

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 591

By: Lawler of the Senate

and

Askins of the House

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 1-860.2, 1-860.5, 1-860.6, 1-860.15 and 1-1950.4, which relate to the Oklahoma Hospice Licensing Act and the nurse aide uniform employment application; expanding and clarifying definitions; updating and clarifying language; expanding powers and duties of the State Department of Health with regard to licensure of hospice programs; authorizing inpatient hospice facilities; providing for restrictions and rules; expanding requirements for specified plan; expanding contents of license; providing for additional fees; amending 63 O.S. 2001, Section 1-1939, which relates to the Nursing Home Care Act; modifying and clarifying certain reporting requirements; amending 63 O.S. 2001, Section 1-1950.3, as amended by Section 15, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1950.3), which relates to nurse aides; making certain staffing applicable to availability of state funds; modifying time period when a nurse aide can be employed; removing certain training restrictions; deeming medication aides as meeting certain certification requirements upon certain events; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-860.2, is amended to read as follows:

Section 1-860.2 As used in the Oklahoma Hospice Licensing Act:

1. "Board" means the State Board of Health;
2. "Department" means the State Department of Health;
3. "Hospice program" means a centrally administered, nonprofit

or profit, medically directed, nurse-coordinated program which provides a continuum of home and inpatient care for the terminally

ill patient and the patient's family. A hospice program offers palliative and supportive care to meet the special needs arising out of the physical, emotional and spiritual stresses ~~which are~~ experienced during the final stages of illness and during dying and bereavement. This care is available twenty-four (24) hours a day, seven (7) days a week, and is provided on the basis of need, regardless of ability to pay. "Class A" Hospice refers to Medicare certified hospices. "Class B" refers to all other providers of hospice services;

4. "Hospice interdisciplinary team" or "hospice team" means a unit composed of ~~the~~ professionals and lay persons, as specified by the Oklahoma Hospice Licensing Act, who provide hospice care;

5. "Hospice patient/family" means the hospice patient's immediate kin, including a spouse, brother, sister, child, parent or other persons with significant personal ties to the hospice patient, who may be designated by members of the hospice patient/family;

6. "Hospice services" means those services furnished to a patient by a hospice or by other persons, pursuant to arrangements with such a hospice, in a place of temporary or permanent residence used as the home of the terminally ill patient for the purpose of maintaining the patient at home. ~~If the~~ Should a patient needs require short-term institutionalization, ~~the~~ such hospice services shall be furnished in cooperation with those contracted institutions or in ~~the~~ a hospice inpatient facility ~~of the hospice~~. Such services may include, but ~~are~~ need not be limited to, bereavement ~~services~~, palliative ~~services~~, personal care and such other services as are provided by nurses, physicians, home health aides, physical therapists, counselors, psychologists, social workers and volunteers. Services provided by a hospital, nursing home or other health care provider shall not constitute a hospice services unless such hospital, nursing home or other health care provider ~~establishes a freestanding~~ is licensed as a hospice program;

7. "Medical advisor" means a physician licensed pursuant to the laws of this state who is commissioned as a medical advisor by ~~the~~ a hospice for the ~~purposes~~ purpose of providing ongoing palliative care as a member of ~~the~~ a hospice team;

8. "Palliative services" means the care or treatment given to a patient by ~~the~~ a hospice team for the reduction or abatement of pain and other symptoms ~~caused by the disease~~ attendant to the patient's condition;

9. "Patient" means ~~the~~ a terminally ill person receiving hospice services;

10. "Terminally ill" means ~~the~~ a medical prognosis of limited life expectancy of one (1) year or less at the time of referral to a hospice of a person who is experiencing an illness for which therapeutic strategies directed toward cure and control of the ~~disease~~ illness alone, outside the context of symptom control, are no longer appropriate;

11. "Bereavement" means ~~that~~ the period of time following death during which survivors mourn a death and process their grief. "Bereavement services" means support services ~~to be~~ offered to ~~the~~ a family during the bereavement period;

12. "~~Freestanding hospice~~ Hospice inpatient facility" means a facility ~~or program~~ of a licensed hospice program having twelve (12) beds or less in which only hospice services are provided;

13. "Personal care" means services provided to a patient in ~~the~~ a home to meet the physical requirements of the patient and to accommodate the maintenance or supportive needs of a patient;

14. "Medically directed" means ~~that~~ the delivery of medical care ~~is~~ as directed by a medical advisor;

15. "Hospice home services" means hospice services ~~which are~~ provided primarily in the home of ~~the~~ a patient;

16. "Inpatient services" means hospice services provided to patients who require twenty-four (24) hour supervision by a licensed health care provider; and

17. "Health care provider" means a facility or institution licensed by the laws of this state to provide on a regular basis medical services, skilled nursing care, necessary dietary service, hospice inpatient services or personal care. The term "health care provider" includes, but is not limited to, hospice inpatient facilities, hospitals, skilled nursing homes, intermediate care facilities and ~~room and board homes~~ residential care facilities.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-860.5, is amended to read as follows:

Section 1-860.5 The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke licenses for ~~hospices~~ hospice programs pursuant to the provisions of the Oklahoma Hospice Licensing Act;

2. Establish and enforce standards and requirements for licensure of ~~hospices~~ hospice programs and require the submission of, and to review, reports from any person establishing or operating a hospice program;

3. Establish and enforce construction standards and other requirements for hospice inpatient facilities. Such construction standards and other requirements for hospice inpatient facilities shall not be less stringent than current Medicare Hospice Regulations for inpatient facilities.

