

STATE OF OKLAHOMA

1st Session of the 50th Legislature (2005)

CONFERENCE COMMITTEE
SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1276

By: Peters of the House

and

Riley of the Senate

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-106.1, which relates to fee schedule for licenses; clarifying language; amending 63 O.S. 2001, Sections 1-860.2a, 1-860.5, as amended by Section 2, Chapter 339, O.S.L. 2003, 1-860.6, as amended by Section 3, Chapter 339, O.S.L. 2003, 1-860.9, 1-860.9a and 1-860.15, as amended by Section 4, Chapter 339, O.S.L. 2003 (63 O.S. Supp. 2004, Sections 1-860.5, 1-860.6 and 1-860.15), which relate to the Oklahoma Hospice Licensing Act; providing for first-year and permanent licenses; authorizing the State Department of Health to issue and enforce first-year licenses; deleting maximum fee amounts; creating new fee category; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-106.1, is amended to read as follows:

Section 1-106.1 A. The State Board of Health may establish a system of fees to be charged for health services and for services rendered to members of the public in the issuance and renewal of licenses and permits by the State Commissioner of Health and the State Department of Health. This provision is subject to the following limitations:

1. No schedule of fees may be established or amended by the Board except during such times as the Legislature is in session; provided, the Board may establish or amend a schedule of fees at a

time when the Legislature is not in session if the fees or schedule of fees has been specifically authorized by the Legislature or has been approved by the Contingency Review Board. The State Board of Health must follow the procedures required by Article I of the Administrative Procedures Act for adoption of rules and regulations in establishing or amending any such schedule of fees; and

2. The Board shall charge fees only within the following ranges, except as may be otherwise ~~specified~~ provided for in this ~~section~~ title.

For license or permit issuance: \$50.00 to \$2,000.00

For license or permit renewal: \$10.00 to \$500.00

For health services: \$25.00 to \$250.00

provided further, that any facility exempt from the requirement to obtain a permit based on date of construction or start-up may be assessed an annual permit renewal fee equivalent.

B. The Board's authority to establish such a fee schedule shall extend to all programs administered by the State Commissioner of Health and the State Department of Health, regardless of whether the statutes creating such programs are codified in the Oklahoma Public Health Code.

C. The Board shall base its schedule of licensing or permitting fees upon the reasonable costs of review and inspection services rendered in connection with each license and permit program, but shall be within the ranges specified in subsection A of this section, except as may be otherwise specified in this section. The Department shall establish a system of training for all personnel who render review and inspection services in order to assure uniform statewide application of rules and regulations and the Board shall also base the fee on reasonable costs associated with the training of those personnel. Such fees shall not be used in the operation of local health departments whose personnel do not participate fully in

applicable State Department of Health training and standardization programs.

D. The Board may exempt by rule any class of licensee or permittee or any class of facility or activity to be licensed or permitted from the requirements of the fee schedule if the Board determines that the creation of such a schedule for any such class would work an unreasonable economic hardship.

E. All statutory fees now in effect for health services and for the issuance and renewal of any license or permit administered by the State Commissioner of Health and the State Department of Health within the jurisdiction of the Department shall remain in effect until such time as the Board acts to implement new fee schedules pursuant to the provisions of this Code.

F. Unless a longer duration is specified for certain permits by the rules and regulations of the Board, licenses and permits issued by the Commissioner of Health shall be for a one-year period.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-860.2a, is amended to read as follows:

Section 1-860.2a A public or private agency or person which establishes, conducts, or maintains a hospice or holds itself out to the public as a hospice is required by the Oklahoma Hospice Licensing Act, to obtain a first-year or permanent license from the Department pursuant to the Oklahoma Hospice Licensing Act.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 1-860.5, as amended by Section 2, Chapter 339, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-860.5), is amended to read as follows:

Section 1-860.5 The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke first-year and permanent licenses for hospice programs pursuant to the provisions of the Oklahoma Hospice Licensing Act;

2. Establish and enforce standards and requirements for licensure of hospice programs and require the submission of, and to review, reports from any person establishing or operating a hospice program;

3. Establish and enforce construction standards and other requirements for hospice inpatient facilities; provided, however, such standards and requirements shall comply with current Medicare regulations for hospice inpatient facilities;

4. Establish a construction plan review fee for such facilities; provided, however, the amount of such fee shall not exceed the amount set by the Department for construction plan review fees for hospitals;

5. Enter upon any public or private property, with permission, for the purpose of inspecting and investigating conditions of the patients in a hospice or for the purpose of inspecting and investigating a hospice for compliance with the provisions of the Oklahoma Hospice Licensing Act, or the standards or requirements for licensure developed by the Department pursuant to the provisions of the Oklahoma Hospice Licensing Act;

