STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1790 By: Seikel of the House

and

Weedn of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to persons with disabilities; amending 10 O.S. 1991, Sections 1412, as amended by Section 4, Chapter 307, O.S.L. 1992, 1414, 1414.1, as amended by Section 5, Chapter 307, O.S.L. 1992 and 1415.1, as last amended by Section 1 of Enrolled Senate Bill No. 457 of the 1st Session of the 46th Oklahoma Legislature (10 O.S. Supp. 1996, Sections 1412 and 1414.1), which relate to persons with developmental disabilities; modifying functions and duties of the Mental Retardation Advisory Committee; clarifying and updating language; authorizing community services for certain persons on a voluntary basis; deleting outdated behavior management standard for certain accreditation for certain institutions; modifying admission criteria for certain persons at certain institutions; amending 22 O.S. 1991, Sections 1175.3, as amended by Section 1, Chapter 323, O.S.L. 1993, 1175.6 and 1175.7 (22 O.S. Supp. 1996, Section 1175.3), which relate to court orders for incompetent persons; authorizing consideration of voluntary treatment for previously referred incompetent offenders with mental retardation; amending Section 2, Chapter 291, O.S.L. 1992 (56 O.S. Supp. 1996, Section 227), which relates to the Developmental Disabilities Services Division within the Department of Human Services; providing for preferences; modifying criteria for qualified corporations; authorizing the Department of Human Services to reimburse certified volunteers and family members for legal costs of initiating guardianship proceedings for certain clients; creating the Task Force on Medicaid Managed Care Services for People with Developmental Disabilities; specifying purpose; providing for composition, membership and qualifications; providing for meetings and staffing; providing for travel reimbursement; providing for duties; requiring reports; requiring confidentiality for certain complaint review for determining qualified corporations; providing exceptions; defining terms; prohibiting employment of community services workers without a registry review or a criminal background check; providing exceptions; authorizing fees; providing for performance; providing for temporary employment; requiring reports; providing notification; prohibiting release of certain information; requiring termination of certain employees; providing certain performance; providing penalties;

creating a community services worker registry; providing for establishment of registry; providing for contents; requiring certain information; providing for disclosure; providing for procedures; making certain actions unlawful; specifying certain penalties; providing for judicial reviews; specifying certain time limitations; providing for appointment of certain receivers; providing and specifying duties; specifying conditions and instances for appointment; providing for petitions; providing for contents; prohibiting certain appointments; requiring maintenance of list; requiring certain hearings; requiring and providing for notice and hearings; authorizing ex parte appointments; providing for certain reimbursement; making certain contracts not subject to competitive bidding; authorizing certain liens; requiring certain bonds; providing for powers and duties; providing for terminations; requiring approval of certain expenditures; requiring certain reports; requiring reviews and notices; providing for assistance; requiring amendment to state Medicaid plan for certain purpose; amending Section 4, Chapter 277, O.S.L. 1992 (56 O.S. Supp. 1996, Section 604), which relates to Family Support Program; expanding source for certain subsidies; amending Section 4, Chapter 139, O.S.L. 1992, as amended by Section 1, Chapter 157, O.S.L. 1996 (63 O.S. Supp. 1996, Section 1-1962), which relates to the Home Care Act; requiring certain staff to receive an approved level of training; providing certain exemption; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 1991, Section 1412, as amended by Section 4, Chapter 307, O.S.L. 1992 (10 O.S. Supp. 1996, Section 1412), is amended to read as follows:

Section 1412. A. The Director of Human Services, who ~~should~~ shall not be removed from office, except for cause, subject to the approval of the Commission for Human Services, shall appoint an advisory committee to advise the Commission and Director on matters relating to ~~the care and treatment of the mentally retarded~~ service delivery for persons with developmental disabilities.

B. Such advisory committee shall include among its members representatives of state agencies and persons representative of professional, civic, or other public or nonprofit private agencies, organizations, or groups concerned with ~~problems of the mentally retarded~~ services needed by persons with developmental

disabilities, including the ~~Oklahoma Association for Mentally Retarded Children and the~~ parent-guardian association of the Northern Oklahoma Resource Center of Enid, the Southern Oklahoma Resource Center of Pauls Valley, and ~~the Hissom Memorial Center~~ families of individuals receiving services from the Developmental Disabilities Services Division of the Department of Human Services.

SECTION 2. AMENDATORY 10 O.S. 1991, Section 1414, is amended to read as follows:

Section 1414. A. 1. Mentally retarded persons who are legal residents of this state and who have a mental age not above that of the average nine-year-old child, as determined by psychological examination, may be admitted to an institution named in Section 1406 of this title or provided community services, if available, on a voluntary basis only upon written application to the Director on forms provided for such purpose. Other mentally retarded persons who are residents of this state and who are above ~~said~~ such mental age may be admitted or provided community services, on a voluntary basis only, upon recommendation of the superintendent of the institution and approval of the Director.

2. The application shall be signed by any parent having legal custody of ~~said~~ such person, a guardian appointed by a court, or other legal custodian of ~~said~~ such person.

3. The psychological examination provided for in this section shall be on forms provided by the Department and must be completed before an application can be approved and the applicant admitted to the institution.

B. Release of a resident of any of the institutions named in Section 1406 of this title shall be subject to such reasonable rules and conditions as may be prescribed by the ~~Public Welfare~~ Commission for Human Services and shall be made only to the parent, guardian appointed by a court, or legal custodian of the resident~~, except that~~; provided, however, a resident eighteen (18) years of age or older who has not been found by a court to be incompetent or incapacitated may request and obtain ~~his~~ such person's own release.

