ENGROSSED HOUSE AMENDMENT
TO
ENGROSSED SENATE BILL NO. 1850 By: Cain of the Senate

and

Denney of the House

(Oklahoma State Board of Examiners for Nursing Home Administrators - repealer - effective date)

AUTHOR: Add the following House Coauthor: Shelton

AMENDMENT NO. 1. Strike the stricken title, enacting clause and entire bill and insert

"(Oklahoma State Board of Examiners for Nursing Home Administrators - repealer - effective date)

SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.51, as amended by Section 1, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005, Section 330.51), is amended to read as follows:

Section 330.51 For the purposes of this act, and as used herein:

1. "Board" means the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators;

2. "~~Nursing home~~ Long-term care administrator" means a person licensed by the State of Oklahoma ~~who is in charge of a facility~~ pursuant to this act. A ~~nursing home~~ long-term care administrator must devote at least one-half (1/2) of such person's working time to

on-the-job supervision of ~~such~~ a long-term care facility; provided that this requirement shall not apply to ~~a nursing home~~ 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, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed six facilities and sixty-four beds. 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;

3. "Nursing home", "rest home" and "specialized home" shall have the same meaning as the term "nursing facility" as such term is defined in the Nursing Home Care Act; and

4. "Administrator" and "owner" shall have the same meanings as such terms are defined in the Nursing Home Care Act~~; and~~

~~5. "Qualified mental retardation professional" shall be an individual determined by the State Department of Health, pursuant to Section 483.430, 42 C.F.R., to:~~

~~a. have at least one (1) year of experience working directly with persons with mental retardation or other developmental disabilities, and~~

~~b. be one of the following:~~

~~(1) a doctor of medicine or osteopathy licensed to practice in this state,~~

~~(2) a registered nurse, or~~

~~(3) an individual who holds at least a bachelor's degree in a related field~~.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 330.52, as amended by Section 2, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005, Section 330.52), is amended to read as follows:

Section 330.52 A. There is hereby re-created, to continue until July 1, 2012, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators. The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators shall consist of fifteen (15) members, ten of whom shall be representative of the professions and institutions concerned with the care and treatment of critically ill or infirm elderly patients, three members representing the general public, and the State Commissioner of Health and the Director of the Department of Human Services, or their designees. The thirteen members shall be appointed by the Governor, with the advice and consent of the Senate.

B. Five of the thirteen appointive members shall each be presently an owner or a licensed administrator and shall have had five (5) years' experience in the nursing home profession as an owner or administrator. Three members shall be representatives of the general public. No members other than the five owners or licensed administrators shall have a direct or indirect financial interest in nursing homes.

C. Effective July 1, 2005, all appointed positions of the current Board shall be deemed vacant. The Governor shall make initial appointments pursuant to the provisions of this subsection upon the effective date of this act. Initial appointments shall become effective on July 1, 2005. The new members of the Board shall be initially appointed as follows:

1. Two members who are owners or licensed administrators, one member representing the general public and two other members shall be appointed for a term of one (1) year to expire on July 1, 2006;

2. Two members who are owners or licensed administrators, one member representing the general public and two other members shall

be appointed for a term of two (2) years to expire on July 1, 2007; and

3. One member who is an owner or licensed administrator, one member representing the general public and one other member shall be appointed for a term of three (3) years to expire on July 1, 2008.

D. After the initial terms, the terms of all appointive members shall be three (3) years. Any vacancy occurring in the position of an appointive member shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.53, is amended to read as follows:

Section 330.53 A. The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators shall have authority to issue licenses to qualified persons as ~~nursing home~~ long-term care administrators, and shall establish qualification criteria for such ~~nursing home~~ long-term care administrators.

B. No license shall be issued to a person as a ~~nursing home~~ long-term care administrator unless:

1. The person shall have submitted evidence satisfactory to the Board that the person is:

a. not less than twenty-one (21) years of age, and

b. of reputable and responsible character~~,~~; and

~~c. in sound physical and mental health; and~~

2. The person shall have submitted evidence satisfactory to the Board of the person's ability to supervise a nursing home or specialized home.

