

STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2019

By: Benson of the House

and

Taylor of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Oklahoma 2001 Healthcare Initiative; providing for purpose; specifying legislative intent; requiring the Oklahoma Health Care Authority, the Oklahoma State Health Department and the Department of Human Services to implement certain requirements; specifying certain requirements; providing for a Nursing Facilities Quality of Care Fee; providing for assessment of fee on nursing facilities; specifying purpose; providing for calculation and methodologies; requiring certain reports; authorizing a uniform per diem Nursing Facilities Quality of Care Fee; making certain payments allowable Medicaid reimbursement costs; creating the Nursing Facility Quality of Care Fund; prohibiting certain uses; requiring certain uses; providing for deposits and expenditures; providing for content of fund; limiting certain increases; providing methodology for reimbursements; providing that no facility shall be guaranteed that any reimbursement will be equal to or exceed the fee paid; enumerating when assessment of fee is null and void; providing for return of certain paid fees; providing for promulgation of rules; prohibiting certain exceptions; providing for effect of certain judgments on section; limiting scope; providing for applicability; defining terms; creating the Oklahoma Medicaid Matching Funds Task Force; providing for purpose; providing for appointments; providing for membership; providing for quorum; providing for officers; providing for meetings; providing for duties; requiring report; providing for staffing; requiring recalculation and reimbursement of certain costs to nursing facilities; specifying certain conditions; providing for implementation; increasing staffing requirements; defining term; requiring reporting; requiring single assessment tool; requiring implementation of a case mix Medicaid reimbursement system; requiring additional use of a central statewide consumer information and help line; granting a wage and salary increase to certain nursing facility personnel; specifying base amount; requiring certain reports; making certain insurance liability costs allowable costs for Medicaid reimbursement purposes; amending Section 1, Chapter 418, O.S.L. 1999, which relates to the Oklahoma Continuum of Care Task Force; increasing number of Task Force members; providing for appointment; modifying method of appointment of members and certain aspect of powers and duties of the Task Force; modifying staffing requirements; amending 43A O.S. 1991, Section 10-105, as last amended by Section 1, Chapter 78, O.S.L. 1999 (43A O.S. Supp. 1999, Section 10-105), which relates to the Protective Services for Vulnerable Adults Act; clarifying statutory reference; providing for receipt of certain investigative reports pertaining to a vulnerable adult; adding areas of jurisdiction; deeming the Department of Human Services a party for certain complaints in specified facilities; authorizing requests for certain hearings; requiring certain summaries; amending 56 O.S. 1991,

Section 1005, as last amended by Section 1 of Enrolled House Bill No. 1908 of the 2nd Session of the 47th Oklahoma Legislature, which relates to the Oklahoma Medicaid Program Integrity Act; making it unlawful for specified state agency employees to fail to promptly report a violation of the Oklahoma Medicaid Program; construing provisions of section of law; making it unlawful for an employee of the State Department of Health to accept anything of value from specified entities for specified actions; establishing requirements related to conflict of interest for employees of the State Department of Health; defining term; requiring promulgation of certain rules; amending 63 O.S. 1991, Sections 1-851.1, as last amended by Section 9, Chapter 223, O.S.L. 1997, 1-853, as last amended by Section 2, Chapter 328, O.S.L. 1998, 1-1904, 1-1911, as amended by Section 11, Chapter 230, O.S.L. 1995, Section 14, Chapter 230, O.S.L. 1995 and 1-1940, as amended by Section 19, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Sections 1-851.1, 1-853, 1-1911, 1-1914.1 and 1-1940), which relate to the Long-Term Care Certificate of Need Act and the Nursing Home Care Act; modifying definition; expanding certain time periods related to the certificate of need process; adding to list of circumstances for which an application may be rejected; making it unlawful for certain state agency employee to disclose specified information to certain person prior to an inspection; providing penalty for violation of certain rule; providing procedure for specified facility; clarifying language; specifying calculation of certain penalties; providing for imposition of certain penalties; expanding list of entities that may bring action for certain injunction; requiring a complaint investigation and written report within certain time frame; updating language; providing for immediate action by the State Department of Health to remedy certain violations pursuant to a complaint from the Department of Human Services; authorizing certain hearings; requiring reports; requiring promulgation of rules; specifying contents; deeming the Department of Human Services a party for purposes of complaints made by the Department of Human Services; amending 62 O.S. 1991, Section 203, as last amended by Section 2, Chapter 31, O.S.L. 1999 (62 O.S. Supp. 1999, Section 203), which relates to apportionment of monies; adding to list of agencies and funds authorized to retain interest; providing components of tobacco prevention and cessation program; specifying amount of contract funding; providing for promulgation of rules; requiring distribution; providing priorities; providing for certain duties; providing for training and supplies; creating the Tobacco Prevention and Cessation Revolving fund; specifying purpose; providing for deposits and expenditures; requiring the State Department of Health and the Department of Human Services to develop and implement a uniform application for employment of nurse aides; providing for contents; amending Section 1, Chapter 202, O.S.L. 1996, as renumbered by Section 1, Chapter 108, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2611.2), which relates to mode and order of interrogation and presentation; defining the term incapacitated witness; amending 12 O.S. 1991, Section 2803.1, as last amended by Section 1, Chapter 24, O.S.L. 1998 (12 O.S. Supp. 1999, Section 2803.1), which relates to hearsay exceptions; providing for the admissibility of an out-of-court statement by an incapacitated person; amending 43A O.S. 1991, Section 10-104, as last amended by Section 4, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1999, Section 10-104), which relates to persons required to report abuse of vulnerable adults; providing immunity from civil or criminal liability for employers of caretakers who report misconduct of employees; specifying penalties; providing for reassessment of certain fee upon certain events; providing for codification; providing for noncodification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. This act shall be known and may be cited as the "Oklahoma 2001 Healthcare Initiative".

B. 1. The purpose of the Oklahoma 2001 Healthcare Initiative is to improve the public health care system of Oklahoma through increased health care services and benefits.

2. In order to upgrade Oklahoma's health care system, the Oklahoma Legislature through the Oklahoma 2001 Healthcare Initiative hereby provides funding for the most critical needs of the vulnerable citizens and residents of this state.

C. To this end, the Oklahoma Legislature hereby requires:

1. The Oklahoma Health Care Authority to:

a. increase by eighteen percent (18%), provided the increase does not exceed federal limits, the Medicaid reimbursement rate to the following persons or entities providing Medicaid-authorized services to eligible persons:

- (1) physicians including, but not limited to, psychiatrists and osteopathic physicians,
- (2) home health care providers,
- (3) laboratory and clinic services providers,
- (4) ambulatory clinic providers, and
- (5) other Medicaid-authorized medical services providers including, but not limited to: chiropractors, optometrists, opticians, psychologists, speech pathologists, and occupational therapists,

b. increase by ten percent (10%) the Medicaid reimbursement rate to persons providing Medicaid

behavioral health counseling services to eligible persons,

c. increase the hospital inpatient day limit for Medicaid services from twelve (12) days to twenty-four (24) days per year,

d. increase the Medicaid reimbursement rate to the Sooner Care Plus Program for:

(1) maternity level of care services

increase by \$271.00 per delivery

(2) emergency room services

increase emergency room visit rate

increase nonemergency room visit rate

(3) ambulatory surgical services 10% increase

(4) inpatient hospital services 12% increase

(5) neonatal inpatient hospital

services 20% increase

e. increase the Medicaid reimbursement rate to hospitals in the Fee-For-Service Program for:

(1) maternity level of care services,

Mother increase by \$55.50 per day

Child increase by \$55.50 per day

(2) emergency room services

increase emergency room visit rate

increase nonemergency room visit rate

(3) ambulatory surgical services 10% increase

(4) inpatient hospital services 12% increase

(5) neonatal inpatient hospital

services 20% increase

(6) critical access hospital

services 38% increase

- f. increase the Medicaid reimbursement rate sixty percent (60%) for dental services provided to eligible persons, and
- g. increase the Medicaid reimbursement rate forty percent (40%) for ambulance services provided to eligible persons;

2. The State Department of Health, with the cooperation of the Oklahoma Health Care Authority and the Department of Human Services to:

- a. develop and implement a comprehensive, evidence-based tobacco prevention and cessation program from state-appropriated funds, available Medicaid funds, available grant funds, and available Temporary Assistance for Needy Families block grant monies. The program shall:
 - (1) consist of the following four cornerstones:
 - (a) community-based initiatives,
 - (b) voluntary classroom programs in public schools,
 - (c) cessation assistance, and
 - (d) public education media programs, and
 - (2) utilize strategies including, but not limited to, involving school nurses in youth tobacco prevention efforts, and utilizing other efforts that have been demonstrated to be effective by the United States Centers for Disease Control and Prevention in an effort to:
 - (a) lower smoking rates among Oklahoma youths,
 - (b) reduce tobacco consumption by Oklahomans, and
 - (c) reduce exposure related to secondhand tobacco smoke.

