

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

HOUSE BILL NO. 2992

By: Crocker

AS INTRODUCED

An Act relating to the Residential Care Act; amending 63 O.S. 1991, Sections 1-820, as last amended by Section 4, Chapter 230, O.S.L. 1995, 1-821, 1-825, 1-826, 1-829, 1-830, 1-831, 1-832, 1-833, 1-836 and 1-838, and Section 5, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1995, Sections 1-820 and 1-842), which relate to residential care homes; modifying definitions; providing for rule promulgation; providing for enforcement of administrative penalties; requiring maintenance of certain records; providing process for remedial actions taken against licensee, owner or operator by State Department of Health; providing that Department of Health may take action regarding a conditional or probationary license; providing that violation of act or rules may be cause for action against license; requiring all complaints to be forwarded to Ombudsman Program of the Special Unit on Aging; requiring certain training for inspectors; authorizing person from statewide organization representing mentally ill persons to be on inspection team; authorizing representatives of Department of Mental Health and Substance Abuse Services to enter residential care home for certain

purposes; modifying terms; updating references; modifying time period in which home shall submit plan of correction; specifying criminal penalties provided in act are in addition to remedial action; modifying penalties; establishing criteria for determination of penalty; stating legislative intent; adding subjects for regulation by rule; establishing criteria for medication distribution and administration; providing for fire safety inspections; requiring certain documents be maintained for public inspection; requiring posting of resident rights; specifying items to be included in statement of resident rights; providing penalty for violation of residential rights; establishing civil remedies for violation of resident rights; requiring representatives of certain groups be granted access to residents; establishing notice requirement; providing administrator of home a right to refuse access under certain circumstances; establishing procedures for protection of residents' funds; establishing criteria for contracts executed between residents and residential care homes; requiring establishment of residents advisory councils; establishing duties for residents advisory councils; establishing Residential Care Homes Residents and Family State Council; providing for membership; providing for reimbursement; providing for powers of Council; providing certain records shall be subject to public disclosure; establishing procedures for appointment of temporary manager of residential care home; prohibiting involuntary transfer or

discharge of residents; providing exceptions; requiring notice prior to involuntary transfer or discharge; providing exceptions; adopting certain rules and regulations; establishing certain notice to be given prior to closing a residential care home; establishing civil liability of residential care home owners and licensees; prohibiting certain individuals from being representatives of resident; providing exception; requiring certain state agencies to assist in carrying out provisions of Residential Care Act; repealing 63 O.S. 1991, Section 1-828, which relates to fire safety inspections; repealing 63 O.S. 1991, Section 1-835, which relates to administration of medication; repealing Section 3, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1995, Section 1-841), which relates to accounting of client's financial records; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-820, as last amended by Section 4, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1995, Section 1-820), is amended to read as follows:

Section 1-820. As used in the Residential Care Act, Section 1-819 et seq. of this title:

1. "Abuse" means 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 home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person who is in charge of a home and who devotes at least one-third (1/3) of his full working time to on-the-job supervision of such home;

4. "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;

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

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

7. "Commissioner" means the State Commissioner of Health;

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

9. "Habilitation" means procedures and interventions designed to assist a mentally ill, drug-dependent or alcohol-dependent person eighteen (18) years of age or older to achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that the resident will make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction and personal relationships;

10. "Home" means a residential care home;

11. "Residential care home" means:

- a. any establishment or institution other than an adult companion home, a hotel, motel, fraternity or sorority house, college or university dormitory which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any residents requiring supportive assistance who are not related to the owner or administrator of

the home by blood or marriage. Said residents shall be ambulatory and essentially capable of managing their own affairs, but do not routinely require skilled nursing care or intermediate care,

- b. a residential care home may consist of a series of units or buildings which are not connected or part of the same structure if:
 - (1) such buildings or units are owned by the same owner or operator,
 - (2) all residents of the units or buildings are fully capable of ambulation to and from the buildings or units,
 - (3) the location and construction of the buildings or units ensure the health, safety, and protection from fire hazards and other hazards and provide for the convenience and accessibility of the residents to each residential building or unit,
 - (4) any out-of-doors premise or thoroughfare is adequately maintained to ensure the health and safety of the residents,
 - (5) the buildings or units are within one hundred seventy-five (175) feet of the building housing the main kitchen and dining room. The units or buildings must be located in the most convenient and accessible location for residents, and
- c. residential care home shall not mean a hotel, motel, fraternity or sorority house, college or university dormitory providing such facility operates in a manner customary to its description and does not house any person who requires supportive assistance from said facility in order to meet an adequate level of daily living.

~~The Board shall develop minimum standards for such residential homes pursuant to Section 1-836 of this title;~~

12. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Residential Care Act, Section 1-819 et seq. of this title;

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

14. "Neglect" means failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness;

15. "Operator" means the person who is not the administrator but who manages the home;

16. "Owner" means a person, corporation, partnership, association, or other entity which owns a home or leases a home. 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 home;

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 person, whether or not a guardian has been appointed for such person;

18. "Resident" means a person residing in a home 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. No owner, agent, or employee or person with a pecuniary interest in the residential facility or relative thereof shall be a representative of a resident unless such person is appointed by the court;

20. "Supportive assistance" means the service rendered to any person 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 obtaining prescription medications, making appointments for medical care and keeping appointments for medical care, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident prepared with the participation of the resident, the mental health or drug or alcohol services case-manager assigned to the resident, and the administrator of the facility or his designee. Supportive assistance shall not include medical service; and

21. "Transfer" means a change in location of living arrangements of a resident from one home to another home.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-821, is amended to read as follows:

Section 1-821. A. The State Board of Health shall have the power and duty to promulgate rules, in accordance with the Administrative Procedures Act, as required by the Residential Care Act or as otherwise necessary for the proper implementation and enforcement of the Residential Care Act or for the health, safety and welfare of residents of residential care homes.

