

THE STATE SENATE
Tuesday, April 12, 2005

Committee Substitute for
ENGROSSED
House Bill No. 1453

COMMITTEE SUBSTITUTE FOR ENGROSSED HOUSE BILL NO. 1453 - By: DENNEY,
McCARTER and NANCE 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;
recreating 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~~;

1 2. "Nursing home administrator" means a person licensed by the
2 State of Oklahoma who is in charge of a facility. A nursing home
3 administrator must devote at least ~~one-third (1/3)~~ one-half (1/2) of
4 such person's working time to on-the-job supervision of such
5 facility; provided that this requirement shall not apply to a
6 nursing home administrator of an intermediate care facility for the
7 mentally retarded with sixteen or fewer beds (ICF-MR/16), in which
8 case the person licensed by the state may be in charge of more than
9 one ICF-MR/16, if such facilities are located within a circle that
10 has a radius of not more than fifteen (15) miles, and the total
11 number of facilities and beds does not exceed six facilities and
12 sixty-four beds. The facilities may be free-standing in a community
13 or may be on campus with a parent institution. The ICF-MR/16 may be
14 independently owned and operated or may be part of a larger
15 institutional ownership and operation;

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

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

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

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

10 C. Effective July 1, 2005, all appointed positions of the
11 current Board shall be deemed vacant. The Governor shall make
12 initial appointments pursuant to the provisions of this subsection
13 upon the effective date of this act. Initial appointments shall
14 become effective on July 1, 2005. The new members of the Board
15 shall be initially appointed as follows:

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

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

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

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

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

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

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

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

22 ~~(c)~~ 3. Issue licenses to individuals determined, after the
23 application of such techniques, to meet such standards, and revoke

1 or suspend licenses previously issued by the Board in any case where
2 the individual holding any such license is determined substantially
3 to have failed to conform to the requirements of such standards-;

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

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

17 6. Receive, investigate, and take appropriate action on any
18 complaint received by the Board from the Department of Human
19 Services or any other regulatory agency. The Board shall promulgate
20 rules that include, but are not limited to, provisions for:

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

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

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

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

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

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

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

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

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

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

4 A. Any decision by the Oklahoma State Board of Examiners for
5 Nursing Home Administrators pursuant to a complaint received against
6 an individual administrator shall be voted upon by a quorum of the
7 Board in an open meeting.

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

- 12 1. The exact nature of the complaint(s);
- 13 2. The identity of the administrator;
- 14 3. A description of the investigation;
- 15 4. The identity of the investigator;
- 16 5. The identity of the witnesses interviewed, unless the
17 witness wishes to remain anonymous and is a current resident, a
18 current staff member, or the personal or legal representative of a
19 current resident;
- 20 6. A description of documents or other tangible items examined
21 in the course of the investigation;
- 22 7. All evidence obtained that would directly or by reference
23 establish the ultimate fact of the complained act or omission; and

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

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

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

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

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

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

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

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

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

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

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

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

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

10 ~~7.~~ 6. Sheep and Wool Utilization, Research and Market
11 Development Commission as created by Section 18-181 of Title 2 of
12 the Oklahoma Statutes;

13 ~~8.~~ 7. Oklahoma Wheat Utilization, Research and Market
14 Development Commission as created by Section 18-301 of Title 2 of
15 the Oklahoma Statutes;

16 ~~9.~~ 8. Board of Examiners in Optometry as created by Section 582
17 of Title 59 of the Oklahoma Statutes;

18 ~~10.~~ 9. State Capitol Preservation Commission as created by
19 Section 4102 of this title;

20 ~~11.~~ 10. Commission on County Government Personnel Education and
21 Training as created by Section 130.1 of Title 19 of the Oklahoma
22 Statutes;

1 ~~12.~~ 11. Oklahoma Climatological Survey as created by Section
2 245 of this title;

3 ~~13.~~ 12. The State Board of Licensed Social Workers as created
4 by Section 1253 of Title 59 of the Oklahoma Statutes;

5 ~~14.~~ 13. Child Death Review Board as created by Section 1150.2
6 of Title 10 of the Oklahoma Statutes;

7 ~~15.~~ 14. State Agency Review Committee as created by Section
8 7005 of this title;

9 ~~16.~~ 15. The Wellness Council as created by Section 1382 of this
10 title;

11 ~~17.~~ 16. Oklahoma Liquefied Petroleum Gas Research, Marketing
12 and Safety Commission as created by Section 420.22 of Title 52 of
13 the Oklahoma Statutes; and

14 ~~18.~~ 17. Board of Chiropractic Examiners as created by Section
15 161.4 of Title 59 of the Oklahoma Statutes.

16 SECTION 7. 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 HEALTH & HUMAN RESOURCES, dated
21 4-7-05 - DO PASS, As Amended and Coauthored.