The program shall comply with the provisions of
Section 19 of this act,

- b. expend monies made available from the Legislature and other sources for such programs authorized by this section with a goal of encouraging additional matching direct and indirect funds for tobacco prevention and cessation efforts in Oklahoma, and
- c. report by January 1st of each year to the Legislature on the implementation of the comprehensive, evidence-based tobacco prevention and cessation program specified by this section;

3. The Department of Human Services to:

- a. increase Medicaid reimbursement rates to:
 - (1) direct care staff who provide personal care and ADvantage waiver services to Medicaid-eligible adults including, but not limited to, the reimbursement rate for respite care, meal preparation and housekeeping, and
 - (2) habilitation training specialists who serve developmentally disabled persons including, but not limited to, the reimbursement rate for assisting and training in self-care, and daily living and prevocational skills,
- b. increase contract amount by thirteen percent (13%) for salaries of Older Americans Act nutrition site employees who provide meals and nutrition services including, but not limited to, reimbursement rates for home-delivered meals, congregate meals and nutrition education,
- c. purchase services up to Ten Thousand Dollars (\$10,000.00) per child for developmentally disabled children who are on the waiting list to receive

- services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services,
- d. purchase services up to Fifteen Thousand Dollars (\$15,000.00) per adult for developmentally disabled adults who are on the waiting list to receive services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services, and
 - e. purchase ADvantage waiver services for developmentally disabled persons without cognitive impairment.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2002 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. For the purpose of providing quality care enhancements, the Oklahoma Health Care Authority is authorized to and shall assess a Nursing Facilities Quality of Care Fee pursuant to this section upon each nursing facility licensed in this state. Quality of care enhancements include, but are not limited to, the purposes specified in this section.

B. As a basis for determining the maximum Nursing Facilities Quality of Care Fee assessed upon each licensed nursing facility, the Oklahoma Health Care Authority shall calculate a uniform per-patient day rate. The rate shall be set at six percent (6%) of the total annual patient gross revenue of all licensed nursing facilities in this state.

C. The Nursing Facilities Quality of Care Fee owed by a licensed nursing facility shall be calculated by the Oklahoma Health Care Authority by adding the daily patient census of a licensed nursing facility, as reported by the facility for each day of the month, and by multiplying the ensuing figure by a uniform per-

patient day rate determined pursuant to the provisions of subsection B of this section.

D. Each licensed nursing facility which is assessed the Nursing Facilities Quality of Care Fee shall be required to file a report on a monthly basis with the Oklahoma Health Care Authority detailing the daily patient census and patient gross revenues at such time and in such manner as required by the Oklahoma Health Care Authority.

E. 1. The Nursing Facilities Quality of Care Fee for a licensed nursing facility for the period beginning October 1, 2000, shall be determined using the daily patient census and annual patient gross revenues figures reported to the Oklahoma Health Care Authority for the calendar year 1999 upon forms supplied by the Authority.

2. The Nursing Facilities Quality of Care Fee for the fiscal year beginning July 1, 2001, and each fiscal year thereafter shall be determined by:

- a. using the daily patient census and patient gross revenues reports received by the Authority covering the six-month period October 1 through March 31 of the prior fiscal year, and
- b. annualizing those figures.

F. The payment of the Nursing Facilities Quality of Care Fee by licensed nursing facilities shall be an allowable cost for Medicaid reimbursement purposes.

G. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Nursing Facility Quality of Care Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

- a. all monies received by the Authority pursuant to this section and otherwise specified or authorized by law,

- b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and
- c. interest attributable to investment of money in the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Authority for:

- a. reimbursement of the additional costs paid to Medicaid-certified nursing facilities for purposes specified by Sections 4, 5 and 6 of this act,
- b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),
- c. nonemergency transportation services for nursing home clients,
- d. eyeglass and denture services for nursing home clients,
- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,
- h. funds to conduct a study of nursing facility reimbursement methodology,

- i. costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,
- j. durable medical equipment and supplies services for elderly adults, and
- k. personal needs allowance increases for nursing home residents from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

4. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

5. The fund and the programs specified in this section are exempt from budgetary cuts, reductions, or eliminations caused by the lack of general revenue funds.

6. The Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR) shall not exceed the net Medicaid rate increase for nursing facilities including, but not limited to, the Medicaid rate increase for which Medicaid-certified nursing facilities are eligible due to the Nursing Facilities Quality of Care Fee less the portion of that increase attributable to treating the Nursing Facilities Quality of Care Fee as an allowable cost.

7. The reimbursement rate for nursing facilities shall be made in accordance with Oklahoma's Medicaid reimbursement rate methodology and the provisions of this section.

8. No nursing facility shall be guaranteed, expressly or otherwise, that any additional costs reimbursed to the facility will equal or exceed the amount of the Nursing Facilities Quality of Care Fee paid by the nursing facility.

H. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to

the Oklahoma Medicaid program, for purposes of matching expenditures from the Nursing Facility Quality of Care Fund at the approved federal medical assistance percentage for the applicable fiscal year, the Nursing Facilities Quality of Care Fee shall be null and void as of the date of the nonavailability of such federal funding, through and during any period of nonavailability.

2. In the event of an invalidation of this section by any court of last resort under circumstances not covered in subsection I of this section, the Nursing Facilities Quality of Care Fee shall be null and void as of the effective date of that invalidation.

3. In the event that the Nursing Facilities Quality of Care Fee is determined to be null and void for any of the reasons enumerated in this subsection, any Nursing Facilities Quality of Care Fee assessed and collected for any periods after such invalidation shall be returned in full within sixty (60) days by the Oklahoma Health Care Authority to the nursing facility from which it was collected.

I. 1. If any provision of this section or the application thereof shall be adjudged to be invalid by any court of last resort, such judgment shall not affect, impair or invalidate the provisions of the section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered. The applicability of such provision to other persons or circumstances shall not be affected thereby.

2. This subsection shall not apply to any judgment that affects the rate of the Nursing Facilities Quality of Care Fee, its applicability to all licensed nursing homes in the state, the usage of the fee for the purposes prescribed in this section, and/or the ability of the Oklahoma Health Care Authority to obtain full federal participation to match its expenditures of the proceeds of the fee.

J. The Oklahoma Health Care Authority shall promulgate rules for the implementation and enforcement of the Nursing Facilities Quality of Care Fee established by this section.

K. The Authority may assess administrative penalties, and shall promulgate rules which provide for the assessment of administrative penalties, upon nursing facilities which fail to submit the fee required by this section in a timely manner.

