

**ENGROSSED**

**House Bill No. 2723**

**As Amended**

ENGROSSED HOUSE BILL NO. 2723 - By: PETTIGREW of the House and  
COFFEE of the Senate.

[ public health and safety - amending 12 sections in Title  
63 - Long-term Care - Nursing Home Care Act -  
emergency ]

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,

- 1           c.    the nursing care component of a continuum of care  
2                    facility, as such term is defined under the Continuum  
3                    of Care and Assisted Living Act, or  
4           d.    the nursing care component of a life care community as  
5                    such term is defined by the Long-term Care Insurance  
6                    Act;

7           5.    "Disclosure statement" means a written statement by the  
8   applicant which contains:

- 9           a.    the full name, business address, and social security  
10                   number of the applicant, and all persons with  
11                   controlling interest as defined by this act,  
12           b.    the full name and address of any legal entity in which  
13                   the applicant holds a debt or equity interest of at  
14                   least five percent (5%), or which is a parent company  
15                   or subsidiary of the applicant,  
16           c.    a description of the experience and credentials of the  
17                   applicant, including any past or present permits,  
18                   licenses, certifications, or operational  
19                   authorizations relating to long-term care facility  
20                   regulation,  
21           d.    a listing and explanation of any administrative, civil  
22                   or criminal legal actions against the applicant or any  
23                   person with a controlling interest which resulted in a

1 final agency order or final judgment by a court of  
2 record including, but not limited to, final orders or  
3 judgments on appeal related to long-term care in the  
4 five (5) years immediately preceding the filing of the  
5 application. Such actions shall include, without  
6 limitation, any permit denial or any sanction imposed  
7 by a state regulatory authority or the federal Health  
8 Care Financing Administration, and

9 e. a listing of any federal long-term care agency and any  
10 state long-term care agency outside this state that  
11 has or has had regulatory responsibility over the  
12 applicant;

13 6. ~~"Person"~~ "History of noncompliance" means three consecutive  
14 standard surveys found to be at the substandard quality of care  
15 level;

16 7. "Owner" means any ~~individual~~ sole proprietorship,  
17 corporation, industry, firm, partnership, association, venture,  
18 trust, institution, federal, state or local governmental  
19 instrumentality, agency or body or any other legal entity however  
20 organized which is licensed or will be licensed to operate a long-  
21 term care facility; and

22 7. ~~"Person"~~ 8. "Owner with a controlling interest" means a  
23 ~~person~~ an owner, sole proprietorship, corporation, industry, firm,

1 partnership, association, venture, trust, institution, federal,  
2 state or local governmental instrumentality, agency or body or any  
3 other legal entity however organized which is licensed or will be  
4 licensed to operate a long-term care facility who meets any one or  
5 more of the following requirements:

- 6 a. controls fifty percent (50%) or more of the common  
7 stock of the corporate entity involved or controls  
8 fifty percent (50%) or more of the interest in the  
9 partnership involved,
- 10 b. controls a percentage of stock greater than any other  
11 stockholder or equal to the other single largest  
12 stockholder or controls a percentage of partnership  
13 interest greater than any other partner or equal to  
14 the other single largest partnership interest,
- 15 c. serves on the board of the entity involved,
- 16 d. serves as an officer of the entity involved, or
- 17 e. actively participates in the management of the entity  
18 involved or actively participates in the management of  
19 the entity in the relevant time period.

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

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

- 1        1. Issue, renew, deny, modify, suspend and revoke certificates  
2 of need;
- 3        2. Establish and enforce standards and requirements for  
4 certificates of need;
- 5        3. Require the submission of and to review reports from any  
6 person requesting or obtaining a certificate of need;
- 7        4. Employ or designate personnel necessary to implement the  
8 provisions of the Long-term Care Certificate of Need Act;
- 9        5. Report to the district attorney having jurisdiction or the  
10 Attorney General, any act committed by any person which may  
11 constitute a violation pursuant to the provisions of the Long-term  
12 Care Certificate of Need Act;
- 13       6. Advise, consult and cooperate with other agencies of this  
14 state, the federal government, other states and interstate agencies,  
15 and with affected groups and political subdivisions to further the  
16 purposes of the provisions of the Long-term Care Certificate of Need  
17 Act;
- 18       7. Promulgate and enforce rules subject to the approval of the  
19 State Board of Health to implement the provisions of the Long-term  
20 Care Certificate of Need Act;
- 21       8. Investigate, request or otherwise obtain the information  
22 necessary to determine the qualifications and background of an  
23 applicant for a certificate of need;

