

SHORT TITLE: Public health and safety; Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act; renaming act; modifying language; effective date.

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

SENATE BILL NO. 1097

By: Robinson

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-818.1, 1-818.2, as last amended by Section 3, Chapter 236, O.S.L. 1994, 1-818.3, as amended by Section 4, Chapter 236, O.S.L. 1994, 1-818.4, as last amended by Section 5, Chapter 236, O.S.L. 1994, 1-818.5, as amended by Section 6, Chapter 236, O.S.L. 1994, 1-818.6, 1-818.7, as amended by Section 7, Chapter 236, O.S.L. 1994, 1-818.8, 1-818.9, 1-818.10, as amended by Section 8, Chapter 236, O.S.L. 1994, 1-818.11, as amended by Section 9, Chapter 236, O.S.L. 1994, 1-818.12, 1-818.13, 1-818.14, as amended by Section 10, Chapter 236, O.S.L. 1994, 1-818.15, 1-818.16, 1-818.17, as amended by Section 11, Chapter 236, O.S.L. 1994, 1-818.18, 1-818.19, 1-818.20, as amended by Section 12, Chapter 236, O.S.L. 1994, 1-818.21, as amended by Section 13, Chapter 236, O.S.L. 1994, 1-818.22, 1-818.23, 1-818.24, 1-818.25, as amended by Section 14, Chapter 236, O.S.L. 1994, 1-818.26, 1-818.27, as amended by Section 15, Chapter 236, O.S.L. 1994, 1-818.28, 1-818.29, as amended by Section 16, Chapter 236, O.S.L. 1994, 1-818.30, 1-818.31, 1-818.32, 1-818.33, 1-818.34, 1-818.35, as amended by Section 17, Chapter 236, O.S.L. 1994, 1-818.36, 1-818.37, 1-818.38, 1-818.39, 1-818.40 and 1-818.41 (63 O.S. Supp. 1995, Sections 1-818.2, 1-818.3, 1-818.4, 1-818.5, 1-818.7, 1-818.10, 1-818.11, 1-818.14, 1-818.17, 1-818.20, 1-818.21, 1-818.25, 1-818.27, 1-818.29 and 1-818.35), which relate to the Group Homes for Developmentally Disabled and Physically Handicapped Persons Act; renaming and re-creating act; modifying terms; clarifying act; deeming certain provider to be licensed; requiring distribution of certain procedures to all providers of group home services; modifying content of powers and duties; deleting requirement for certain public meeting; modifying composition of the Group Homes for Persons with Developmental Disabilities Advisory Board; specifying conditions under which the Department of Human Services shall provide clerical staff support to the Advisory Board; clarifying certain responsibilities; clarifying language; requiring certain complaint to be reduced to writing; including attorneys' fees and costs in certain civil liability provisions; removing Commission for Human Services' authorization to hire attorneys for certain purposes; requiring certain group home administrator to take certain

actions and to make certain report; modifying powers of the Department; providing for annual review of certain rules; modifying type of staffing requirements; deeming certain provider to be licensed; modifying type of information subject to public disclosure; eliminating certain fees; modifying availability of license; eliminating requirement for prior notice of transfer; providing for a hearing for a provider under certain conditions; requiring provider to make certain information available to residents, employees and visitors; modifying contents of statement of rights and responsibilities; specifying resident's right to refuse medication and treatment; stating residents' rights to retain and use personal clothes and possessions and be treated courteously and respectfully; requiring notification of residents' death and providing exceptions; deleting responsibility of the Department of Human Services for burial; specifying types of restraints to be authorized; requiring that residents receive certain statement; allowing residents to perform certain tasks; requiring written contract to be executed annually or otherwise; deleting language related to discharge or transfer of a resident; modifying manner in which group homes protect residents' funds; allowing residents to receive guests or visitors in the group home during reasonable hours under certain conditions; increasing time period for written notice of involuntary transfer or discharge of a resident from a group home; deleting requirement for certain inspection, survey and evaluation of a group home by the Department; modifying source of reimbursement for certain receiver; allowing designee for Director of Human Services under certain circumstances; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-818.1, is amended to read as follows:

Section 1-818.1 Sections 1 through 41 of this act shall be known and may be cited as the "Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act".

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-818.2, as last amended by Section 3, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.2), is amended to read as follows:

Section 1-818.2 As used in the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title:

1. "Abuse" means any intentional ~~abuse, neglect, and exploitation, as those terms are~~ infliction of physical pain, injury or mental anguish, or the deprivation of food, clothing, shelter or medical care by a caretaker or other person responsible for providing these services, as defined by the Protective Services for the Elderly and for Incapacitated ~~Persons~~ Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes, and any sexual assault inflicted on a resident of a group home;

2. "Access" means the right of a person to enter a group home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person designated by the ~~owner~~ provider who has authority and responsibility for the programs and operation of a group home ~~for developmentally disabled and physically handicapped adults;~~

4. "Advisory Board" means the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Advisory Board established by Section 1-818.4 of this title;

5. "Advocate" means an adult designated in writing by the resident to assist the resident in exercising his or her rights;

6. "Applicant" means a person, corporation, partnership, association, or other entity which is being considered by the

Department of Human Services for a license with the Department to provide group home services;

7. "Commission" means the Commission for Human Services;

~~6.~~ 8. "Contract" means the binding legal agreement to provide group home services, entered into between the provider and the Developmental Disabilities Services Division of the Department of Human Services;

9. "DDSD" means the Developmental Disabilities Services Division of the Department of Human Services;

10. "Department" means the Department of Human Services;

~~7.~~ 11. "Developmental disability" means a severely chronic disability of a person, five (5) years of age or older, which:

- a. is attributable to a physical or mental impairment or a combination of physical and mental impairments,
- b. is manifested before the person attains the age of twenty-two (22) years,
- c. is likely to continue indefinitely,
- d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) self-care,
 - (2) receptive and expressive language,
 - (3) learning,
 - (4) mobility,
 - (5) self-direction,
 - (6) capacity for independent living, or
 - (7) economic self-sufficiency, and
- e. reflects the person's need for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are lifelong or of

extended duration and are individually planned and coordinated;

~~8.~~ 12. "Director" means the Director of Human Services;

~~9.~~ 13. "Exploitation" means the unjust or improper use of the personal resources of a resident for the profit or advantage, pecuniary or otherwise, of another person, as defined by the Protective Services for the Elderly and for Incapacitated Adults Act, Section 10-101 et seq. of Title 43A of the Oklahoma Statutes;

14. "Group home for ~~developmentally disabled and physically handicapped adults~~ persons with developmental disabilities" means any establishment or institution, other than a hotel, motel, fraternity or sorority house, college or university dormitory, for not more than twelve (12) residents who are eighteen (18) years of age or older and who ~~are developmentally disabled or physically handicapped~~ have developmental disabilities, and which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence of the residents and which offers or provides supportive assistance to any of its residents requiring supportive assistance. ~~Said~~ Such residents shall not require intermediate care facility services;

~~10.~~ 15. "Guardian" means a court-appointed representative or conservator;

16. "Habilitation" means procedures and interventions designed to assist a ~~developmentally disabled~~ an individual with developmental disabilities achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that ~~a resident of a group home~~ such individual will make progressively independent and

responsible decisions about social behavior, quality of life, job satisfaction and personal relationships;

~~11.~~ 17. "Home" or "group home" means a group home for ~~developmentally disabled and physically handicapped adults~~ persons with developmental disabilities;

~~12.~~ "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;~~

18. "House manager" means the person who is not the administrator of a group home but who manages the group home;