4. Establish a construction plan review fee for such facilities; provided, however, the amount of such fee shall not exceed the amount set by the Department for construction plan review fees for hospitals;

5. Enter upon any public or private property, with permission, for the purpose of inspecting and investigating conditions of the

patients in ~~the~~ a hospice or for the purpose of inspecting and investigating ~~the~~ a hospice for compliance with the provisions of the Oklahoma Hospice Licensing Act, or the standards or requirements for licensure developed by the Department pursuant to the provisions of the Oklahoma Hospice Licensing Act;

~~4.~~ 6. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of hospices and the patients of such hospices, and to take necessary action pursuant to the provisions of the Oklahoma Hospice Licensing Act to protect and safeguard the health, safety and welfare of patients of hospices;

~~5.~~ 7. Establish a procedure for receipt and investigation of complaints regarding a hospice or concerning the condition, care and treatment of a patient in the hospice;

~~6.~~ 8. 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 Oklahoma Hospice Licensing Act;

~~7.~~ 9. Develop and enforce rules subject to the approval of the State Board of Health to implement the provisions of the Oklahoma Hospice Licensing Act;

~~8.~~ 10. Establish and enforce penalties for violations of the provisions of the Oklahoma Hospice Licensing Act as authorized by the Board pursuant to the provisions of the Oklahoma Hospice Licensing Act; and

~~9.~~ 11. Exercise all incidental powers as necessary and proper for the administration of the Oklahoma Hospice Licensing Act.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-860.6, is amended to read as follows:

Section 1-860.6 A. No public or private agency or person shall establish, conduct or maintain a hospice program or hold itself out

to the public as a hospice program without first obtaining a license from the State Department of Health.

B. An application for a hospice program license shall be filed on a form prescribed by the Department and shall be accompanied by:

1. The license fee required by Section 1-860.15 of this title;
2. Documentation of complete disclosure for the applicant which shall include, but not be limited to, the name, mailing address and finding address of every stockholder with at least five percent (5%) ownership interest in the hospice program;

3. Satisfactory proof that the hospice program is in compliance with the provisions of the Oklahoma Hospice Licensing Act, ~~Section 1-860.1 et seq. of this title,~~ and any rules and minimum standards promulgated by the State Board of Health pursuant to the Oklahoma Hospice Licensing Act; and

4. Proof of sufficient financial ability to operate and conduct the hospice program in accordance with the requirements of the Oklahoma Hospice Licensing Act.

C. The initial application shall be accompanied by a plan for the delivery of home and inpatient hospice services to patients and their families. Such plan shall contain, but not be limited to:

1. The estimated average number of patients to be served monthly;

2. The geographic area in which hospice services will be available;

3. A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing health care providers;

4. Provisions for the implementation of hospice home care within three (3) months of licensure;

5. The name and qualifications of any existing or potential health care provider with whom the hospice program may enter into a contract; ~~and~~

6. The projected annual operating cost of the hospice program;
and

7. The location and proposed construction drawings for any hospice inpatient facility operated by the hospice program. A licensed hospice program shall not operate more than one hospice inpatient facility.

D. A license issued for the operation of a hospice program, unless sooner suspended or revoked, shall expire automatically one (1) year from the date of issuance. At least sixty (60) days prior to the expiration date, an application for license renewal shall be submitted to the Department on forms furnished by the Department. The license shall be renewed if the applicant has complied with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the provisions of the Oklahoma Hospice Licensing Act. The application for license renewal shall be accompanied by an update of the plan for delivery of hospice services only if information contained in the plan submitted pursuant to subsection C of this section is no longer applicable or up-to-date.

E. A hospice program for which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the Department of such proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

F. The license shall:

1. Be displayed in a conspicuous place inside the hospice program office;

2. Be valid only in the possession of the person or public agency to which it is issued;

3. Not be subject to sale, assignment, or other transfer, voluntary or involuntary; ~~and~~

4. Not be valid for any hospice program other than the hospice program for which the license was originally issued; and

5. Restrict the number of patients in a hospice inpatient facility to the Department-approved occupancy level for each facility.

