

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 1109

By: Cain and Williams of the
Senate

and

Blackburn of the House

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 1-1961, 1-1962 and 1-1964, which relate to the Home Care Act; modifying definition; expanding list of exempt entities and providing exception to exemption; providing for an exemption from certain restrictions in rules; requiring training; amending 63 O.S. 2001, Section 1-1950.5, as amended by Section 1, Chapter 71, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1950.5), which relates to penalties for caregivers; adding restriction for personal care attendants hired under certain programs; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1961, is amended to read as follows:

Section 1-1961. As used in the Home Care Act:

1. "Board" means the State Board of Health;
2. "Certification" means verification of appropriate training and competence established by the State Board of Health by rules promulgated pursuant to the Home Care Act for home health aides and home care agency administrators;
3. "Department" means the State Department of Health;

4. "Home care agency" means any sole proprietorship, partnership, association, corporation or other organization which administers, offers or provides home care services, for a fee or pursuant to a contract for such services, to clients in their place of residence. The term "home care agency" shall not include:

- a. individuals who contract with the Department of Human Services to provide personal care services, provided such individuals shall not be exempt from certification as home health aides,
- b. organizations that contract with the Oklahoma Health Care Authority as Intermediary Services Organizations (ISO) to provide federal Internal Revenue Service fiscal and supportive services to Consumer-Directed Personal Assistance Supports and Services (CD-PASS) waiver program participants who have employer responsibility for hiring, training, directing and managing an individual personal care attendant, or
- c. CD-PASS waiver program employer participants;

5. "Home care services" means skilled or personal care services provided to clients in their place of residence for a fee;

6. "Home health aide" means an individual who provides personal care to clients in their temporary or permanent place of residence for a fee;

7. "Home care agency administrator" means a person who operates, manages, or supervises, or is in charge of a home care agency;

8. "Personal care" means assistance with dressing, bathing, ambulation, exercise or other personal needs; and

9. "Skilled care" means home care services performed on a regular basis by a trained Respiratory Therapist/Technician or by a person currently licensed by this state, including but not limited

to a Licensed Practical Nurse, Registered Nurse, Physical Therapist, Occupational Therapist, Speech Therapist, or Social Worker.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1962, is amended to read as follows:

Section 1-1962. A. No home care agency as such term is defined by this act shall operate without first obtaining a license as required by the Home Care Act.

B. 1. No employer or contractor, except as otherwise provided by this subsection, shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless such individual is a licensed health professional or unless such individual has satisfied the requirements for certification and placement on the home health aide registry maintained by the State Department of Health; and

2. a. Any person in the employment of a home care agency as a home health aide on June 30, 1992, with continuous employment through June 30, 1993, shall be granted home health aide certification by the Department on July 1, 1993. The home care agency shall maintain responsibility for assurance of specific competencies of the home health aide and shall only assign the home health aide to tasks for which the aide has been determined to be competent.

b. Any home health aide employed between the dates of July 1, 1992, and June 30, 1993, shall be eligible for certification by passing a competency evaluation and testing as required by the Department.

c. Any home health aide employed on and after July 1, 1996, shall complete any specified training, competency evaluation and testing required by the Department.

C. The provisions of the Home Care Act shall not apply to:

1. A person acting alone who provides services in the home of a relative, neighbor or friend;

2. A person who provides maid services only;

3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;

4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act;

5. A nurse-midwife;

6. An individual, agency, or organization that contracts with the Oklahoma Health Care Authority to provide services under the Home and Community-Based Waiver for persons with mental retardation or that contracts with the Department of Human Services to provide community services to persons with mental retardation; provided, that staff members and individuals providing such services shall receive a level of training, approved by the Department of Human Services, which meets or exceeds the level required pursuant to the Home Care Act. An individual, agency or organization otherwise covered under the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under contracts referenced in this paragraph;