19. "Interdisciplinary team" means a group of people, including, at a minimum, the resident and the resident's family, guardian or advocate, who develop a plan to encourage and enhance habilitation of the resident;

~~13.~~ 20. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped Persons~~ with Developmental Disabilities Act, Section 1-818.1 et seq. of this title;

~~14.~~ 21. "Neglect" means a failure to provide protection for a resident who is unable to protect his or her own interests; or the failure to provide adequate personal care or maintenance, or access to medical care which results shelter or clothing; or the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of his or her lack of awareness, incompetence or incapacity, which has resulted or may result in physical or mental injury ~~to a resident,~~

as defined by the Protective Services for the Elderly and for Incapacitated Adults Act;

~~15. "House manager" means the person who is not the administrator but who manages the group 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. 22. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs, or general supervision of the physical and mental well-being of a person, who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his or her person, whether or not a guardian has been appointed for such person;

~~18. "Physically handicapped"~~ 23. "Physical disability" means a condition which causes the restricted use of ~~his or her~~ the extremities by an individual or affects other bodily functions of an individual and which ~~require~~ requires the specialized training, habilitation or rehabilitation services provided by a group home;

~~19. 24.~~ "Program certification" means certification by the Department that a group home meets and is in compliance with the rules adopted by the Commission for Human Services as standards for the training, habilitation or rehabilitation of residents of a group home;

~~20. 25.~~ "Provider" means a person, corporation, partnership, association, or other entity which operates a group home as defined in this act;

26. "Resident" means a person residing in a group home for ~~developmentally disabled or physically handicapped~~ persons with

developmental disabilities due to a developmental disability ~~or~~
~~physical handicap;~~

~~21. "Representative of a resident" means a court-appointed guardian or conservator, or if there is no court-appointed guardian or conservator, an adult designated in writing by the resident to be his or her representative;~~

~~22.~~ 27. "Sexual assault" means rape, incest, lewd and indecent acts or proposals, as defined by law, by a person responsible for the resident's welfare and includes the allowing, permitting, or encouraging a resident to engage in prostitution or the lewd, obscene, or pornographic photographing, filming or depiction of a resident;

~~23.~~ 28. "Supervision" means the provision of on-site staffing in the group home or on the premises of the group home when residents are present who require on-site staffing, as determined by an assessment by ~~a qualified professional~~ an interdisciplinary team. Supervision includes, but is not limited to, training, assistance with housekeeping, assistance with preparation of meals, assistance with safe storage, distribution and administration of medications, and assistance with personal care as necessary for the health and comfort of such person;

~~24.~~ 29. "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 training, supervision, assistance in housekeeping, assistance in the preparation of meals, 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; and~~

~~25.~~ 30. "Transfer" means a change in location of living arrangements of a resident from one group home to another group home.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-818.3, as amended by Section 4, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.3), is amended to read as follows:

Section 1-818.3 ~~A.~~ The Department of Human Services shall have the power and duty to:

1. Enforce any provision and prosecute any violation of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title;

2. Issue, renew, deny, modify, suspend, and revoke licenses for group homes pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act; provided, however, providers of group home services that have a current contract with the Developmental Disabilities Services Division shall be deemed to be ~~in compliance with standards promulgated by the Commission for Human Services and as such shall be exempt from licensure by the Department~~ licensed;

3. Establish and enforce standards and requirements for licensure and program certification of group homes which are subject to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act and require the submission of, and to review, reports from any person establishing or operating a group home;

4. Enter upon any public or private property for the purpose of inspecting and investigating conditions of the residents in the group home or for the purpose of inspecting and investigating the home for compliance with the provisions of ~~the Group Homes for the~~

~~Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or the standards or requirements for licensure and program certification developed by the Department pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act;

5. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of group homes and the residents of such homes, and to take necessary action pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act to protect and safeguard the health, safety, and welfare of residents of homes;

6. Establish a procedure for receipt and investigation of complaints regarding a group home or concerning the condition, care, and treatment of a resident of a home, a copy of which procedure shall be distributed to all providers of group home services;

7. Report to the district attorney having jurisdiction or the Attorney General any act committed by ~~an owner~~ a provider, administrator, operator, or employee of a group home which may constitute a misdemeanor pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act;

8. 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 Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act;

9. Develop and enforce rules subject to the approval of the Commission for Human Services to implement the provisions of ~~the Group Homes for the Developmentally Disabled or Physically~~

~~Handicapped Persons Act~~ this act. Such rules 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 group home ~~and program certification standards for training, habilitation and rehabilitation appropriate for the condition and level of functioning of the residents of a group home~~ as outlined in this act;

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

11. Establish civil penalties for violations of the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act as authorized by the Commission pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act;

12. 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 group home;

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

14. Exercise all incidental powers as necessary and proper for the administration of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

~~B. To improve resident care, the Department shall hold a public meeting at least once every four (4) years in each of the licensed group 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 4. AMENDATORY 63 O.S. 1991, Section 1-818.4, as last amended by Section 5, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.4), is amended to read as follows:

Section 1-818.4 A. There is hereby re-created to continue until July 1, ~~1998~~ 2000, in accordance with the provisions of the Oklahoma Sunset Law, Section 3901 et seq. of Title 74 of the Oklahoma Statutes, the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Advisory Board.

1. The Advisory Board shall be composed of nine (9) members as follows:

- a. eight members, appointed by the Director of Human Services, one of whom shall be a representative of the Oklahoma Community Based Providers Association, one a representative of United Cerebral Palsy of Oklahoma, ~~and~~ one a representative of the State Council on Developmental Disabilities who is not a state employee, two who shall be group home ~~administrators~~ directors having a minimum of two (2) years of experience as a group home ~~administrator~~ director, and three who shall be consumers or consumer advocates, one of whom is the parent of a person having a developmental disability ~~and one of whom is a physically handicapped person confined to a wheelchair.~~ These appointed members shall each serve a three-year term and may be reappointed, ~~and~~ and

b. one member shall be the State Fire Marshal, or a designee who shall serve at the pleasure of the State Fire Marshal.

2. The Advisory Board shall annually elect a chair, a vice-chair and a secretary and shall meet at least quarterly and at such other times as may be necessary. All meetings of the Advisory Board shall be subject to the provisions of the Oklahoma Open Meeting Act, Section 301 et seq. of Title 25 of the Oklahoma Statutes. Members of the Advisory Board shall not receive compensation for their services but shall be reimbursed pursuant to the provisions of the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

3. The Department of Human Services shall appoint an employee to serve as a resource person and provide assistance to the Advisory Board.

B. The Advisory Board shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to and care and treatment of residents of group homes subject to the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title;

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

3. Evaluate and review the standards, practices, and procedures of the Department regarding the administration and enforcement of the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act and the quality of services and care and treatment provided to residents of group

homes, and may make recommendations to the Department as necessary and appropriate; and

4. Serve as an advisory body to the Department regarding the implementation of any nationally recognized accreditation standards, as they apply to community-based facilities and services adopted by the Commission for Human Services as standards for the provision of services to ~~developmentally disabled or physically handicapped~~ persons with developmental disabilities who receive services through the Department of Human Services.

C. The Department shall, with regard to the meetings and duties of the Advisory Board which pertain to the Department, provide clerical staff support to assist the Advisory Board and space for meetings.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-818.5, as amended by Section 6, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.5), is amended to read as follows:

Section 1-818.5 It shall be the duty of the Director of the Oklahoma State Bureau of Investigation to assist the Director of Human Services in carrying out the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, insofar as the ~~Bureau's~~ functions of the respective offices and departments are concerned with the health, welfare and safety of any person or persons cared for in group homes as defined herein.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-818.6, is amended to read as follows:

Section 1-818.6 A. Enforcement of any action for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Group Homes for ~~the Developmentally Disabled or Physically~~

~~Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, may be brought by:

1. The district attorney of the appropriate district court of the State of Oklahoma;
2. The Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or
3. The Department on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or as otherwise authorized by law.

