

STATE OF OKLAHOMA

1st Session of the 46th Legislature (1997)

HOUSE BILL NO. 2150

By: Gray

AS INTRODUCED

An Act relating to public health and safety; creating the Oklahoma Assisted Living Facility Act; defining terms; providing for short title; providing exemptions; providing for powers and duties of the Department of Health; providing for application and licensure of assisted living facilities; requiring fee; providing for contents of application; providing certain application and licensure procedures; providing for promulgation of rules; providing for qualifications of certain applicants; providing procedures; authorizing modification of a license; specifying procedures for the transfer of a home; providing for probationary licenses; specifying qualifications for receipt of a license; specifying certain penalties and liabilities for certain violations; providing for appeals; specifying purpose of act; providing for effective dates of nonrenewal or revocation of a license; requiring inspections by certain persons; requiring maintenance of certain documents; requiring protection of resident's funds; providing certain duties of facilities; requiring certain reports; providing for administrative and criminal penalties; providing for certain actions; providing

for notice and hearing for certain violations;
authorizing certain activities in emergency
situations; providing for plan of correction;
prohibiting certain activities; requiring the
promulgation of certain standards; providing for
fire drills; requiring assessment; specifying
certain responsibility of administrator; providing
for designation of certain persons as caregivers;
providing for certain contracts; providing for
maintenance of certain records; providing for
financial agreements; requiring personal care and
services plans; specifying contents; setting
certain medications requirements; requiring written
records; providing for the distribution of certain
funds; and providing an effective date.

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 1-865.1 of Title 63, unless
there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "Oklahoma
Assisted Living Facility Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-865.2 of Title 63, unless
there is created a duplication in numbering, reads as follows:

As used in the Oklahoma Assisted Living Facility Act:

1. "Abuse" means the infliction of pain, injury, or the willful
deprivation by a caregiver or other person of services necessary to

maintain mental and physical health of a person for whom such individual has responsibility;

2. "Activities of daily living" means tasks involved in dressing, bathing, grooming, eating, toileting, communication, and behavior patterns;

3. "Administration of drugs and medicines" means the actual delivery of drugs and medicines to a resident in an assisted living facility by a certified medication aide or licensed nursing personnel;

4. "Ambulatory adult" means an adult who has the ability to move from place to place by walking, either unaided or aided by prostheses, brace, cane, walker, crutches, or handrails, or by propelling a wheelchair and transferring independently, or by standby assistance in ambulating, and who can perceive an emergency condition whether caused by fire or otherwise;

5. "Assisted living" means a level of personal service in a residential setting provided by an assisted living facility for adults who may have physical or mental impairment and who require at least moderate staff assistance with activities of daily living;

6. "Assisted living facility" means a permanent building, portion of a building, or group of buildings, not to include mobile homes, in which room, board, meals, laundry, and assistance with non-medical personal care and services is provided for not less than twenty-four (24) hours in any week and to a minimum of two ambulatory adults not related by blood or marriage to the owner or administrator. An assisted living facility shall be subject to licensure by and meet such requirements and minimum standards as the State Board of Health shall prescribe in rules promulgated pursuant to the Oklahoma Assisted Living Facility Act;

7. "Assistance with medication" means providing limited assistance to a resident who is in an assisted living facility and who is capable of self-administration of medication;

8. "Authorized representative" means a resident's legal guardian, next of kin or other person acting as agent for a resident who does not have a legally appointed guardian;

9. "Bedfast or bedridden" means a person who is unable to independently transfer in or out of or turn in a bed. The term bedfast or bedridden also includes the condition of a person, as certified by a physician, who is confined or restricted to bed for a prolonged or indefinite period of time. A person for whom a physician has prescribed bed rest because of a temporary illness shall not be considered bedfast;

10. "Caregiver" means a person or entity who is responsible for the care of another person;

11. "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and that is not required to treat medical symptoms;

12. "Contracted medical care" means care provided in an assisted living facility by a licensed health care professional or a licensed home health care agency;

13. "Dependent living status" means a classification assigned to an individual during the initial assessment upon application or entry into an assisted living facility who, for purposes of:

- a. activities of daily living and instrumental activities of daily living, may be deficient in no more than two areas,
- b. ambulation, may require standby assistance from another person or needs equipment or a mechanical device to safely complete an activity,
- c. administration of medication, needs to have medication administered or monitored by a certified medication aide or licensed nursing personnel, or
- d. behavior patterns, exhibits aggressive, abusive, or disruptive behavior or poses a risk to oneself.

