

An Act relating to public health and safety; amending 63 O.S. 1991, Sections 1-826, 1-830 and 1-831, which relate to the Residential Care Act; clarifying and updating language; removing requirement for hearing; providing for opportunity for hearing; modifying and removing certain time requirements; amending Section 5, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1998, Section 1-852.1), which relates to certificates of need; providing for determination of application fees; amending 63 O.S. 1991, Section 1-873, as amended by Section 2, Chapter 104, O.S.L. 1996 (63 O.S. Supp. 1998, Section 1-873), which relates to licensure requirements for certain long-term care facilities; adding to and clarifying licensure requirements; providing for construction of issuance or renewal of a license; amending 63 O.S. 1991, Section 1-1916, which relates to the Nursing Home Care Act; adding to prohibited acts; amending 63 O.S. 1991, Section 1-1923, as last amended by Section 1, Chapter 42, O.S.L. 1998 (63 O.S. Supp. 1998, Section 1-1923), which relates to the Long-Term Care Facility Advisory Board; adding to membership; modifying qualifications for certain members; providing for terms; amending 63 O.S. 1991, Section 1-1925, which relates to minimum standards for nursing home services; updating language; adding to list of minimum standards; repealing Section 7, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1998, Section 1-890.7), which relates to the Continuum of Care and Assisted Living Standards Council; and providing an effective date.

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

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

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

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

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

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

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

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

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

or facility as defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title; or

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

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

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

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-830, is amended to read as follows:

Section 1-830. A. 1. If upon inspection or investigation, or whenever the State Department of Health determines that there are reasonable grounds to believe that a home is in violation of the Residential Care Act or of any standard, or rule, ~~or regulation~~ promulgated pursuant to the provisions of the Residential Care Act which would have a direct impact upon one or more residents of the home or of any order of the Department, the Department shall give written notice to the alleged violator specifying the cause of complaint.

2. Such notice shall require that the matters complained of be corrected immediately or that the alleged violator appear before the Department at a time and place specified in the notice and answer the charges. The notice shall be delivered to the alleged violator in accordance with the provisions of subsection ~~E~~ D of this section.

~~B. The Department shall give the notice specified by the provisions of subsection A of this section within ten (10) days of an inspection or investigation of the home if the Department determines that the home is in violation of the Residential Care Act or the rules and regulations promulgated by the Board pursuant to the provisions of the Residential Care Act.~~

~~C.~~ 1. The Department shall afford the alleged violator an opportunity for a fair hearing ~~within fifteen (15) days of receipt of notice provided by subsection A of this section~~ in accordance with the provisions of subsection ~~F~~ E of this section.

2. On the basis of the evidence produced at the hearing, the Department shall make findings of fact and conclusions of law and enter an order thereon. The Department shall give written notice of such order to the alleged violator and to such other persons as shall have appeared at the hearing and made written request for notice of the order.

3. If the hearing is held before any person other than the Department, such person shall transmit the record of the hearing together with recommendations for findings of fact and conclusions of law to the Department which shall thereupon enter its order.

4. The Department may enter its order on the basis of such record or, before issuing its order, require additional hearings or further evidence to be presented. The order of the Department shall become final and binding on all parties unless appealed to the district court as provided in ~~Sections 317 through 325 of Title 75 of the Oklahoma Statutes~~ Article II of the Administrative Procedures Act within thirty (30) days after notice has been sent to the parties.

~~D.~~ C. 1. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or welfare of any resident of a home licensed pursuant to the provisions of the Residential Care Act, the Department may without

notice or hearing issue an order stating the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Such order shall be effective immediately.

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

3. Any person aggrieved by such order continued after the hearing provided for in this subsection may appeal to the district court of the area affected within thirty (30) days.