C. ~~1. A qualified mental retardation professional, as defined in Section 330.51 of this title, shall be determined to meet the educational requirements as a licensed nursing home administrator and shall be eligible to take the National Administrator Board and State Standards Examinations.~~

~~2. A qualified mental retardation professional who meets the requirements of paragraph 1 of this subsection may serve as the licensed administrator for no more than four (4) intermediate care facilities for the mentally retarded with sixteen or less beds (ICF-MR/16)~~ For purposes of this section, any person licensed as a nursing home administrator by this state prior to the effective date of this act shall be deemed to have a valid license in accordance with this section.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 330.54, is amended to read as follows:

Section 330.54 Each person licensed as a ~~nursing home~~ long-term care administrator pursuant to the provisions of Section 330.53 of this title shall be required to pay an annual license fee which shall be deposited in the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators Revolving Fund. Such fee shall be determined by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators ~~in an amount not to exceed Two Hundred Dollars ($200.00)~~. Each such license shall expire on the 31st day of December following its issuance, and shall be renewable for a calendar year, upon payment of the annual license fee.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 330.56, is amended to read as follows:

Section 330.56 The Oklahoma State Board of Examiners for Long-Term Care Administrators shall elect from its membership a ~~president~~ chair, ~~vice-president~~ vice-chair, and secretary-treasurer, and shall adopt rules ~~and regulations~~ to govern its proceedings. Each member shall be allowed necessary travel expenses, as may be approved by the Board pursuant to the State Travel Reimbursement Act. The Board may employ and fix the compensation and duties of necessary personnel to assist it in the performance of its duties.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 330.57, is amended to read as follows:

Section 330.57 The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators shall have sole and exclusive authority to determine the qualifications, skill and fitness of any person to serve as an administrator of a nursing home or specialized home under the provisions of the Nursing Home Care Act~~, Section 1-1901 et seq. of this title~~. The holder of a license under the provisions of ~~this act~~ Section 330.51 et seq. of this title shall be deemed qualified to serve as the administrator of a nursing home or specialized home.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 330.58, as amended by Section 3, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005, Section 330.58), is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators shall:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a ~~nursing home~~ long-term care administrator, which standards shall be designed to ensure that ~~nursing home~~ long-term care administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as ~~nursing home~~ long-term care administrators;

2. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

3. Issue licenses to individuals determined, after the application of such techniques, to meet such standards. The Board may deny an initial application, deny a renewal application, and revoke or suspend licenses previously issued by the Board in any case where the individual holding any such license is determined

substantially to have failed to conform to the requirements of such standards. The Board may also warn, censure, impose administrative fines or use other remedies that may be considered to be less than revocation and suspension. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation, and any additional factors deemed appropriate by the Board when issuing a fine;

4. Establish and carry out procedures designed to ensure that individuals licensed as ~~nursing home~~ long-term care administrators will, during any period that they serve as such, comply with the requirements of such standards;

5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a ~~nursing home~~ long-term care administrator has failed to comply with the requirements of such standards. The long-term care ombudsman program of the Aging Services Division of the Department of Human Services shall be notified of all complaint investigations of the Board so that they may be present at any such complaint investigation for the purpose of representing ~~nursing home~~ long-term care facility consumers;

6. Receive, investigate, and take appropriate action on any complaint received by the Board from the Department of Human Services or any other regulatory agency. The Board shall promulgate rules that include, but are not limited to, provisions for:

a. establishing a complaint review process, and

b. creating a formal complaint file;

7. Conduct a continuing study and investigation of ~~nursing homes~~ long-term care facilities and administrators of ~~nursing homes~~ long-term care facilities within the state with a view toward the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of

such standards with respect to administrators of ~~nursing homes~~ long-term care facilities who have been licensed;

8. Cooperate with and provide assistance when necessary to state regulatory agencies in investigations of complaints;

9. Develop a code of ethics for ~~nursing home~~ long-term care administrators which includes, but is not limited to, a statement that administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator;

10. Report a final adverse action against a ~~nursing home~~ long-term care administrator to the Healthcare Integrity and Protection Data Bank pursuant to federal regulatory requirements; ~~and~~

11. Refer completed investigations to the proper law enforcement authorities for prosecution of criminal activities;

12. Impose administrative fines, in an amount to be determined by the Board, against persons who do not comply with the provisions of this act or the rules adopted by the Board. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation, and any additional factors deemed appropriate by the Board when issuing a fine;

13. Assess the costs of the hearing process, including attorney fees;

14. Grant short-term provisional licenses to individuals who do not meet all of the licensing requirements, provided the individual obtains the services of a currently licensed administrator to act as a consultant and meets any additional criteria for a provisional license established by the Board; and

15. Order a summary suspension of an administrator's license or an Administrator in Training (AIT) permit, if in the course of an investigation it is determined that a licensee or AIT candidate for

licensure has engaged in conduct of a nature that is detrimental to the health, safety or welfare of the public, and which conduct necessitates immediate action to prevent further harm.