An individual shall be assessed upon entry into an assisted living facility to determine such individual's living status;

14. "Emotional abuse" means the willful or reckless infliction of emotional or mental anguish, or the use of a physical or chemical restraint, medication or isolation as punishment or as a substitute for treatment or care of any person eligible for care or services pursuant to the provisions of the Oklahoma Assisted Living Facility Act;

15. "Exploitation" means the expenditure, diminution or use of property, assets or resources of a person eligible for care or services pursuant to the provisions of this act without the express voluntary consent of such person or such person's authorized representative;

16. "Health care professional" means a physician, dentist, physician assistant, nurse practitioner, pharmacist, physical, speech or occupational therapist, registered nurse, licensed practical nurse, licensed social worker, registered dietitian, or other person, licensed under the laws of this state, as a health care professional;

17. "Home health care agency" means an agency licensed to operate in this state that provides health care services to an individual in such individual's place of residence;

18. "Independent living status" means a classification assigned to an individual who at the time of initial assessment is capable of performing all activities of daily living and instrumental activities of daily living for himself or herself without requiring assistance of the staff of an assisted living facility. If the policy of a facility dictates that medications are to be centrally administered or distributed, without regard for a resident's capacity to self-administer medication, medication administration shall not be considered in assessing an individual's living status;

19. "Instrumental activities of daily living" means tasks involved in transportation, meal preparation, shopping, money management, medication administration, communicating by telephone, corresponding, housekeeping, laundering, transferring from one location to another, continence, ambulating, and other related areas;

20. "Medical care services" means services provided to a resident of an assisted living facility that are ordered by a physician licensed in this state who is chosen by the resident and who has no financial interest in the facility. Such services shall be required to be provided or delegated by a health care professional. Any other services, whether or not ordered by a physician licensed in this state, that are not required to be provided by a health care professional shall be considered personal care services. For purposes of this definition, the term "health care professional" shall not include a certified home health aide or a certified nurse aide;

21. "Medical examination record" means the record of a medical examination by a licensed physician of an individual no more than thirty (30) days prior to such individual's admission to an assisted living facility;

22. "Medical record" means a confidential file, maintained by an assisted living facility on each resident in the facility. Such record shall include a medical examination record, documentation of physician orders, nursing and treatment records, and any other appropriate records necessary for the medical care of the resident regardless of whether such services are rendered by facility staff or pursuant to a resident's arrangement with a provider outside of the assisted living facility staffing. Any services provided to a resident by a health care professional or a home health agency outside of the assisted living facility, pursuant to a contract with such an entity, shall be arranged through the staff of the facility

and shall be documented in the resident's medical record. A provider who contracts to provide health or personal care services to a resident of an assisted living facility shall provide to the facility, for inclusion in the resident's medical record, documentation of treatment or services provided to or for a resident;

23. "Neglect" means the failure of a caregiver to:

- a. provide food, shelter and clothing,
- b. make the appropriate arrangements for medical services for the health care of a person under such caregiver's care who is unable to provide self care, or
- c. provide such basic needs for the resident when the resident is unable to provide such basic needs for himself or herself when such inability is the result of the person's mental or physical inability;

24. "Personal care and services" means the provision to a resident of an assisted living facility of individualized supervision, care and assistance with activities of daily living as defined in paragraph 2 of this section, and any other care and services required to assist a resident;

25. "Personal care and services plan" means a written plan for each resident of an assisted living facility that is developed and coordinated with the resident's physician and the resident, or the resident's authorized representative, which details the personal care and services required by a resident. Such plan shall be developed and updated monthly by the nurse consultant;

26. "Physical restraint" means any manual method or physical or mechanical device, material or equipment attached or adjacent to a resident's body that the resident cannot remove easily which restricts freedom of movement or normal access to such resident's body;

27. "Resident" means an ambulatory adult residing in an assisted living facility who requires help with no more than two activities of daily living;

28. "Resident record" means the record that contains a copy of a resident's medical examination record, admission record, and personal care and services plan;

29. "Self-administered medication" means medication that is typically self-administered, such as oral medications, topicals, suppositories, and injections, including intravenous, pursuant to a physician's order or over the counter; and

30. "Standby assistance" means the need for supervision of a resident of an assisted living facility by another person for such resident to perform new activity procedures which have been adapted by a therapist for safe and effective performance by the resident. A resident shall require standby assistance when potential error and the need for safety precautions are not always anticipated by the resident.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. No person shall establish, operate, or maintain in this state any assisted living facility without first obtaining a license as required by the Oklahoma Assisted Living Facility Act.

B. The Oklahoma Assisted Living Facility Act shall not apply to nursing homes, adult companion homes, domiciliary care units operated by the Department of Veterans Affairs which are operated as a separate facility or which are operated in conjunction with a nursing facility, residents of residential care facilities that contract with the Department of Mental Health and Substance Abuse Services, residential care homes or to hotels, motels, boarding houses or rooming houses, or other places that furnish board or room to their residents.

C. The Oklahoma Assisted Living Facility Act shall not apply to a facility which is not charging or receiving periodic compensation for services rendered, and not receiving any county, state, or federal assistance.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health shall promulgate rules to establish a comprehensive system of licensure for assisted living facilities in accordance with the provisions of the Oklahoma Assisted Living Facilities Act.

