

ENROLLED HOUSE
BILL NO. 2033

By: Staggs of the House

and

Weedn of the Senate

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-860.2, as amended by Section 1, Chapter 236, O.S.L. 1992, Section 2, Chapter 236, O.S.L. 1992 and 1-860.4 (63 O.S. Supp. 1996, Sections 1-860.2 and 1-860.2a), which relate to the Oklahoma Hospice Licensing Act; modifying definitions; removing certain exemptions from the Oklahoma Hospice Licensing Act; prohibiting solicitation or offers of payment or other benefits for hospice or hospice services; specifying penalties and remedies; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-860.2, as amended by Section 1, Chapter 236, O.S.L. 1992 (63 O.S. Supp. 1996, Section 1-860.2), is amended to read as follows:

Section 1-860.2 As used in the Oklahoma Hospice Licensing Act:

1. "Board" means the State Board of Health;
2. "Department" means the State Department of Health;
3. "Hospice" means a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program ~~located in a municipality with a population in excess of twenty-five thousand (25,000)~~ which provides a continuum of home and inpatient care for the terminally ill patient and the patient's family. ~~Such term shall also include a centrally administered, nonprofit or profit, medically directed, nurse-coordinated program located in a municipality with a population of less than twenty-five thousand (25,000) if such program is licensed pursuant to the provisions of this act.~~ A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses which are experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;
4. "Hospice interdisciplinary team" or "hospice team" means a unit composed of the professionals and lay persons, as specified by the Oklahoma Hospice Licensing Act, who provide hospice care;
5. "Hospice patient/family" means the hospice patient's immediate kin, including a spouse, brother, sister, child, parent or other persons with significant personal ties to the hospice patient, who may be designated by members of the hospice patient/family;
6. "Hospice services" means those services furnished to a patient by a hospice or by other persons, pursuant to arrangements

with such a hospice in a place of temporary or permanent residence used as the home of the terminally ill patient for the purpose of maintaining the patient at home. If the patient needs short-term institutionalization, the services shall be furnished in cooperation with those contracted institutions or in the inpatient facility of the hospice. Such services may include, but are not limited to, bereavement services, palliative services, personal care and such other services as are provided by nurses, physicians, home health aides, physical therapists, counselors, psychologists, social workers and volunteers. Services provided by a hospital, nursing home or other health care provider shall not constitute a hospice unless such hospital, nursing home or other health care provider establishes a freestanding hospice;

7. "Medical advisor" means a physician licensed pursuant to the laws of this state who is commissioned as a medical advisor by the hospice for the purposes of providing ongoing palliative care as a member of the hospice team;

8. "Palliative services" means the care or treatment given to a patient by the hospice team for the reduction or abatement of pain and other symptoms caused by the disease;

9. "Patient" means the terminally ill person receiving hospice services;

10. "Terminally ill" means the medical prognosis of limited life expectancy of one (1) year or less at the time of referral to a hospice of a person who is experiencing an illness for which therapeutic strategies directed toward cure and control of the disease alone outside the context of symptom control, are no longer appropriate;

11. "Bereavement" means that period of time following death during which survivors mourn a death and process their grief.

"Bereavement services" means support services to be offered to the family during the bereavement period;

12. "Freestanding hospice" means a facility or program in which only hospice services are provided;

13. "Personal care" means services provided to a patient in the home to meet the physical requirements of the patient and to accommodate the maintenance or supportive needs of a patient;

14. "Medically directed" means that the delivery of medical care is directed by a medical advisor;

15. "Hospice home services" means hospice services which are provided primarily in the home of the patient;

16. "Inpatient services" means hospice services provided to patients who require twenty-four (24) hour supervision by a licensed health care provider; and

17. "Health care provider" means a facility or institution licensed by the laws of this state to provide on a regular basis medical services, skilled nursing care, necessary dietary service or personal care. The term "health care provider" includes, but is not limited to, hospitals, skilled nursing homes, intermediate care facilities and room and board homes.

