STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 1280 By: Robinson of the Senate

and

Hilliard and Staggs of the House

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to the Commission for Rehabilitation Services; amending 74 O.S. 2001, Sections 166.1, 166.2, and 166.5, and 10 O.S. 2001, Section 1418, which relate to the powers and duties of the Commission for Rehabilitation Services; establishing criteria for position and duties of Director of the State Department of Rehabilitation Services; authorizing Director to employ staff; authorizing Department to enter into contracts and make certain purchases; clarifying duties of Commission; making Commissioners trustees of certain trust; authorizing creation of certain trust for benefit of Oklahoma School for the Blind and Oklahoma School for the Deaf; authorizing lease or rental of certain property; stating parameters for management or sale of trust property; requiring Commission to utilize certain income to fulfill certain purpose; authorizing sale of property upon certain determination by Commission; requiring deposit of proceeds from sale of property into trust fund; authorizing use of income from trust assets for certain purposes; making disbursement of certain trust corpus and dissolution of certain trust subject to legislative approval; requiring Department of Central Services to provide necessary assistance to Department of Rehabilitation Services; expanding authorization for expenditure of certain income; updating obsolete language; amending 59 O.S. 2001, Sections 725.2, 887.17, as amended by Section 1, Chapter 135, O.S.L. 2003, 888.4 and 1604 (59 O.S. Supp. 2003, Section 887.17), which relate to professions and occupations; construing section of laws; clarifying application of specified provisions of the Individuals with Disabilities Education Act, Amendment of 1997, Public Law 105-17, and the Rehabilitation Act of 1973 for specific purposes; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 74 O.S. 2001, Section 166.1, is amended to read as follows:

Section 166.1 A. There is hereby created the State Department of Rehabilitation Services, to be governed by the Commission for Rehabilitation Services.

B. The Director of the Department of Rehabilitation Services shall be the chief executive officer of the Department. The Director shall have the training and experience necessary for the administration of the Department, as determined by the Commission for Rehabilitation Services. The Director may employ such staff as may be necessary to perform the duties of the Department.

C. The Department may make and enter into all contracts necessary or incidental to the performance of its duties and may purchase or lease equipment, furniture, materials and supplies, and incur such other expenses as may be necessary to maintain and operate the Department.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 166.2, is amended to read as follows:

Section 166.2 A. Effective July 1, 1993, there is hereby created the Commission for Rehabilitation Services, an agency of the State of Oklahoma, a body corporate and politic, with powers of government and with the authority to exercise the rights, privileges and functions as herein specified, with its lawful operations deemed to be an essential governmental function of the State of Oklahoma with all the attributes thereof.

B. The Commission shall appoint and remove the Director of the Department of Rehabilitation Services, approve programs, policy and budget, and perform the necessary functions of a governing board for the State Department of Rehabilitation Services.

C. 1. The Commission shall consist of three (3) members, to be appointed by June 15, 1993, as follows:

a. one member shall be appointed by the President Pro Tempore of the Oklahoma State Senate for a three-year term,

b. one member shall be appointed by the Speaker of the Oklahoma House of Representatives for a three-year term, and

c. one member shall be appointed by the Governor for a three-year term.

2. Thereafter, beginning with the expiration of the terms of the three members initially appointed, the Commission shall consist of three (3) members, appointed as follows:

a. one member shall be appointed by the President Pro Tempore of the Oklahoma State Senate and shall serve a term of one (1) year,

b. one member shall be appointed by the Speaker of the Oklahoma House of Representatives and shall serve a term of two (2) years, and

c. one member shall be appointed by the Governor and shall serve a term of three (3) years.

3. Thereafter, at the expiration of the term, or termination of the member's service for any reason, the original appointing authority shall appoint a successor for a term of three (3) years, or for the remainder of an unexpired term.

D. Members of the Commission shall be knowledgeable of and have concern for rehabilitation issues and disability issues; provided, that such requirement shall not exclude participation of lay persons as Commission members. All members shall be residents of the state and qualified electors at the time of their appointment. Before entering upon the duties of their office, members of the Commission shall take the Constitutional oath of office and the same shall be filed with the Secretary of State. A member of the Commission may be reappointed to succeed himself or herself. Commission members

shall be reimbursed for travel expenses incurred in the performance of their duties as provided in the State Travel Reimbursement Act~~, Section 500.1 et seq. of Title 74 of the Oklahoma Statutes~~.

