

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 738

By: Robinson of the Senate

and

Staggs of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Residential Care Act; amending 63 O.S. 1991, Sections 1-820, as last amended by Section 4, Chapter 230, O.S.L. 1995, 1-821, 1-822, 1-823, 1-824, 1-825, 1-826, 1-827, 1-828, 1-829, 1-830, 1-831, 1-832, 1-833, 1-834, 1-836, as amended by Section 1, Chapter 110, O.S.L. 1998, 1-837, 1-839 and Section 3, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 2000, Sections 1-820, 1-836 and 1-841), which relate to definitions, powers and duties, application for license, transfer of ownership, probationary license, penalties, revocation of license, effective date of revocation of license, fire safety inspections, prohibition of placement of persons in unlicensed homes, inspections and investigations, complaints, report of correction, prohibited acts, prosecution of violations, standards for homes, insuring life of resident, disposition of monies and accounting of clients' financial records; modifying definitions; requiring promulgation of specific rules; modifying powers and duties; removing certain requirement of an application; modifying applicant requirements; prohibiting certain persons from eligibility for licensure or participation in the management or operation of a home; modifying time limit for notification of specified change; allowing issuance and renewal of specified licenses; requiring plan of correction be submitted and accepted by parties prior to licensure; modifying penalties and liabilities; allowing opportunity for hearing; allowing denial of license when requirements are not met for licensure pursuant to rules; allowing denial, refusal to renew, suspension or revocation of license if specified persons have been convicted of a felony; allowing suspension of license if licensee or home is subject to suspension; allowing suspension of license if licensee failed to submit a plan of correction; setting time period after which certain conditions may be considered corrected; deleting denial of license as ground for such consideration; removing condition on effective date of nonrenewal, suspension or revocation of license; specifying time when license surrendered in lieu of revocation may be considered; deleting language relating to granting of new license; deleting obsolete language; modifying time period between inspections; requiring

inspections, investigations, surveys or evaluations be conducted without prior notice; providing that operator of any unlicensed facility shall be deemed to have given specified consent; providing that refusal to permit entry shall constitute grounds for emergency transfer of all residents; making disclosure of unannounced residential care inspections a misdemeanor, misuse of office and a violation of Ethics Commission rules; modifying conditions under which written notice of violation shall be given; modifying time frame for giving notice; setting time frame for requesting hearing; allowing the adoption of rules establishing specified criteria; deleting language relating to transmission of record of hearing and order of the Department; deleting definition; deleting language related to service and proof of service; deleting language related to the conducting of hearings; modifying time frame for hearing and notice of rejection; modifying procedures relating to correction of violations; allowing extension of specified period; deleting language related to request for extended correction time and contest of Department action; requiring home to follow a directed plan under specified circumstances; declaring operation of a residential care home without a license to be a public health emergency and specifying warranted action; requiring promulgation of specified rules instead of standards; clarifying language; allowing State Department of health to bring specified action; prohibiting residential care owners, administrators or operators from being entitled to or assigned benefits of specified insurance, with exception; requiring monies to be placed in specified fund; requiring accounting of clients' financial records; authorizing the State Department of Health to create a specified volunteer program and allowing specific activities related thereto; repealing 63 O.S. 1991, Section 1-838, which relates to receivers; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 1991, Section 1-820, as last amended by Section 4, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 2000, Section 1-820), is amended to read as follows:

Section 1-820. As used in the Residential Care Act, ~~Section 1-819 et seq. of this title:~~

1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

2. "Access" means the right of a person to enter a home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person who is in charge of a home and who devotes at least one-third (1/3) of his or her full working time to on-the-job supervision of such home;

4. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three or fewer mentally retarded or developmentally disabled adults;

5. "Advisory Board" means the Long-Term Care Facility Advisory Board;

6. "Ambulatory" means any resident who is capable of self-movement, including in and out of wheelchairs, to all areas of the home;

7. "Board" means the State Board of Health;

~~7.~~ 8. "Commissioner" means the State Commissioner of Health;

~~8.~~ 9. "Department" means the State Department of Health;

