

ENROLLED HOUSE
BILL NO. 1540

By: Erwin of the House

and

Brown of the Senate

An Act relating to public health and safety; creating the Continuum of Care and Assisted Living Act; defining terms; providing for promulgation of rules; specifying certain contents; making certain provisions of Nursing Home Care Act applicable; providing for application, license and renewal thereof, and fees; requiring certain inclusions; providing for procedures; prohibiting certain use of phrases or implications; providing exception; providing for application of act; authorizing certain bans of admission; authorizing certain penalties; providing for violations; specifying jurisdictional areas; providing for compliance with certain named act; creating the Continuum of Care and Assisted Living Standards Council; providing for appointment; providing for qualifications; specifying duties; amending 63 O.S. 1991, Section 1-1908, which relates to the prohibition of certain vendor payments; updating language; amending 63 O.S. 1991, Section 1-851.1, as last amended by Section 1, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1996, Section 1-851.1), which relates to the Long-term Care Certificate of Need Act; modifying term; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 7 of this act shall be known and may be cited as the "Continuum of Care and Assisted Living Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Continuum of Care and Assisted Living Act:

1. "Assisted living center" means any home or establishment offering, coordinating or providing services to two or more persons who:

- a. are domiciled therein,
- b. are unrelated to the operator,
- c. by choice or functional impairments, need assistance with personal care or nursing supervision,
- d. may need intermittent or unscheduled nursing care,
- e. may need medication assistance, and
- f. may need assistance with transfer and/or ambulation.

Intermittent nursing care and home health aide services may be provided in an assisted living facility by a home health agency;

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

3. "Commissioner" means the Commissioner of Health; and

4. "Continuum of care facility" means a home, establishment or institution providing nursing facility services as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes and one or both of the following:

a. assisted living center services as defined in the Continuum of Care and Assisted Living Act, and

b. adult day care center services as defined in Section 1-872 of Title 63 of the Oklahoma Statutes.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules necessary to implement the provisions of the Continuum of Care and Assisted Living Act. Such rules shall include, but shall not be limited to:

1. A uniform comprehensive resident screening instrument to measure the needs and capabilities of residents in all settings and to determine appropriate placements of residents;

2. Physical plant requirements meeting construction and life safety codes, with provisions accommodating resident privacy and independence in assisted living centers and in assisted living components of continuum of care facilities based on the variable capabilities of residents;

3. Staffing levels responsive to the variable needs of residents, with provisions for sharing of staff between components in a continuum of care facility;

4. Standards for measuring quality outcomes for residents;

5. Provisions for individualized services chosen by and designed for each resident;

6. Procedures for inspections and investigations of licensed entities to ensure compliance with the Continuum of Care and Assisted Living Act and rules promulgated by the Board;

7. Enumeration of resident rights and responsibilities to be observed by each facility and its staff; and

8. Provisions for a surety bond or deposit from each applicant in an amount sufficient to guarantee that obligations to residents will be performed, with provisions for reduction or waiver of the surety bond or deposit when the assets of the applicant or its contracts with other persons are sufficient to reasonably ensure the performance of its obligations.

B. The nursing care service of a continuum of care facility shall be subject to the requirements, procedures and remedies set out in the Nursing Home Care Act, including provisions relating to resident rights.

C. The adult day care component of a continuum of care facility shall be subject to requirements and procedures specified under the Adult Day Care Act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each application for establishment of a continuum of care facility or assisted living center shall be accompanied by a nonrefundable application fee of Two Thousand Dollars (\$2,000.00).

B. Each application for an initial license, or annual renewal of the license, to operate a continuum of care facility or assisted living center shall be accompanied by a license fee of Ten Dollars (\$10.00) for each bed included in the maximum bed capacity at such

facility or center. Each application for an initial or renewal license for a continuum of care facility that includes an adult day care component shall be accompanied by an additional license fee in an amount to be determined by the Board, but not to exceed Seventy-five Dollars (\$75.00).