SECTION 3. AMENDATORY 10 O.S. 1991, Section 1414.1, as amended by Section 5, Chapter 307, O.S.L. 1992 (10 O.S. Supp. 1996, Section 1414.1), is amended to read as follows:

Section 1414.1 A. In addition to the admissions requirements of Section 1414 of this title, the Greer Center Facility located on the grounds of the Northern Oklahoma Resource Center of Enid in Enid, Oklahoma, shall be established as a separate entity from the Northern Oklahoma Resource Center of Enid and further shall provide for the admission of persons who have been dually diagnosed as follows:

1. Primary diagnosis of mental retardation by a psychologist, physician or psychiatrist. The diagnosis shall be in accordance with any statutory requirements and shall include intellectual evaluation, adaptive behavior evaluation, and evidence that retardation occurred within the developmental period. Preference shall be given for those individuals whose retardation level falls within the mild and moderate ranges; and

2. Secondarily, clinical evidence of behavioral or emotional problems pursuant to a formal, written evaluation by a psychologist, psychiatrist or physician describing the nature of the problem, the frequency of occurrence of the problem, any prior treatment efforts and reasons why the applicant cannot receive appropriate treatment in the applicant's current environment and a secondary diagnosis of mental illness in accordance with the Diagnostic and Statistical Manual of Mental Disorders, as revised and published by the American Psychiatric Association.

B. ~~Persons with pending criminal charges~~ A person shall not be considered for voluntary admission into the Greer Center Facility unless it can be clinically demonstrated that the behavior of the person does not pose an ~~immediate danger to self or~~ unreasonable risk of injury, death or sexual assault to others or an unreasonable risk of injury or death to self. Persons considered for admission shall not be considered by a psychologist, psychiatrist, or physician as homicidal or suicidal and shall not have exhibited homicidal or suicidal tendencies for six (6) months prior to application for admission.

C. An applicant who requires skilled nursing care shall not be admitted to the Greer Center Facility ~~if the applicant requires skilled nursing care~~. Applicants having a medical condition which is degenerative in nature that will require skilled nursing shall be considered on a case by case basis to ensure that sufficient staff is available to ensure quality of care. If an applicant has any existing medical or surgical condition that is correctable, the condition shall be remedied by the referring facility before admission to the Greer Center Facility is considered.

D. Any person seeking admission to the Greer Center Facility for treatment, subject to the availability of space, shall be admitted. All persons admitted to the Greer Center Facility shall submit a referral packet to the director of the Greer Center Facility which contains at a minimum, the following information or records:

1. Results of a current physical exam;

2. Recent physician orders and progress notes ~~(~~for up to one (1) year, if available~~)~~;

3. Recent nursing notes ~~(~~for up to one (1) year, if available~~)~~;

4. Fact sheet (medical records);

5. Legal papers ~~(~~, including, but not limited to, birth certificate, marriage certificate~~,~~ and guardianship~~, etc.)~~;

6. Social history, with a recent social evaluation or update ~~(~~within one (1) year~~)~~;

7. Psychological exam administered or updated within ninety (90) days of referral;

8. Dental records;

9. Immunization record;

10. ~~Multi-disciplinary~~ Multidisciplinary progress notes ~~(~~for up to one (1) year, if available~~)~~;

11. Medical and medication history; and

12. Individual Habilitation Plan or Care Plan ~~(~~, if available~~)~~.

E. The Greer Center Admissions Committee shall consist of a representative from the Department of Mental Health and Substance

Abuse Services, a representative from the Greer Center Facility, and an independent psychologist or psychiatrist on contract with the Department of Human Services. The Committee shall make decisions regarding admissions to the programs of the Greer Center Facility. The Committee may request additional information concerning an applicant from the referring agency or participation by referring agency personnel as necessary.

F. Persons entering the Greer Center Facility shall receive a comprehensive evaluation of their intellectual functioning, adaptive behavior skills, and mental health status, and shall receive a continuous active treatment program, which includes aggressive, consistent implementation of a program of specialized and generic training, treatment, health services and related services. The evaluation and assessment shall be completed within thirty (30) days of admission to the Greer Center Facility.

G. After the evaluation and assessment by the Greer Center Facility, staff shall present the individual's referral packet and their findings to the Greer Center Admissions Committee with a recommendation for continued admission or alternate treatment. The Admissions Committee shall make decisions regarding continued admission and shall notify the Department of Human Services, the Department of Mental Health and Substance Abuse Services and the referring agency in writing, stating specifically the decisions of the Committee regarding admission, including specific reasons for denial of admission. If an applicant's admission is not continued at the Greer Center Facility after undergoing the evaluation process, the referring agency shall reimburse the Department of Human Services for the number of bed days used at the Medicaid rate for that unit. If an applicant's admission is continued, the applicant shall be certified for Medicaid reimbursement from the initial date of admission.

H. Individuals who have been admitted and served by the Greer Center Facility shall be eligible for readmission services on the same basis as an individual initially seeking services.

I. In addition to other discharge procedures and requirements provided by law, the interdisciplinary team of the Greer Center

Facility shall have recommended discharge based upon a determination that the individual's mental or physical condition prevents the individual from receiving appropriate services at the Greer Center Facility and the individual shall have completed all primary goals of the individual's habilitation plan. The Developmental Disabilities Services Community Services Unit from the individual's placement area shall be consulted in the recommendations for placement and shall be responsible for coordinating the placement and follow up.

J. The Commission for Human Services is authorized and hereby directed to promulgate and amend rules ~~and regulations~~ necessary to implement the provisions of this section.