7. An individual, agency or organization that provides or supports the provision of personal care services to an individual who performs individual employer responsibilities of hiring, training, directing and managing a personal care attendant as part of the Oklahoma Health Care Authority Consumer-Directed Personal Assistance Supports and Services (CD-PASS) waiver program. An individual, agency or organization otherwise covered under the provisions of the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under Oklahoma Health Care Authority contracts referenced in this

paragraph, but shall not be exempt from the criminal history background check required under the Home Care Act and Section 1-1950.5 of this title for other paraprofessional direct care service providers. A personal care attendant hired by a consumer under the CD-PASS program shall be exempt from certification as a home health aide, provided such personal care attendant receives the training required and approved by the Department of Human Services;

8. An individual who only provides Medicaid home- and community-based personal care services pursuant to a contract with the Oklahoma Health Care Authority; or

~~8.~~ 9. An individual who:

- a. is employed by a licensed home care agency exclusively to provide personal care services on a live-in basis,
- b. has no convictions pursuant to a criminal history investigation as provided in Section 1-1950.1 of this title,
- c. is being continuously trained by a registered nurse to provide care that is specific to the needs of the particular client receiving the care, and
- d. is supervised by a registered nurse via an on-site visit at least once each month.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-1964, is amended to read as follows:

Section 1-1964 The State Board of Health shall promulgate rules necessary to implement the provisions of the Home Care Act. Such rules shall include, but shall not be limited to:

1. Minimum standards for home care services. In establishing such standards, the Board shall consider those standards adopted by state and national home care associations;

2. Requirements for the certification and renewal certification of home health aides and home care agency administrators;

3. Provisions for transfer of ownership of a licensed agency;

4. A requirement that each licensed agency create and disclose to its clients a statement of clients' rights and responsibilities;

5. Establishing continuing education requirements for renewal of certifications for home care agency administrators;

6. Requirements for financial resources to ensure a home care agency's ability to provide adequate home care services;

7. Standards for assessing an applicant's business and professional experience as demonstrated in prior health care provider operations including, but not limited to, nursing homes, residential care homes, and home care and in previous compliance with all lawful orders of suspension, receivership, administrative penalty or sanction issued by the State Department of Health or by other administrative agencies in other states with similar responsibilities;

8. Restrictions on any agency, agency employee, or agency contractor providing skilled care or conducting an in-home assessment of the need for skilled care unless and until the agency receives a physician's order to provide skilled care or to conduct an in-home assessment of the need for skilled care; provided, however, such restrictions shall not prevent an agency from providing personal care to a client without a physician's order. Provided further, such restrictions shall not apply to in-home assessments of home and community-based waiver clients in the state Medicaid program;

9. Restrictions on any agency, agency employee, or agency contractor soliciting, coercing, or harassing a consumer of home care services or who may need home care services; and

10. Standards or other provisions which do not conflict with any federal requirements relating to the federal Medicaid and Medicare programs.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-1950.5, as amended by Section 1, Chapter 71, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1950.5), is amended to read as follows:

Section 1-1950.5 A. 1. It shall be unlawful for a caregiver to solicit or accept anything of value greater than One Dollar (\$1.00) from any person in the caregiver's care; provided, however, nothing in this section shall be construed as prohibiting a group of individuals, including family members and friends of residents, from establishing an employee recognition program consisting of voluntary, anonymous and confidential donations to care providers, provided further, no care provider shall be included in the group making decisions regarding the disbursement. Such donations may be disbursed pursuant to procedures established by the group.

2. As used in this section, "caregiver" means a person who is:

a. the paid agent or employee of:

~~a.~~ (1) an assisted living center,

~~b.~~ (2) a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title,

~~c.~~ (3) an adult day care center as such term is defined in Section 1-872 of ~~Title 63 of the Oklahoma Statutes~~ this title,

~~d.~~ (4) a home health or home care agency, or

~~e.~~ (5) the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers under the Personal Care Services Program, or

b. a personal care attendant hired by a consumer under the CD-PASS program,

but does not include a guardian, limited guardian, or conservator as such terms are defined in the Oklahoma Guardianship and Conservatorship Act.

B. Any person who violates the provisions of paragraph 1 of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

SECTION 5 This act shall become effective November 1, 2004.

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