6. Employ or designate personnel to conduct investigations and inspections, to make reports of the condition of hospices and the patients of such hospices, and to take necessary action pursuant to the provisions of the Oklahoma Hospice Licensing Act to protect and safeguard the health, safety and welfare of patients of hospices;

7. Establish a procedure for receipt and investigation of complaints regarding a hospice or concerning the condition, care and treatment of a patient in the hospice;

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 Oklahoma Hospice Licensing Act;

9. Develop and enforce rules subject to the approval of the State Board of Health to implement the provisions of the Oklahoma Hospice Licensing Act;

10. Establish and enforce penalties for violations of the provisions of the Oklahoma Hospice Licensing Act as authorized by the Board pursuant to the provisions of the Oklahoma Hospice Licensing Act; and

11. Exercise all incidental powers as necessary and proper for the administration of the Oklahoma Hospice Licensing Act.

SECTION 4. AMENDATORY 63 O.S. 2001, Section 1-860.6, as amended by Section 3, Chapter 339, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-860.6), is amended to read as follows:

Section 1-860.6 A. No public or private agency or person shall establish, conduct or maintain a hospice program or hold itself out to the public as a hospice program without first obtaining a first-year or permanent license from the State Department of Health.

B. An application for a hospice program first-year or permanent license shall be filed on a form prescribed by the Department and shall be accompanied by:

1. The first-year or permanent license fee required by Section 1-860.15 of this title;

2. Documentation of complete disclosure for the applicant which shall include, but not be limited to, the name, mailing address and finding address of every stockholder with at least five percent (5%) ownership interest in the hospice program;

3. Satisfactory proof that the hospice program is in compliance with the provisions of the Oklahoma Hospice Licensing Act and any rules and minimum standards promulgated by the State Board of Health pursuant to the Oklahoma Hospice Licensing Act; and

4. Proof of sufficient financial ability to operate and conduct the hospice program in accordance with the requirements of the Oklahoma Hospice Licensing Act.

C. The initial application shall be accompanied by a plan for the delivery of home and inpatient hospice services to patients and their families. Such plan shall contain, but not be limited to:

1. The estimated average number of patients to be served monthly;

2. The geographic area in which hospice services will be available;

3. A listing of services which are or will be provided, either directly by the applicant or through contractual arrangements with existing health care providers;

4. Provisions for the implementation of hospice home care within three (3) months of licensure;

5. The name and qualifications of any existing or potential health care provider with whom the hospice program may enter into a contract;

6. The projected annual operating cost of the hospice program; and

7. The location and proposed construction drawings for any hospice inpatient facility operated by the hospice program. A licensed hospice program shall not operate more than one hospice inpatient facility.

D. A Unless suspended or revoked, a first-year license issued for the operation of a hospice program shall expire automatically one (1) year from the date of issuance; provided, this provision shall not apply if the Department has not completed a follow-up survey of the hospice program. The Department may renew a first-year license for up to one (1) additional year beyond the expiration date if the applicant has complied with the provisions of the Oklahoma Hospice Licensing Act and the rules promulgated by the Board for the operation of a hospice program under a first-year license.

E. Unless suspended or revoked, a permanent license issued for the operation of a hospice program, ~~unless sooner suspended or revoked,~~ shall expire automatically one (1) year from the date of issuance. At least sixty (60) days prior to the expiration date, an application for license renewal shall be submitted to the Department on forms furnished by the Department. The license shall be renewed if the applicant has complied with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the provisions of the Oklahoma Hospice Licensing Act. The application for license renewal shall be accompanied by an update of the plan for delivery of hospice services only if information contained in the plan submitted pursuant to subsection C of this section is no longer applicable ~~or up-to-date.~~

~~E.~~ F. A hospice program for which a revocation or suspension proceeding is pending at the time of license renewal may be issued a conditional license effective until final disposition by the Department of such proceeding. If judicial relief is sought from the final disposition, the court having jurisdiction may issue a conditional permit for the duration of the judicial proceeding.

~~F.~~ G. The license shall:

1. Be displayed in a conspicuous place inside the hospice program office;
2. Be valid only in the possession of the person or public agency to which it is issued;
3. Not be subject to sale, assignment, or other transfer, voluntary or involuntary;
4. Not be valid for any hospice program other than the hospice program for which the license was originally issued; and
5. Restrict the number of patients in a hospice inpatient facility to the Department-approved occupancy level for each facility.