B. The Department shall have the power and duty to:

1. Issue, renew, deny, modify, suspend, and revoke licenses for homes pursuant to the provisions of the Residential Care Act; ~~and~~

2. Establish and enforce standards and requirements for licensure of homes which are subject to the provisions of the

Residential Care Act and require the submission of, and to review, reports from any person establishing or operating a home; ~~and~~

3. Enter upon any public or private property for the purpose of inspecting and investigating conditions of the residents in the home or for the purpose of inspecting and investigating the home for compliance with the provisions of the Residential Care Act, or the standards or requirements for licensure developed by the Department pursuant to the provisions of the Residential Care Act; ~~and~~

4. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of homes and the residents of such homes, and to take necessary action pursuant to the provisions of the Residential Care Act to protect and safeguard the health, safety, and welfare of residents of homes; ~~and~~

5. Establish a procedure for receipt and investigation of complaints regarding a home or concerning the condition, care, and treatment of a resident of a home; ~~and~~

6. Report to the district attorney having jurisdiction or the Attorney General any act committed by an owner, administrator, operator, or employee of a home which may constitute a misdemeanor pursuant to the provisions of the Residential Care Act; ~~and~~

7. 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 Residential Care Act; ~~and~~

8. ~~Develop~~ Subject to the approval of the Board, develop and enforce rules and regulations ~~subject to the approval of the Board~~ to implement the provisions of the Residential Care Act. ~~Such rules and regulations shall include but not be limited to governing temperature limits, lighting, ventilation, and other physical conditions which shall protect the health, safety, and welfare of the residents in a home. It is the intent of the Legislature that residential care homes which provide care for three (3) or less~~

~~residents be subject to the Residential Care Act but that the Department not promulgate standards and rules for the homes that such rules are unduly restrictive as to prohibit the operation of such home. Therefore the Department is authorized and shall establish and adopt levels of standards for residential care homes based upon number of residents in a home; and~~

9. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for licensure; ~~and~~

10. Establish ~~civil~~ and enforce administrative penalties for violations of the provisions of the Residential Care Act as authorized by the Board pursuant to the provisions of the Residential Care Act; ~~and~~

11. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department to protect the health, safety, and welfare of any resident of a home; ~~and~~

12. Assure the accountability for reimbursed care provided in certified homes participating in a federal or state health program as provided by or through the Department of Human Services; ~~and~~

13. Advise, consult, cooperate and assist with vocational-technical schools or institutions of higher education in this state in providing the training of persons to distribute and administer medication to a resident of a home; ~~and~~

14. Transfer or discharge a resident or otherwise protect the health, safety, and welfare of any resident of a home; ~~and~~

15. Maintain logs and other records required by the Residential Care Act to be available to public inspection in a manner that is easily and readily available and accessible; and

16. Exercise all incidental powers as necessary and proper for the administration of the Residential Care Act.

~~B.~~ C. To improve patient care, the Department shall hold a public meeting at least once every four (4) years in each of the

licensed homes to advise and to facilitate communication and cooperation between personnel of the home and the residents. Administrators, employees of the home, residents, friends and relatives of the residents, representatives of the residents, and employees from appropriate state and federal agencies shall be invited and encouraged to attend such meetings.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-825, is amended to read as follows:

Section 1-825. A. Any person who violates any of the provisions of the Residential Care Act or any order or determination of the Department promulgated pursuant to the Residential Care Act, or who fails to perform any duty imposed upon such person by the provisions of the Residential Care Act, shall be subject to any of the following penalties and liabilities as authorized by the provisions of the Residential Care Act:

1. License revocation, suspension, or nonrenewal; ~~and~~
2. Conditional license; ~~and~~
3. Transfer of residents; ~~and~~
4. Receivership; ~~and~~
5. Injunctive proceedings; ~~and~~
6. ~~Civil~~ Administrative fines; and
7. Criminal penalties.

B. For violations of the Residential Care Act and the rules promulgated thereunder:

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a residential care home and may, after notice and opportunity for hearing, impose the remedy most likely to gain and ensure continued compliance with the Residential Care Act and the rules promulgated hereunder; and
2. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a home, assess administrative penalties, or issue a conditional license.

C. Remedial action shall be based on current and past noncompliance or incomplete or partial compliance; repeated violations; or failure to substantially comply with the Residential Care Act and rules promulgated thereto. 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 home or others owned or operated by the same or related entities; and
4. Any showing of good faith in attempting to achieve compliance with the provisions of the Residential Care Act.

D. The fact of an on-going criminal investigation or proposed or pending criminal action shall not operate to ban or prevent the Department from seeking remedial action as required by this section.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-826, is amended to read as follows:

Section 1-826. After notice and hearing pursuant to the provisions of Section 1-830 of this title, the Department may:

1. Deny a license to an applicant who does not meet the requirements for licensure pursuant to the provisions of the Residential Care Act; or
2. Refuse to renew, suspend, or revoke a license to a licensee or home which is not in compliance with the provisions of the Residential Care Act or with the standards, rules, or regulations of the Board promulgated pursuant to the provisions of the Residential Care Act; or
3. Deny, refuse to renew, suspend, or revoke a license, conditional license, or probationary license to an applicant, licensee, or home which has a history of noncompliance or incomplete

or partial compliance with the provisions of the Residential Care Act or the standards, rules, or regulations of the Board issued pursuant to the provisions of the Residential Care Act or other satisfactory evidence which demonstrates that the applicant or licensee is unlikely to manage or operate a home or to provide care or treatment to the residents of a home in a manner which warrants public trust; or

4. Deny, refuse to renew, suspend, or revoke a license to an applicant or licensee who has insufficient financial or other resources to the extent that the applicant or licensee is incapable of assuring or providing adequate care or treatment to the residents of the home; or