B. In promulgating such rules, the Board shall include provisions for:

1. Building fire and safety codes in consultation with the State Fire Marshal;
2. Building and construction requirements; and
3. Residents' rights and responsibilities while residing in an assisted care facility.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. It shall be unlawful for any person to operate or open a facility unless such operation shall have been approved and regularly licensed as hereinafter provided.

B. Before an initial license shall be approved and issued to operate a facility pursuant to the Oklahoma Assisted Living Facility Act, the following shall be provided:

1. An application shall be made under oath and shall contain, at a minimum, the following information:
 - a. (1) if an individual, the name and address of the applicant and attestation that such individual is at least twenty-one (21) years of age, of

reputable and responsible character, and in sound physical and mental health,

(2) if a firm, partnership, or association, the name and address of every member thereof, and

(3) if a corporation, the name and address thereof and of its officers and its registered agent, and like evidence for officers, as submitted for an individual,

b. the name and location of the facility for which a license is sought,

c. the name and address of the person or persons under whose management or supervision the facility will be conducted,

d. the name and address of any other person holding an interest of at least five percent (5%) in the ownership, operation or management of the facility,

e. the number and type of residents for which personal care and services are to be provided, and

f. a projected staffing pattern for providing such care and services;

2. Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance; and

3. A determination shall be made by the State Department of Health that the applicant, or the corporation, partnership or other entity, if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an assisted living facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department or of other departments of other states with similar responsibilities and lack

of revocation of a license during the previous five (5) years. In determining the applicant's responsibility and suitability to operate or to direct or participate in the operation of an assisted living facility, the Department shall consider the applicant's record of suspensions, receivership, administrative penalties, or noncompliance of lawful orders of the Department or of other departments of other states with similar responsibilities.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An application for licensure or renewal of licensure to establish or operate an assisted living facility shall be on a form prescribed by the State Commissioner of Health and shall contain such information as the State Board of Health may require.

B. Each application for licensure shall be accompanied by a fee of Five Dollars (\$5.00) for each bed included in the maximum bed capacity at such facility. No fee shall be refunded after an application for license has been approved. Fees shall be payable by cash, cashier's check, or money order made payable to the Board.

C. 1. Each assisted living facility shall be designated by a permanent and distinctive name which shall not be changed without first notifying the Board in writing. Such notice shall specify the name to be discontinued as well as the new name. The words "hospital", "nursing home", "clinic", "sanitarium", or any other such word which reflects a different type of facility shall not appear in the name or title of an assisted living facility.

2. Each application for licensure shall specify the maximum bed capacity of the assisted living facility proposed to be licensed.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. All licenses shall be on a form prescribed by the State Commissioner of Health, and shall include, but not be limited to, the name and location of the assisted living facility, the maximum bed capacity for which the facility may be operated under the same management, the date the license was issued, and the expiration date of the license. A separate license shall be required for each assisted living facility when more than one assisted living facility is operated under the same management.

B. 1. The provisions of the license shall:

- a. not be transferable or assignable,
- b. be posted in a conspicuous place on the licensed premises,
- c. be issued only for the premises named in the application, and
- d. be renewed for a one-year period upon application, inspection, and payment of the license fee as required by the provisions of the Oklahoma Assisted Living Facility Act.

2. The fee for a license renewal following an initial license, or for a license amendment to reflect a change in bed capacity, shall be prorated based on the number of days remaining until December 31, and, in the case of a change in the number of beds, the total number of beds.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action pursuant to the Oklahoma Assisted Living Facility Act arising out of the notice of violation.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. When transfer of ownership or operation of a facility is proposed, the entity transferring ownership or operation shall notify the State Department of Health of the transfer and the entity to whom ownership or operation is transferred shall apply for a new license at least thirty (30) days prior to the date of the final transfer.

B. The transferor shall remain responsible for the operation of the facility until such time as a license is issued to the transferee.

C. The license granted to the transferee shall be subject to any plan of correction submitted by the previous owner and approved by the Department, and any conditions contained in a provisional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a provisional license and require the transferee to submit a plan of correction as provided in the Oklahoma Assisted Living Facility Act.

D. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to the transfer of ownership.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A license may be issued by the State Board of Health after the State Department of Health has determined that an assisted living facility is in compliance with the provisions set forth in the Oklahoma Assisted Living Facility Act.

B. 1. The Board may issue a provisional license to a facility when the Board has reason to believe that the operation of the

facility is questionable. Such provisional license may only be issued when the Board is satisfied that the health and safety of the residents of the facility will not be endangered during the period of issuance of the provisional license. The maximum length of time for issuance of a provisional license will be one (1) year; provided, however, an extension of time may be granted if the facility's governing authority is making specific plans to construct a new assisted living facility, establish an assisted living facility in a structure which complies with the provisions of the Oklahoma Assisted Living Facility Act, or is actually in the process of complying with the provisions of the Oklahoma Assisted Living Facility Act.

