

ENGROSSED HOUSE AMENDMENT

TO

ENGROSSED SENATE BILL NO. 1671

By: Cain of the Senate

and

Gilbert of the House

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-857, which relates to the Long-term Care Certificate of Need Act; Sections 1-1904, 1-1906, 1-1908.1, 1-1912, 1-1914.1, 1-1914.2 and 1-1925, which relate to the Nursing Home Care Act; Section 1-1951, which relates to nurse aides; providing for regulation of specified aspects of the certificate of need process; * * * expanding minimum standards for facilities; specifying conditions under which the State Commissioner of Health shall act to protect nursing facility residents; providing for appointment and termination of a receiver; * * * amending 43A O. S. 2001, Sections 3-403, 3-417 and 3-417.1, which relate to licensure of alcohol and drug abuse treatment centers by the State Department of Health; deleting obsolete references; providing for codification; and providing an effective date.

AMENDMENT NO. 1. Strike the title, enacting clause and entire bill and insert

"An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-857, which relates to the Long-term Care Certificate of Need Act; modifying specified aspects of the certificate of need process; amending 63 O.S. 2001, Sections 1-1904, 1-1906, 1-1908.1, 1-1912, 1-1914.1, 1-1914.2 and 1-1925, which relate to the Nursing Home Care Act; modifying licensure and certification procedures; expanding grounds for revocation or suspension of licensure; allowing specified limitations on licensure and requiring periodic reports; creating the Nursing Facility Administrative Penalties Fund revolving fund; specifying and expanding conditions for serving a notice of violation; expanding remedies for violations; expanding conditions under which a temporary manager can be appointed and conditions under which a manager may be relieved; expanding minimum standards for facilities; specifying conditions under which the State Commissioner of Health shall act to protect nursing facility residents; providing for appointment and termination of a receiver; specifying conditions requiring notification; prescribing minimum standard for

facilities; expanding the power and duty of the State Department of Health with regard to nurse aides; amending 43A O. S. 2001, Sections 3-403, 3-417 and 3-417.1, which relate to licensure of alcohol and drug abuse treatment centers by the State Department of Health; deleting obsolete references; amending 63 O.S. 2001, Section 1-103, which relates to the State Board of Health; modifying membership and terms of office; limiting number of terms a member may serve; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-857, is amended to read as follows:

Section 1-857. A. A certificate of need issued pursuant to the provisions of this act for the construction or establishment of a new long-term care service or the expansion or change of an existing service shall be valid for a period of six (6) months during which time the applicant shall submit to the State Department of Health the plans and specifications for the facility to be constructed or modified; however, the Department may extend such time by a period not to exceed six (6) months for extraordinary circumstances beyond the control of the applicant. If no such plans and specifications are submitted ~~and approved~~ within the time required by this section, then such certificate shall be null and void. If plans and specifications are submitted, the Department shall approve or disapprove such plans and specifications within forty-five (45) business days of the filing or such plans and specifications shall be presumed to be approved. If the Department disapproves the plans and specifications, such disapproval shall include a detailed statement of the corrections needed. ~~The holder of the certificate must resubmit corrected plans and specifications within forty-five (45) business days of disapproval. Failure to resubmit shall render the certificate void.~~ The State Board of Health shall provide by rule the review process and time deadlines not exceeding twelve (12)

months for approval or disapproval and resubmittal of initial, final and corrected plans and specifications. The applicant's failure to meet the review process deadlines promulgated by the Board shall render the certificate of need void. The applicant must begin construction or modification of the structure within two (2) months following the approval of the final plans and specifications and must proceed to complete the structure or modifications within ~~twelve~~ fourteen (14) months of the approval or the certificate will be canceled. However, the Department may extend such completion day by a period not to exceed ~~six (6)~~ twelve (12) months for good cause, ~~provided that such extension shall not apply to an applicant who has been previously granted a six (6) months' extension for completion of plans and specifications.~~

B. A certificate of need issued pursuant to the provisions of this act for the acquisition of a long-term care facility shall be valid for a period of six (6) months by which time the acquisition must be finalized, provided that the Department may extend such final date by a period not to exceed ~~three (3)~~ six (6) months for good cause.