SECTION 4. AMENDATORY 10 O.S. 1991, Section 1415.1, as last amended by Section 1 of Enrolled Senate Bill No. 457 of the 1st Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 1415.1 A. 1. All institutions named in Section 1406 of this title within the Department of Human Services, which are established primarily for the purpose of caring for the mentally retarded, shall maintain an adequate clinical record of each resident. Such record shall contain initial social, psychological, and medical evaluation results, as well as interval reports of the resident's condition, the treatment and training prescribed, and the progress shown.

2. ~~The program for care and treatment established at such institutions shall meet, but not be limited to, the standards for accreditation published by the Accreditation Council for Services for Mentally Retarded and Other Developmentally Disabled Individuals which pertain to behavior management. The Department shall arrange for regular, periodic surveys at such institutions for the purpose of ascertaining compliance with the standards of the Accreditation Council. Reports of the survey results shall be provided to the Commission and to the Director, and shall be filed with the Office of Juvenile System Oversight of the Oklahoma Commission on Children and Youth.~~

~~3.~~ The ~~Human Services~~ Commission for Human Services shall establish an ombudsman program for each of the institutions and residential facilities for the mentally retarded operated by the Department, which shall include, but not be limited to, an appeals procedure for the resolution of grievances or complaints of the residents of the institutions and facilities and the grievances or complaints of the parents or the court-appointed guardians of the residents.

B. The educational and physical capabilities of each resident shall be assessed at least one time each year by appropriate professional personnel for the purpose of determining such further treatment or training as may be required. A report of the findings and recommendations of such assessments shall be filed in the clinical record of the resident. Failure on the part of the superintendent of the institution to institute a policy of annual evaluations, if sufficient personnel are available, shall constitute dereliction of duty.

C. When annual evaluations of a resident reflect improvement in social or physical capabilities sufficient enough to permit the resident to be released from the institution, either completely or conditionally, the superintendent shall return such resident to the resident's immediate family, or shall provide assistance for the placement of the resident in some other appropriate residential setting.

D. 1. The Department of Human Services may enter into contracts for the development of residential settings and attendant community services prior to the release of the resident.

2. The Department shall establish procedures which specify the conditions and requirements for recipients of such contracts. In establishing reimbursement rates for recipients of such contracts, the Department may take into consideration any unusual or increased costs of the recipient relating to the care and treatment of developmentally disabled clients including, but not limited to, workers' compensation costs.

3. A copy of these procedures shall be made available to any person upon request.

E. 1. In addition to any other form of assistance provided, the Department is authorized to pay stipends to eligible relatives and certified volunteers for the sole purpose of acquiring legal representation to initiate guardianship proceedings.

2. Financial guidelines and other criteria pertaining to eligibility of relatives and certified volunteers applying for a stipend shall be established by rules promulgated by the Commission.

F. Reports of the reviews of the administration of psychotropic medications shall be made available to the parent or the court-appointed guardian of a resident of the institutions. The parent or the court-appointed guardian of a resident of the institution shall have access to all clinical records pertaining to the condition, treatment, training, and education of the resident which are maintained at the institution, or elsewhere, by the Department of Human Services.

SECTION 5. AMENDATORY 22 O.S. 1991, Section 1175.3, as amended by Section 1, Chapter 323, O.S.L. 1993 (22 O.S. Supp. 1996, Section 1175.3), is amended to read as follows:

Section 1175.3 A. Upon filing of an application for determination of competency, the court shall set a hearing date, which shall be as soon as practicable, but at least one (1) day after service of notice as provided by Section 1175.2 of this title.

B. The court shall hold a hearing on the date provided. At the hearing, the court shall examine the application for determination of competency to determine if it alleges facts sufficient to raise a doubt as to the competency of the person. Any additional evidence tending to create a doubt as to the competency of the person may be presented at this hearing.

C. If the court finds there is no doubt as to the competency of the person, it shall order the criminal proceedings to resume.

D. 1. a. If the court finds there is a doubt as to the competency of the person, it shall order the person to be examined by doctors or appropriate technicians. The doctors or technicians shall

be practitioners in the appropriate branch of medicine relevant to the alleged incompetency of the person.

b. In addition, the Developmental Disabilities Services Division of the Department of Human Services shall receive written notice from the district attorney who filed the criminal petition, and be authorized by order of the court to have a psychologist or other appropriate clinician participate with professionals assigned by any other public or private agency in any competency evaluation wherein mental retardation or other developmental disability may be involved. The psychologist or clinician employed, by contract or otherwise, by the Department of Human Services may issue a separate opinion and recommendation to the court.

2. The person shall be examined on an outpatient basis prior to referral for any necessary inpatient evaluation, as ordered by the court. The court may commit the person to the custody of the Department of Mental Health and Substance Abuse Services or any other state agency or private facility for the examination provided by this act. The person shall be required to undergo examination for a period of time sufficient for the doctor or doctors or technicians to reach a conclusion as to competency, and the court shall impose a reasonable time limitation for such period of examination.

3. If the court determines that the person whose competency is in question may be a threat to the safety of ~~himself~~ self or others, it shall order the person retained in a secure facility until the completion of the competency hearing provided in Section 1175.4 of this title.

E. The doctor or doctors shall receive instructions that they shall examine the patient to determine:

1. ~~Is this~~ If the person is able to appreciate the nature of the charges made against ~~him?~~ such person;

2. ~~Is this~~ If the person is able to consult with ~~his~~ the lawyer and rationally assist in the preparation of ~~his~~ the defense~~?~~ of such person;

3. If the answer to question 1 or 2 is no, ~~can~~ whether the person can attain competency within a reasonable time if provided with a course of treatment, therapy or training~~?~~;

4. ~~Is~~ If the person ~~a~~ is mentally ill ~~person~~ or a person requiring treatment as defined by Section 1-103 of Title 43A of the Oklahoma Statutes~~?~~; and

5. If the person were released without treatment, therapy or training, whether such person would ~~he probably~~ pose a significant threat to the life or safety of ~~himself~~ self or others~~?~~.