~~9.~~ 10. "Habilitation" means procedures and interventions designed to assist a mentally ill, drug-dependent or alcohol-dependent person eighteen (18) years of age or older to achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that the resident will make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction and personal relationships;

~~10.~~ 11. "Home" means a residential care home;

~~11.~~ 12. "Residential care home" means:

- a. means any establishment or institution other than an adult companion home, a group home, a hotel, motel, fraternity or sorority house, college or university dormitory which offers ~~or~~ provides or supports

residential accommodations, food service, and supportive assistance to any of its residents or houses any residents requiring supportive assistance who are not related to the owner or administrator of the home by blood or marriage. ~~Said~~ The residents shall be ambulatory and essentially capable of ~~managing participating in their own affairs~~ activities of daily living, but ~~do~~ shall not routinely require ~~skilled nursing care or intermediate care~~ nursing services, and

- b. ~~a residential care home~~ may consist of a series of units or buildings which are not connected or part of the same structure if:
- (1) such buildings or units are owned by the same owner or operator,
 - (2) all residents of the units or buildings are fully capable of ambulation to and from the buildings or units,
 - (3) the location and construction of the buildings or units ensure the health, safety, and protection from fire hazards and other hazards and provide for the convenience and accessibility of the residents to each residential building or unit,
 - (4) any out-of-doors premise or thoroughfare is adequately maintained to ensure the health and safety of the residents, and
 - (5) the buildings or units are within one hundred seventy-five (175) feet of the building housing the main kitchen and dining room. The units or buildings must be located in the most convenient and accessible location for residents, ~~and~~

~~e. residential care home shall not mean a hotel, motel, fraternity or sorority house, college or university dormitory providing such facility operates in a manner customary to its description and does not house any person who requires supportive assistance from said facility in order to meet an adequate level of daily living;~~

provided, however, the leasing of rooms directly or indirectly to residents of a home shall not void the application of the provisions of the Residential Care Act or rules promulgated pursuant thereto.

The State Board of Health shall ~~develop minimum standards~~ promulgate rules for such residential homes pursuant to the provisions of Section 1-836 of this title;

~~12.~~ 13. "Licensee" means a person, corporation, partnership, or association who is the owner of a home which is licensed pursuant to the provisions of the Residential Care Act, ~~Section 1-819 et seq. of this title;~~

~~13.~~ 14. "Maintenance" means meals, shelter, and laundry services;

~~14.~~ 15. "Neglect" means failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness;

~~15.~~ 16. "Operator" means the person who is not the administrator but who manages the home;

~~16.~~ 17. "Owner" means a person, corporation, partnership, association, or other entity which owns ~~a home~~ or leases a home or part of a home, directly or indirectly, to residents. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the home;

~~17.~~ 18. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, ~~or who is incapable of managing his person~~ or who is unable to manage all activities of daily living without assistance, whether or not a guardian has been appointed for such person;

~~18.~~ 19. "Resident" means a person of legal age, residing in a home due to illness, physical or mental infirmity, or advanced age;

~~19.~~ 20. "Representative of a resident" means a court-appointed guardian, or if there is no court-appointed guardian, ~~the parent of a minor,~~ a relative, or other person, designated in writing by the resident. No owner, agent, ~~or~~ employee, or person with a pecuniary interest in the residential facility or relative thereof shall be a representative of a resident unless such person is appointed by the court;

~~20.~~ 21. "Supportive assistance" means the service rendered to any person which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes, but is not limited to, housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution and administration of medications, and assistance in personal care as necessary for the health and comfort of such person. The term "supportive assistance" shall not be interpreted or applied so as to prohibit the participation of residents in housekeeping or meal preparation tasks as a part of the written treatment plan for the training, habilitation or rehabilitation of the resident, prepared with the participation of the resident, the mental health or drug or alcohol services case-manager assigned to the resident, and the administrator of the facility or his a designee. ~~Supportive assistance shall not include medical service;~~ and

~~21.~~ 22. "Transfer" means a change in location of living arrangements of a resident from one home to another home.