B. The Department may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act or any rule, ~~regulation,~~ or order issued pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including, but not limited to, mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-818.7, as amended by Section 7, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.7), is amended to read as follows:

Section 1-818.7 A. The operation or maintenance of a group home in violation of the Group Homes for Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, or of the rules promulgated by the Commission for Human Services, is declared a public nuisance inimical to the public welfare. The Director of Human Services, in the name of the people of the state, or through the Attorney General or the district attorney of the county in which

the group 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 group home.

B. 1. Any person with personal knowledge or substantial specific information who believes that this act, a rule promulgated under ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act, Section 1-818.1 et seq.~~ of this title act, or a federal certification rule applying to a group home may have been violated may request an investigation. The request may be submitted to the Department of Human Services in writing, by telephone, or personally. An oral ~~request~~ complaint shall be reduced to writing by the Department. Provided that any person who willfully or recklessly makes a false ~~request~~ complaint without a reasonable basis in fact for such a ~~request~~ complaint under the provisions of this act shall be liable in a civil suit for any actual damages, including attorneys' fees and costs, suffered by a group home so requested to be investigated, and 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~~ provider no earlier than at the commencement of the on-site inspection of the ~~facility~~ group home which takes place pursuant to the complaint.

3. The Commission shall promulgate rules to protect the identity of the complainant, provided that ~~said person~~ such complainant is presently a ~~present~~ resident or resident's representative or ~~a present~~ such complainant is presently an employee of the group home.

4. Upon receipt of a complaint, the Department shall determine whether ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, a rule promulgated under this act, or a federal certification rule for facilities has been or is being violated. A determination about a complaint which alleges a violation shall be made in writing, within thirty (30) days after ~~the complaint's~~ receipt of the complaint. The determination shall state the reasons therefor.

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

6. A written determination, correction order or warning notice concerning a complaint shall be available for public inspection.

7. The Department shall issue a written determination signed by the Director which shall serve as a final appealable order subject to trial de novo in the appropriate district court.

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

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-818.8, is amended to read as follows:

Section 1-818.8 A. The ~~owner and licensee are~~ provider is 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~~ a provider 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~~ the resident's guardian or advocate 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~~ provider or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's ~~representative~~ guardian or advocate, 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 or exploitation under this act shall be ~~presumed a rebuttable presumption.~~

H. ~~A group home~~ An employee or agent of a provider who becomes aware of abuse ~~or~~, neglect or exploitation of a resident as prohibited by this act shall immediately report the matter to the group home administrator. A group home administrator who becomes aware of abuse ~~or~~, neglect or exploitation of a resident shall ~~immediately act~~ take immediate action to ~~rectify the problem and shall make a report of the incident and its correction~~ ensure the health and safety of the resident, and shall make a report of the incident and any action taken to the Department.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-818.9, is amended to read as follows:

Section 1-818.9 Any person who violates any of the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, or any order or determination of the Department promulgated pursuant to ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or who fails to perform any duty imposed upon such person by the provisions of ~~the Group Homes for the Developmentally Disabled~~

~~or Physically Handicapped Persons Act~~ this act, shall be subject to any of the following penalties and liabilities as authorized by the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act:

1. License revocation, suspension, or nonrenewal; ~~and~~
2. Conditional license; ~~and~~
3. Transfer of residents; ~~and~~
4. Receivership; ~~and~~
5. Injunctive proceedings, including prohibiting the admission of new residents to the group home; ~~and~~
6. Civil fines; and
7. Criminal penalties.

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-818.10, as amended by Section 8, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.10), is amended to read as follows:

Section 1-818.10 After notice and hearing pursuant to the provisions of Section 1-818.28 of this title, the Department of Human Services may:

1. Deny or refuse to renew, suspend, or revoke a license to an applicant who ~~does not meet the requirements for licensure and program certification pursuant to~~ is not in compliance with the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped Persons~~ with Developmental Disabilities Act, Section 1-818.1 et seq. of this title;

2. ~~Refuse to renew, suspend, or revoke a license to a licensee or group home which is not in compliance with the provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act or with the standards or rules of the Commission for Human Services promulgated pursuant to the provisions~~

~~of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons;~~

~~3.~~ Deny, refuse to renew, suspend, or revoke a license to an applicant, or licensee, ~~or group home:~~

- a. ~~which~~ who has a history of noncompliance or incomplete or partial compliance with the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or with the standards or rules promulgated by the Commission for Human Services pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or
- b. based on other satisfactory evidence which demonstrates that the applicant or licensee is unlikely to manage or operate a group home or to provide care or treatment to the residents of a group home in a manner which warrants public trust;

~~4.~~ 3. 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 group home;

~~5.~~ 4. 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 group home ~~or a home or facility~~ as defined in Section 1-1902 of this title or the care or treatment of a resident of a group home ~~or a home or facility~~ as defined in Section 1-1902 of this title. If the applicant or licensee is a corporation, the provisions of this paragraph shall apply to ~~individual~~ the principal corporate officers

and the principal members and the executive committee of the board of directors of the corporation;

~~6.~~ 5. Deny, refuse to renew, suspend, or revoke a license if an administrator or house manager of a group home has been convicted of a misdemeanor or felony in connection with the management or operation of a group home ~~or a home or facility~~ as defined in Section 1-1902 of this title or care or treatment of a resident of a group home ~~or a home or facility~~ as defined in Section 1-1902 of this title;

~~7.~~ 6. Deny, refuse to renew, suspend, or revoke a license to an applicant or licensee who has permitted, aided, or abetted the commission of any illegal act in connection with the management or operation of a group home or the care or treatment of a resident of a group home;

~~8.~~ 7. 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~~ The 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.~~ 8. Revoke a license if the licensee has failed to correct conditions as required in a plan of ~~corrections~~ correction pursuant to the provisions of Section 1-818.30 of this title.

SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-818.11, as amended by Section 9, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.11), is amended to read as follows:

Section 1-818.11 A. The Department of Human Services shall develop and annually review rules establishing minimum standards for group homes. These standards shall be promulgated by the Commission for Human Services and submitted to the Legislature no later than January of each year. These standards shall regulate:

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;

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

3. 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

4. Equipment essential to the health and welfare of the residents.

B. The Department may, as necessary and appropriate, establish a system of classification for group homes based upon the level of care or treatment, training, habilitation or rehabilitation services required by residents of the group home, and establish minimum program certification standards for each classification.

C. The Commission shall adopt rules establishing minimum standards for certification of the programs and services of a group home provided to or obtained on behalf of the residents for the specialized care, treatment, training, habilitation or rehabilitation of the residents. The certification standards shall provide for:

1. Number and qualifications of all personnel, including management and supervisory, direct care, specialized professional or para-professional and other personnel, having responsibility for any part of the care given to residents. The Department shall establish staffing requirements for homes which shall specify the ~~number of staff hours of care per resident, and the requirements for~~

supervision, continued education and training ~~related to~~
requirements that are needed for care for of the residents of the
various types of group homes or areas within group homes;

2. An individualized written plan for the training, habilitation or rehabilitation for each resident of the group home specifying the training, habilitation or rehabilitation objectives and activities for the resident. The plan shall be prepared by ~~a~~ an interdisciplinary team of professional, para-professional and direct care personnel of the group home and, ~~to the maximum extent possible,~~ with the participation of the resident and the resident's ~~representative~~ guardian or advocate, if any;

3. Training for the safe administration of medication to a resident;

4. Accountability for the management and safekeeping of any resident's funds which the group home manages; and

5. Conditions and procedures for the involuntary transfer or discharge of a resident from a ~~facility~~ group home.

D. 1. The certification standards for programs and services shall be developed jointly by the Department and the Advisory Board for presentation to the Commission for Human Services for its approval. The standards shall be reviewed at least annually for any necessary modifications by the Department and the Group Homes for Persons with Developmental Disabilities Advisory Board, and any necessary modifications shall be presented to the Commission for its approval.