2. Closure of an assisted living facility for a period of thirty (30) days or longer, except for periods of remodeling or alteration, shall mean that a facility is no longer in continuous operation and the facility must meet the requirements for licensure prior to reopening.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any person who violates any of the provisions of the Oklahoma Assisted Living Facility Act or any order or determination of the State Department of Health pursuant to the Oklahoma Assisted Living Facility Act, or who fails to perform any duty imposed upon such person by the provisions of the Oklahoma Assisted Living Facility Act, shall be subject to any of the following penalties and liabilities as authorized by the provisions of the Oklahoma Assisted Living Facility Act:

1. License revocation, suspension, or nonrenewal;
2. Provisional license;
3. Transfer of residents;
4. Receivership;

5. Injunctive proceedings;
6. Administrative fines; and
7. Criminal penalties.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Board of Health is authorized to suspend or revoke a license issued under the provisions of the Oklahoma Assisted Living Facility Act based on any of the following conditions:

1. Violation of any of the provisions of the Oklahoma Assisted Living Facility Act and rules promulgated pursuant thereto;
2. Permitting, aiding or abetting the commission of any illegal act in such institution; or
3. Conduct or practices deemed by the Board to be detrimental to the welfare of the residents of such facility.

B. Before any such license issued pursuant to the Oklahoma Assisted Living Facility Act is suspended or revoked, written notice shall be given the licensee, stating the grounds of the complaint, and the time and place set for a hearing of such complaint, which shall be not less than thirty (30) days from the date of the notice. Such notice shall be sent by registered or certified mail to the licensee at the address where the affected institution is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

C. If a license is revoked as provided in this section, a new application for license shall be considered by the State Board of Health after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of the Oklahoma Assisted Living Facility Act and rules promulgated thereto have been satisfied.

D. Each license so revoked shall be returned to the Board immediately upon its revocation or after a facility voluntarily ceases operation.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any licensee dissatisfied with any administrative decision made in the application of the Oklahoma Assisted Living Facility Act or rules promulgated pursuant thereto may appeal under Article II of the Oklahoma Administrative Procedures Act.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. For the purposes of the Oklahoma Assisted Living Facility Act, an assisted living facility shall confine its services to persons who are not in need of hospital or nursing home care.

B. In situations where a decision as to whether a facility comes within the scope of the Oklahoma Assisted Living Facility Act and is therefore required to be licensed, any such decision shall be based upon an evaluation of the following factors:

1. When persons who are related by blood, marriage, or legal guardianship decide to live together in a shared living arrangement and are in need of personal care and services, the facility shall not be subject to licensing. However, if an individual or family accepts one or more individuals not related by blood, marriage or guardianship to such individuals for the purpose of providing personal care and services or assistance with activities of daily living, a license shall be required; and

2. Hotels, boarding and rooming houses catering to persons on a weekly, monthly, or yearly basis without offering personal care and services or assistance with activities of daily living, and the relationship is solely that of tenant-landlord, shall not be subject

to licensing under the Oklahoma Assisted Living Facility Act.

However, if the management provides persons in need of personal care and services or assistance with activities of daily living, licensing as an assisted living facility shall be required.

C. An assisted living facility may be licensed in combination with a hospital or nursing home. Assisted living facilities shall not be licensed in combination with commercial hotels, motels, or rooming houses. A combination facility shall comply with the appropriate rules of the State Board of Health for each classification of the facility.

SECTION 15. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon the conviction of any person who has been determined by the State Department of Health to have violated any provision of the Oklahoma Assisted Living Facility Act or any rule or order issued pursuant to the provisions thereof shall be guilty of a misdemeanor and shall be punished by a fine of not more than Five Thousand Dollars (\$5,000.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. Each day of operation shall constitute a separate violation.

B. Beginning one hundred eighty (180) days after the promulgation of rules herein provided for by the State Board of Health, the State Department of Health may assess an administrative penalty of not more than Three Thousand Dollars (\$3,000.00) against any licensed assisted living facility for admitting or retaining as a resident any person who does not meet the definition of a resident as defined in Section 2 of this act. Each such retaining shall constitute a separate violation.

C. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the

penalty, the Department shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on the ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of the Oklahoma Assisted Living Facility Act.

D. Any license holder may elect to surrender the holder's license in lieu of the fine but shall be forever barred from obtaining a reissuance of such license.

SECTION 16. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Attorney General or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Oklahoma Assisted Living Facility Act or any rule promulgated or order issued pursuant thereto.

B. 1. Enforcement of any action for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma Assisted Living Facility Act or for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Oklahoma Assisted Living Facility Act may be brought by:

- a. the district attorney of the appropriate district court of this state,
- b. the Attorney General on behalf of this state in the appropriate district court of this state, or
- c. the State Department of Health on behalf of this state in the appropriate district court of this state, or as otherwise authorized by law.

