

EHB 1276

THE STATE SENATE
Monday, April 11, 2005

ENGROSSED

House Bill No. 1276

As Amended

ENGROSSED HOUSE BILL NO. 1276 - By: PETERS of the House and RILEY of the Senate.

[public health and safety - amending seven sections in Title 63 - Oklahoma Hospice Licensing Act - provisional licenses - emergency]

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

1 Health must follow the procedures required by Article I of the
2 Administrative Procedures Act for adoption of rules and regulations
3 in establishing or amending any such schedule of fees; and

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

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

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

9 For health services: \$25.00 to \$250.00

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

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

18 C. The Board shall base its schedule of licensing or permitting
19 fees upon the reasonable costs of review and inspection services
20 rendered in connection with each license and permit program, but
21 shall be within the ranges specified in subsection A of this
22 section, except as may be otherwise specified in this section. The
23 Department shall establish a system of training for all personnel

1 who render review and inspection services in order to assure uniform
2 statewide application of rules and regulations and the Board shall
3 also base the fee on reasonable costs associated with the training
4 of those personnel. Such fees shall not be used in the operation of
5 local health departments whose personnel do not participate fully in
6 applicable State Department of Health training and standardization
7 programs.

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

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

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

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

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

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

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

11 1. Issue, renew, deny, modify, suspend and revoke provisional
12 and permanent licenses for hospice programs pursuant to the
13 provisions of the Oklahoma Hospice Licensing Act;

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

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

22 4. Establish a construction plan review fee for such
23 facilities; provided, however, the amount of such fee shall not

1 exceed the amount set by the Department for construction plan review
2 fees for hospitals;

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

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

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

18 8. Advise, consult and cooperate with other agencies of this
19 state, the federal government, other states and interstate agencies,
20 and with affected groups and political subdivisions to further the
21 purposes of the provisions of the Oklahoma Hospice Licensing Act;

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

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

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

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

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

18 B. An application for a hospice program provisional or
19 permanent license shall be filed on a form prescribed by the
20 Department and shall be accompanied by:

21 1. The provisional or permanent license fee required by Section
22 1-860.15 of this title;

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

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

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

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

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

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

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

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

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

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

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

10 D. A Unless suspended or revoked, a provisional license issued
11 for the operation of a hospice program shall expire automatically
12 one (1) year from the date of issuance. The Department may renew a
13 provisional license for up to one (1) additional year beyond the
14 expiration date if the applicant has complied with the provisions of
15 the Oklahoma Hospice Licensing Act and the rules promulgated by the
16 Board for the operation of a hospice program under a provisional
17 license.

18 E. Unless suspended or revoked, a permanent license issued for
19 the operation of a hospice program, ~~unless sooner suspended or~~
20 ~~revoked,~~ shall expire automatically one (1) year from the date of
21 issuance. At least sixty (60) days prior to the expiration date, an
22 application for license renewal shall be submitted to the Department
23 on forms furnished by the Department. The license shall be renewed

1 if the applicant has complied with the provisions of the Oklahoma
2 Hospice Licensing Act and all rules promulgated by the Board
3 pursuant to the provisions of the Oklahoma Hospice Licensing Act.
4 The application for license renewal shall be accompanied by an
5 update of the plan for delivery of hospice services only if
6 information contained in the plan submitted pursuant to subsection C
7 of this section is no longer applicable ~~or up-to-date~~.

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

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

15 1. Be displayed in a conspicuous place inside the hospice
16 program office;

17 2. Be valid only in the possession of the person or public
18 agency to which it is issued;

19 3. Not be subject to sale, assignment, or other transfer,
20 voluntary or involuntary;

21 4. Not be valid for any hospice program other than the hospice
22 program for which the license was originally issued; and

1 5. Restrict the number of patients in a hospice inpatient
2 facility to the Department-approved occupancy level for each
3 facility.

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

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

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

21 1. Deny a provisional or permanent license to an applicant who
22 does not meet the requirements for licensure pursuant to the
23 provisions of the Oklahoma Hospice Licensing Act;

1 2. Refuse to renew, suspend or revoke a provisional or
2 permanent license to a hospice which is not in compliance with the
3 provisions of the Oklahoma Hospice Licensing Act or with the rules
4 promulgated by the State Board of Health pursuant to the provisions
5 of the Oklahoma Hospice Licensing Act;

6 3. Deny, refuse to renew, suspend or revoke a provisional or
7 permanent license to an applicant or hospice which has a history of
8 noncompliance or incomplete or partial compliance with the
9 provisions of the Oklahoma Hospice Licensing Act or with the rules
10 promulgated by the Board pursuant to the Oklahoma Hospice Licensing
11 Act, or for which there is other satisfactory evidence which
12 demonstrates that the applicant or hospice is unlikely to provide
13 care or treatment to the patients in the care of the hospice in a
14 manner which warrants public trust;

15 4. Deny, refuse to renew, suspend or revoke a provisional or
16 permanent license to an applicant or hospice which has insufficient
17 financial or other resources to the extent that the applicant or
18 hospice is incapable of ensuring or providing adequate care or
19 treatment to the patients; or

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

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

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

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

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

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

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

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

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

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

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

5 1. Initial application fee ~~not exceeding Two Hundred Fifty~~
6 ~~Dollars (\$250.00);~~

7 2. ~~Initial~~ Provisional license fee ~~not exceeding Two Hundred~~
8 ~~Fifty Dollars (\$250.00);~~

9 3. Permanent license fee;

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

12 ~~4.~~ 5. Late renewal fee charges ~~not exceeding Fifty Dollars~~
13 ~~(\$50.00).~~

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

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

20 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 4-6-05 - DO
21 PASS, As Amended.