

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

SENATE BILL 1467

By: Robinson

AS INTRODUCED

An Act relating to public health and safety; creating End Stage Renal Disease Facilities Act; providing short title; establishing definitions; prohibiting operation without license after specified date; providing exemptions; authorizing State Department of Health to promulgate rules and minimum standards and stating criteria thereto; requiring facilities to submit application; establishing nonrefundable application fee; providing conditions for issuance and denial of license; authorizing temporary license and setting expiration date; providing for license renewal; prohibiting transfer or assignment of license; requiring posting of license; directing distribution of funds into specified revolving fund; authorizing Department to take legal action to redress or restrain violations; establishing jurisdiction of court; establishing civil penalty; establishing administrative penalty and providing criteria for determination of penalty amount; creating End Stage Renal Disease Revolving Fund and stating procedures thereto; creating Oklahoma End Stage Renal Disease Advisory Council and requiring State Commissioner of Health to make appointments; stating purpose; establishing powers and duties of Advisory Council and setting parameters thereof; providing for membership, appointment, qualifications, terms of office and vacancies; providing for meetings, election and duties of chair and travel reimbursement; requiring action in accordance with specified acts; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

This act shall be known and may be cited as the "End Stage Renal Disease Facilities Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the End Stage Renal Disease Facilities Act:

1. "Board" means the State Board of Health;
2. "Chief technician" means the facility-based supervisor of the facility's mechanical, reuse and water treatment systems;
3. "Commissioner" means the State Commissioner of Health;
4. "Competency" means the demonstrated ability to carry out specified tasks or activities with reasonable skill and safety in adherence with the prevailing standard of practice;
5. "Department" means the State Department of Health;
6. "Dialysis" means a process by which dissolved substances are removed from a patient's body by diffusion from one fluid compartment to another across a semipermeable membrane including, but not limited to, hemodialysis and peritoneal dialysis;
7. "Dialysis technician or patient care technician" means an individual who is not a registered nurse or licensed physician who provides dialysis care under the supervision of a registered nurse or licensed physician;
8. "End stage renal disease (ESRD)" means that stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life;
9. "End stage renal disease (ESRD) facility" means a facility that provides dialysis treatment or dialysis training to individuals with end stage renal disease; and
10. "ESRD Network 13" means a regional agency under contract with the Center for Medicare and Medicaid Services (CMS) to assess and improve the quality of care provided to patients with end stage renal disease in the states of Oklahoma, Arkansas and Louisiana.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. After November 1, 2002, no end stage renal disease (ESRD) facility shall operate without first obtaining a license as required by the End Stage Renal Disease Facilities Act.

B. The provisions of this act shall not apply to:

1. A hospital licensed under Sections 1-701 through 1-709 of Title 63 of the Oklahoma Statutes which provides dialysis only to individuals receiving inpatient services from such hospital; or

2. The office of a licensed physician if the office is not used primarily as an end stage renal disease facility.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall have the power and duty to promulgate, amend and repeal rules necessary to implement the provisions of the End Stage Renal Disease Facilities Act, including rules which:

1. Address the establishment and enforcement of qualifications, standards and requirements for licensure of ESRD facilities;

2. Provide procedures for issuing, reviewing, revoking and/or denying a license or a license renewal to any facility making application when the requirements for licensure or renewal are not met;

3. Provide procedures for transfer of ownership of a licensed facility;

4. Provide procedures for Department entry into any ESRD facility when reasonably necessary for the sole purpose of inspecting and investigating conditions of the facility in accordance with provisions of the End Stage Renal Disease Facilities Act;

5. Provide for administrative penalties for violations of the End Stage Renal Disease Facilities Act;

6. Provide procedures for receipt and investigation of complaints regarding an ESRD facility. A complaint regarding an ESRD facility shall not be made public unless a complete investigation substantiates the violations alleged in the complaint; and

7. Provide for license and renewal fees, not to exceed reasonable costs incurred by the Department in implementing this act, taking into account the number of dialysis stations and patient census served at licensed facilities.

B. The State Department of Health shall establish minimum standards to protect the health and safety of a patient at an end stage renal disease facility, including:

1. Design and space requirements for safe access by patients and personnel and which ensure patient privacy and dignity;
2. Emergency and disaster preparedness;
3. Facility communication responsibilities,
4. Water treatment and reuse by the facility;
5. Sanitary and hygienic conditions in the facility;
6. Equipment used by the facility in relationship to the health and safety of patients;
7. Indicators of the quality of care provided by the facility;
8. Patient care and treatment;
9. Qualifications and supervision of the professional staff, including physicians, as well as other personnel; and
10. Patient and facility rights and responsibilities.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any facility making application for a license under this act shall submit an application to the State Department of Health on a form prescribed by the Department.

B. An application for an initial license to establish or operate a new end stage renal disease facility shall be accompanied by a nonrefundable application fee set by the State Board of Health. The Department shall issue a license if, after inspection and investigation, it finds the facility in compliance with this act and rules of the Board. An application for a license for an end stage renal disease facility may be denied for failure to meet any of the minimum standards of this act or the rules promulgated by the Board.