SECTION 6. AMENDATORY 22 O.S. 1991, Section 1175.6, is amended to read as follows:

Section 1175.6 A. Upon the finding by the jury or the court as provided by Section 1175.5 of this title, the court shall issue the appropriate order regarding the person~~.~~ as follows:

1. If the person is found to be competent, the criminal proceedings shall be resumed;

2. If the person is found to be incompetent, but capable of achieving competence with treatment, therapy, or training, the court shall ~~remand~~ commit the person to the legal custody of the Department of Mental Health and Substance Abuse Services, or refer to the Department of Human Services, other appropriate state agencies or a private care provider for consideration of voluntary appropriate treatment, therapy, or training;

3. If the person is found to be incompetent and not capable of achieving competency within a reasonable period of time, and is a person requiring treatment as defined by Title 43A of the Oklahoma Statutes, then the court shall order treatment as if there had been a finding pursuant to Title 43A of the Oklahoma Statutes that the defendant was a mentally ill person requiring treatment, without any further proceedings, and shall suspend the criminal proceeding. The Department of Mental Health and Substance Abuse Services or other agency providing treatment to the person or the institution wherein the person is confined or

treated shall make periodic reports to the court as to the competency of the defendant. If the agency or institution reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed; and

4. a. If the person is found to be incompetent, and not capable of achieving competency within a reasonable period of time, but is not a person requiring treatment as defined by Title 43A of the Oklahoma Statutes and is not a threat to ~~himself~~ self or society, the court shall ~~remand~~ refer the person to the Department of Human Services for consideration of voluntary assistance, subject to assistance from any other appropriate state agencies, and shall suspend the criminal proceedings.

b. The Department of Human Services shall make periodic reports to the court as to the status and activities of the person. If the Department of Human Services reports that the person appears to have achieved competency, the court shall hold another competency hearing to determine if the person has achieved competency. If competency has been achieved, the criminal proceeding shall be resumed.

B. Any person arrested and charged with a criminal offense which is punishable by death, life imprisonment or life imprisonment without parole, who is found to be incompetent by the court and ordered into the custody of the Department of Mental Health and Substance Abuse Services pursuant to paragraphs 2 or 3 of subsection A of this section, shall be placed in a maximum security ward of the mental health facility designated by the Department of Mental Health and Substance Abuse Services until such time as ~~said~~ such person is adjudicated to be competent or is adjudicated no longer determined to be a threat to any other person.

SECTION 7. AMENDATORY 22 O.S. 1991, Section 1175.7, is amended to read as follows:

Section 1175.7 A. If the person is found incompetent, but capable of achieving competency within a reasonable period of time, as defined by the court, the court shall order such person to undergo such treatment, therapy or training which is calculated to allow the person to achieve competence.

B. The court shall appoint a medical supervisor for a course of treatment. The medical supervisor of treatment may be any person or agency that agrees to supervise the course of treatment. The proposed treatment may be either inpatient or outpatient care depending on the facilities and resources available to the court and the type of disability sought to be corrected by the court's order. The court may require the supervisor to provide periodic progress reports to the court and may pay for the services of the medical supervisor from court funds.

C. The court may commit the incompetent person to the custody of the Department of Mental Health and Substance Abuse Services or other appropriate state agency, if the court, after the hearing provided in Section 1175.4 of this title, determines that such commitment is necessary for the effective administration of the treatment ordered, or if the court determines that the defendant is dangerous to ~~himself~~ self or society.

D. The court may allow the person to receive treatment from private facilities if such facilities are willing, and neither the state nor the court fund is required to directly pay for such care.

E. In no event shall an incompetent individual be involuntarily committed to the legal custody of the Department of Human Services or any of its facilities.

SECTION 8. AMENDATORY Section 2, Chapter 291, O.S.L. 1992 (56 O.S. Supp. 1996, Section 227), is amended to read as follows:

Section 227. A. The Developmental Disabilities Services Division within the Department of Human Services is hereby directed to offer a preference to qualified corporations within

the state to provide residential or vocational services to residents of this state who have developmental disabilities. The Commission for Human Services is hereby authorized to promulgate rules to implement the provisions of this act, provided such rules shall not unduly interfere with interstate commerce or discriminate against out-of-state corporations.

B. A qualified corporation shall:

1. Conduct at least fifty-one percent (51%) of its financial business within the State of Oklahoma, including both receipt and disbursement transactions;

2. Have its principal place of business within the State of Oklahoma and have on file in the Office of the Secretary of State of Oklahoma a certificate of incorporation or a certificate of qualification of foreign incorporation;

3. Provide residential or vocational services, or both, as determined by the Department of Human Services to the residents of this state who have developmental disabilities;

4. Be identified on a list maintained by the Developmental Disabilities Services Division of the Department of Human Services. This list shall include those corporations which demonstrate the capacity to maintain fiscal solvency, as determined by the Department of Human Services, and, if the corporation has been in existence for two or more years, the corporation's capacity to maintain fiscal solvency must be verified by two (2) or more annual financial audits, conducted by an independent certified public accountant;

5. Have a history of ethical business practices as established by a peer review panel, if prior business operations have been conducted. Complaints relating to ethical practices shall be reviewed by a peer review panel of five (5) members, to be appointed annually by the Administrator of the Developmental Disabilities Services Division. Members of the panel may be reappointed. The panel shall:

a. develop criteria to determine ethical business practices for qualified corporations,

b. determine compliance of qualified corporations with such criteria, ~~and~~

c. make recommendations to the Administrator of the Developmental Disabilities Services Division, who shall take appropriate action to remedy any unethical behavior, and

d. maintain confidentiality in the review of complaints relating to ethical practices in determining qualified corporations throughout the review process, except to:

(1) employees of other state and federal agencies in the course of their official duties pertaining or relating to such review process, services, or residents,

(2) the members of the Legislature or its staff, and

(3) the office of the Governor; and

6. Be in full compliance with all assurances and monitoring standards required by the Department of Human Services or other relevant state and federal licensing and certification requirements.