5. Deny, refuse to renew, suspend, or revoke a license to an applicant or licensee who has been convicted of a misdemeanor or felony in connection with the management or operation of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes or the care or treatment of a resident of the home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes; or

6. Deny, refuse to renew, suspend, or revoke a license if an administrator or operator of a home has been convicted of a felony in connection with the management or operation of a home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes or care or treatment of a resident of the home, or facility as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes; or

7. Deny, refuse to renew, suspend, or revoke a license to an applicant or licensee who has permitted, aided, or abetted the commission of violations of the Residential Care Act, rules promulgated pursuant to the Residential Care Act or any illegal act in connection with the management or operation of a home or the care or treatment of a resident of a home; or

8. Refuse to renew a license if at the time application is made for the renewal of the license, the licensee or home is subject to a plan of correction. Said license may be renewed at such time the required corrections are completed in the manner and time specified in the plan of corrections; or

9. Revoke a license if the licensee has failed to correct conditions as required in a plan of corrections pursuant to the provisions of Section 1-831 of this title.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-828.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

All state agencies receiving complaints on, or conducting surveys or inspections of, residential care homes shall forward complete copies of complaints and complaint investigations or of inspection or survey results to the Ombudsman Program of the Special Unit on Aging and, with regard to complaints on and surveys or inspections of homes having mentally ill, drug-dependent or alcohol-dependent residents, the Advocate General of the Department of Mental Health and Substance Abuse Services.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-829, is amended to read as follows:

Section 1-829. A. Every home for which a license has been issued shall be periodically inspected by a duly appointed representative of the Department pursuant to rules and regulations adopted by the Board with the advice and counsel of the Long-Term Care Facility Advisory Board. Inspection reports shall be prepared on forms prescribed by the Department with the advice and counsel of the Advisory Board. The Department shall provide adequate training and supervision of persons assigned to inspect residential care homes to assure that inspectors are knowledgeable regarding the requirements of the Residential Care Act, the rules of the

Department and the needs of residents and to assure consistency in the inspection of homes.

B. The Department shall at least three times a year and whenever it deems necessary inspect, survey, and evaluate each home to determine compliance with applicable licensure and certification requirements and standards.

1. An inspection shall occur within one hundred twenty (120) days prior to license renewal.

2. Any inspection, investigation, survey, or evaluation may be conducted without prior notice to the home. At least one inspection per home shall be unannounced. Any licensee or applicant for a license shall be deemed to have given consent to any duly authorized employee or agent of the Department to enter and inspect the home in accordance with the provisions of the Residential Care Act, ~~Section 1-820 et seq. of this title.~~ Refusal to permit such entry or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a license.

3. One person shall be invited by the Department from a statewide organization of the elderly ~~by the Department~~ or a statewide organization representing mentally ill persons, or both, as appropriate for the home, to act as a citizen observer in any inspection. Such person shall receive expenses as provided in the State Travel Reimbursement Act, ~~Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.~~

C. The Department shall maintain a log, updated at least monthly and available for public inspection, which shall at a minimum detail:

1. The name of the home and date of inspection, investigation, survey, or evaluation; and

2. Any deficiencies, lack of compliance, or violation noted at the inspection, investigation, survey, or evaluation; and

3. The date a notice of violation, license denial, nonrenewal, suspension, or revocation was issued or other enforcement action occurred; and

4. The date a plan of correction was submitted and the date said plan was approved; and

5. The date corrections were completed, as verified by an inspection; and

6. If the inspection or investigation was made pursuant to the receipt of a complaint, the date such complaint was received and the date the complainant was notified of the results of the inspection or investigation.

D. The Department shall require periodic reports and shall have access to books, records and other documents maintained by the home to the extent necessary to implement the provisions of the Residential Care Act and the rules promulgated by the Board pursuant to the provisions of the Residential Care Act.

E. The Department shall make at least one annual report on each home in the state. The report shall include all conditions and practices not in compliance with the Residential Care Act or the standards, rules, and regulations promulgated pursuant to the Residential Care Act within the last year and, if a violation is corrected, or is subject to an approved plan of correction. The Department shall send a copy of the report to any person upon receiving a written request. The Department may charge a reasonable fee to cover the cost of copying and mailing the report.

F. A state or local ombudsman as that term is defined by the Special Unit on Aging within the Department of Human Services pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et seq., as amended, or case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies is authorized to accompany and shall be notified by the Department of any inspection conducted of any home licensed pursuant

to the provisions of the Residential Care Act. Any state or local ombudsman or, with regard to homes having mentally ill or drug-dependent or alcohol-dependent residents, an authorized representative of the Department of Mental Health and Substance Abuse Services or one of its contract agencies is authorized to enter any home licensed pursuant to the provisions of the Residential Care Act, communicate privately and without unreasonable restriction with any resident of a home who consents to such communication, to seek consent to communicate privately and without restriction with any resident of a home, and to observe all areas of a home that directly pertain to the care of a resident of a home.

G. Following any inspection by the Department, pursuant to the provisions of this section, all reports relating to the inspection shall be filed in the county office of the Department of Human Services in which the home is located and with the Department of Mental Health and Substance Abuse Services.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-830, is amended to read as follows:

Section 1-830. A. If upon inspection or investigation, or whenever the Department determines that there are reasonable grounds to believe that a home is in violation of the Residential Care Act or of any standard, rule, or regulation promulgated pursuant to the provisions of the Residential Care Act which would have a direct impact upon one or more residents of the home or of any order of the Department, the Department shall give written notice to the alleged violator specifying the ~~cause of complaint~~ violation. Such notice shall require that the ~~matters complained of~~ violation be corrected immediately or that the alleged violator appear before the Department at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection E of this section.

B. The Department shall give the notice specified by the provisions of subsection A of this section within ten (10) days of an inspection or investigation of the home if the Department determines that the home is in violation of the Residential Care Act or the rules and regulations promulgated by the Board pursuant to the provisions of the Residential Care Act.

