

ENROLLED HOUSE
BILL NO. 2723

By: Pettigrew of the House

and

Coffee of the Senate

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 1-851.1, 1-851.2, 1-852, 1-852.1, 1-853, 1-854.1, 1-857, as amended by Section 2, Chapter 230, O.S.L. 2002, 1-857.1 and 1-858 (63 O.S. Supp. 2003, Section 1-857), which relate to the Long-term Care Certificate of Need Act; adding and modifying definitions; updating language; requiring certain review procedures for certain applications; requiring procedures for certain applications; modifying requirements for obtaining a certificate of need; increasing amount for certain capital investments; modifying facilities which must obtain a certificate of need; modifying facilities not required to obtain a certificate of need and for certain activities; providing certain exemption procedures; clarifying language; setting fees; specifying certain maximums; providing for procedures; providing for nonissuance of certain licenses; removing and modifying procedures; providing reasons therefore; authorizing and requiring certain postings; exempting certain actions and ownerships from such requirements; modifying enforcement provisions and penalties; modifying certain filing requirements; adding certain filing fees; authorizing certain extensions; modifying certain exemptions from certain criteria; increasing requirements; adding to certain exemptions; expanding who may appeal certain decisions; removing certain expansion of existing service from certificate of need requirements; updating language; changing agency responsible for certain collection of data; increasing certain penalties; amending 63 O.S. 2001, Sections 1-1902, 1-1908, 1-1950.1, as amended by Section 1 of Enrolled Senate Bill No. 1184 of the 2nd Session of the 49th Oklahoma Legislature and 1-1950.3, as last amended by Section 3, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1950.3), which relate to the Nursing Home Care Act; modifying terms; updating language; requiring certain submissions; providing for assessment of certain fees; providing for maximum fees; increasing certain fees; providing for rules; modifying definitions relating to employment of nurse aides; adding to definitions; requiring promulgation of certain rules; prohibiting certain penalties; setting time period; setting certain criteria; authorizing certain procedures by certain medication aides; providing certain restrictions; providing for certain training;

requiring for establishment of certain policies and procedures; requiring reviews; removing certain submission requirements; repealing 63 O.S. 2001, Section 1-857.4, which relates to establishment of certain forms and provisions for collecting certain data; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-851.1, is amended to read as follows:

Section 1-851.1 For purposes of the Long-term Care Certificate of Need Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Department" means the State Department of Health;
4. "Long-term care facility" means:
 - a. a nursing facility or a specialized facility, as such terms are defined by Section 1-1902 of this title,
 - b. skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title,
 - c. the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, or
 - d. the nursing care component of a life care community as such term is defined by the Long-term Care Insurance Act;
5. "Disclosure statement" means a written statement by the applicant which contains:
 - a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by ~~this act~~ the Long-term Care Certificate of Need Act,
 - b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
 - c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,

- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the five (5) years immediately preceding the filing of the application. Such actions shall include, without limitation, any permit denial or any sanction imposed by a state regulatory authority or the ~~federal Health Care Financing Administration~~ Centers for Medicare and Medicaid Services, and
- e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

6. "History of noncompliance" means three standard or complaint surveys found to be at the substandard quality of care level when the facility does not achieve compliance by date certain in a nursing facility or specialized facility for persons with Alzheimer's disease or related disorders. Additionally, "history of noncompliance" for an intermediate care or specialized facility for persons with mental retardation means three consecutive routine or complaint surveys that resulted in determinations that the facility was out of compliance with two or more Conditions of Participation in the Medicaid program within the preceding thirty-six (36) months when the facility does not achieve compliance within sixty (60) days;

7. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

7. 8. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest, or
- c. ~~serves on the board of the entity involved,~~
- d. ~~serves as an officer of the entity involved, or~~
- e. ~~actively participates in the management of the entity involved or actively participates in the management of the entity in the relevant time period~~ a managing member of a Limited Liability Company (LLC).

