

ENROLLED HOUSE
BILL NO. 1442

By: Stanley of the House

and

Shurden of the Senate

An Act relating to public health and safety; amending Section 10, Chapter 230, O.S.L. 2002 and 63 O.S. 2001, Sections 1-1939 and 1-1950.3, as amended by Section 15, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2002, Sections 1-1930.1 and 1-1950.3), which relate to the Nursing Home Care Act; updating language; modifying and adding to list of occurrences requiring notification of the State Department of Health; modifying and setting time limits for notification of certain incident and situation reports concerning abuse, neglect or exploitation of a resident of a nursing home; setting procedures; requiring written reports; specifying procedures to be taken by Department when notification occurs; authorizing employment and contracting with certain persons if such persons are eligible for placement on nurse aide registry; prohibiting certain employment or contracts; setting certain time periods for placement on registry; allowing certain certified medication aides eligible to distribute medications in nursing homes; requiring submission of an analysis of projected fiscal impact of implementation of a certain statute; requiring certain consideration of comments and analysis; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 10, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2002, Section 1-1930.1), is amended to read as follows:

Section 1-1930.1 A. The owner of a nursing facility shall notify the State Department of Health within twenty-four (24) hours of the occurrence of any of the events specified in subsection B of this section. Such notification may be in written form. When initial notification to the Department is made by telephone or telephone facsimile, it shall be followed by a written confirmation within five (5) calendar days.

B. The occurrence of any of the following events shall require notification pursuant to the provisions of subsection A of this section:

1. The owner of a facility receives notice that a judgment or tax lien has been levied against the facility or any of the assets of the facility or the licensee;

2. A financial institution refuses to honor a check or other instrument issued by the owner, operator or manager to its employees for a regular payroll;

3. The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified in the Nursing Home Care Act or rules promulgated thereto by the State Board of Health;

~~4. The financial resources of the facility fall below the amount needed to operate the facility for a period of at least forty-five (45) days based on the current occupancy of the facility. The determination that financial resources have fallen below the amount needed to operate the facility shall be based upon the current number of occupied beds in the facility, multiplied by the current daily Medicaid reimbursement rate, multiplied by forty-five (45) days;~~

~~5.~~ 5. The owner, operator or manager fails to make timely payment of any tax of any governmental agency;

~~6.~~ 5. The filing of a bankruptcy petition under Title 7 or Title 11 of the United States Code or any other laws of the United States, by any person or entity with a controlling interest in the facility; ~~and~~

~~7.~~ 6. The appointment of a trustee by the bankruptcy court; and

7. The filing of a petition in any jurisdiction by any person seeking appointment of a receiver for the facility.

SECTION 2. 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 or exploitation 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, or exploitation of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department.

I. 1. The facility shall be responsible for reporting the following serious incidents to the Department within twenty-four (24) hours:

- a. communicable diseases,
- b. deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device,
- c. missing residents. In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing,
- d. situations arising where criminal intent is suspected. Such situations shall also be reported to local law enforcement, and
- e. resident abuse, neglect and misappropriation of the property of a resident.

2. All other incident reports shall be made in accordance with federal law.

3. All initial written reports of incidents or situations shall be mailed to the Department within five (5) working days after the

incident or situation. The final report shall be filed with the Department when the full investigation is complete.

SECTION 3. 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, 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 not 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
- c. 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, upon successful completion of competency standards, shall be eligible to distribute medication within a nursing facility.

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.

G. The Oklahoma Health Care Authority shall submit to the Governor, the Speaker of the Oklahoma House of Representatives and the President Pro Tempore of the State Senate no later than March 1, 2004, an analysis of the projected fiscal impact of the implementation of the provisions of subparagraph a of paragraph 2 of subsection A of this section. The Authority shall consider information provided by the long-term care industry and the Office of the State Long-Term Care Ombudsman in projecting the costs and/or cost savings associated with the full implementation of subparagraph a of paragraph 2 of subsection A of this section.

SECTION 4. 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.

Passed the House of Representatives the 27th day of May, 2003.

Presiding Officer of the House of
Representatives

Passed the Senate the 28th day of May, 2003.

Presiding Officer of the Senate