

ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 2592

By: Peters of the House

and

Cain of the Senate

An Act relating to developmental disabilities services; * * * * modifying and clarifying certain powers of the Department of Human Services; modifying liability requirements; providing procedure for revocation or denial of certain licenses * * * * modifying conditions under which operation of a group home may be transferred * * * * requiring the Department of Human Services to promulgate certain rules * * * * repealing * * * * Group Homes for Persons with Developmental or Physical Disabilities Act* * * * codification * * * * an effective date.

AMENDMENT NO. 1: Page 1, strike the title, enacting clause and entire bill and insert:

"An Act relating to developmental disabilities services; amending 10 O.S. 2001, Sections 1430.1, 1430.2, 1430.3, 1430.7, 1430.8, 1430.9, 1430.11, 1430.12, 1430.13, 1430.14, 1430.15, 1430.17, 1430.18, 1430.19, 1430.20, 1430.22, 1430.23, 1430.24, 1430.25, 1430.26, 1430.27, 1430.31, 1430.33, 1430.34, 1430.35, 1430.36, 1430.40 and 1430.41, which relate to the Group Homes for Persons with Developmental or Physical Disabilities Act; updating citation; adding, deleting, and modifying definitions; modifying and clarifying certain powers of the Department of Human Services; clarifying certain duties of the Department of Human Services; modifying liability requirements; modifying certain penalties and liabilities; providing procedure for revocation or denial of certain licenses; modifying content of certain standards; deleting certain rule-making authority; adding requirement that certain inspection reports be made available to the Department of Human Services; modifying certain disclosure requirements; modifying content of certain application forms; modifying certain eligibility requirements; modifying conditions under which operation of a group home may be transferred; clarifying certain language; modifying information providers must make available to certain persons and for public inspection; requiring the Commission for Human Services to promulgate certain rules; modifying certain rights and responsibilities; modifying content of certain contracts; deleting certain requirements for protection of certain funds and providing rule-making

authority regarding the protection of certain funds; deleting authorization for certain persons to have access to residents; clarifying certain language; modifying prohibition involving insurable interest or insurance benefits; modifying certain inspection procedures; modifying a prohibition; clarifying scope of provisions; repealing 10 O.S. 2001, Sections 1430.5, 1430.10, 1430.16, 1430.21, 1430.28, 1430.29 and 1430.30, which relate to the Group Homes for Persons with Developmental or Physical Disabilities Act; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 10 O.S. 2001, Section 1430.1, is amended to read as follows:

Section 1430.1 Sections ~~±~~ 1430.1 through ~~40~~ 1430.41 of this ~~act~~ title shall be known and may be cited as the "Group Homes for Persons with Developmental or Physical Disabilities Act".

SECTION 2. AMENDATORY 10 O.S. 2001, Section 1430.2, is amended to read as follows:

Section 1430.2 As used in the Group Homes for Persons with Developmental or Physical Disabilities Act:

1. ~~"Abuse" means any intentional infliction of physical pain, injury or mental anguish, or the deprivation of food, clothing, shelter or medical care by a person responsible for providing these services, as defined by the Protective Services for the Elderly and for Incapacitated Vulnerable Adults Act, and any sexual assault inflicted on a resident of a group home~~ means causing or permitting:
 - a. the infliction of physical pain, injury, sexual abuse, sexual exploitation, unreasonable restraint or confinement, or mental anguish, or
 - b. the deprivation of nutrition, clothing, shelter, health care, or other care or services without which serious physical or mental injury is likely to occur to a vulnerable adult by a caretaker or other person providing services to a vulnerable adult;

2. "Access" means the right of a person to enter a group home to communicate privately and without unreasonable restriction;

3. "Administrator" means the person designated by the provider who has authority and responsibility for the programs and operation of a group home;

4. "Advisory Board" means the Group Homes for Persons with Developmental or Physical Disabilities Advisory Board established by Section 4 1430.4 of this ~~act~~ title;

5. "Advocate" means an adult designated in writing selected by the resident to assist the resident in exercising the rights of such resident;

6. "Applicant" means a person, corporation, limited liability company, partnership, association, or other entity which is being considered by the Department of Human Services for a license with the Department to provide group home services;

7. "Case manager" means a staff member who is responsible for ensuring that services to a resident are planned and provided in a coordinated fashion;

8. "Commission" means the Commission for Human Services;

~~8.~~ 9. "Contract" means the binding legal agreement to provide group home services, entered into between the provider and the Developmental Disabilities Services Division of the Department of Human Services or the Oklahoma Health Care Authority (OHCA);

~~9.~~ 10. "DDSD" means the Developmental Disabilities Services Division of the Department of Human Services;

~~10.~~ 11. "Department" means the Department of Human Services;

~~11.~~ 12. "Developmental disability" means a severely chronic disability of a person, ~~five (5) years of age or older~~, which:

- a. is attributable to a physical or mental impairment or a combination of physical and mental impairments,
- b. is manifested before the person attains the age of twenty-two (22) years,

- c. is likely to continue indefinitely,
- d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) self-care,
 - (2) receptive and expressive language,
 - (3) learning,
 - (4) mobility,
 - (5) self-direction,
 - (6) capacity for independent living, or
 - (7) economic self-sufficiency, and
- e. reflects the ~~person's~~ need of the person for a combination and sequence of special interdisciplinary or generic care, treatment or other services which are of lifelong or ~~of~~ extended duration and are individually planned and coordinated;

~~12.~~ 13. "Director" means the Director of Human Services;

~~13.~~ 14. "Exploitation" means the unjust or improper use of the ~~personal~~ resources of a group home resident for the profit or advantage, pecuniary or otherwise, of ~~another~~ a person other than the group home resident through the use of undue influence, coercion, harassment, duress, deception, false representation, or false pretense, as defined by the Protective Services for ~~the Elderly and for Incapacitated~~ Vulnerable Adults Act;

~~14.~~ 15. "Group home for persons with developmental or physical disabilities" means any establishment ~~or institution, other than a hotel, motel, fraternity or sorority house, college or university dormitory,~~ for not more than twelve residents who are eighteen (18) years of age or older and who have developmental or physical disabilities, which offers or provides supervision, residential accommodations, food service, and training and skill development opportunities designed to lead to increased independence of the residents and which offers or provides supportive assistance to any

of its residents requiring supportive assistance. ~~Such residents shall not require intermediate care facility services;~~

~~15.~~ 16. "Guardian" means a court-appointed representative or conservator;

~~16.~~ 17. "Habilitation" means ~~procedures and interventions designed to assist an individual with developmental or physical disabilities achieve greater physical, mental and social development by enhancing the well-being of the person and teaching skills which increase the possibility that such individual will make progressively independent and responsible decisions about social behavior, quality of life, job satisfaction and personal relationships~~ services designed to assist individuals in acquiring, retaining, and improving the self-help, socialization, and adaptive skills necessary to reside successfully in home and community-based settings;

~~17.~~ 18. "Home" or "group home" means a group home for persons with developmental or physical disabilities;

~~18.~~ "House manager" ~~means the person who is not the administrator of a group home but who manages the group home;~~

~~19.~~ "Interdisciplinary team" ~~means a group of people, including, at a minimum, the resident and the resident's family, guardian or advocate, who develop a plan to encourage and enhance habilitation of the resident~~ "Indecent exposure" means forcing or requiring a resident to:

- a. look upon the body or private parts of another person or look upon sexual acts performed in the presence of the resident, or
- b. touch or feel the body or private parts of another;

~~20.~~ "Licensee" means a person, corporation, partnership, limited liability company, or association who is the ~~owner~~ operator of a home which is licensed pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

21. "Neglect" as defined by the Protective Services for Vulnerable Adults Act means a:

- a. the failure to provide protection for a group home resident who is unable to protect ~~one's~~ his or her own interests; or,
- b. the failure to provide adequate shelter, nutrition, health care, or clothing; or ~~the harming or threatening with harm through action or inaction by either another individual or through the person's own action or inaction because of such person's lack of awareness, incompetence or incapacity, which has resulted or may result in physical or mental injury, as defined by the Protective Services for the Elderly and for Incapacitated Adults Act;~~

~~22. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs, or general supervision of the physical and mental well-being of a person, who is currently unable to maintain a private, independent residence, or who has limited abilities in the managing of his or her person, whether or not a guardian has been appointed for such person~~

- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

~~23. 22. "Physical disability" means a condition which causes the restricted use of the extremities by an individual or affects other bodily functions of an individual and which requires the specialized training, habilitation or rehabilitation services provided by a group home;~~

~~24. "Program certification" means certification by the Department that a group home meets and is in compliance with the rules adopted by the Commission for Human Services as standards for~~

~~the training, habilitation or rehabilitation of residents of a group home~~

23. "Program coordinator" means a person employed by a provider or a licensee who is responsible for the supervision, coordination, and monitoring of services to a resident receiving services provided by the provider or licensee;

~~25.~~ 24. "Provider" means a person, corporation, partnership, limited liability company, association, or other entity which operates that contracts with the Developmental Disabilities Services Division of the Department of Human Services or the Oklahoma Health Care Authority to operate a group home for persons with developmental or physical disabilities;

~~26.~~ 25. "Resident" means a person residing receiving services in a group home for persons with developmental or physical disabilities due to a developmental disability;

~~27. "Sexual assault" means rape, incest, lewd and indecent acts or proposals, as defined by law, by a person responsible for the resident's welfare and includes the allowing, permitting, or encouraging a resident to engage in prostitution or the lewd, obscene, or pornographic photographing, filming or depiction of a resident~~

26. "Sexual abuse" as defined in the Protective Services for Vulnerable Adults Act means:

- a. oral, anal, or vaginal penetration of a resident by or through the union with the sexual organ of a caretaker or other person providing services to the resident, or the anal or vaginal penetration of a resident by a caretaker or other person providing services to the resident with any other object,
- b. for the purpose of sexual gratification, the touching, feeling, or observation of the body or private parts of

a resident by a caretaker or other person providing services to the resident, or

c. indecent exposure by a caretaker or other person providing services to the resident;

27. "Sexual exploitation" as defined in the Protective Services for Vulnerable Adults Act includes, but is not limited to, a caretaker causing, allowing, permitting, or encouraging a resident to engage in prostitution, or in the lewd, obscene, or pornographic photographing, filming, or depiction of the resident as those acts are defined by state law;

28. "Supervision" means the provision of on-site staffing in the group home or on the premises of the group home when ~~residents are~~ a resident is present who ~~require~~ requires on-site staffing, as determined by ~~an assessment by an interdisciplinary~~ the team of the resident. Supervision also includes, ~~but is not limited to,~~ training, assistance with housekeeping, assistance with preparation of meals, assistance with safe storage, distribution and administration of medications, and assistance with personal care as necessary for the health and comfort of such person provision of necessary staff support, as documented in the individual plan of each service recipient, when the service recipient is in the community, except when the service recipient is engaged in employment, vocational services, or adult day services;

29. "Supportive assistance" means the service rendered to ~~any person~~ a service recipient which is sufficient to enable the ~~person~~ service recipient to meet an adequate level of daily living. Supportive assistance includes, but is not limited to, training and supervision of service recipients, assistance in housekeeping, assistance in the preparation of meals, and assistance in activities of daily living as necessary for the health and comfort of service recipients; and

30. "Transfer" means a change in location of living arrangements of a resident from one group home to another group home;

31. "Team" means the group of people responsible for service planning, implementation, and monitoring of the individual plan.

The team includes:

- a. the person receiving services,
- b. the case manager of the person receiving services, if applicable,
- c. the legal guardian of the person receiving services, if the service recipient has a legal guardian,
- d. the advocate(s) of the person receiving services, if there is an advocate, who may be a parent, family member, friend, or another who knows the service recipient well,
- e. the program coordinator or designee, and
- f. any other person whose participation is necessary to achieve the outcomes included in the individual plan;
and

32. "Verbal abuse" as defined in the Protective Services for Vulnerable Adults Act means the use of words, sounds, or other communication including, but not limited to, gestures, actions or behaviors, by a caretaker or other person providing services to a resident that is likely to cause a reasonable person to experience humiliation, intimidation, fear, shame, or degradation.

SECTION 3. AMENDATORY 10 O.S. 2001, Section 1430.3, is amended to read as follows:

Section 1430.3 The Department of Human Services shall have the power and duty to:

1. Enforce any provision ~~and prosecute any violation~~ of the Group Homes for Persons with Developmental or Physical Disabilities Act;

2. Issue, renew, deny, modify, suspend, and revoke licenses for group homes pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act; provided, however, providers of group home services that have a current contract with the Developmental Disabilities Services Division or the Oklahoma Health Care Authority to provide group home services shall be deemed to be licensed;

3. Establish and enforce standards and requirements for licensure and ~~program certification~~ operation of group homes ~~which~~ that are subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act and require the submission of, and to review, reports from any person establishing or operating a group home;

4. Enter upon any public or private property for the purpose of inspecting and investigating conditions of the residents in the group home or for the purpose of inspecting and investigating the home for compliance with the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, or the standards or requirements for licensure and ~~program certification~~ operation of group homes developed by the Department pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

5. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of group homes and the residents of such homes, and to take necessary action pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act to protect and safeguard the health, safety, and welfare of residents of homes;

6. Establish a procedure for receipt ~~and~~, investigation, and resolution of complaints regarding a group home or concerning the condition, care, and treatment of a resident of a home, a copy of

which procedure shall be distributed to all providers of group home services and licensees;

7. Report to the district attorney having jurisdiction or the Attorney General any act committed by a provider, licensee, administrator, operator, or employee of a group home which may constitute a misdemeanor pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

8. 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 Group Homes for Persons with Developmental or Physical Disabilities Act;

9. Develop and enforce rules subject to the approval of the Commission for Human Services to implement the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act. Such rules shall include, but not be limited to, physical conditions which shall protect the health, safety, and welfare of the residents in a group home as outlined in the Group Homes for Persons with Developmental or Physical Disabilities Act, safe storage and administration of medications, health-related services as defined in Section 1020 of Title 56 of the Oklahoma Statutes, rights of group home residents and competency-based training requirements for group home staff;

10. Investigate, request or otherwise obtain the information necessary to determine the qualifications and background of an applicant for licensure or contract;

11. Establish civil penalties for violations of the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act as authorized by the Commission pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

12. Institute and maintain or intervene in any action or proceeding where deemed necessary by the Department to protect the health, safety, and welfare of any resident of a group home;

13. Transfer or discharge a resident or otherwise protect the health, safety, and welfare of any resident of a group home; and

14. Exercise all incidental powers as necessary and proper for the administration of the Group Homes for Persons with Developmental or Physical Disabilities Act.

SECTION 4. AMENDATORY 10 O.S. 2001, Section 1430.7, is amended to read as follows:

Section 1430.7 A. The operation or maintenance of a group home in violation of the Group Homes for Persons with Developmental or Physical Disabilities Act, or of the rules promulgated by the Commission for Human Services, is declared a public nuisance inimical to the public welfare. The Director of Human Services, in the name of the people of the state, or through the Attorney General or the district attorney of the county in which the group home is located may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such group home.