C. Each application to establish or license a continuum of care facility or assisted living center shall be on a form approved by the Commissioner to include, but not be limited to, the following:

1. Disclosure of the applicant's identity and background in the operation of continuum of care and assisted living services; and
2. Evidence of the adequacy of the applicant's financial resources and ability to ensure adequate staffing.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

No person shall establish, operate or maintain a continuum of care facility or assisted living center, or use in its name, logo, contracts, or literature the phrase "continuum of care facility" or "assisted living", nor imply that it is a continuum of care facility or assisted living center, nor hold itself out to be a continuum of care facility or assisted living center, unless that person first obtains a license as required by the Continuum of Care and Assisted Living Act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Continuum of Care and Assisted Living Act shall not apply to residential care homes, adult companion homes, domiciliary care units operated by the Department of Veterans Affairs, or to hotels, motels, boardinghouses, rooming houses, or other places that furnish board or room to their residents. The Continuum of Care and Assisted Living Act shall not apply to facilities not charging or receiving periodic compensation for services rendered and not receiving any county, state or federal assistance.

B. The Commissioner may ban admissions to, or deny, suspend, refuse to renew or revoke the license of, any continuum of care facility or assisted living center which fails to comply with the Continuum of Care and Assisted Living Act or rules promulgated by the Board.

C. Any person who has been determined by the Commissioner to have violated any provision of the Continuum of Care and Assisted Living Act or any rule promulgated hereunder shall be liable for an administrative penalty of not more than Five Hundred Dollars (\$500.00) for each day that said violation occurs.

D. If a continuum of care facility's failure to comply with the Continuum of Care and Assisted Living Act or rules involves nursing care services, the Commissioner shall have authority to exercise additional remedies provided under the Nursing Home Care Act. If a continuum of care facility's failure to comply with the Continuum of Care and Assisted Living Act or rules involves adult day care services, then the Commissioner shall have authority to exercise additional remedies provided under the Adult Day Care Act.

E. In taking any action to deny, suspend, deny renewal, or revoke a license, or to impose an administrative fee, the Commissioner shall comply with requirements of the Administrative Procedures Act.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall appoint a Continuum of Care and Assisted Living Standards Council to be created until July 1, 2003, in accordance with the Oklahoma Sunset Law, to consist of twenty-seven (27) members. Each member of the Board of Health shall appoint three members of the Standards Council. The appointments made by each Board of Health member shall be comprised of the following persons: one member who shall be an owner, operator or administrator of a nursing facility; one member who shall be an owner, operator or administrator of a residential care facility; and one member who shall represent the public.

B. The Standards Council shall advise the Board on the following:

1. Standards for staffing, quality of care, and physical plant design for continuum of care and assisted living facilities;

2. Implementing the provisions of the Continuum of Care and Assisted Living Act; and

3. Such other matters and activities as directed by the Board of Health.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1908, is amended to read as follows:

Section 1-1908. No facility shall be licensed to operate or continue to operate unless, in addition to compliance with other current licensure requirements, the building is of one-hour fire resistant construction and approved by the Department and the State Fire Marshal. If the building is not of one-hour fire resistant construction in addition to the other current licensure requirements, it must be approved by the Department and the State Fire Marshal and must have an approved automatic sprinkler system, as rated and approved by the National Fire Protection Association Standards; provided further, the Department of Human Services and the Oklahoma Health Care Authority shall not make a vendor payment to any individual or facility on behalf of any person for medical care rendered in the form of nursing service outside such person's home, unless such individual or facility holds a current nursing home facility, continuum of care facility, assisted living, or adult day care license issued by the Commissioner or other state agency authorized to issue such license.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-851.1, as last amended by Section 1, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1996, Section 1-851.1), is amended to read as follows:

Section 1-851.1 For purposes of the Long-term Care Certificate of Need Act:

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

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

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

4. "Long-term care service" means service provided by a nursing facility, or a specialized facility, as such terms are defined by Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title or skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title, or the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act;

5. "Disclosure statement" means a written statement by the applicant which contains:

a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by this act,

b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at

- least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
 - d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the three (3) years immediately preceding the filing of the application for civil actions and five (5) years immediately preceding the filing of the application for criminal actions. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the federal Health Care Financing Administration, and
 - e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

7. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest,
- c. serves on the board of the entity involved,
- d. serves as an officer of the entity involved, or
- e. actively participates in the management of the entity involved or actively participates in the management of the entity in the relevant time period.

SECTION 10. Section 6 of this act shall become effective July 1, 1998.

SECTION 11. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 13th day of May, 1997.

Speaker of the House of
Representatives

Passed the Senate the 13th day of May, 1997.

President of the Senate