

1 STATE OF OKLAHOMA

2 2nd Session of the 47th Legislature (2000)

3 COMMITTEE SUBSTITUTE
4 FOR
5 SENATE BILL 1576

By: Cain

6
7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending
9 63 O.S. 1991, Sections 1-822, 1-823, 1-824, 1-826, 1-
10 829, 1-830 and 1-831, which relate to the Residential
11 Care Act; clarifying that issuance of a license
12 should not constitute a waiver of enforcement
13 actions; updating language; removing probationary
14 licenses; deleting certain procedures relating
15 thereto; providing for issuance of licenses and
16 procedures thereto; authorizing certain extensions;
17 deleting certain powers and duties; removing certain
18 requirements for inspections by the State Department
19 of Health; authorizing certain inspections; making
20 inspections unannounced; authorizing certain visits;
21 making certain actions unlawful; providing penalty;
22 modifying notice and hearing provisions; amending 63
23 O.S. 1991, Sections 1-1905, as last amended by
24 Section 9, Chapter 230, O.S.L. 1995, 1-1912, as
25 amended by Section 12, Chapter 230, O.S.L. 1995,
26 Section 15, Chapter 230, O.S.L. 1995 and 1-1923, as
27 last amended by Section 1, Chapter 42, O.S.L. 1998
28 (63 O.S. Supp. 1999, Sections 1-1905, 1-1912, 1-
29 1914.2 and 1-1923), which relate to the Nursing Home
30 Care Act and the Long Term Care Facility Advisory
31 Board; prohibiting issuance of effective dates of
32 certain initial licenses or renewals prior to
application dates; providing for emergency actions
and providing process, hearing and notice; defining
terms; providing for certain releases; adding to
Board membership and providing terms; modifying
duties of the Advisory Board; repealing 63 O.S. 1991,
Section 1-828 and Section 7, Chapter 223, O.S.L. 1997
(63 O.S. Supp. 1999, Section 1-890.7), which relate
to fire safety inspections and the Continuum of Care
and Assisted Living Standards Council; providing an
effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-822, is
amended to read as follows:

Section 1-822. A. An application for a license, or renewal
thereof, to establish or operate a residential care home shall be

1 accompanied by a fee of Fifty Dollars (\$50.00). ~~Said~~ The fee shall
2 not be refunded. Except as provided for in Section 1-824 of this
3 title, a license shall expire twenty-four (24) months from the date
4 of issuance, unless sooner revoked, and may be renewed biannually by
5 the State Department of Health pursuant to the provisions of the
6 Residential Care Act. All licenses shall be on a form prescribed by
7 the State Commissioner of Health, and shall include, but not be
8 limited to, the maximum bed capacity for which the license is
9 granted, the date the license was issued, and the expiration date of
10 the license. The provisions of the license shall require that the
11 license shall:

12 1. Not be transferable or assignable except as authorized by
13 the provisions of the Residential Care Act; and

14 2. Be posted in a conspicuous place on the licensed premises;
15 and

16 3. Be issued only for the premises named in the application,
17 ~~and~~ may be renewed for twenty-four-month periods upon application,
18 ~~inspection,~~ and payment of the license fee, as required by the
19 provisions of the Residential Care Act.

20 B. An application shall be under oath and shall contain the
21 following information:

22 1. The name and address of the owner of the home. If the owner
23 is a firm or partnership, the name and address of each member
24 thereof shall be included in the application. If the owner is a
25 corporation, the name and address of the corporation and the name
26 and address of each officer and registered agent of the corporation
27 shall be included in the application; and

28 2. The name and address of the applicant if the applicant is
29 not the owner and is acting as agent for the owner; and

30 3. The name and location of the home for which a license is
31 sought; and

32 4. The name of the administrator of the home; and

1 5. The number and type of residents for whom services are to be
2 provided; and

3 6. The staffing pattern for providing resident care. In the
4 case of an application for an initial license, the staffing pattern
5 shown may be the projected staffing pattern.

6 C. Each initial application shall be accompanied by a statement
7 from the unit of local government having zoning jurisdiction over
8 the location of the home stating that the location is not in
9 violation of a zoning ordinance.

10 D. 1. An applicant shall be twenty-one (21) years of age or
11 older and of reputable and responsible character. In addition, the
12 applicant shall have appropriate business or professional
13 experience.

14 2. No person who has been convicted of a felony in connection
15 with the management or operation of a home, or facility as defined
16 in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title or
17 in the care and treatment of the residents of a home, or facility as
18 defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this
19 title shall be eligible to be licensed. If the applicant is a firm,
20 partnership, or corporation, the applicant shall not be eligible to
21 be licensed if any member of the firm or partnership or any officer
22 or major stockholder of the corporation has been convicted of a
23 felony in connection with the operation or management of a home, or
24 facility as defined in Section 1-1902 of ~~Title 63 of the Oklahoma~~
25 ~~Statutes~~ this title or the care and treatment of the residents of a
26 home, or facility as defined in Section 1-1902 of ~~Title 63 of the~~
27 ~~Oklahoma Statutes~~ this title.

28 E. 1. The application for a license or renewal of a license
29 shall be accompanied by a statement of ownership which shall include
30 the following:

31 a. The name, address, telephone number, occupation or
32 business activity, business address, and business

1 telephone number of the owner of the home and of every
2 person who owns the building in which the home is
3 located. If the owner is a partnership or
4 corporation, the name and address of each partner and
5 stockholder with an ownership interest of five percent
6 (5%) or more shall be included in the statement; and

7 b. The name and address of any other home in which the
8 owner has a full or partial financial interest or, if
9 the owner is a partnership or corporation, any other
10 home in which the partnership or corporation has a
11 full or partial financial interest. The statement
12 shall indicate whether or not any other home wherein a
13 full or partial financial interest is held would, if
14 located in this state, be required to be licensed.

