7, Chapter 139, O.S.L. 1992, as last amended by Section 30, Chapter 382, O.S.L. 1994 (63 O.S. Supp. 1995, Sections 1-1961, 1-1964 and 1-1965), which relate to the Home Care Act; modifying and adding terms; modifying and adding to contents, coverage and scope of rules; requiring certain disclosure; providing for certain requirements, restrictions and standards; authorizing stricter standards; providing for procedures for licensure; requiring certain resources; requiring and increasing certain licensure and certification fees; requiring certain information from certain persons; requiring certain investigation and determination; providing certain conditions, restrictions and functions; providing for disclosure statements; providing for contents and certain information; providing for expiration of licensure; authorizing certain extensions and prorations; providing for denial of licensure; specifying reasons; prohibiting certain actions; specifying certain actions relating to licenses; providing for expiration; authorizing revocation or suspension of licenses; specifying certain conditions; specifying certain grounds; providing for continuation of certain issuance or renewal; prohibiting certain actions; specifying certain requirements; providing for promulgation of rules; providing for contents; defining terms; making issuance of certain license after violation not a waiver; providing for authority to make certain determination of qualifications for administrators; requiring development of standards; requiring certain persons to be certified; specifying certain conditions; specifying duties of the Department of Health; requiring training; specifying contents; requiring proof of training; making certain actions unlawful; requiring payment of certain fees; providing for issuance and termination of certificates; authorizing certain civil actions for certain conduct; providing for granting of certain relief; specifying certain factors; providing findings and considerations; authorizing certain relief; making certain practices not unconscionable; making certain persons civilly liable for certain damages; providing for other

remedies; requiring the State Board of Health to promulgate rules regarding establishment of provider service networks; requiring rules to address certain procedures and standards; making provider service networks subject to certain quality assurance standards; defining term; requiring compliance with rules; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY Section 3, Chapter 139, O.S.L. 1992, as amended by Section 1, Chapter 169, O.S.L. 1995 (63 O.S. Supp. 1995, Section 1-1961), is amended to read as follows:

Section 1-1961. As used in the Home Care Act:

1. "Board" means the State Board of Health;

2. "Certification" means verification of appropriate training and competence ~~for the provision of personal care established by the State Board of Health by rules promulgated pursuant to the Home Care Act for home health aides and home care agency administrators;~~

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

4. "Home care agency" means any sole proprietorship, partnership, association, corporation or other organization which administers, offers or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health ~~aids~~ aides;

5. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;

6. "Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee;

7. "Home care agency administrator" means a person who operates, manages, or supervises, or is in charge of a home care agency;

8. "Personal care" means assistance with dressing, bathing, ambulation, exercise or other personal needs; and

~~8.~~ 9. "Skilled care" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this state, including but not limited to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker.

SECTION 2. AMENDATORY Section 6, Chapter 139, O.S.L. 1992 (63 O.S. Supp. 1995, Section 1-1964), is amended to read as follows:

Section 1-1964. The State Board of Health shall promulgate rules necessary ~~for the accomplishment of~~ to implement the purposes provisions of the Home Care Act, including. Such rules shall include, but shall not be limited to:

1. Minimum standards for home care services. In establishing such standards, the Board shall consider those standards adopted by ~~the Oklahoma Association for Home Care~~ state and national home care associations;

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

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

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

5. Establishing continuing education requirements for renewal of certifications for home care agency administrators and home health aides;

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

7. Standards for assessing an applicant's business and professional experience as demonstrated in prior health care provider operations including, but not limited to, nursing homes, residential care homes, and home care and in previous compliance with all lawful orders of suspension, receivership, administrative penalty or sanction issued by the State Department of Health or by other administrative agencies in other states with similar responsibilities;

8. Restrictions on any agency, agency employee, or agency contractor providing skilled care or conducting an in-home assessment of the need for skilled care unless and until the agency receives a physician's order to provide skilled care or to conduct an in-home assessment of the need for skilled care; provided, however, such restrictions shall not prevent an agency from providing personal care to a client without a physician's order;

9. Restrictions on any agency, agency employee, or agency contractor soliciting, coercing, or harassing a consumer of home care services or who may need home care services; and

10. Standards or other provisions which do not conflict with any federal requirements relating to the federal Medicaid and Medicare programs.