G. Any person who, prior to January 1, 1991, provided hospice services to any patient shall be entitled to operate as a hospice program pursuant to the provisions of the Oklahoma Hospice Licensing Act without making application and obtaining a license pursuant to the provisions of the Oklahoma Hospice Licensing Act for one (1) year after September 1, 1991, provided such person otherwise complies with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the act. Thereafter any person providing hospice services shall make application, obtain a license, and comply with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the act.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-860.15, is amended to read as follows:

Section 1-860.15 The State Department of Health, subject to the approval of the State Board of Health, shall prescribe and publish in the manner established by its rules, fees in the amounts determined by the Board for the following:

1. Initial application fee not exceeding ~~One Hundred Dollars (\$100.00)~~ Two Hundred Fifty Dollars (\$250.00);

2. Initial license fee not exceeding ~~One Hundred Dollars (\$100.00)~~ Two Hundred Fifty Dollars (\$250.00);

3. Renewal of license fee not exceeding ~~Two Hundred Dollars (\$200.00)~~ Five Hundred Dollars (\$500.00); and

4. Late renewal fee charges not exceeding Fifty Dollars (\$50.00).

SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-1950.4, is amended to read as follows:

Section 1-1950.4 A. 1. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman of the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a ~~freestanding~~ hospice inpatient facility or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.

2. Nothing in this section shall prohibit the State Department of Health or any other state agency from requiring applicants for any position in the classified service to be certified by the state using the State of Oklahoma Employment Application.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;

2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with state criminal history record checks; and

3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-1939, is amended to read as follows:

Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. ~~Also~~ In addition, any state employee that aids, abets, assists, or conspires with an owner or licensee to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under ~~this act~~ the Nursing Home Care Act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or ~~his~~ the legal representative of the resident of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a

resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under ~~this act~~ the Nursing Home Care Act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or criminal, as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A facility employee or agent who becomes aware of abuse or neglect of a resident prohibited by ~~this act~~ the Nursing Home Care Act shall immediately report the matter to the facility administrator. A facility administrator who becomes aware of abuse or neglect of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department within three (3) working days of the incident.

I. 1. The facility shall be responsible for reporting the following:

- a. communicable diseases,
- b. deaths by unusual occurrence, such as accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device, according to applicable state and federal laws, and
- c. unusual incidents including, but not limited to, reporting missing residents to the appropriate agencies.

2. All reports shall be made by telephone to the Department within three (3) working days of the incident. An initial report of the incident shall be mailed to the Department within ten (10)

working days after the incident. The final report shall be filed with the Department when the full investigation is complete.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-1950.3, as amended by Section 15, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1950.3), is amended to read as follows:

Section 1-1950.3 A. 1. Until November 1, 2004, no employer or contractor who is subject to the provisions of Section 1-1950.1 or 1-1950.2 of this title shall use, on a full-time, temporary, per diem, or other basis, any individual who is not a licensed health professional as a nurse aide for more than four (4) months, unless such individual has satisfied all requirements for certification and is eligible for placement on the nurse aide registry maintained by the State Department of Health.

2. a. Effective November 1, 2004, pending the availability of state funding, no nursing facility, assisted living or other long-term care facility shall employ as a nurse aide, on a full-time, temporary, per diem, or any other basis, any individual who is not certified as a nurse aide in good standing and is eligible for placement on the nurse aide registry maintained by the State Department of Health.

b. The Department may grant a temporary emergency waiver to the provisions of this paragraph to any nursing facility, assisted living or other long-term care facility which can demonstrate that such facility has been unable to successfully meet its staffing requirements. The State Board of Health shall promulgate rules related to eligibility for receipt of such waiver, and the process and the conditions for obtaining the waiver.

B. 1. Until November 1, 2004, no person shall use an individual as a nurse aide unless the individual:

- a. is enrolled in a Department-approved training and competency evaluation program,
- b. is currently certified and eligible to be listed on the nurse aide registry, or
- c. has completed the requirements for certification and placement on the nurse aide registry.

2. An individual employed as a nurse aide who is enrolled in a Department-approved training and competency evaluation program for nurse aides shall successfully complete such training and competency evaluations within four (4) months of entering the training program.

3. The individual shall obtain certification, and ~~be placed on the Department shall place the nurse aide on the registry~~ within thirty (30) days after demonstration of competency ~~in order to continue employment as a nurse aide.~~

4. Any nursing facility, assisted living or other long-term care facility that employs an individual who is in nurse aide training, as provided in this section, shall ensure that the trainee shall:

- ~~a. complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,~~
- ~~b.~~ not perform any service for which the trainee has not trained and been determined proficient by the instructor, and
- ~~e.~~ b. be supervised at all times by no less than a licensed practical nurse.

5. No employer may use as a nurse aide an individual who has not completed the nurse aide training and competency program within the required four-month period.

C. For purposes of this section, "four (4) months" means the equivalent of four (4) months of full-time employment as a nurse

aide by any employer in any nursing facility, assisted living or other long-term care facility.

D. 1. The Department may grant a trainee a one-time extension of the four-month training requirement if:

- a. such requirement causes an undue hardship for the trainee due to unusual circumstances or illness, and
- b. the trainee has demonstrated a good faith effort to complete the training and competency evaluation program.

2. The State Board of Health shall promulgate rules related to the review of and the process and conditions for such an extension.

E. Certified medication aides are deemed to meet the requirements for certification upon notice of passing a state-approved competency evaluation.

F. Any person convicted of violating any of the provisions of this section or Section 1-1950.1 of this title shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

SECTION 8. This act shall become effective November 1, 2003.

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