4. Such appeal when docketed shall have priority over all cases pending on said docket, except criminal cases.

5. For the purposes of this subsection, the term emergency shall mean a life-threatening situation.

~~E.~~ D. 1. Except as otherwise expressly provided by law, any notice, order, or other instrument issued by or pursuant to authority of the Department may be served on any person affected thereby personally, by publication, or by mailing a copy of the notice, order, or other instrument by registered mail directed to the person affected at his last-known post office address as shown by the files or records of the Department. Proof of service shall be made as in the case of service of a summons or by publication in a civil action or may be made by the affidavit of the person who did the mailing. Such proof of service shall be filed in the office of the Department.

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

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

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-831, is amended to read as follows:

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

B. 1. A home shall have ten (10) days after receipt of notice of violation in which to prepare and submit a plan of correction. The plan shall include a fixed time period not in excess of thirty (30) days within which violations are to be corrected. The State Department of Health may extend this period up to thirty (30) days where correction involves substantial capital improvement.

2. If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection within ten (10) days of receipt of the plan of correction to the home. The home shall have ten (10) days after receipt of the notice of rejection in which to submit a modified plan.

3. If the modified plan is not timely submitted, or if the modified plan is rejected, the home shall follow an approved plan of correction imposed by the Department which shall be submitted to the home within thirty (30) days.

C. 1. Upon a licensee's petition, the Department shall determine whether to grant a licensee's request for an extended correction time. Such petition shall be served on the Department prior to expiration of the correction time originally approved.

2. The burden of proof is on the petitioning licensee to show good cause for not being able to comply with the original correction time approved. The extended correction time may be granted for a period of time not to exceed thirty (30) days.

D. If a home desires to contest any Department action pursuant to this section, it shall send a written request for a hearing to the Department within ten (10) days of receipt of notice of the contested action and the Department shall commence the hearing pursuant to Section 1-830 of this title. Whenever possible, all action of the Department pursuant to the provisions of this section arising out of a violation shall be determined at a single hearing. Issues decided after a hearing may not be reheard at subsequent hearings pursuant to the provisions of this section.

SECTION 4. AMENDATORY Section 5, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 1998, Section 1-852.1), is amended to read as follows:

Section 1-852.1 A. Each application for a certificate of need applied for pursuant to the provisions of Section 4 1-852 of this ~~act~~ title, except for those applications filed by state agencies, shall be accompanied by an application fee equal to one percent (1%) of the capital cost of the project, with a minimum fee of One Thousand Dollars (\$1,000.00).

B. The maximum filing fee on an application for replacement of an existing facility, pursuant to subsection D of Section 1-853 of this title, shall be One Thousand Dollars (\$1,000.00).

C. For purposes of determining application fees, capital cost shall include all costs associated with the project except operating expenses. Capital cost shall be based on the greater of contract

price, book value or fair market value of all assets required to accomplish the project, including land acquisition and site development.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-873, as amended by Section 2, Chapter 104, O.S.L. 1996 (63 O.S. Supp. 1998, Section 1-873), is amended to read as follows:

Section 1-873. A. The State Board of Health, with the advice of the Long-Term Care Facility Advisory Board, created pursuant to Section 1-1923 of Title 63 of the Oklahoma Statutes, shall define minimum licensure requirements and rules including standards for:

1. Health and social services which may be provided to participants;
2. The range of services to be provided by a center based on the type of participants to be served;
3. Staff to participant ratios;
4. Staff and volunteer qualifications;
5. Staff training;
6. Food services;
7. Participant records and care plans;
8. Antidiscrimination policies;
9. Sanitary and fire standards; and
10. Any other requirements necessary to ensure the safety and well-being of frail elderly and disabled adults.

B. Centers to be licensed shall include all adult day care centers, with the exception of sheltered workshops and senior recreational centers, which do not receive participant fees for services. It shall be unlawful to operate a center without first obtaining a license for such operation as required by the Adult Day Care Act, regardless of other licenses held by the operator. Organizations operating more than one center shall obtain a license for each site.