15 2. The applicant shall agree in writing, prior to the issuance
16 of a license, to notify the Department if there is any change in the
17 information required to be included in the statement of ownership
18 within six (6) months of such change. The information contained in
19 the statement of ownership shall be public information and shall be
20 available upon request from the Department.

21 F. Upon application of a licensee, a license may be modified
22 in accordance with the provisions of the Residential Care Act. Such
23 application for modification of a license shall be accompanied by a
24 fee of Twenty Dollars (\$20.00) and shall be submitted in such form
25 and manner as required by the Department.

26 G. Upon payment of the required application fees, the
27 Commissioner shall issue and renew licenses for the operation of
28 homes which were found to comply with the provisions of the
29 Residential Care Act and the ~~standards and rules and regulations~~ of
30 the Board promulgated pursuant to the provisions of the Residential
31 Care Act.

1 H. ~~All~~ Each residential care ~~homes~~ home shall be required to
2 have or employ an administrator for the home.

3 I. The issuance or renewal of a license after a notice of a
4 violation has been sent shall not constitute a waiver by the State
5 Department of Health of its power to rely on the violation as the
6 basis for subsequent license revocation or other enforcement action
7 arising out of the notice of violation pursuant to the provisions of
8 the Residential Care Act.

9 SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-823, is
10 amended to read as follows:

11 Section 1-823. Whenever ownership of a residential care home is
12 transferred from the person named in the application to another
13 person who does not have a current license for the home, the
14 transferee must obtain ~~a probationary~~ an initial license as provided
15 by the provisions of Section 1-824 of this title.

16 1. The transferee shall notify the State Department of Health
17 of the transfer and apply for a license no less than thirty (30)
18 days prior to final transfer.

19 2. The transferor shall notify the Department of the transfer
20 no less than thirty (30) days prior to final transfer and shall
21 remain responsible for the operation of the home until such time as
22 ~~a probationary~~ an initial license is issued to the transferee. The
23 transferor shall remain liable for all penalties assessed which are
24 imposed for violations occurring prior to transfer of ownership.

25 SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-824, is
26 amended to read as follows:

27 Section 1-824. ~~If the applicant has not been previously~~
28 ~~licensed or if the~~ For any new ~~home is not in operation at the time~~
29 ~~application is made or for any home which has undergone a transfer~~
30 of ownership or operation, the State Department of Health shall
31 issue ~~a probationary~~ only an initial license. ~~A probationary~~
32 ~~license shall be valid for one hundred twenty (120) days unless~~

1 ~~sooner suspended or revoked pursuant to the provisions of the~~
2 ~~Residential Care Act.~~

3 ~~1. Prior to the issuance of a probationary license, the~~
4 ~~Department shall:~~

5 ~~a. ascertain whether or not the applicant is qualified to~~
6 ~~be licensed pursuant to the provisions of the~~
7 ~~Residential Care Act; and~~

8 ~~b. inspect the home and inform the applicant of any~~
9 ~~conditions which require correction prior to the~~
10 ~~issuance of a license. If the home is a new home the~~
11 ~~Department shall also inform the applicant of any~~
12 ~~condition which requires correction prior to the~~
13 ~~acceptance of residents into the home. If the home is~~
14 ~~an existing home whose ownership is being transferred,~~
15 ~~the probationary license issued to the transferee, in~~
16 ~~addition to any corrections required as a result of the~~
17 ~~inspection, shall be subject to any plan of correction~~
18 ~~submitted by the previous owner and approved by the~~
19 ~~Department.~~

20 ~~2. Within thirty (30) days prior to the termination of a~~
21 ~~probationary license, the Department shall completely inspect the~~
22 ~~home and, if the home meets the applicable requirements for~~
23 ~~licensure, shall issue a license pursuant to the provisions of the~~
24 ~~Residential Care Act. If at the end of said extension of the~~
25 ~~probationary license, the home is not in substantial compliance with~~
26 ~~the provisions of the Residential Care Act and with the standards~~
27 ~~and requirements established by the Department pursuant to the~~
28 ~~provisions of the Residential Care Act, the license shall be denied~~
29 ~~and the Department shall take such action as necessary and as~~
30 ~~authorized pursuant to the provisions of the Residential Care Act~~
31 ~~for the protection of the health, safety, and welfare of the~~
32 ~~residents of the home. An initial license shall be valid for one~~

1 hundred eighty (180) days unless sooner suspended or revoked under
2 this act. Prior to the termination of an initial license, the
3 Department shall inspect the home fully and completely and, if the
4 home meets the applicable requirements for licensure, shall issue a
5 renewal license pursuant to the provisions of the Residential Care
6 Act. If the Department finds that the home does not meet the
7 requirements for licensure but has made substantial progress toward
8 meeting those requirements, the initial license may be extended once
9 for a period not to exceed one hundred twenty (120) days from the
10 expiration date of the initial license.