SECTION 3. AMENDATORY Section 7, Chapter 139, O.S.L. 1992, as last amended by Section 30, Chapter 382, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-1965), is amended to read as follows:

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

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

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

B. 1. An application for an initial license to establish or operate a new home care agency shall be accompanied by a nonrefundable application fee of up to Three Thousand Dollars (\$3,000.00) not to exceed the reasonable costs incurred by the Department in implementing the Home Care Act.

2. An application for a license, or renewal thereof, to establish or operate a an existing home care agency shall be accompanied by a nonrefundable licensing fee of Five Hundred Dollars (\$500.00).

3. An application for license, or renewal thereof, to establish or operate a home care agency branch office of an agency licensed in the State of Oklahoma shall be accompanied by a nonrefundable licensing fee of Twenty-five Dollars (\$25.00). ~~Upon payment of the required licensing fee, an initial license may be issued for not~~

~~less than six (6) months nor more than eighteen (18) months from the date of issuance.~~

~~4. Funds collected pursuant to this section shall be deposited in the Home Health Care Revolving Fund created in Section 19 of Enrolled Senate Bill No. 911 of the 2nd Session of the 44th Oklahoma Legislature.~~

C. Disclosure statements shall be completed by the applicant and all affiliated persons and such other legal entities specified by this subsection. The disclosure statements shall be made a part of the application and shall include, but not be limited to, the following information:

1. The full name and address of the applicant, and all affiliated persons;

2. 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;

3. A description of any ongoing organizational relationships as they may impact operations within the state; and

4. The names, locations, and dates of ownership, operation, or management for all current and prior home care agencies owned, operated or managed in this state or in any other state by the applicant or by any affiliated persons.

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

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

2. Conviction of the applicant, or any affiliated persons, for any offense listed in subsection F of Section 1-1950.1 of this title.

E. The license issued by the Commissioner shall:

1. Not be transferable or assignable except to any affiliated person, parent company or subsidiary of the applicant or legal entity which has an ongoing organizational relationship with the applicant;

2. Be posted in a conspicuous place, open to the public, on the licensed premises;

3. Be issued only for the premises named in the application; and

4. Except as otherwise provided by this paragraph, expire on July 31 of each year. The Department shall promulgate rules which will authorize or allow:

a. the term of a renewal license issued pursuant to the Home Care Act prior to the effective date of this act which will expire prior to July 1, 1997, to be extended or any application fee or other fee required by the Home Care Act to be prorated so that a renewal license may be issued on August 1, 1997, and

b. the issuance of a new license, or a renewal license, prior to or after the effective date of this act to establish or operate a home care agency pursuant to the Home Care Act for less than one (1) year or the proration of any application fee or other fee so required so that a renewal license may be issued on August 1, 1997.

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

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

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

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

H. For purposes of this section:

1. "Affiliated person" means:

- a. any officer, director or partner of the applicant,
- b. any person employed by the applicant as a general or key manager who directs the operations of the facility which is the subject of the application, and
- c. any person owning or controlling more than five percent (5%) of the applicant's debt or equity; and

2. "Subsidiary" means any person, firm, corporation or other legal entity which:

- a. controls or is controlled by the applicant,
- b. is controlled by an entity that also controls the applicant, or
- c. the applicant or an entity controlling the applicant has directly or indirectly the power to control.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1962a of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. The State Board of Health shall have authority to determine the qualifications, skill and fitness of any person employed to serve as an administrator of a home care agency. The State Board of Health in promulgating rules pursuant to this section may consider advice and comments from representatives of home care agencies, home care agency administrators and representatives of statewide organizations for home care agency clients.

2. The State Board of Health shall develop standards which must be met by individuals in order to receive certification as a home health agency administrator, which standards shall be designed to ensure that home health agency administrators will be individuals who are of good character and are suitable, and who, by training or experience, are qualified to serve as home health agency administrators.