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-851.2, is amended to read as follows:

Section 1-851.2 A. The State Commissioner of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke certificates of need;
2. Establish and enforce standards and requirements for certificates of need;
3. Require the submission of and to review reports from any person requesting or obtaining a certificate of need;
4. Employ or designate personnel necessary to implement the provisions of the Long-term Care Certificate of Need Act;
5. Report to the district attorney having jurisdiction or the Attorney General, any act committed by any person which may constitute a violation pursuant to the provisions of the Long-term Care Certificate of Need Act;
6. 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 Long-term Care Certificate of Need Act;
7. Promulgate and enforce rules subject to the approval of the State Board of Health to implement the provisions of the Long-term Care Certificate of Need Act;
8. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for a certificate of need;
9. Establish administrative penalties for violations of the provisions of the Long-term Care Certificate of Need Act as authorized by the Board;
10. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department pursuant to the Long-term Care Certificate of Need Act;
11. Develop and administer plans for health services including, but not limited to, staffing, facilities and other resources;
12. Develop and publish, once every four (4) years, a Quadrennial State Health Plan, following guidelines and procedures adopted by the Board which specify the method of adoption of the plan document, its format, provisions for developing and publishing plan amendments and the role of the State Department of Health, local health planning advisory councils and the Alcohol, Drug Abuse and Community Mental Health Planning and Coordination Boards of each mental health catchment area in its development;
13. Establish and administer criteria and standards for the delineation and approval of areas and regions for health planning purposes;

14. Promote and maintain plans for providing health services including, but not limited to, health, staffing and health facilities, in this state; and

15. Exercise all incidental powers as necessary and proper for the administration of the Long-term Care Certificate of Need Act.

B. The State Department of Health shall be the single state agency to participate in federal programs for health planning and to apply for and administer federal funds for health planning, provided, that the Long-term Care Certificate of Need Act, and any other law vesting planning functions in any other state agency, shall not apply to health planning functions vested by law in the Department of Mental Health and Substance Abuse Services, the Oklahoma Health Care Authority and the Department of Human Services.

~~C. The Department shall establish forms and provide for the collection of monthly data necessary for the computation of occupancy rates from licensed long-term care facilities which do not provide services to Medicaid recipients. Data shall include, but not be limited to, licensed bed capacity, average daily census, days on which beds were reserved for residents temporarily absent, and the number, if any, of semi-private units rented as private rooms~~
Facility occupancy data used in the review of Certificate of Need applications shall be based upon monthly reports that are submitted by facilities to the Oklahoma Health Care Authority pursuant to Section 1-1925.2 of this title and that are available to the public upon request.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-852, is amended to read as follows:

Section 1-852. A. Every entity desiring to establish a new long-term care facility, to expand an existing facility whether through construction or conversion of facilities, or to acquire an existing long-term care facility shall make application to the State Department of Health for a certificate of need. The application for a certificate of need shall be in such form as the State Commissioner of Health shall prescribe.

B. A certificate of need shall be required for:

1. Any capital investment or lease of ~~Five Hundred Thousand Dollars (\$500,000.00)~~ One Million Dollars (\$1,000,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications, and site acquisition; provided, that this dollar limit shall not apply to a change in bed capacity; ~~and~~

2. Acquisition of the ownership or operation of a facility whether by purchase, lease, donation, transfer of stock or interest, management contract, corporate merger, assignment, or through foreclosure. ~~Acquisition through management contract shall be subject to a certificate of need unless said management contract is part of a purchase or lease proceeding. In such case the management contract shall be exempt from the certificate of need for a single term of up to nine (9) months, with no more than one three-month extension. A copy of the purchase contract shall be included by the~~

~~applicant in the request for the management contract certificate of need exemption.~~

~~Management contracts for a period of six (6) months or less shall not be subject to certificate of need review. Such management contracts cannot be renewed unless the applicant files for a certificate of need; and~~

3. An increase in licensed beds, whether through establishment of a new facility or expansion of an existing facility.

C. The Department within fifteen (15) days after receipt of an application, shall issue an exemption from certificate of need requirements upon written request and demonstration that applicable exemption criteria have been met, for any of the following activities:

1. An increase of no more than ten beds or ten percent (10%) of the facility's licensed beds, whichever is greater, per calendar year if:

- a. the total capital cost of the increase is less than One Million Dollars (\$1,000,000.00), and
- b. the facility's occupancy rate averaged ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the exemption request;

2. Construction of a long-term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility if:

- a. the project involves no increase in licensed beds;
- b. the facility shall be constructed no farther than three (3) miles for rural areas and seven and one-half (7 1/2) miles for urban areas, as defined by the Standard Metropolitan Statistical Area (SMSA), from the facility it is replacing or relocating, and
- c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services; and

3. A management agreement if:

- a. the management entity discloses all persons with controlling interest in the management entity and discloses all experience in long-term care facility management or operation in any state during the preceding thirty-six (36) months,
- b. the management entity and any person with controlling interest if the management entity has less than thirty-six (36) months experience in management or operation of facilities, does not have a history of noncompliance, and
- c. the licensed entity remains responsible for facility operation, financial performance, staffing and

delivery of resident services required under the
Nursing Home Care Act.