C. Pending the appeal of an order granting a certificate of need in the district or Supreme Court, the effective dates of deadlines for submitting plans, filing reports, completion of the project and other requirements related to such project shall commence on the date of a final judicial determination of any such appeal, and any certificate of need which has been approved by the Department shall remain in effect pending such appeal. The effective date of the issuance of a certificate of need shall be the date of a final judicial determination of any such appeal. The provisions of this subsection shall have prospective and retrospective application.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1904, is amended to read as follows:

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

1. Protecting the health, welfare and safety of residents;

2. Assuring the accountability for reimbursed care provided in certified facilities participating in a federal or state health program as provided by or through the ~~Department of Human Services~~ Oklahoma Health Care Authority; and

3. Assuring consistent application of uniform inspection protocols.

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

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

D. Before an initial license shall be issued pursuant to the Nursing Home Care Act to operate and manage a facility ~~the following shall be provided before an application is approved and a license issued,~~ the applicant shall provide the following:

1. An application ~~shall be under oath and shall contain~~ on a form provided by the Department containing, at a minimum, the following information:

- a. the name and address of the applicant, if an individual, and that the applicant is not less than twenty-one (21) years of age, of reputable and responsible character, and in sound physical and mental health; and if a firm, partnership, or association, of every member thereof; and in the case of a corporation, the name and address

thereof and of its officers and its registered agent and like evidence for officers, as submitted for an individual,

- b. the name and location of the facility for which a license is sought,
- c. the name and address of the person or persons under whose management or supervision the facility will be conducted, and a copy of the written agreement between the manager and the applicant,
- d. the name and address of any other person holding an interest of at least five percent (5%) in the ownership, operation or management of the facility,
- e. the number and type of residents for which maintenance, personal care, specialized or nursing facility services are to be provided, and
- f. a projected staffing pattern for providing patient care;

2. ~~Each initial application shall be accompanied by a~~ A statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance; and

3. ~~The Commissioner shall determine~~ Documentation that the administrator ~~of a facility other than a residential care home~~ is the holder of a current license as a Nursing Home Administrator issued by the Oklahoma State Board of Examiners for Nursing Homes; and Home Administrators.

4. ~~That~~ E. Before issuing an initial license, the Department shall find that the individual applicant, or the corporation, partnership or other entity, if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of

revocation of a license during the previous five (5) years. In determining the applicant's responsibility and suitability to operate or to direct or participate in the operation of a facility, the Department may also consider the applicant's record of suspensions, receivership, administrative penalties, or noncompliance with lawful orders of this Department or of other departments of other states with similar responsibilities.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1906, is amended to read as follows:

Section 1-1906. A. The State Commissioner of Health shall issue and renew licenses for the operation of facilities which are found to comply with the provisions of this act, and standards, ~~and rules and regulations~~ of the State Board of Health.

B. For any new facility or for any facility ~~which~~ that has undergone a transfer of ownership or operation the State Department of Health shall issue only an initial license. 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 fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under this act. If the Department finds that the facility 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.

C. An application for a license may be denied for any of the following reasons:

1. Failure to meet any of the minimum standards set forth by this act or by rules ~~and regulations~~ promulgated by the Department under this act;

2. Conviction of the applicant, or of any member of an applicant that is a firm, partnership or association or, if a corporation, the conviction of the corporation or any of its officers or a majority stockholder, or of a person designated to manage or supervise a facility, of a felony, meaning a crime that would have a bearing on the operation of a nursing home, the conviction to be shown by a certified copy of the record of the court of conviction, if the Department determines, after investigation, that such applicant has not been sufficiently rehabilitated to warrant the public trust, or other satisfactory evidence that the moral character of the applicant, or administrator, or manager, or supervisor of the facility is not reputable;

3. Personnel insufficient in number or unqualified by training or experience properly to care for the proposed number and type of residents to be determined by standards set by the Department with said standards not being less than those set by federal statute; or

4. Insufficient financial or other resources that would render a facility incapable of providing adequate patient care.

D. Immediately upon the denial of any application or reapplication for a license under this act, the Department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing. If the applicant desires to contest the denial of a license, it shall provide written notice to the Department of a request for a hearing within ten (10) days after receipt of the notice of denial and the Department shall commence the hearing.