L. As used in this section:

1. "Nursing facility" means any home, establishment or institution, or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

2. "Medicaid" means the medical assistance program established in Title XIX of the federal Social Security Act and administered in this state by the Oklahoma Health Care Authority;

3. "Patient gross revenues" means gross revenues received in compensation for services provided to residents of nursing facilities including, but not limited to, client participation. The term "patient gross revenues" shall not include amounts received by nursing facilities as charitable contributions; and

4. "Additional costs paid to Medicaid-certified nursing facilities under Oklahoma's Medicaid reimbursement methodology" means both state and federal Medicaid expenditures including, but not limited to, funds in excess of the aggregate amounts that would otherwise have been paid to Medicaid-certified nursing facilities under the Medicaid reimbursement methodology which have been updated for inflationary, economic, and regulatory trends and which are in effect immediately prior to the inception of the Nursing Facilities Quality of Care Fee.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1925.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby established until June 1, 2002, the Medicaid Matching Funds Task Force composed of seventeen (17) members as follows:

1. The Speaker of the Oklahoma House of Representatives shall appoint:

- a. four persons who are nursing home owners, operators or administrators, two of whom shall be owners, operators or administrators of nursing facilities that receive Medicaid reimbursement and two of whom shall be owners, operators or administrators of nursing facilities that do not receive Medicaid funds,
- b. two persons, one of whom is a representative of a statewide organization representing senior citizens, and one person who is a representative of a statewide organization representing developmentally disabled persons, and
- c. a member of the Oklahoma House of Representatives;

2. The President Pro Tempore of the Senate shall appoint:

- a. four persons who are nursing home owners, operators or administrators, one of whom shall be the owner, operator or administrator of a nursing facility that receives Medicaid reimbursement and three of whom shall be owners, operators or administrators of nursing facilities that do not receive Medicaid funds,
- b. two persons, one of whom is a representative of a statewide organization of child-serving or child advocacy agencies, and one person who is a representative of a statewide organization representing mentally ill persons, and
- c. a member of the Oklahoma State Senate; and

3. The Governor shall appoint three persons, one of whom shall be a representative of a statewide organization representing allopathic physicians, one of whom shall be a representative of a statewide organization representing osteopathic physicians, and one

of whom shall be a representative of a statewide organization representing hospitals.

B. 1. Members shall serve at the pleasure of the appointing authority. A vacancy on the Task Force shall be filled by the original appointing authority.

2. A majority of the members appointed to the Task Force shall constitute a quorum. A majority of the members present at a meeting may act for the Task Force.

3. The Speaker of the House of Representatives shall designate the chair and the President Pro Tempore shall designate the vice-chair of the Task Force from among the members of the Task Force.

4. The chair of the Task Force shall convene the first meeting of the Task Force on or before October 1, 2000.

5. The members of the Task Force shall determine meeting dates. Members shall not be compensated for their service but shall be reimbursed by their appointing authorities for necessary expenses incurred in the performance of their duties. Members shall receive no compensation for their service on the Task Force, but shall receive travel reimbursement as follows:

- a. legislative members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes,
- b. nonlegislative members who are state officers or employees shall be reimbursed by their respective agencies for their necessary travel expenses incurred in the performance of their duties in accordance with the provisions of the State Travel Reimbursement Act, and
- c. members who are not legislators or officers or employees of the state shall be reimbursed by their

appointing authorities in accordance with the provisions of the State Travel Reimbursement Act.

C. 1. The Task Force:

- a. shall study and evaluate alternative funding mechanisms for nursing facilities that will comply with federal law and regulations with regard to Medicaid. The Task Force may examine mechanisms and systems used in other states,
- b. shall study alternative funding mechanisms and opportunities for state programs and services that are or may be compensable, in compliance with applicable federal laws and rules, with federal Medicaid funds, including, but not limited to, programs and services for senior citizens, children, mentally ill persons, developmentally disabled persons and persons who rely on the state Medicaid program for health care services,
- c. may divide into subcommittees in furtherance of its purpose,
- d. may obtain information and assistance as necessary to complete its duties from any state agency,
- e. shall actively seek and consider input from the public, the business community, organizations representing persons affected by Medicaid, public interest organizations, professional organizations, or any other groups or persons with an interest in the state Medicaid program and the work of the Task Force, and
- f. shall solicit and accept written comments, recommendations and proposals, and shall hold public hearings to obtain comments from the public.

2. a. The Task Force shall be staffed by the Oklahoma Health Care Authority.
- b. All departments, officers, agencies and employees of the state shall cooperate with the Task Force in carrying out its duties and responsibilities including, but not limited to, providing any information, records, reports or other assistance as may be requested by the Task Force.

D. The director, administrator or commissioner, as appropriate, of each of the following state agencies shall each appoint one or more agency employees to attend Task Force meetings and provide information to the Task Force as requested:

- a. the Department of Commerce,
- b. the Oklahoma Tax Commission,
- c. the Oklahoma Health Care Authority,
- d. the Department of Human Services,
- e. the State Department of Health,
- f. the Department of Mental Health and Substance Abuse Services,
- g. the Oklahoma Commission on Children and Youth,
- h. the Office of Handicapped Concerns, and
- i. the Department of Rehabilitation Services.

E. The Task Force shall submit a final report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before February 1, 2002, regarding the findings and recommendations of the Task Force.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1925.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Health Care Authority shall fully recalculate and reimburse nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) from the Nursing Facility

Quality Care Fund beginning October 1, 2000, the average actual, audited costs reflected in previously submitted cost reports for the cost-reporting period that began July 1, 1998, and ended June 30, 1999, inflated by the federally published inflationary factors for the two (2) years appropriate to reflect present-day costs at the midpoint of the July 1, 2000, through June 30, 2001, rate year.

1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR), and shall be calculated in the same manner as has been mutually understood by the long-term care industry and the Oklahoma Health Care Authority.

2. The recalculated reimbursement rate shall be implemented September 1, 2000.

B. 1. From September 1, 2000, through August 31, 2001, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:

- a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every eight residents,
- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen residents.

2. From September 1, 2001, through August 31, 2002, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:

- a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every seven residents,

- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every sixteen residents.

3. On and after September 1, 2002, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:

- a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every six residents,
- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every fifteen residents.

4. For purposes of this subsection:

- a. "direct-care staff" means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility, and
- b. prior to September 1, 2002, activity and social services staff who are not providing direct, hands-on care to residents may be included in the direct-care-staff-to-resident ratio in any shift. On and after September 1, 2002, such persons shall not be included in the direct-care-staff-to-resident ratio.

C. The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act to submit a monthly report on staffing ratios on a form that the Authority shall develop. The report shall document the extent to which such nursing facilities are meeting or are failing to meet the minimum direct-care-staff-to-resident ratios specified by this section. Such report shall be available to the public upon request.

D. 1. On or before July 1, 2001, all entities regulated by this state that provide long-term care services shall utilize a single assessment tool to determine client services needs. The tool shall be developed by the Oklahoma Health Care Authority.

2. The Oklahoma Health Care Authority shall implement a case mix Medicaid reimbursement system for all state-regulated long-term care providers effective November 1, 2001.

3. The Department of Human Services shall expand its statewide senior citizen information line to include assistance with or information on long-term care services in this state.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5022.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Effective November 1, 2000, the Oklahoma Health Care Authority shall grant a wage and salary adjustment including, but not limited to, employee benefits to be paid to the facility for employees specified in subsection B of this section in nursing facilities serving adults (NFs) and intermediate care facilities for the mentally retarded (ICFs/MR).

2. The adjustment shall be based upon a new minimum wage for specified employees of nursing facilities, standard private intermediate care facilities for the mentally retarded (ICFs/MR) and specialized private intermediate care facilities for the mentally retarded (ICFs/MR) in the amount of Six Dollars and Sixty-five Cents (\$6.65) per hour.

B. The provisions of this section shall only apply to the following specified employees:

1. Registered nurses;
2. Licensed practical nurses;
3. Nurse aides;
4. Certified medication aides;
5. Dietician staff;

6. Housekeeping staff;
7. Maintenance staff;
8. Laundry staff;
9. Social service staff; and
10. Other activities staff.

C. The Oklahoma Health Care Authority shall review any reports or records retained by the nursing facilities during the regular cost-reporting process and normal auditing procedures of the Authority to ensure compliance with this section.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 5022.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Oklahoma Health Care Authority shall promulgate rules which shall provide that the liability insurance costs of nursing facilities shall be allowable costs for purposes of Medicaid reimbursement.