D. A certificate of need shall not be required for:

1. Any changes of ownership resulting from the operation of law, including but not limited to divorce, probate, reversions and bankruptcy if the transfer of interest is to any already existing stockholder or person or entity listed on the license application disclosure statement. This shall also include cancellations and expirations of leases. Operational law ownership changes shall be reported to the Department within five (5) working days of the change;

2. Ownership changes for estate planning purposes, treasury stock purchases, and transfers between existing owners and/or family members; increases in the amount of common stock or partnership interest for any individual who already owns fifty percent (50%) of the common stock or corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved; and

3. New purchases of common stock or partnership interest by any legal entity if such new purchaser will own, in total, less than fifty percent (50%) of the corporate entity involved or partnership involved.

E. All applicants for the issuance of a certificate of need, at such time and in such manner as required by the Department, shall file:

1. A disclosure statement with their applications unless the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly owned subsidiary of a publicly held company. In such case, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved;

2. Copies of residents council minutes and family council minutes, if any, and the facility's written response to the councils' requests or grievances, for the three (3) months prior to the date of application, for each of the applicant's current holdings in the State of Oklahoma; and

3. Such other relevant information required by the Department pursuant to the Long-term Care Certificate of Need Act that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

~~D.~~ F. An application for a certificate of need ~~thereof~~ shall be signed under oath by the applicant.

~~E.~~ G. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewing bodies selected by the Department to assist the Department in determining whether the application is complete. Once the Department has determined that the application is complete, it shall

notify the affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of the new or any long-term care service acquisition, expansion, or establishment of a new facility.

~~F.~~ H. Except as provided by Section 4 1-853.1 of this ~~act~~ title, the investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of long-term care facilities in relation to an optimal target ratio of long-term care beds per thousand persons seventy-five (75) years of age or older in the state;

2. The availability of long-term care which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care facility and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed acquisition, expansion, or establishment of a new long-term care facility;

5. The record of the applicant's current and prior ownership, operation and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the State Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

6. Review of minutes of family councils and residents councils, and the facilities' responses, from each of the applicant's holdings in Oklahoma; and

7. Any other matter which the Department deems appropriate.

~~G.~~ I. Before making a final determination on an acquisition application, the Commissioner shall cause paid public notices to be published in a newspaper of general circulation near the facility and in a newspaper of general circulation in the area where the application is available for public inspection. A notice in a form prescribed by the Department also shall be posted by the applicant in a public area in each facility operated by the applicant in Oklahoma, to inform residents and families of the applicant's proposed action. The public notices shall offer participating parties an opportunity to submit written comments.

~~H.~~ J. The Commissioner's decision to approve or deny the proposed acquisition, expansion, or establishment of a new facility shall be made within forty-five (45) days following the deadline for submitting written comments, or the proposed acquisition, ~~expansion,~~ or establishment shall be automatically approved, unless otherwise prohibited pursuant to the provisions of the Long-term Care Certificate of Need Act.

~~I.~~ K. If the Commissioner finds that a proposed acquisition, expansion, or establishment of a new facility is consistent with the criteria and standards for review of such projects, and is otherwise in compliance with the provision of the Long-term Care Certificate

of Need Act, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition, expansion, or establishment of a new facility is not consistent with the criteria and standards, or is otherwise not in compliance with the provisions of the Long-term Care Certificate of Need Act, the Commissioner shall deny the certificate of need.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-852.1, is amended to read as follows:

Section 1-852.1 A. Each application for a new certificate of need applied for pursuant to the provisions of Section 4 1-852 of this ~~act~~ title, except for those applications filed by state agencies, shall be accompanied by an application fee equal to one percent (1%) of the capital cost of the project, with a minimum fee of One Thousand Dollars (\$1,000.00).