SECTION 2. AMENDATORY 63 O.S. 1991, Section 1-821, is amended to read as follows:

Section 1-821. A. The State Board of Health shall promulgate rules to enforce the provisions of the Residential Care Act which shall include, but not be limited to, provisions for temperature settings, lighting, ventilation, and other physical conditions that affect the health, safety and welfare of the residents in a home. Residential care homes that provide care for three or fewer residents shall be subject to the provisions of the Residential Care Act; provided, however, if such rules unduly restrict operation of the home, the Board shall be authorized and shall promulgate additional rules for residential care homes based upon the number of residents in a home.

B. The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend, and revoke licenses for homes pursuant to the provisions of the Residential Care Act; ~~and~~

2. ~~establish and enforce standards and requirements for licensure of homes which are subject to~~ Enforce the provisions of the Residential Care Act and any rules promulgated pursuant thereto by the Board, and require the submission ~~of,~~ and ~~to~~ review of reports from any person establishing or operating a home; ~~and~~

3. Enter upon any public or private property for the purpose of:

a. inspecting and investigating conditions of the residents in the home ~~or for the purpose of,~~

b. inspecting and investigating the home for compliance with the provisions of the Residential Care Act, ~~or the standards or requirements for licensure developed by the Department pursuant to the provisions of the~~

~~Residential Care Act~~ rules promulgated pursuant thereto, or

c. determining if services are being provided without a license; and

4. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of homes and the residents of such homes, and to take necessary action pursuant to the provisions of the Residential Care Act to protect and safeguard the health, safety, and welfare of residents of homes; ~~and~~

5. Establish a procedure for receipt and investigation of complaints regarding a home or concerning the condition, care, and treatment of a resident of a home; ~~and~~

6. Report to the district attorney having jurisdiction or the Attorney General any act committed by an owner, administrator, operator, or employee of a home which may constitute a misdemeanor pursuant to the provisions of the Residential Care Act; ~~and~~

7. Advise, consult, and cooperate with other agencies of this state, the federal government, other states and interstate agencies, and with affected groups and political subdivisions to further the purposes of the provisions of the Residential Care Act; ~~and~~

~~8. develop and enforce rules and regulations subject to the approval of the Board to implement the provisions of the Residential Care Act. Such rules and regulations shall include but not be limited to governing temperature limits, lighting, ventilation, and other physical conditions which shall protect the health, safety, and welfare of the residents in a home. It is the intent of the Legislature that residential care homes which provide care for three (3) or less residents be subject to the Residential Care Act but that the Department not promulgate standards and rules for the homes that such rules are unduly restrictive as to prohibit the operation of such home. Therefore the Department is authorized and shall~~

~~establish and adopt levels of standards for residential care homes based upon number of residents in a home; and~~

~~9.~~ Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for licensure; ~~and~~

~~10.~~ 9. Establish civil penalties for violations of the provisions of the Residential Care Act as authorized by the Board pursuant to the provisions of the Residential Care Act; ~~and~~

~~11.~~ 10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department to protect the health, safety, and welfare of any resident of a home; ~~and~~

~~12.~~ 11. Assure the accountability for reimbursed care provided in certified homes participating in a federal or state health program as provided by or through the Department of Human Services; ~~and~~

~~13.~~ 12. Advise, consult, cooperate and assist with vocational-technical schools or institutions of higher education in this state in providing the training of persons to distribute and administer medication to a resident of a home; ~~and~~

~~14.~~ 13. Transfer or discharge a resident or otherwise protect the health, safety, and welfare of any resident of a home; ~~and~~

~~15.~~ 14. Exercise all incidental powers as necessary and proper for the administration of the Residential Care Act.

~~B.~~ C. To improve patient care, the Department shall hold a public meeting at least once every four (4) years in each of the licensed homes to advise and to facilitate communication and cooperation between personnel of the home and the residents. Administrators, employees of the home, residents, friends and relatives of the residents, representatives of the residents, and employees from appropriate state and federal agencies shall be invited and encouraged to attend such meetings.

SECTION 3. 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~~ meet the specific requirements for licensure as specified in rules promulgated by the State Board of Health pursuant to the provisions of the Residential Care Act.

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 or 1-1950.1 of ~~Title 63 of the Oklahoma Statutes~~ this title shall be eligible to be licensed or to participate in the management or operation of a home.