E. The Commissioner may suspend or revoke a license on any of the following grounds:

1. Violation of any of the provisions of this act or the rules, regulations and standards issued pursuant thereto;

2. Permitting, aiding or abetting the commission of any illegal act in a licensed facility; ~~or~~

3. Conduct of practices deemed by the Commissioner to be detrimental to the welfare of the patients or residents of a facility;

4. Insufficient financial or other resources that would render a facility incapable of providing adequate patient care; or

5. The facility has closed.

F. 1. The Department, after notice to the applicant or licensee, may suspend, revoke, refuse to renew a license or assess administrative penalties in any case in which the Department finds that there has been a substantial failure to comply with this act or the rules ~~and regulations~~ promulgated by the Department under this act;

2. Notice under this section shall include a clear and concise statement of the violations on which the nonrenewal, revocation or administrative penalty is based, the statute or rule violated and notice of the opportunity for a hearing;

3. If a facility desires to contest the nonrenewal or revocation of a license or the assessment of administrative penalties, the facility shall, within ten (10) days after receipt of notice under paragraph 2 of this section, notify the Commissioner in writing of its request for a hearing. Upon receipt of the request the Commissioner shall send notice to the facility and hold a hearing;

4. The effective date of nonrenewal or revocation of a license by the Commissioner shall be any of the following:

- a. until otherwise ordered by the district court, revocation is effective on the date set by the Commissioner in the notice of revocation, or upon final action after hearing, whichever is later,
- b. until otherwise ordered by the district court, nonrenewal is effective on the date of expiration of

any existing license, or upon final action after hearing, whichever is later, or

c. the Department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of residents.

G. A new application, following revocation, shall be considered by the Commissioner on receipt of evidence that the conditions upon which revocation was based have been corrected; and a new license may then be granted after proper inspection has been made and all provisions of this act have been complied with, and the rules, regulations and standards of the Board have been satisfied.

H. The Department may suspend, for a period not to exceed three (3) years, the license of a facility that has temporarily closed or ceased operations for remodeling, renovation, replacement or relocation, or that is pending a change of ownership, operation or management. The facility shall provide periodic reports to the Department not less than once every six (6) months demonstrating the facility's progress towards reopening. At or before the conclusion of the suspension period, the facility shall meet applicable requirements for licensure and shall reopen, or the license shall expire. Any closed facility that has a suspended license on the effective date of this act may be issued a suspended license for a period not to exceed three (3) years from the effective date of this act.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-1908.1, is amended to read as follows:

Section 1-1908.1 A. The Oklahoma Health Care Authority shall amend the state Medicaid plan to provide a funding source for payment of temporary managers, ~~or~~ state monitors or receivers in facilities certified to provide long-term care services under Medicaid, upon request of the State Department of Health, pursuant to 42 U.S.C.A., Section 1396r(h)(z).

B. There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "Nursing Facilities Administrative Penalties Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Department of Health from administrative penalties imposed under the Nursing Home Care Act. Monies collected as a result of administrative penalties imposed under the Nursing Home Care Act shall be deposited into the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the protection of health or property of residents of nursing and specialized nursing facilities that have been placed under temporary managers, state monitors or receivers requested by the Department, including, but not limited to, the following purposes:

1. Relocation expenses incurred by the Department, in the event of closure of a facility;

2. Maintenance of facility operation pending correction of deficiencies or closure, such as temporary management, state monitor or receivership, in the event that the revenues of the facility are insufficient; or

3. The costs associated with informational meetings held by the Department with residents, family members, and interested parties in an affected community where the Department proceeds with appointment of a temporary manager, state monitor or receivership petition.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-1912, is amended to read as follows:

Section 1-1912. A. ~~If upon inspection or investigation, the~~ The State Department of Health shall serve a notice of violation upon a licensee whenever upon inspection or investigation the Department determines that a:

1. The 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; or~~

2. The financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility.

B. 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.~~ C. 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.

D. Whenever the Department finds that an emergency exists requiring immediate action to protect the health or welfare of any resident of a facility licensed pursuant to the provisions of the Nursing Home Care Act, the Department may, without notice of hearing, issue an order stating the existence of such an emergency and requiring that action be taken as deemed necessary to meet the emergency. Such order shall be effective immediately. Any person to whom such an order is directed shall comply with such order immediately but on application to the Department shall be afforded a hearing with ten (10) business days of receipt of the application. On the basis of such hearing, the Department may continue the order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided in this subsection may appeal to the district court in Oklahoma County within thirty (30) days. Such appeal when docketed shall have priority over all cases

pending on the docket, except criminal cases. For the purposes of this subsection, the State Board of Health shall define by rule the term "emergency" to include, but not be limited to, a life-endangering situation.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-1914.1, is amended to read as follows:

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

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a facility and may, after notice and opportunity for hearing, impose the remedy most likely to:

- a. gain and ensure continued compliance with the Nursing Home Care Act, the rules promulgated thereto, or federal certification standards, or both rules and standards-, or
- b. provide for financial operation of the facility that ensures the health, safety and welfare of the residents;

2. In the alternative or in addition to any remedial action, the State Commissioner of Health may direct the Oklahoma Health Care Authority to withhold vendor payments due to a facility under its programs until such time as the corrections are made;

~~2.~~ 3. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a facility, assess administrative penalties, or issue a conditional license; and

- ~~3.~~ 4. a. Pursuant to an investigation or inspection that reveals a willful violation of rules pertaining to minimum direct-care staffing requirements, the Commissioner shall notify the Oklahoma Health Care Authority and the Authority shall withhold as a penalty a minimum of twenty percent (20%) of the

vendor payments due the facility under its programs for each day such violation continues.

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

B. Whenever the Department takes remedial action against a facility because the financial condition of the facility has endangered, or is at risk of endangering the proper operation of the facility or the health, safety or welfare of the residents of the facility, the Department shall also review the conditions of all other facilities in the state owned or operated by a person or corporation with a controlling interest, as defined by Section 1-851.1 of this title, and may take remedial action against the facilities as necessary or appropriate.

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

1. The nature, circumstances and gravity of the violations;
2. The repetitive nature of the violations at the facility or others operated by the same or related entities;
3. The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and
4. ~~Any showing~~ A clear demonstration of good faith in attempting to achieve and maintain continuing compliance with the provisions of the Nursing Home Care Act.

SECTION 7. AMENDATORY 63 O.S. 2001, 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 financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility;

5. 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.~~ 6. 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 own~~ the manager's 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~~ under any of the following circumstances:

- a. 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,
- b. a receiver or bankruptcy trustee is appointed,
- c. the Commissioner appoints a new temporary manager,
- d. a new owner, operator, or manager is licensed,
- e. the Department, the temporary manager, or the receiver closes the facility through an orderly transfer of the residents, or
- f. an administrative hearing or court order ends the temporary manager appointment.

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 8. AMENDATORY 63 O.S. 2001, Section 1-1925, is amended to read as follows:

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

1. Location and construction of the facility, including 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 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. 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. 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. Equipment essential to the health and welfare of the residents; ~~and~~

6. Minimum levels of supplies including, but not limited to, food and other perishables;

7. Minimum financial solvency standards to ensure the operation of facilities; and

8. A program of rehabilitation for those residents who would benefit from such programs.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1930.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Whenever a determination is made that one of the following conditions exists, the State Commissioner of Health shall take whatever steps necessary to protect the health, welfare and safety of the residents including, if necessary, petitioning the court to place the facility under the control of a receiver to ensure that the residents receive adequate care:

1. The facility is operating without a license;

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

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

4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency, the appointment of a receiver is necessary; or

5. It is necessary to ensure that the residents get adequate care in a situation in which the residents' health and safety are threatened.

B. The court shall hold a hearing within five (5) days of the filing of the petition. The petition and notice of the hearing shall be served on the owner, administrator or designated agent of the facility and the petition and notice of hearing shall be posted in a conspicuous place in the facility not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the court. The court shall appoint a receiver for a limited time period, not to exceed one hundred eighty

(180) days, which shall automatically terminate the receivership unless extended by the court.