B. The maximum filing fee on an application for replacement of an existing facility, pursuant to subsection D of Section 1-853 of this title, shall be One Thousand Dollars (\$1,000.00).

C. 1. The maximum filing fee on an application for an acquisition shall be Three Thousand Dollars (\$3,000.00).

2. The capital cost for acquisition shall be the current book value of the facility as shown by a recognized method or basis of accounting as attested by a Certified Public Accountant.

D. Each request for exemption from certificate of need requirements submitted under Section 1-852 of this title, except for a request filed by a state agency, shall be accompanied by a fee of One Hundred Dollars (\$100.00).

SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-853, is amended to read as follows:

Section 1-853. A. Except as provided in subsections B~~7~~ and C~~7~~ ~~D and E~~ of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the State Commissioner of Health makes the following findings:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality;

4. The applicant is or employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection ~~F~~ D of this section.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety

codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds:

- a. that the facility or service is not needed, or
- b. that the applicant is found to be out of compliance with the provisions of subsection ~~F~~ D of this section.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

C. No certificate of need shall be issued for the acquisition of an existing facility unless after investigation the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and

2. Is found to be in compliance with the provisions of subsection ~~F~~ D of this section.

~~D. 1. Any application seeking a certificate of need for the construction of a long term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility shall be granted a certificate of need if the application meets the following criteria:~~

- ~~a. the project involves no increase in licensed beds,~~
- ~~b. except for a not-for-profit life care community, the facility shall be constructed no farther than three (3) miles from the facility it is replacing or relocating, and~~
- ~~c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services.~~

~~2. The provisions of subsection F of this section shall not apply to replaced or relocated facilities.~~

~~E. Any application for a certificate of need for an increase in the number of licensed beds in an existing nursing or specialized facility currently licensed under Section 1-1906 of this title shall be approved by the Commissioner if the application meets the following criteria:~~

~~1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater;~~

~~2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00);~~

~~3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the application;~~

~~4. If the facility previously has not increased beds pursuant to this subsection. The provisions of this paragraph shall apply only to a facility that was constructed to replace or relocate part of the facility pursuant to subsection D of this section; and~~

~~5. The applicant is found to be in compliance with the provisions of subsection F of this section.~~

~~F. D.~~ 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding sixty (60) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused renewal; or if the license or certification was relinquished voluntarily in lieu of penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding sixty (60) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by ~~rule~~ statute, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities,
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal ~~Health Care Financing Administration~~ Centers for Medicare and Medicaid Services, or
- d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. The Other than any of those reasons listed in paragraph 1 or 2 of this subsection, the Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding ~~sixty (60) thirty-six (36) months, an administrative penalty above the level of a deficiency, other than any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care~~

facility operated by a person with a controlling interest one or more of the following:

- a. findings of substandard quality of care or noncompliance with two or more conditions of participation on twenty percent (20%) or more of the surveys conducted in the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest during the preceding thirty-six (36) months,
- b. a temporary manager, monitor, or receiver appointed, or
- c. had a civil money penalty imposed of Thirty-five Thousand Dollars (\$35,000.00) or more.

~~G.~~ E. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

~~H.~~ F. When the Commissioner makes a determination to issue or deny a certificate of need, the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The State Board of Health shall adopt rules concerning the time in which a decision must be made on an application.

~~I.~~ G. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) days of the Department determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

~~J.~~ ~~The Commissioner shall refuse to issue a certificate of need for an increase in licensed bed capacity of any facility that was replaced or relocated in part pursuant to subsection D of this section unless all of that facility is subsequently replaced or relocated. The applicability of this subsection shall not be affected by any change in ownership, operation or management of the facility.~~

SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-854.1, is amended to read as follows:

Section 1-854.1 Any final determination by the State Department of Health ~~under~~ pursuant to the Long-term Care Certificate of Need Act, ~~except for a determination made pursuant to subsection D of Section 1-853 of this title,~~ may be appealed by the applicant, or any other aggrieved party under the provisions of Sections 317 and 318 of Article II of the Administrative Procedures Act; provided, that the venue for such appeal shall be in Oklahoma County or in the county in which the facility at issue in the application is located.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-857, as amended by Section 2, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2003, Section 1-857), is amended to read as follows:

Section 1-857. A. 1. A certificate of need issued pursuant to the provisions of ~~this act~~ the Long-term Care Certificate of Need Act for the construction or establishment of a new long-term care service or the expansion ~~or change~~ of an existing service shall be valid for a period of six (6) months during which time the applicant shall submit to the State Department of Health the plans and specifications for the facility to be constructed ~~or modified~~; however, the Department may extend such time by a period not to exceed ~~six (6)~~ twelve (12) months for extraordinary circumstances beyond the control of the applicant.

2. If no such plans and specifications are submitted within the time required by this section, then such certificate shall be null and void.

3. If plans and specifications are submitted, the Department shall approve or disapprove such plans and specifications within thirty (30) days of the filing of such plans and specifications shall be presumed to be approved.

4. If the Department disapproves the plans and specifications, such disapproval shall include a detailed statement of the corrections needed.

5. The State Board of Health shall provide by rule the review process and time deadlines not exceeding twelve (12) months for approval or disapproval and resubmittal of initial, final and corrected plans and specifications. The applicant's failure to meet the review process deadlines promulgated by the Board shall render the certificate of need void.

6. The applicant must begin construction ~~or modification~~ of the structure within ~~two (2)~~ twelve (12) months following the approval of the final plans and specifications and must proceed to complete the structure ~~or modifications~~ within ~~twelve (12)~~ eighteen (18) months of the approval from the beginning of construction or the certificate will be canceled. However, the Department may extend such completion day by a period not to exceed twenty-four (24) months for good cause upon the applicant's demonstration that the applicant has made a good faith effort to complete the structure or modifications and that the delay is unlikely to result in harm to the population to be served by the applicant.

B. A certificate of need issued pursuant to the provisions of this act for the acquisition of a long-term care facility shall be valid for a period of six (6) months by which time the acquisition must be finalized, provided that the Department may extend such final date by a period not to exceed twelve (12) months for good cause.

C. Pending the appeal of an order granting a certificate of need in the district or Supreme Court, the effective dates of deadlines for submitting plans, filing reports, completion of the project and other requirements related to such project shall commence on the date of a final judicial determination of any such appeal, and any certificate of need which has been approved by the

Department shall remain in effect pending such appeal. The effective date of the issuance of a certificate of need shall be the date of a final judicial determination of any such appeal. The provisions of this subsection shall have prospective and retrospective application.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 1-857.1, is amended to read as follows:

Section 1-857.1 A. The ~~Oklahoma State Board of Health Planning Commission~~ shall ~~adopt~~ promulgate such rules and regulations as are necessary to implement the provisions of ~~this act~~ the Long-term Care Certificate of Need Act and meet the requirements of federal regulations. The ~~Commission~~ State Department of Health may administer oaths at any hearing or investigation conducted pursuant to ~~this act~~ the Long-term Care Certificate of Need Act, and receive federal grant or contract funds by complying with the requirements therefor.

B. The ~~Commission~~ Department shall ~~prepare and distribute an annual~~ post on the Department's Internet site a monthly report which shall include the status of each review currently being conducted, the reviews completed since the last report issued, and a general statement of the findings and decisions made in the course of these reviews.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 1-858, is amended to read as follows:

Section 1-858. A. Any person who offers or develops or begins to offer or develop a long-term care facility ~~or an addition thereto~~ without having first obtained a certificate of need, as provided by the Long-term Care Certificate of Need Act, shall be deemed guilty of a misdemeanor, and upon conviction shall be punishable by payment of a fine of not less than ~~One Hundred Dollars (\$100.00)~~ One Thousand Dollars (\$1,000.00) and not more than ~~Five Hundred Dollars (\$500.00)~~ Five Thousand Dollars (\$5,000.00).

