STATE OF OKLAHOMA

2nd Session of the 47th Legislature (2000)

SENATE BILL 1575 By: Cain

AS INTRODUCED

An Act relating to public health and safety; 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; requiring referrals of complaints regarding certain facilities to the State Department of Health for investigation; providing for transmission of certain reports; amending 63 O.S. 1991, Sections 1-822, 1-823, 1-824, 1-826, 1-829, 1-830 and 1-831, which relate to the Residential Care Act; clarifying that issuance of a license should not constitute a waiver of enforcement actions; updating language; removing probationary licenses; deleting certain procedures relating thereto; providing for issuance of licenses and procedures thereto; authorizing certain extensions; deleting certain powers and duties; removing certain requirements for inspections by the State Department of Health; authorizing certain inspections; making inspections unannounced; authorizing certain visits; making certain actions unlawful; providing penalty; modifying notice and hearing provisions; amending 63 O.S. 1991, Sections 1-1905, as last amended by Section 9, Chapter 230, O.S.L. 1995, 1-1912, as amended by Section 12, Chapter 230, O.S.L. 1995, Section 15, Chapter 230, O.S.L. 1995 and 1-1923, as last amended by Section 1, Chapter 42, O.S.L. 1998 (63 O.S. Supp. 1999, Sections 1-1905, 1-1912, 1-1914.2 and 1-1923), which relate to the Nursing Home Care Act and the Long Term Care Facility Advisory Board; prohibiting issuance of effective dates of 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; and providing an effective date.

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

SECTION 1. 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 of this act~~ 10-105.1 of this 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~~ himself or herself 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, 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. Nothing herein shall prevent the State Department of Health from conducting any type of investigation or taking any appropriate action pursuant to the provisions of the~~

~~Nursing Home Care Act and the Residential Care Act~~ home, assisted living center or continuum of care facility, the Department shall refer the report to the State Department of Health for investigation and appropriate action pursuant to the provisions of Title 63 of the Oklahoma Statutes. The State Department of Health shall forward to the Department a copy of the final investigative report.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I. The issuance or renewal of a license after a 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 arising out of the notice of violation pursuant to the provisions of the Residential Care Act.

SECTION 3. AMENDATORY 63 O.S. 1991, Section 1-823, is amended to read as follows:

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

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

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

SECTION 4. AMENDATORY 63 O.S. 1991, Section 1-824, is amended to read as follows:

Section 1-824. ~~If the applicant has not been previously licensed or if the~~ For any new home ~~is not in operation at the time application is made~~ or for any home which has undergone a transfer of ownership or operation, the State Department of Health shall issue ~~a probationary~~ only an initial license. ~~A probationary license shall be valid for one hundred twenty (120) days unless sooner suspended or revoked pursuant to the provisions of the Residential Care Act.~~

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

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

~~b. inspect the home and inform the applicant of any conditions which require correction prior to the issuance of a license. If the home is a new home the Department shall also inform the applicant of any condition which requires correction prior to the acceptance of residents into the home. If the home is an existing home whose ownership is being transferred, the probationary license issued to the transferee, in~~

~~addition to any corrections required as a result of the inspection, shall be subject to any plan of correction submitted by the previous owner and approved by the Department.~~

~~2. Within thirty (30) days prior to the termination of a probationary license, the Department shall completely inspect the home and, if the home meets the applicable requirements for licensure, shall issue a license pursuant to the provisions of the Residential Care Act. If at the end of said extension of the probationary license, the home is not in substantial compliance with the provisions of the Residential Care Act and with the standards and requirements established by the Department pursuant to the provisions of the Residential Care Act, the license shall be denied and the Department shall take such action as necessary and as authorized pursuant to the provisions of the Residential Care Act for the protection of the health, safety, and welfare of the residents of the home.~~ An initial license shall be valid for one hundred eighty (180) days unless sooner suspended or revoked under this act. Prior to the termination of an initial license, the Department shall inspect the home fully and completely and, if the home meets the applicable requirements for licensure, shall issue a renewal license pursuant to the provisions of the Residential Care Act. If the Department finds that the home does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the initial license may be extended once for a period not to exceed one hundred twenty (120) days from the expiration date of the initial license.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-826, is amended to read as follows:

Section 1-826. After notice and 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~~,~~ or 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~~,~~ or 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 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; ~~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 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; ~~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~~ correction pursuant to the provisions of Section 1-831 of this title.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-829, is amended to read as follows:

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

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

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

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

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

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

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

3. One person from a statewide organization representative of the elderly shall be invited 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 reimbursement for travel expenses as provided for in the State Travel Reimbursement Act.

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

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

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

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

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

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

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

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

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

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

F. A state or local ombudsman as that term is defined by the Special Unit on Aging within the Department of Human Services pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et seq., as amended, or case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies is authorized to accompany and shall be notified by the Department of any inspection conducted of any home licensed pursuant to the provisions of the Residential Care Act. Any state or local ombudsman is authorized to enter any home licensed pursuant to the provisions of the Residential Care Act, communicate privately and without unreasonable restriction with any resident of a home who consents to such communication, to seek consent to communicate privately and without restriction with any resident of a home, and to observe all areas of a home that directly pertain to the care of a resident of a home.