C. If a petition filed under this section alleges an emergency exists, the court may set the matter for hearing at the earliest possible time. The petitioner shall notify the licensee, administrator of the facility or registered agent of the licensee more than five (5) days prior to the hearing. Any form of written notice may be used. A receivership shall not be established ex parte by the court unless the Commissioner, under oath, has provided a statement that the Commissioner has determined that there is a life-endangering situation. A waiver of the five-day notice requirement may be approved by the court in life-endangering situations as determined and confirmed under oath, by the Commissioner.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1930.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The court may appoint any qualified person as a receiver, except it shall not appoint any owner or affiliate of the facility which is in receivership as its receiver. The State Department of Health shall maintain a list of such persons to operate facilities which the court may consider.

B. The receiver shall make provisions for the continued health, safety and welfare of all residents of the facility.

C. A receiver appointed under this section shall exercise those powers and shall perform those duties set out by the court. These powers and duties may include those generally ascribed to receivers and receiverships and may also include the powers and duties of trustees under the 1978 Bankruptcy Code. The court shall provide for the receiver to have sufficient power and duties to ensure that the residents receive adequate care.

D. All funds due to the facility from any source during the pendency of the receivership shall be made available to the receiver

who shall use the funds to assure the health and safety of the facility's residents.

E. A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breaches of fiduciary duty.

F. Other provisions of this section notwithstanding, the Department may issue a license to a facility placed in receivership. The duration of a license issued under this section is limited to the duration of the receivership.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1930.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The court may terminate a receivership:

1. If the time period specified in the order appointing the receiver elapses and is not extended;

2. If the court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist or the Department grants the facility a new license;
or

3. If all of the residents in the facility have been transferred or discharged.

B. 1. Within thirty (30) days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

2. If the operating funds exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the owner. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the owner shall be liable for the deficiency.

3. The Department shall have a lien for any payment made to the receiver 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 subparagraph a, b or c of this paragraph, made by the owner within one (1) year prior to the filing of the petition for receivership;

4. The receiver shall, within sixty (60) days after termination of the receivership, file a notice of any lien created under this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1930.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. All of the following occurrences shall require notification pursuant to this section:

1. The owner of a facility receives notice that a judgment or tax lien has been levied against the facility or any of the assets of the facility or the licensee;

2. A financial institution refuses to honor a check or other instrument issued by the owner, operator or manager to its employees for a regular payroll;

3. The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified in the Nursing Home Care Act or rules promulgated by the State Board of Health;

4. The financial resources of the facility fall below the amount needed to operate the facility for a period of at least forty-five (45) days based on the current occupancy of the facility. The determination that financial resources have fallen below the amount

needed to operate the facility shall be based upon the current number of occupied beds in the facility multiplied by the current daily Medicaid reimbursement rate multiplied by forty-five (45) days;

5. The owner, operator or manager fails to make timely payment of any tax of any government agency;

6. The filing of a bankruptcy petition under Title 7 or Title 11 of the United States Code or any other laws of the United States, by any person or entity with a controlling interest in the facility; or

7. The appointment of a trustee by the bankruptcy court.

B. The owner of a facility shall notify the Department within twenty-four (24) hours of the occurrence of any of the events specified in subsection A of this section. Such notification may be in written form, if provided by telephone facsimile or overnight mail, or by telephone, with a written confirmation within five (5) calendar days.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 1-1951, is amended to read as follows:

Section 1-1951. A. The State Department of Health shall have the power and duty to:

1. Issue certificates of training and competency for ~~nursing~~ nurse aides;

2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs;

3. Determine ~~curriculum~~ curricula and standards for training and competency programs;

4. Establish and maintain a registry for certified ~~nursing~~ nurse aides and for ~~nursing~~ nurse aide trainees; ~~and~~

5. Establish categories and standards for nurse aide certification and registration; and

6. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of this section.

B. The State Board of Health shall promulgate rules to implement the provisions of this section and shall have power to assess fees.