C. The Department shall afford the alleged violator an opportunity for a fair hearing within fifteen (15) days of receipt of notice provided by subsection A of this section in accordance with the provisions of subsection F of this section. On the basis of the evidence produced at the hearing, the Department shall make findings of fact and conclusions of law and enter an order thereon. The Department shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order. If the hearing is held before any person other than the Department, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Department which shall thereupon enter its order. The Department may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Department shall become final and binding on all parties unless appealed to the district court as provided ~~in Sections 317 through 325 of Title 75 of the Oklahoma Statutes~~ by the Administration Procedures Act within thirty (30) days after notice has been sent to the parties.

D. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare of any resident of a home licensed pursuant to the provisions of the Residential Care Act, the Department may without notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet

the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with said order immediately but on application to the Department shall be afforded a hearing within ten (10) days of receipt of said notice. On the basis of such hearing, the Department shall continue such order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases. For the purposes of this subsection, the term emergency shall mean a life-threatening situation.

E. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Department.

Every certificate or affidavit of service made and filed as in this section provided shall be prima facie evidence of the facts therein stated. A certified copy thereof shall have like force and effect.

F. The hearings authorized by this section may be conducted by the Department. The Department may designate hearing officers who shall have the power and authority to conduct such hearings in the name of the Department at any time and place. Such hearings shall be conducted in conformity with and records made thereof as provided

by the provisions of ~~Sections 309 through 326 of Title 75 of the Oklahoma Statutes~~ the Administrative Procedures Act.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-831, is amended to read as follows:

Section 1-831. A. If the ~~complaints~~ violations specified in the notice required by Section 1-830 of this title have been corrected prior to the hearing, the home may submit a report of correction in place of a plan of correction as specified in subsection B of this section. Such report shall be signed by the administrator or operator under oath.

B. A home shall have ten (10) working days after receipt of notice of violation in which to prepare and submit a plan of correction. The plan shall include a fixed time period not in excess of thirty (30) days within which violations are to be corrected. The Department may extend this period up to thirty (30) days where correction involves substantial capital improvement. If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection within ten (10) days of receipt of the plan of correction to the home. The home shall have ten (10) 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 home shall follow an approved plan of correction imposed by the Department which shall be submitted to the home within thirty (30) days.

C. Upon a licensee's petition, the Department shall determine whether to grant a licensee's request for an extended correction time. Such petition shall be served on the Department prior to expiration of the correction time originally approved. The burden of proof is on the petitioning licensee to show good cause for not being able to comply with the original correction time approved. The extended correction time may be granted for a period of time not to exceed thirty (30) days.

D. If a home desires to contest any Department action pursuant to this section, it shall send a written request for a hearing to the Department within ten (10) days of receipt of notice of the contested action and the Department shall commence the hearing pursuant to Section 1-830 of this title.

E. Whenever possible, all action of the Department pursuant to the provisions of 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 pursuant to the provisions of this section.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-832, is amended to read as follows:

Section 1-832. A. No person shall willfully:

1. Fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction pursuant to the provisions of the Residential Care Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension; ~~or~~

2. Prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department in the investigation and enforcement of the Residential Care Act; ~~or~~

3. Prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties pursuant to the provisions of the Residential Care Act; ~~or~~

4. Prevent or interfere with any such representative in the preserving of evidence of any violation of the Residential Care Act or the rules promulgated pursuant to the provisions of the Residential Care Act; ~~or~~

5. Retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any

remedy authorized pursuant to the provisions of the Residential Care Act; or

6. File any false, incomplete, or intentionally misleading information required to be filed pursuant to the provisions of the Residential Care Act, or willfully fail or refuse to file any information required by the Department pursuant to the provisions of the Residential Care Act; or

7. Open or operate a home without a license.

B. No employee of a state or unit of a local government agency shall aid, abet, assist, conceal, or conspire with an administrator, operator or other employee of a home in a violation of any provision of the Residential Care Act or any rule, regulation, or standard promulgated by the Board pursuant to the Residential Care Act.

C. ~~Any~~ In addition to the penalties and remedial action provided for by the Residential Care Act, any person who violates any of the provisions of the Residential Care Act, upon conviction, shall be guilty of a misdemeanor. Each day upon which such violation occurs shall constitute a separate violation.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-832.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The operation or maintenance of a residential care home in violation of this act, or of the rules promulgated by the Department, is hereby declared a public nuisance, inimical to the public welfare. The 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 home 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 home.

B. 1. Any person with personal knowledge or substantial specific information who believes that this act, or a rule

promulgated under this act, may have been violated may file a complaint. The 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 that any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of this act, shall be liable in a civil suit for any actual damages suffered by a home 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 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 the Residential Care Act, a rule promulgated pursuant to the Residential Care Act, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area.

a. If the Department does not have jurisdiction over the complaint area, the complaint shall be referred to the appropriate agency having jurisdiction over the complaint area and the complaint shall not be investigated by the Department. The Department shall give prompt notice of the referral and the decision not to investigate shall be given to the complainant.

b. A report summarizing the complaint investigation shall be made in writing.

- c. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.
- d. The Department shall give weight and credence to complaints and reports of violations of the Residential Care Act made by a state or local ombudsman or a representative of the Department of Mental Health and Substance Abuse Services or one of its contract agencies.

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 remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

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

7. The Department shall seek any remedial action provided under this act for violations documented during complaint investigations.