3. 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~~ 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~~ 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~~ thirty (30) days in advance 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~~ may issue and renew licenses which substantially 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~~ thereto; provided, however, a plan of correction shall be submitted and accepted by both parties prior to licensure.

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

SECTION 4. 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 license as provided ~~by the provisions of~~ in 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 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 5. AMENDATORY 63 O.S. 1991, Section 1-824, is amended to read as follows:

Section 1-824. If ~~the~~ an applicant for licensure under the Residential Care Act has not been previously licensed, or if the a home is not in operation at the time application is made, the State

Department of Health shall issue a probationary 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;~~ Section 1-822 of this title, 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~~ rules for licensure, shall issue a license pursuant to the provisions of the Residential Care Act and rules promulgated pursuant thereto. If at the end of ~~said~~ an 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~~ rules promulgated pursuant thereto, 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.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-825, is amended to read as follows:

Section 1-825. Any person who violates any of the provisions of the Residential Care Act, the rules promulgated pursuant thereto by the State Board of Health, or any order or determination of the State Department of Health pursuant to the provisions of the Residential Care Act, or who fails to perform any duty imposed upon such person by the provisions of the Residential Care Act, shall be subject to any of the following penalties and liabilities as authorized by the provisions of the Residential Care Act:

1. License revocation, suspension, or nonrenewal; ~~and~~
2. ~~Conditional license; and~~
- ~~3.~~ Transfer of residents; ~~and~~
- ~~4.~~ ~~Receivership~~
3. Temporary manager; ~~and~~
- ~~5.~~ 4. Injunctive proceedings; ~~and~~
- ~~6.~~ 5. Civil fines; and
- ~~7.~~ 6. Criminal penalties as provided in Section 1-832 of this title.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-826, is amended to read as follows:

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

1. Deny a license to an applicant who does not meet the requirements for licensure pursuant to the provisions of the Residential Care Act or rules promulgated pursuant thereto; ~~or~~
2. Refuse to renew, suspend, or revoke a license to a licensee or home which is not in compliance with the provisions of the

Residential Care Act or ~~with the standards, rules, or regulations of~~ the State Board of Health promulgated pursuant ~~to the provisions of~~ ~~the Residential Care Act thereto;~~ ~~or~~

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

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

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

6. Deny, refuse to renew, suspend, or revoke a license if an administrator or operator of a home has been convicted of a felony in connection with the management or operation of a home, or facility as defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ or 1-1950.1 of this title, or care or treatment of a resident of the home, or facility as defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title; ~~or~~

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

8. Refuse to renew a license if, at the time application is made for the renewal of the license, the licensee or home is subject to a plan of correction. ~~Said~~ The license may be renewed at such time as the required corrections are completed in the manner and time specified in the plan of ~~corrections~~ correction. If a license is issued or renewed with a plan of correction, such license may be suspended if the required corrections are not completed in the manner and time specified in the plan of correction; or

9. Suspend or revoke a license if the licensee has failed to submit a plan of correction or to correct conditions as required in a plan of ~~corrections~~ correction pursuant to the provisions of Section 1-831 of this title.

SECTION 8. AMENDATORY 63 O.S. 1991, Section 1-827, is amended to read as follows:

Section 1-827. A. If a hearing is not requested, the effective date of the nonrenewal, suspension, or revocation shall be as follows:

1. In cases of nonrenewal of a license the effective date shall be the expiration date of the license. ~~Said~~ The date may be extended no longer than necessary to permit the orderly removal of the residents; or

2. In cases of revocation or suspension of the license the effective date shall be the date set by the State Department of Health in the notice of revocation. ~~Said~~ The date shall be no later than necessary to permit the orderly removal of the residents.

B. If a hearing is requested, unless otherwise ordered by a district court, the effective date of the nonrenewal, suspension, or

revocation of a license shall be set upon final action after the hearing and shall be no later than necessary to permit the orderly removal of the residents.

C. A new application of the applicant or licensee whose license was ~~denied~~, not renewed, suspended, or revoked may be considered after ninety (90) days upon receipt of satisfactory evidence that the conditions upon which such ~~denial~~, nonrenewal, suspension, or revocation was based have been corrected. A new license may be granted after a full and complete inspection or investigation and the applicant or licensee and the home are in ~~full~~ substantial compliance with the provisions of the Residential Care Act and the ~~standards, rules, and regulations~~ promulgated thereto by the State Board pursuant to the provisions of the Residential Care Act of Health.