B. The State Department of Health, pursuant to rules promulgated by the Board, shall:

1. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards as established in paragraph 2 of subsection A of this section;

2. Certify individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend certification previously issued by the Department in any case where the individual holding any such certification is determined substantially to have failed to conform to the requirements of such standards;

3. Establish and carry out procedures designed to ensure that individuals certified as home health agency administrators will, during any period that they serve as such, comply with the requirements of such standards; and

4. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Department to the effect that any individual certified as a home care agency administrator has failed to comply with the requirements of such standards.

C. 1. In order to further ensure minimum standards for certification, the Board shall require a home care agency

administrator to receive education or training which shall include, but not be limited to, training in administration, supervision, fiscal management, ethics, community relations, public information and human relations, concerning the issues associated with the operation of home care agencies and programs. Any person employed as an administrator after November 1, 1996, shall have completed the education or training specified by this subsection.

2. On and after August 1, 1997, proof of successful completion of the education, training or continuing education, as applicable, for the home care agency administrator shall be required prior to issuance or renewal of a license for a home care agency pursuant to the provisions of the Home Care Act.

D. It shall be unlawful and a misdemeanor for any person to act or serve in the capacity as a home care agency administrator unless such individual is the holder of a certification as a home care agency administrator, issued in accordance with the provisions of the Home Care Act.

E. Each person certified as a home care agency administrator pursuant to the provisions of this section shall be required to pay an annual certification fee in an amount to be determined by the State Board of Health not to exceed Two Hundred Dollars (\$200.00). Each such certificate shall expire on the 31st day of July following its issuance and shall be renewable for twelve (12) months beginning August 1, upon payment of the annual certification fee.

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

G. 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.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1967a of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any person, other legal entity, or any governmental agency may bring a civil action to restrain a provider of home care services, or a person acting on behalf of the provider or under the provider's control from, or for the collection of damages caused by:

1. Making or enforcing unconscionable terms or provisions of a provider agreement;
2. Fraudulent or unconscionable conduct in inducing a patient to enter into an agreement; or
3. Fraudulent or unconscionable conduct in collecting fees for services.

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

1. That the defendant has made unconscionable agreements or has engaged in or is likely to engage in a course of fraudulent or unconscionable conduct;
2. That the agreements or conduct of the defendant has caused or is likely to cause injury to a patient; or
3. That the defendant has been able to cause or will be able to cause injury primarily because of the nature of the services involved.

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

1. Belief by the defendant at the time the services were provided that there was no reasonable probability of injury;
2. Knowledge by the defendant at the time the services were provided of the inability of the patient to receive substantial benefit from the services provided;

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

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

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

6. Any other fact.

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

E. With respect to an action brought to restrain actions pursuant to the provisions of the Home Care Act, or unconscionable agreements or fraudulent or unconscionable conduct, a person may apply to the court for temporary relief against a defendant, pending final determination. If the court finds after a hearing held upon notice to the defendant that there is reasonable cause to believe that the defendant should be restrained, it may grant any temporary relief or restraining order it deems appropriate.

F. In addition, after demand, a person, other legal entity or governmental agency may bring a civil action against a provider of home care services, or a person acting on behalf of the provider or under the provider's control, to recover damages incurred as a result of any action taken by the provider or such person, subject to the provisions of this section.

G. The provisions of this section shall not affect any other remedies available under other principles of law or equity.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2513 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules regarding the establishment and operation of provider service networks (PSNs) which shall address, at a minimum, the following:

1. Procedures to allow health care providers within a service area to enter into voluntary agreements to improve access to and the quality or affordability of health care;

2. Procedures for reviewing the plan of operation of a provider service network and standards for approval or disapproval of such plan; and

3. Financial solvency and network capacity standards to ensure a provider service network's ability to deliver promised services.

B. The rules promulgated by the Board shall provide that provider service networks shall be subject to the same quality assurance standards established by law or by rules promulgated by the Board for health maintenance organizations.

C. As used in this section, "provider service network" means a provider-based managed care entity, including physician-hospital organizations (PHOs), organized for the purpose of providing, financing, and managing the risk of health care services to subscribers.

SECTION 7. This act shall become effective November 1, 1996.

Passed the House of Representatives the 23rd day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 24th day of May, 1996.

President of the Senate