11 SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-826, is
12 amended to read as follows:

13 Section 1-826. After notice and hearing ~~pursuant to the~~
14 ~~provisions of Section 1-830 of this title,~~ the State Department of
15 Health may:

16 1. Deny a license to an applicant who does not meet the
17 requirements for licensure pursuant to the provisions of the
18 Residential Care Act; ~~or~~

19 2. Refuse to renew, suspend, or revoke a license to a licensee
20 or home which is not in compliance with the provisions of the
21 Residential Care Act or with the standards, or rules, ~~or regulations~~
22 of the Board promulgated pursuant to the provisions of the
23 Residential Care Act; ~~or~~

24 3. Deny, refuse to renew, suspend, or revoke a license to an
25 applicant, licensee, or home which has a history of noncompliance or
26 incomplete or partial compliance with the provisions of the
27 Residential Care Act or the standards, or rules, ~~or regulations~~ of
28 the Board issued pursuant to the provisions of the Residential Care
29 Act or other satisfactory evidence which demonstrates that the
30 applicant or licensee is unlikely to manage or operate a home or to
31 provide care or treatment to the residents of a home in a manner
32 which warrants public trust; ~~or~~

1 4. Deny, refuse to renew, suspend, or revoke a license to an
2 applicant or licensee who has insufficient financial or other
3 resources to the extent that the applicant or licensee is incapable
4 of assuring or providing adequate care or treatment to the residents
5 of the home; ~~or~~

6 5. Deny, refuse to renew, suspend, or revoke a license to an
7 applicant or licensee who has been convicted of a misdemeanor or
8 felony in connection with the management or operation of a home, or
9 facility as defined in Section 1-1902 of Title 63 of the Oklahoma
10 Statutes or the care or treatment of a resident of the home, or
11 facility as defined in Section 1-1902 of Title 63 of the Oklahoma
12 Statutes; ~~or~~

13 6. Deny, refuse to renew, suspend, or revoke a license if an
14 administrator or operator of a home has been convicted of a felony
15 in connection with the management or operation of a home, or
16 facility as defined in Section 1-1902 of Title 63 of the Oklahoma
17 Statutes or care or treatment of a resident of the home, or facility
18 as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;
19 ~~or~~

20 7. Deny, refuse to renew, suspend, or revoke a license to an
21 applicant or licensee who has permitted, aided, or abetted the
22 commission of any illegal act in connection with the management or
23 operation of a home or the care or treatment of a resident of a
24 home; or

25 ~~8. Refuse to renew a license if at the time application is made~~
26 ~~for the renewal of the license, the licensee or home is subject to a~~
27 ~~plan of correction. Said license may be renewed at such time the~~
28 ~~required corrections are completed in the manner and time specified~~
29 ~~in the plan of corrections; or~~

30 ~~9.~~ Revoke a license if the licensee has failed to correct
31 conditions as required in a plan of ~~corrections~~ correction pursuant
32 to the provisions of Section 1-831 of this title.

1 SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-829, is
2 amended to read as follows:

3 Section 1-829. A. Every home for which a license has been
4 issued shall be periodically inspected by a duly appointed
5 representative of the State Department of Health pursuant to rules
6 ~~and regulations adopted~~ promulgated by the State Board of Health
7 with the advice and counsel of the Long-Term Care Facility Advisory
8 Board. Inspection reports shall be prepared on forms prescribed by
9 the Department with the advice and counsel of the Advisory Board.

10 B. ~~The Department shall at least three times a year and~~
11 ~~whenever it deems necessary inspect, survey, and evaluate each home~~
12 ~~to determine compliance with applicable licensure and certification~~
13 ~~requirements and standards.~~

14 ~~1. An inspection shall occur within one hundred twenty (120)~~
15 ~~days prior to license renewal.~~

16 ~~2. Any inspection, investigation, survey, or evaluation may be~~
17 ~~conducted without prior notice to the home. At least one inspection~~
18 ~~per home shall be unannounced. Any licensee or applicant for a~~
19 ~~license shall be deemed to have given consent to any duly authorized~~
20 ~~employee or agent of the Department to enter and inspect the home in~~
21 ~~accordance with the provisions of the Residential Care Act, Section~~
22 ~~1-820 et seq. of this title. Refusal to permit such entry or~~
23 ~~inspection may constitute grounds for the denial, nonrenewal,~~
24 ~~suspension, or revocation of a license.~~

25 ~~One person shall be invited from a statewide organization of the~~
26 ~~elderly by the Department to act as a citizen observer in any~~
27 ~~inspection. Such person shall receive expenses as provided in the~~
28 ~~State Travel Reimbursement Act, Section 500.1 et seq. of Title 74 of~~
29 ~~the Oklahoma Statutes.~~

30 1. The Department, whenever it deems necessary, shall inspect,
31 survey and evaluate every home to determine compliance with
32 applicable licensure and certification requirements and standards.

1 2. All inspections of homes shall be unannounced. The
2 Department may have as many unannounced inspections as it deems
3 necessary. The Department may periodically visit a home for the
4 purpose of consultation and may notify the home in advance of such a
5 visit. An inspection, survey or evaluation, other than an
6 inspection of financial records or a consultation visit, shall be
7 conducted without prior notice to the home.

8 3. One person from a statewide organization representative of
9 the elderly shall be invited by the Department to act as a citizen
10 observer in an unannounced inspection. The individual may be a
11 state or local ombudsman as defined by the Aging Services Division
12 of the Department of Human Services, acting pursuant to the
13 provisions of the Older Americans Act of 1965, Public Law No. 89-73,
14 42 U.S.C.A., Section 3001 et seq., as amended. The citizen observer
15 shall receive reimbursement for travel expenses as provided for in
16 the State Travel Reimbursement Act.

17 4. An employee of a state or local unit of a government agency,
18 charged with inspecting, surveying and evaluating homes, who aids,
19 abets, assists, conceals or conspires with a home administrator or
20 employee in violation of the provisions of the Residential Care Act
21 shall be guilty of a misdemeanor and shall be subject to dismissal
22 from employment.