E. The original appointing authority may remove any commissioner for misconduct, incompetency or neglect of duty, after giving such commissioner a written statement of charges, and opportunity for a hearing.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 166.5, is amended to read as follows:

Section 166.5 A. The Commission for Rehabilitation Services shall have the powers and duties to:

1. Adopt bylaws and promulgate rules for the regulation of its affairs and the conduct of its business;

2. Formulate policies and adopt rules for the effective administration of the duties of the State Department of Rehabilitation Services;

3. Adopt an official seal;

~~3.~~ 4. Establish an office;

~~4.~~ 5. Sue and to be sued, subject to the provisions of the Governmental Tort Claims Act;

~~5.~~ 6. Make and enter into all contracts necessary or incidental to the performance of its duties and the execution of its powers;

~~6.~~ 7. Purchase or lease equipment, furniture, materials and supplies, and incur such other expenses as may be necessary to maintain and operate the Commission and the State Department of Rehabilitation Services, or to discharge its duties and responsibilities or to make any of its powers effective;

~~7.~~ 8. Acquire by purchase, lease, gift, solicitation of gift or by any other manner, and to maintain, use and operate or to contract for the maintenance, use and operation of or lease of any and all property of any kind, real, personal or mixed or any interest therein unless otherwise provided by this act; provided that, all

contracts for real property shall be subject to the provisions of Section 63 of this title;

~~8.~~ 9. Appoint such officers, agents and employees as it deems necessary to operate and maintain the Commission and to prescribe their duties and to fix their compensation; ~~and~~

~~9.~~ 10. Perform such other acts as shall be necessary for the accomplishment of the purposes of Chapter 5A of this title; and

11. Serve as trustee for the trust created in subsection B of this section for the benefit of the Oklahoma School for the Blind and the Oklahoma School for the Deaf.

B. 1. The Commission for Rehabilitation Services is hereby authorized and directed to create a trust into which all real property held by the Commission for the benefit of the Oklahoma School for the Blind and the Oklahoma School for the Deaf shall be transferred.

2. The property placed in trust:

a. shall be held for the sole benefit of the Oklahoma School for the Blind and the Oklahoma School for the Deaf,

b. if not needed for use by the schools, may be leased or rented to others and all income received from such leases or rentals shall be payable to the Commission and deposited in the Rehabilitation Services Disbursing Fund for use by the Commission to fulfill the purposes of the Oklahoma School for the Blind and the Oklahoma School for the Deaf, and

c. may be sold if the commissioners, acting as trustees, determine that the sale is in the best interest of the Oklahoma School for the Blind or the Oklahoma School for the Deaf. The proceeds from the sale of the property shall be held in the trust corpus and shall be invested by the State Treasurer. Income derived

from the corpus shall be used by the Commission for the purposes of the Oklahoma School for the Blind and the Oklahoma School for the Deaf.

3. The corpus of the trust may be disbursed only upon legislative approval.

4. The trust may be dissolved only upon legislative approval.

C. Upon the creation of the trust authorized in subsection B of this section, the Department of Central Services shall provide all necessary assistance to the Department of Rehabilitation Services to identify and transfer all real property held by or for the benefit of the Oklahoma School for the Blind and the Oklahoma School for the Deaf to the trust.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 1418, is amended to read as follows:

Section 1418. A. The Commission for Rehabilitation Services shall have the supervision, management and control of the Oklahoma School for the Blind and the Oklahoma School for the Deaf, and, in addition to the powers and duties now vested in the State Board of Education as to each of such institutions, shall have authority to adopt such rules as it deems necessary for the government and operation of each institution, and for the admission and discharge of pupils at each institution. No easement, right-of-way, oil and gas lease or surface lease on any land used or occupied by either institution, or any other institution under the jurisdiction of the Commission, shall be granted or conveyed without the approval of the Commission; and all money hereafter received therefor or derived therefrom, including rentals and royalties from leases executed prior to ~~the effective date of this act~~ July 1, 1965, shall be deposited in the revolving fund of the institution and be used by the Commission for ~~capital improvements at~~ the purposes of the institution. The Commission may participate in federal programs for the benefit of blind or deaf persons, and may receive and administer

federal funds for such purposes. The Commission is hereby expressly granted every power necessary or convenient to make such institutions effective for the purposes for which they were created. ~~This act~~ The provisions of this section shall not affect the type of school maintained at either institution.