2. Any provider of group home having services that has a current ~~valid~~ contract with the Developmental Disabilities Services Division of the Department of Human Services ~~for the care, treatment and training, habilitation or rehabilitation of developmentally disabled or physically handicapped persons~~ shall be deemed to meet

~~the program certification standards adopted by the Commission~~ be licensed.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-818.12, is amended to read as follows:

Section 1-818.12 The State Fire Marshal or ~~his~~ a designee shall conduct fire safety inspections on a regular basis at group homes and report ~~his~~ findings of ~~said~~ such inspections to the Department of Human Services. 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 group homes from the hazards of fire and smoke.

SECTION 13. AMENDATORY 63 O.S. 1991, Section 1-818.13, is amended to read as follows:

Section 1-818.13 The following information is subject to disclosure to the public from the Department of Human Services:

1. Information submitted under Section ~~14~~ 1-818.14 of this ~~act~~ title, except information concerning the remuneration of personnel licensed, registered or certified by the Department, and monthly charges for an individual private resident; and

2. Records of license, certification and program certification inspections, surveys and evaluations of group homes, other reports of inspections, surveys and evaluations of resident care, and reports concerning a group home prepared pursuant to Titles XVIII and XIX of the Social Security Act, 42 U.S.C., Section 1301 et seq., subject to the provisions of the Social Security Act; ~~and~~

~~3. Complaints filed against a group 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 group home as provided in Section 7 and, further, except that a complainant or resident's name shall not be disclosed except as provided in Section 7 of this act.~~

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-818.14, as amended by Section 10, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.14), is amended to read as follows:

Section 1-818.14 A. ~~An application for a license, or renewal thereof, to establish or operate a group home shall be accompanied by a fee of Twenty-five Dollars (\$25.00). Said fee shall not be refunded.~~ Except as provided for in Section 1-818.16 of this title, a license shall expire twelve (12) months from the date of issuance, unless sooner revoked, and may be renewed annually by the Department of Human Services pursuant to the provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title. All licenses shall be on a form prescribed by the Director of Human Services, and shall include, but not be limited to, the maximum bed capacity for which the license is granted, the kind of program the licensee is certified to operate, the date the license was issued, and the expiration date of the license. The provisions of the license shall require that the license shall:

1. Not be transferable or assignable except as authorized by the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act;

2. Be ~~posted in a conspicuous place~~ available on the licensed premises; and

3. Be issued only for the premises named in the application, and may be renewed for twelve-month periods upon application, and inspection, ~~and payment of the license fee, as required by,~~ pursuant

to the provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act this act.

B. An application shall be under oath and shall contain the following information:

1. The name and address of the ~~owner of the group home~~ applicant or licensee. If the ~~owner~~ applicant or licensee is a firm or partnership, the name and address of each member thereof shall be included in the application. If the ~~owner~~ applicant or licensee is a corporation, the name and address of the corporation and the name and address of each officer and registered agent of the corporation shall be included in the application;

2. The name and address of the applicant or licensee if the applicant or licensee is not the ~~owner~~ provider and is acting as agent for the ~~owner~~ provider of group home services;

3. The name and location of the group home for which a license is sought;

4. The name of the administrator of the home;

5. The number and type of residents for whom services are to be provided;

6. A description of the program and the staffing pattern for providing resident care. In the case of an application for an initial license, such description may be shown as the projected program and staffing pattern; and

7. Information or records required by the Department pursuant to the rules adopted by the Commission for Human Services for program certification.

C. Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the group home stating that the location is not in violation of a zoning ordinance.

D. 1. An applicant or licensee shall be twenty-one (21) years of age or older and of reputable and responsible character. In addition, the applicant or licensee shall have appropriate business or professional experience.

2. No person who has been convicted of a felony in connection with the management or operation of a group home ~~or facility~~ as defined in Section 1-1902 of this title, or in the care and treatment of the residents of a group home pursuant to the provisions of ~~Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, ~~or a home or facility~~ as defined in Section 1-1902 of this title, shall be eligible to be licensed. If the applicant or licensee is a firm, partnership, or corporation, the applicant shall not be eligible to be licensed if any member of the firm or partnership or any officer or major stockholder of the corporation has been convicted of a felony in connection with the operation or management of a group home pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act or the care and treatment of the residents of a group home ~~or facility~~ as defined in Section 1-1902 of this title.

E. 1. The application for a license or renewal of a license shall be accompanied by a statement of ownership which shall include the following:

- a. the name, address, telephone number, occupation or business activity, business address, and business telephone number of the owner of the group home and of every person who owns the building in which the group home is located. If the owner is a partnership or corporation, the name and address of each partner and

stockholder with an ownership interest of five percent (5%) or more shall be included in the statement⁷, and

b. the name and address of any other group home in which the owner has a full or partial financial interest or, if the ~~owner~~ applicant or licensee is a partnership or corporation, any other group home ~~or home or facility~~ as defined in Section 1-1902 of this title in which the partnership or corporation has a full or partial financial interest. The statement shall indicate whether or not any other group home wherein a full or partial financial interest is held would, if located in this state, be required to be licensed.

2. The applicant or licensee shall agree in writing, prior to the issuance of a license, to notify the Department if there is any change in the information required to be included in the statement of ownership within six (6) months of such change. The information contained in the statement of ownership shall be public information and shall be available upon request from the Department.

F. Upon application of a licensee, a license may be modified in accordance with the provisions of the Group Homes for ~~the~~ Developmentally Disabled or Physically Handicapped Persons with Developmental Disabilities Act. ~~Such application for modification of a license shall be accompanied by a fee of Twenty Dollars (\$20.00) and shall be submitted in such form and manner as required by the Department.~~

G. ~~Upon payment of the required application fees, the~~ The Director shall issue and renew licenses for group homes which comply with the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act and the standards and rules promulgated by the Commission pursuant to the

provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-818.15, is amended to read as follows:

Section 1-818.15 A. A license to operate a group home is not transferrable. Whenever ~~ownership~~ operation of a group home is transferred from the ~~person~~ provider named in the application to another ~~person~~ provider who does not have a current group home license for the home, the transferee must obtain a probationary license as provided ~~by the provisions of~~ in Section ~~16~~ 1-818.16 of this ~~act~~ title.

~~1.~~ B. The transferee shall notify the Department of Human Services of the transfer and apply for a license no less than thirty (30) days prior to final transfer.

~~2.~~ ~~The transferor shall notify the Department of the transfer no less than thirty (30) days prior to final transfer and shall remain responsible for the operation of the group home until such time as a probationary license is issued to the transferee. The transferor shall remain liable for all penalties assessed which are imposed for violations occurring prior to transfer of~~ ownership operation.

SECTION 16. AMENDATORY 63 O.S. 1991, Section 1-818.16, is amended to read as follows:

Section 1-818.16 If the applicant has not been previously licensed or if the group home is not in operation at the time application is made, the Department of Human Services shall issue a probationary license. A probationary license shall be valid for one hundred twenty (120) days unless sooner suspended or revoked pursuant to the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped Persons with~~

Developmental Disabilities Act, Section 1-818.1 et seq. of this title.