SECTION 9. AMENDATORY 63 O.S. 1991, Section 1-828, is amended to read as follows:

Section 1-828. The State Fire Marshal or ~~his~~ a designee shall conduct fire safety inspections on a regular basis at residential care homes and report ~~his~~ any findings ~~of said~~ from the inspections to the State Department of Health. In addition, the State Fire Marshal shall develop, adopt, and promulgate ~~the~~ rules ~~and regulations~~, or specifications consistent with nationally recognized standards or practices necessary for the safeguarding of life and property of residents of residential care homes from the hazards of fire and smoke.

SECTION 10. 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. 1. 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~~ rules.

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

2. ~~Any~~ An inspection, investigation, survey, or evaluation ~~may~~ shall be ~~conducted without prior notice to the home. At least one inspection per home shall be~~ unannounced. Any licensee ~~or,~~ applicant for a license or operator of any unlicensed facility 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~~ shall constitute grounds for the denial, nonrenewal, suspension, or revocation of a license as well as emergency transfer of all residents.

3. Any employee of the Department who discloses to any unauthorized person, prior to an inspection, information regarding an unannounced residential care home inspection that is required pursuant to the provisions of this act shall, upon conviction thereof, be guilty of a misdemeanor. In addition, such action shall be construed to be a misuse of office and punishable as a violation of rules promulgated by the Ethics Commission.

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.~~

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~~ the 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~~ thereto.

E. The Department shall make at least one annual report on each home in the state. The report shall include all conditions and practices not in compliance with the provisions of the Residential Care Act or ~~the standards, rules, and regulations~~ promulgated pursuant thereto within the last year and, if a violation is corrected, or is subject to an approved plan of correction. The Department 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 11. 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~~ Whenever the State Department of Health determines that ~~there are reasonable grounds to believe that~~ a home is in violation of the provisions of the Residential Care Act or ~~of any standard, 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 thereto,~~ 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 of this section home of the violation.~~

B. The Department shall give the notice specified by the provisions of subsection A of this section within ten (10) business 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 of this section The home may request a hearing within ten (10) business days of receipt of the notice. 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. 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. The State Board of Health shall adopt rules that establish criteria for the emergency transfer of residents initiated by the State Department of Health, including notice and hearings, if the resident is aggrieved by the decision. 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) business 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. ~~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. 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 12. AMENDATORY 63 O.S. 1991, Section 1-831, is amended to read as follows:

Section 1-831. A. If the ~~complaints~~ violations specified in the notice required by Section 1-830 of this title have been corrected prior to the ~~hearing~~ date of filing of a plan of correction, 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) business 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 Department may ~~extend this~~ grant an extended 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) business days of receipt of the plan of correction to the home. The home shall have ten (10) business 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~~ a directed 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 13. AMENDATORY 63 O.S. 1991, Section 1-832, is amended to read as follows:

Section 1-832. A. No person shall willfully:

1. Fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction pursuant to the provisions of the Residential Care Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

~~or~~

2. Prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the State Department

of Health in the investigation and enforcement of the Residential Care Act; ~~or~~

3. Prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties pursuant to the provisions of the Residential Care Act; ~~or~~

4. Prevent or interfere with any such representative in the preserving of evidence of any violation of the Residential Care Act or the rules promulgated pursuant ~~to the provisions of the Residential Care Act~~ thereto; ~~or~~

5. Retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized pursuant to the provisions of the Residential Care Act; ~~or~~

6. File any false, incomplete, or intentionally misleading information required to be filed pursuant to the provisions of the Residential Care Act, or willfully fail or refuse to file any information required by the Department pursuant to the provisions of the Residential Care Act; or

7. Open or operate a home without a license. Operation of a residential care home without a license is a public health emergency warranting action pursuant to the provisions of Section 1-830 of this title.