23 C. The Department shall maintain a log, updated at least
24 monthly and available for public inspection, which shall at a
25 minimum detail:

26 1. The name of the home and date of inspection, investigation,
27 survey or evaluation; and

28 2. Any deficiencies, lack of compliance or violation noted at
29 the inspection, investigation, survey or evaluation; and

30 3. The date a notice of violation, license denial, nonrenewal,
31 suspension or revocation was issued or other enforcement action
32 occurred; and

1 4. The date a plan of correction was submitted and the date
2 said plan was approved; and

3 5. The date corrections were completed, as verified by an
4 inspection; and

5 6. If the inspection or investigation was made pursuant to the
6 receipt of a complaint, the date such complaint was received and the
7 date the complainant was notified of the results of the inspection
8 or investigation.

9 D. The Department shall require periodic reports and shall have
10 access to books, records and other documents maintained by the home
11 to the extent necessary to implement the provisions of the
12 Residential Care Act and the rules promulgated by the Board pursuant
13 to the provisions of the Residential Care Act.

14 E. The Department shall make at least one annual report on each
15 home in the state. The report shall include a description of all
16 conditions and practices not in compliance with the Residential Care
17 Act or the standards, or rules, ~~and regulations~~ promulgated pursuant
18 ~~to the Residential Care Act~~ thereto within the last year and, ~~if~~
19 information pertaining to whether a violation ~~is~~ has been corrected,
20 or is subject to an approved plan of correction. The State
21 Department of Health shall send a copy of the report to any person
22 upon receiving a written request. The Department may charge a
23 reasonable fee to cover the cost of copying and mailing the report.

24 F. A state or local ombudsman as that term is defined by the
25 Special Unit on Aging within the Department of Human Services
26 pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et
27 seq., as amended, or case manager employed by the Department of
28 Mental Health and Substance Abuse Services or one of its contract
29 agencies is authorized to accompany and shall be notified by the
30 Department of any inspection conducted of any home licensed pursuant
31 to the provisions of the Residential Care Act. Any state or local
32 ombudsman is authorized to enter any home licensed pursuant to the

1 provisions of the Residential Care Act, communicate privately and
2 without unreasonable restriction with any resident of a home who
3 consents to such communication, to seek consent to communicate
4 privately and without restriction with any resident of a home, and
5 to observe all areas of a home that directly pertain to the care of
6 a resident of a home.

7 G. Following any inspection by the Department, pursuant to the
8 provisions of this section, all reports relating to the inspection
9 shall be filed in the county office of the Department of Human
10 Services in which the home is located and with the Department of
11 Mental Health and Substance Abuse Services.

12 SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-830, is
13 amended to read as follows:

14 Section 1-830. A. If upon inspection or investigation, or
15 whenever the State Department of Health determines that there are
16 reasonable grounds to believe that a home is in violation of the
17 Residential Care Act or of any standard, or rule, ~~or regulation~~
18 promulgated pursuant to the provisions of the Residential Care Act
19 which would have a direct impact upon one or more residents of the
20 home or of any order of the Department, the Department shall give
21 written notice to the alleged violator specifying the cause of
22 complaint. Such notice shall require that the matters complained of
23 be corrected immediately or that the alleged violator appear before
24 the Department at a time and place specified in the notice and
25 answer the charges. The notice shall be delivered to the alleged
26 violator in accordance with the provisions of subsection ~~E~~ D of this
27 section.

28 B. ~~The Department shall give the notice specified by the~~
29 ~~provisions of subsection A of this section within ten (10) days of~~
30 ~~an inspection or investigation of the home if the Department~~
31 ~~determines that the home is in violation of the Residential Care Act~~

32

1 ~~or the rules and regulations promulgated by the Board pursuant to~~
2 ~~the provisions of the Residential Care Act.~~

3 ~~E.~~ The Department shall afford the alleged violator an
4 opportunity for a fair hearing ~~within fifteen (15) days of receipt~~
5 ~~of notice provided by subsection A of this section~~ in accordance
6 with the provisions of subsection ~~F~~ E of this section. On the basis
7 of the evidence produced at the hearing, the Department shall make
8 findings of fact and conclusions of law and enter an order thereon.
9 The Department shall give written notice of such order to the
10 alleged violator and to such other persons as shall have appeared at
11 the hearing and made written request for notice of the order. If
12 the hearing is held before any person other than the Department,
13 such person shall transmit the record of the hearing together with
14 recommendations for findings of fact and conclusions of law to the
15 Department which shall thereupon enter its order. The Department
16 may enter its order on the basis of such record or, before issuing
17 its order, require additional hearings or further evidence to be
18 presented. The order of the Department shall become final and
19 binding on all parties unless appealed to the district court as
20 provided in Sections 317 through 325 of Title 75 of the Oklahoma
21 Statutes within thirty (30) days after notice has been sent to the
22 parties.

23 ~~D.~~ C. Whenever the Department finds that an emergency exists
24 requiring immediate action to protect the public health or welfare
25 of any resident of a home licensed pursuant to the provisions of the
26 Residential Care Act, the Department may without notice or hearing
27 issue an order stating the existence of such an emergency and
28 requiring that such action be taken as it deems necessary to meet
29 the emergency. Such order shall be effective immediately. Any
30 person to whom such an order is directed shall comply with ~~said~~ the
31 order immediately but on application to the Department shall be
32 afforded a hearing within ten (10) days of receipt of ~~said~~ the

1 notice. On the basis of such hearing, the Department shall continue
2 such order in effect, revoke it, or modify it. Any person aggrieved
3 by such order continued after the hearing provided for in this
4 subsection may appeal to the district court of the area affected
5 within thirty (30) days. Such appeal when docketed shall have
6 priority over all cases pending on ~~said~~ the docket, except criminal
7 cases. For the purposes of this subsection, the term "emergency"
8 shall mean a life-threatening situation.