2. The court has jurisdiction to determine the action, and to grant the necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

SECTION 17. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.17 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Fire Marshal or a designee shall conduct fire safety inspections on a regular basis at assisted living facilities and shall report any findings of such inspections to the State Department of Health. In addition, the State Fire Marshal shall develop, adopt, and promulgate the rules or specifications, consistent with nationally recognized standards or practices, necessary for the safeguarding of life and property of residents of assisted living facilities from the hazards of fire and smoke.

SECTION 18. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.18 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. All assisted living facilities shall maintain a written fire control and evacuation plan. In addition, such plan shall be kept current and shall be appropriately posted in each facility in a conspicuous place. The administrator of the facility shall file and maintain written observations of the effectiveness of the plan for at least three (3) years.

B. Fire drills shall be conducted at least twelve times per year and shall be equally divided among the different shifts. Provisions shall be made for conducting drills during the normal waking hours and normal sleeping hours of the residents. Fire drills may be announced in advance to residents and shall involve actual evacuation of all residents who have experienced exiting through all exits required by the State Fire Marshal. Exits not

used in such fire drills shall not be included in the count of exits pursuant to the requirements of the State Fire Marshal.

SECTION 19. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.19 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Prior to admission to an assisted living facility, each applicant shall be assessed by the assisted living facility's nurse consultant, or as directed by the administrator of the facility, and shall be classified as residing in either an independent living status or a dependent living status.

1. Any person assessed as being in a dependent living status who is determined to be deficient in more than two activities of daily living shall not be admitted or maintained in an assisted living facility.

2. Any person assessed as being in an independent living status shall be further evaluated for his or her ability to perform instrumental activities of daily living. Any deficiency in instrumental activities of daily living shall be noted in the individual's personal care and services plan and shall include provisions for addressing the deficiency. Reassessment and updating of a resident's ability to perform instrumental activities of daily living shall be made by the nurse consultant on a monthly basis.

B. The nurse consultant shall utilize the results of the resident's assessment in developing or amending the resident's personal care and services plan as hereinafter provided.

C. An ambulatory adult who does not require acute, continuous, or extensive medical or nursing care shall be eligible for admission to an assisted living facility.

D. 1. A person with the following conditions, or a resident who develops any such condition, shall not be admitted to or retained in an assisted living facility:

- a. a person with any active reportable, communicable, contagious, or infectious disease,
- b. a person with a chronic health condition requiring extensive nursing care or daily medical supervision,
- c. a person who requires daily professional observation,
- d. a person who requires the exercise of professional judgment by facility staff,
- e. a person who requires any kind of physical restraint or confinement for such person's own protection or that of other residents,
- f. a person who requires treatment for addiction to alcohol or drugs,
- g. a person who requires treatment or special care for mental illness deficiency to such a degree as to endanger himself or herself,
- h. a person who poses a serious threat to himself or herself, or to others,
- i. a person who requires hypocermoclysis,
- j. a person who requires resopharyngeal and tracheotomy aspiration,
- k. a person who requires initial phases of a regimen involving administration of medical gases,
- l. a person who requires arterial blood gas monitoring,
- m. a person who is unable to communicate his or her needs, or
- n. a person who requires a nasogastric tube.

2. A person with the following conditions, or a resident who subsequently develops any such condition, shall not be admitted to or retained in an assisted living facility:

- a. the person requires intravenous or daily intramuscular injections or intravenous feedings,
- b. the person requires gastronomy feedings,

- c. the person requires insertion, sterile irrigation and replacement of catheters, except for routine maintenance of Foley catheters,
- d. the person requires sterile wound care, or
- e. the person requires treatment of extensive stage three or stage four decubitus ulcer or exfoliative dermatitis;

provided, however, a resident with any of such conditions may be retained by the facility for a period not to exceed twenty-one (21) days, or for a longer period if within such twenty-one (21) days or by the first business day thereafter if the twenty-first day falls on a Saturday, a Sunday or a holiday, or earlier if such condition becomes apparent to the staff of the facility, and the State Department of Health is notified of same and does not object. The facility shall notify the Department who shall respond to such notification within five (5) working days of its receipt of such notification.

3. A person shall be ineligible to continue as a resident of an assisted living facility if after a period of twenty-one (21) days the individual requires three or more skilled nursing visits per week for conditions listed in paragraph 2 of this subsection.

E. Assistance with appropriate placement shall be provided by the facility staff for any resident who develops any of the conditions listed in subsection D of this section and who is subsequently discharged from the facility.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.20 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The administrator of the assisted living facility shall be responsible for the supervision, preparation, and filing of records. This responsibility may be delegated to other employees of the facility.

B. Each assisted living facility shall provide for a nurse consultant who is familiar with the overall program of the facility.

The nurse consultant shall:

1. Complete an initial assessment of all applicants prior to admission to a facility;

2. Advise the administrator of the facility regarding the annual personal care and services plan for each resident;

3. Advise the administrator of the facility regarding any monthly status changes or services needed or required by the resident; and

4. Conduct a monthly documented review of the resident's self-administered medication program which shall include a count of each medication included in the resident's self-administered medication program.

