

CS for SB 1850

1 THE STATE SENATE  
2 Tuesday, February 28, 2006

3 Committee Substitute for  
4 Senate Bill No. 1850

5 COMMITTEE SUBSTITUTE FOR SENATE BILL NO. 1850 - By: CAIN of the  
6 Senate and DENNEY of the House.

7 An Act relating to public health and safety; amending 63  
8 O.S. 2001, Section 330.51, as amended by Section 1, Chapter  
9 168, O.S.L. 2005, 330.52, as amended by Section 2, Chapter  
10 168, O.S.L. 2005, 330.53, 330.54, 330.56, 330.57, 330.58, as  
11 amended by Section 3, Chapter 168, O.S.L. 2005, 330.59,  
12 330.61, 330.62, Section 4, Chapter 168, O.S.L. 2005 and  
13 Section 5, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005,  
14 Sections 330.51, 330.52, 330.58, 330.64 and 330.65), which  
15 relate to the Oklahoma State Board of Examiners for Nursing  
16 Home Administrators; modifying language; deleting  
17 definition; deleting certain authority of qualified mental  
18 retardation professionals; specifying authority of certain  
19 Board; repealing 63 O.S. 2001, Section 330.63, which relates  
20 to the Oklahoma State Board of Examiners for Nursing Home  
21 Administrators Revolving Fund; and providing an effective  
22 date.

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

24 SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.51, as  
25 amended by Section 1, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005,  
26 Section 330.51), is amended to read as follows:

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

29 1. "Board" means the Oklahoma State Board of Examiners for  
30 ~~Nursing Home~~ Long-Term Care Administrators;

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

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

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

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

4           a. ~~have at least one (1) year of experience working~~  
5           ~~directly with persons with mental retardation or other~~  
6           ~~developmental disabilities, and~~

7           b. ~~be one of the following:~~

8           ~~(1) a doctor of medicine or osteopathy licensed to~~  
9           ~~practice in this state,~~

10          ~~(2) a registered nurse, or~~

11          ~~(3) an individual who holds at least a bachelor's~~  
12          ~~degree in a related field.~~

13       SECTION 2.        AMENDATORY        63 O.S. 2001, Section 330.52, as  
14 amended by Section 2, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005,  
15 Section 330.52), is amended to read as follows:

16       Section 330.52 A. There is hereby re-created, to continue  
17 until July 1, 2012, in accordance with the provisions of the  
18 Oklahoma Sunset Law, the Oklahoma State Board of Examiners for  
19 ~~Nursing Home~~ Long-Term Care Administrators. The Oklahoma State  
20 Board of Examiners for ~~Nursing Home~~ Long-Term Care Administrators  
21 shall consist of fifteen (15) members, ten of whom shall be  
22 representative of the professions and institutions concerned with  
23 the care and treatment of critically ill or infirm elderly patients,

1 three members representing the general public, and the State  
2 Commissioner of Health and the Director of the Department of Human  
3 Services, or their designees. The thirteen members shall be  
4 appointed by the Governor, with the advice and consent of the  
5 Senate.

6 B. Five of the thirteen appointive members shall each be  
7 presently an owner or a licensed administrator and shall have had  
8 five (5) years' experience in the nursing home profession as an  
9 owner or administrator. Three members shall be representatives of  
10 the general public. No members other than the five owners or  
11 licensed administrators shall have a direct or indirect financial  
12 interest in nursing homes.

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

19 1. 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 one (1) year to expire on July 1, 2006;

22 2. Two members who are owners or licensed administrators, one  
23 member representing the general public and two other members shall

1 be appointed for a term of two (2) years to expire on July 1, 2007;  
2 and

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

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

10 SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.53, is  
11 amended to read as follows:

12 Section 330.53 A. The Oklahoma State Board of Examiners for  
13 ~~Nursing Home~~ Long-Term Care Administrators shall have authority to  
14 issue licenses to qualified persons as ~~nursing home~~ long-term care  
15 administrators, and shall establish qualification criteria for such  
16 ~~nursing home~~ long-term care administrators.

17 B. No license shall be issued to a person as a ~~nursing home~~  
18 long-term care administrator unless:

19 1. The person shall have submitted evidence satisfactory to the  
20 Board that the person is:

21 a. not less than twenty-one (21) years of age, and

22 b. of reputable and responsible character, and

23 c. ~~in sound physical and mental health; and~~

1           2. The person shall have submitted evidence satisfactory to the  
2 Board of the person's ability to supervise a nursing home or  
3 specialized home.