9 ~~E.~~ D. Except as otherwise expressly provided by law, any
10 notice, order, or other instrument issued by or pursuant to
11 authority of the Department may be served on any person affected
12 thereby personally, by publication, or by mailing a copy of the
13 notice, order, or other instrument by registered mail directed to
14 the person affected at his last-known post office address as shown
15 by the files or records of the Department. Proof of service shall
16 be made as in the case of service of a summons or by publication in
17 a civil action or may be made by the affidavit of the person who did
18 the mailing. Such proof of service shall be filed in the office of
19 the Department.

20 Every certificate or affidavit of service made and filed as in
21 this section provided shall be prima facie evidence of the facts
22 therein stated. A certified copy thereof shall have like force and
23 effect.

24 ~~F.~~ E. The hearings authorized by this section may be conducted
25 by the Department. The Department may designate hearing officers
26 who shall have the power and authority to conduct such hearings in
27 the name of the Department at any time and place. Such hearings
28 shall be conducted in conformity with and records made thereof as
29 provided by the provisions of Sections 309 through 326 of Title 75
30 of the Oklahoma Statutes.

31 SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-831, is
32 amended to read as follows:

1 Section 1-831. A. If the complaints specified in the notice
2 ~~required by Section 1-830 of this title~~ have been corrected ~~prior to~~
3 ~~the hearing~~, the home may submit a report of correction in place of
4 a plan of correction as specified in subsection B of this section.
5 Such report shall be signed by the administrator or operator under
6 oath.

7 B. A home shall have ten (10) days after receipt of notice of
8 violation in which to prepare and submit a plan of correction. The
9 plan shall include a fixed time period not in excess of thirty (30)
10 days within which violations are to be corrected. The State
11 Department of Health may extend this period up to thirty (30) days
12 where correction involves substantial capital improvement. If the
13 Department rejects a plan of correction, it shall send notice of the
14 rejection and the reason for the rejection within ten (10) days of
15 receipt of the plan of correction to the home. The home shall have
16 ten (10) days after receipt of the notice of rejection in which to
17 submit a modified plan. If the modified plan is not timely
18 submitted, or if the modified plan is rejected, the home shall
19 follow an approved plan of correction imposed by the Department
20 which shall be submitted to the home within thirty (30) days.

21 C. Upon a licensee's petition, the Department shall determine
22 whether to grant a licensee's request for an extended correction
23 time. Such petition shall be served on the Department prior to
24 expiration of the correction time originally approved. The burden
25 of proof is on the petitioning licensee to show good cause for not
26 being able to comply with the original correction time approved. The
27 extended correction time may be granted for a period of time not to
28 exceed thirty (30) days.

29 D. If a home desires to contest any Department action pursuant
30 to this section, it shall send a written request for a hearing to
31 the Department within ten (10) days of receipt of notice of the
32 contested action and the Department shall commence the hearing

1 pursuant to Section 1-830 of this title. Whenever possible, all
2 action of the Department pursuant to the provisions of this section
3 arising out of a violation shall be determined at a single hearing.
4 Issues decided after a hearing may not be reheard at subsequent
5 hearings pursuant to the provisions of this section.

6 SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1905, as
7 last amended by Section 9, Chapter 230, O.S.L. 1995 (63 O.S. Supp.
8 1999, Section 1-1905), is amended to read as follows:

9 Section 1-1905. A. An application for a license, or renewal
10 thereof, to operate a facility shall be accompanied by a fee of Ten
11 Dollars (\$10.00) for each bed included in the maximum bed capacity
12 at such facility. All licenses shall be on a form prescribed by the
13 State Commissioner of Health, which shall include, but not be
14 limited to, the maximum bed capacity for which it is granted and the
15 date the license was issued. The license shall:

- 16 1. Not be transferable or assignable;
- 17 2. Be posted in a conspicuous place on the licensed premises;
- 18 3. Be issued only for the premises named in the application;

19 and

- 20 4. Expire on July 30 of each year, provided an initial license
21 shall expire one hundred eighty (180) days after the date of
22 issuance.

23 B. The fee for a license renewal following an initial license,
24 or for a license amendment to reflect a change in bed capacity,
25 shall be prorated based on the number of days remaining until July
26 30, and, in the case of a change in the number of beds, the total
27 number of beds.

28 C. The issuance or renewal of a license after notice of a
29 violation has been sent shall not constitute a waiver by the State
30 Department of Health of its power to rely on the violation as the
31 basis for subsequent license revocation or other enforcement action
32 under this act arising out of the notice of violation.

1 D. 1. When transfer of ownership or operation of a facility is
2 proposed, the transferee shall notify the Department of the transfer
3 and apply for a new license at least thirty (30) days prior to final
4 transfer.

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

8 3. The license granted to the transferee shall be subject to
9 the plan of correction submitted by the previous owner and approved
10 by the Department and any conditions contained in a conditional
11 license issued to the previous owner. If there are outstanding
12 violations and no approved plan of correction has been implemented,
13 the Department may issue a conditional license and plan of
14 correction as provided in this act.

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

18 5. The Department shall not issue an initial or renewal license
19 to a facility unless the Department has received the license
20 application and fee required under this section. A license issued
21 by the Department shall not bear an effective date that is earlier
22 than the date that the Department received the license application
23 and fee.

24 E. Nursing and specialized facilities, as defined and licensed
25 pursuant to the Nursing Home Care Act shall be surveyed through an
26 unannounced inspection at least once every fifteen (15) months, with
27 a statewide average survey cycle of twelve (12) months.