SECTION 2. AMENDATORY Section 2, Chapter 236, O.S.L. 1992 (63 O.S. Supp. 1996, Section 1-860.2a), is amended to read as follows:

Section 1-860.2a A public or private agency or person located ~~in municipalities with a population of less than twenty-five thousand (25,000)~~ which establishes, conducts, or maintains a hospice or holds itself out to the public as a hospice ~~may, but is not~~ required by the Oklahoma Hospice Licensing Act, to obtain a license from the Department pursuant to the Oklahoma Hospice Licensing Act, ~~Section 1-860.1 of Title 63 of the Oklahoma Statutes.~~

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-860.4, is amended to read as follows:

Section 1-860.4 A. A hospice shall comply with the following:

1. A hospice shall coordinate its services with those of the patient's primary or attending physician;
2. A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice may contract for some elements of its services to a patient and family, provided direct patient care is maintained with the patient and the hospice team so that overall coordination of services can be maintained by the hospice team. The majority of hospice services available through a hospice shall be provided directly by the licensee. Any contract entered into between a hospice and health care provider shall specify that the hospice retain the responsibility for planning, coordinating and prescribing hospice services on behalf of a hospice patient and ~~his~~ the hospice patient's family. No hospice may charge fees for services provided directly by the hospice team which duplicate contractual services provided to the patient or ~~his~~ the patient's family;
3. The hospice team shall be responsible for coordination and continuity between inpatient and home care aspects of care;
4. A hospice shall not contract with a health care provider or another hospice that has or has been given a conditional license within the last eighteen (18) months;
5. Hospice services shall provide a symptom control process, to be provided by a hospice team skilled in physical and psychosocial management of distressing signs and symptoms;
6. Hospice care shall be available twenty-four (24) hours a day, seven (7) days a week;
7. A hospice shall have a bereavement program which shall provide a continuum of supportive and therapeutic services for the family;
8. The unit of care in a hospice program shall be composed of the patient and family;
9. A hospice program shall provide a continuum of care and a continuity of care providers throughout the length of care for the patient and to the family through the bereavement period;
10. A hospice program shall not impose the dictates of any value or belief system on its patients and their families;
11.
 - a. Admission to a hospice shall be upon the order of a physician licensed pursuant to the laws of this state and shall be dependent on the expressed request and informed consent of the patient and family.
 - b. The hospice program shall have admission criteria and procedures that reflect:
 - a. (1) the patient and family's desire and need for service,
 - b. (2) the participation of the attending physician, and
 - c. (3) the diagnosis and prognosis of the patient.
 - c. (1) Any hospice or employee or agent thereof who knowingly or intentionally solicits patients or pays to or offers a benefit to any person, firm, association, partnership, corporation or other legal entity for securing or soliciting patients for the hospice or hospice services in this state, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars (\$500.00) and not more than Two Thousand Dollars (\$2,000.00).

- (2) In addition to any other penalties or remedies provided by law:
 - (a) a violation of this section by a hospice or employee or agent thereof shall be grounds for disciplinary action by the State Department of Health, and
 - (b) the State Department of Health may institute an action to enjoin violation or potential violation of this section. The action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law.
- (3) This subparagraph shall not be construed to prohibit:
 - (a) advertising, except that advertising which:
 - (i) is false, misleading or deceptive,
 - (ii) advertises professional superiority or the performance of a professional service in a superior manner, and
 - (iii) is not readily subject to verification, and
 - (b) remuneration for advertising, marketing or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is:
 - (i) set in advance,
 - (ii) consistent with the fair market value of the services, and
 - (iii) not based on the volume or value of any patient referrals or business otherwise generated between the parties, and
 - (c) any payment, business arrangements or payments practice not prohibited by 42 U.S.C., Section 1320a-7b(b), or any regulations promulgated pursuant thereto.
- (4) This paragraph shall not apply to licensed insurers, including but not limited to group hospital service corporations or health maintenance organizations which reimburse, provide, offer to provide or administer hospice services under a health benefits plan for which it is the payor when it is providing those services under a health benefits plan; and

12. A hospice program shall develop and maintain a quality assurance program that includes:

- a. evaluation of services,
- b. regular chart audits, and
- c. organizational review.

B. A hospice team shall consist of, as a minimum, a physician, a registered nurse, and a social worker or counselor, each of whom shall be licensed as required by the laws of this state. The team may also include clergy and such volunteers as are necessary to provide hospice services. A registered nurse licensed pursuant to the laws of this state shall be employed by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice team.

C. 1. An up-to-date record of the services given to the patient and family shall be kept by the hospice team. Records shall contain pertinent past and current medical, nursing, social, and

such other information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination;

2. Information received by persons employed by or providing services to a hospice, or information received by the State Department of Health through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient's guardian or the patient's family.

D. 1. A hospice program shall have a clearly defined and organized governing body, which has autonomous authority for the conduct of the hospice program;

2. The hospice program shall have an administrator who shall be responsible for the overall coordination and administration of the hospice program.

SECTION 4. This act shall become effective November 1, 1997.

Passed the House of Representatives the 7th day of May, 1997.

Speaker of the House of
Representatives

Passed the Senate the 8th day of May, 1997.

President of the Senate