1           9. Establish administrative penalties for violations of the  
2 provisions of the Long-term Care Certificate of Need Act as  
3 authorized by the Board;

4           10. Institute and maintain or intervene in any action or  
5 proceeding where deemed necessary by the Department pursuant to the  
6 Long-term Care Certificate of Need Act;

7           11. Develop and administer plans for health services including,  
8 but not limited to, staffing, facilities and other resources;

9           12. Develop and publish, once every four (4) years, a  
10 Quadrennial State Health Plan, following guidelines and procedures  
11 adopted by the Board which specify the method of adoption of the  
12 plan document, its format, provisions for developing and publishing  
13 plan amendments and the role of the State Department of Health,  
14 local health planning advisory councils and the Alcohol, Drug Abuse  
15 and Community Mental Health Planning and Coordination Boards of each  
16 mental health catchment area in its development;

17           13. Establish and administer criteria and standards for the  
18 delineation and approval of areas and regions for health planning  
19 purposes;

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

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

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

11        C. The Department shall establish forms and provide for the  
12 collection of monthly data necessary for the computation of  
13 occupancy rates from all licensed long-term care facilities ~~which do~~  
14 ~~not provide services to Medicaid recipients~~. Data shall include,  
15 but not be limited to, licensed bed capacity, average daily census,  
16 days on which beds were reserved for residents temporarily absent,  
17 and the number, if any, of semi-private units rented as private  
18 rooms.

19        D. An initial or renewal application for a license shall  
20 include a certification by the applicant that, at the time of the  
21 filing of the application:

22        1. The applicant and any entity disclosed within a disclosure  
23 statement submitted pursuant to the Long-term Care Certificate of

1 Need Act or rules promulgated pursuant thereto are current in their  
2 payment of all state and federal employment and unemployment taxes;

3 2. The applicant and any entity disclosed within a disclosure  
4 statement submitted pursuant to the Long-term Care Certificate of  
5 Need Act or rules promulgated pursuant thereto have filed all  
6 required returns for such taxes;

7 3. Whether any state tax warrants or federal tax liens have  
8 been filed against the applicant, the facility or any entity  
9 disclosed within a disclosure statement submitted pursuant to the  
10 Long-term Care Certificate of Need Act or rules promulgated pursuant  
11 thereto; and

12 4. Whether any state attachments or federal levies have been  
13 made and are currently pending to collect delinquent state or  
14 federal employment or unemployment taxes owed by the applicant, the  
15 facility, or any entity disclosed within a disclosure statement  
16 submitted pursuant to the Long-term Care Certificate of Need Act or  
17 rules promulgated pursuant thereto.

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

20 Section 1-852. A. Every entity desiring to establish a new  
21 long-term care facility, to expand an existing facility whether  
22 through construction or conversion of facilities, or to acquire an  
23 existing long-term care facility shall make application to the State

1 Department of Health for a certificate of need. The application for  
2 a certificate of need shall be in such form as the State  
3 Commissioner of Health shall prescribe.

4 B. A certificate of need shall be required for:

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

11 2. Acquisition of the ownership or operation of a facility by  
12 purchase, or lease, ~~donation, transfer of stock, corporate merger,~~  
13 ~~assignment, or through foreclosure.~~ Acquisition through management  
14 ~~contract shall be subject to a certificate of need unless said~~  
15 ~~management contract is part of a purchase or lease proceeding.~~ In  
16 ~~such case the management contract shall be exempt from the~~  
17 ~~certificate of need for a single term of up to nine (9) months, with~~  
18 ~~no more than one three-month extension.~~ A copy of the purchase  
19 ~~contract shall be included by the applicant in the request for the~~  
20 ~~management contract certificate of need exemption.~~

21 ~~Management contracts for a period of six (6) months or less~~  
22 ~~shall not be subject to certificate of need review.~~ Such management

1 ~~contracts cannot be renewed unless the applicant files for a~~  
2 ~~certificate of need.~~

3 C. A certificate of need shall not be required for:

4 1. Any changes of ownership resulting from the operation of  
5 law, including but not limited to divorce, probate, and reversions.