28 SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-1912, as
29 amended by Section 12, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999,
30 Section 1-1912), is amended to read as follows:

31 Section 1-1912. A. If upon inspection or investigation, the
32 State Department of Health determines that a facility is in

1 violation of this act, any rule promulgated thereunder, or
2 applicable federal certification criteria, it shall promptly serve a
3 notice of violation upon the licensee. Each notice of violation
4 shall be prepared in writing and shall specify the nature of the
5 violation, and the statutory provision, rule or standard alleged to
6 have been violated. The notice of violation shall inform the
7 licensee of its obligation to file a plan of correction within ten
8 (10) working days of receipt of the notice of violation.

9 B. The Department shall notify the licensee of its intent to
10 take any remedial action, impose administrative penalties, place a
11 monitor or temporary manager in the facility, issue a conditional
12 license, or suspend or revoke a license. The Department shall also
13 inform the licensee of the right to a hearing.

14 C. 1. Whenever the Department finds that an emergency exists
15 requiring immediate action to protect the public health or the
16 welfare of any resident of a facility licensed pursuant to the
17 provisions of the Nursing Home Care Act, the Department may without
18 notice or hearing issue an order stating the existence of such an
19 emergency and require that such action be taken as it deems
20 necessary to meet the emergency. Such order shall be effective
21 immediately.

22 2. Any person to whom such an order is directed shall comply
23 with the order immediately, but on application to the Department
24 shall be afforded a hearing within ten (10) days of receipt of the
25 notice. On the basis of such hearing, the Department shall continue
26 such order in effect, revoke it or modify it.

27 3. Any person aggrieved by such order continued after the
28 hearing provided for in this subsection may appeal to the district
29 court of the area affected within thirty (30) days. Such appeal
30 when docketed shall have priority over all cases pending on the
31 docket, except criminal cases.

32

1 4. For purposes of this subsection, the term "emergency" shall
2 mean a life-threatening situation.

3 SECTION 10. AMENDATORY Section 15, Chapter 230, O.S.L.
4 1995 (63 O.S. Supp. 1999, Section 1-1914.2), is amended to read as
5 follows:

6 Section 1-1914.2 A. The State Commissioner of Health may place
7 a qualified person in a facility as a temporary manager to assume
8 operating control of the facility and to ensure that the health and
9 safety of the residents of the facility are protected when any of
10 the following conditions exist:

11 1. The conditions at the facility pose immediate jeopardy to
12 the health and safety of the residents of the facility;

13 2. The facility is operating without a license;

14 3. The State Department of Health has suspended, revoked or
15 refused to renew the existing license of the facility;

16 4. The facility has closed or has informed the Department that
17 it intends to close and adequate arrangements for the relocation of
18 residents have not been made at least thirty (30) days prior to
19 closure; or

20 5. The Department has terminated certification status under
21 Medicare/Medicaid.

22 B. The Department shall notify the owner or operator of the
23 action taken, the reason or reasons why such action was taken, and
24 the right of the owner or operator to have a hearing on the matter.

25 C. Any owner or operator subject to placement of a temporary
26 manager may appeal such action by filing a petition for hearing with
27 the district court. The court shall conduct the hearing within five
28 (5) working days of such action by the Department. On the basis of
29 the hearing, the court may continue the order in effect, revoke it
30 or modify it. The petition for hearing, when docketed, shall have
31 priority over all cases pending on the docket except criminal cases.
32

1 D. All funds due or available to the facility from any source
2 during the pendency of the temporary management shall be made
3 available to the temporary manager who shall use the funds to ensure
4 the health and safety of the residents of the facility.

5 E. The Commissioner shall establish qualifications for persons
6 to be appointed as temporary managers and shall maintain a list of
7 all such qualified persons. The Commissioner may appoint any person
8 from the list to serve as a temporary manager, provided that the
9 Commissioner shall not appoint any owner or affiliate of the
10 facility as its temporary manager.

11 F. The temporary manager shall make provisions for the
12 continued protection of the health and safety of all residents of
13 the facility. The temporary manager appointed pursuant to the
14 Nursing Home Care Act shall exercise those powers and shall perform
15 those duties set out by the Commissioner in writing. The
16 Commissioner shall provide for the temporary manager to have
17 sufficient power and duties to ensure that the residents of the
18 facility receive adequate care.

19 G. If funds are insufficient to meet the expenses of performing
20 the powers and duties conferred on the temporary manager, the
21 temporary manager may borrow the funds or contract for indebtedness
22 as necessary; provided any such indebtedness shall not be construed
23 to be a debt of the state or made on behalf of the state. The State
24 of Oklahoma is not liable, directly or indirectly, for any liability
25 incurred by any temporary manager in the performance of the
26 managers' official duties pursuant to law.

27 H. The Commissioner shall set the compensation of the temporary
28 manager, who shall be paid by the facility.

29 I. A temporary manager may be held liable in a personal
30 capacity only for ~~his~~ the manager's own gross negligence,
31 intentional acts or breaches of fiduciary duty. The Commissioner
32 may require a temporary manager to post a bond.

1 J. The Department shall issue a conditional license to a
2 facility in which a temporary manager is placed. The duration of a
3 license issued under this section is limited to the duration of the
4 temporary managership.

5 K. The Commissioner shall require that the temporary manager
6 report to the Department on a regular basis as to the progress of
7 the facility in reaching substantial compliance with the Nursing
8 Home Care Act and the rules promulgated thereto, and the
9 establishment of mechanisms which will ensure the continued
10 compliance of the facility.

11 L. 1. The Commissioner may release the temporary manager when
12 the Commissioner determines that the facility is and will continue
13 to be in substantial compliance with the Nursing Home Care Act and
14 rules promulgated thereto or when the Commissioner appoints a new
15 temporary manager to assume operational control of the facility.