C. The Department of Human Services shall be allowed discretion in its choice of providers for residential or vocational services, or both, when none of the qualified corporations can or are willing to provide such services.

D. The Developmental Disabilities Services Division shall not be prohibited from contracting with any new community-based nonprofit corporation to provide residential or vocational services in an unserved community.

E. The Developmental Disabilities Services Division shall be authorized to provide technical assistance, either directly or through the use of qualified consultants, to enhance the ability of Oklahoma-based corporations to provide new, innovative and effective services to residents of this state who have developmental disabilities.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 228 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. In addition to any other form of assistance provided for under subsection E of Section 1415 of Title 10 of the Oklahoma Statutes, the Department of Human Services is authorized to pay a voucher to a relative or certified volunteer for the sole purpose of acquiring legal representation to initiate guardianship proceedings on behalf of any person who receives Title XIX Home and Community-Based Waiver-funded services from the Developmental Disabilities Services Division, or who is a resident of an institution specified in Section 1406 of Title 10 of the Oklahoma Statutes.

B. Administration of the guardianship voucher program, including, but not limited to, establishing financial eligibility criteria and volunteer training and certification requirements, shall be established by rules promulgated by the Commission for Human Services.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1010.10 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created the Task Force on Medicaid Managed Care Services for People with Developmental Disabilities. The purpose of the task force shall be to examine the application of managed care principles and practices to services for people with developmental disabilities under the state Medicaid program.

B. The task force shall be composed of fifteen (15) members, two of whom shall be members of the Senate, appointed by the President Pro Tempore of the Senate, and two of whom shall be members of the House of Representatives, appointed by the Speaker of the House of Representatives. The remaining members shall consist of:

1. The Administrator of the Oklahoma Health Care Authority, or a designee;

2. The Director of Human Services, or a designee;

3. A person with developmental disabilities or a representative of People First of Oklahoma, appointed by the Governor;

4. A representative of the Oklahoma Community Provider's Association, appointed by the Governor;

5. A representative of the Oklahoma Resource Centers, appointed by the Governor;

6. A representative of private intermediate care facilities for the mentally retarded, appointed by the Speaker of the House;

7. A representative of the Mental Retardation Advisory Committee or the Oklahoma Planning Council on Developmental Disabilities, appointed by the President Pro Tempore;

8. Two professionals who serve people with developmental disabilities, appointed by the President Pro Tempore and the Speaker of the House;

9. A parent or guardian representative of a consumer of services for people with developmental disabilities, appointed by the Speaker; and

10. A parent or guardian representative of consumers on the waiting list for services for people with developmental disabilities, appointed by the President Pro Tempore.

C. The first meeting of the task force shall be convened not later than ninety (90) days after the effective date of this act by the Administrator of the Oklahoma Health Care Authority. The task force shall elect from among the legislative members a chair and a vice-chair. Staffing for the task force shall be provided by the Oklahoma Health Care Authority and the legislative staffs of the Senate and the House of Representatives.

D. Members of the task force shall receive no compensation for serving on the task force, but shall receive travel reimbursement as follows:

1. Legislative members of the task force shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with Section 456 of Title 74 of the Oklahoma Statutes from the legislative body which they serve;

2. Nonlegislative state agency members of the task force shall be reimbursed by their own agencies; and

3. Nonlegislative members of organizations shall be reimbursed by their appointing authority in accordance with the State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes.

E. 1. The task force shall make recommendations for implementing managed care for services to people with developmental disabilities under the state Medicaid program, to include, but not be limited to, identification of:

a. services that are most critical to people with developmental disabilities and that are essential for health plans to provide,

b. methods of providing such services, whether in specialized programs developed specifically for such population or in generic managed care plans that serve all people, and

c. the extent to which services will be provided, whether they will be comprehensive or whether certain services will be excluded.

2. The task force shall issue periodic reports of its progress in formulating recommendations to the Legislature and the Governor.

3. The task force shall publish its final report to the Legislature and the Governor on or before February 1, 1999.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

For the purposes of this chapter:

1. "Bureau" means the Oklahoma State Bureau of Investigation;

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

3. "Community services provider" or "provider" means a community-based program, corporation, or individual who contracts with, or is licensed or funded by, the Department of Human Services to provide residential or vocational services to persons

with mental retardation or developmental disabilities, or contracts with the Oklahoma Health Care Authority to provide services to individuals with mental retardation through the Home and Community-Based Waiver, except a private ICF/MR;

4. "Community services worker" or "worker" means any person employed by or under contract with a community services provider to provide, for compensation or as a volunteer, health-related services, training, or supportive assistance to persons with developmental disabilities, and who is not a licensed health professional;

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

6. "Developmental disability" means a severe, chronic disability of a person which:

a. is attributable to a mental or physical impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism,

b. is manifested before the person attains twenty-two (22) years of age,

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, and

(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 of lifelong or extended duration and are individually planned and coordinated;