C. The Department may grant a temporary initial license to a facility making application. The temporary initial license expires on the earlier of:

1. The date the Department issues or denies the license provided for in subsection B or D of this section; or

2. Six (6) months after the date the temporary initial license was issued.

D. The license provided for in subsection B shall be renewable annually after submission of:

1. The renewal application and fee; and

2. An annual report on a form prescribed by the Department including information related to the quality of care at the end stage renal disease facility.

E. No license shall be transferable or assignable.

F. Every license shall be posted in a conspicuous place on the licensed premises and shall be issued only for the premises named in the application.

G. All funds collected pursuant to this section shall be deposited in the End Stage Renal Disease Facilities Revolving Fund created in Section 9 of this act.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department may bring an action in a court of competent jurisdiction for equitable relief to redress or restrain a violation by any person of a provision of the Oklahoma End Stage Renal Disease Facilities Act or any rule promulgated pursuant to the provisions of the act. The court shall have jurisdiction to determine such action, and to grant the necessary or appropriate relief including, but not limited to, mandatory or prohibitive injunctive relief or interim equitable relief.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A person who knowingly violates the End Stage Renal Disease Facilities Act or knowingly fails to comply with any rule promulgated thereto, shall be liable for a civil penalty of not more than One Thousand Dollars (\$1,000.00) for each violation if the Department finds that the violation threatens the health and safety of a patient of an end stage renal disease facility.

B. Each day of a continuing violation may constitute a separate ground for recovery.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

The Department may assess an administrative penalty against a person who violates this act or rules promulgated by the State Board of Health. The penalty shall not exceed Ten Thousand Dollars (\$10,000.00). In determining the amount of an administrative penalty under this section, the Department shall consider:

1. The seriousness of the violation;
2. The history of previous violations;

3. The amount necessary to deter future violations;
4. The effort made to correct the violation; and
5. Any other matters that justice may require.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

There is hereby created in the State Treasury a Revolving Fund for the State Department of Health, to be designated as the "End Stage Renal Disease Revolving Fund". The fund shall be a continuing fund not subject to fiscal year limitations. The fund shall consist of all monies collected pursuant to the provisions of this act. All monies accruing to the fund are hereby appropriated and shall be budgeted and expended by the State Department of Health for licensure and regulation of end stage renal disease facilities. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-723.10 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Commissioner of Health shall appoint an Oklahoma End Stage Renal Disease (ESRD) Advisory Council to advise the State Board of Health, the Commissioner, and the State Department of Health regarding ESRD operations and to recommend actions to improve patient care.

B. The Advisory Council shall have the power and duty to:

1. Review, in its advisory capacity, rules and standards for end stage renal disease facility licensure;

2. Evaluate, review, and make recommendations regarding Department licensure activities; provided, however, the Advisory Council shall not make recommendations regarding scope of practice

for any health care providers or practitioners regulated pursuant to Title 59 of the Oklahoma Statutes; and

3. Recommend:

- a. quality indicators and data submission requirements for end stage renal disease facilities, and
- b. indicators and data to be used by the Department to monitor compliance with licensure requirements.

C. The Advisory Council shall be composed of nine (9) members appointed by the Commissioner, with the advice and consent of the Board, as follows:

1. Three patients or immediate family members of a patient diagnosed with end stage renal disease, one of whom shall be of Native American descent. The patient representative may be selected from a population of individuals with current successful renal transplants, if at one time the individual received treatment at an ESRD facility;

2. One member who shall be a licensed physician with a practice which includes end stage renal disease services;

3. One member who shall be an Oklahoma-based representative of ESRD Network 13, currently employed or serving in an advisory capacity to ESRD Network 13, at the time of nomination to the Advisory Council;

4. One member who shall be a licensed, registered nurse and a current member of a nationally recognized nephrology nursing association;

5. One member who shall be an end stage renal disease facility administrator;

6. One member who shall be a licensed dietician specializing in end stage renal disease; and

7. One number who shall be social worker specializing in end stage renal disease.



D. Members shall be appointed for terms of three (3) years. Provided, of those members initially appointed to the Advisory Council, five members shall be appointed for two-year terms beginning November 1, 2002, as designated by the Commissioner and four members shall be appointed for three-year terms beginning November 1, 2002, as designated by the Commissioner. When a vacancy occurs, members shall continue in office until a successor is appointed.

E. The Advisory Council shall meet on a quarterly basis and shall annually elect from among its members a chair. The chair shall preside at meetings of the Advisory Council, set the agenda, and perform other duties as may be prescribed by the Commissioner. Members of the Council shall serve without compensation but shall be reimbursed by the Department for travel expenses related to their service as authorized by the State Travel Reimbursement Act.

F. The Advisory Council shall act in accordance with the provisions of the Oklahoma Open Meeting Act, the Oklahoma Open Records Act, and the Administrative Procedures Act.

SECTION 11. This act shall become effective July 1, 2002.

SECTION 12. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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