B. The Oklahoma School for the Blind and the Oklahoma School for the Deaf shall be considered local educational agencies only for the purpose of participating in federal programs and receiving federal funds disbursed by the State Department of Education to local educational agencies, if the schools meet the eligibility requirements for the federal programs.

SECTION 5. AMENDATORY 59 O.S. 2001, Section 725.2, is amended to read as follows:

Section 725.2 A. The following nine classes of persons may use the word "Doctor", or an abbreviation thereof, and shall have the right to use, whether or not in conjunction with the word "Doctor", or any abbreviation thereof, the following designations:

1. The letters "D.P.M." by a person licensed to practice podiatry under Chapter 4 of this title;

2. The letters "D.C." by a person licensed to practice chiropractic under Chapter 5 of this title;

3. The letters "D.D.S." by a person licensed to practice dentistry under Chapter 7 of this title;

4. The letters "M.D." by a person licensed to practice medicine and surgery under Chapter 11 of this title;

5. The letters "O.D." by a person licensed to practice optometry under Chapter 13 of this title;

6. The letters "D.O." by a person licensed to practice osteopathy under Chapter 14 of this title;

7. The letters "Ph.D.", "Ed.D." or "Psy.D." by a person licensed as a health service psychologist pursuant to the Psychologists Licensing Act;

8. The letters "Ph.D.", "Ed.D." or other letters representing a doctoral degree by a person licensed as a speech and language pathologist pursuant to the Speech Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of speech and language pathology; and

9. The letters "Ph.D.", "Ed.D." or other letters representing a doctoral degree by a person licensed as an audiologist pursuant to the Speech Pathology and Audiology Licensing Act and who has earned a doctoral degree from a regionally accredited institution of higher learning in the field of audiology.

B. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "doctor" or "doctors" shall mean and include each of the nine classes of persons listed in subsection A of this section.

C. Unless otherwise specifically provided in a particular section or chapter of the Oklahoma Statutes, the word "physician" or "physicians" shall mean and include each of the classes of persons listed in paragraphs 1 through 6 of subsection A of this section. The term "physician" shall not include any person specified in paragraphs 7 through 9 of subsection A of this section unless such person is otherwise authorized to use such designation pursuant to this section.

D. Notwithstanding any other provision of this section, a person licensed in this state to perform speech pathology or audiology services is hereby designated to be a practitioner of the healing art for purposes of making a referral for speech pathology or audiology services pursuant to the provisions of the Individuals with Disabilities Education Act, Amendment of 1997, Public Law 105-17, and Section 504 of the Rehabilitation Act of 1973.

SECTION 6. AMENDATORY 59 O.S. 2001, Section 887.17, as amended by Section 1, Chapter 135, O.S.L. 2003 (59 O.S. Supp. 2003, Section 887.17), is amended to read as follows:

Section 887.17 A. 1. Any person licensed under this act as a physical therapist or physical therapist assistant shall treat human ailments by physical therapy only under the referral of a person licensed as a physician or surgeon with unlimited license and Doctors of Dentistry, Chiropractic and Podiatry, with those referrals being limited to their respective areas of training and practice; provided, however, a physical therapist may provide services within the scope of physical therapy practice without a physician referral to children who receive physical therapy services pursuant to the Individuals with Disabilities Education Act, Amendment of 1997 (P.L. 105-17) and the Rehabilitation Act of 1973, Section 504. Provided further, a plan of care developed by a person authorized to provide services within the scope of the Physical Therapy Practice Act shall be deemed to be a prescription for purposes of providing services pursuant to the provisions of the Individuals with Disabilities Education Act, Amendment of 1997, Public Law 105-17, and Section 504 of the Rehabilitation Act of 1973.

2. Nothing in this act shall prevent a physical therapist from performing screening and educational procedures within the scope of physical therapy practice without a physician referral.

3. Nothing in this act shall be construed as authorization for a physical therapist or physical therapist assistant to practice any branch of the healing ~~arts~~ art.