~~G.~~ H. Any person who, prior to January 1, 1991, provided hospice services to any patient shall be entitled to operate as a hospice program pursuant to the provisions of the Oklahoma Hospice Licensing Act without making application and obtaining a license pursuant to the provisions of the Oklahoma Hospice Licensing Act for one (1) year after September 1, 1991, provided such person otherwise complies with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the act. Thereafter any person providing hospice services shall make application, obtain a license, and comply with the provisions of the Oklahoma Hospice Licensing Act and all rules promulgated by the Board pursuant to the act.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 1-860.9, is amended to read as follows:

Section 1-860.9 A. After notice and hearing pursuant to the provisions of Section 1-860.10 of this title, the State Department of Health may:

1. Deny a first-year or permanent license to an applicant who does not meet the requirements for licensure pursuant to the provisions of the Oklahoma Hospice Licensing Act;
2. Refuse to renew, suspend or revoke a first-year or permanent license to a hospice which is not in compliance with the provisions of the Oklahoma Hospice Licensing Act or with the rules promulgated by the State Board of Health pursuant to the provisions of the Oklahoma Hospice Licensing Act;
3. Deny, refuse to renew, suspend or revoke a first-year or permanent license to an applicant or hospice which has a history of noncompliance or incomplete or partial compliance with the provisions of the Oklahoma Hospice Licensing Act or with the rules promulgated by the Board pursuant to the Oklahoma Hospice Licensing Act, or for which there is other satisfactory evidence which demonstrates that the applicant or hospice is unlikely to provide

care or treatment to the patients in the care of the hospice in a manner which warrants public trust;

4. Deny, refuse to renew, suspend or revoke a first-year or permanent license to an applicant or hospice which has insufficient financial or other resources to the extent that the applicant or hospice is incapable of ensuring or providing adequate care or treatment to the patients; or

5. Assess administrative penalties pursuant to Article II of the Administrative Procedures Act.

B. Any of the following actions by a hospice or any of its employees shall be grounds for action by the Department against a hospice:

1. A violation of the provisions of the Oklahoma Hospice Licensing Act or of any of the rules promulgated thereto; or

2. An intentional or negligent act materially affecting the health or safety of a patient.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 1-860.9a, is amended to read as follows:

Section 1-860.9a A. Any person who has been determined by the State Department of Health to have violated any provision of the Oklahoma Hospice Licensing Act or any rule or order of the State Board of Health issued pursuant thereto may be assessed an administrative fine of not less than Fifty Dollars (\$50.00) nor more than One Thousand Dollars (\$1,000.00) for each day that the violation continues. The maximum administrative fine shall not exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations that do not constitute immediate jeopardy to residents. A fine of not less than Five Hundred Dollars (\$500.00) per day nor more than Two Thousand Five Hundred Dollars (\$2,500.00) per day may be assessed for any violation constituting immediate jeopardy to residents.

B. The amount of the fine shall be assessed by the Department, pursuant to the provisions of subsection A of this section, after notice and hearing. In determining the amount of the fine, the Department shall include, but not be limited to, consideration of:

1. The nature, circumstances, and gravity of the violation;
2. The repetitive nature of the violation by the hospice or by other hospices operated by the same entity;
3. The previous degree of difficulty in obtaining compliance with the Oklahoma Hospice Licensing Act or the rules promulgated pursuant thereto; and
4. With respect to the person found to have committed the violation, the degree of culpability and evidence of a substantial show of good faith by such person in attempting to achieve compliance with the provisions of the Oklahoma Hospice Licensing Act.

C. Any license holder may elect to surrender the first-year or permanent license of such holder in lieu of such fine but shall be forever barred from obtaining a reissuance of the license or any other license issued pursuant to the Oklahoma Hospice Licensing Act.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 1-860.15, as amended by Section 4, Chapter 339, O.S.L. 2003 (63 O.S. Supp. 2004, Section 1-860.15), is amended to read as follows:

Section 1-860.15 A. The State Department of Health, subject to the approval of the State Board of Health, shall prescribe and publish in the manner established by its rules, fees in the amounts determined by the Board for the following:

1. Initial application fee ~~not exceeding Two Hundred Fifty Dollars (\$250.00);~~
2. ~~Initial~~ First-year license fee ~~not exceeding Two Hundred Fifty Dollars (\$250.00);~~
3. Permanent license fee;

4. Renewal of permanent license fee ~~not exceeding Five Hundred Dollars (\$500.00)~~; and

~~4. 5. Late renewal fee charges not exceeding Fifty Dollars (\$50.00).~~

B. Such fees may only be established or amended by the Board during such times as the Legislature is in session.

SECTION 8. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

50-1-7370

MG

04/28/05