

ENGROSSED HOUSE
BILL NO. 1453

By: Denney, McCarter and Nance
of the House

and

Cain of the Senate

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 330.51, 330.52 and 330.58, which relate to Nursing Home Administrators Act; modifying definitions; modifying membership; modifying duties of the Board; providing for additional duties; providing for certain rulemaking; providing for certain investigations; establishing timeline; authorizing exemptions; providing for public registry of complaints; requiring certain contents of registry; providing for certain complaint processes; requiring certain records become public; providing for notice; providing for hearing; providing for appeal; providing for codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.51, is amended to read as follows:

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

1. "Board" means the Oklahoma State Board of Examiners for Nursing Home Administrators ~~hereinafter created~~;

2. "Nursing home administrator" means a person licensed by the State of Oklahoma who is in charge of a facility. A nursing home administrator must devote at least ~~one-third (1/3)~~ one-half (1/2) of such person's working time to on-the-job supervision of such facility; provided that this requirement shall not apply to a nursing home administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in which case the person licensed by the state may be in charge of more than

one ICF-MR/16, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed six facilities and sixty-four beds. The facilities may be free-standing in a community or may be on campus with a parent institution. The ICF-MR/16 may be independently owned and operated or may be part of a larger institutional ownership and operation;

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

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

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

- a. have at least one (1) year of experience working directly with persons with mental retardation or other developmental disabilities, and
- b. be one of the following:
 - (1) a doctor of medicine or osteopathy licensed to practice in this state,
 - (2) a registered nurse, or
 - (3) an individual who holds at least a bachelor's degree in a related field.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 330.52, is amended to read as follows:

Section 330.52 A. There is hereby re-created, to continue until July 1, 2006, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Examiners for Nursing Home Administrators. The Oklahoma State Board of Examiners for Nursing Home Administrators shall consist of fifteen (15) members, eleven of whom shall be representative of the professions

and institutions concerned with the care and treatment of critically ill or infirm elderly patients, two members representing the general public, and the Commissioner of Health and the Director of the Department of Human Services, or their designees. The thirteen members shall be appointed by the Governor, with the advice and consent of the Senate.

B. ~~Six~~ Five of the thirteen appointive members shall each be presently an owner and a licensed administrator and shall have had five (5) years' experience in the nursing home profession as an owner and administrator. ~~Two~~ Three members shall be representatives of the general public and shall not have any direct or indirect financial interest in nursing homes. ~~The~~ None of the other members shall ~~not~~ be nursing home owners or administrators and shall not have ~~no~~ a direct or indirect financial interest in nursing homes.

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

SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.58, is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for Nursing Home Administrators shall:

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

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

~~(e)~~ 3. Issue licenses to individuals determined, after the application of such techniques, to meet such standards, and revoke or suspend licenses previously issued by the Board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards-~~;~~;

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

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

6. Receive, investigate, and take appropriate action on any complaint received by the Board from the Department of Human Services or any other regulatory agency. The Board shall develop rules including, but not limited to, the following:

- a. establishing a process for the Board to review complaints, and
- b. creating a formal file on each complaint received which is a public record;

~~(f)~~ 7. Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state with a view to the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed ~~as such;~~;

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

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

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

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

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 330.64 of Title 63, unless there is created a duplication in numbering, reads as follows:

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

B. Upon the effective date of this act, the Board shall maintain a historic record or registry of all complaints or other referrals complaining of acts or omissions of licensed administrators. The registry shall be maintained in both electronic and paper formats and shall be available for inspection by the public. Such registry shall be organized both in chronological order by the date of the complaint and by the name of the licensed

administrator. The registry shall contain information about the nature of the complaint and the action, if any was taken by the Board. The registry shall also contain the number of complaints made against an individual administrator.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 330.65 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Any decision upon a complaint received by the Oklahoma State Board of Examiners for Nursing Home Administrators against an individual administrator shall be voted upon by a quorum of the Board in an open and public meeting of the Board.

B. At least five (5) working days prior to the Board meeting for which a decision will be made, each member of the Board shall be furnished a complete written report with at least the following information:

1. The exact nature of the complaint(s);
2. The identity of the administrator;
3. The description of the investigation;
4. The identity of the investigator;
5. The identity of the witnesses interviewed or identification of documents or other tangible items examined in the course of the investigation;
6. The identity of all evidence obtained that would directly or by reference establish the ultimate fact of the complained act or omission; and
7. The identity of all evidence that would either explain or mitigate the complained act or omission.

C. Each complaint will be acted upon pursuant to a motion of the presiding officer after an opportunity for discussion of the complaint. Following a discussion of the evidence, any member of the Board may make a motion to continue the investigation to gather additional evidence or make further inquiries. If the motion to

extend the investigation is affirmed by the Board, the vote established good cause to extend the investigation for sixty (60) days. If the motion to extend the investigation fails, the Board shall vote upon the merits of the complaint.

D. A recommendation shall not be made to the Board by a subcommittee of the Board or a staff member of the Board. Each member of the Board shall vote based on the evidence presented in the report presented pursuant to this section.

E. The investigation report furnished to the Board pursuant to this section shall be considered a confidential investigation document until the motion by the presiding officer to vote on the complaint is made at which time the report will be considered a public record. Prior to any Board discussion of the complaint, a copy of the entire report shall be made available to all persons attending the public meeting who request a copy. After the public vote upon the complaint is made and recorded, a full and complete copy of the investigation report shall be maintained as a public record, indexed by docket number or similar internal reference.

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

SECTION 6. 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.

Passed the House of Representatives the 2nd day of March, 2005.

Presiding Officer of the House of
Representatives

Passed the Senate the ____ day of _____, 2005.

Presiding Officer of the Senate