SECTION 7. AMENDATORY Section 1, Chapter 418, O.S.L. 1999, is amended to read as follows:

Section 1. A. There is hereby established until June 1, ~~2000~~ 2001, the Oklahoma Continuum of Care Task Force. The Task Force shall be composed of ~~twenty-one (21)~~ twenty-seven (27) members, ~~seven~~ nine of whom shall be appointed ~~by each~~ by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives; ~~provided, however, no member of the Oklahoma Legislature may be appointed to the Task Force.~~ Members serving on the Task Force prior to the effective date of this act may continue to serve on the Task Force at the pleasure of their appointing authorities. Of the six new members appointed pursuant to the provisions of this act, the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives shall each appoint two members. Such members shall be appointed from lists of names submitted to them by:

1. The Oklahoma Alliance on Aging;
2. The American Association of Retired Persons;
3. The Oklahoma State Council on Aging;
4. The Oklahoma Silver-Haired Legislature Alumni Association;

and

5. Any other statewide organization of advocates for senior citizens.

B. 1. Members shall serve at the pleasure of ~~the~~ their appointing ~~authority~~ authorities. A vacancy on the Task Force shall be filled by the original appointing authority.

2. A majority of the members appointed to the Task Force shall constitute a quorum. A majority of the members present at a meeting may act for the Task Force.

3. The President Pro Tempore shall designate the chair and the Speaker shall designate the vice-chair of the Task Force from among the members of the Task Force.

4. The chair of the Task Force shall convene ~~the first a~~ meeting of the Task Force on or before ~~October 1, 1999~~ September 1, 2000.

5. The members of the Task Force shall determine meeting dates.

~~Members~~

6. a. non legislative members shall not be compensated for their service but shall be reimbursed by their appointing authorities for necessary expenses incurred in the performance of their duties, pursuant to the provisions of the State Travel Reimbursement Act, and
- b. Legislative members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes.

C. 1. The Task Force:

- a. shall study the various long-term care programs currently being provided in this state and shall make recommendations concerning a comprehensive state policy regarding long-term care,
- b. may divide into subcommittees in furtherance of its purpose,
- c. shall examine staffing patterns in long-term care facilities and may recommend staffing changes,
- d. shall study the feasibility of granting city-county health departments jurisdiction or authority to regulate or assist in the regulation of long-term care facilities within their city-county areas and the extent to which such jurisdiction or authority, if feasible, should be granted,
- e. shall compare the state Medicaid program funding system for long-term care facilities with systems used in other states and may recommend changes to such system,
- ~~e.~~ f. shall study the feasibility of requiring nurse aides and other designated employees at long-term care facilities to obtain national criminal history records searches based upon submission of fingerprints,
- g. shall examine and make final recommendations regarding the feasibility of establishing an acuity-based reimbursement system, utilizing a Minimum Data Set (MDS) Assessment, for long-term care residents, and shall report its findings and recommendations to the Senate and the House of Representatives on or before February 1, ~~2000~~ 2001. As used in this subparagraph:
 - (1) "Acuity-based reimbursement system" means a system of funding that mandates the implementation of a per diem payment for long-

term care facilities. The system shall cover all routine, ancillary and capital costs related to services furnished to long-term care residents and shall be based on a resident classification system that includes, but is not limited to, data from resident assessments and relative weights developed from staff time data, and

(2) "Minimum Data Set (MDS)" means a core set of screening, clinical and functional status elements, including common definitions and coding categories, that forms the foundation of a comprehensive assessment for all residents of Medicare_ or Medicaid-certified long-term care facilities,

~~f.~~ h. shall develop criteria for an ~~"Ideal Nursing Home"~~ demonstration ~~project~~ projects that may be used to test various innovations in nursing home care. The demonstration project may further be used to estimate the cost of implementing the innovations on a statewide basis,

~~g.~~ i. shall work with the Office of the State Long-Term Care Ombudsman, the State Department of Health, the Oklahoma Health Care Authority, the Department of Human Services and all other related agencies and long-term care providers in developing a proposed policy for the state,

~~h.~~ j. shall actively seek and consider input from the public, the business community, long-term care organizations, organizations for elderly or retired persons, public interest organizations, professional organizations, or any other groups or persons with an interest in the

long-term care programs of this state and the work of the Task Force, ~~and~~

~~i.~~ k. shall solicit and accept written comments, recommendations and proposals, and shall hold public hearings to obtain comments from the public, and

1. shall monitor the implementation of the Oklahoma 2001 Healthcare Initiative.

2. a. The Task Force shall be ~~equally~~ staffed by ~~personnel from the Department of Human Services, the State Department of Health and the Oklahoma Health Care Authority; provided, however, the Department of Human Services shall act as the lead agency for staffing purposes~~ the staff of the Oklahoma House of Representatives and the Oklahoma State Senate.

b. ~~All departments, officers, agencies and employees~~ The Department of Human Services, the State Department of Health, the Oklahoma Health Care Authority and any other department, officer, agency and employee of the state shall cooperate with the Task Force in carrying out its duties and responsibilities, including, but not limited to, providing any information, records and reports as may be requested by the Task Force.

D. The Task Force shall submit a final report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before February 1, ~~2000~~ 2001, regarding the findings and recommendations of the Task Force.

SECTION 8. AMENDATORY 43A O.S. 1991, Section 10-105, as last amended by Section 1, Chapter 78, O.S.L. 1999 (43A O.S. Supp. 1999, Section 10-105), is amended to read as follows:

Section 10-105. A. Upon receiving a report of alleged abuse, neglect, or exploitation of a vulnerable adult pursuant to the provisions of the Protective Services for Vulnerable Adults Act, the

Department of Human Services shall make a prompt and thorough investigation.

B. The investigation by the Department shall include:

1. Notification of local law enforcement agency;
2. Every reasonable effort to locate and notify the caretaker, legal guardian and next of kin of the vulnerable adult who may be in need of protective services pursuant to Section ~~2~~ 10-105.1 of this ~~act~~ title;
3. Diagnostic evaluation to determine whether the person needs protective services;
4. Any photographs necessary to document injuries or conditions which have resulted or may result in an injury or serious harm to the person;
5. A statement of the least restrictive services needed;
6. Whether services are available from the Department or in the community and how the services can be provided;
7. Whether the person would be capable of obtaining services for self and could bear the cost or would be eligible for services from the Department;
8. Whether a caretaker or legal guardian would be willing to provide services or would agree to their provision;
9. Whether the person desires the services;
10. A statement of any follow-up investigation or monitoring of the services that may be needed; and
11. Other relevant information.

C. 1. The Department's investigation shall include a visit to the home or other place of residence of the person who is the subject of the report, a private interview with such person, and consultation with persons who have knowledge of the circumstances. If, in the course of an investigation of this nature, the Department is denied entrance to the home or other place of residence of a person believed to be a vulnerable adult in need of protective

services, or is denied a private interview, or documentation, or access to records, or other information relating to such person as provided by paragraph 10 of subsection B of this section, the Department may petition the court for an order allowing entry or access.

2. The petition shall state the name and address of the person who is the subject of the report and shall allege specific facts sufficient to show that the circumstances of the person are in need of investigation.

3. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer.

4. The Department shall make all reasonable attempts to interview the caretaker or other persons alleged to be involved in the abuse, neglect or exploitation in order to enhance service provision and to prevent additional incidents of abuse, neglect or exploitation.

D. When a report is received pertaining to a vulnerable adult who has a legal guardian, a copy of the investigative report of the Department shall be filed with the court to which the guardian is accountable.

E. 1. In the case of a report pertaining to a vulnerable adult who is a resident of a nursing facility ~~or~~, residential care facility, assisted living facility or continuum of care facility, the Department shall immediately notify the State Department of Health of ~~such~~ the investigative report in writing, and shall forward to the State Department of Health a copy of the Department's final investigative report.