6 This shall also include cancellations and expirations of leases.

7 Operational law ownership changes shall be reported to the

8 Department within five (5) working days of the change;

9 2. Ownership changes for estate planning purposes, treasury  
10 stock purchases, and transfers between existing owners and/or family  
11 members;

12 3. An increase in the number of licensed beds, as indicated in  
13 subsection E of Section 1-853 of this title, or the construction of  
14 a replacement facility where the old facility is closed. Notice to  
15 the State Department of Health and plan review shall be required  
16 prior to construction; and

17 4. A management agreement, notice to the State Department of  
18 Health and full disclosure of ownership shall be required prior to  
19 the start of the management agreement. The Department shall have  
20 the right to deny a management agreement based on the criteria  
21 identified in paragraph 5 of subsection G of this section.

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

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

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

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

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

1       ~~E.~~ F. Promptly upon receipt of any such application, the  
2 Department shall examine and transmit the application to reviewing  
3 bodies selected by the Department to assist the Department in  
4 determining whether the application is complete. Once the  
5 Department has determined that the application is complete, it shall  
6 notify the affected parties and other reviewing bodies and cause a  
7 thorough investigation to be made of the need for and  
8 appropriateness of the new or any long-term care service  
9 acquisition,~~expansion,~~ or establishment of a new facility.

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

- 13       1. The adequacy of long-term care facilities in relation to an  
14 optimal target ratio of long-term care beds per thousand persons  
15 seventy-five (75) years of age or older in the state;
- 16       2. The availability of long-term care which may serve as  
17 alternatives or substitutes;
- 18       3. The adequacy of financial resources for the acquisition,~~expansion,~~  
19 ~~expansion,~~ or establishment of a new long-term care facility and for  
20 the continued operation thereof;
- 21       4. The availability of sufficient staff to properly operate the  
22 proposed acquisition,~~expansion,~~ or establishment of a new long-term  
23 care facility;

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

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

10          ~~7.~~ Any other matter which the Department deems appropriate.

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

21          ~~H. I.~~ The Commissioner's decision to approve or deny the  
22 proposed acquisition, ~~expansion,~~ or establishment of a new facility  
23 shall be made within forty-five (45) days following the deadline for

1 submitting written comments, or the proposed acquisition, ~~expansion,~~  
2 or establishment shall be automatically approved, unless otherwise  
3 prohibited pursuant to the provisions of the Long-term Care  
4 Certificate of Need Act.

5 ~~F.~~ J. If the Commissioner finds that a proposed acquisition, ~~expansion,~~  
6 ~~expansion,~~ or establishment of a new facility is consistent with the  
7 criteria and standards for review of such projects, and is otherwise  
8 in compliance with the provision of the Long-term Care Certificate  
9 of Need Act, then the Commissioner shall issue a certificate of  
10 need. If the Commissioner finds that the proposed acquisition,  
11 expansion, or establishment of a new facility is not consistent with  
12 the criteria and standards, or is otherwise not in compliance with  
13 the provisions of the Long-term Care Certificate of Need Act, the  
14 Commissioner shall deny the certificate of need.

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

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

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

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

6 2. The maximum fee for plan review for ten-bed expansion shall  
7 be One Thousand Dollars (\$1,000.00).

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

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

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

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

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

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

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

3           B. 1. An application for a certificate of need for a capital  
4 expenditure to eliminate or prevent imminent safety hazards as  
5 defined by federal, state or local fire, building or life safety  
6 codes or regulations, or to comply with state licensure standards,  
7 or to comply with accreditation standards, compliance with which is  
8 required to receive reimbursements under Title XVIII of the Social  
9 Security Act or payments under a state plan for medical assistance  
10 approved under Title XIX of such act, shall be approved unless the  
11 Department finds:

12                 a. that the facility or service is not needed, or

13                 b. that the applicant is found to be out of compliance  
14 with the provisions of subsection F of this section.

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

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

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

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

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

- 8           a. the project involves no increase in licensed beds,
- 9           b. except for a not-for-profit life care community, the  
10           facility shall be constructed no farther than ~~three~~  
11           ~~(3)~~ seven and one-half (7 1/2) miles from the facility  
12           it is replacing or relocating, and
- 13           c. a plan for the use of the facility to be replaced or  
14           relocated is provided that ensures continuity of  
15           services.