4           ~~C. 1. A qualified mental retardation professional, as defined~~  
5 ~~in Section 330.51 of this title, shall be determined to meet the~~  
6 ~~educational requirements as a licensed nursing home administrator~~  
7 ~~and shall be eligible to take the National Administrator Board and~~  
8 ~~State Standards Examinations.~~

9           ~~2. A qualified mental retardation professional who meets the~~  
10 ~~requirements of paragraph 1 of this subsection may serve as the~~  
11 ~~licensed administrator for no more than four (4) intermediate care~~  
12 ~~facilities for the mentally retarded with sixteen or less beds (ICF-~~  
13 ~~MR/16).~~

14           SECTION 4.           AMENDATORY           63 O.S. 2001, Section 330.54, is  
15 amended to read as follows:

16           Section 330.54 Each person licensed as a ~~nursing home~~ long-term  
17 care administrator pursuant to the provisions of Section 330.53 of  
18 this title shall be required to pay an annual license fee which  
19 shall be deposited in the Oklahoma State Board of Examiners for  
20 ~~Nursing Home~~ Long-Term Care Administrators Revolving Fund. Such fee  
21 shall be determined by the Oklahoma State Board of Examiners for  
22 ~~Nursing Home~~ Long-Term Care Administrators ~~in an amount not to~~  
23 ~~exceed Two Hundred Dollars (\$200.00).~~ Each such license shall

1 expire on the 31st day of December following its issuance, and shall  
2 be renewable for a calendar year, upon payment of the annual license  
3 fee.

4 SECTION 5. AMENDATORY 63 O.S. 2001, Section 330.56, is  
5 amended to read as follows:

6 Section 330.56 The Oklahoma State Board of Examiners for Long-  
7 Term Care Administrators shall elect from its membership a ~~president~~  
8 chair, ~~vice-president~~ vice-chair, and secretary-treasurer, and shall  
9 adopt rules ~~and regulations~~ to govern its proceedings. Each member  
10 shall be allowed necessary travel expenses, as may be approved by  
11 the Board pursuant to the State Travel Reimbursement Act. The Board  
12 may employ and fix the compensation and duties of necessary  
13 personnel to assist it in the performance of its duties.

14 SECTION 6. AMENDATORY 63 O.S. 2001, Section 330.57, is  
15 amended to read as follows:

16 Section 330.57 The Oklahoma State Board of Examiners for  
17 ~~Nursing Home~~ Long-Term Care Administrators shall have sole and  
18 exclusive authority to determine the qualifications, skill and  
19 fitness of any person to serve as an administrator of a nursing home  
20 or specialized home under the provisions of the Nursing Home Care  
21 Act, ~~Section 1-1901 et seq. of this title.~~ The holder of a license  
22 under the provisions of ~~this act~~ Section 330.51 et seq. of this

1 title shall be deemed qualified to serve as the administrator of a  
2 nursing home or specialized home.

3 SECTION 7. AMENDATORY 63 O.S. 2001, Section 330.58, as  
4 amended by Section 3, Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005,  
5 Section 330.58), is amended to read as follows:

6 Section 330.58 The Oklahoma State Board of Examiners for  
7 ~~Nursing Home~~ Long-Term Care Administrators shall:

8 1. Develop, impose, and enforce standards which must be met by  
9 individuals in order to receive a license as a ~~nursing home~~ long-  
10 term care administrator, which standards shall be designed to ensure  
11 that ~~nursing home~~ long-term care administrators will be individuals  
12 who are of good character and are otherwise suitable, and who, by  
13 training or experience in the field of institutional administration,  
14 are qualified to serve as ~~nursing home~~ long-term care  
15 administrators;

16 2. Develop and apply appropriate techniques, including  
17 examinations and investigations, for determining whether an  
18 individual meets such standards;

19 3. Issue licenses to individuals determined, after the  
20 application of such techniques, to meet such standards. The Board  
21 may deny an initial application, deny a renewal application, and  
22 revoke or suspend licenses previously issued by the Board in any  
23 case where the individual holding any such license is determined

1 substantially to have failed to conform to the requirements of such  
2 standards. The Board may also warn, censure, impose administrative  
3 finer or use other remedies that may be considered to be less than  
4 revocation and suspension;

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

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

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

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

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

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

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

16          10. Report a final adverse action against a ~~nursing home~~ long-  
17 term care administrator to the Healthcare Integrity and Protection  
18 Data Bank pursuant to federal regulatory requirements; ~~and~~

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

21          12. Impose administrative fines, in an amount to be determined  
22 by the Board, against persons who do not comply with the provisions  
23 of this act or the rules adopted by the Board;

1        13. Assess the costs of the hearing process, including attorney  
2 fees;

3        14. Grant short-term provisional licenses to individuals who do  
4 not meet all of the licensing requirements, provided the individual  
5 obtains the services of a currently licensed administrator to act as  
6 a consultant and meets any additional criteria for a provisional  
7 license established by the Board; and

8        15. Order a summary suspension of an administrator's license or  
9 an Administrator in Training (AIT) permit, if in the course of an  
10 investigation it is determined that a licensee or AIT candidate for  
11 licensure has engaged in conduct of a nature that is detrimental to  
12 the health, safety or welfare of the public, and which conduct  
13 necessitates immediate action to prevent further harm.

14        SECTION 8.        AMENDATORY        63 O.S. 2001, Section 330.59, is  
15 amended to read as follows:

16        Section 330.59 It shall be unlawful and a misdemeanor for any  
17 person to act or serve in the capacity as a ~~nursing home~~ long-term  
18 care administrator unless ~~he~~ the person is the holder of a license  
19 as a ~~nursing home~~ long-term care administrator, issued in accordance  
20 with the provisions of this act.