7. "Health-related services" means those services provided by community services providers or community services workers to persons with developmental disabilities that include, but are not limited to, the following: personal hygiene, transferring, range of motion, supervision or assistance in activities of daily living, basic nursing care such as taking temperature, pulse or respiration, positioning, incontinent care, identification of signs and symptoms of disease; and

8. "Supportive assistance" means the service rendered to persons with developmental disabilities which is sufficient to enable such 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 persons with developmental disabilities.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided by subsection C of this section, before any community services provider makes an offer to employ or to contract with a community services worker applicant to provide health-related services, training, or supportive assistance to a person with a developmental disability, the community services provider shall:

a. provide, prior to a check with the Department of Human Services, for a criminal history records search to be made on the community services worker applicant or contractor pursuant to the provisions of this section, and

b. check with the Department of Human Services to determine if the name of the applicant seeking employment or contract has been entered on the community services workers registry created pursuant

to Section 13 of this act. Prior to a decision by the Department not to enter the name of a community services worker on such registry, the Department shall allow for notice and opportunity for due process for such community services worker against whom a final investigative finding by the Department of Human Services or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual has been made. The Department of Human Services is authorized to charge a community services provider a reasonable fee for access to the registry. If the name of the applicant seeking employment or a contract with the community services provider is listed on the registry as having a final Department of Human Services investigative finding or a finding by an Administrative Law Judge pursuant to the requirements of Section 13 of this act, and the Department has allowed for notice and opportunity for due process for such applicant, the provider shall not hire the applicant.

2. A community services provider is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request pursuant to the provisions of this section.

3. The community services provider shall request the Bureau to conduct a criminal history records search on a community services worker desiring employment or a contract with the provider and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The community services provider shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request, such fee to be determined by the Oklahoma State Bureau of Investigation.

4. The requirement of a criminal history records search shall not apply to an offer of employment made to:

a. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,

b. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,

c. a physical therapist registered pursuant to the Physical Therapy Practice Act,

d. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,

e. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,

f. a speech pathologist or audiologist licensed pursuant to the Speech Pathology and Audiology Licensing Act,

g. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act, or

h. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act.

B. At the request of the community services provider, the Bureau shall conduct a criminal history records search on any applicant desiring employment or a contract pursuant to subsection A of this section or any worker employed by the community services provider, including any of the workers specified in paragraph 4 of subsection A of this section, at any time during the period of employment of such worker with the provider.

C. A community services provider may make an offer of temporary employment to a community services worker pending the results of such criminal history records search and the registry review on the applicant. The community services provider in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. Temporary employment shall not exceed thirty (30) days. The community services provider shall not hire or contract with an applicant as a community services worker on a permanent basis

until the results of the criminal history records search and the registry review are received.

D. Within five (5) days of receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting community services provider.

E. Every community services provider shall inform each applicant for employment, or each prospective contract worker, as applicable, that the community services provider is required to obtain a criminal history records search and a registry review before making an offer of permanent employment or a contract with the community services worker or applicant described in subsection A of this section.

F. 1. If the results of any criminal history records search from any jurisdiction reveals that the subject worker or applicant has been convicted, or pled guilty or nolo contendere to a felony or misdemeanor, the employer shall not hire or contract with the applicant, but shall immediately terminate the community services worker's employment, contract, or volunteer arrangement, subject to the provisions of paragraph 2 of this subsection.

2. The community services provider may request, in writing, a waiver of the provisions of paragraph 1 of this subsection from the Director of the Department of Human Services, or a designee of the Director, and such provisions may be waived in writing by the Director of the Department of Human Services or a designee of the Director. The Director or a designee of the Director may waive the provisions based upon standards promulgated by the Commission for Human Services. No waiver shall be granted for offenses resulting in a felony conviction or plea of guilty or nolo contendere to a felony that occurred less than five (5) calendar years prior to the date of request. In no case shall a waiver be granted for employment of a community services worker who has been convicted of, or pled guilty or nolo contendere to, a felony count of aggravated assault and battery, homicide, murder, attempted murder, rape, incest, sodomy, or abuse, neglect, or financial exploitation of any person entrusted to the worker's care.

G. All criminal history records received by the community services provider are for the exclusive use of the Department of Human Services and the community services provider which requested the information. Except as otherwise provided by this chapter or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

H. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

I. As part of any inspections required by law, the Department of Human Services shall review the employment files of the community services provider required to conduct a criminal history records search to ensure such community services provider is in compliance with the provisions of this section.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Within one hundred eighty (180) days following the effective date of this act, the Commission for Human Services shall promulgate rules to establish and maintain a community services worker registry. Such rules will include, but not be limited to:

1. A procedure for notation in such registry of a final Department of Human Services investigative finding or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual by a community services worker;

2. A procedure for notice and due process for a community services worker or applicant before the entering of such person's name in the registry as having a final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, neglect, or exploitation of an individual;

3. Disclosure requirements for information in the registry; and

4. Procedures for granting a waiver of the provisions of paragraph 1 of subsection F of Section 12 of this act by the Director of Human Services.

B. The community services worker registry shall include, but not be limited to, the following information on each community services worker:

1. The individual's full name;

2. Information necessary to identify each individual;

3. The date the individual's name was placed in the registry; and

4. Information on any final Department of Human Services investigative finding or Administrative Law Judge finding of abuse, exploitation, or neglect, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes concerning the worker.