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

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

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

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

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

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

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

16          F. The Department shall require notice and approval of the  
17 expansion plans.

18          G. 1. The Commissioner shall refuse to issue a certificate of  
19 need to any applicant who has had, in ten percent (10%) or more of  
20 the applicant's long-term care facility holdings in the preceding  
21 sixty (60) months, a facility license or certification revoked,  
22 rescinded, canceled, terminated, involuntarily suspended, or refused

1 renewal; or if the license or certification was relinquished  
2 voluntarily in lieu of penalty.

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

- 8 a. the applicant has had, in any of the applicant's long-  
9 term care holdings in the preceding sixty (60) months,  
10 a facility's license or certificate revoked,  
11 rescinded, canceled, terminated, involuntarily  
12 suspended or refused renewal,
- 13 b. the applicant has a history of noncompliance, as  
14 defined by rule, with the standards for licensure of  
15 long-term care facilities of any state in which the  
16 applicant has or has had long-term care facilities, or  
17 with federal standards for certification of long-term  
18 care facilities,
- 19 c. the applicant, in all current and prior ownership,  
20 operation and management of long-term care facilities,  
21 has not complied with all lawful orders of suspension,  
22 receivership, temporary management, or administrative  
23 penalty issued by the Department or by other

1 authorities with similar responsibilities in other  
2 states or by the federal ~~Health Care Financing~~  
3 ~~Administration~~ Centers for Medicare and Medicaid  
4 Services, or

5 d. the applicant has been convicted of a felony criminal  
6 offense related to the operation or management of a  
7 long-term care facility.

8 3. The Commissioner may refuse to issue a certificate of need  
9 to any applicant who has had, in the preceding sixty (60) months, an  
10 administrative penalty above the level of a deficiency, other than  
11 any of those listed in paragraph 1 or 2 of this subsection, against  
12 any of the applicant's long-term care facility holdings or against  
13 any long-term care facility operated by ~~a person~~ an owner with a  
14 controlling interest.

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

19 ~~H.~~ I. When the Commissioner makes a determination to issue or  
20 deny a certificate of need, the Commissioner shall provide written  
21 findings to the applicant, other reviewers and to other persons upon  
22 their request. The certificate of need shall establish the maximum  
23 capital expenditure for the project. The State Board of Health

1 shall adopt rules concerning the time in which a decision must be  
2 made on an application.

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

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

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

20 Section 1-854.1 Any final determination by the State Department  
21 of Health ~~under~~ pursuant to the Long-term Care Certificate of Need  
22 Act, ~~except for a determination made pursuant to subsection D of~~  
23 ~~Section 1-853 of this title,~~ may be appealed by the applicant, or

1 any other aggrieved party under the provisions of Sections 317 and  
2 318 of Article II of the Administrative Procedures Act; provided,  
3 that the venue for such appeal shall be in Oklahoma County or in the  
4 county in which the facility at issue in the application is located.

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

8 Section 1-857. A. A certificate of need issued pursuant to the  
9 provisions of this act for the construction or establishment of a  
10 new long-term care service ~~or the expansion or change of an existing~~  
11 ~~service~~ shall be valid for a period of six (6) months during which  
12 time the applicant shall submit to the State Department of Health  
13 the plans and specifications for the facility to be constructed ~~or~~  
14 ~~modified~~; however, the Department may extend such time by a period  
15 not to exceed six (6) months for extraordinary circumstances beyond  
16 the control of the applicant. If no such plans and specifications  
17 are submitted within the time required by this section, then such  
18 certificate shall be null and void. If plans and specifications are  
19 submitted, the Department shall approve or disapprove such plans and  
20 specifications within thirty (30) days of the filing of such plans  
21 and specifications shall be presumed to be approved. If the  
22 Department disapproves the plans and specifications, such  
23 disapproval shall include a detailed statement of the corrections

1 needed. The State Board of Health shall provide by rule the review  
2 process and time deadlines not exceeding twelve (12) months for  
3 approval or disapproval and resubmittal of initial, final and  
4 corrected plans and specifications. The applicant's failure to meet  
5 the review process deadlines promulgated by the Board shall render  
6 the certificate of need void. The applicant must begin construction  
7 ~~or modification~~ of the structure within ~~two (2)~~ six (6) months  
8 following the approval of the final plans and specifications and  
9 must proceed to complete the structure ~~or modifications~~ within  
10 ~~twelve (12)~~ eighteen (18) months of the approval or the certificate  
11 will be canceled. However, the Department may extend such  
12 completion day by a period not to exceed twenty-four (24) months for  
13 good cause upon the applicant's demonstration that the applicant has  
14 made a good faith effort to complete the structure ~~or modifications~~  
15 and that the delay is unlikely to result in harm to the population  
16 to be served by the applicant.