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

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-830, is amended to read as follows:

Section 1-830. A. 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. 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.~~ 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. 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. 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. 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 within thirty (30) days after notice has been sent to the parties.

~~D.~~ C. 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. Any person to whom such an order is directed shall comply with ~~said~~ the order immediately but on application to the Department shall be afforded a hearing within ten (10) days of receipt of ~~said~~ the notice. On the basis of such hearing, the Department shall continue such order in effect, revoke it~~,~~ or modify it. 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. Such appeal when docketed shall have priority over all cases pending on ~~said~~ the docket, except criminal cases. For the purposes of this subsection, the term "emergency" shall mean a life-threatening situation.

~~E.~~ D. 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.

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.

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

Section 1-1905. A. An application for a license, or renewal thereof, to operate a facility shall be accompanied by a fee of Ten Dollars ($10.00) for each bed included in the maximum bed capacity at such facility. All licenses shall be on a form prescribed by the State Commissioner of Health, which shall include, but not be

limited to, the maximum bed capacity for which it is granted and the date the license was issued. The license shall:

1. Not be transferable or assignable;

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

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

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

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

C. 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.

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

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

3. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented,

the Department may issue a conditional license and plan of correction as provided in this act.

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

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

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

SECTION 10. AMENDATORY 63 O.S. 1991, Section 1-1912, as amended by Section 12, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Section 1-1912), is amended to read as follows:

Section 1-1912. A. If upon inspection or investigation, the State Department of Health determines that a facility is in violation of this act, any rule promulgated thereunder, or applicable federal certification criteria, it shall promptly serve a notice of violation upon the licensee. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision, rule or standard alleged to have been violated. The notice of violation shall inform the licensee of its obligation to file a plan of correction within ten (10) working days of receipt of the notice of violation.

B. The Department shall notify the licensee of its intent to take any remedial action, impose administrative penalties, place a monitor or temporary manager in the facility, issue a conditional

license, or suspend or revoke a license. The Department shall also inform the licensee of the right to a hearing.

C. 1. Whenever the Department finds that an emergency exists requiring immediate action to protect the public health or the welfare of any resident of a facility licensed pursuant to the provisions of the Nursing Home Care Act, the Department may without notice or hearing issue an order stating the existence of such an emergency and require 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 the order immediately, but on application to the Department shall be afforded a hearing within ten (10) days of receipt of the 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. Such appeal when docketed shall have priority over all cases pending on the docket, except criminal cases.

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

SECTION 11. AMENDATORY Section 15, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 1999, Section 1-1914.2), is amended to read as follows:

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

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

2. The facility is operating without a license;

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

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

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

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

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

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

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

F. The temporary manager shall make provisions for the continued protection of the health and safety of all residents of the facility. The temporary manager appointed pursuant to the

Nursing Home Care Act shall exercise those powers and shall perform those duties set out by the Commissioner in writing. The Commissioner shall provide for the temporary manager to have sufficient power and duties to ensure that the residents of the facility receive adequate care.

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

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

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

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

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

L. 1. The Commissioner may release the temporary manager when the Commissioner determines that the facility is and will continue to be in substantial compliance with the Nursing Home Care Act and

rules promulgated thereto or when the Commissioner appoints a new temporary manager to assume operational control of the facility.

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

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

4. In order to protect the health, welfare and safety of the residents of any nursing facility for which a temporary manager has been appointed, the Department is authorized to provide the monies from any funds appropriated or otherwise made available to the Department to protect the residents of the nursing facility. The Department shall have a lien for any payment made pursuant to this section upon any beneficial interest, direct or indirect, of any owner in the following property:

a. the building in which the facility is located,

b. any fixtures, equipment or goods used in the operation of the facility,

c. the land on which the facility is located, or

d. the proceeds from any conveyance of property described in subparagraphs a, b, or c of this paragraph made by the owner prior to the order placing the temporary manager.

M. Nothing in the Nursing Home Care Act shall be deemed to relieve any owner, administrator or employee of a facility in which

a temporary manager is placed of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator or employee prior to the appointment of a temporary manager; provided, nothing contained in the Nursing Home Care Act shall be construed to suspend during the temporary managership any obligation of the owner, administrator or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee or any other person for the payment of mortgages or liens.

SECTION 12. AMENDATORY O.S. 1991, Section 1-1923, as last amended by Section 1, Chapter 42, O.S.L. 1998 (63 O.S. Supp. 1999, 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 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 provisions of 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, and

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;

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, and

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;

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 Continuum of Care and Assisted Living Act, the Residential Care 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~~ homes 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 13. REPEALER 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), are hereby repealed.

SECTION 14. This act shall become effective November 1, 2000.

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