B. 1. Any person with personal knowledge or substantial specific information who believes that the Group Homes for Persons with Developmental or Physical Disabilities Act, or a rule promulgated pursuant thereto, ~~or a federal certification rule applying to a group home~~ may have been violated, may request an investigation. The request may be submitted to the Department of Human Services in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department. Provided that any person who willfully or recklessly makes a false complaint without a reasonable basis in fact for such a complaint under the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act shall be liable in a civil suit for any

actual damages, including attorneys' fees and costs, suffered by a group home so requested to be investigated, and for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

2. The substance of the complaint shall be provided to the provider no earlier than at the commencement of the on-site inspection of the group home which takes place pursuant to the complaint.

3. The Commission shall promulgate rules to protect the identity of the complainant, provided that such complainant is presently a resident or resident's representative or such complainant is presently an employee of the group home.

4. Upon receipt of a complaint, the Department shall ~~determine~~ investigate whether the Group Homes for Persons with Developmental or Physical Disabilities Act, or a rule promulgated pursuant thereto, ~~or a federal certification rule for facilities~~ has been or is being violated. Allegations of abuse, neglect, or exploitation shall be investigated by appropriate authorities in accordance with state law. Other complaints shall be evaluated by authorized Department staff and investigated timely based on the nature of the complaint. A determination about a complaint ~~which alleges a violation~~ shall be made in writing, ~~within thirty (30) days after receipt of the complaint.~~ The determination shall state the reasons therefor.

5. In all cases, the Department shall inform the group home and the complainant, ~~unless otherwise indicated by the~~ if so requested by the complainant, of its findings within ten (10) days of its determination. ~~The complainant may direct the Department to send a copy of such findings to one other person.~~ The notice of such findings shall include a copy of the written determination, the correction order, if any, the warning notice, if any, and the state

licensure ~~of federal certification for~~ or regulatory requirement, or both, on which the violation is listed.

6. A written determination, correction order or warning notice concerning a complaint shall be available for public inspection from the Department.

7. The Department shall issue a written determination ~~signed by the Director~~ which shall serve as a final appealable order subject to trial de novo in the appropriate district court.

8. The Commission shall establish any additional rules necessary for the investigation and hearing of complaints as provided herein, and is authorized to employ hearing officers.

SECTION 5. AMENDATORY 10 O.S. 2001, Section 1430.8, is amended to read as follows:

Section 1430.8 A. The provider is liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. Also, any state employee that aids, abets, assists, or conspires with a provider to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under this act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or the resident's guardian or advocate of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A No provider or licensee, or ~~its~~ agents or employees of a provider or licensee shall ~~not~~ transfer, discharge, evict, harass, dismiss or retaliate against a resident, a ~~resident's~~ guardian or advocate of a resident, or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under this act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or criminal, as a consequence of making such report. ~~The good faith of any persons required or permitted to report cases of suspected resident abuse, neglect or exploitation pursuant to the Group Homes for Persons with Developmental or Physical Disabilities Act shall be a rebuttable presumption.~~

H. An employee or agent of a provider or licensee who becomes aware of abuse, neglect or exploitation of a resident ~~as prohibited by the Group Homes for Persons with Developmental or Physical Disabilities Act~~ shall immediately report the matter ~~to the group home administrator~~ as required by Section 10-104 of Title 43A of the Oklahoma Statutes. A group home administrator who becomes aware of abuse, neglect or exploitation of a resident shall make a report as required by Section 10-104 of Title 43A of the Oklahoma Statutes and take immediate action to ensure the health and safety of the resident, ~~and shall make a report of the incident and any action taken to the Department.~~

SECTION 6. AMENDATORY 10 O.S. 2001, Section 1430.9, is amended to read as follows:

Section 1430.9. ~~Any~~ In addition to any other penalties and liabilities provided in this act, any person who violates any of the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, or any order or determination of the Department promulgated pursuant thereto, or who fails to perform any duty imposed upon such person by the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, shall be subject to any of the following penalties and liabilities as authorized by the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act:

1. License revocation, suspension, or nonrenewal;
2. Conditional license;
3. Transfer of residents;
4. Receivership;
5. Injunctive proceedings, including prohibiting the admission of new residents to the group home;
6. Civil fines; ~~and~~
7. Criminal penalties; and
8. Other remedies established by the Department of Human Services through rule-making authority.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1430.10a of Title 10, unless there is created a duplication in numbering, reads as follows:

A. The Department of Human Services may revoke, deny or refuse to renew the license of any group home found to be in violation of any provision of this act or the rules of the Commission for Human Services, as provided in Section 1430.3 of Title 10 of the Oklahoma Statutes.

B. 1. No license shall be revoked or issuance or renewal denied unless and until such time as the licensee or applicant shall

have been given at least thirty (30) days' notice in writing of the grounds for the proposed revocation or refusal.

2. At the time the group home is given notice in writing of the revocation or denial of a license, the Department shall also advise the family member or advocate of each resident, as noted in Section 1430.22 of Title 10 of the Oklahoma Statutes, of the action by written notification and the posting of an announcement in the group home.

3. If the revocation or denial is protested within thirty (30) days of receipt of the notice, in writing and addressed to the Commission for Human Services, the Commission or the authorized agency of the Commission shall conduct a hearing at which an opportunity shall be given to the licensee or applicant to present testimony and confront witnesses. On the basis of the evidence produced at the hearing, the Department shall make findings of fact and conclusions of law and enter an order thereon. The order of the Department shall become final and binding on all parties unless appealed to the district court as provided in Article II of the Administrative Procedures Act within thirty (30) days after notice has been sent to the parties.

4. Notice of the hearing shall be given to the licensee or applicant by personal service or by delivery to the last-known address by certified mail, return receipt requested, at least two (2) weeks prior to the date of the hearing.

5. After notice, if the proposed revocation or denial of a license is not protested in accordance with this section, the license may thereupon be revoked or denied.

C. 1. Nothing in this section shall be construed as preventing the Department from taking emergency action as provided by this subsection.

2. After an investigation or inspection, if the Department finds that an emergency exists which requires immediate action to

protect the health, safety, or welfare of any resident of a group home licensed pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, the Director may without notice or hearing issue an emergency order stating the existence of the emergency and require that action be taken as is deemed necessary to meet the emergency including, when necessary, removing residents from the group home and prohibiting the group home from providing services to residents pending a hearing on the matter.

a. The emergency order shall be effective immediately.

Any person to whom an emergency order is directed shall comply with the emergency order immediately but, upon written request to the Department on or before the tenth day after receipt of the emergency order, shall be afforded a hearing on or before the tenth day after receipt of the request by the Department.

b. On the basis of such hearing, the Department shall continue the order in effect, revoke it, or modify it.

c. Any person aggrieved by the order continued after the hearing provided for in this subsection may appeal the order to the district court of the group home affected within thirty (30) days of continuation or modification of the order. The appeal when docketed shall have priority over all cases pending on the docket, except criminal cases. For purposes of this subsection, "emergency" means a situation that poses a direct and serious hazard to the health, safety, or welfare of any resident of the group home.