1. Prior to the issuance of a probationary license, the Department shall:

- a. ascertain whether or not the applicant is qualified to be licensed pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act;~~ this act, and
- b. inspect the group home and inform the applicant of any conditions which require correction prior to the issuance of a license. If the group home is a new home the Department shall also inform the applicant of any condition which requires correction prior to the acceptance of residents into the home. If the home is an existing group home whose ownership is being transferred, the probationary license issued to the transferee, in addition to any corrections required as a result of the inspection, shall be subject to any plan of correction submitted by the previous ~~owner~~ provider and approved by the Department.

2. Within thirty (30) days prior to the termination of a probationary license, the Department shall completely inspect the group home and, if the home meets the applicable requirements for licensure and program certification, shall issue a license pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act. If the home is not in substantial compliance with the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ and with the standards and requirements established by the Department pursuant to the provisions of the

~~Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, the license shall be denied and the Department shall take such action as necessary and as authorized pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act for the protection of the health, safety, and welfare of the residents of the group home.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-818.17, as amended by Section 11, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.17), is amended to read as follows:

Section 1-818.17 A. The Department of Human Services may issue a conditional license to any group home if the Department finds that a violation exists in such group home. The issuance of a conditional license shall revoke any license held by the group home.

B. Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent ~~full licensure~~ issuance of a regular license and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction. In the alternative or in addition to a conditional license, the Director of Human Services may withhold vendor payments due to a group home under its programs until such time as the corrections are made or a plan of correction for all deficiencies is approved by the Department.

C. Written notice of the decision to issue a conditional license shall be sent to the group home together with the proposed plan of correction. The notice shall inform the group home of its right to an informal conference prior to issuance of the conditional license and its right to a full hearing.

D. If the group home desires to have an informal conference it shall, within four (4) working days of receipt of notice, send a written request for an informal conference to the Department. The Department shall, within four (4) working days from the receipt of the request, hold an informal conference. Following the conference, the Department may affirm or overrule its previous decision, or modify the terms of the conditional license and plan of correction. The conditional license may be issued after the informal conference or after the time for requesting an informal conference has expired, prior to any further hearing.

E. If after the informal conference the group home desires to contest the basis for issuance of a conditional license, or the terms of the license or plan of correction, the facility shall send a written request for hearing to the Department within ten (10) days after issuance of the conditional license and the Department shall then hold the hearing.

F. A conditional license shall be issued for a period specified by the Department, but in no event for more than one (1) year. The Department shall periodically, but not less than semiannually, inspect any group home operating under a conditional license. If the Department finds substantial failure by the group home to follow the plan of correction, the conditional license may be revoked.

G. If the Department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the Department shall so notify the licensee provider at least thirty (30) days prior to expiration of the license. The licensee is entitled to a hearing if requested prior to expiration of the conditional license. The provider is entitled to a hearing if requested prior to expiration of the conditional license.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 1-818.18,
is amended to read as follows:

Section 1-818.18 Every ~~facility provider~~ shall ~~conspicuously post for display in an area of its offices accessible~~ make available to residents, employees and visitors the following:

1. Its current license;
2. Residents' rights as listed in Section ~~20~~ 1-818.20 of the Group Homes for ~~Developmentally Disabled or Physically Handicapped Persons~~ with Developmental Disabilities Act, Section 1-818.1 et seq. of this title;

3. A description, provided by the Department of Human Services, of complaint procedures established under ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ 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 the resident's ~~representative~~ guardian or advocate, if any;

4. A copy of any order pertaining to the ~~facility~~ group 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 ~~19~~ 1-818.19 of this ~~act~~ title.

SECTION 19. AMENDATORY 63 O.S. 1991, Section 1-818.19,
is amended to read as follows:

Section 1-818.19 A group home shall retain the following for public inspection:

1. A complete copy of every inspection report of the group home received from the Department of Human Services during the past three (3) years;

2. A copy of every order pertaining to the group home issued by the Department or a court during the past three (3) years;

3. A description of the services provided by the group 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 group home who are responsible for resident care;

6. A complete copy of the most recent inspection report of the group home received from the Department; and

7. A complete copy of any current ~~contract~~ license or agreement between the group home and the Department ~~of Human Services~~ for the care, treatment, training, habilitation or rehabilitation of residents of the group home.

SECTION 20. AMENDATORY 63 O.S. 1991, Section 1-818.20, as amended by Section 12, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.20), is amended to read as follows:

Section 1-818.20 A. All principles enunciated in this section shall be ~~posted in a conspicuous, easily accessible place~~ available in each group home, and each resident and resident's ~~representative~~ guardian or advocate, if any, shall be provided a copy of these principles prior to or upon admission. The ~~group home~~ provider shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section.

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 ~~group home~~ provider shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications and consultations with the physician, attorney or any other person of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;

3. Every resident shall have the right, without fear of reprisal, to present grievances on behalf of the resident or others to the ~~group home's~~ provider's staff or administrator, to governmental officials or to any other person, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care;

4. Every resident shall have the right to manage his or her own financial affairs, unless the resident ~~or a representative, if any,~~ delegates the responsibility, in writing, to the ~~group home pursuant to the program certification requirements as provided in Section 1-818.11 of this title~~ provider. The resident ~~and a representative, if any,~~ shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the ~~group home~~ provider during any period of time the resident has delegated such responsibilities ~~have been delegated to the group home to the provider;~~

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident shall be fully informed by ~~the~~ his or her attending physician of the resident's own medical condition and proposed treatment in terms and language that the resident can understand, ~~unless medically contraindicated,~~ and shall have the right to refuse medication and

treatment after being fully informed of and understanding the consequences of such actions;

6. Every resident shall receive respect and privacy in the resident's medical care program. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential;

7. Every resident shall have the right to retain and use his or her personal clothing and possessions, unless ~~medically contraindicated~~ prohibited by law, and shall have the right to security in the storage and use of such clothing and possessions;

8. Every resident shall have the right to ~~receive courteous and respectful care and treatment and~~ be treated courteously and respectfully and shall be furnished by the provider with a written statement of the services provided by the group 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 group home's basic per diem rate;

9. Every resident shall be free from mental and physical abuse, and free from physical and chemical restraints ~~as provided by the program certification standards,~~ except those physical and chemical restraints which are:

- a. authorized in writing by a physician, in accordance with rules promulgated by the Department, for a specified period of time, or
- b. necessitated by an emergency where the restraint may only be applied by a physician or a qualified licensed nurse or other personnel under the supervision of such

physician, who shall set forth in writing the
circumstances requiring the use of such restraints;

10. Every resident shall receive a statement of the ~~facility's~~
~~regulations~~ provider's guidelines and an explanation of the
resident's responsibility to ~~obey~~ comply with all reasonable
regulations of the ~~facility~~ group home and to respect the personal
rights and private property of the other residents;

11. Every resident shall receive a statement that should they
be adjudicated incompetent, the above rights and responsibilities
shall be exercised by a court-appointed guardian;

12. No resident shall be required to perform services for a
~~group home provider, except for normal, shared household tasks.~~
~~Regular participation in shared household tasks shall not be
construed to mean "services for a group home" when said tasks are
included as part of a training, habilitation or rehabilitation plan
for the resident pursuant to the program certification requirements
for the group home and are performed as a part of normal shared
household tasks;~~

~~12.~~ 13. Every resident shall have privacy for ~~spousal~~ conjugal
visits. ~~Every~~ A resident may share a room with ~~their~~ a spouse, if
the spouse is residing in the same group home; and

~~13.~~ ~~When a physician indicates it is appropriate, a group home~~

14. A provider shall immediately notify the resident's next of kin,
or ~~representative~~ guardian or advocate, of the resident's death or
when the resident's death appears to be imminent, unless the
resident has left instructions to the contrary.