1. Each person certified as a ~~nursing~~ nurse aide pursuant to the provisions of this section shall be required to pay certification and recertification fees in amounts to be determined by the State Board of Health, not to exceed Fifteen Dollars (\$15.00).

2. In addition to the certification and recertification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Board.

3. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

C. Only a person who has qualified as a certified ~~nursing~~ nurse aide and who holds a valid current ~~nursing~~ nurse aide certificate for use in this state shall have the right and privilege of using the title Certified ~~Nursing~~ Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

D. 1. The State Department of Health shall establish and maintain a certified ~~nursing~~ nurse aide and ~~nursing~~ nurse aide trainee registry that:

- a. is sufficiently accessible to promptly meet the needs of the public and employers, and
- b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home ~~or~~, clients of an agency or center, or of misappropriation of resident or client property.

2. The registry shall contain information as to whether a ~~nursing~~ nurse aide has:

- a. successfully completed a certified ~~nursing~~ nurse aide training and competency examination,
 - b. met all the requirements for certification, or
 - c. received a waiver from the Board.
3. a. The registry shall include, but not be limited to, the following information on each certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee:
- (1) the individual's full name,
 - (2) information necessary to identify each individual,
 - (3) the date the individual became eligible for placement in the registry,
 - (4) information on any finding of the Department of abuse, neglect or exploitation by the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee, including:
 - (a) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,
 - (b) the date of the hearing, if requested by the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee, and
 - (c) a statement by the individual disputing the finding if the individual chooses to make one.

4. The Department shall include the information specified in division (4) of subparagraph a of paragraph 3 of this subsection in the registry within ten (10) working days of the substantiating finding and it shall remain in the registry, unless:

- a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or

b. the Board is notified of the death of the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

6. The Department shall, after notice to the individuals involved and a reasonable opportunity for a hearing, make a finding as to the accuracy of the allegations.

7. If the Department after notice and opportunity for hearing ~~investigation~~ determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the ~~nursing~~ nurse aide and to the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a ~~nursing assistant~~ nurse aide in a long-term care facility, a residential care facility, assisted living facility, day care facility, or any entity that requires certification of nurse aides, and notice of any further appeal rights shall also be sent to the ~~nursing~~ nurse aide.

8. The Department shall require that each facility check the nurse aide registry before hiring a person to work as a ~~nursing~~ nurse aide. If the registry indicates that an individual has been found, as a result of a hearing, to be personally responsible for abuse, neglect or exploitation, that individual shall not be hired by the facility.

9. If the state finds that any other individual employed by the facility has neglected, abused, misappropriated property or exploited in a facility, the Department shall notify the appropriate licensing authority and the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred.

10. Upon a written request by a certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee when a finding of abuse, exploited or neglect is confirmed and placed in the registry.

11. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified ~~nursing~~ nurse aide or ~~nursing~~ nurse aide trainee to the person requesting such information, and may disclose additional information the Department determines necessary.

12. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune from liability for reporting allegations of abuse, neglect or exploitation.

E. ~~All nursing~~ Each nurse aide ~~trainees~~ trainee shall wear a badge which ~~designates them~~ clearly identifies the person as a ~~nursing~~ nurse aide trainee. Such badge shall be furnished by the ~~Department~~ facility employing the trainee. The badge shall be nontransferable and shall include the first and last name of the trainee.

SECTION 14. AMENDATORY 43A O.S. 2001, Section 3-403, is amended to read as follows:

Section 3-403. As used in the Oklahoma Alcohol and Drug Abuse Services Act:

1. "Approved treatment facility" means any facility which offers either inpatient, intermediate or outpatient treatment to any person suffering from alcohol or drug abuse, or alcohol- or drug-related problems and which is certified by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority ~~and which has been licensed by the State Department of Health~~ pursuant to the provisions of the Oklahoma Alcohol and Drug Abuse Services Act;

2. An "alcohol-dependent person" is one who uses alcoholic beverages to such an extent that it impairs the health, family life, or occupation of the person and compromises the health and safety of the community;