SECTION 8. AMENDATORY 10 O.S. 2001, Section 1430.11, is amended to read as follows:

Section 1430.11 A. The Department of Human Services shall develop ~~and annually review~~ rules establishing minimum standards for

group homes. ~~These standards shall be promulgated by the Commission for Human Services and submitted to the Legislature no later than January of each year.~~ These standards, at minimum, shall regulate:

1. Location and construction of the home, including plumbing, heating, lighting, ventilation, and other physical conditions which shall ensure the health, safety, and comfort of residents and protection from fire hazards;

2. All sanitary conditions within the group home and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents;

3. ~~Diet related to the needs of each resident based on sound nutritional practice and on recommendations which may be made by the physicians attending the resident;~~ and Number and qualifications of all personnel, including management and supervisory, direct care, specialized professional or paraprofessional and other personnel, having responsibility for any part of the care given to residents. The Department of Human Services shall establish staffing requirements for homes which shall specify the supervision, continuing education, and training requirements that are needed for care of the residents of the various types of group homes;

4. ~~Equipment essential to the health and welfare of the residents~~ An individualized written plan for the training, habilitation or rehabilitation for each resident of the group home specifying the training, habilitation or rehabilitation outcomes and activities for the resident. The plan shall be prepared by the team of the resident;

5. Competency-based training for the safe administration of medication and the provision of health-related services, as defined in Section 1020 of Title 56 of the Oklahoma Statutes, to residents;

6. Accountability for the management and safekeeping of any funds of the resident which the group home manages; and

7. Conditions and procedures for the involuntary transfer or discharge of a resident from a group home.

B. The Department may, as necessary and appropriate, establish a system of classification for group homes based upon the level of care or treatment, training, habilitation or rehabilitation services required by residents of the group home, and establish ~~minimum program certification standards~~ requirements for each classification.

~~C. The Commission shall promulgate rules establishing minimum standards for certification of the programs and services of a group home provided to or obtained on behalf of the residents for the specialized care, treatment, training, habilitation or rehabilitation of the residents. The certification standards shall provide for:~~

~~1. Number and qualifications of all personnel, including management and supervisory, direct care, specialized professional or para-professional and other personnel, having responsibility for any part of the care given to residents. The Department shall establish staffing requirements for homes which shall specify the supervision, continued education and training requirements that are needed for care of the residents of the various types of group homes or areas within group homes;~~

~~2. An individualized written plan for the training, habilitation or rehabilitation for each resident of the group home specifying the training, habilitation or rehabilitation objectives and activities for the resident. The plan shall be prepared by an interdisciplinary team of professional, para-professional and direct care personnel of the group home and with the participation of the resident and the resident's guardian or advocate, if any;~~

~~3. Training for the safe administration of medication to a resident;~~

~~4. Accountability for the management and safekeeping of any resident's funds which the group home manages; and~~

~~5. Conditions and procedures for the involuntary transfer or discharge of a resident from a group home.~~

~~D. 1. The certification standards for programs and services shall be developed jointly by the Department and the Advisory Board for presentation to the Commission for Human Services for its approval. The standards shall be reviewed at least annually for any necessary modifications by the Department and the Group Homes for Persons with Developmental or Physical Disabilities Advisory Board, and any necessary modifications shall be presented to the Commission for its approval.~~

~~2. Any provider of group home services that has a current contract with the Developmental Disabilities Services Division of the Department of Human Services shall be deemed to be licensed.~~

SECTION 9. AMENDATORY 10 O.S. 2001, Section 1430.12, is amended to read as follows:

Section 1430.12 The State Fire Marshal or a designee shall conduct fire safety inspections on a regular basis at group homes subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act and report findings of such inspections to the Department of Human Services. ~~In addition, the State Fire Marshal shall develop, adopt, and promulgate rules or specifications consistent with nationally recognized standards or practices necessary for the safeguarding of life and property of residents of group homes from the hazards of fire and smoke~~ Providers of group home services and licensees shall make reports of the inspections available to authorized staff of the Department of Human Services upon request.

SECTION 10. AMENDATORY 10 O.S. 2001, Section 1430.13, is amended to read as follows:

Section 1430.13 The following information is subject to disclosure to the public from the Department of Human Services:

1. Information submitted under Section ~~14~~ 1430.14 of this ~~act~~ title, except information concerning the remuneration of personnel licensed, registered or certified by the Department, and monthly charges for an individual private resident; and

2. Records of ~~license, certification and program certification~~ inspections, surveys and evaluations of group homes, ~~other reports of inspections, surveys and evaluations of resident care, and reports concerning a group home prepared pursuant to Titles XVIII and XIX of the Social Security Act, 42 U.S.C., Section 1301 et seq., subject to the provisions of the Social Security Act;~~ and

3. Complaints filed against a group home and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a group home as provided in Section ~~7~~ 1430.7 of this ~~act~~ title and, further, except that a complainant or resident's name shall not be disclosed except as provided in Section ~~7~~ 1430.7 of this ~~act~~ title.

SECTION 11. AMENDATORY 10 O.S. 2001, Section 1430.14, is amended to read as follows:

Section 1430.14 A. ~~Except as provided for in Section 16 of this act,~~ a A license shall expire twelve (12) months from the date of issuance, unless sooner revoked, and may be renewed annually by the Department of Human Services pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act. All licenses shall be on a form prescribed by the Director of Human Services, and shall include, but not be limited to, the maximum bed capacity for which the license is granted, the kind of program the licensee is certified to operate, the date the license

was issued, and the expiration date of the license. The provisions of the license shall require that the license shall:

1. Not be transferable or assignable except as authorized by the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

2. Be available on the licensed premises; and

3. Be issued only for the premises named in the application, and may be renewed for twelve-month periods upon application and inspection, pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act.

B. An application shall be under oath and shall contain, but not be limited to, the following information:

1. The name and address of the applicant or licensee. If the applicant or licensee is a firm or partnership, the name and address of each member thereof shall be included in the application. If the applicant or licensee is a firm, partnership, limited liability company, or corporation, the name and address of the firm, partnership, limited liability company, or corporation and the name and address of each member of the firm, major member of the limited liability company or manager, major partner of the partnership, or officer, major stockholder and registered agent of the corporation shall be included in the application;

2. The name and address of the applicant or licensee if the applicant or licensee is not the provider and is acting as agent for the provider of group home services or licensee;

3. The name and location of the group home for which a license is sought;

4. The name of the administrator of the home;

5. The number and type of residents for whom services are to be provided;

6. A description of the program and the staffing pattern for providing resident care. In the case of an application for an

initial license, such description may be shown as the projected program and staffing pattern; and

7. Information or records required by the Department pursuant to the rules adopted by the Commission for Human Services ~~for~~ program certification regarding group homes.

C. Each initial application shall be accompanied by a statement from the unit of local government having zoning jurisdiction over the location of the group home stating that the location is not in violation of a zoning ordinance.

D. 1. An applicant or licensee shall be twenty-one (21) years of age or older and of reputable and responsible character. In addition, the applicant or licensee shall have appropriate business or professional experience.

2. No person who ~~has been convicted of a felony in connection with the management or operation of a group home as defined in Section 1-1902 of this title, or in the care and treatment of the residents of a group home pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, as defined in Section 1-1902 of this title,~~ is ineligible for employment as a community services worker in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes shall be eligible to be licensed or to receive a contract to become a community services provider. If the applicant or licensee is a firm, partnership, limited liability company, or corporation, the applicant shall not be eligible to be licensed or to receive a contract if any member of the firm ~~or partnership,~~ any major member of the limited liability company or manager, any major partner of the partnership, or any officer or major stockholder of the corporation ~~has been convicted of a felony in connection with the operation or management of a group home pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act or the care and treatment of the residents of a group home as defined in Section 1-~~

~~1902 of this title~~ is ineligible for employment as a community services worker in accordance with Section 1025.2 of Title 56 of the Oklahoma Statutes.

E. ~~1.~~ The application for a license or renewal of a license shall be accompanied by a statement of ownership which shall include the following:

a. ~~the~~

1. The name, address, telephone number, occupation or business activity, business address, and business telephone number of the owner of the group home and of every person who owns the building in which the group home is located. If the owner is a partnership, limited liability company, or corporation, the name and address of each partner, major member of the limited liability company, and stockholder with an ownership interest of five percent (5%) or more shall be included in the statement,~~;~~ and

b. ~~the~~

2. The name and address of any other group home in which the owner has a full or partial financial interest or, if the applicant or licensee is a partnership, limited liability company, or corporation, any other group home as defined in Section 1-1902 of this title in which the partnership, limited liability company, or corporation has a full or partial financial interest. The statement shall indicate whether or not any other group home wherein a full or partial financial interest is held would, if located in this state, be required to be licensed.

