

ENGROSSED HOUSE
BILL NO. 1762

By: Wright, Glover, Bengel, Beutler,
Blackburn, Boyd, Calvey, Collins,
Covey, Easley, Ferguson,
Hilliard, Ingmire, Kirby,
Lindley, Liotta, Maddux,
McCarter, Mitchell, Nance,
Ostrander, Paulk, Piatt, Roach,
Seikel, Sweeden and Turner of the
House

and

Snyder of the Senate

An Act relating to public health and safety;
authorizing certain contracts; requiring compliance
with certain standards; requiring certain rights;
requiring promulgation of certain rules; amending 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), which relates to the Nursing Home Care Act;
clarifying and updating language; making certain acts
a felony; 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;
expanding scope of certain reports; making the
Department of Human Services a party for certain
complaints; making certain acts a felony; amending 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), which relates to the Nursing Home Care Act;
expanding parties that may bring action for
injunctive relief; providing procedural remedy for
complaints submitted to the State Department of
Health by the Department of Human Services; making
the Department of Human Services a party for purposes
of certain complaints; amending 56 O.S. 1991, Section
1005, as amended by Section 4, Chapter 306, O.S.L.
1995 (56 O.S. Supp. 1999, Section 1005), which
relates to the Oklahoma Medicaid Program Integrity
Act; making certain acts a felony; providing for
codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-1901.1 of Title 63, unless
there is created a duplication in numbering, reads as follows:

A. In discharging its official duties pursuant to Section 1-1911 of Title 63 of the Oklahoma Statutes regarding nursing home inspections, the State Department of Health shall have the authority to enter into contracts and other agreements with private providers or other state agencies for nursing home inspection services.

B. Such services shall meet any standards or requirements prescribed and established for nursing home inspections pursuant to the Nursing Home Care Act and rules promulgated thereto.

C. A nursing home inspection provider contracting with the Department shall have right of access to enter a facility, to communicate privately with any resident of the facility, and to inspect the facility and appropriate records and books as necessary to ascertain compliance with the Nursing Home Care Act pursuant to powers and duties imposed upon such provider by contract.

D. The Oklahoma Health Care Authority shall promulgate rules for certification of contract nursing home inspection providers. The Rules promulgated by the Authority shall ensure that at a minimum:

1. Contract inspection providers undergo criminal background searches by the Oklahoma State Bureau of Investigation;

2. Contract inspection providers do not have a conflict of interest pursuant to the Nursing Home Care Act;

3. Contract inspection providers will comply with standards and requirements established for nursing home inspections pursuant to the Nursing Home Care Act and rules promulgated thereto. Nothing in this section allowing contracting for nursing home inspections, shall be construed to authorize accreditation by a voluntary organization to be substituted for the standards for long-term care facility licensure promulgated by the State Department of Health pursuant to the Administrative Procedures Act;

4. There is sufficient supervision and oversight in the nursing home inspection process; and

5. Nursing home inspection reports completed by nursing home inspection providers will be open to public review pursuant to the Oklahoma Open Records Act.

SECTION 2. 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~~ an officer, employee, agent or private inspection provider, other state agency or other 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 or shall provide for the inspection, survey and evaluation of every facility to determine compliance with applicable licensure and certification requirements and standards. All inspections of facilities shall be unannounced. The Department may have or shall provide as many unannounced inspections as it deems necessary. Any employee of the State Department of Health or contract inspection provider who discloses to any unauthorized person, prior to the inspection, information regarding an unannounced nursing home inspection required pursuant to the provisions of this section shall, upon conviction thereof, be guilty of a felony.

2. The Department or provider may periodically visit a facility for the purpose of consultation and may notify the facility in advance of such a visit.

3. 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.

4. One person shall be invited from a statewide organization of the elderly by the Department to act as a citizen observer in an unannounced inspection. 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. The citizen observer shall receive expenses as provided for in the State Travel Reimbursement Act.

5. 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 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~~. The Department and any nursing home inspection provider 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, contractor 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 3. 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. 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. 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. If it is necessary to forcibly enter the premises, the representative of the Department shall make the entry accompanied by a peace officer. 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 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, or assisted living facility, the Department shall immediately notify the State Department of Health of such report in writing, and shall forward to the State Department of Health a copy of the Department's final investigative report. The Department of Human Services shall be deemed a party pursuant to the Administrative Procedures Act for complaints filed with the Department of Health regarding vulnerable adults who are residents of nursing facilities, residential care facilities or assisted living facilities. 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. 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 4. 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 intentionally 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 for any intermediate care facility for the mentally retarded, or any other long-term care facility licensed by the Department, upon conviction thereof, shall be guilty of a felony.

SECTION 5. 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, or of the rules promulgated by the Department, is hereby declared a public nuisance, inimical to the public welfare. 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. 1. Any person with personal knowledge or substantial specific information who believes that this act, a rule promulgated under this act, or a federal certification rule applying to a facility may have been violated may file a complaint. 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 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, 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. 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. Upon receipt of a complaint, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant to the Nursing Home Care Act, 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 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. 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 or any rule promulgated thereto and also alleges that such violation is an imminent 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.

6. 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 for violations of the Nursing Home Care Act and rules promulgated thereto.

7. 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 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.

~~6.~~ 8. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

~~7.~~ 9. The Department shall seek any remedial action provided under this act for violations documented during complaint investigations.

~~8.~~ 10. The Department shall establish any additional rules necessary for the investigation of complaints as provided herein, and 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 6. AMENDATORY 56 O.S. 1991, Section 1005, as amended by Section 4, Chapter 306, O.S.L. 1995 (56 O.S. Supp. 1999, Section 1005), is amended to read as follows:

Section 1005. A. It shall be unlawful 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 and regulations of the Oklahoma Health Care Authority for a period of at least six (6) years following the date on which payment was received.

B. 1. 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~~

a. 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~~

b. 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.~~ 2. 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 his position, authority or responsibility, had reason to know, of the falsity of the claim, statement or representation.

C. Any employee of the State Department of Health, the Department of Human Services, or the Oklahoma Health Care Authority who knowingly and 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 the agency or the Attorney General shall be, upon conviction thereof, guilty of a felony.

SECTION 7. This act shall become effective November 1, 2000.

Passed the House of Representatives the 4th day of May, 2000.

Speaker of the House of
Representatives

Passed the Senate the ____ day of _____, 2000.

President of the Senate