C. A licensed nurse, certified medication aide, or other licensed nursing personnel shall be employed to administer and supervise the medication of residents as provided in the Oklahoma Assisted Living Facility Act.

SECTION 21. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.21 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The medical care of a resident of an assisted living facility shall be under the direction and supervision of a physician who does not have a financial interest in the facility or in the medical services provided to any resident.

B. Upon admission, each resident shall designate a physician or physicians of the resident's choice who can be called on for medical care.

C. Each assisted living facility shall have an agreement with one or more duly licensed physicians to serve in an emergency situation when a resident's own personal physician cannot be

reached, or to provide temporary medical attention to a resident whose personal physician is not available.

D. The assisted living facility shall provide general observation and health supervision of residents which shall include, but not be limited to, documenting changes in the resident's weight, nutritional status, ambulation, activities of daily living, and medication behavior. Such observation and supervision shall be conducted on a monthly basis at a minimum. The facility shall notify the responsible party and physician of changes in a resident's health status. If the physician orders contractual services to meet the changed needs of the resident's health status, the facility shall contact the appropriate service provider for the required health care services.

E. Whenever a resident becomes bedfast or bedridden, requires hospitalization, or medical, nursing or other care beyond the capabilities and facilities of the assisted living facility, prompt effort shall be made to transfer the resident to the appropriate health care facility.

F. No form of mechanical or chemical restraint shall be applied nor seclusion enforced in a resident's living facility except in extreme emergency situations when the resident represents a danger of harm to the resident's self or to other residents. In such an event, the facility shall immediately notify the resident's physician and responsible party so that appropriate treatment or change of placement can be immediately provided.

G. The resident's physician shall be called at the onset of an illness or in case of accident or injury to a resident, or the resident shall be transported to an appropriate facility for medical services.

H. Any known instance of abuse or neglect shall be reported to the county office of the Department of Human Services, the District

Attorney, Adult Protective Services, the Office of the Attorney General or the State Department of Health.

SECTION 22. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.22 of Title 63, unless there is created a duplication in numbering, reads as follows:

A resident who has been discharged from a hospital, who has a temporary illness, or who has been assessed by a nurse consultant as having a status change in the resident's health shall be eligible to contract with a health care professional for rehabilitation in order to maintain such resident's status as a resident in an assisted living facility. For purposes of this section, a temporary illness or resident change shall not exceed sixty (60) days. If, at the end of the sixty-day period, the resident does not meet the definition of a resident as provided in the Oklahoma Assisted Living Facility Act, the resident shall be transferred to a facility appropriate for such resident's health care needs pursuant to rules promulgated by the State Board of Health.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.23 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. An assisted living facility shall not involuntarily transfer or discharge a resident except for medical reasons, for the resident's safety, for the safety of other residents, or for nonpayment for the resident's stay.

B. 1. Involuntary transfer or discharge of a resident from an assisted living facility shall be preceded by a written notice within ten (10) days of the date of such transfer or discharge. The ten-day requirement shall not apply in any of the following instances:

- a. when an emergency transfer or discharge is mandated by the resident's health care needs and is in accordance

with the written orders and medical justification of the attending physician, and

- b. when the transfer or discharge is necessary for the physical safety of other residents as documented in the resident's record.

2. The written notice of involuntary transfer or discharge shall contain an explanation of the reasons for transfer or discharge and shall inform the resident or the resident's authorized representative, if any, of the right to request a hearing by the State Department of Health if the resident is aggrieved by the decision of the facility.

3. Written notice of involuntary transfer shall be sent to the resident and to the resident's authorized representative if the resident has no guardian.

C. A resident who is aggrieved by an involuntary transfer or discharge may request a hearing by the Department within five (5) days of receipt of the notice. Decisions reached in a hearing shall be binding on all parties, unless appealed to the State Commissioner of Health.

1. The Department shall initiate the transfer or discharge of a resident in any of the following situations:

- a. when the resident's health care needs are not being met according to a licensed medical authority,
- b. when the transfer or discharge is necessary for the physical safety of other residents as observed or as documented in the records, or
- c. when it is determined that a resident's rights have been violated or the resident has been unduly taken advantage of in fiscal matters, or has been physically, mentally, or sexually abused.

2. The resident's wishes, in all situations, shall be given careful consideration in determining whether or not the health or

safety aspects involved outweigh the trauma of a resident being transferred or discharged.

SECTION 24. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.24 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Provision shall be made for the safe storage of records. Records shall be handled in such a manner as to ensure safety from water or fire damage and shall be safeguarded from unauthorized use.

2. Residents' records shall be kept current from the time of admission to the time of discharge or death and shall be stored in the facility for a minimum of three (3) years after discharge or death before being destroyed.

B. 1. All records and reports required by this act shall be established, maintained, and filed in an orderly manner in the assisted living facility.

2. All entries on all records and reports shall be legibly written in ink or typewritten.

3. A case of suspected abuse, neglect, or exploitation shall be reported immediately to the county office of the Department of Human Services, the Office of the Attorney General, the State Department of Health, Adult Protective Services or the district attorney's office.