3. A "drug-dependent person" means a person who is using a controlled substance as presently defined in Section 102 of the Federal Controlled Substances Act and who is in a state of psychic or physical dependence, or both, arising from administration of that controlled substance on an intermittent or continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence;

4. "Authority" means the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority;

5. "Council" means the Advisory Council on Alcohol and Drug Abuse;

6. "Incompetent person" means a person who has been adjudged legally mentally incompetent by a district court and who has not been judicially restored to competency;

7. "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as the direct result of the consumption of alcohol or drugs;

8. "Medical detoxification" means diagnostic and treatment services performed by licensed facilities for acute alcohol intoxication, delirium tremens and physical and neurological complications resulting from acute intoxication. Medical detoxification includes the services of a physician and attendant medical personnel including nurses, interns and emergency room personnel, the administration of a medical examination and a medical history, the use of an emergency room and emergency medical equipment if warranted, a general diet of three meals each day, the administration of appropriate laboratory tests, and supervision by properly trained personnel until the person is no longer medically incapacitated by the effects of alcohol;

9. "Nonmedical detoxification" means detoxification services for intoxicated clients with no apparent physical or neurological symptoms requiring medical treatment as a result of their intoxication. Nonmedical detoxification includes providing a bed, oral administration of fluids, three meals a day and the taking of the client's temperature, blood pressure and pulse at least once every six (6) hours for the duration of the client's stay in the nonmedical detoxification service;

10. "Inpatient treatment" means the process of providing residential diagnostic and treatment services on a scheduled basis;

11. "Intermediate care" means an organized therapeutic environment in which a client may receive diagnostic services, counseling, vocational rehabilitation and/or work therapy while benefiting from the support which a full or partial residential setting can provide. Intermediate care should provide a transition between the inpatient detoxification facility and reintegration into

community life. Intermediate care must include provision for a bed, three meals a day and medical support if needed;

12. "Transitional living facility" and "halfway house" means an approved treatment facility which offers or provides temporary residential accommodations, meals, supervision at all times residents are in the facility or on facility premises, and services, including counseling, short-term supportive care, case management, mental health services or treatment services to residents pursuant to a contract with the Department of Mental Health and Substance Abuse Services. A transitional living facility shall provide services to not more than twelve residents;

13. "Short-term supportive care" means a service rendered to any person residing in a halfway house or transitional living facility which is sufficient to assist the person to meet or achieve an adequate level of daily living and to learn or develop adequate daily living skills. Daily living skills shall include but not be limited to resident participation in meal preparation and routine housekeeping and laundry tasks. Short-term supportive assistance includes, but is not limited to assistance in the preparation of meals, housekeeping, laundry tasks and personal hygiene. Short-term supportive assistance shall not include medical services or personal care as defined in Section 1-820 of Title 63 of the Oklahoma Statutes; and

14. "Treatment" means the broad range of emergency, inpatient, intermediate and outpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcohol-dependent, intoxicated and drug-dependent persons.

SECTION 15. AMENDATORY 43A O.S. 2001, Section 3-417, is amended to read as follows:

Section 3-417. A. ~~After being certified by the Alcohol and Drug Abuse Prevention, Training, Treatment and Rehabilitation Authority,~~

~~any person or private agency, other than a transitional living facility or halfway house as defined by Section 3-403 of this title and persons or private agencies providing only outpatient services, shall apply to the State Commissioner of Health for a license to operate the treatment facility. Applications for such licenses shall be made in accordance with provisions for licensing hospitals and related institutions contained in Sections 1-703 and 1-704 of Title 63 of the Oklahoma Statutes.~~

~~B.~~ In addition to the standards for treatment services and rules of operation required by Section 3-416 of this title, the Department of Mental Health and Substance Abuse Services shall establish physical facility standards, fire safety standards and such other health and safety standards for halfway houses and transitional living facilities as necessary.

~~C.~~ B. The Department of Mental Health and Substance Abuse Services ~~and the State Department of Health~~ shall ensure that the standards required by Section 3-415 of ~~Title 43A and Section 1-705 of Title 63 of the Oklahoma Statutes~~ this title include specific physical facility standards providing for facilities that provide substance abuse treatment services to pregnant women and women with children when the children also reside at the facility.