B. If the State Department of Health, through one of its agents or representatives, notifies in writing, through certified mail, return receipt requested, the person who has unlawfully commenced the offering or development of a long-term care facility to cease and desist, then each day that such person continues such offering or development shall be a separate offense. If any person continues to offer or develop an institutional health service after the issuance of a cease and desist order, the Department shall seek an injunction to prohibit the continued offering or development.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 1-1902, is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act:

1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when invited to do so by a resident. The state or local "ombudsman", as

that term is defined by the Aging Services Division of the Department of Human Services pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies shall have right of access to enter a facility, communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate privately and without restriction with any resident, and to observe all areas of the facility that directly pertain to the patient care of the resident without infringing upon the privacy of the other residents without first obtaining their consent;

3. "Administrator" means the person licensed by the State of Oklahoma who is in charge of a facility. An administrator must devote at least one-third (1/3) of such person's working time to on-the-job supervision of the facility; provided that this requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in which case the person licensed by the state may be in charge of more than one ICF-MR/16 facility, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, the total number of facilities and beds does not exceed six facilities and sixty-four beds, and each ICF-MR/16 facility is supervised by a qualified mental retardation professional. The facilities may be free-standing in a community or may be on campus with a parent institution. The ICF-MR/16 may be independently owned and operated or may be part of a larger institutional ~~ownership and~~ operation;

4. "Advisory Board" means the Long-Term Care Facility Advisory Board;

5. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three or fewer mentally retarded or developmentally disabled adults;

6. "Board" means State Board of Health;

7. "Commissioner" means State Commissioner of Health;

8. "Department" means the State Department of Health;

9. "Facility" means a nursing facility and a specialized home; provided this term shall not include a residential care home or an adult companion home;

10. "Nursing facility" means a home, an establishment or an institution, a distinct part of which is primarily engaged in providing:

- a. skilled nursing care and related services for residents who require medical or nursing care,
- b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
- c. on a regular basis, health-related care and services to individuals who because of their mental or physical

condition require care and services beyond the level of care provided by a residential care home and which can be made available to them only through a nursing facility.

"Nursing facility" does not mean, for purposes of Section 1-851.1 of this title, a facility constructed or operated by an entity described in paragraph 7 of subsection B of Section ~~± 6201 of this act~~ Title 74 of the Oklahoma Statutes or the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, to the extent that the facility constructed or operated by an entity described in paragraph 7 of subsection B of Section ~~± 6201 of this act~~ Title 74 of the Oklahoma Statutes contains such a nursing care component;

11. "Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for mentally retarded or developmentally disabled persons, but does not mean, for purposes of Section 1-851.1 of this title, a facility constructed or operated by an entity described in paragraph 7 of subsection B of Section ~~± 6201 of this act~~ Title 74 of the Oklahoma Statutes or the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, to the extent that the facility constructed or operated by an entity described in paragraph 7 of subsection B of Section ~~± 6201 of this act~~ Title 74 of the Oklahoma Statutes contains such a nursing care component;

12. "Residential care home" means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act other than a hotel, motel, fraternity or sorority house, or college or university dormitory, which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. The residents shall be persons who are ambulatory and essentially capable of managing their own affairs, but who do not routinely require nursing care; provided, the term "residential care home" shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory, if the facility operates in a manner customary to its description and does not house any person who requires supportive assistance from the facility in order to meet an adequate level of daily living;

13. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by the Department pursuant to the provisions of the Nursing Home Care Act;

14. "Maintenance" means meals, shelter, and laundry services;

15. "Neglect" means failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness;

16. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a

result of the financial success or failure of the operation shall be presumed to be the owner of the facility;

17. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person, whether or not a guardian has been appointed for such person;

18. "Resident" means a person residing in a facility due to illness, physical or mental infirmity, or advanced age;

19. "Representative of a resident" means a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident; provided, that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, the Residential Care Act, or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act shall not be appointed guardian or limited guardian of a resident of the facility unless the owner, operator, administrator or employee is the spouse of the resident, or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment; and

20. "Supportive assistance" means the service rendered to any person which is less than the service provided by a nursing facility but which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution, and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. Supportive assistance shall not include medical service.

