

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

HOUSE BILL NO. 2675

By: Seikel

AS INTRODUCED

An Act relating to persons with developmental or physical disabilities; amending Section 12, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1997, Section 1025.2), which relates to community services worker registry; clarifying language; amending 63 O.S. 1991, Section 1-818.3, as last amended by Section 3, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.6, as last amended by Section 6, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.34, as last amended by Section 34, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, and 1-818.35, as last amended by Section 35, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Sections 1430.3, 1430.6, 1430.34, and 1430.35), which relate to group homes for persons with developmental or physical disabilities; updating language; providing for appointment of a receiver; deleting redundant and outdated language; providing for compensation, liability, termination and rights and obligations of a receiver; amending Section 6, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1997, Section 1-890.6),

which relates to the Continuum of Care and Assisted Living Act; exempting certain persons from act; repealing 63 O.S. 1991, Sections 1-818.36, as last amended by Section 36, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.37, as last amended by Section 37, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.38, as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.39, as last amended by Section 38, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.40, as last amended by Section 39, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, and 1-818.41, as last amended by Section 40, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Sections 1430.36, 1430.37, 1430.38, 1430.39, 1430.40 and 1430.41), which relate to receiverships for group homes for persons with developmental or physical disabilities; and providing an effective date.

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

SECTION 1. AMENDATORY Section 12, Chapter 407, O.S.L. 1997 (56 O.S. Supp. 1997, Section 1025.2), is amended to read as follows:

Section 1025.2 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 worker registry created pursuant to Section ~~13~~ 1025.3 of this ~~act~~ title. 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~~ 1025.3 of this ~~act~~ title, 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 2. AMENDATORY 63 O.S. 1991, Section 1-818.3, as last amended by Section 3, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Section 1430.3), is amended to read as follows:

Section 1430.3 The Department of Human Services shall have the power and duty to:

1. Enforce any provision and prosecute any violation of the Group Homes for Persons with Developmental or Physical Disabilities Act;
2. Issue, renew, deny, modify, suspend, and revoke licenses for group homes pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act; provided, however, providers of group home services that have a current contract with the Developmental Disabilities Services Division shall be deemed to be licensed;
3. Establish and enforce standards and requirements for licensure and program certification of group homes which are subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act and require the submission of, and to review, reports from any person establishing or operating a group home;
4. Enter upon any public or private property for the purpose of inspecting and investigating conditions of the residents in the group home or for the purpose of inspecting and investigating the home for compliance with the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, or the standards or requirements for licensure and program certification developed by the Department pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

5. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of group homes and the residents of such homes, and to take necessary action pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act to protect and safeguard the health, safety, and welfare of residents of homes;

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

7. Report to the district attorney having jurisdiction or the Attorney General any act committed by a provider, administrator, operator, or employee of a group home which may constitute a misdemeanor pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

8. Advise, consult, and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

9. Develop and enforce rules subject to the approval of the Commission for Human Services to implement the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act. Such rules shall include, but not be limited to, physical conditions which shall protect the health, safety, and welfare of the residents in a group home as outlined in the Group Homes for Persons with Developmental or Physical Disabilities Act;

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

11. Establish ~~civil~~ administrative penalties for violations of the provisions of the Group Homes for Persons with Developmental or

Physical Disabilities Act as authorized by the Commission pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

12. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department to protect the health, safety, and welfare of any resident of a group home;

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

14. Provide for the appointment of a receiver pursuant to Sections 1030.1 through 1030.4 of Title 56 of the Oklahoma Statutes;
and

15. Exercise all incidental powers as necessary and proper for the administration of the Group Homes for Persons with Developmental or Physical Disabilities Act.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-818.6, as last amended by Section 6, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Section 1430.6), is amended to read as follows:

Section 1430.6 A. Enforcement of any action for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Group Homes for Persons with Developmental or Physical Disabilities Act may be brought by:

1. The district attorney of the appropriate district court of the State of Oklahoma;

2. The Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or

3. The Department of Human Services on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma; or as otherwise authorized by law.