16 2. Within thirty (30) days after release, the temporary manager
17 shall give the Department a complete accounting of all property of
18 which the temporary manager has taken possession, of all funds
19 collected, and of the expenses of the temporary managership.

20 3. After a complete accounting, and payment of reasonable
21 expenses incurred as a result of the temporary managership, the
22 Commissioner shall order payment of the surplus to the owner. If
23 funds are insufficient to pay reasonable expenses incurred as a
24 result of the temporary managership, the owner shall be liable for
25 the deficiency. Any funds recovered from the owner shall be used to
26 reimburse any unpaid expenses due and owing as a result of the
27 temporary managership.

28 4. In order to protect the health, welfare and safety of the
29 residents of any nursing facility for which a temporary manager has
30 been appointed, the Department is authorized to provide the monies
31 from any funds appropriated or otherwise made available to the
32 Department to protect the residents of the nursing facility. The

1 Department shall have a lien for any payment made pursuant to this
2 section upon any beneficial interest, direct or indirect, of any
3 owner in the following property:

- 4 a. the building in which the facility is located,
- 5 b. any fixtures, equipment or goods used in the operation
6 of the facility,
- 7 c. the land on which the facility is located, or
- 8 d. the proceeds from any conveyance of property described
9 in subparagraphs a, b, or c of this paragraph made by
10 the owner prior to the order placing the temporary
11 manager.

12 M. Nothing in the Nursing Home Care Act shall be deemed to
13 relieve any owner, administrator or employee of a facility in which
14 a temporary manager is placed of any civil or criminal liability
15 incurred, or any duty imposed by law, by reason of acts or omissions
16 of the owner, administrator or employee prior to the appointment of
17 a temporary manager; provided, nothing contained in the Nursing Home
18 Care Act shall be construed to suspend during the temporary
19 managership any obligation of the owner, administrator or employee
20 for payment of taxes or other operating and maintenance expenses of
21 the facility or of the owner, administrator, employee or any other
22 person for the payment of mortgages or liens.

23 SECTION 11. AMENDATORY 63 O.S. 1991, Section 1-1923, as
24 last amended by Section 1, Chapter 42, O.S.L. 1998 (63 O.S. Supp.
25 1999, Section 1-1923), is amended to read as follows:

26 Section 1-1923. A. There is hereby re-created, to continue
27 until July 1, 2004, in accordance with the provisions of the
28 Oklahoma Sunset Law, a Long-Term Care Facility Advisory Board which
29 shall be composed as follows:

- 30 1. The Governor shall appoint a ~~twenty-three-member~~ twenty-
31 five-member Long-Term Care Facility Advisory Board which shall

1 advise the State Commissioner of Health. The Advisory Board shall
2 be comprised of the following persons:

- 3 a. one representative from the Office of the State Fire
4 Marshal, designated by the State Fire Marshal,
- 5 b. one representative from the Oklahoma Health Care
6 Authority, designated by the Administrator,
- 7 c. one representative from the Department of Mental
8 Health and Substance Abuse Services, designated by the
9 Commissioner of Mental Health and Substance Abuse
10 Services,
- 11 d. one representative from the Aging Services Division of
12 the Department of Human Services, designated by the
13 Director of Human Services,
- 14 e. one representative from the Oklahoma Department of
15 Vocational and Technical Education, designated by the
16 Director,
- 17 f. one representative from the Senior Health Insurance
18 Counseling Program within the Insurance Department,
19 designated by the Insurance Commissioner,
- 20 g. one representative from a geriatrics department within
21 a major university in this state,
- 22 h. one representative from an area aging agency,
- 23 i. one representative from a statewide alliance on aging,
- 24 j. one member who shall be a licensed general
25 practitioner of the medical profession,
- 26 ~~f.~~ k. one member who shall be a licensed general
27 practitioner of the osteopathic profession,
- 28 ~~g.~~ l. one member who shall be a registered pharmacist,
- 29 ~~h.~~ m. one member who shall be a licensed registered nurse,
- 30 ~~i.~~ n. one member who shall be a licensed practical nurse,
- 31 ~~j.~~ o. ~~three members~~ one member who shall be of reputable
32 and responsible character and sound physical and

1 mental health and shall be ~~operator-administrators~~ an
2 operator-administrator of a nursing ~~homes~~ home which
3 ~~have~~ has a current ~~licenses~~ license issued pursuant to
4 the provisions of the Nursing Home Care Act and who
5 shall have had five (5) years' experience in the
6 nursing home profession as ~~operator-administrators~~ an
7 operator-administrator,

8 ~~k. p. three members~~ one member who shall be a residential
9 care home ~~operator-administrators~~ operator-
10 administrator licensed pursuant to the provisions of
11 the Residential Care Act,

12 ~~l. q. three members~~ one member who shall be an adult day
13 care facility ~~owner-operators~~ owner-operator licensed
14 pursuant to the provisions of the Adult Day Care Act,
15 and

16 r. one member who shall be a home health care provider,
17 licensed pursuant to the provisions of the Home Health
18 Care Act,

19 s. one member who shall be a state regulated home- and
20 community-based care provider,

21 ~~m. t. five members~~, who shall be over the age of sixty-five
22 (65), who shall represent the general public;
23 provided, however, at least two of the appointments
24 shall consist of individuals who are presently serving
25 as a caregiver for an elderly or disabled family
26 member, and

27 u. one member who shall be an assisted living center
28 operator-administrator licensed pursuant to the
29 provisions of the Continuum of Care and Assisted
30 Living Act;

31 2. The designated ~~representative~~ representatives from the
32 Office of the State Fire Marshal, ~~the designated representative from~~

1 the Department of Mental Health and Substance Abuse Services, ~~the~~
2 ~~designated representative from~~ the Department of Human Services, the
3 Oklahoma Department of Vocational and Technical Education, the
4 Insurance Department, and ~~the designated representative from~~ the
5 State Department of Health shall each serve at the pleasure of their
6 designators.