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

1 C. Pending the appeal of an order granting a certificate of  
2 need in the district or Supreme Court, the effective dates of  
3 deadlines for submitting plans, filing reports, completion of the  
4 project and other requirements related to such project shall  
5 commence on the date of a final judicial determination of any such  
6 appeal, and any certificate of need which has been approved by the  
7 Department shall remain in effect pending such appeal. The  
8 effective date of the issuance of a certificate of need shall be the  
9 date of a final judicial determination of any such appeal. The  
10 provisions of this subsection shall have prospective and  
11 retrospective application.

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

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

1        B. The ~~Commission~~ Department shall prepare and distribute ~~an~~  
2 ~~annual~~ a monthly report which shall include the status of each  
3 review currently being conducted, the reviews completed since the  
4 last report issued, and a general statement of the findings and  
5 decisions made in the course of these reviews.

6        SECTION 9.        AMENDATORY        63 O.S. 2001, Section 1-857.4, is  
7 amended to read as follows:

8        Section 1-857.4 The State Department of ~~Human Services~~ Health  
9 is hereby directed to establish forms and provide for the collection  
10 of monthly data necessary for the computation of occupancy rates  
11 from all licensed long-term care facilities ~~which provide services~~  
12 ~~to Medicaid recipients~~. Data shall include those elements specified  
13 in subsection C of Section ~~&~~ 1-851.2 of this ~~act~~ and the Department  
14 ~~of Human Services shall provide monthly reports thereof to the~~  
15 Department title.

16        SECTION 10.        AMENDATORY        63 O.S. 2001, Section 1-858, is  
17 amended to read as follows:

18        Section 1-858. A. Any ~~person~~ owner who offers or develops or  
19 begins to offer or develop a long-term care facility ~~or an addition~~  
20 ~~thereto~~ without having first obtained a certificate of need, as  
21 provided by the Long-term Care Certificate of Need Act, shall be  
22 deemed guilty of a misdemeanor, and upon conviction shall be  
23 punishable by payment of a fine of not less than ~~One Hundred Dollars~~

1 ~~(\$100.00)~~ One Thousand Dollars (\$1,000.00) and not more than ~~Five~~  
2 ~~Hundred Dollars (\$500.00)~~ Five Thousand Dollars (\$5,000.00).

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

13 SECTION 11. AMENDATORY 63 O.S. 2001, Section 1-1902, is  
14 amended to read as follows:

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

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

19 2. "Access" means the right of a person to enter a facility to  
20 communicate privately and without unreasonable restriction when  
21 invited to do so by a resident. The state or local "ombudsman", as  
22 that term is defined by the Aging Services Division of the  
23 Department of Human Services pursuant to the Older Americans' Act,

1 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager  
2 employed by the Department of Mental Health and Substance Abuse  
3 Services or one of its contract agencies shall have right of access  
4 to enter a facility, communicate privately and without unreasonable  
5 restriction with any resident who consents to the communication, to  
6 seek consent to communicate privately and without restriction with  
7 any resident, and to observe all areas of the facility that directly  
8 pertain to the patient care of the resident without infringing upon  
9 the privacy of the other residents without first obtaining their  
10 consent;

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

1 institution. The ICF-MR/16 may be independently owned and operated  
2 or may be part of a larger institutional ~~ownership and operation;~~

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

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

10 6. "Board" means State Board of Health;

11 7. "Commissioner" means State Commissioner of Health;

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

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

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

19 a. skilled nursing care and related services for  
20 residents who require medical or nursing care,

21 b. rehabilitation services for the rehabilitation of  
22 injured, disabled, or sick persons, or

1 c. on a regular basis, health-related care and services  
2 to individuals who because of their mental or physical  
3 condition require care and services beyond the level  
4 of care provided by a residential care home and which  
5 can be made available to them only through a nursing  
6 facility.