~~2. The applicant or licensee shall agree in writing, prior to the issuance of a license, to notify the Department if there is any change in the information required to be included in the statement of ownership within six (6) months of such change. The information contained in the statement of ownership shall be public information and shall be available upon request from the Department.~~

~~F. Upon application of a licensee, a license may be modified in accordance with the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act.~~

G. F. The Director or designee shall issue and renew licenses for group homes which comply with the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act and the standards and rules promulgated by the Commission pursuant thereto.

SECTION 12. AMENDATORY 10 O.S. 2001, Section 1430.15, is amended to read as follows:

Section 1430.15 A. A license to operate a group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act is not transferable. ~~Whenever~~ Operation of a group home ~~is~~ can only be transferred from:

1. With the prior written approval of the director of the Developmental Disabilities Services Division (DDSD) of the Department of Human Services or designee; and

2. From the provider or licensee named in the application to another provider who does not have a current group home license for the home, the transferee must obtain a probationary license as provided in Section 16 of this act has a current license or is deemed licensed in accordance with Section 1430.3 of this title.

B. ~~The transferee shall notify the Department of Human Services of the transfer and apply for a license no less than thirty (30) days prior to final transfer.~~

The transferor shall remain responsible for the operation of the group home until ~~such time as a probationary license is issued to the transferee~~ the transfer is complete. The transferor shall remain liable for all penalties assessed which are imposed for violations occurring prior to transfer of operation. Any citations, problems identified by the Development Disabilities Services Division prior to the transfer, or outstanding deficiencies

remaining after the transfer are the responsibility of the transferee to correct.

SECTION 13. AMENDATORY 10 O.S. 2001, Section 1430.17, is amended to read as follows:

Section 1430.17 A. The Department of Human Services may issue a conditional license to any group home if the Department finds that a violation exists in such group home. The issuance of a conditional license shall revoke any license held by the group home issued pursuant to the Group Homes for Persons with Developmental or Physical Disabilities Act.

B. Prior to the issuance of a conditional license, the Department shall review and approve a written plan of correction. The Department shall specify the violations which prevent issuance of a regular license and shall establish a time schedule for correction of the deficiencies. Retention of the license shall be conditional on meeting the requirements of the plan of correction. In the alternative or in addition to a conditional license, the Director of Human Services may withhold vendor payments due to a group home under its programs until such time as the corrections are made or a plan of correction for all deficiencies is approved by the Department.

C. Written notice of the decision to issue a conditional license shall be sent to the group home together with the proposed plan of correction. The notice shall inform the group home of its right to an informal conference prior to issuance of the conditional license and its right to a full hearing.

D. If the group home desires to have an informal conference it shall, within four (4) working days of receipt of notice, send a written request for an informal conference to the Department. The Department shall, within four (4) working days from the receipt of the request, hold an informal conference. Following the conference, the Department may affirm or overrule its previous decision, or

modify the terms of the conditional license and plan of correction. The conditional license may be issued after the informal conference or after the time for requesting an informal conference has expired, prior to any further hearing.

E. If after the informal conference the group home desires to contest the basis for issuance of a conditional license, or the terms of the license or plan of correction, the facility shall send a written request for hearing to the Department within ten (10) days after issuance of the conditional license and the Department shall then hold the hearing.

F. A conditional license shall be issued for a period specified by the Department, but in no event for more than one (1) year. The Department shall periodically, but not less than semiannually, inspect any group home operating under a conditional license. If the Department finds substantial failure by the group home to follow the plan of correction, the conditional license may be revoked.

G. If the Department determines that a conditional license shall expire without renewal or replacement of the conditional license by a regular license, the Department shall so notify the ~~provider~~ licensee at least thirty (30) days prior to expiration of the license. The licensee is entitled to a hearing if requested prior to expiration of the conditional license. The provider is entitled to a hearing if requested prior to expiration of the conditional license.

SECTION 14. AMENDATORY 10 O.S. 2001, Section 1430.18, is amended to read as follows:

Section 1430.18 Every provider and licensee shall make available to residents, employees and visitors the following:

1. ~~Its~~ The current license or current contract with the Department of Human Services or the Oklahoma Health Care Authority for provision of group home services;

2. ~~Residents' rights~~ Rights of residents as listed in Section ~~1-818.20~~ 1430.20 of the ~~Group Homes for Persons with Developmental or Physical Disabilities Act~~ this title;

3. A description, ~~provided by the Department of Human Services,~~ of complaint of the grievance procedures of the group home established under the ~~Group Homes for Persons with Developmental or Physical Disabilities Act~~ and in accordance with OAC 340:2-3-54, to include the name, address and telephone number of the local grievance coordinator and the name, address, and telephone number of a person authorized by the Department to receive complaints regarding potential contract violations. A copy of the grievance and complaint procedure procedures shall also be given to each resident and the ~~resident's~~ guardian or advocate of the resident, if any;

4. A copy of any order pertaining to the group home issued by the Department or a court which is currently in effect; and

5. A list of the material available for public inspection under Section ~~19~~ 1430.19 of this ~~act~~ title.

SECTION 15. AMENDATORY 10 O.S. 2001, Section 1430.19, is amended to read as follows:

Section 1430.19 A group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act shall retain the following for public inspection:

1. A complete copy of every inspection report of the group home received from the Department of Human Services during the past three (3) years with resident-identifying information removed;

2. A copy of ~~every order~~ correspondence with resident-identifying information removed issued by the Department of Human Services, the Oklahoma Health Care Authority, or a court during the last three (3) years pertaining to the group home ~~issued by the Department or a court during the past three (3) years~~;

3. A description of the services provided by the group home, the rates charged for those services and items for which a resident may be separately charged;

4. A copy of the statement of ownership; and

~~5. A record of personnel who are licensed, certified or registered and employed or retained by the group home who are responsible for resident care;~~

~~6. A complete copy of the most recent inspection report of the group home received from the Department; and~~

~~7. A complete copy of any current license or agreement group home contract between the group home and the Department or the Oklahoma Health Care Authority for the care, treatment, training, habilitation or rehabilitation of residents of the group home.~~

SECTION 16. AMENDATORY 10 O.S. 2001, Section 1430.20, is amended to read as follows:

Section 1430.20 A. ~~All principles enunciated in this section~~ Rules promulgated by the Commission for Human Services regarding the rights and responsibilities of residents shall be available in each group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, and each resident and ~~resident's~~ guardian or advocate of the resident, if any, shall be provided a copy of these ~~principles~~ rules prior to or upon admission. The provider or licensee shall ensure that ~~its~~ the staff is familiar with and observes the rights and responsibilities enumerated in this section.