7 3. The initial appointments of the Governor shall be for the
8 following terms:

- 9 a. the initial term of the member of the medical
10 profession shall be for a three-year term,
- 11 b. the initial term of the member of the osteopathic
12 profession shall be for a three-year term,
- 13 c. the initial term of the registered pharmacist shall be
14 for a two-year term,
- 15 d. the initial term of the licensed registered nurse
16 shall be for a two-year term,
- 17 e. the initial term of the licensed practical nurse shall
18 be for a one-year term,
- 19 f. ~~of~~ as the ~~initial~~ terms ~~for~~ of the nine members
20 presently serving who are licensed operator-
21 administrators for facilities pursuant to the Nursing
22 Home Care Act, residential care homes pursuant to the
23 Residential Care Act and adult day care facilities
24 pursuant to the Adult Day Care Act, ~~three shall be for~~
25 ~~one-year terms, three shall be for two-year terms, and~~
26 ~~three shall be for three-year terms; provided that~~
27 ~~representatives for each of the terms shall include~~
28 expire the Governor shall make new appointments
29 pursuant to the provisions of this section; provided,
30 however, in making such appointments the Governor
31 shall appoint one individual representing who
32 represents facilities subject to the provisions of the

1 Nursing Home Care Act, one individual ~~representing~~ who
2 represents residential care homes subject to the
3 Residential Care Act, one individual who represents
4 entities subject to the provisions of the Home Health
5 Care Act, one individual who is a provider of home-
6 and community-based services, and one individual
7 ~~representing~~ who represents facilities subject to the
8 provisions of the Adult Day Care Act. The initial
9 terms of such members shall be for three-year terms,
10 and

11 g. the initial terms for the five members of the general
12 public over the age of sixty-five (65) shall be for
13 one-, two-, three-, four- and five-year terms
14 respectively, and

15 h. the initial term of the member who is a licensed
16 operator-administrator of an assisted living center
17 pursuant to the provisions of the Continuum of Care
18 and Assisted Living Act shall be for a three-year
19 term;

20 4. After the initial designations or appointments, the
21 designated ~~representative~~ representatives from the Office of the
22 State Fire Marshal, ~~the designated representative of~~ the Oklahoma
23 Health Care Authority, ~~the designated representative of~~ the
24 Department of Human Services, the Oklahoma Department of Vocational
25 and Technical Education, the Insurance Commission, and ~~the~~
26 ~~designated representative of~~ the Department of Mental Health and
27 Substance Abuse Services shall each serve at the pleasure of their
28 designators. All other terms shall be for a three-year period. In
29 case of a vacancy, the Governor shall appoint individuals to fill
30 the remainder of the term.

31 B. The State Department of Health shall provide ~~a clerical~~
32 staff ~~worker~~ support as needed to perform designated duties of the

1 Advisory Board. The Department shall also provide space for
2 meetings of the Advisory Board.

3 C. The Advisory Board shall annually elect a chair, vice-chair
4 and secretary-treasurer, shall meet at least quarterly, and may hold
5 such special meetings as may be necessary. The members of the
6 Advisory Board shall be reimbursed as provided for by the State
7 Travel Reimbursement Act.

8 D. The Advisory Board shall have the power and duty to:

9 1. Serve as an advisory body to the Department for the
10 development and improvement of services to and care and treatment of
11 residents of facilities subject to the provisions of the Nursing
12 Home Care Act, facilities and centers subject to the Continuum of
13 Care and Assisted Living Act, homes subject to the provisions of the
14 Residential Care Act and ~~facilities~~ centers subject to the
15 provisions of the Adult Day Care Act;

16 2. Review, make recommendations regarding, and approve in its
17 advisory capacity the system of standards developed by the
18 Department;

19 3. Evaluate and review the standards, practices, and procedures
20 of the Department regarding the administration and enforcement of
21 the provisions of the Nursing Home Care Act, the Continuum of Care
22 and Assisted Living Act, the Residential Care Act and the Adult Day
23 Care Act, and the quality of services and care and treatment
24 provided to residents of facilities, assisted living centers and
25 residential care homes and participants in adult day care centers.
26 The Board may make recommendations to the Department as necessary
27 and appropriate;

28 4. Evaluate and review financial accountability standards,
29 policies and practices of residential care ~~facilities~~ homes
30 regarding residents' funds for which the ~~facility~~ home is the payee,
31 and evaluate and review expenditures made on behalf of the resident
32

1 by the ~~facility~~ home to ensure that such funds are managed
2 appropriately and in the best interests of the resident; and

3 5. Publish and distribute an annual report of its activities
4 and any recommendations for the improvement of services and care and
5 treatment to residents of facilities, assisted living centers and
6 residential care homes and participants in adult day care centers on
7 or before January 1 of each year to the Governor, the State
8 Commissioner of Health, the State Board of Health, the Speaker of
9 the House of Representatives, the President Pro Tempore of the
10 Senate, and the chief administrative officer of each agency affected
11 by the report.

12 SECTION 12. REPEALER 63 O.S. 1991, Section 1-828 and
13 Section 7, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1999, Section 1-
14 890.7), are hereby repealed.

15 SECTION 13. This act shall become effective July 1, 2000.

16 SECTION 14. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.

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