SECTION 11. AMENDATORY 63 O.S. 2001, Section 1-1908, is amended to read as follows:

Section 1-1908. A. No facility shall be licensed to operate or continue to operate unless, in addition to compliance with other current licensure requirements, the building is of one-hour fire resistant construction and approved by the Department and the State Fire Marshal. If the building is not of one-hour fire resistant construction in addition to the other current licensure requirements, ~~it, the facility~~ must be approved by the State Department of Health and the State Fire Marshal and. In addition, the facility must have an approved automatic sprinkler system, as rated and approved by the National Fire Protection Association Standards; ~~provided further, the.~~

B. Each facility that proposes an increase in beds, whether through new construction or modification, shall submit construction plans to the Department for review prior to the start of construction. The Department may assess a fee for such review in an amount not more than two one-hundredths percent (0.02%) or One Thousand Dollars (\$1,000.00), whichever is the least amount, per project of the total construction cost of the facility or modification. The maximum fee for plan review for a ten-bed or ten percent (10%) expansion project authorized under subsection C of

Section 1-852 of this title shall be One Thousand Dollars (\$1,000.00). The State Board of Health shall promulgate rules for submission and resubmission of construction plans to ensure the timely review of such plans by the Department.

C. The Department of Human Services and the Oklahoma Health Care Authority shall not make a vendor payment to any individual or facility on behalf of any person for medical care rendered in the form of nursing service outside such person's home, unless such individual or facility holds a current nursing facility, continuum of care facility, assisted living, or adult day care license issued by the Commissioner or other state agency authorized to issue such license.

SECTION 12. AMENDATORY 63 O.S. 2001, Section 1-1950.1, as amended by Section 1 of Enrolled Senate Bill No. 1184 of the 2nd Session of the 49th Oklahoma Legislature, is amended to read as follows:

Section 1-1950.1 A. For purposes of this section:

1. "Nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility, or specialized facility, ~~or residential care home~~ as such terms are defined in ~~Section 1-1902 of this title~~ the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in Section 1-872 of this title the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- ~~e.~~ f. a home health or home care agency, and
- ~~d.~~ g. 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 Medicaid State Plan Personal Care Program;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency; and

4. "Bureau" means the Oklahoma State Bureau of Investigation.

B. 1. Except as otherwise provided by subsection C of this section, before any employer makes an offer to employ or to contract with a nurse aide or other person to provide nursing care, health-related services or supportive assistance to any individual except as provided by paragraph 4 of this subsection, the employer shall provide for a criminal history background check to be made on the nurse aide or other person pursuant to the provisions of this section. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal history background check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

2. Except as otherwise specified by subsection D of this section, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation which the employer is required or authorized to request by the provisions of this section.

3. The employer shall request the Bureau to conduct a criminal history background check on the person and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request.

4. The requirement of a criminal history background check shall not apply to an offer of employment made to:

- a. a nursing home administrator licensed pursuant to the provisions of Section 330.53 of this title,
- b. any person who is the holder of a current license or certificate issued pursuant to the laws of this state authorizing such person to practice the healing arts,
- c. a registered nurse or practical nurse licensed pursuant to the Oklahoma Nursing Practice Act,
- d. a physical therapist registered pursuant to the Physical Therapy Practice Act,
- e. a physical therapist assistant licensed pursuant to the Physical Therapy Practice Act,
- f. a social worker licensed pursuant to the provisions of the Social Worker's Licensing Act,

- g. a speech pathologist or audiologist licensed pursuant to the Speech-Language Pathology and Audiology Licensing Act,
- h. a dietitian licensed pursuant to the provisions of the Licensed Dietitian Act,
- i. an occupational therapist licensed pursuant to the Occupational Therapy Practice Act, or
- j. an individual who is to be employed by a nursing service conducted by and for the adherents of any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing.

5. At the request of an employer, the Bureau shall conduct a criminal history background check on any person employed by the employer, including the persons specified in paragraph 4 of this subsection at any time during the period of employment of such person.

C. 1. An employer may make an offer of temporary employment to a nurse aide or other person pending the results of the criminal history background check on the person. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with a person on a permanent basis until the results of the criminal history background check are received.

2. An employer may accept a criminal history background report less than one (1) year old of a person to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person.

D. 1. The Bureau shall not provide to the employer the criminal history background records of a person being investigated pursuant to this section unless the criminal records relate to:

- a. any felony or misdemeanor classified as a crime against the person,
- b. any felony or misdemeanor classified as a crime against public decency or morality,
- c. any felony or misdemeanor classified as domestic abuse pursuant to the provisions of the Protection from Domestic Abuse Act,
- d. a felony violation of any state statute intended to control the possession or distribution of a Schedule I through V drug pursuant to the Uniform Controlled Dangerous Substances Act, and
- e. any felony or misdemeanor classified as a crime against property.