8. The Department shall establish any additional rules necessary for the investigation 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 11. AMENDATORY 63 O.S. 1991, Section 1-833, is amended to read as follows:

Section 1-833. A. Any person who has been determined by the Department to have violated any provision of the Residential Care Act or any rule, regulation, or order issued pursuant to the

provisions of the Residential Care Act may be liable for ~~a civil~~ an administrative penalty of not ~~more~~ less than ~~One Hundred Dollars~~ ~~(\$100.00)~~ Fifty Dollars (\$50.00) or more than One Thousand Dollars (\$1,000.00) for each day that said violation continues. The maximum ~~civil~~ administrative penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations that do not constitute immediate jeopardy to residents. Penalties of not less than Five Hundred Dollars (\$500.00) per day or more than Two Thousand Five Hundred Dollars (\$2,500.00) per day may be imposed for violations constituting immediate jeopardy to residents.

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 hearing. 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 home or others operated by the same entity, the previous degree of difficulty in obtaining compliance with the Residential Care Act or the rules promulgated pursuant to it 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~~ financial condition of the home, and any substantial show of good faith in attempting to achieve compliance with the provisions of the Residential Care Act.

C. Any license holder may elect to surrender his license in lieu of said fine but shall be forever barred from obtaining a reissuance of ~~said~~ the license or any other license issued pursuant to the Residential Care Act.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-836, is amended to read as follows:

Section 1-836. A. The Department shall develop minimum standards for homes. These standards shall be promulgated by the

Board and submitted to the Legislature no later than January of each year. ~~These standards shall regulate~~ It is the intent of the Legislature that residential care homes which provide care for three (3) or less residents be subject to the Residential Care Act but that the Department not promulgate standards and rules for the homes that are unduly restrictive as to prohibit the operation of such home. Therefore the Department is authorized and shall establish and adopt levels of standards for residential care homes based upon number of residents in a home. The rules promulgated pursuant to this section shall include but not be limited to the regulation of:

1. Location and construction of the home, including plumbing, heating, lighting, ventilation, and other physical conditions which shall ensure the health, safety, and comfort of residents and protection from fire hazards; ~~and~~

2. Number of all personnel, including management and supervisory personnel, having responsibility for any part of the care given to residents. The Department shall establish staffing ratios for homes which shall specify the number of staff hours per resident of care that are needed for care for various types of homes or areas within homes. Minimum personnel ratio requirements for all homes shall be based only on average daily census; ~~and~~

3. Temperature limits, lighting, ventilation, and other physical conditions which shall protect the health, safety, and welfare of the residents in a home;

4. All sanitary conditions within the home and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents; ~~and~~

~~4.~~ 5. Diet related to the needs of each resident based on sound nutritional practice and on recommendations which may be made by the physicians attending the resident; ~~and~~

~~5.~~ 6. The availability of medical services for residents, which may include but not be limited to an on-call physician, nurse, or other appropriate health care professional;

7. Equipment essential to the health and welfare of the residents; and

~~6.~~ 8. A program of ~~rehabilitation~~ habilitation for those residents who would benefit from such programs; and

9. The storage, distribution and administration of medications. The distribution and administration of medication to a resident of a home shall be administered only by a person who has obtained a certificate of residential care training as required by this section.

B. 1. In order to further ensure minimum standards for homes, a certificate of training as specified shall be required of all:

- a. administrators who shall obtain a residential care administrator certificate of training, and
- b. all direct care staff who have the responsibility for distribution or administration of medication to residents who shall obtain a residential care certificate of training. Registered nurses, licensed practical nurses and certified medication aides shall be deemed to meet the certification requirements of this section.

2. The certificate will be developed and administered by an institution of higher learning with advice of the Commissioner of Health and of the Long Term Care Advisory Board.

- a. (1) For residential care home administrators the training shall consist of a minimum of fifty (50) hours which shall include at least fifteen (15) hours in the administration of medication and shall also include, but not be limited to, training in administration, supervision,

reporting, record keeping, independent or daily living skills, leisure skills and recreation, and public relations concerning the issues associated with the operation of residential care homes and programs. Any person employed as an administrator after the effective date of this act shall have completed the training specified by this division.

(2) Thereafter, annually, at least sixteen (16) hours of training in the subjects specified by this subparagraph shall be required for such administrator.

b. All direct care staff who have the responsibility for administration of medication to residents shall be required to begin training in the administration of medication within ninety (90) days of employment with the home and to satisfactorily complete at least fifteen (15) hours of training in the administration of medication, within the first year of employment with the home. Medication shall be distributed or administered to residents only by a person who has obtained a certificate of residential care training or is deemed as provided by this section to meet certification requirements.

3. All other direct care staff who are employed by a residential care home within ninety (90) days of employment with the home shall be required to begin eight (8) hours of in-service training by the administrator of the home or other person designated by the administrator of the home and completed within twelve (12) months from date of employment and annually thereafter. Thereafter such direct care staff and the direct care staff who have the responsibility for administering medication to residents shall,

annually, be required to receive at least eight (8) hours of training by the administrator of the home in patient reporting and observation, record keeping, independent or daily living skills, leisure skills and recreation, human relations and such other training relevant to residential care programs and operations.

4. The requirement of certification and the training specified pursuant to the provisions of this subsection shall be included in the rules and regulations promulgated by the Board.

5. Failure of the owner or administrator to ensure the training required pursuant to this subsection is received shall constitute a violation of the Residential Care Act and shall be grounds for revocation of licensure. Proof of successful completion of such training for the residential care home administrator and direct care staff shall be required prior to issuance or renewal of a license issued pursuant to the provisions of the Residential Care Act. The Department shall not renew any license for any residential care home, if the training required by this subsection has not been completed.

