

ENGROSSED HOUSE
BILL NO. 1720

By: Hastings of the House
and
Coffee of the Senate

(public health and safety - Nursing Facility
Mediation Act - qualifications -
effective date)

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 1-1939.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

Sections 1 through 6 of this title shall be known and may be cited as the "Nursing Facility Mediation Act".

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1939.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

As used in the Nursing Facility Mediation Act:

1. "Nursing Facility Mediator" means an impartial third party qualified pursuant to subsection A of Section 6 of this act appointed by the court to assist parties in resolving issues and deciding disputed issues pursuant to the provisions of the Nursing Facility Mediation Act relating to civil actions brought pursuant to Section 1-1939 of Title 63 of the Oklahoma Statutes or any other provision of the Nursing Home Care Act;

2. "Nursing facility" means any nursing home licensed pursuant to the Nursing Home Care Act; and

3. "Resident" means a person residing in a nursing facility, the representative of the resident, or an immediate family member of the resident.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1939.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. In any civil action brought pursuant to Section 1-1939 of Title 63 of the Oklahoma Statutes or any other provision of the Nursing Home Care Act, the court may, upon its own motion, or by motion of a party or agreement of both the parties, appoint a nursing facility mediator to assist the parties in resolving issues and decide disputed issues pursuant to the provisions of the Nursing Facility Mediation Act related to the case before the court.

B. 1. The authority of a nursing facility mediator shall be specified in the order appointing the nursing facility mediator and limited to matters that will aid the parties in:

- a. identifying disputed issues,
- b. reducing misunderstandings,
- c. clarifying priorities,
- d. exploring possibilities for compromise, and
- e. developing methods of collaboration in nursing care.

2. The appointment of a nursing facility mediator shall not divest the court of its exclusive jurisdiction to determine fundamental issues before the court, and the authority to exercise management and control of the case.

3. The appointment order should specify those matters which the nursing facility mediator is authorized to determine. The order shall specify which determinations will be immediately effective and which will require an opportunity for court review prior to taking effect.

C. The parties may limit the decision-making authority of the nursing facility mediator to specific issues or areas if the nursing

facility mediator is being appointed pursuant to agreement of the parties.

D. Meetings between the nursing facility mediator and the parties need not follow any specific procedures and the meetings may be informal. All communication between the parties and the nursing facility mediator shall not be confidential.

E. 1. Except as otherwise provided by this subsection, the court shall reserve the right to remove the nursing facility mediator in its own discretion;

2. The court shall remove the nursing facility mediator upon the request and agreement of both parties; and

3. Upon the motion of either party and good cause shown, the court shall remove the nursing facility mediator.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1939.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A report of the decisions and recommendations made by the nursing facility mediator shall be filed with the court within twenty (20) days, with copies of the report provided to the parties or their counsel. There shall be no ex parte communication with the court.

B. Any decisions made by the nursing facility mediator authorized by the court order and issued pursuant to the provisions of the Nursing Facility Mediation Act shall be binding on the parties until further order of the court.

C. 1. Any party may file with the court and serve on the nursing facility mediator and all other parties an objection to the nursing facility mediator's report within ten (10) days after the nursing facility mediator provides the report to the parties, or within another time as the court may direct.

2. Responses to the objections shall be filed with the court and served on the nursing facility mediator and all other parties within ten (10) days after the objection is served.

D. The court shall review any objections to the report and any responses submitted to those objections to the report and shall thereafter enter appropriate orders.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1939.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This state shall assume no financial responsibility for payment of fees to the nursing facility mediator.

B. The court, if available, may appoint a nursing facility mediator to serve on a volunteer basis.

C. The nursing facility mediator fees shall be allocated between the parties. The court may allocate the fees between the parties differently upon a finding of good cause by the court or good cause set forth in the nursing facility mediator report.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1939.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Each judicial district shall adopt local rules governing the qualifications of nursing facility mediators; provided, the minimum qualifications for a nursing facility mediator shall be as follows:

1. A master's degree in social work and one (1) year of experience in services for the elderly;

2. A member of the Academy of Certified Social Workers (ACSW) and one (1) year of experience in services for the elderly or disabled;

3. A master's degree in a behavioral or social science and two (2) years' experience in services for the elderly or disabled;

4. A doctorate in a behavioral or social science and one (1) year of experience in services for the elderly or disabled; or

5. Is a member of the clergy with two (2) years of experience in counseling.

B. A nursing facility mediator who is not an attorney shall not constitute the practice of law without a license.

SECTION 7. This act shall become effective November 1, 2003.

Passed the House of Representatives the 12th day of March, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2003.

Presiding Officer of the Senate