

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2723:

Pettigrew

AS INTRODUCED

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, 1-857.4 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; adding to list of facilities required to collect certain data; modifying requirements for obtaining a certificate of need; exempting certain actions and ownerships from such requirements; modifying certain filing requirements; adding certain filing fees; modifying certain exemptions from certain criteria; increasing requirements; adding to certain exemptions; modifying powers of Commissioner of Health relating to long-term care facilities; 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 data; amending 63 O.S. 2001, Sections 1-1902 and 1-1903, as amended by Section 1, Chapter 89, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1903), which relate to the Nursing Home Care Act; modifying terms; updating language; 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,
- 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, 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 consecutive standard surveys found to be at the substandard quality of care level;

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

~~7. "Person"~~ 8. "Owner with a controlling interest" means a person an owner, sole proprietorship, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized which is licensed or will be licensed to operate a long-term care facility 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, or
- 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,

- ~~e. 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.~~

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 all 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.

D. In addition to any other reporting requirements, each licensed long-term care facility shall submit such information as deemed necessary to the Department relating to federal tax return filings.

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) 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 by purchase, or lease, ~~donation, transfer of stock, 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.~~

C. 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, and reversions. This shall also include foreclosures, bankruptcy, and transfers by an order of the court, 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;

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

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

D. 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; and

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

~~E.~~ F. 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.~~ G. 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; and

~~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.~~ H. 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.~~ I. 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.~~ J. 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 maximum fee for plan review for ten-bed expansion shall be One Thousand Dollars (\$1,000.00).

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, C, 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 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 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 of this section.

D. 1. Any application seeking a ~~certificate of need~~ an approval 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~~ approval 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)~~ five (5) 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~~ 1. A certificate of need shall not be required 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~~

a. 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~~+~~1

~~2. The~~

b. the total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00)~~+~~1

~~3. The~~

c. 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~~+~~1, and

~~4. If~~

d. 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.~~

2. The Department shall require notice and approval of the expansion plans.

F. 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~~ owner 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, 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, 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 Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding sixty (60) 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.~~

G. 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. 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. Any ~~person~~ owner 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. A certificate of need issued pursuant to the provisions of this 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) months for extraordinary circumstances beyond the control of the applicant. If no such plans and specifications are submitted within the time required by this section, then such certificate shall be null and void. 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. If the Department disapproves the plans and specifications, such disapproval shall include a detailed statement of the corrections needed. 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. The applicant must begin construction ~~or modification~~ of the structure within two (2) months following the approval of the final plans and specifications and must proceed to complete the structure ~~or modifications~~ within twelve (12) months of

the approval 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~~ 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 1-857.4, is amended to read as follows:

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

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

Section 1-858. A. Any ~~person~~ owner 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) and not more than Five Hundred Dollars (\$500.00).

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~~ owner who has unlawfully commenced the offering or development of a long-term care facility to cease and desist, then each day that such ~~person~~ owner continues

such offering or development shall be a separate offense. If any ~~person~~ owner 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 11. 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 sole proprietorship, 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~~ sole proprietorship, corporation, partnership, association, or other entity which ~~owns~~ is licensed to operate 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 12. AMENDATORY 63 O.S. 2001, Section 1-1903, as amended by Section 1, Chapter 89, O.S.L. 2003 (63 O.S. Supp. 2003, Section 1-1903), is amended to read as follows:

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

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

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

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

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

SECTION 13. 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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