2. The Department of Human Services shall be deemed a party pursuant to the Administrative Procedures Act for the investigative reports filed by the Department with the State Department of Health regarding vulnerable adults who are residents of nursing facilities,

residential care facilities, assisted living facilities or continuum of care facilities.

- a. Within thirty (30) days of receipt of the final investigative report submitted by the Department of Human Services pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken as a result of the complaint including, but not limited to, results of any inspections, enforcement actions or actions which may be taken by the State Department of Health.
- b. Whenever the Department of Human Services believes that the conditions giving rise to a complaint by the Department alleging a serious threat to the health, safety or welfare of a resident of a nursing facility, residential care facility, assisted living facility or continuum of care facility have not been adequately addressed, the Department of Human Services may request the State Department of Health to hold a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

3. Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate remedial or other action pursuant to the provisions of the Nursing Home Care Act ~~and~~, the Residential Care Act and the Continuum of Care and Assisted Living Act.

~~2.~~ F. When a report is received pertaining to a vulnerable adult residing in a facility other than a home, where persons are employed to provide care and those employees have been named as persons responsible for the abuse, neglect or exploitation, the Department shall forward its findings to the owner or operator of the facility to prevent further incidents.

SECTION 9. AMENDATORY 56 O.S. 1991, Section 1005, as last amended by Section 1 of Enrolled House Bill No. 1908 of the 2nd Session of the 47th Oklahoma Legislature, is amended to read as follows:

Section 1005. A. It shall be unlawful and upon conviction thereof, shall be punishable as a misdemeanor for any person to willfully and knowingly:

1. Make or cause to be made a claim, knowing the claim to be false, in whole or in part, by commission or omission; ~~or~~

2. Make or cause to be made a statement or representation for use in obtaining or seeking to obtain authorization to provide a good or a service knowing the statement or representation to be false, in whole or in part, by commission or omission; ~~or~~

3. Make or cause to be made a statement or representation for use by another in obtaining a good or a service under the Oklahoma Medicaid Program, knowing the statement or representation to be false, in whole or in part, by commission or omission; ~~or~~

4. Make or cause to be made a statement or representation for use in qualifying as a provider of a good or a service under the Oklahoma Medicaid Program, knowing the statement or representation to be false, in whole or in part, by commission or omission; ~~or~~

5. Charge any recipient or person acting on behalf of a recipient, money or other consideration in addition to or in excess of rates of remuneration established under the Oklahoma Medicaid Program; ~~or~~

6. Solicit or accept a benefit, pecuniary benefit, or kickback in connection with goods or services paid or claimed by a provider to be payable by the Oklahoma Medicaid Program; or

7. Having submitted a claim for or received payment for a good or a service under the Oklahoma Medicaid Program, fail to maintain or destroy such records as required by law or the rules of the

Oklahoma Health Care Authority for a period of at least six (6) years following the date on which payment was received.

B. For the purposes of this section, a person shall be deemed to have made or caused to be made a claim, statement, or representation if the person:

1. Had the authority or responsibility to make the claim, statement, or representation, to supervise those who made the claim, statement, or representation, or to authorize the making of the claim, statement, or representation, whether by operation of law, business or professional practice, or office procedure; and

2. Exercised such authority or responsibility or failed to exercise such authority or responsibility and as a direct or indirect result, the false statement was made.

C. The provisions of this section shall not be construed to prohibit any payment, business arrangement or payment practice not prohibited by 42 U.S.C., Section 1320a-7b(b) or any regulations promulgated pursuant thereto or to prohibit any payment, business arrangement or payment practice not prohibited by Section 1-742 of Title 63 of the Oklahoma Statutes.

D. For the purposes of this section, a person shall be deemed to have known that a claim, statement, or representation was false if the person knew, or by virtue of the person's position, authority or responsibility, had reason to know, of the falsity of the claim, statement or representation.

E. Any employee of the State Department of Health, the Department of Human Services or the Oklahoma Health Care Authority who knowingly or willfully fails to promptly report a violation of the Oklahoma Medicaid Program, subject to the provisions of this section, to the chief administrative officer of such agency or the State Attorney General shall, upon conviction thereof, be guilty of a misdemeanor.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-105b of Title 63, unless there is created a duplication in numbering, reads as follows:

Any employee of the State Department of Health who willfully or knowingly accepts anything of value from any person, firm, association, partnership or corporation for securing or soliciting residents for any facility subject to the Nursing Home Care Act, the Residential Care Act, the Continuum of Care and Assisted Living Act, or any other long-term care facility licensed by the Department, upon conviction thereof, shall be guilty of a felony.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-105c of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall:

1. Ensure that no employee of the Department whose responsibilities relate in any manner to long-term care is subject to a conflict of interest which would impair the ability of the person to carry out his or her employment duties in an impartial manner including, but not limited to:

- a. ownership or investment interest by the employee or a member of the employee's immediate family represented by equity, debt or other financial relationship in a long-term care facility or a long-term care service,
- b. employment by, under contract to, or participation by the employee or a member of the employee's immediate family in the management of, a long-term care facility, except as provided in Section 1-1914.2 of Title 63 of the Oklahoma Statutes and with the approval of the State Commissioner of Health, or
- c. the receipt or the right of the employee or a member of the employee's immediate family to receive directly or indirectly remuneration, in cash or in kind, under

a compensation arrangement with an owner or operator of a long-term care facility; and

2. Establish and specify, in writing, mechanisms to identify and remove conflicts of interest referred to in this section including, but not limited to:

- a. the methods by which the Department will examine individuals and members of the individuals' immediate family members to identify the conflicts, and
- b. the actions that the Department will require the individuals and such family members to take to eliminate such conflicts.

B. For purposes of this section, the term "immediate family" means:

1. The spouse of the employee;
2. The parents of the spouse of the employee;
3. A child by birth or adoption;
4. A stepchild;
5. A parent;
6. A grandparent;
7. A grandchild;
8. A sibling of the employee;
9. The spouse of any immediate family member specified in this

subsection; or

10. Such other relationship deemed necessary by the State Board of Health as determined by rule.

SECTION 12. AMENDATORY 63 O.S. 1991, Section 1-851.1, as last amended by Section 9, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1999, Section 1-851.1), is amended to read as follows:

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

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

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

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

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

- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by this act,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the ~~three (3) years immediately preceding the filing of the application for civil actions~~ and five (5) years immediately preceding the filing of the application ~~for criminal actions~~. Such actions shall include,

without limitation, any permit denial or any sanction imposed by a state regulatory authority or the federal Health Care Financing Administration, and

- e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

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

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

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

SECTION 13. AMENDATORY 63 O.S. 1991, Section 1-853, as last amended by Section 2, Chapter 328, O.S.L. 1998 (63 O.S. Supp. 1999, Section 1-853), is amended to read as follows:

Section 1-853. A. Except as provided in subsections B, C, D and E of this section, no certificate of need shall be issued by the

State Department of Health unless after investigation the State Commissioner of Health makes the following findings:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality;

4. The applicant is or employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds:

a. that the facility or service is not needed, or

b. that the applicant is found to be out of compliance with the provisions of subsection F of this section.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

C. No certificate of need shall be issued for the acquisition of an existing facility unless after investigation the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and

2. Is found to be in compliance with the provisions of subsection F of this section.

D. 1. Any application seeking a certificate of need for the construction of a long-term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility shall be granted a certificate of need if the application meets the following criteria:

- a. the project involves no increase in licensed beds,
- b. the facility shall be constructed no farther than three (3) miles from the facility it is replacing or relocating, and
- c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services.