C. The State Fire Marshal or his designee shall conduct fire safety inspections on a regular basis at residential care homes and report his findings of said inspections to the Department. In addition, the State Fire Marshal shall develop, adopt, and promulgate the rules and regulations, or specifications consistent with nationally recognized standards or practices necessary for the safeguarding of life and property of residents of residential care homes from the hazards of fire and smoke.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Every residential care home shall conspicuously post for display in an area of its offices accessible to residents, employees and visitors the following:

1. Its current license;
2. Residents' rights as listed in Section 1-836.3 of this title;
3. A description, provided by the Department, of complaint procedures established under this act and the name, address and telephone number of a person authorized by the Department to receive complaints. A copy of the complaint procedure shall also be given to each resident and representative of a resident or court-appointed guardian of a resident;
4. A copy of any order pertaining to the home issued by the Department or a court which is currently in effect; and
5. A list of the material available for public inspection under Section 1-836.9 of this title.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A residential care home shall retain the following for public inspection:

1. A complete copy of every inspection report of the home received from the Department during the past three (3) years;
2. A copy of every order pertaining to the home issued by the Department or a court during the past three (3) years;
3. A description of the services provided by the home and the rates charged for those services and items for which a resident may be separately charged;
4. A copy of the statement of ownership;
5. A record of personnel who are licensed, certified or registered and employed or retained by the facility who are responsible for patient care; and
6. A complete copy of the most recent inspection report of the facility received from the Department.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. All principles enunciated in this section shall be posted in a conspicuous, easily accessible place in each residential care home 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 home shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The home shall make available to each resident, upon request, 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, mental health treatment provider, attorney, meetings of family and resident groups or any other person or persons of his choice, and may send and promptly receive, unopened, his 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 or others to the home'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 home to work for improvements in resident care. The family of a resident shall have the right to meet in the home with other residents' families. Every resident shall have the right to prompt

efforts by the home to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Except as provided by the Oklahoma Health Care Options Act, every resident shall have the right to choose his own medical or mental health treatment provider or day treatment, partial hospitalization or adult day care provider;

5. Every resident shall have the right to manage his own financial affairs, unless the resident delegates the responsibility, in writing, to the home. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in his behalf by the home during any period of time the resident has delegated such responsibilities to the home;

6. 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 shall be fully informed by his attending physician of his 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 found by a court to be incapacitated;

7. Every resident shall receive respect and privacy in his 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 an advance directive for health care or an advance directive for mental health treatment;

8. 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;

9. Every resident shall have the right to receive notice before the room or roommate of the resident in the home 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;

10. Every resident shall have the right to retain and use his personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

11. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the home, 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 basic per diem rate of the home;

12. 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 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;

13. Every resident shall receive a statement of the home's regulations and an explanation of the resident's responsibility to

obey all reasonable regulations of the home and to respect the personal rights and private property of the other residents;

14. Every resident shall receive a statement that, should they be found by a court to be incapacitated and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed guardian;

15. Except as provided by Section 1-820 of this title, no resident shall be required to perform services for a home;

16. Every resident shall have privacy for spousal visits. Every resident may share a room with their spouse, if the spouse is residing in the same home;

17. 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;

18. 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

19. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the Department with respect to the facility and any plan of correction in effect with respect to the facility.

C. No residential care home 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. Each home shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. 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. 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. Any employee of a state agency that inspects any residential care home 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. 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 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any employee or agent of a public agency or any representative of a community legal services program or any member of a nonprofit community supported agency which provides health or social services to the elderly or to mentally ill or alcohol-dependent or drug-dependent persons, or any member of a church group, association of older persons, organization representing mentally ill or alcohol-dependent or drug-dependent persons or community service club which provides volunteers for service to residential care home residents shall be permitted access at reasonable hours, which shall be 10:00 a.m. to 8:00 p.m., to any individual resident of any home, if the purpose of such agency, program or organization includes rendering assistance to residents without charge, but only if there is neither a commercial purpose nor affect to such access and if the purpose is to do any of the following:

1. Visit, talk with and make personal, social and legal services available to all residents;
2. Inform residents of their rights and entitlements and their corresponding obligations, under federal and state laws, by means of educational materials and discussions in groups and with individual residents;
3. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and Social Security benefits, as well as in all other matters in which residents are aggrieved. Assistance may include counseling and litigation; or
4. Engage in other methods of asserting, advising and representing residents so as to extend to them full enjoyment of their rights.

B. All persons entering a home under this section shall promptly notify appropriate home personnel of their presence. They shall, upon request, produce identification to establish their identity. No such person shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. A resident may terminate at any time a visit by a person having access to the resident's living area under this section.

C. This section shall not limit the power of the Department or other public agency otherwise permitted or required by law to enter and inspect a home.

D. Notwithstanding subsection A of this section, the administrator of a home may refuse access to the home to any person if the presence of that person in the home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the home, or if the person seeks access to the home for commercial purposes. Any person refused access to a home may within ten (10) days request a hearing. In that proceeding, the burden of proof as to the right of the home to refuse access under this section shall be on the home.

E. This section shall not apply to any inspection team of the Department or any other agency.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. To protect each resident's funds, the residential care home:

1. Shall reserve a portion of each resident's monthly income, in an amount not less than Twenty-five Dollars (\$25.00), as a personal needs allowance for use by the resident, or for use on behalf of the resident by his guardian, or other representative designated by the resident;

2. Shall at the time of admission, provide each resident, or representative or guardian of a resident, with a written statement explaining the resident's rights regarding personal funds and listing the services for which the resident will be charged, and obtain a signed acknowledgment from each resident or his representative that he has received the statement;

3. May accept funds from a resident for safekeeping and managing, if the home receives written authorization from the resident or his guardian; such authorization shall be attested to by a witness who has no pecuniary interest in the home or its operations, and who is not connected in any way to home personnel or the administrator in any manner whatsoever;

4. Shall maintain and allow each resident and responsible party access to a written record of all financial arrangements and transactions involving the individual resident's funds;

5. Shall provide each resident, or his representative or guardian with a written itemized statement on request, of all financial transactions involving the resident's funds;

6. Shall keep any funds received from a resident for safekeeping in an account separate from the home's funds and shall maintain such funds as required by the Department of Human Services and federal regulations;