B. A statement of rights and responsibilities shall include, but not be limited to, the following:

1. Every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and the provider shall encourage and assist in the exercise of these rights;

2. Every resident shall have the right to have private communications and consultations with the physician, attorney or any other person of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;

3. Every resident shall have the right, without fear of reprisal, to present grievances on behalf of the resident or others to the provider's staff or administrator, to governmental officials or to any other person, and to join with other residents or individuals within or outside of the facility to work for improvements in resident care;

4. Every resident shall have the right to manage his or her own financial affairs, unless the resident delegates the responsibility, in writing, to the provider. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the provider during any period of time the resident has delegated such responsibilities to the provider;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident shall be fully informed by the resident's attending physician of the resident's own medical condition and proposed treatment in terms and language that the resident can understand, and shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions;

6. Every resident shall receive respect and privacy in the resident's medical care program. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential;

7. Every resident shall have the right to retain and use his or her personal clothing and possessions, unless prohibited by law, and

shall have the right to security in the storage and use of such clothing and possessions;

8. Every resident shall have the right to be treated courteously and respectfully and shall be furnished by the provider with a written statement of the services and related charges;

9. Every resident shall be free from mental and physical abuse, and free from physical and chemical restraints, except those physical and chemical restraints which are:

- ~~a.~~ authorized in writing by a physician, in accordance with rules promulgated by the Department, for a specified period of time, ~~or~~
- ~~b.~~ ~~necessitated by an emergency where the restraint may only be applied by a physician or a qualified licensed nurse or other personnel under the supervision of such physician, who shall set forth in writing the circumstances requiring the use of such restraints;~~

10. Every resident shall receive a statement of the provider's guidelines and an explanation of the resident's responsibility to comply with all reasonable regulations of the group home and to respect the personal rights and private property of the other residents;

11. Every resident shall receive a statement that should they be adjudicated incompetent, the above rights and responsibilities shall be exercised by a court-appointed guardian;

12. No resident shall be required to perform services for a provider, except for normal, shared household tasks;

13. Every resident shall have privacy for conjugal visits. A resident may share a room with a spouse, if the spouse is residing in the same group home; and

~~14. A provider shall immediately notify the resident's next of kin, or guardian or advocate, of the resident's death or when the resident's death appears to be imminent, unless the resident has~~

~~left instructions to the contrary~~ Every resident shall be entitled to all rights provided in OAC 340:100-3-1.2.

C. No provider shall deny appropriate care on the basis of the resident's source of payment ~~as defined in the rules.~~

D. Each provider shall ~~prepare a written plan and~~ provide appropriate staff training to implement each resident's rights as stated in this section.

E. ~~Any person convicted of violating any provision of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment~~ The rights enumerated in subsection B of this section may be limited for residents of an alternative group home, as described in OAC 340:100-5-22.6, if the resident has been placed in the alternative group home pursuant to Section 1175.6b or Section 1175.6c of Title 22 of the Oklahoma Statutes, or if the resident has mental retardation and a current community protection issue, which include, but are not limited to:

1. Allegation(s), charge, or conviction of a sexual offense;
2. A history of stalking or opportunistic behavior which demonstrates a likelihood of committing a sexually violent or predatory act;
3. A pattern of violence towards others;
4. A diagnosis of mental retardation and mental illness with ongoing episodes that are dangerous as defined in Section 1175 of Title 22 of the Oklahoma Statutes; or
5. Evidence of commission of a violent crime.

F. ~~In addition to the penalties provided in this section, an~~ An action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this

section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit, and the reasonable attorney fees incurred by the plaintiff. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

G. Any employee of the Department of Human Services who inspects any group home shall report any flagrant violations of this act or any other statute to the Director of Human Services, or a designee, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

H. Upon the death of a resident who has no sources of payment for funeral services, the provider shall immediately notify appropriate county officials who shall be responsible for funeral and burial procedures of the deceased in the same manner as with any indigent resident of the county.

SECTION 17. AMENDATORY 10 O.S. 2001, Section 1430.22, is amended to read as follows:

Section 1430.22 A. A written contract shall be executed between a person, the ~~resident's~~ guardian ~~or advocate~~ of a resident, if any, and a group home or ~~its~~ the agent of the group home ~~within one hundred twenty (120) days from~~ prior to the time a person is admitted to a group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act,

and annually thereafter, or at the expiration of the period of previous contract, or when the source of payment for the ~~resident's~~ care of the resident changes, or when there are changes in the terms of the contract.

B. The contract shall be executed between the provider and the resident and the ~~resident's~~ guardian ~~or advocate~~ of the resident, if any.

C. A copy of the contract shall be given to the resident and to the ~~resident's~~ guardian or advocate of the resident, if any, ~~at the time of the resident's admission to the group home.~~

D. A copy of the contract for a resident who is supported by nonpublic funds other than the ~~resident's own~~ personal funds of the resident shall be made available to the person providing the funds for the ~~resident's~~ support of the resident.

E. The contract shall be written legibly in clear and unambiguous language ~~and shall be printed in type no smaller than standard typewriter pica or elite type.~~

F. The contract shall specify:

1. The ~~term~~ expiration date of the contract;
2. The services to be provided under the contract and the charges for the services, including the amount of the room and board payment for which the service recipient is responsible;

3. The services that may be provided to supplement the contract and the charges for ~~the~~ such additional services;

4. ~~The sources liable for payments due under the contract;~~

5. The amount of any deposit paid; and

6. 5. The rights, duties and obligations of the resident, except that the specification of ~~a resident's~~ rights of a resident may be furnished on a separate document ~~which complies with the requirements of Section 20 of this act.~~

G. The contract shall state the name of the ~~resident's~~ guardian or advocate of the resident, if any, and emergency contact.

H. The contract shall provide that if the resident dies or is compelled by a change in physical or mental health to leave the group home, the contract and all obligations under it shall terminate immediately. All charges shall be prorated as of the date on which the contract terminates, and, if any payments have been made in advance, the excess shall be refunded to the resident or the ~~resident's~~ guardian or advocate of the resident, if any.

SECTION 18. AMENDATORY 10 O.S. 2001, Section 1430.23, is amended to read as follows:

Section 1430.23 To protect the funds of a resident of a facility subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, the group home:

~~1. May assist the resident in reserving a portion of the resident's monthly income for the resident's personal use;~~

~~2. Shall at the time of admission, and annually thereafter, provide each resident and the resident's guardian or advocate, if any, with a written statement explaining the resident's rights regarding personal funds and listing the services for which the resident will be charged, and obtain a signed acknowledgment from each resident and the resident's guardian or advocate, if any, that the resident has received the statement;~~

~~3. May assist the resident in safekeeping and managing the resident's funds, if the group home receives written authorization from the resident and the resident's guardian or advocate, if any;~~

~~4. Shall maintain and allow each resident and the resident's guardian or advocate, if any, access to a written record of all financial arrangements and transactions involving the individual resident's funds;~~

~~5. Shall provide each resident and the resident's guardian or advocate, if any, with a written itemized statement on request, of all financial transactions involving the resident's funds;~~

~~6. Shall keep any funds received from a resident for safekeeping in an account separate from the provider's funds;~~

~~7. Shall return to the resident, upon written request by the resident and the resident's guardian or advocate, if any, all or any part of the resident's funds given the provider for safekeeping, including the interest accrued, if any, from deposits;~~

~~8. Unless otherwise provided by state law, upon the death of a resident, shall provide the administrator or executor of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the provider; and~~

~~9. If the operation of a provider agency changes, shall provide the buyer with written verification by a public accountant of all residents' monies and properties for which the provider is responsible, and obtain a signed receipt from the new provider must comply with rules promulgated by the Department of Human Services regarding protection of the personal funds of the resident.~~

SECTION 19. AMENDATORY 10 O.S. 2001, Section 1430.24, is amended to read as follows:

Section 1430.24 A. Residents of group homes subject to the Group Homes for Persons with Developmental or Physical Disabilities Act may receive any guest or visitor in the group home during reasonable hours as long as the visit does not infringe upon the rights of other group home residents. Any guest or visitor entering a group home shall promptly notify the staff on duty of their presence and shall, upon request, produce identification to establish their identity. No such person shall enter the immediate living area of any resident without first identifying oneself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. A resident may terminate at any time a visit by a person having access to the ~~resident's~~ living area of the resident pursuant to this section.