2. Within five (5) days of receiving a request to conduct a criminal history background check, the Bureau shall complete the criminal history background check and report the results of the check to the requesting employer.

E. Every employer who is subject to the provisions of this section shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nurse aide or other person described in subsection B of this section.

F. 1. If the results of a criminal history background check reveal that the subject person has been convicted of any of the following offenses, the employer shall not hire or contract with the person:

- a. assault, battery, or assault and battery with a dangerous weapon,
- b. aggravated assault and battery,
- c. murder or attempted murder,
- d. manslaughter, except involuntary manslaughter,
- e. rape, incest or sodomy,
- f. indecent exposure and indecent exhibition,
- g. pandering,
- h. child abuse,
- i. abuse, neglect or financial exploitation of any person entrusted to ~~his~~ the care or possession of such person,
- j. burglary in the first or second degree,
- k. robbery in the first or second degree,
- l. robbery or attempted robbery with a dangerous weapon, or imitation firearm,
- m. arson in the first or second degree,
- n. unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act,
- o. grand larceny, or
- p. petit larceny or shoplifting within the past seven (7) years.

2. If the results of a criminal history background check reveal that an employee or a person hired on a temporary basis pursuant to subsection C of this section or any other person who is an employee

or contract provider has been convicted of any of the offenses listed in paragraph 1 of this subsection, the employer shall immediately terminate the person's employment or contract. The provisions of this paragraph shall not apply to an employee or contract provider of an employer who has completed the requirements for certification and placement on the nurse aide registry and who has been continuously employed by the employer prior to January 1, 1992.

G. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

H. All criminal records received by the employer are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

I. Any person releasing or disclosing any information received pursuant to this section without the authorization prescribed by this section shall be guilty of a misdemeanor.

J. As part of the inspections required by the Nursing Home Care Act, Continuum of Care and Assisted Living Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility ~~or~~, home or institution required to obtain criminal history background records to ensure such facilities ~~or~~, homes or institutions are in compliance with the provisions of this section.

SECTION 13. AMENDATORY 63 O.S. 2001, Section 1-1950.3, as last amended by Section 3, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2003, 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, specialized facility, continuum of care facility, assisted living or other long-term care facility center, adult day care or residential home 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, continuum of care facility, assisted living center or ~~other long-term care facility~~ adult day care or residential home which can demonstrate that such facility, home or institution has been unable to successfully meet its staffing requirements.—The related to the provisions of subparagraph a of this paragraph. No later than September 30, 2004, 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.

- c. From November 1, 2004, until October 31, 2005, the Department shall not issue any monetary penalties nor shall it issue any licensure deficiency related to the provisions of subparagraph a of this paragraph to a nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home, which is unable to comply with the requirements and which has applied for a temporary waiver under subparagraph b of this paragraph, whether or not the waiver application has been approved.

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 the Department shall place the nurse aide on the registry within thirty (30) days after demonstration of competency.

4. Any nursing facility, specialized facility, continuum of care facility, assisted living ~~or other long-term care facility~~ center, adult day care or residential care home 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, specialized facility, continuum of care facility, assisted living or other long-term care facility center, adult day care or residential care home.

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. 1. Certified medication aides, upon successful completion of competency standards or prescribed training courses, shall be eligible to distribute medication medications or treatments provided by paragraph 2 of this subsection within a nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home facility.

2. Certified medication aides may:

- a. perform fingerstick blood sugars,
- b. administer diabetic medications,
- c. administer medications, first aid treatments and nutrition; by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal, and nasogastric/gastrostomy tubes routes, and
- d. administer oral metered dose inhalers and nebulizers;

3. The State Board of Health shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:

- a. competency and practice standards for medication aides,
- b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,
- c. certification and recertification requirements for medication aides,

- d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and
- e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide;

4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the State Board of Health. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

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 14. REPEALER 63 O.S. 2001, Section 1-857.4, is hereby repealed.

SECTION 15. 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 25th day of May, 2004.

Presiding Officer of the House of
Representatives

Passed the Senate the 26th day of May, 2004.

Presiding Officer of the Senate