7. Shall return to the resident, upon written request by the resident or his guardian, all or any part of the resident's funds given the home for safekeeping, including the interest accrued from deposits;

8. Shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the home has written authorization from the resident or the resident's guardian or if the resident is a minor, his parent, to handle it differently;

9. Unless otherwise provided by state law, upon the death of a resident, shall provide the administrator or executor of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the home; and

10. If the home is sold, shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner.

B. The State Department of Health shall require as a condition of licensure for residential care facilities that an accounting be made of financial records of each client for which the facility is the payee in each such residential facility. The 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 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A written contract shall be executed between a person or his guardian and a home or its agent within one hundred twenty (120) days from the time a person is admitted to a residential care home, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds; if a person is a resident of a home on the effective date of this act and no legally enforceable contract exists, then a contract as described in this section shall be executed within sixty (60) days after the effective date of this act. If the facility receives or is to receive payment by the state or federal government, an individual contract with the home is not required.

A resident shall not be discharged or transferred at the expiration of the term of a contract, except as provided in Sections 1-838.1 through 1-838.5 of this title.

B. The contract shall be executed between the resident or the resident's guardian and the licensee.

C. A copy of the contract shall be given to the resident or to the resident's representative at the time of the resident's admission to the home.

D. A copy of the contract for a resident who is supported by nonpublic funds other than the resident's own funds shall be made available to the person providing the funds for the resident's support.

E. The contract shall be written in clear and unambiguous language and shall be printed in type no smaller than standard typewriter pica or elite type. The general form of the contract shall be prescribed by the Department.

F. The contract shall specify:

1. The term of the contract;
2. The services to be provided under the contract and the charges for the services;
3. The services that may be provided to supplement the contract and the charges for the services;
4. The sources liable for payments due under the contract;
5. The amount of deposit paid; and
6. The rights, duties and obligations of the resident, except that the specification of a resident's rights may be furnished on a separate document which complies with the requirements of Section 836.3 of this title.

G. The contract shall designate the name of the resident's representative, if any.

H. The contract shall provide that if the resident dies or is compelled by a change in physical or mental health to leave the

home, the contract and all obligations under it shall terminate immediately. All charges shall be prorated as of the date on which the contract terminates, and, if any payments have been made in advance, the excess shall be refunded to the resident. This provision shall not apply to life-care contracts through which a home agrees to provide maintenance and care for a resident throughout the remainder of his life or to continuing-care contract through which a home agrees to supplement all available forms of financial support in providing maintenance and care for a resident throughout the remainder of his life.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each residential care home shall establish a residents' advisory council. The administrator shall designate a member of the staff to coordinate the establishment of, and render assistance to, said council.

B. The composition of the residents' advisory council shall be specified by Department regulation, but no employee or affiliate of a home shall be a member of any such council.

C. The residents' advisory council shall meet at least once each month with the staff coordinator who shall provide assistance to said council in preparing and disseminating a report of each meeting as specified by the regulations to all residents, the administrator, and the staff.

D. Records of the residents' advisory council meetings shall be maintained in the office of the administrator.

E. The residents' advisory council shall communicate to the administrator the opinions and concerns of the residents. The council shall review procedures for implementing residents' rights, facility responsibilities and make recommendations for changes or

additions which will strengthen the home's policies and procedures as they affect residents' rights and home responsibilities.

F. The residents' advisory council shall be forum for:

1. Obtaining and disseminating information;
2. Soliciting and adopting recommendations for home programming and improvements; and
3. Early identification and recommendation of orderly resolution of problems.

G. The residents' advisory council may present complaints as provided in Section 1-832.1 of this title.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall:

1. Establish a Residential Care Homes 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 volunteer representatives or guardians of residents of residential care homes licensed pursuant to the Residential Care 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. 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 homes subject to the provisions of the Residential Care Act 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 pursuant to the provisions of the Residential Care Act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-836.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

The following information is subject to disclosure to the public from the Department:

1. Information submitted under Section 1-832.1 of this title except information concerning the remuneration of personnel licensed, registered or certified by the Department and monthly charges for an individual private resident;

2. Records of license and certification inspections, surveys and evaluations of homes, other reports of inspections, surveys and evaluations of resident care, and reports concerning a facility prepared pursuant to Titles XVIII and XIX of the Social Security Act, subject to the provisions of the Social Security Act; and

3. Complaints filed against a home and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a home as provided in Section 1-832.1 of this title and, further, except that a complainant or resident's name shall not be disclosed except as provided in Section 1-832.1 of this title.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-837.1 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 residential care home as a temporary manager to assume operating control of the facility and to ensure that the health and

safety of the residents of the home are protected when any of the following conditions exist:

1. The conditions at the home pose immediate jeopardy to the health and safety of the residents of the facility;

2. The home is operating without a license;

3. The State Department of Health has suspended, revoked or refused to renew the existing license of the home;

4. The home 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 action 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 home 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 home.

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 home 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 home. The temporary manager appointed pursuant to the Residential Care Act shall exercise those powers and shall perform those duties set out by the Commissioner in writing. The Commissioner shall provide for the temporary manager to have sufficient power and duties to ensure that the residents of the home 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 or contract for indebtedness as necessary; provided any such indebtedness shall not be construed to be a debt of the state or made on behalf of the state. The State of Oklahoma is not liable, directly or indirectly, for any liability incurred by any temporary manager in the performance of the managers' official duties pursuant to law.

H. The Commissioner shall set the compensation of the temporary manager, who shall be paid by the home.

I. A temporary manager may be held liable in a personal capacity only for his own gross negligence, intentional acts or breaches of fiduciary duty. The Commissioner may require a temporary manager to post a bond.

J. The Department shall issue a conditional license to a home 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 Residential

Care Act and the rules promulgated thereto, and the establishment of mechanisms which will ensure the continued compliance of the home.