SECTION 8. AMENDATORY 63 O.S. 2001, Section 330.59, is amended to read as follows:

Section 330.59 It shall be unlawful and a misdemeanor for any person to act or serve in the capacity as a ~~nursing home~~ long-term care administrator unless ~~he~~ the person is the holder of a license as a ~~nursing home~~ long-term care administrator, issued in accordance with the provisions of this act.

SECTION 9. AMENDATORY 63 O.S. 2001, Section 330.61, is amended to read as follows:

Section 330.61 A. In addition to ~~the annual license~~ fees necessary to implement the provisions of this act, the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators may impose fees for:

1. Training programs conducted or approved by the Board; and

2. Education programs conducted or approved by the Board.

B. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators Revolving Fund.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 330.62, is amended to read as follows:

Section 330.62 There is hereby created in the State Treasury a revolving fund for the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators to be designated the "Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of such sources of income as are provided by law. All monies accruing to the credit of said fund are hereby appropriated and may be

budgeted and expended by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators to carry out the duties established by law. Expenditures from said fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

SECTION 11. AMENDATORY Section 4, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005, Section 330.64), is amended to read as follows:

Section 330.64 A. Each investigation of a complaint received by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators shall be completed within one hundred eighty (180) days from the date the complaint is received by the Board. The investigation may be extended for good cause for a maximum of two extensions of sixty (60) days. A public statement of all grounds for such extension shall be prepared and presented to the entire Board prior to the expiration of the initial one hundred eighty (180) days of the investigation. A majority vote of the Board is required to grant an extension of an investigation.

B. ~~Upon the effective date of this act~~ Effective May 13, 2005, the Board shall create and maintain a registry of all complaints or other referrals complaining of acts or omissions of licensed administrators. The registry shall be maintained in both electronic and paper formats and shall be available for inspection by the public. Such registry shall be organized in chronological order both by the date of the complaint and by the name of the licensed administrator. The registry shall contain information about the nature of the complaint and the action, if any, taken by the Board. The registry shall also contain the number of complaints made against an individual administrator.

SECTION 12. AMENDATORY Section 5, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005, Section 330.65), is amended to read as follows:

Section 330.65 A. Any decision by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators pursuant to a complaint received against an individual administrator shall be voted upon by a quorum of the Board in an open meeting.

B. At least five (5) working days prior to the Board meeting at which a decision will be made, each member of the Board shall be furnished a complete written report which shall include, but not be limited to, the following information:

1. The exact nature of the complaint(s);

2. The identity of the administrator;

3. A description of the investigation;

4. The identity of the investigator;

5. The identity of the witnesses interviewed, unless the witness wishes to remain anonymous and is a current resident, a current staff member, or the personal or legal representative of a current resident;

6. A description of documents or other tangible items examined in the course of the investigation;

7. All evidence obtained that would directly or by reference establish the ultimate fact of the complained act or omission; and

8. All evidence that would either explain or mitigate the complained act or omission.

C. Each complaint shall be acted upon pursuant to a motion after an opportunity for discussion by the Board. Following discussion of the evidence, any member of the Board may make a motion to continue the investigation in order to gather additional evidence or to make further inquiries. The investigation may be extended for sixty (60) days upon a finding of good cause as provided for in subsection A of Section ~~4~~ 330.64 of this ~~act~~ title.

If the motion to extend the investigation fails, the Board shall vote upon the merits of the complaint.

D. No recommendation on a complaint shall be made to the Board by a subcommittee or a staff member of the Board. Each member of the Board shall vote based on the evidence presented in the report required pursuant to the provisions of this section.

E. The investigation report furnished to the Board pursuant to the provisions of this section shall be considered a confidential investigation document until a motion to vote on the complaint is made, at which time the report shall be considered a public record. After the vote upon the complaint is made and recorded, the Board shall maintain as a public record a full and complete copy of the investigation report indexed by docket number or similar internal reference.

F. Notice of a Board decision issued to a ~~nursing home~~ long-term care administrator who is the subject of a complaint shall be issued in accordance with the provisions of Article II of the Administrative Procedures Act governing individual proceedings. Any request for a hearing by a ~~nursing home~~ long-term care administrator regarding the proposed action of the Board shall be received by the Board within ten (10) days of the receipt of the notice of the Board decision by the ~~nursing home~~ long-term care administrator. Any party aggrieved by a decision of the Board following a hearing may appeal directly to district court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma Statutes.

SECTION 13. REPEALER 63 O.S. 2001, Section 330.63, is hereby repealed.

SECTION 14. This act shall become effective November 1, 2006."

Passed the House of Representatives the 4th day of April, 2006.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2006.

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Presiding Officer of the Senate