~~B. Any employee or agent of a public agency or any representative of a community legal services program or any member of a nonprofit community-supported agency which provides health or social services to the developmentally disabled or physically handicapped, or any member of a church group, association of older persons or community service club which provides volunteers for service to group home residents shall be permitted access to a group home at reasonable hours, subject to the consent of a resident or residents to receive such persons as guests or visitors in accordance with the provisions of subsection A of this section.~~

~~C.~~ This section shall not limit the power of the Department of Human Services or other public agency otherwise permitted or required by law to enter and inspect a group home.

~~D. C.~~ The provider or licensee may refuse access to the group home to any person if the presence of that person in the group home would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the group home, or if the person seeks access to the group home for commercial purposes. ~~Any person refused access to a group home may within ten (10) days request a hearing. In that proceeding, the burden of proof as to the right of the group home to refuse access under this section shall be on the group home.~~

SECTION 20. AMENDATORY 10 O.S. 2001, Section 1430.25, is amended to read as follows:

Section 1430.25 A group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act shall not involuntarily transfer or discharge a resident except for medical reasons, for the ~~resident's~~ safety of the resident or for the safety of other residents, for violations of the contract between the resident and the group home or for nonpayment for the ~~resident's stay, unless limited by the Federal Social Security Act, 42 U.S.C., Section 301 et seq~~ of the resident. Involuntary transfer

or discharge of a resident for violations of the contract shall be subject to the conditions and procedures established by the rules adopted by the Commission for Human Services ~~for program certification~~. Involuntary transfer or discharge of a resident from a group home shall be preceded by a minimum written notice of thirty (30) days. The thirty-day requirement shall not apply in any of the following instances:

1. When an emergency transfer or discharge is mandated by the ~~resident's~~ health care needs of the resident and is in accordance with the written orders and medical justification of the attending physician; or

2. When the transfer or discharge is necessary for the physical safety of other residents as documented in the ~~clinical~~ record.

SECTION 21. AMENDATORY 10 O.S. 2001, Section 1430.26, is amended to read as follows:

Section 1430.26 A. No provider or licensee, including a corporate officer, major stockholder or member of the board of directors, member of the firm, major member of the limited liability company or manager, major partner of the partnership when the provider or licensee is a firm, partnership, limited liability company, or corporation, administrator, or employee of a group home subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act shall have an insurable interest in the life of a resident of the home unless the provider, licensee, administrator, or employee is related to the resident of the home by blood ~~or~~, marriage or adoption.

B. No provider or licensee, including a corporate officer, major stockholder, or member of the board of directors, member of the firm, major member of the limited liability company or manager, major partner of the partnership when the provider or licensee is a firm, partnership, limited liability company, or corporation, administrator, or employee of a group home shall be entitled or

assigned to any benefits of a life insurance policy on the resident unless the provider, licensee, administrator, or employee is related to the resident of the home by blood ~~or~~, marriage or adoption.

C. No provider or licensee, including a corporate officer, major stockholder or member of the board of directors, member of the firm, major member of the limited liability company or manager, major partner of the partnership, when the provider or licensee is a firm, partnership, limited liability company, or corporation, administrator, or employee of a group home shall be appointed guardian or conservator of a resident of the home or hold power of attorney for a resident of the home unless said provider, licensee, administrator or employee is a relative of the resident and is otherwise eligible for appointment by a court as the guardian of the resident.

SECTION 22. AMENDATORY 10 O.S. 2001, Section 1430.27, is amended to read as follows:

Section 1430.27 A. Every group home ~~for which a license has been issued~~ shall be ~~periodically~~ inspected at least annually by a duly appointed representative of the Department of Human Services pursuant to rules promulgated by the Commission for Human Services with the advice and counsel of the Group Homes for Persons with Developmental or Physical Disabilities Advisory Board established by Section ~~4~~ 1430.4 of this act title. ~~Inspection reports shall be prepared on forms prescribed by the Department with the advice and counsel of the Advisory Board.~~

B. The Department shall at least ~~three times a year~~ annually and whenever it deems necessary inspect, survey, and evaluate each group home to determine compliance with applicable licensure and program ~~certification~~ requirements and standards.

~~1. An inspection shall occur within one hundred twenty (120) days prior to license renewal.~~

~~2-~~ C. Any inspection, investigation, survey, or evaluation may be conducted without prior notice to the home. At least one inspection per group home shall be unannounced. Any licensee or applicant for a license shall be deemed to have given consent to any duly authorized employee or agent of the Department to enter and inspect the group home in accordance with the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act. Refusal to permit such entry or inspection may constitute grounds for the denial, nonrenewal, suspension, or revocation of a license.

~~6-~~ D. The Department shall maintain a log, updated at least monthly and available for public inspection, which shall at a minimum detail:

1. The name of the group home and date of inspection, investigation, survey, or evaluation;

2. Any deficiencies, lack of compliance, or violation noted at the inspection, investigation, survey, or evaluation;

3. The date a notice of violation, license denial, nonrenewal, suspension, or revocation was issued or other enforcement action occurred;

4. ~~The date a plan of correction was submitted and the date the plan was approved~~ Proposed dates for the resolution of deficiencies;

5. The date corrections were completed, as verified by an inspection; and

6. If the inspection or investigation was made pursuant to the receipt of a complaint, the date such complaint was received and the date ~~the complainant and~~ the group home was notified of the results of the inspection or investigation.

~~8-~~ E. The Department shall require periodic reports and shall have access to books, records and other documents maintained by the group home to the extent necessary to implement the provisions of the Group Homes for Persons with Developmental or Physical

Disabilities Act and the rules promulgated by the Commission for Human Services pursuant thereto.

~~E. A state or local ombudsman, or a representative of the Office of Client Advocacy, or a case manager assigned monitoring responsibilities for clients residing in group homes is authorized to accompany and shall be notified of any survey or inspection conducted of any group home licensed pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act.~~

F. Any state or local ombudsman or a representative of the Office of Client Advocacy having proper identification is authorized to enter any group home licensed pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, communicate privately and without unreasonable restriction with any resident of a group home who consents to such communication, to seek consent to communicate privately and without restriction with any resident of a group home, and to observe all areas of a group home that directly pertain to the care of a resident of a group home.

~~F. Following any survey or inspection pursuant to the provisions of this section, all reports relating to the survey or inspection shall be filed in the county office of the Department of Human Services in which the group home is located and with the Developmental Disabilities Services Division of the Department of Human Services.~~

G. All state agencies receiving complaints on, or conducting surveys or inspections of group homes shall forward complete copies of complaints or inspection or survey results to the Office of Client Advocacy of the Department of Human Services.

SECTION 23. AMENDATORY 10 O.S. 2001, Section 1430.31, is amended to read as follows:

Section 1430.31 A. No person shall willfully:

1. Fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

2. Prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department of Human Services in the investigation and enforcement of the Group Homes for Persons with Developmental or Physical Disabilities Act;

3. Prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

4. Prevent or interfere with any such representative in the preserving of evidence of any violation of the Group Homes for Persons with Developmental or Physical Disabilities Act or the rules promulgated pursuant thereto;

5. Retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act;

6. File any false, incomplete, or intentionally misleading information required to be filed pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, or willfully fail or refuse to file any information required by the Department pursuant to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act; or

7. Open or operate a group home without a license or ~~operate a contract for group home without a license and program certification~~

services with the Department of Human Services or the Oklahoma Health Care Authority.

B. No employee of a state or unit of a local government agency shall aid, abet, assist, conceal, or conspire with any employee of a provider or licensee in a violation of any provision of the Group Homes for Persons with Developmental or Physical Disabilities Act or any rule or standard promulgated by the Commission for Human Services pursuant to the Group Homes for Persons with Developmental or Physical Disabilities Act.