L. 1. The Commissioner may release the temporary manager when the Commissioner determines that the home is and will continue to be in substantial compliance with the Residential Care Act and rules promulgated thereto.

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. After a complete accounting, and payment of reasonable expenses incurred as a result of the temporary managership, the Commissioner shall order payment of the surplus to the owner. If funds are insufficient to pay reasonable expenses incurred as a result of the temporary managership, the owner shall be liable for the deficiency. Any funds recovered from the owner shall be used to reimburse any unpaid expenses due and owing as a result of the temporary managership.

4. In order to protect the health, welfare and safety of the residents of any residential care home for which a temporary manager has been appointed, the Department is authorized to provide the monies from any funds appropriated or otherwise made available to the Department to protect the residents of the home. The Department shall have a lien for any payment made pursuant to this section upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the home is located,
- b. any fixtures, equipment or goods used in the operation of the home,
- c. the land on which the home is located, or
- d. the proceeds from any conveyance of property described in subparagraph a, b, or c of this paragraph made by

the owner prior to the order placing the temporary manager.

M. Nothing in the Residential Care Act shall be deemed to relieve any owner, administrator or employee of a home 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 the Residential Care 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 23. AMENDATORY 63 O.S. 1991, Section 1-838, is amended to read as follows:

Section 1-838. A. If funds are insufficient to meet the expenses of performing the powers and duties conferred on the ~~receiver~~ temporary manager, or if there are insufficient funds on hand to meet those expenses, the Department may reimburse the receiver for those expenses from funds available in the Public Health Special Fund.

B. The court shall set the compensation of the receiver, which shall be considered a necessary expense of a receivership.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A residential care home shall not involuntarily transfer or discharge a resident except for medical reasons, for the resident's safety or for the safety of other residents, or for nonpayment for the resident's stay, unless limited by the federal Social Security Act.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

Involuntary transfer or discharge of a resident from a residential care home shall be preceded by a minimum written notice of ten (10) days. The ten day requirement shall not apply in any of the following instances:

1. When an emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician; or

2. When the transfer or discharge is necessary for the physical safety of other residents as documented in the clinical record.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department shall adopt reasonable rules and regulations that establish appropriate criteria for the transfer of residents initiated by a residential care home, including notice and hearings if the resident is aggrieved by the decision. The primary purpose and emphasis of the departmental rules and regulations shall be the preservation of the health, welfare, and safety of the residents.

The process of developing these rules and regulations shall include the consideration of advice and comments from the Long-Term Care Facility Advisory Board, the Residential Care Homes Residents and Family State Council, representatives of residential care homes, representatives of statewide organizations for the elderly and representatives of statewide organizations for mentally ill or alcohol-dependent or drug-dependent persons.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department shall adopt reasonable rules and regulations that establish appropriate criteria for the transfer of residents initiated by the Department in emergency situations, including notice and hearings if the resident is aggrieved by the decision. The primary purpose and emphasis of the departmental rules and regulations shall be the preservation of the health, welfare, and safety of the residents. In addition, the Department of Human Services shall cooperate with the Health Department and the Department of Mental Health and Substance Abuse Services to provide assistance in relocation of residents, to provide casework services, and in other ways to minimize the impact of the transfer on the residents.

In the development of these rules and regulations, the Department shall consider advice and comments from the Long-Term Care Facility Advisory Board, the Residential Care Homes Residents and Family State Council, representatives of residential care home industries, representatives of statewide organizations for the elderly and representatives of statewide organizations for mentally ill or alcohol-dependent or drug-dependent persons.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any owner of a residential care home licensed under this act shall give ninety (90) days' notice prior to voluntarily closing a home or closing any part of a home, or prior to closing any part of a home if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The home shall offer to assist the resident in securing an alternative placement

and shall advise the resident on available alternatives. Where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The home shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the home if needed. Also, the Department may promulgate rules and regulations that establish criteria for the acceleration of the notice requirement if extraordinary circumstances warrant it.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-838.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The owner and licensee of a residential care home are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. Also, any state employee that aids, abets, assists, or conspires with an owner or licensee of a residential care home to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under this act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or his legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under this act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or criminal, as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A residential care home employee or agent who becomes aware of abuse or neglect of a resident prohibited by this act shall immediately report the matter to the home administrator. A home administrator who becomes aware of abuse or neglect of a resident shall immediately act to rectify the problem and shall make a report of the incident to the Department and to the Adult Protective Services Unit of the Department of Human Services.

SECTION 30. AMENDATORY Section 5, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1995, Section 1-842), is amended to read as follows:

Section 1-842. 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 "representative of a 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 representative at any time and for any reason. No representative shall be required to serve in such capacity if the person objects to serving, and may resign as 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 representative of the resident shall be notified of the admission, the contract or any modifications to the contract.

C. If a resident is subject to a special, limited or full guardianship, pursuant to the provisions of the Oklahoma Guardianship and Conservatorship Act or the Protective Services for the Elderly and for Incapacitated Adults Act, the representative of the resident shall be the court-appointed guardian.

D. No owner, administrator, operator, or employee of a residential care home shall be the representative of a resident unless the owner, administrator, operator or employee is related to the resident by blood or marriage.

SECTION 31. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-842.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

It shall be the duty of the Department of Human Services, the Department of Mental Health and Substance Abuse Services and the Director of the Oklahoma State Bureau of Investigation to assist the Commissioner in carrying out the provisions of the Residential Care Act insofar as the functions of these respective offices and departments are concerned with the health, welfare and safety of any person or persons cared for in residential care homes as defined herein.

SECTION 32. REPEALER 63 O.S. 1991, Sections 1-828 and 1-835 and Section 3, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1995, Section 1-841), are hereby repealed.

SECTION 33. This act shall become effective November 1, 1996.

45-2-7956 CLD