C. No ~~licensed facility~~ provider shall deny appropriate care on
the basis of the resident's source of payment as defined in the
~~regulations~~ rules.

D. Each ~~group home~~ provider 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 provision 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~~ the Department of Human Services who inspects any group home shall report any flagrant violations of this act or any other statute to the ~~administrative head of the state agency~~ Director of Human Services, or a designee, 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 ~~group home~~ provider 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. ~~However, if the resident is a client of the Department of Human Services, the Department of Human Services shall be responsible for the burial of the resident as provided by law.~~

SECTION 21. AMENDATORY 63 O.S. 1991, Section 1-818.21, as amended by Section 13, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.21), is amended to read as follows:

Section 1-818.21 A. Each group home shall establish a residents' advisory council. The administrator shall designate a member of the group home staff to coordinate the establishment of ~~and~~ and render assistance to ~~said~~ the council.

B. The composition of the residents' advisory council shall be specified by Department of Human Services rule, but no employee of the Department or employee or affiliate of a group 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~~ the council in preparing and disseminating a report of each meeting as specified by ~~the regulations~~ rule 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, group home responsibilities and make recommendations for changes or additions which will strengthen the group home's policies and procedures as they affect residents' rights and group home responsibilities.

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

1. Obtaining and disseminating information;
2. Soliciting and adopting recommendations for group 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 ~~1-818.13~~ 1-818.7 of this title on behalf of a resident to the Department.

SECTION 22. AMENDATORY 63 O.S. 1991, Section 1-818.22, is amended to read as follows:

Section 1-818.22 A. A written contract shall be executed between a person ~~and his representative,~~ the resident's guardian or advocate, if any, and a group home or its agent within one hundred twenty (120) days from the time a person is admitted to a group home, and annually thereafter, 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 group home on the effective date of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons 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.~~

~~A resident shall not be discharged or transferred at the expiration of the term of a contract, except as provided in Section 25 of this act.~~

B. The contract shall be executed between the ~~group home provider~~ and the resident and ~~his representative~~ the resident's guardian or advocate, if any.

C. A copy of the contract shall be given to the resident and to the resident's ~~representative~~ guardian or advocate, if any, at the time of the resident's admission to the group 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 ~~20~~

1-818.20 of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this title.

G. The contract shall ~~designate~~ state the name of the resident's ~~representative~~ guardian or advocate, 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 group 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 or the resident's guardian or advocate, if any.

SECTION 23. AMENDATORY 63 O.S. 1991, Section 1-818.23, is amended to read as follows:

Section 1-818.23 To protect each resident's funds, the group home:

1. ~~Shall reserve~~ May assist the resident in reserving a portion of ~~each~~ the resident's monthly income ~~as provided by the program certification requirements as a~~ for the resident's personal needs allowance ~~for use by the resident;~~

2. Shall at the time of admission, and annually thereafter, provide each resident and ~~his representative~~ the resident's guardian or advocate, if any, 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 and ~~his representative~~ the resident's guardian or advocate, if any, that ~~he~~ the resident has received the statement;

3. ~~May accept funds from a~~ assist the resident in ~~accordance with program certification requirements for~~ safekeeping and managing the resident's funds, if the group home receives written

authorization from the resident and ~~his representative~~ the resident's guardian or advocate, if any;

4. Shall maintain and allow each resident and ~~his representative~~ the resident's guardian or advocate, if any, access to a written record of all financial arrangements and transactions involving the individual resident's funds;

5. Shall provide each resident and ~~his representative~~ the resident's guardian or advocate, if any, 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 ~~group home's~~ provider's funds and ~~shall maintain such funds as required by the program certification requirements;~~

7. Shall return to the resident, upon written request by the resident and ~~his representative~~ the resident's guardian or advocate, if any, all or any part of the resident's funds given the ~~group home~~ provider for safekeeping, including the interest accrued, if any, 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 group home has written authorization from the resident and the resident's representative, if any, 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 ~~group home~~ provider; and

~~10.~~ 9. If the ~~group home is sold~~ operation of a provider agency changes, shall provide the buyer with a written verification by a public accountant of all residents' monies and properties ~~being transferred~~ for which the provider is responsible, and obtain a signed receipt from the new ~~owner~~ provider.

SECTION 24. AMENDATORY 63 O.S. 1991, Section 1-818.24, is amended to read as follows:

Section 1-818.24 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 developmentally disabled or physically handicapped, or any member of a church group, association of older persons or community service club which provides volunteers for service to group home residents shall be permitted access at~~ Residents may receive any guest or visitor in the group home during reasonable hours, which shall be, as a minimum, set between the hours 8:00 a.m. and 8:00 p.m. at times when the residents are in the home, to any individual resident of any group 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~~ long as the visit does not infringe upon the rights of other group home residents. Any guest or visitor entering a group home under this section shall promptly notify appropriate group home personnel the staff on duty of their presence. They and 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 or herself 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. B.~~ This section shall not limit the power of the Department of Human Services or other public agency otherwise permitted or required by law to enter and inspect a facility group home.

~~D. C.~~ Notwithstanding the provisions of subsection A of this section, the administrator of a group home provider may refuse access to the group home to any person if the presence of that person in the group 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 facility group home, or if the person seeks access to the group home for commercial purposes. Any person refused access to a group home may within ten (10) days request a hearing. In that proceeding, the burden of proof as to the right of the group home to refuse access under this section shall be on the facility group home.

SECTION 25. AMENDATORY 63 O.S. 1991, Section 1-818.25, as amended by Section 14, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.25), is amended to read as follows:

Section 1-818.25 A group 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, for violations of the contract between the resident and the group home or for nonpayment for the resident's stay, unless limited by the Federal Social Security Act, 42 U.S.C., Section 301 et seq. Involuntary transfer or discharge of a resident for violations of the contract shall be subject to the conditions and procedures established by the rules adopted by the Commission for Human Services for program certification. Involuntary transfer or discharge of a resident from a group home shall be preceded by a minimum written notice of ~~ten (10)~~ thirty (30) days. The ~~ten-day~~ thirty-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. AMENDATORY 63 O.S. 1991, Section 1-818.26, is amended to read as follows:

Section 1-818.26 A. No ~~owner~~ provider, including a corporate officer or member of the board of directors when the ~~owner~~ provider is a corporation, administrator, or employee of a group home shall have an insurable interest in the life of a resident of the home unless ~~said owner~~ the provider, administrator, or employee is related to the resident of the home by blood or marriage.

B. No ~~owner~~ provider, including a corporate officer or member of the board of directors when the ~~owner~~ provider is a corporation, administrator, or employee of a group home shall be entitled or assigned to any benefits of a life insurance policy on the resident unless ~~said owner~~ the provider, administrator, or employee is related to the resident of the home by blood or marriage.

C. No ~~owner~~ provider, including a corporate officer or member of the board of directors when the ~~owner~~ provider is a corporation, administrator, or employee of a group home shall be appointed guardian or conservator of a resident of the home unless said ~~owner~~ provider, administrator or employee is a relative of the resident and is otherwise eligible for appointment by a court as the guardian ~~or conservator~~ of the resident.