21        SECTION 9.        AMENDATORY        63 O.S. 2001, Section 330.61, is  
22 amended to read as follows:

1 Section 330.61 A. In addition to ~~the annual license~~ fees  
2 necessary to implement the provisions of this act, the Oklahoma  
3 State Board of Examiners for ~~Nursing Home~~ Long-Term Care  
4 Administrators may impose fees for:

- 5 1. Training programs conducted or approved by the Board; and
- 6 2. Education programs conducted or approved by the Board.

7 B. All revenues collected as a result of fees authorized in  
8 this section and imposed by the Board shall be deposited into the  
9 Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term Care  
10 Administrators Revolving Fund.

11 SECTION 10. AMENDATORY 63 O.S. 2001, Section 330.62, is  
12 amended to read as follows:

13 Section 330.62 There is hereby created in the State Treasury a  
14 revolving fund for the Oklahoma State Board of Examiners for ~~Nursing~~  
15 ~~Home~~ Long-Term Care Administrators to be designated the "Oklahoma  
16 State Board of Examiners for ~~Nursing Home~~ Long-Term Care  
17 Administrators Revolving Fund". The fund shall be a continuing  
18 fund, not subject to fiscal year limitations, and shall consist of  
19 such sources of income as are provided by law. All monies accruing  
20 to the credit of said fund are hereby appropriated and may be  
21 budgeted and expended by the Oklahoma State Board of Examiners for  
22 ~~Nursing Home~~ Long-Term Care Administrators to carry out the duties  
23 established by law. Expenditures from said fund shall be made upon

1 warrants issued by the State Treasurer against claims filed as  
2 prescribed by law with the Director of State Finance for approval  
3 and payment.

4 SECTION 11. AMENDATORY Section 4, Chapter 168, O.S.L.  
5 2005 (63 O.S. Supp. 2005, Section 330.64), is amended to read as  
6 follows:

7 Section 330.64 A. Each investigation of a complaint received  
8 by the Oklahoma State Board of Examiners for ~~Nursing Home~~ Long-Term  
9 Care Administrators shall be completed within one hundred eighty  
10 (180) days from the date the complaint is received by the Board.  
11 The investigation may be extended for good cause for a maximum of  
12 two extensions of sixty (60) days. A public statement of all  
13 grounds for such extension shall be prepared and presented to the  
14 entire Board prior to the expiration of the initial one hundred  
15 eighty (180) days of the investigation. A majority vote of the  
16 Board is required to grant an extension of an investigation.

17 B. ~~Upon the effective date of this act~~ Effective May 13, 2005,  
18 the Board shall create and maintain a registry of all complaints or  
19 other referrals complaining of acts or omissions of licensed  
20 administrators. The registry shall be maintained in both electronic  
21 and paper formats and shall be available for inspection by the  
22 public. Such registry shall be organized in chronological order  
23 both by the date of the complaint and by the name of the licensed

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

5 SECTION 12. AMENDATORY Section 5, Chapter 168, O.S.L.  
6 2005 (63 O.S. Supp. 2005, Section 330.65), is amended to read as  
7 follows:

8 Section 330.65 A. Any decision by the Oklahoma State Board of  
9 Examiners for ~~Nursing Home~~ Long-Term Care Administrators pursuant to  
10 a complaint received against an individual administrator shall be  
11 voted upon by a quorum of the Board in an open meeting.

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

- 16 1. The exact nature of the complaint(s);
- 17 2. The identity of the administrator;
- 18 3. A description of the investigation;
- 19 4. The identity of the investigator;
- 20 5. The identity of the witnesses interviewed, unless the  
21 witness wishes to remain anonymous and is a current resident, a  
22 current staff member, or the personal or legal representative of a  
23 current resident;

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

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

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

7           C. Each complaint shall be acted upon pursuant to a motion  
8 after an opportunity for discussion by the Board. Following  
9 discussion of the evidence, any member of the Board may make a  
10 motion to continue the investigation in order to gather additional  
11 evidence or to make further inquiries. The investigation may be  
12 extended for sixty (60) days upon a finding of good cause as  
13 provided for in subsection A of Section ~~4~~ 330.64 of this ~~act~~ title.  
14 If the motion to extend the investigation fails, the Board shall  
15 vote upon the merits of the complaint.

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

20           E. The investigation report furnished to the Board pursuant to  
21 the provisions of this section shall be considered a confidential  
22 investigation document until a motion to vote on the complaint is  
23 made, at which time the report shall be considered a public record.

1 After the vote upon the complaint is made and recorded, the Board  
2 shall maintain as a public record a full and complete copy of the  
3 investigation report indexed by docket number or similar internal  
4 reference.

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

16 SECTION 13. REPEALER 63 O.S. 2001, Section 330.63, is  
17 hereby repealed.

18 SECTION 14. This act shall become effective November 1, 2006.

19 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated  
20 2-16-06 - DO PASS, As Amended and Coauthored.