2. The provisions of subsection F of this section shall not apply to replaced or relocated facilities.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing nursing or specialized facility currently licensed under Section 1-1906 of this title shall be approved by the Commissioner if the application meets the following criteria:

1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater;

2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00);

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the application;

4. If the facility previously has not increased beds pursuant to this subsection. The provisions of this paragraph shall apply only to a facility that was constructed to replace or relocate part of the facility pursuant to subsection D of this section; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

F. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding ~~twenty-four (24)~~ sixty (60) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding ~~twenty-four (24)~~ sixty (60) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by rule, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities, ~~or~~
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension,

receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Health Care Financing Administration, or

d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding ~~twenty-four (24)~~ sixty (60) months, an administrative penalty above the level of a deficiency, other than any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest.

G. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

H. When the Commissioner makes a determination to issue or deny a certificate of need, the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The State Board of Health shall adopt rules concerning the time in which a decision must be made on an application.

I. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) days of the Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written

findings shall be issued within forty-five (45) days of such hearing.

J. The Commissioner shall refuse to issue a certificate of need for an increase in licensed bed capacity of any facility that was replaced or relocated in part pursuant to subsection D of this section unless all of that facility is subsequently replaced or relocated. The applicability of this subsection shall not be affected by any change in ownership, operation or management of the facility.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-1904, is amended to read as follows:

Section 1-1904. A. The State Department of Health shall establish a comprehensive system of licensure and certification for facilities in accordance with ~~this act~~ the Nursing Home Care Act for the purposes of:

1. Protecting the health, welfare and safety of residents; ~~and~~
2. Assuring the accountability for reimbursed care provided in certified facilities participating in a federal or state health program as provided by or through the Department of Human Services; and
3. Assuring consistent application of uniform inspection protocols.

B. The licensing and certification procedures and standards provided in this act, or by rules ~~and regulations~~ of the ~~Department~~ State Board of Health, shall be no less than provided in statute and rules currently governing nursing homes.

C. It shall be unlawful and upon conviction thereof, punishable as a misdemeanor for any person to operate or open a facility ~~as defined in this act~~ unless such operation shall have been approved and regularly licensed as hereinafter provided.

D. Before an initial license shall be issued ~~under this act~~ pursuant to the Nursing Home Care Act to operate a facility the

following shall be provided before an application is approved and a license issued:

1. An application shall be under oath and shall contain, at a minimum, the following information:

- a. the name and address of the applicant, if an individual, and that ~~he~~ the applicant is not less than twenty-one (21) years of age, of reputable and responsible character, and in sound physical and mental health; and if a firm, partnership, or association, of every member thereof; and in the case of 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 maintenance, personal care, specialized or nursing facility services are to be provided, and
- f. a projected staffing pattern for providing patient care;

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;

3. The Commissioner shall determine that the administrator of a facility other than a residential care home is the holder of a

current license as a Nursing Home Administrator issued by the State Board of Nursing Homes; and

4. That the individual 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 a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department 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 a facility, the Department may also consider the ~~following factors;~~ the applicant's record of suspensions, receivership, administrative penalties, or noncompliance ~~of~~ with lawful orders of this Department or of other departments of other states with similar responsibilities.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-1911, as amended by Section 11, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Section 1-1911), is amended to read as follows:

Section 1-1911. A. 1. Every building, institution, or establishment for which a license has been issued shall be periodically inspected by a duly appointed representative of the State ~~Commissioner~~ Department of Health, pursuant to rules ~~adopted~~ promulgated by the State Board of Health with the advice and counsel of the Long-Term Care Facility Advisory Board, created in Section 1-1923 of this title.

2. Inspection reports shall be prepared on forms prescribed by the Commissioner with the advice and counsel of the Advisory Board.

B. 1. The ~~State~~ Department ~~of Health~~, whenever it deems necessary, shall inspect, survey, and evaluate every facility to determine compliance with applicable licensure and certification requirements and standards. All inspections of facilities shall be

unannounced. The Department may have as many unannounced inspections as it deems necessary.

2. Any employee of the State Department of Health who discloses to any unauthorized person, prior to an inspection, information regarding an unannounced nursing home inspection required pursuant to the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor. In addition, such action shall be construed to be a misuse of office and punishable as a violation of rules promulgated by the Ethics Commission.

3. a. The Department may periodically visit a facility for the purpose of consultation and may notify the facility in advance of such a visit. An inspection, survey, or evaluation, other than an inspection of financial records or a consultation visit, shall be conducted without prior notice to the facility.

b. One person shall be invited by the Department from a statewide organization of the elderly ~~by the Department~~ to act as a citizen observer in ~~an unannounced inspection~~ inspections. The individual may be a state or local ombudsman as defined by the Aging Services Division of the Department of Human Services, acting pursuant to the provisions of the Older Americans Act of 1965, Public Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as amended.

c. The citizen observer shall ~~receive~~ be reimbursed for expenses ~~as provided for~~ in accordance with the provisions of the State Travel Reimbursement Act.

d. An employee of a state or unit of a local government agency, charged with inspecting, surveying, and evaluating facilities, who aids, abets, assists, conceals, or conspires with a facility administrator or employee in violation of the provisions of the

Nursing Home Care Act shall be guilty, upon conviction thereof, of a misdemeanor and shall be subject to dismissal from employment.

C. The Department shall hold open meetings, as part of its routine licensure survey, in each of the licensed facilities to advise and to facilitate communication and cooperation between facility personnel and the residents of facilities in their mutual efforts to improve patient care. Administrators, employees of the facility, residents, residents' relatives, friends, residents' representatives, and employees from appropriate state and federal agencies shall be encouraged to attend these meetings to contribute to this process.

D. 1. The Department shall require periodic reports and shall have access to books, records, and other documents maintained by the facility to the extent necessary to implement the provisions of the Nursing Home Care Act and the rules promulgated pursuant thereto.

2. Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect the facility in accordance with the provisions of the Nursing Home Care Act. Refusal to permit said entry or inspection, except for good cause, shall constitute grounds for remedial action or administrative penalty or both such action and penalty as provided in the Nursing Home Care Act.

E. The Department shall maintain a file on each facility in the state. All conditions and practices not in compliance with applicable standards shall be specifically stated. If a violation is corrected or is subject to an approved plan of correction, such action shall be contained in the file. Upon receiving a written request for a copy of the file documents, the Department shall send a copy of the document to any person making the written request. The Department may charge a reasonable fee for copying costs.

SECTION 16. AMENDATORY Section 14, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Section 1-1914.1), is amended to read as follows:

Section 1-1914.1 A. For violations of the Nursing Home Care Act, the rules promulgated ~~thereunder~~ thereto, or of Medicare/Medicaid certification regulations:

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a facility and may, after notice and opportunity for hearing, impose the remedy most likely to gain and ensure continued compliance with the Nursing Home Care Act, the rules promulgated ~~hereunder~~ thereto, or federal certification standards or both rules and standards. In the alternative or in addition to any remedial action, the State Commissioner of Health may direct the Oklahoma Health Care Authority to withhold vendor payments due to a facility under its programs until such time as the corrections are made; ~~and~~

2. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a facility, assess administrative penalties, or issue a conditional license; and

3. a. Pursuant to an investigation or inspection that reveals a willful violation of rules pertaining to minimum direct-care staffing requirements, the Commissioner shall notify the Oklahoma Health Care Authority and the Authority shall withhold as a penalty a minimum of twenty percent (20%) of the vendor payments due the facility under its programs for each day such violation continues.

b. The Commissioner shall impose an equivalent penalty amount under licensure standards for a facility that does not receive vendor payments under its program that is in willful violation of rules pertaining to minimum direct-care staffing requirements.

B. Remedial action as provided in subsection A of this section shall be based on current and past noncompliance or incomplete or partial compliance; repeated violations; or failure to substantially comply with the Nursing Home Care Act and rules promulgated thereto. In determining the most appropriate remedy, the Department shall consider at least the following:

1. The nature, circumstances and gravity of the violations;

2. The repetitive nature of the violations at the facility or others operated by the same or related entities;

3. The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and

4. Any showing of good faith in attempting to achieve continuing compliance with the provisions of the Nursing Home Care Act.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-1940, as amended by Section 19, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Section 1-1940), is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of ~~this act~~, the Nursing Home Care Act or ~~of the~~ rules promulgated by the ~~Department~~ State Board of Health, pursuant thereto, is hereby declared a public nuisance, inimical to the public welfare.