C. A community services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, neglect, or exploitation of an individual may seek judicial review under Section 318 et seq. of Title 75 of the Oklahoma Statutes. The finding of the Administrative Law Judge may be appealed to the district court in which the community services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department of Human Services.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1025.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

Any violation of the provisions of Sections 11 through 13 of this act shall be a misdemeanor and, upon conviction or plea of guilty or nolo contendere, shall be punishable by a fine of not less than Three Hundred Dollars ($300.00), but not to exceed One Thousand Dollars ($1,000.00). In addition to the fine, such violator may be imprisoned in the county jail for not more than thirty (30) days. Each day that such violation continues shall be considered to be a separate violation.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1030.1 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services may, upon its own initiative or at the request of an owner, operator or resident of any agency providing residential services to people with mental retardation, or at the request of a resident's guardian or relative, petition the court to appoint a receiver to take possession of and operate an agency providing residential services, except a facility subject to the provisions of the Nursing Home Care Act. When requested to file a petition, the Department of Human Services shall determine if proper cause exists, and shall take whatever steps are necessary to protect the health, welfare and safety of residents including, if necessary, petitioning the court to place the agency under the control of a receiver to ensure that the residents receive adequate care.

B. Upon the filing of a petition by the Department of Human Services, subject to other provisions of this article, a court may appoint a receiver to take possession of and operate an agency licensed by or contracting with the Department of Human Services or the Oklahoma Health Care Authority to provide community residential supports to individuals with mental retardation or other developmental disabilities when there is actual, imminent or substantial risk of serious physical or mental harm or death to residents, and no other remedies at law are adequate to protect the health, safety and welfare of the residents.

C. Conditions and factors which may result in mental or physical harm or death, or risk of harm or death, as described in subsection B of this section include, but are not limited to, instances when any of the following occur:

1. The residential agency has violated, or has demonstrated a pattern and practice of repeated violations of, state or federal law, rule or regulation which affect health and safety;

2. The residential agency is in the process of terminating services or intends to cease operations, and arrangements for relocating residents are dangerously inadequate; or

3. The residential agency is insolvent as defined in subsection C of Section 16 of this act, and a receivership is necessary to protect the health and safety of the residents.

D. Petitions filed pursuant to this section shall include the following:

1. A description of the specific conditions, conduct, or occurrences existing at the agency which have resulted in serious physical or mental harm or death or which present a substantial risk of serious physical or mental harm or death to residents;

2. A statement explaining why other remedies of law are inadequate;

3. The number of individuals receiving residential services from the agency who have been seriously harmed or died, or are at substantial risk of such harm or death;

4. A statement that the facts have been brought to the attention of the owner or administrator and that conditions have not been remedied within a reasonable period of time or that the conditions, though remedied periodically, habitually exist at the agency as a pattern or practice;

5. The name and address of the persons holding a contract for the agency or serving as the duly authorized agent of the contract and the address of a designated representative for the Director of the Department of Human Services and the Administrator of the Oklahoma Health Care Authority; and

6. A listing of any other reasons that may apply as set forth in this subsection.

E. No party, attorney, or person interested in an action shall be appointed a receiver pursuant to this section. To assist the court in identifying persons qualified to be named as receivers, the Director of the Department of Human Services or the Director's designee shall maintain a list of the names of such persons that the court may consider.

F. The court may award to a residential agency appropriate costs and expenses, including reasonable attorney fees, if the court determines that a petitioner has initiated a proceeding in bad faith or merely for the purpose of harassing or embarrassing the residential agency.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1030.2 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 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 by the petitioner on the owner, administrator or designated agent of the agency, and the Oklahoma Health Care Authority. The petition and notice shall be posted in a conspicuous place in the agency 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.

B. The court may appoint a receiver ex parte pending the hearing if the Department of Human Services provides testimony, under oath, that there has been a loss of life or a life-endangering situation exists for which an adequate remedy at law does not exist. Following the hearing on the petition, and upon a determination that the appointment of a receiver is warranted, the court may then appoint a different receiver or extend the term of the ex parte receiver.

C. When the operating revenue of a residential agency in receivership is insufficient to meet its operating expenses, including the cost of bringing the agency and residences into compliance with state or federal laws or rules or regulations or provisions of the agency's contract, or to protect the health and safety of the residents, the operator shall be deemed insolvent. The Department of Human Services may reimburse the receiver for those expenses from funds available for such uses and expenses.

D. The receiver, the Department of Human Services and the Oklahoma Health Care Authority are not liable for debts incurred

by the owner or operator of an agency providing community residential services for which a receiver has been appointed.

E. Notwithstanding any other provision of law, contracts that are necessary to carry out the powers and duties of the receiver need not be competitively bid.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1030.3 of Title 56, unless there is created a duplication in numbering, reads as follows:

The Department of Human Services shall have a lien against the owner of the agency for any such reimbursements made during the receivership under the same terms, procedures, and conditions as provided for long-term care facilities pursuant to Section 1-1914.2 of Title 63 of the Oklahoma Statutes. The court shall set the compensation of the receiver in accordance with other receiverships generally.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1030.4 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. Before a receiver is appointed, a nominee shall be sworn to faithfully perform the duties of a receiver. At the initial hearing, the receiver shall seek and obtain court approval of one or more sureties and shall execute a bond in such amount as the court shall direct.