SECTION 16. AMENDATORY 43A O.S. 2001, Section 3-417.1, is amended to read as follows:

Section 3-417.1 For the location of any treatment facility, transitional living center or halfway house as defined in Section 3-403 of ~~Title 43A of the Oklahoma Statutes which is operated pursuant to a license issued by the State Commissioner of Health for alcohol and drug abuse prevention, training, treatment and rehabilitation~~ this title, the state, a county, or a municipality shall be subject to the nondiscriminatory zoning ordinances of the municipality in which located, and the location of such facility is specifically prohibited within one thousand (1,000) feet of any public or private

elementary or secondary school. Provided, that if any public or private elementary or secondary school shall be established within the prohibited distance from any such facility after such facility has been in use as a treatment facility, transitional living center or halfway house, this shall not be a bar to the continued use of the facility as designated so long as it remains in continuous use as designated. The distance indicated in this section shall be measured from the nearest property line of the school to the nearest property line of the treatment facility, transitional living center or halfway house. The provisions of this section shall not apply to any treatment facility, transitional living center or halfway house established prior to the effective date of this act.

SECTION 17. AMENDATORY 63 O.S. 2001, Section 1-103, is amended to read as follows:

Section 1-103. A. 1. There is hereby created the State Board of Health, which shall consist of nine (9) members appointed by the Governor and confirmed by the Senate for regular terms of nine (9) years, except as hereinafter otherwise indicated.

2. Not less than four members shall ~~be licensed as physicians and surgeons~~ hold a current license to practice medicine in this state pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act and the Oklahoma Osteopathic Medicine Act. At least one physician member shall be a person licensed to practice medicine in this state by the State Board of Osteopathic Examiners. Physician members licensed by the State Board of Medical Licensure and Supervision ~~and~~ shall be members of the Oklahoma State Medical Association, ~~one.~~ One physician member ~~of which~~ shall be a ~~diplomat~~ diplomate of the American Board of Psychiatry and Neurology or be similarly qualified.

B. 1. The term of office of one member shall expire on June 30, 1964, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have

been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Creek, Lincoln, Okfuskee, Seminole, Pottawatomie, Pontotoc, Hughes, Johnston, and Coal.

2. The term of office of one member shall expire on June 30, 1965, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Blaine, Kingfisher, Canadian, Caddo, Grady, Comanche, Stephens, Jefferson, and Cotton.

3. The term of office of one member shall expire on June 30, 1966, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Le Flore, Latimer, Pittsburg, Atoka, Pushmataha, McCurtain, Choctaw, Bryan, Marshall, Carter, and Love.

4. The term of office of one member shall expire on June 30, 1967, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Cimarron, Texas, Beaver, Harper, Woodward, Woods, Major, Alfalfa, Grant, Garfield, Kay, and Noble.

5. The term of office of one member shall expire on June 30, 1968, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Adair, Sequoyah, Cherokee, Wagoner, Muskogee, Haskell, McIntosh, and Okmulgee.

6. The term of office of one member shall expire on June 30, 1969, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Ottawa, Delaware, Craig, Mayes, Nowata, Rogers, Washington, Tulsa, Pawnee, and Osage.

7. The term of office of one member shall expire on June 30, 1970, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Logan, Oklahoma, Cleveland, McClain, Garvin, Murray, and Payne.

8. The term of office of one member shall expire on June 30, 1971, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be a resident of one of the following counties and shall have been a resident of one or more of such counties for not less than five (5) years immediately preceding such member's appointment: Ellis, Dewey, Roger Mills, Custer, Beckham, Washita, Kiowa, Greer, Jackson, Harmon, and Tillman.

9. The term of office of one member shall expire on June 30, 1972, and each ~~nine (9)~~ six (6) years thereafter, and such member shall be appointed from the State of Oklahoma at large, and shall have been a resident of the state for not less than five (5) years immediately preceding such member's appointment.

C. No member shall serve more than two terms of office.

SECTION 18. This act shall become effective November 1, 2002."

Passed the House of Representatives the 22nd day of April, 2002.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2002.

Presiding Officer of the Senate