B. The State Commissioner of Health or the Department of Human Services, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, or the Attorney General may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

~~B.~~ C. 1. Any person with personal knowledge or substantial specific information who believes that ~~this act~~ the Nursing Home

Care Act, a rule promulgated ~~under this act~~ thereto, or a federal certification rule applying to a facility may have been violated may file a complaint.

2. The complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department; ~~provided that any.~~

3. Any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of ~~this act~~ the Nursing Home Care Act, shall be liable in a civil suit for any actual damages suffered by a facility for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

~~2.~~ 4. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

~~3.~~ ~~The Department shall promulgate rules to protect the identity of the complainant, provided that said person is a present resident or resident's representative or designated guardian or a present employee.~~

~~4.~~ 5. Upon receipt of a complaint pursuant to this subsection, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant ~~to the Nursing Home Care Act~~ thereto, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area. If the Department does not have jurisdiction over the complaint area, the complaint shall not be investigated by the Department and notice of the decision not to investigate shall be given to the complainant. The complaint shall be immediately referred to the appropriate agency having jurisdiction over the complaint area. A report summarizing the complaint investigation

shall be made in writing. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

~~5.~~ 6. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant, ~~and the~~. The complainant may direct the Department to send a copy of such findings to one other person. The notice of such findings shall include a copy of the written determination, the remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

D. 1. Upon receipt of a complaint submitted to the State Department of Health by the Department of Human Services which alleges a violation of the Nursing Home Care Act, any rule promulgated thereto, or federal certification rules, and which also alleges that such violation is a serious threat to the health, safety and welfare of a resident of a nursing facility, the State Department of Health shall take immediate action to remedy the violation based upon the complaint of the Department of Human Services.

2. The Department of Human Services shall be deemed a party pursuant to the Administrative Procedures Act for purposes of any complaint made by the Department of Human Services to the State Department of Health for violations of the Nursing Home Care Act, rules promulgated thereto or federal certification rules.

a. Within thirty (30) days of receipt of a final investigative report submitted by the Department of Human Services pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken pertaining to the complaint including, but not

limited to, any inspection or actions which may be taken by the State Department of Health.

b. Whenever the Department of Human Services believes that the conditions giving rise to a complaint alleging a serious threat to the health, safety and welfare of a resident of a nursing facility have not been adequately addressed, the Department of Human Services may request a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

~~6.~~ E. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

~~7.~~ F. The Department shall seek any remedial action provided under this act for violations documented during complaint investigations.

~~8.~~ The Department shall establish any additional rules necessary for the investigation of complaints as provided herein, and

G. The State Board of Health shall promulgate rules governing the receipt, investigation and resolution of complaints and reports of violations. The rules promulgated by the Board shall provide for the expeditious investigation and resolution of a complaint or report including, but not limited to:

1. An easily understood and readily accessible method of submitting complaints and reports regarding complaints;

2. Actions to be taken upon the receipt of a complaint or report of a complaint;

3. Establishing a priority for investigations of complaints. Specifically, the Department shall give higher priority to investigations of complaints which allege continuing violations or which threaten the health, safety or welfare of residents;

4. The timely investigation of the complaint or report of a complaint;

5. Written reports to the complainants or persons filing the complaint report;

6. Any necessary or appropriate remedial action as determined by the findings of the investigation;

7. The protection of the identity of the complainant, provided that the person is a current or past resident or resident's representative or designated guardian or a current or past employee of a facility;

8. Specific information to be included in investigative protocols which must include at a minimum an interview with:

a. the complainant,

b. the resident, if possible, and

c. any potential witness, collateral resource or affected resident; and

9. Any additional rules necessary for the timely and thorough investigation and resolution of complaints.

H. The Department is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are ~~being~~ properly executed.

SECTION 18. AMENDATORY 62 O.S. 1991, Section 203, as last amended by Section 2, Chapter 31, O.S.L. 1999 (62 O.S. Supp. 1999, Section 203), is amended to read as follows:

Section 203. A. Except as otherwise provided by subsection B of this section, all monies that may come into the State Treasury, pursuant to the provisions of Section 201 et seq. of this title, together with all amounts that may be received by the State Treasurer as investment income or as interest on average daily bank balances, including investment income or interest on deposits from funds deposited to the credit of the Constitutional Reserve Fund

created pursuant to Section 23 of Article 10 of the Oklahoma Constitution, shall be apportioned and credited to the General Revenue Fund for the current year.

B. The provisions of subsection A of this section shall not apply to:

1. Interest received on deposits from funds under the control of the Commissioners of the Land Office;

2. Funds in the Department of Human Services Federal Disallowance Fund;

3. Interest received on deposits from funds under the control of the Santa Claus Commission;

4. The Risk Management Revolving Fund;

5. Investment income and interest received from funds in the Quartz Mountain Revolving Fund from insurance claims;

6. The Drinking Water Treatment Revolving Loan Account and the Drinking Water Treatment Loan Administrative Fund;

7. The Wastewater Facility Construction Revolving Loan Account and Wastewater Facility Construction Revolving Loan Administrative Fund; ~~and~~

8. The State Infrastructure Bank Revolving Fund; and

9. The Nursing Facility Quality of Care Fund.

SECTION 19. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

A. The State Department of Health shall contract with the State Board of Education for the purpose of providing funding to the Board of Education in the amount of Five Hundred Thousand Dollars (\$500,000.00) from the Tobacco Prevention and Cessation Revolving Fund created in Section 20 of this act for the purpose of allowing school districts to employ school nurses. In addition to other responsibilities for school nurses required by the school districts, school nurses shall also implement the provisions of paragraph 2 of subsection C of Section 1 of this act in public schools.

B. The State Board of Education shall promulgate rules establishing criteria and a process for the distribution of funding, as provided for in subsection A of this section, to school districts to employ school nurses. The rules shall require school nurses to implement the provisions of paragraph 2 of subsection C of Section 1 of this act in public schools. Funding shall be distributed to school districts no later than January 1, 2001. The criteria established by the Board shall give priority to school districts which do not currently have a full-time school nurse and to school districts with indicators of relatively higher than normal tobacco consumption among the student population.

C. The State Department of Health shall provide for the training and for the provision of materials to school nurses necessary to develop and implement the comprehensive evidence-based tobacco prevention and cessation program established by paragraph 2 of subsection C of Section 1 of this act in public school districts.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 105d of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a revolving fund for the State Department of Health, to be designated the "Tobacco Prevention and Cessation Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies deposited to the credit of the fund by law. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the State Department of Health for purposes of paragraph 2 of subsection C of Section 1 of this act. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 21. AMENDATORY Section 1, Chapter 202, O.S.L. 1996, as renumbered by Section 1, Chapter 108, O.S.L. 1999 (12 O.S. Supp. 1999, Section 2611.2), is amended to read as follows:

Section 2611.2 A. It is the intent of the Legislature in enacting this section to provide the court with discretion to employ unusual court procedures to protect the rights of children and incapacitated persons, while ensuring the rights of a criminal defendant and the integrity of the judicial process.

B. As used in this section:

1. "Minor witness" means any child witness in a criminal proceeding that is under ~~sixteen (16)~~ eighteen (18) years of age; and

2. "Support person" means a parent, other relative or a next friend chosen by the ~~minor~~ witness to accompany the ~~minor~~ witness to court proceedings;

3. "Incapacitated witness" means any witness in a criminal proceeding that is a person who is defined as an incapacitated person or vulnerable adult as such terms are defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes; and

4. "Witness" means minor witness and incapacitated witness.