SECTION 27. AMENDATORY 63 O.S. 1991, Section 1-818.27, as amended by Section 15, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.27), is amended to read as follows:

Section 1-818.27 A. Every group home for which a license has been issued shall be periodically inspected by a duly appointed representative of the Department of Human Services pursuant to rules adopted by the Commission for Human Services with the advice and counsel of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Advisory Board established by Section 1-818.4 of this title. Inspection reports shall be prepared on forms prescribed by the Department with the advice and counsel of the Advisory Board.

B. ~~The Department shall at least three times a year and whenever it deems necessary inspect, survey, and evaluate each group home to determine compliance with applicable licensure and program 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 group 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 group home in accordance with the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 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.

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 group home and date of inspection, investigation, survey, or evaluation;

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

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

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

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 and the group home 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 group home to the extent necessary to implement the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act and the rules promulgated by the Commission for Human Services pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

E. A state or local ombudsman, or a representative of the Office of Client Advocacy, or a case manager assigned monitoring responsibilities for clients residing in group homes is authorized to accompany and shall be notified of any survey or inspection conducted of any group home licensed pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act. Any state or local ombudsman having proper identification is authorized to enter any group home licensed pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, communicate privately and without unreasonable restriction with any resident of a group home who consents to such communication, to seek consent to communicate privately and without restriction with any resident of a group home, and to observe all areas of a group home that directly pertain to the care of a resident of a group home.

F. Following any survey or inspection pursuant to the provisions of this section, all reports relating to the survey or inspection shall be filed in the county office of the Department of Human Services in which the group home is located and with the

Developmental Disabilities Services Division of the Department of Human Services.

G. All state agencies receiving complaints on, or conducting surveys or inspections of group homes shall forward complete copies of complaints or inspection or survey results to the Office of Client Advocacy of the Department of Human Services.

SECTION 28. AMENDATORY 63 O.S. 1991, Section 1-818.28, is amended to read as follows:

Section 1-818.28 A. If upon inspection or investigation, or whenever the Department of Human Services determines that there are reasonable grounds to believe that a ~~group home~~ provider is in violation of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, or ~~of any standard, or rule, or regulation~~ promulgated pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act which would have a direct impact upon one or more residents of the group home or of any order of the Department, the Department shall give written notice to the alleged violator specifying the violation or violations. Such notice shall require that the violation or violations 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 group home if the Department determines that the home is in violation of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this

act or the rules ~~and regulations~~ promulgated by the ~~Board~~ Commission for Human Services pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this 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 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 group home licensed pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this 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~~ the order immediately but on application to the Department shall be afforded a hearing within ten (10) days of receipt of ~~said~~ the 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~~ the 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~~ such person's 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 provided by this section 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.

SECTION 29. AMENDATORY 63 O.S. 1991, Section 1-818.29, as amended by Section 16, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.29), is amended to read as follows:

Section 1-818.29 A. If a hearing is not requested, the effective date of the nonrenewal, suspension, or revocation shall be as follows:

1. In cases of nonrenewal of a license the effective date shall be the expiration date of the license. ~~Said~~ The date may be extended no longer than necessary to permit the orderly removal of the residents; or

2. In cases of revocation or suspension of the license the effective date shall be the date set by the Department of Human Services in the notice of revocation or suspension. ~~Said~~ The date shall be no later than necessary to permit the orderly removal of the residents.

B. If a hearing is requested, unless otherwise ordered by a district court, the effective date of the nonrenewal, suspension, or revocation of a license shall be set upon final action after the hearing and shall be no later than necessary to permit the orderly removal of the residents.

C. A new application of the ~~applicant or licensee~~ provider whose license was denied, not renewed, suspended, or revoked may be considered upon receipt of satisfactory evidence that the conditions upon which such denial, nonrenewal, suspension, or revocation was based have been corrected. A new license may be granted after a

full and complete inspection or investigation and the ~~applicant or licensee~~ provider and the home are in full compliance with the provisions of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, and the standards and rules promulgated by the Commission for Human Services pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

SECTION 30. AMENDATORY 63 O.S. 1991, Section 1-818.30, is amended to read as follows:

Section 1-818.30 A. If the violation specified in the notice required by Section ~~28~~ 1-818.28 of ~~this act~~ the Group Homes Act, Section 1-818.1 et seq. of this title, have been corrected prior to the hearing, the ~~group home~~ provider 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 house manager~~ authorized agent of the provider under oath.

B. A ~~group home~~ provider shall have ten (10) 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 of Human Services 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 group home. The ~~home~~ provider 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~~ provider shall follow an approved plan of correction imposed by the Department which shall be submitted to the ~~group-home~~ provider within thirty (30) days.

C. Upon a ~~licensee's~~ provider'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~~ petitioner 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 ~~group-home~~ provider 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 ~~28~~ 1-818.28 of this ~~act~~ title. 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, unless there is newly discovered evidence that was not available through due diligence during the initial hearing.

SECTION 31. AMENDATORY 63 O.S. 1991, Section 1-818.31, is amended to read as follows:

Section 1-818.31 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 Group Homes for ~~the~~ Developmentally Disabled or Physically Handicapped Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this

title, 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 of Human Services in the investigation and enforcement of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this 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 Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act; ~~or~~

4. Prevent or interfere with any such representative in the preserving of evidence of any violation of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act or the rules promulgated pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this 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 Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act; ~~or~~

6. File any false, incomplete, or intentionally misleading information required to be filed pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or willfully fail or refuse to file any information required by the Department pursuant to the

provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act; or

7. Open a group home without a license or operate a group home without a license and program certification.

B. No employee of a state or unit of a local government agency shall aid, abet, assist, conceal, or conspire with ~~an administrator, house manager or other~~ any employee of a ~~home~~ provider in a violation of any provision of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act or any rule, ~~regulation,~~ or standard promulgated by the ~~Board Commission for Human Services~~ pursuant to ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

C. Any person who violates any of the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, upon conviction, shall be guilty of a misdemeanor. Each day upon which such violation occurs shall constitute a separate violation.

SECTION 32. AMENDATORY 63 O.S. 1991, Section 1-818.32, is amended to read as follows:

Section 1-818.32 A. Any person who has been determined by the Department of Human Services to have violated any provision of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped~~ Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, or any rule, ~~regulation,~~ or order issued pursuant to the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act may: ~~Be~~ be liable for a civil penalty of not more than One Hundred Dollars (\$100.00) for each day that ~~said~~ the violation

continues. The maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and 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 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, and any show of good faith in attempting to achieve compliance with the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act.

C. Any license holder may elect to surrender ~~his~~ such license in lieu of said fine but shall be forever barred from obtaining a reissuance of ~~said~~ such license.

D. In addition to or in lieu of a fine as provided in this section, the Department may issue an administrative order prohibiting a group home which has a history of incomplete or partial compliance with the provisions of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this act, or which has a history of failure to fully implement a plan of correction in a timely manner from admitting new or additional residents to the group home.

SECTION 33. AMENDATORY 63 O.S. 1991, Section 1-818.33, is amended to read as follows:

Section 1-818.33 Any ~~owner of a facility licensed provider~~ operating under the Group Homes for the Developmentally Disabled or Physically Handicapped Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, shall give ninety (90) days'

notice prior to voluntarily closing a group home or closing any part of a group home, or prior to closing any part of a group 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 of Human Services, to any resident who must be transferred or discharged, to the resident's ~~representative~~ guardian or advocate, 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 ~~group-home~~ provider 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 ~~group-home~~ provider shall comply with all applicable laws and ~~regulations~~ rules until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the group 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 34. AMENDATORY 63 O.S. 1991, Section 1-818.34, is amended to read as follows:

Section 1-818.34 A. The Department of Human Services may place an employee or agent to serve as a monitor ~~in a group home~~ at the provider agency or may petition the district court for appointment of a receiver for a ~~group-home~~ provider, or both, when any of the following conditions exist:

1. The group home is operating without a license;
2. The Department has suspended, revoked or refused to renew the existing license of the ~~group-home~~ provider;

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

4. The Department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the ~~licensee~~ provider to remedy the emergency the Department believes a monitor or receiver is necessary.