C. The license for operation of a center shall be issued by the State Department of Health, ~~and shall be subject to annual renewal.~~ The ~~current~~ license ~~issued pursuant to the provisions of the Adult Day Care Act~~ shall be:

1. Not be transferable or assignable;

2. Be posted in a prominent conspicuous place at on the center licensed premises;

3. Be issued only for the premises named in the application;

and

4. Expire on July 31 of each year; provided, an initial license shall expire one hundred eighty (180) days after the date of issuance.

D. A center shall meet the safety, sanitation and food service standards of the State Department of Health.

E. Local health, fire and building codes relating to adult day care centers shall be classified as an education use group.

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

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-1916, is amended to read as follows:

Section 1-1916. A. No person shall:

1. Intentionally fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction ~~under this act~~ pursuant to the Nursing Home Care Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

2. Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the

Department in the investigation and enforcement of ~~this act~~ the Nursing Home Care Act;

3. Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties ~~under this act~~ pursuant to the Nursing Home Care Act;

4. Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of ~~this act~~ the Nursing Home Care Act or the rules promulgated ~~under this act~~ pursuant to the Nursing Home Care Act;

5. Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized ~~under this act~~ pursuant to the Nursing Home Care Act;

6. Willfully file any false, incomplete or intentionally misleading information required to be filed ~~under this act~~ pursuant to the Nursing Home Care Act, or willfully fail or refuse to file any information; ~~or~~

7. Open or operate a facility without a license; or

8. Intentionally destroy or corrupt electronic records of patient assessments.

B. A violation of this section is a misdemeanor.

C. The district attorney of the county in which the facility is located, or the Attorney General, may be requested by the Department to initiate prosecutions ~~under~~ pursuant to this section.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-1923, as last amended by Section 1, Chapter 42, O.S.L. 1998 (63 O.S. Supp. 1998, Section 1-1923), is amended to read as follows:

Section 1-1923. A. There is hereby re-created, to continue until July 1, 2004, in accordance with the provisions of the

Oklahoma Sunset Law, a Long-Term Care Facility Advisory Board which shall be composed as follows:

1. The Governor shall appoint a ~~twenty-three-member~~ twenty-eight-member Long-Term Care Facility Advisory Board which shall advise the State Commissioner of Health. The Advisory Board shall be comprised of the following persons:

- a. one representative from the Office of the State Fire Marshal, designated by the State Fire Marshal,
- b. one representative from the Oklahoma Health Care Authority, designated by the Administrator,
- c. one representative from the Department of Mental Health and Substance Abuse Services, designated by the Commissioner of Mental Health and Substance Abuse Services,
- d. one representative from the Department of Human Services, designated by the Director of Human Services,
- e. one member who shall be a licensed general practitioner of the medical profession,
- f. one member who shall be a general practitioner of the osteopathic profession,
- g. one member who shall be a registered pharmacist,
- h. one member who shall be a licensed registered nurse,
- i. one member who shall be a licensed practical nurse,
- j. three members who ~~shall be of reputable and responsible character and sound physical and mental health and~~ shall be operator-administrators of nursing homes which have current licenses issued pursuant to the Nursing Home Care Act and who shall have had five (5) years' experience in the nursing home profession as operator-administrators,

- k. three members who shall be residential care home operator-administrators licensed pursuant to the provisions of the Residential Care Act,
- l. three members who shall be adult day care facility owner-operators licensed pursuant to the provisions of the Adult Day Care Act, ~~and~~
- m. five members, who shall be over the age of sixty-five (65), who shall represent the general public,
- n. three members who shall be assisted living center operator-administrators licensed pursuant to the provisions of the Continuum of Care and Assisted Living Act,
- o. one representative who shall be a home care agency operator, and
- p. one representative who shall be a licensed physical therapist;

2. The designated representative from the Office of the State Fire Marshal, the designated representative from the Department of Mental Health and Substance Abuse Services, the designated representative from the Department of Human Services, and the designated representative from the State Department of Health shall serve at the pleasure of their designators-;

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

- a. the initial term of the member of the medical profession shall be for a three-year term,
- b. the initial term of the member of the osteopathic profession shall be for a three-year term,
- c. the initial term of the registered pharmacist shall be for a two-year term,
- d. the initial term of the licensed registered nurse shall be for a two-year term,