C. Records and information regarding a resident's admission to an assisted living facility shall be confidential. Inspectors for licensure or surveyors shall be permitted to review all medical and other records as necessary to determine compliance with rules promulgated pursuant to the Oklahoma Assisted Living Facility Act.

D. A record of vital statistics shall be kept of all deaths that occur within an assisted living facility. By the fifth day of each month, the administrator shall make a report of any such deaths for the preceding month on such forms as the State Board of Health shall prescribe to the county health officer or to the State

Registrar. Such report shall be in addition to the official death certificate required to be completed by the attending physician. If there are no deaths in any one month, a report so stating shall also be made to the county health officer.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.25 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Accounting methods and procedures shall be carried out in accordance with generally accepted accounting principles. The method and procedure used shall be sufficient to permit annual audit, accurate determination of the cost of operation, and the cost per resident day.

B. All assisted living facilities shall carry liability insurance in the basic amounts for bodily injury as determined by the State Department of Health or be able to prove financial responsibility.

C. Each assisted living facility shall keep the following applicable records and documents:

1. Articles of Incorporation or certified copies thereof, if incorporated, or partnership documents, if applicable;

2. A current copy of the approved constitution or bylaws of the governing authority, with a current membership list of the governing authority;

3. Up-to-date personnel records; and

4. A current policy and procedure manual.

SECTION 26. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.26 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Prior to or at the time of admission, the administrator and the resident or the resident's authorized representative shall execute in writing a financial agreement. Duplicate copies of such agreement shall be prepared and signed. One copy shall be given to

the resident and one copy placed on file in the assisted living facility. Such document may be kept separate from the resident's file, but shall be made readily available during inspections.

B. At a minimum, the financial agreement shall contain the following:

1. A statement of the basic charges agreed upon including, but not limited to, room, board, laundry, and personal care and services;

2. The time period to be covered by the agreement;

3. Services for which special charges will be made;

4. A statement regarding refunds for any payments made in advance;

5. Provisions for termination of the agreement by either party; and

6. The signatures of responsible parties.

C. Each resident, prior to execution of a financial agreement, shall have an opportunity to read the agreement. In the event that a resident is unable to read the agreement due to illiteracy or infirmity, the administrator shall take special steps to ensure communication of its contents to the resident.

D. An adequate permanent admission record, either typewritten or legibly written with pen or ink, shall be kept for each resident. Such record shall include:

1. The name, address, age, sex, nationality, marital status, social security number, veteran status, and DD-214 number, if applicable;

2. The name and address of the resident's closest relative, legal guardian, or authorized representative;

3. The name, address, and telephone number of any person or agency providing assistance;

4. The name of the resident's physician, dentist, and pharmacist;

5. The date of admission and date of discharge or death;
6. The resident's religious preference;
7. Information from the resident about insurance policies, including funeral arrangements and burial provisions; and
8. Any other personal and statistical information which may be required by the State Department of Health on a death certificate.

E. A medical examination record shall be completed by a licensed physician who has no financial interest in the facility, on each resident no more than thirty (30) days prior to admission to an assisted living facility. At a minimum, the medical examination record shall contain the following:

1. The physician's diagnosis or statement of condition;
2. A statement by the physician that the resident is free of contagious disease;
3. A statement by the physician that indicates whether the resident needs assistance with medication or administration of medication;
4. A statement by the physician that the resident may or may not self-administer medication; and
5. A description of medication presently prescribed, including the name, dosage, strength, frequency of administration, and possible side effects of any drugs.

F. In addition to the medical examination, no more than thirty (30) days prior to admission, each resident shall be given an annual physical examination. The extent of such annual examination shall be at the discretion of the attending physician.

G. A medical record shall be maintained by the facility on each resident that includes, but is not limited to, the medical examination record, physician orders, medication records, flow records, progress notes, and any other necessary medical information. Additionally, a facility which maintains a resident receiving contracted medical care as directed by a physician's order

shall ensure that a complete medical record is maintained by the contracted service agency in the resident's record. Such medical records shall be subject to review by the Department whenever appropriate. This section shall not apply to medication procedures and administration that are typically self-administered, such as oral medications, topicals, suppositories, and injections, excluding intravenous, pursuant to a physician's order and shall not apply to medication procedures and administration pursuant to emergency response. Prior to treating a resident in the facility, arrangements shall be made between the health care professional and the facility for appropriate recordkeeping in the resident's medical records. Recordkeeping arrangements shall not include emergency, life-threatening medical situations; provided, however, records shall be kept of such situations after their occurrence.