C. 1. In any criminal proceeding, the court, upon motion of counsel, shall conduct a hearing to determine whether the testimony of a ~~minor~~ witness shall be closed to the public. In making the decision, the court shall consider:

- a. the nature and seriousness of the offense,
- b. the age of the ~~minor~~ witness,
- c. the relationship, if any, of the ~~minor~~ witness to the defendant,
- d. the extent to which the size of the community would preclude the anonymity of the ~~minor~~ witness,

- e. the likelihood of public disgrace of the ~~minor~~ witness,
- f. whether there is an overriding public interest in having the testimony of the minor or incapacitated person presented in open court,
- g. whether the district attorney has demonstrated a substantial risk that the identity of the ~~minor~~ witness would be disclosed to the public during the proceeding,
- h. whether the district attorney has demonstrated substantial probability that the disclosure of the identity of the ~~minor~~ witness would cause serious harm to the ~~minor~~ witness,
- i. whether the ~~minor~~ witness has disclosed information concerning the case to the public in a manner which would preclude anonymity of the ~~minor~~ witness, and
- j. other factors the court may deem necessary to protect the interests of justice.

2. The court shall enter an order stating its findings. If the court determines that the testimony of the ~~minor~~ witness ~~shall~~ is to be closed to the public, the court shall in its order establish who ~~can~~ will or will not be present during the testimony of the ~~minor~~ witness, which ~~shall~~ may include:

- a. the defendant ~~and~~ and/or the defense counsel,
- b. any officer having custody of the defendant,
- c. the district attorney or designee and a representative for the state,
- d. court personnel as necessary to conduct the hearing, including but not limited to the judge, the court clerk, the bailiff, and the court reporter,
- e. jury members, if appropriate, and

f. the ~~minor~~ witness and a support person for the ~~minor~~ witness.

D. If the court determines it to be appropriate, the testimony of the ~~minor~~ witness may be taken in chambers or in some other comfortable place other than the courtroom. When the testimony of a ~~minor~~ witness is to be taken in a courtroom, the ~~minor~~ witness and support person shall be brought into the court chambers prior to the taking of the testimony to meet for a reasonable period of time with the judge, the prosecutor and the defense attorney. This meeting shall be for the purpose of explaining the court procedures to the ~~minor~~ witness and to allow the attorneys an opportunity to establish a rapport with the ~~minor~~ witness to facilitate later questioning. No one shall discuss the defendant or any facts of the case with the ~~minor~~ witness during this meeting.

E. A ~~minor~~ witness shall have the right to be accompanied by a support person while giving testimony at any criminal proceeding. The support person shall not discuss the testimony of the ~~minor~~ witness with any other witnesses and shall be admonished by the court to not sway, prompt or influence the testimony of the ~~minor~~ witness in any way.

SECTION 22. AMENDATORY 12 O.S. 1991, Section 2803.1, as last amended by Section 1, Chapter 24, O.S.L. 1998 (12 O.S. Supp. 1999, Section 2803.1), is amended to read as follows:

Section 2803.1 A. A statement made by a child who has not attained thirteen (13) years of age or a person who is an incapacitated person as such term is defined by the provisions of Section 10-103 of Title 43A of the Oklahoma Statutes, which describes any act of physical abuse against the child or incapacitated person or any act of sexual contact performed with or on the child or incapacitated person by another, is admissible in criminal and juvenile proceedings in the courts in this state if:

1. The court finds, in a hearing conducted outside the presence of the jury, that the time, content and totality of circumstances surrounding the taking of the statement provide sufficient indicia of reliability so as to render it inherently trustworthy. In determining such trustworthiness, the court may consider, among other things, the following factors: the spontaneity and consistent repetition of the statement, the mental state of the declarant, whether the terminology used is unexpected of a child of similar age or of an incapacitated person, and whether a lack of motive to fabricate exists; and

2. The child or incapacitated person either:

- a. testifies or is available to testify at the proceedings or pursuant to the provisions of Section 753 et seq. of Title 22 of the Oklahoma Statutes, or
- b. is unavailable as defined in Section 2804 of this title as a witness. When the child or incapacitated person is unavailable, such statement may be admitted only if there is corroborative evidence of the act.

B. A statement may not be admitted under this section unless the proponent of the statement makes known to the adverse party ~~his~~ an intention to offer the statement and the particulars of the statement at least ten (10) days in advance of the proceedings to provide the adverse party with an opportunity to prepare to answer the statement.

SECTION 23. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman of the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home

Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a freestanding hospice or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;
2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with state criminal history record checks; and
3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

SECTION 24. AMENDATORY 43A O.S. 1991, Section 10-104, as last amended by Section 4, Chapter 298, O.S.L. 1998 (43A O.S. Supp. 1999, Section 10-104), is amended to read as follows:

Section 10-104. A. Any person having reasonable cause to believe that a vulnerable adult is suffering from abuse, neglect, or exploitation shall make a report to either the Department of Human Services, the office of the district attorney in the county in which the suspected abuse, neglect, or exploitation occurred or the local

municipal police department or sheriff's department as soon as ~~such~~
the person is aware of the situation. If a report is made to the
Department of Human Services, the county office, after investigating
the report, shall forward its findings to the office of the district
attorney in the county in which the suspected abuse, neglect, or
exploitation occurred. Persons required to make reports pursuant to
this section shall include, but not be limited to:

1. Physicians;
2. Operators of emergency response vehicles and other medical
professionals;
3. Social workers and ~~other~~ mental health professionals;
4. Law enforcement officials;
5. Staff of domestic violence programs; and
6. Long-term care facility personnel.

B. The report shall contain the name and address of the
vulnerable adult, the name and address of the caretaker, if any, and
a description of the ~~situation~~ current location and current
condition of the vulnerable adult and of the situation which may
constitute abuse, neglect or exploitation of the vulnerable adult.

C. Any person who knowingly and willfully fails to promptly
report any abuse, neglect, or exploitation as required by the
provisions of subsection A of this section, upon conviction, shall
be guilty of a misdemeanor punishable by imprisonment in the county
jail for a term not exceeding one (1) year or by a fine of not more
than One Thousand Dollars (\$1,000.00), or by both such fine and
imprisonment.

D. 1. Any person participating in good faith and exercising
due care in the making of a report pursuant to the provisions of
this section shall have immunity from any civil or criminal
liability that might otherwise be incurred or imposed. Any such
participant shall have the same immunity with respect to
participation in any judicial proceeding resulting from such report.

2. The same immunity from any civil or criminal liability shall also be extended to previous employers of a person employed to be responsible for the care of a vulnerable adult, who in good faith report to new employers or prospective employers of such caretaker any misconduct of the caretaker including, but not limited to, abuse, neglect or exploitation of a vulnerable adult, whether confirmed or not.

E. Any person who willfully or recklessly makes a false report ~~or a report without a reasonable basis in fact for such a report pursuant to the provisions of this section~~ shall be civilly liable for any actual damages suffered by the person ~~or persons~~ being reported and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury.

F. Any state or county medical examiner or physician who has reasonable cause to suspect that the death of any vulnerable adult may be the result of abuse or neglect as defined by Section 10-103 of this title shall make a report to the district attorney of the county in which the death occurred. The report shall include the name of the person making the report, the name of the deceased person, the facts or other evidence supporting such suspicion, and any other information that may be of assistance to the district attorney in conducting an investigation into the matter.

G. No employer shall terminate the employment, prevent or impair the practice or occupation of or impose any other sanction on any employee solely for the reason that the employee made or caused to be made a report or cooperated with an investigation pursuant to the Protective Services for Vulnerable Adults Act. A court, in addition to other damages and remedies, may assess reasonable attorney fees against an employer who has been found to have violated the provisions of this subsection.

SECTION 25. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-894 of Title 63, unless there is created a duplication in numbering, reads as follows:

Upon repeal of a United States Congress or federal Health Care Financing Administration requirement to assess a quality of care fee, upon all licensed nursing home beds, such fee shall only be assessed upon nursing facilities that have a Medicaid contract with the state.

SECTION 26. This act shall become effective July 1, 2000.

SECTION 27. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

47-2-9639

KSM

6/11/15