- e. the initial term of the licensed practical nurse shall be for a one-year term,
- f. of the initial terms for the nine members who are licensed operator-administrators for facilities pursuant to the Nursing Home Care Act, residential care homes pursuant to the Residential Care Act and adult day care facilities pursuant to the Adult Day Care Act, three shall be for one-year terms, three shall be for two-year terms, and three shall be for three-year terms; provided that representatives for each of the terms shall include one individual representing facilities subject to the provisions of the Nursing Home Care Act, one individual representing residential care homes subject to the Residential Care Act and one individual representing facilities subject to the provisions of the Adult Day Care Act, ~~and~~
- g. the initial terms for the five members of the general public over the age of sixty-five (65) shall be for one-, two-, three-, four- and five-year terms respectively,
- h. the initial terms for the three members who are licensed operator-administrators for assisted living centers pursuant to the Continuum of Care and Assisted Living Act shall be for one-, two- and three-year terms respectively, and
- i. the initial terms for the home care agency operator and the physical therapist members shall be for two- and three-year terms respectively;

4. After the initial designations or appointments, the designated representative from the Office of the State Fire Marshal, the designated representative of the Oklahoma Health Care Authority, the designated representative of the Department of Human Services

and the designated representative of the Department of Mental Health and Substance Abuse Services shall each serve at the pleasure of their designators. All other terms shall be for a three-year period. In case of a vacancy, the Governor shall appoint individuals to fill the remainder of the term.

B. The State Department of Health shall provide ~~a clerical~~ staff ~~worker~~ support as needed to perform designated duties of the Advisory Board. The Department shall also provide space for meetings of the Advisory Board.

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

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

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

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

3. Evaluate and review the standards, practices, and procedures of the Department regarding the administration and enforcement of the provisions of the Nursing Home Care Act, the Residential Care Act, the Continuum of Care and Assisted Living Act and the Adult Day Care Act, and the quality of services and care and treatment provided to residents of facilities, assisted living centers and residential care homes and participants in adult day care centers.

The Board may make recommendations to the Department as necessary and appropriate;

4. Evaluate and review financial accountability standards, policies and practices of residential care facilities regarding residents' funds for which the ~~facility~~ home is the payee, and evaluate and review expenditures made on behalf of the resident by the ~~facility~~ home to ensure that such funds are managed appropriately and in the best interests of the resident; and

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

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-1925, is amended to read as follows:

Section 1-1925. The ~~Department~~ State Board of Health shall prescribe minimum standards for facilities. These standards shall be promulgated and submitted to the Legislature ~~no later than January 1, 1981~~ pursuant to Article I of the Administrative Procedures Act. These standards shall regulate:

1. Location and construction of the facility, including but not limited to plumbing, heating, lighting, ventilation, and other physical conditions which shall ensure the health, safety and comfort of residents and protection from fire hazards;

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents; ~~specifically, the Department shall establish staffing~~

3. Staffing ratios for facilities which shall specify the number of staff hours per resident of care that are needed for professional nursing care for various types of facilities or areas within facilities;

~~3.~~ 4. All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents;

~~4.~~ 5. Diet related to the needs of each resident based on sound nutritional practice and on recommendations which may be made by the physicians attending the resident;

~~5.~~ 6. Equipment essential to the health and welfare of the residents; ~~and~~

~~6.~~ 7. A program of rehabilitation for those residents who would benefit from such programs; and

8. Comprehensive resident screening instruments to measure the needs and capabilities of residents in all settings and to determine appropriate placements of residents, and procedures for submitting electronic assessments to the State Department of Health.

SECTION 9. REPEALER Section 7, Chapter 223, O.S.L. 1997 (63 O.S. Supp. 1998, Section 1-890.7), is hereby repealed.

SECTION 10. This act shall become effective November 1, 1999.

Passed the House of Representatives the 10th day of March, 1999.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 1999.

President of the Senate