B. In any situation described in subsection A of this section, the Department may place a qualified person to act as monitor ~~in~~ at the ~~group-home~~ provider agency. The monitor shall observe the operation of the ~~group-home~~ provider agency, assist the ~~group-home~~ provider by advising it on how to comply with the state ~~regulations~~ rules promulgated by the Commission for Human Services and shall report periodically to the Department on the operation of the ~~group home~~ provider agency.

SECTION 35. AMENDATORY 63 O.S. 1991, Section 1-818.35, as amended by Section 17, Chapter 236, O.S.L. 1994 (63 O.S. Supp. 1995, Section 1-818.35), is amended to read as follows:

Section 1-818.35 A. Where a resident, a resident's ~~representative~~ guardian or advocate, if any, or a resident's next of kin believes that an emergency exists, each of them, collectively or separately, may file a verified statement with the Director of Human Services, or a designee, who shall immediately investigate. If the Director, or a designee, determines that proper cause exists, ~~said~~ the Director, or a designee, shall take whatever steps are necessary to protect the health, welfare and safety of the residents including, if necessary, petitioning the court to place the group

home under the control of a receiver to ensure that the residents receive adequate care.

B. The court shall hold a hearing within five (5) days of the filing of the petition. The petition and notice of the hearing shall be served on the ~~owner, administrator~~ provider or designated agent of the ~~group home~~ provider and the petition and notice of hearing shall be posted in a conspicuous place in the ~~facility~~ group home not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the court. The court shall appoint a receiver for a limited time period, not to exceed one hundred eighty (180) days, which shall automatically terminate the receivership unless extended by the court, if it finds that:

1. The group home is operating without a license;
2. The Department has suspended, revoked or refused to renew the existing license of the ~~group home~~ provider;
3. The group home is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure;
4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the ~~licensee~~ provider to remedy the emergency, the appointment of a receiver is necessary; or
5. It is necessary to ensure that the residents get adequate care in a situation in which the residents' health, welfare and safety are threatened.

C. If a petition filed under this section alleges that the conditions listed in subsection B of this section exist within a group home, the court may set the matter for hearing at the earliest

possible time. The petitioner shall notify the ~~licensee,~~
~~administrator~~ provider of the group home or registered agent of the
~~licensee~~ provider more than five (5) days prior to the hearing. Any
form of written notice may be used. A receivership shall not be
established ex parte by the court unless the Director of Human
Services, under oath, has provided a statement that ~~said~~ such
Director, or a designee, has personally determined that there is a
life-endangering situation. A waiver of the five-day notice
requirement may be approved by the court in life-endangering
situations as determined and confirmed under oath, by the Director.

SECTION 36. AMENDATORY 63 O.S. 1991, Section 1-818.36,
is amended to read as follows:

Section 1-818.36 A. The court may appoint any qualified person
as a receiver, except it shall not appoint any ~~owner~~ employee or
affiliate of the ~~facility~~ provider which is in receivership as its
receiver. The Department of Human Services shall maintain a list of
such persons to operate ~~facilities~~ group homes which the court may
consider.

B. The receiver shall make provisions for the continued health,
safety and welfare of all residents of the group home.

C. A receiver appointed under this act shall exercise those
powers and shall perform those duties set out by the court. These
powers and duties may include those generally ascribed to receivers
and receiverships and may also include the powers and duties of
trustees under the ~~1978~~ current Bankruptcy Code for the State of
Oklahoma. The court shall provide for the receiver to have
sufficient power and duties to ensure that the residents receive
adequate care.

SECTION 37. AMENDATORY 63 O.S. 1991, Section 1-818.37,
is amended to read as follows:

Section 1-818.37 A. If funds are insufficient to meet the expenses of performing the powers and duties conferred on the receiver, or if there are insufficient funds on hand to meet those expenses, the Department of Human Services 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 38. AMENDATORY 63 O.S. 1991, Section 1-818.38, is amended to read as follows:

Section 1-818.38 A. A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breaches of fiduciary duty.

B. The court may require a receiver to post a bond.

SECTION 39. AMENDATORY 63 O.S. 1991, Section 1-818.39, is amended to read as follows:

Section 1-818.39 ~~Other provisions of the Group Homes for the Developmentally Disabled or Physically Handicapped Persons with~~ Developmental Disabilities Act, Section 1-818.1 et seq. of this title, notwithstanding, the Department of Human Services may issue a conditional license to a ~~group home~~ provider placed in receivership. The duration of a license issued under this section is limited to the duration of the receivership.

SECTION 40. AMENDATORY 63 O.S. 1991, Section 1-818.40, is amended to read as follows:

Section 1-818.40 A. The court may terminate a receivership:

1. If the time period specified in the order appointing the receiver elapses and is not extended;

2. If the court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership

no longer exist; or the Department ~~grants~~ of Human Services issues the ~~group home~~ provider a new license, whether the structure of the group home, the right to operate the group home, or the land on which it is located is under the same or different ownership; or

3. If all of the residents in the group home have been transferred or discharged.

B. 1. Within thirty (30) days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

2. If the operating funds exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the ~~owner~~ provider, after reimbursement of funds drawn from the contingency fund provided for in Section ~~37~~ 1-818.37 of the Group Homes for ~~the Developmentally Disabled or Physically Handicapped Persons~~ with Developmental Disabilities Act, Section 1-818.1 et seq. of this title. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the ~~owner~~ provider shall be liable for the deficiency. Payment recovered from the ~~owner~~ provider shall be used to reimburse the contingency fund for amounts drawn by the receiver under Section ~~37~~ 1-818.37 of this title.

3. The Department shall have a lien for any payment made under Section ~~37~~ 1-818.37 of ~~the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act~~ this title upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the group home is located,
- b. any fixtures, equipment or goods used in the operation of the group home,
- c. the land on which the group home is located, or

d. the proceeds from any conveyance of property described in subparagraphs a, b or c above, made by the ~~owner~~ provider within one (1) year prior to the filing of the petition for receivership.

4. The receiver shall, within sixty (60) days after termination of the receivership, file a notice of any lien created under this section. If the lien is on real property, the notice shall be filed with the county clerk. If the lien is on personal property, the ~~lien~~ notice shall be filed with the Secretary of State. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this act against any person, on any property, or for any amount not specified in the notice filed under this paragraph.

SECTION 41. AMENDATORY 63 O.S. 1991, Section 1-818.41, is amended to read as follows:

Section 1-818.41 Notwithstanding the general rules of receiverships and trustees, nothing in ~~this act~~ the Group Homes for Persons with Developmental Disabilities Act, Section 1-818.1 et seq. of this title, shall be deemed to relieve any ~~owner,~~ administrator or employee of a group home placed in receivership 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 receiver; provided, that nothing contained in this act shall be construed to suspend during the receivership any obligation of the ~~owner,~~ administrator or employee for payment of taxes or other operating and maintenance expenses of the group home or of the ~~owner,~~ administrator, employee or any other person for the payment of mortgages or liens. The ~~owner~~ provider shall

retain the right to sell or mortgage any group home under receivership, subject to approval of the court which ordered the receivership.

SECTION 42. This act shall become effective November 1, 1996.

45-2-1662

CJ