B. In establishing a receivership, the court shall set forth the powers and duties of the receiver. The court shall authorize the receiver to do all that is prudent and necessary to protect the health, safety and welfare of all persons served by the agency and to efficiently administer residential services within the requirements of state and federal law, relevant policy, and the agency's contracts with the Department of Human Services and the Oklahoma Health Care Authority. These powers and duties shall include those generally ascribed to receivers and may also include the powers and duties of trustees under the U.S. Bankruptcy Code,

as amended. In addition to the powers specified by this section, the court shall authorize the receiver to:

1. Honor all leases, mortgages and secured transactions governing all buildings, goods and fixtures of which the receiver has taken possession and continues to use, but, in the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the receivership, or, in the case of a purchase agreement, only to the extent of payments that are received during the period of the receivership;

2. If transfer of residents is necessary, provide for the orderly transfer of residents by doing the following:

a. cooperate with all appropriate state and local agencies in carrying out the transfer of residents to alternative community placements,

b. arrange for the transportation of residents' belongings and records,

c. help to locate alternative placements and develop discharge plans,

d. prepare residents for the trauma of discharge, and

e. permit residents or guardians to participate in transfer or discharge planning except when an emergency exists and immediate transfer is necessary;

3. Make periodic reports on the status of the residential program to the appropriate state agency, parents, guardians, and residents;

4. Compromise demands or claims with prior notice to the Department of Human Services and the Oklahoma Health Care Authority, subject to approval by the court; and

5. Subject to the supervision and control of the court, bring and defend actions in the receiver's name, in the official capacity as receiver, and take and keep possession of property.

C. The court shall require the receiver to obtain court approval prior to making any single expenditure of more than Five Thousand Dollars ($5,000.00) to correct deficiencies in the structure or furnishings of residences supported by an agency.

The court shall require regular and detailed reports including a final report. The receivership shall be reviewed at least every sixty (60) days.

D. Upon motion by the receiver, the Department of Human Services or other interested party, a receivership established pursuant to this section may be terminated by the court, and the receiver discharged, following notification of the appropriate parties and interested persons and a hearing, if the court determines the following:

1. The residential agency and owners have ceased operations and the former residents have been relocated to an appropriate service setting; or

2. Circumstances no longer exist at the agency that present a substantial risk of physical or mental harm or death to residents, and there is no deficiency in the agency that is likely to create such risk of harm or death.

E. Upon motion of the receiver, the Department of Human Services or other interested party, the court may, during the hearing to consider termination of the receivership and discharge of the receiver, approve the return of control of the agency, corporation, or assets to the original owner or approve the sale of the same to a new owner. The Department of Human Services, the Oklahoma Health Care Authority, all other interested parties, and other persons with a known interest in the proceedings shall receive written notice from the receiver of such hearing.

F. The Department of Human Services and the Oklahoma Health Care Authority shall provide technical assistance to any receiver appointed pursuant to this section.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5020.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority shall amend the state Medicaid plan to provide a funding source for payment of temporary managers or state monitors in facilities certified to provide long-term care services and community-based service provider

facilities under Medicaid, upon request of the Department of Human Services pursuant to 42 U.S.C.A., Section 1396r(h)(z).

SECTION 20. AMENDATORY Section 4, Chapter 277, O.S.L. 1992 (56 O.S. Supp. 1996, Section 604), is amended to read as follows:

Section 604. The Director of the Department of Human Services shall, within the constraints of funding appropriated to the Department, maintain a Family Support Program for children with severe developmental disabilities who reside in their family homes in accordance with the following criteria:

1. The family member resides with the family;

2. The family resides in the State of Oklahoma;

3. The gross adjusted income of the family for the year immediately preceding the date of application for the assistance did not exceed Forty-five Thousand Dollars ($45,000.00);

4. The family is headed by a biological parent, adoptive parent, or legal guardian of the eligible family member~~. Provided~~; provided, however, that if the eligible family member lives with an adoptive parent or parents who already receive ~~the Department of Human Services'~~ adoption subsidy from any source on behalf of the applicant, the family cannot receive family support assistance authorized by this section; and

5. The family or family member does not receive Medicaid Home and Community-based Waiver Services.

SECTION 21. AMENDATORY Section 4, Chapter 139, O.S.L. 1992, as amended by Section 1, Chapter 157, O.S.L. 1996 (63 O.S. Supp. 1996, Section 1-1962), is amended to read as follows:

Section 1-1962. A. ~~On and after July 1, 1993, no~~ No home care agency as such term is defined by this act shall operate without first obtaining a license as required by the Home Care Act.

B. ~~On and after July 1, 1993:~~ 1. No employer or contractor, except as otherwise provided by this subsection, shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or

unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the State Department of Health; and

2. a. Any person in the employment of a home care agency as a home health aide on June 30, 1992, with continuous employment through June 30, 1993, shall be granted home health aide certification by the Department on July 1, 1993. The home care agency shall maintain responsibility for assurance of specific competencies of the home health aide and shall only assign the home health aide to tasks for which the aide has been determined to be competent.

b. Any home health aide employed between the dates of July 1, 1992, and June 30, 1993, shall be eligible for certification by passing a competency evaluation and testing as required by the Department.

c. Any home health aide employed on and after July 1, 1996, shall complete any specified training, competency evaluation and testing required by the Department. The Department in conjunction with the Department of Human Services shall, until July 1, 1997, provide for competency certification for individuals under contract with the state Medicaid agency for the provision of personal care services prior to July 1, 1997, and who have not already been certified pursuant to this subsection.

C. The provisions of the Home Care Act shall not apply to:

1. A person acting alone who provides services in the home of a relative, neighbor or friend;

2. A person who provides maid services only;

3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;

4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act; ~~or~~

5. A nurse-midwife; or

6. An individual, agency, or organization that contracts with the Oklahoma Health Care Authority to provide services under the Home and Community-Based Waiver for persons with mental retardation or that contracts with the Department of Human Services to provide community services to persons with mental retardation; provided, that staff members and individuals providing such services shall receive a level of training, approved by the Department of Human Services, which meets or exceeds the level required pursuant to the Home Care Act. An individual, agency or organization otherwise covered under the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under contracts referenced in this paragraph.

SECTION 22. This act shall become effective November 1, 1997.

46-1-7646 KSM