B. No employee of a state or unit of a local ~~government~~ governmental agency shall aid, abet, assist, conceal, or conspire with an administrator, operator or other employee of a home in a violation of any provision of the Residential Care Act or any rule, ~~regulation, or standard~~ promulgated by the State Board of Health pursuant ~~to the Residential Care Act~~ thereto.

C. Any person who violates any of the provisions of the Residential Care Act, upon conviction, shall be guilty of a

misdemeanor. Each day upon which such violation occurs shall constitute a separate violation.

SECTION 14. AMENDATORY 63 O.S. 1991, Section 1-833, is amended to read as follows:

Section 1-833. A. Any person who has been determined by the State Department of Health to have violated any provision of the Residential Care Act or any rule, ~~regulation, or order issued promulgated~~ pursuant to the provisions of the Residential Care Act ~~thereto~~ may be liable for a civil penalty of not more than One Hundred Dollars (\$100.00) for each day that ~~said~~ the violation continues. The maximum civil penalty shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the penalty, the Department shall include, but not be limited to, consideration of the nature, circumstances, and gravity of the violation and, with respect to the person found to have committed the violation, the degree of culpability, the effect on ability of the person to continue to do business, and any show of good faith in attempting to achieve compliance with the provisions of the Residential Care Act.

C. Any license holder may elect to surrender his or her license in lieu of ~~said~~ the fine but shall be forever barred from obtaining a reissuance of ~~said~~ the license.

SECTION 15. AMENDATORY 63 O.S. 1991, Section 1-834, is amended to read as follows:

Section 1-834. A. The Attorney General, the State Department of Health or the district attorney of the appropriate district court of Oklahoma may bring an action in a court of competent jurisdiction for the prosecution of a violation by any person of a provision of the Residential Care Act or any rule, ~~regulation, or order issued~~

promulgated pursuant to the provisions of the Residential Care Act thereto.

B. 1. Enforcement of any action for equitable relief to redress or restrain a violation by any person of a provision of the Residential Care Act or for an injunction or recovery of any administrative or civil penalty assessed pursuant to the Residential Care Act may be brought by:

- a. the district attorney of the appropriate district court of the State of Oklahoma~~7~~1
- b. the Attorney General on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma~~7~~1 or
- c. the Department on behalf of the State of Oklahoma in the appropriate district court of the State of Oklahoma, or as otherwise authorized by law.

2. The court has jurisdiction to determine ~~said~~ the action, and to grant the necessary or appropriate relief~~7~~ including~~7~~1 but not limited to~~1~~ mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.

SECTION 16. AMENDATORY 63 O.S. 1991, Section 1-836, as amended by Section 1, Chapter 110, O.S.L. 1998 (63 O.S. Supp. 2000, Section 1-836), is amended to read as follows:

Section 1-836. A. The State ~~Department~~ Board of Health shall ~~develop minimum standards for residential care homes. These standards shall be promulgated by the State Board of Health and submitted to the Legislature no later than January of each year. These standards~~ promulgate rules to enforce the provisions of the Residential Care Act. Such rules shall regulate:

1. Location and construction of the home, 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 of all personnel, including management and supervisory personnel, having responsibility for any part of the care given to residents. The Department shall establish staffing ratios for homes which shall specify the number of staff hours of care per resident that are needed for care for various types of homes or areas within homes. Minimum personnel ratio requirements for all homes shall be based only on average daily census;

3. All sanitary conditions within the home 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 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. Rehabilitation programs for those residents who would benefit from such programs.

B. 1. In order to further ensure minimum standards for homes, a certificate of training as specified shall be required of all:

- a. administrators, who shall obtain a residential care administrator certificate of training, and
- b. direct care staff responsible for administration of medication to residents, who shall obtain a residential care certificate of training.

2. The certificate will be developed and administered by an institution of higher learning with the advice of the State Commissioner of Health and of the Long-Term Care Facility Advisory Board.

- a. (1) For residential care home administrators the training shall consist of a minimum of fifty (50) hours which shall include at least fifteen (15)

hours of training in the administration of medication and shall also include, but not be limited to, training in:

- (a) administration,
- (b) supervision,
- (c) reporting,
- (d) record keeping,
- (e) independent or daily living skills,
- (f) leisure skills and recreation, and
- (g) public relations concerning the issues associated with the operation of residential care homes and programs.