C. Any person who violates any of the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act, upon conviction, shall be guilty of a misdemeanor. Each day upon which such violation occurs shall constitute a separate violation.

SECTION 24. AMENDATORY 10 O.S. 2001, Section 1430.33, is amended to read as follows:

Section 1430.33 Any provider or licensee operating under the Group Homes for Persons with Developmental or Physical Disabilities Act shall give ninety (90) days' notice prior to voluntarily closing a group home or closing any part of a group home, or prior to closing any part of a group home if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents. Such notice shall be given to the Department of Human Services, to any resident who must be transferred or discharged, to the resident's guardian or advocate, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The provider or licensee shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The provider or licensee shall comply with all applicable laws and rules until the

date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the group home if needed. Also, the Department may promulgate rules that establish criteria for the acceleration of the notice requirement if extraordinary circumstances warrant it.

SECTION 25. AMENDATORY 10 O.S. 2001, Section 1430.34, is amended to read as follows:

Section 1430.34 A. The Department of Human Services may place an employee or agent to serve as a monitor at a provider agency or licensee subject to the provisions of the Group Homes for Persons with Developmental or Physical Disabilities Act or may petition the district court for appointment of a receiver for a provider or licensee, or both, when any of the following conditions exist:

1. The group home is operating without a license;
2. The Department has suspended, revoked or refused to renew the existing license of the provider or licensee;
3. The provider or licensee has closed or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure; or
4. The Department determines that an emergency exists, whether or not it has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the provider or licensee to remedy the emergency the Department believes a monitor or receiver is necessary.

B. In any situation described in subsection A of this section, the Department may place a qualified person to act as monitor at the provider agency or licensee. The monitor shall observe the operation of the provider agency or licensee, assist the provider or licensee by advising it on how to comply with the state rules promulgated by the Commission for Human Services and shall report

periodically to the Department on the operation of the provider agency or licensee.

SECTION 26. AMENDATORY 10 O.S. 2001, Section 1430.35, is amended to read as follows:

Section 1430.35 A. Where a resident of a group home subject to the Group Homes for Persons with Developmental or Physical Disabilities Act, a ~~resident's~~ guardian or advocate of a resident, if any, or a resident's next of kin believes that an emergency exists, each of them, collectively or separately, may file a verified statement with the Director of Human Services, or a designee, who shall immediately investigate. If the Director, or a designee, determines that proper cause exists, the Director, or a designee, shall take whatever steps are necessary to protect the health, welfare and safety of the residents including, if necessary, petitioning the court to place the group home under the control of a receiver to ensure that the residents receive adequate care.

B. The court shall hold a hearing within five (5) days of the filing of the petition. The petition and notice of the hearing shall be served on the provider or licensee or designated agent of the provider or licensee and the petition and notice of hearing shall be posted in a conspicuous place in the group home not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the court. The court shall appoint a receiver for a limited time period, not to exceed one hundred eighty (180) days, which shall automatically terminate the receivership unless extended by the court, if it finds that:

1. The group home is operating without a license;
2. The Department has suspended, revoked or refused to renew the existing license of the provider or licensee;
3. The group home is closing or has informed the Department that it intends to close and adequate arrangements for relocation of

residents have not been made at least thirty (30) days prior to closure;

4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the provider or licensee to remedy the emergency, the appointment of a receiver is necessary; or

5. It is necessary to ensure that the residents get adequate care in a situation in which the ~~residents'~~ health, welfare and safety of the residents are threatened.

C. If a petition filed under this section alleges that the conditions listed in subsection B of this section exist within a group home, the court may set the matter for hearing at the earliest possible time. The petitioner shall notify the provider of the group home or licensee or registered agent of the provider or licensee more than five (5) days prior to the hearing. Any form of written notice may be used. A receivership shall not be established ex parte by the court unless the Director of Human Services, under oath, has provided a statement that such Director, or a designee, has personally determined that there is a life-endangering situation. A waiver of the five-day notice requirement may be approved by the court in life-endangering situations as determined and confirmed under oath, by the Director.

SECTION 27. AMENDATORY 10 O.S. 2001, Section 1430.36, is amended to read as follows:

Section 1430.36 A. The court may appoint any qualified person as a receiver, except it shall not appoint any employee or affiliate of the provider or licensee which is in receivership as its receiver. The Department of Human Services shall maintain a list of such persons to operate group homes which the court may consider.

B. The receiver shall make provisions for the continued health, safety and welfare of all residents of the group home.

C. A receiver appointed pursuant to the Group Homes for Persons with Developmental or Physical Disabilities Act shall exercise those powers and shall perform those duties set out by the court. These powers and duties may include those generally ascribed to receivers and receiverships and may also include the powers and duties of trustees under the current Bankruptcy Code for the State of Oklahoma. The court shall provide for the receiver to have sufficient power and duties to ensure that the residents receive adequate care.

SECTION 28. AMENDATORY 10 O.S. 2001, Section 1430.40, is amended to read as follows:

Section 1430.40 A. The court may terminate a receivership:

1. If the time period specified in the order appointing the receiver elapses and is not extended;
2. If the court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist; or the Department of Human Services issues the provider or licensee a new license, whether the structure of the group home, the right to operate the group home, or the land on which it is located is under the same or different ownership; or
3. If all of the residents in the group home have been transferred or discharged.

B. 1. Within thirty (30) days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

2. If the operating funds exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the provider or licensee, after reimbursement of funds drawn from the contingency fund provided for in Section ~~37~~ 1430.37 of this ~~act~~ title. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the provider or licensee

shall be liable for the deficiency. Payment recovered from the provider or licensee shall be used to reimburse the contingency fund for amounts drawn by the receiver under Section ~~37~~ 1430.37 of this ~~act~~ title.

3. The Department shall have a lien for any payment made under Section ~~37~~ 1430.37 of this ~~act~~ title upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the group home is located,
- b. any fixtures, equipment or goods used in the operation of the group home,
- c. the land on which the group home is located, or
- d. the proceeds from any conveyance of property described in subparagraphs a, b or c above, made by the provider or licensee within one (1) year prior to the filing of the petition for receivership.

4. The receiver shall, within sixty (60) days after termination of the receivership, file a notice of any lien created under this section. If the lien is on real property, the notice shall be filed with the county clerk. If the lien is on personal property, the notice shall be filed with the Secretary of State. The notice shall specify the name of the person against whom the lien is claimed, the name of the receiver, the dates of the petition for receivership and the termination of receivership, a description of the property involved and the amount claimed. No lien shall exist under this act against any person, on any property, or for any amount not specified in the notice filed under this paragraph.

SECTION 29. AMENDATORY 10 O.S. 2001, Section 1430.41, is amended to read as follows:

Section 1430.41 Notwithstanding the general rules of receiverships and trustees, nothing in the Group Homes for Persons with Developmental or Physical Disabilities Act shall be deemed to relieve any administrator or employee of a group home placed in

receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the administrator or employee prior to the appointment of a receiver; provided, that nothing contained in this act shall be construed to suspend during the receivership any obligation of the administrator or employee for payment of taxes or other operating and maintenance expenses of the group home or of the administrator, employee or any other person for the payment of mortgages or liens. The provider or licensee shall retain the right to sell or mortgage any group home under receivership, subject to approval of the court which ordered the receivership.

SECTION 30. REPEALER 10 O.S. 2001, Sections 1430.5, 1430.10, 1430.16, 1430.21, 1430.28, 1430.29 and 1430.30, are hereby repealed.

SECTION 31. This act shall become effective November 1, 2006."

Passed the Senate the 18th day of April, 2006.

Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____,
2006.

Presiding Officer of the House
of Representatives