7 "Nursing facility" does not mean, for purposes of Section 1-851.1 of  
8 this title, a facility constructed or operated by an entity  
9 described in paragraph 7 of subsection B of Section ~~±~~ 6201 of ~~this~~  
10 ~~act~~ Title 74 of the Oklahoma Statutes or the nursing care component  
11 of a continuum of care facility, as such term is defined under the  
12 Continuum of Care and Assisted Living Act, to the extent that the  
13 facility constructed or operated by an entity described in paragraph  
14 7 of subsection B of Section ~~±~~ 6201 of ~~this act~~ Title 74 of the  
15 Oklahoma Statutes contains such a nursing care component;

16 11. "Specialized facility" means any home, establishment, or  
17 institution which offers or provides inpatient long-term care  
18 services on a twenty-four-hour basis to a limited category of  
19 persons requiring such services, including but not limited to a  
20 facility providing health or habilitation services for mentally  
21 retarded or developmentally disabled persons, but does not mean, for  
22 purposes of Section 1-851.1 of this title, a facility constructed or  
23 operated by an entity described in paragraph 7 of subsection B of

1 Section ~~±~~ 6201 of ~~this act~~ Title 74 of the Oklahoma Statutes or the  
2 nursing care component of a continuum of care facility, as such term  
3 is defined under the Continuum of Care and Assisted Living Act, to  
4 the extent that the facility constructed or operated by an entity  
5 described in paragraph 7 of subsection B of Section ~~±~~ 6201 of ~~this~~  
6 ~~act~~ Title 74 of the Oklahoma Statutes contains such a nursing care  
7 component;

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

22 13. "Licensee" means ~~the person~~ a sole proprietorship, a  
23 corporation, partnership, or association who is the owner of the

1 facility which is licensed by the Department pursuant to the  
2 provisions of the Nursing Home Care Act;

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

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

6 16. "Owner" means a ~~person~~ sole proprietorship, corporation,  
7 partnership, association, or other entity which ~~owns~~ is licensed to  
8 operate a facility ~~or leases a facility. The person or entity that~~  
9 ~~stands to profit or lose as a result of the financial success or~~  
10 ~~failure of the operation shall be presumed to be the owner of the~~  
11 ~~facility;~~

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

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

20 19. "Representative of a resident" means a court-appointed  
21 guardian or, if there is no court-appointed guardian, the parent of  
22 a minor, a relative, or other person, designated in writing by the  
23 resident; provided, that any owner, operator, administrator or

1 employee of a facility subject to the provisions of the Nursing Home  
2 Care Act, the Residential Care Act, or the Group Homes for the  
3 Developmentally Disabled or Physically Handicapped Persons Act shall  
4 not be appointed guardian or limited guardian of a resident of the  
5 facility unless the owner, operator, administrator or employee is  
6 the spouse of the resident, or a relative of the resident within the  
7 second degree of consanguinity and is otherwise eligible for  
8 appointment; and

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

18 SECTION 12. AMENDATORY 63 O.S. 2001, Section 1-1903, as  
19 amended by Section 1, Chapter 89, O.S.L. 2003 (63 O.S. Supp. 2003,  
20 Section 1-1903), is amended to read as follows:

21 Section 1-1903. A. No ~~person~~ owner shall establish, operate,  
22 or maintain in this state any nursing facility without first  
23 obtaining a license as required by the Nursing Home Care Act.

1           B. The Nursing Home Care Act shall not apply to any facility  
2 operated by the Oklahoma Department of Veterans Affairs under  
3 control of the Oklahoma War Veterans Commission residential care  
4 homes, assisted living facilities or adult companion homes which are  
5 operated in conjunction with a nursing facility, or to hotels,  
6 motels, boarding houses, rooming houses, or other places that  
7 furnish board or room to their residents.

8           C. Certificate of need review shall not be required for any  
9 addition, deletion, modification or new construction of current or  
10 future State Veterans Center nursing facilities.

11          D. The Nursing Home Care Act shall not authorize any person to  
12 engage in any manner in the practice of the healing arts or the  
13 practice of medicine, as defined by law.

14          E. The Nursing Home Care Act shall not apply to a facility  
15 which is not charging or receiving periodic compensation for  
16 services rendered, and not receiving any county, state, or federal  
17 assistance.

18          SECTION 13. It being immediately necessary for the preservation  
19 of the public peace, health and safety, an emergency is hereby  
20 declared to exist, by reason whereof this act shall take effect and  
21 be in full force from and after its passage and approval.

22 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 3-31-04 - DO  
23 PASS, As Amended.