B. The Department may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Group Homes for Persons with

Developmental or Physical Disabilities Act or any rule or order issued pursuant thereto. Said court has jurisdiction to determine said action, and to grant the necessary or appropriate relief, including, but not limited to, mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

C. The Department may, upon its own initiative or at the request of an owner, operator or resident of any group home for persons with developmental or physical disability, or resident's guardian or relative, petition the court to appoint a receiver to take possession of and operate the group home pursuant to Sections 1030.1 through 1030.4 of Title 56 of the Oklahoma Statutes.

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-818.34, as last amended by Section 34, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Section 1430.34), is amended to read as follows:

Section 1430.34 A. The Department of Human Services may place an employee or agent to serve as a monitor at a provider agency subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act ~~or may petition the district court for appointment of a receiver for a provider, or both,~~ when any of the following conditions exist:

1. The group home is operating without a license;
2. The Department has suspended, revoked or refused to renew the existing license of the provider;
3. The provider has closed or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure; or
4. The Department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the provider to remedy

the emergency the Department believes a monitor ~~or receiver~~ is necessary.

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

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-818.35, as last amended by Section 35, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Section 1430.35), is amended to read as follows:

Section 1430.35 A. Where a resident of a group home subject to the Group Homes for Persons with Developmental or Physical Disabilities Act, a resident's guardian or advocate, if any, or a resident's next of kin believes that an emergency exists, each of them, collectively or separately, may file a verified statement with the Director of Human Services, or a designee, who shall immediately investigate. ~~If the Director, or a designee, determines that proper cause exists, the Director, or a designee, shall take whatever steps are necessary to protect the health, welfare and safety of the residents including, if necessary, petitioning the court to place the group home under the control of a receiver to ensure that the residents receive adequate care.~~

~~B. The court shall hold a hearing within five (5) days of the filing of the petition. The petition and notice of the hearing shall be served on the provider or designated agent of the provider and the petition and notice of hearing shall be posted in a conspicuous place in the group home not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the court. The court shall appoint a~~

~~receiver for a limited time period, not to exceed one hundred eighty (180) days, which shall automatically terminate the receivership unless extended by the court, if it finds that:~~

~~1. The group home is operating without a license;~~

~~2. The Department has suspended, revoked or refused to renew the existing license of the provider;~~

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

~~4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the provider to remedy the emergency, the appointment of a receiver is necessary; or~~

~~5. It is necessary to ensure that the residents get adequate care in a situation in which the residents' health, welfare and safety are threatened.~~

~~C. If a petition filed under this section alleges that the conditions listed in subsection B of this section exist within a group home, the court may set the matter for hearing at the earliest possible time. The petitioner shall notify the provider of the group home or registered agent of the provider more than five (5) days prior to the hearing. Any form of written notice may be used. A receivership shall not be established ex parte by the court unless the Director of Human Services, under oath, has provided a statement that such Director, or a designee, has personally determined that there is a life-endangering situation. A waiver of the five-day notice requirement may be approved by the court in life-endangering situations as determined and confirmed under oath, by the Director.~~

B. The Department may, upon its own initiative or at the request of an owner, operator or resident of a group home, or a resident's guardian or relative, petition the court to appoint a receiver to

take possession of and operate the group home. Any such action shall be made and comply with the provisions of Sections 1030.1 through 1030.4 of Title 56 of the Oklahoma Statutes.

C. Appointment of a receiver, compensation and liability of the receiver, termination of the receivership, and rights and obligations of the receiver shall be governed by the provisions of Sections 1030.1 through 1030.4 of Title 56 of the Oklahoma Statutes.

SECTION 6. AMENDATORY Section 6, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1997, Section 1-890.6), is amended to read as follows:

Section 1-890.6 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, persons with mental retardation receiving services, provided by the Developmental Disabilities Services Division of the Department of Human Services, in their own homes, 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. REPEALER 63 O.S. 1991, Sections 1-818.36, as last amended by Section 36, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.37, as last amended by Section 37, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.38, as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.39, as last amended by Section 38, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, 1-818.40, as last amended by Section 39, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996, and 1-818.41, as last amended by Section 40, Chapter 354, O.S.L. 1996, and as renumbered by Section 56, Chapter 354, O.S.L. 1996 (10 O.S. Supp. 1997, Sections 1430.36, 1430.37, 1430.38, 1430.39, 1430.40 and 1430.41), are hereby repealed.

SECTION 8. This act shall become effective November 1, 1998.

46-2-9113

KSM