- (2) An individual applying for certification as an administrator may at any time present the institution of higher education with documentation of prior education and work experience for consideration for possible credit toward certification.
- (3) Any person employed as an administrator after July 1, 1988, shall have completed the training specified by this division.
- (4) Thereafter, annually, at least sixteen (16) hours of training in the subjects specified by this division shall be required for such administrator.
- (5) A certified administrator may make a written request to the ~~State Commissioner of Health~~ to be placed in an inactive status for up to five (5) subsequent calendar years. Such inactive status shall allow the administrator to waive the educational requirements for the period of the request. Such certified administrator shall not

work in a residential care administrator capacity in Oklahoma until such time as the certificate is reactivated. The request to reactivate the certificate shall be made in writing to the Commissioner. Such administrator shall then be required to complete sixteen (16) hours of training in the subjects specified in this division.

- b. All direct care staff who are responsible for administration of medication to residents shall be required to begin training in the administration of medication within ninety (90) days of employment with the home and to satisfactorily complete at least fifteen (15) hours of training in the administration of medication, within the first year of employment with the home.

3. All other direct care staff who are employed by a residential care home, within ninety (90) days of employment with the home, shall be required to begin eight (8) hours of in-service training, to be administered by the administrator of the home or other person designated by the administrator of the home and completed within twelve (12) months from such person's date of employment, and annually thereafter. Thereafter such direct care staff and the direct care staff responsible for administering medication to residents shall, annually, be required to receive at least eight (8) hours of training by the administrator of the home in:

- a. patient reporting and observation,
- b. record keeping,
- c. independent or daily living skills,
- d. leisure skills and recreation,
- e. human relations, and

f. such other training relevant to residential care programs and operations.

4. The requirement of certification and the training specified pursuant to the provisions of this subsection shall be included in the rules promulgated by the Board.

5. Failure of the owner or administrator to ensure the training required pursuant to this subsection is received shall constitute a violation of the Residential Care Act and shall be grounds for revocation of licensure. Proof of successful completion of such training for the residential care home administrator and direct care staff shall be required prior to issuance or renewal of a license issued pursuant to the provisions of the Residential Care Act. The Department shall not renew any license for any residential care home, if the training required by this subsection has not been completed.

SECTION 17. AMENDATORY 63 O.S. 1991, Section 1-837, is amended to read as follows:

Section 1-837. A. No owner, administrator, or operator of a residential care home shall have an insurable interest in the life of a resident of the home unless ~~said~~ the owner, administrator, or operator is related to the resident ~~of the home~~ by blood or marriage.

B. No owner, administrator, or operator of a residential care home shall be entitled or assigned to any benefits of a life insurance policy on ~~the~~ a resident unless ~~said~~ the owner, administrator, or operator is related to the resident ~~of the home~~ by blood or marriage.

SECTION 18. AMENDATORY 63 O.S. 1991, Section 1-839, is amended to read as follows:

Section 1-389. All monies received by the State Department of Health, from any monies received as a result of an assessment of a civil penalty pursuant to the provisions of the Residential Care Act

shall be deposited in the ~~General Revenue~~ Public Health Special Fund created in Section 1-107 of this title.

SECTION 19. AMENDATORY Section 3, Chapter 230, O.S.L. 1995 (63 O.S. Supp. 2000, Section 1-841), is amended to read as follows:

Section 1-841. The State Department of Health shall require as a condition of licensure for residential care facilities that an accounting be made of financial records of each client for which the facility is the payee in each such residential facility. Such accounting shall be recorded and given to the resident and/or the resident's representative upon request. The records may be inspected by any employee of the Department during any regular inspection or at any time a complaint is received by the Department regarding a client's finances.

SECTION 20. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-859.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health is authorized to create a volunteer program for long-term care facilities. The Department may promote, develop, train and manage volunteers related to long-term care needs.

SECTION 21. REPEALER 63 O.S. 1991, Section 1-838, is hereby repealed.

SECTION 22. This act shall become effective November 1, 2001.

48-1-1712 BP 6/12/2015 3:16:40 AM