4. Any person violating the provisions of this act shall be guilty of a misdemeanor as per Section 887.16 of this title.

B. 1. The provisions of this act are not intended to limit the activities of persons legitimately engaged in the nontherapeutic administration of baths, massage, and normal exercise.

2. This act shall not prohibit students who are enrolled in schools of physical therapy approved by the State Board of Medical Licensure and Supervision from performing such work as is incidental to their course of study; nor shall it prevent any student in any recognized school of the healing ~~arts~~ art in carrying out prescribed courses of study; provided such school is a recognized institution by the statutes of Oklahoma, and its practitioners are duly licensed as prescribed by law.

3. Nothing in this act shall apply to any person employed by an agency, bureau, or division of the federal government while in the discharge of official duties, however, if such individual engages in the practice of physical therapy outside the line of official duty, the individual must be licensed as herein provided.

SECTION 7. AMENDATORY 59 O.S. 2001, Section 888.4, is amended to read as follows:

Section 888.4 A. No person shall practice occupational therapy or hold himself or herself out as an occupational therapist, or as being able to practice occupational therapy, or to render occupational therapy services in this state unless he or she is licensed in accordance with the provisions of this act. The licensing provisions of this act shall not be applicable to a person who assists in the practice of occupational therapy as an occupational therapy aide.

B. The provisions of this act shall not be construed to authorize occupational therapists or occupational therapy assistants to practice medicine and surgery within the meaning of Section 492 of Title 59 of the Oklahoma Statutes.

C. Notwithstanding any other provisions of this act, a plan of care developed by a person authorized to provide services within the scope of the Occupational Therapy Practice Act shall be deemed to be a prescription for purposes of providing services pursuant to the provisions of the Individuals with Disabilities Education Act,

Amendment of 1997, Public Law 105-17, and Section 504 of the Rehabilitation Act of 1973.

SECTION 8. AMENDATORY 59 O.S. 2001, Section 1604, is amended to read as follows:

Section 1604. A. Except as otherwise provided by this section, no person shall practice speech-language pathology or audiology unless such person is licensed pursuant to the Speech-Language Pathology and Audiology Licensing Act.

B. The Speech-Language Pathology and Audiology Licensing Act shall not be construed to prevent:

1. A person licensed under any other law of this state from engaging in the profession or occupation for which such person is licensed, provided such person does not represent himself or herself to be a speech-language pathologist or audiologist;

2. An employee of the federal government, state, county or municipal government, or an agency or political subdivision thereof, from engaging in such employee's duties of employment;

3. The hearing testing or any other act conducted by licensed physicians within the scope of their licensed profession or by persons conducting hearing tests or other acts under the direct supervision of the physician;

4. The activities and services of a hearing-aid dealer or fitter so long as the activities and services of such dealer or fitter are limited to the selection, adaptation, distribution or sale of hearing aids, and the testing, instruction, and counseling pertaining thereto, as long as such hearing-aid dealer or fitter does not represent himself or herself to be an audiologist;

5. A teacher of the deaf and hard of hearing, certified by the Oklahoma State Department of Education, or certified nationally by the Council on Education of the Deaf, from engaging in the profession for which such teacher is trained. The services of a

teacher of the deaf and hard-of-hearing shall be directed solely to those persons having or suspected of having a hearing disorder;

6. Any person not a resident of this state and who has not established offices in this state, from engaging in the practice of speech-language pathology or audiology in this state for a period that, in the aggregate, does not exceed seven (7) days in any calendar year, if such a person's education and experience is the substantial equivalent to that of a licensed speech-language pathologist or audiologist as described in Section 1605 of this title; and

7. The activities of hearing screening programs which are conducted by employees or trained volunteers who are providing these services under the auspices of public or private charitable agencies.

C. Notwithstanding any other provision of this section, a person licensed in this state to perform speech pathology or audiology services is hereby designated to be a practitioner of the healing art for purposes of making a referral for speech pathology or audiology services pursuant to the provisions of the Individuals with Disabilities Education Act, Public Law 105-17, as amended, and Section 504 of the Rehabilitation Act of 1973.

SECTION 9. This act shall become effective July 1, 2004.

SECTION 10. 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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