

STATE OF OKLAHOMA

1st Session of the 49th Legislature (2003)

HOUSE BILL HB1587

By: Leist

AS INTRODUCED

An Act relating to poor persons; creating within the Department of Human Services the Oklahoma Rule Advisory Council on Developmental Disabilities Services; providing for appointment and qualification; providing for terms; providing for duties; providing for reimbursement; requiring advice of Council; requiring certain submissions; providing exceptions; providing for limitations; providing for emergency rules; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 615 of Title 56, unless there is created a duplication in numbering, reads as follows:

A. 1. There is hereby created within the Department of Human Services the Oklahoma Rule Advisory Council on Developmental Disabilities Services. The Council shall consist of eighteen (18) members.

2. Five members shall be appointed by the Governor, five members shall be appointed by the Speaker of the House of Representatives, five members shall be appointed by the President Pro Tempore of the Senate, and three members shall be appointed by the Director of the Department of Human Services.

3. The initial appointments for each gubernatorial and legislative member shall be for progressive terms of one (1) through five (5) years so that only one term expires each calendar year. The initial appointments for each member appointed by the director of the Department of Human Services shall be appointed for

progressive terms of one (1) through three (3) years so that one term expires each calendar year. Subsequent appointments shall be for five-year terms. Members shall continue to serve until their successors are appointed.

4. Any vacancy shall be filled in the same manner as the original appointments. Ten members shall constitute a quorum.

B. The Council shall be composed as follows:

1. The Governor shall appoint five members as follows:

- a. one person representing a group which advocates for the developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled child who receives services from the Developmental Disabilities Services Division of the Department of Human Services,
- c. one parent or legal guardian of a developmentally disabled child who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for these services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and
- e. one developmentally disabled person who receives services from the Department of Human Services;

2. The Speaker of the House of Representatives shall appoint five members as follows:

- a. one person representing a group which advocates for the developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled child who receives services from the Developmental Disabilities Services Division of the Department of Human Services,

- c. one parent or legal guardian of a developmentally disabled child who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for these services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and
- e. one developmentally disabled person who receives services from the Department of Human Services;

3. The President Pro Tempore of the Senate shall appoint five members as follows:

- a. one person representing a group which advocates for the developmentally disabled,
- b. one parent or legal guardian of a developmentally disabled child who receives services from the Developmental Disabilities Services Division of the Department of Human Services,
- c. one parent or legal guardian of a developmentally disabled child who does not receive services from the Developmental Disabilities Services Division of the Department of Human Services and who is on the waiting list for these services,
- d. one person who is employed by a community-based provider of services to the developmentally disabled in Oklahoma, and
- e. one developmentally disabled person who receives services from the Department of Human Services; and

4. The Director of the Department of Human Services shall appoint three members as follows:

- a. one person who is employed in the Developmentally Disabled Services Division of the Department of Human Services,
- b. one person who is engaged in budgeting and fiscal policy formulation for the Department of Human Services, and
- c. one person who develops policy for the Developmentally Disabled Services Division of the Department of Human Services.

C. The Council shall elect a chair and a vice-chair from among its members. The Council shall meet as required for rule development, review and recommendation and for such other purposes specified by law. Special meetings may be called by the chair or by the concurrence of any five members.

D. The Council shall:

1. Have authority to recommend to the Commission for Human Services rules to implement the duties and responsibilities of the Department for persons with developmental disabilities. The Department shall not have standing to recommend to the Commission proposed permanent rules or changes to such rules which have not previously been submitted to the Council for action at least forty-five (45) days prior to the hearing for adoption of the rules by the Commission;

2. Before recommending any permanent rules to the Commission, give public notice, offer opportunity for public comment and conduct a public rulemaking hearing when required by the Administrative Procedures Act and rules of the Commission;

3. Have authority to make written recommendations to the Commission which have been concurred upon by at least a majority of the membership of the Council; and

4. Have the authority to provide a public forum for the discussion of issues it considers relevant to its area of jurisdiction, and to:

- a. pass nonbinding resolutions expressing the sense of the Council, and
- b. make recommendations to the Commission and its programs related to persons with disabilities concerning the need and the desirability of conducting public meetings, workshops and seminars.

E. The Council shall not recommend rules for promulgation by the Commission unless all applicable requirements of the Administrative Procedures Act and rules of the Commission have been followed, including but not limited to notice, rule impact statement and rulemaking hearings. All actions of the Council with regard to rulemaking shall be deemed actions of the Commission for the purposes of complying with the Administrative Procedures Act and rules of the Commission. The Council shall advise the Commission on initiating and conducting rulemaking proceedings related to persons with developmental disabilities.

F. Members of the Council shall serve without compensation but may be reimbursed expenses incurred in the performance of their duties, as provided in the State Travel Reimbursement Act. The Council is authorized to utilize the conference rooms of the Commission and obtain administrative assistance from the Commission, as required.

G. 1. Except as provided in this subsection, rules within the jurisdiction of the Council provided for by this section shall be promulgated with the advice of the Council.

2. The Commission may promulgate emergency and preemptive rules without the advice of the Council when the time constraints of the emergency or proposed preemptive rules, as determined by the Commission, do not permit timely development of recommendations by

the Council; provided, an emergency rule may be promulgated only in circumstances that truly and clearly constitute an emergency pursuant to subsection H of this section.

3. Factual support of the emergency need must be submitted to the Legislature and the Governor by the agency demonstrating that an emergency pursuant to subsection H of this section cannot be averted or remedied by any other administrative act.

4. If the Commission adopts any proposed permanent rules or promulgates any preemptive rules without the advice of the Council or not in accord with the advice of the Council, the Commission shall detail the reasons therefor on the rule report submitted to the Governor and the Legislature pursuant to Article 1 of the Administrative Procedures Act.

H. The Commission may only promulgate an emergency rule related to persons with developmental disabilities if:

1. The Commission determines that:

- a. an immediate peril exists to the preservation of the public peace, health, safety or welfare,
- b. time limitation established by the Legislature, by a federal statute or regulation or a state or federal court order requires an emergency rule, or
- c. the rule is necessary to prevent substantial harm to the public interest; and

2. The agency attaches to the proposed permanent rule an affidavit signed by the Director of the Department of Human Services and a majority of the Commission having rulemaking authority affirming that the emergency rule is necessary to:

- a. prevent or affect an immediate peril to the preservation of the public peace, health, safety or welfare of the state,

- b. comply with time limitations established by the Legislature, by a federal statute or regulation or by a state or federal court order, or
- c. prevent substantial harm to the public interest.

SECTION 2. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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