SECTION 27. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.27 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There shall be a written personal care and services plan for each resident developed by the nursing consultant in consultation with the physician and the resident, or the resident's authorized representative, which indicates the personal care and services required by the individual resident. This plan shall be kept current by the nurse consultant and updated bi-monthly or whenever there is a change in the health status of the resident by the nurse consultant in consultation with the attending physician. At a minimum, the personal care and services plan shall contain the following:

1. A written description of actions to be taken by the facility to meet the assessed needs of the resident's activities of daily living and instrumental activities of daily living;

2. Documentation of any change in medication and personal services;

3. A prearranged plan with the resident or the resident's authorized representative for transfer of the resident to a hospital; and

4. A description of procedures to follow in case of serious illness, accident, or death.

B. If an accident occurs in an assisted living facility, a detailed report of the accident shall be made. The report of the accident shall immediately be completed and given to the administrator for filing as an administrative record. The report shall also be signed by the resident or the resident's authorized representative.

C. Each facility shall establish policies and procedures governing a resident's conduct and responsibility at the facility and shall ensure that each resident is fully informed, as evidenced by written acknowledgment, prior to or at the time of admission and during his or her stay, of such policies and procedures. A copy of such policies and procedures shall be available upon request of a resident or the resident's authorized representative in the facility. Each resident's file shall contain a copy of the written acknowledgment which shall be signed and dated by the administrator, or a designee, and the resident or the resident's authorized representative.

D. Each facility shall post in a conspicuous place a copy of the statement of residents' rights and responsibilities while residing in an assisted care facility as promulgated by the State Board of Health.

SECTION 28. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.28 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Medications shall be stored properly and securely whether maintained by the resident or by an assisted living facility, except when required to be kept by the resident on his or her person due to

the need for frequent or emergency use, as determined by the resident's physician.

B. No drugs or medicines bearing the inscription "Federal Law Prohibits Dispensing Without a Prescription" shall be stocked by an assisted living facility. Only nonprescription drugs such as analgesics, mild laxatives, antacids and anti-diarrhea preparations shall be maintained in stock by an assisted living facility. Any medication maintained as stock shall contain the manufacturer's label and shall be properly labeled in accordance with accepted professional standards.

C. First aid supplies shall be maintained in a place readily accessible to persons providing personal care and services in an assisted living facility. Such supplies shall be inspected at least annually to ensure their usability.

D. Poisons and medications for external use shall be properly and plainly labeled and maintained in a locked cabinet; provided, however, this provision shall not apply to oral medications that are labeled "poison". No poisons may be stored or maintained in the kitchen and dining area of an assisted living facility or in any resident's room; provided, however, a resident who has been authorized to safely handle soap materials and various other poisonous materials may store such in the resident's room. Cleaning supplies may be stored or maintained in the kitchen or dining room area of a facility if a locked cabinet is provided.

E. All containers of medicines and drugs shall be labeled in accordance with the rules of the Board of Pharmacy and shall include appropriate cautionary labels.

F. Medications of a resident who is discharged, transferred or deceased shall be accounted for or properly disposed of by the facility.

1. Medications of a resident who is discharged or transferred to another facility shall be returned to the resident. The

responsible party shall sign a statement stating that such person received the medications. The statement shall contain the name of the drug, the name of the pharmacy that issued the drug, the prescription number and date, the name of the resident, the strength of the medication, and the amount. Such statement shall be maintained in a file at the facility for a minimum of two (2) years.

2. Medications of a deceased resident shall be destroyed on the premises of the assisted living facility pursuant to rules of the State Department of Health. Upon destruction of such medications, a record shall be made and kept on file for a minimum of two (2) years. Such record shall include: the name of the assisted living facility, the method of disposal, the name of the drug, the name of the pharmacy that issued the drug, the prescription number and date, the name of the resident, the strength of the medication, the amount, and the reason for disposal. Such record shall be signed and dated by the individual performing the destruction in the presence of the nurse consultant.

SECTION 29. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-865.29 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A resident of the facility who is authorized, pursuant to a physician's order, to self-administer medication, as such medication is defined in Section 2 of this act, may do so without professional observation or supervision.

B. The nurse consultant shall conduct at least a monthly documented review of the resident's self-administered medication program which shall include a count of each medication included in the resident's self-administered medication program.

C. 1. All medication shall be administered by a licensed nurse, a certified medication aide or other licensed nursing personnel to any resident for whom self-administration of medication is not feasible.

2. Any prescription or nonprescription medication for which the facility has responsibility for administering to a resident shall be identified in the resident's record and shall be prescribed in writing for the resident by a physician.

3. Any medication administered on an "as needed basis" shall be administered by a licensed nurse, a certified medication aide or other licensed nursing personnel. Such person shall indicate the reason(s) that the medication was administered and the results obtained, in consultation with the nurse consultant.

D. 1. A written record shall be kept for each resident denoting drugs administered by the licensed nurse, certified medication aide or other licensed nursing personnel.

2. Medications to be administered shall include the following:

- a. oral medications,
- b. eye, ear or nose drops,
- c. topical ointments,
- d. suppositories or enemas, and
- e. inhalers, including oxygen on a regular basis and as needed.

SECTION 30. This act shall become effective November 1, 1997.

46-1-5441

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