

ENROLLED HOUSE
BILL NO. 1453

By: Denney, McCarter, Nance,
Tibbs and Dank of the House

and

Cain, Leftwich and Paddack
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; modifying definitions; re-creating the Oklahoma State Board of Examiners for Nursing Home Administrators until certain date; 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; amending 74 O.S. 2001, Section 3907, as amended by Section 3, Chapter 93, O.S.L. 2004 (74 O.S. Supp. 2004, Section 3907), which relates to termination of certain statutory entities July 1, 2006; deleting certain entity; 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~~ 2012, 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~~ ten of whom shall be representative of the professions and institutions concerned with the care and treatment of critically ill or infirm elderly patients, ~~two~~ three members representing the general public, and the State Commissioner of Health and the Director of the Department of Human Services, or their designees. The thirteen members shall be appointed by the Governor, with the advice and consent of the Senate.

B. ~~Six~~ Five of the thirteen appointive members shall each be presently an owner ~~and~~ or a licensed administrator and shall have had five (5) years' experience in the nursing home profession as an owner ~~and~~ or administrator. ~~Two~~ Three members shall be representatives of the general public ~~and~~. No members other than the five owners or licensed administrators shall ~~not~~ have ~~any~~ a direct or indirect financial interest in nursing homes. ~~The other members shall not be nursing home owners or administrators and shall have no direct financial interest in nursing homes~~

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

become effective on July 1, 2005. The new members of the Board shall be initially appointed as follows:

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

2. Two members who are owners or licensed administrators, one member representing the general public and two other members shall be appointed for a term of two (2) years to expire on July 1, 2007; and

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

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

SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.58, 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;

~~(c)~~ 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 promulgate rules that include, but are not limited to, provisions for:

- a. establishing a complaint review process, and
- b. creating a formal complaint file;

~~(f)~~ 7. Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state with a view ~~to~~ toward the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of nursing homes 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 guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator;

10. Report a final adverse action against a nursing home 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 within one hundred eighty (180) days from the date the complaint is received by the Board. The investigation may be extended for good cause for a maximum of two extensions of sixty (60) days. A public statement of all grounds for such extension shall be prepared and presented to the entire Board prior to the expiration of the initial one hundred eighty (180) days of the investigation. A majority vote of the Board is required to grant an extension of an investigation.

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

SECTION 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 by the Oklahoma State Board of Examiners for Nursing Home Administrators pursuant to a complaint received against an individual administrator shall be voted upon by a quorum of the Board in an open meeting.

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

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

2. The identity of the administrator;

3. A description of the investigation;

4. The identity of the investigator;

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

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

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

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

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

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

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

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

SECTION 6. AMENDATORY 74 O.S. 2001, Section 3907, as amended by Section 3, Chapter 93, O.S.L. 2004 (74 O.S. Supp. 2004, Section 3907), is amended to read as follows:

Section 3907. The following statutory entities and their successors shall be terminated on July 1, 2006, and all powers, duties and functions shall be abolished one (1) year thereafter:

1. Board of Examiners for Speech-Language Pathology and Audiology as created by Section 1607 of Title 59 of the Oklahoma Statutes;

2. State Board of Veterinary Medical Examiners as created by Section 698.3 of Title 59 of the Oklahoma Statutes;

3. Board of Tests for Alcohol and Drug Influence as created by Section 759 of Title 47 of the Oklahoma Statutes;

4. State Anatomical Board as created by Section 91 of Title 63 of the Oklahoma Statutes;

~~5. Oklahoma State Board of Examiners for Nursing Home Administrators as created by Section 330.52 of Title 63 of the Oklahoma Statutes;~~

~~6. Oklahoma Peanut Commission as created by Section 18-52 of Title 2 of the Oklahoma Statutes;~~

~~7. 6. Sheep and Wool Utilization, Research and Market Development Commission as created by Section 18-181 of Title 2 of the Oklahoma Statutes;~~

~~8. 7. Oklahoma Wheat Utilization, Research and Market Development Commission as created by Section 18-301 of Title 2 of the Oklahoma Statutes;~~

~~9. 8. Board of Examiners in Optometry as created by Section 582 of Title 59 of the Oklahoma Statutes;~~

~~10. 9. State Capitol Preservation Commission as created by Section 4102 of this title;~~

~~11. 10. Commission on County Government Personnel Education and Training as created by Section 130.1 of Title 19 of the Oklahoma Statutes;~~

~~12. 11. Oklahoma Climatological Survey as created by Section 245 of this title;~~

~~13.~~ 12. The State Board of Licensed Social Workers as created by Section 1253 of Title 59 of the Oklahoma Statutes;

~~14.~~ 13. Child Death Review Board as created by Section 1150.2 of Title 10 of the Oklahoma Statutes;

~~15.~~ 14. State Agency Review Committee as created by Section 7005 of ~~this~~ title;

~~16.~~ 15. The Wellness Council as created by Section 1382 of this title;

~~17.~~ 16. Oklahoma Liquefied Petroleum Gas Research, Marketing and Safety Commission as created by Section 420.22 of Title 52 of the Oklahoma Statutes; and

~~18.~~ 17. Board of Chiropractic Examiners as created by Section 161.4 of Title 59 of the Oklahoma Statutes.

SECTION 7. 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 5th day of May, 2005.

Presiding Officer of the House
of Representatives

Passed the Senate the 13th day of April, 2005.

Presiding Officer of the Senate