THE STATE SENATE
Monday, February 28, 2005

Senate Bill No. 49

As Amended

SENATE BILL NO. 49 - By: CAIN of the Senate and DENNEY of the House.

[public health and safety – long-term care facility – temporary managers – effective date]

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1914.2, as amended by Section 8, Chapter 230, O.S.L. 2002 (63 O.S. Supp. 2004, Section 1-1914.2), is amended to read as follows:

Section 1-1914.2 A. The State Commissioner of Health may place a qualified person in a facility as a temporary manager to assume operating control of the facility and to ensure that the health and safety of the residents of the facility are protected when any of the following conditions exist:

1. The conditions at the facility pose immediate jeopardy to the health and safety of the residents of the facility;

2. The facility is operating without a license;

3. The State Department of Health has suspended, revoked or refused to renew the existing license of the facility;

4. The financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility;

(Bold face denotes Committee Amendments)

5. The facility has closed or has informed the Department that it intends to close and adequate arrangements for the relocation of residents have not been made at least thirty (30) days prior to closure; or

6. The Department has terminated certification status under Medicare/Medicaid.

B. The Department shall notify the owner or operator of the action taken, the reason or reasons why such action was taken, and the right of the owner or operator to have a hearing on the matter.

C. Any owner or operator subject to placement of a temporary manager may appeal such action by filing a petition for hearing with the district court within five (5) days of the appointment of a temporary manager. The court shall conduct the hearing within ~~five (5) working~~ ten (10) days of ~~such action by~~ the ~~Department~~ filing of such petition. On the basis of the hearing, the court may continue the order in effect, revoke it or modify it. The petition for hearing, when docketed, shall have priority over all cases pending on the docket except criminal cases.

D. All funds due or available to the facility from any source, to include funds held by a predecessor temporary manager of the facility, during the pendency of the temporary management shall be made available to the temporary manager who shall use the funds to ensure the health and safety of the residents of the facility.

Unless prior written approval has been obtained from the Commissioner for such expenditure, any use of funds for a purpose other than to ensure the health and safety of the residents of the facility shall constitute a breach of the temporary manager's fiduciary duty and a violation of the Nursing Home Care Act.

E. The Commissioner shall establish qualifications for persons to be appointed as temporary managers and shall maintain a list of all such qualified persons. The Commissioner may appoint any person from the list to serve as a temporary manager, provided that the Commissioner shall not appoint any owner or affiliate of the facility as its temporary manager.

F. The temporary manager shall make provisions for the continued protection of the health and safety of all residents of the facility. The temporary manager appointed pursuant to the Nursing Home Care Act shall exercise those powers and shall perform those duties set out by the Commissioner in writing. The Commissioner shall provide for the temporary manager to have sufficient power and duties to ensure that the residents of the facility receive adequate care.

G. If funds are insufficient to meet the expenses of performing the powers and duties conferred on the temporary manager, the temporary manager may borrow the funds or contract for indebtedness as necessary; provided, any such indebtedness shall not be construed

to be a debt of the state or made on behalf of the state. The State of Oklahoma is not liable, directly or indirectly, for any liability incurred by any temporary manager in the performance of the ~~managers'~~ manager's official duties pursuant to law. The State Board of Health shall, by rule, establish a fund, to be drawn out of the discretionary funds of the Department, to assist temporary managers in the continuation of care of the residents of a facility where, in the judgment of the Commissioner, funds are not available from other sources; provided, any such advances by the Department shall be repaid by the temporary manager at the time the final account is rendered. If such advances are not repaid in full, any amount not repaid shall constitute a lien against any and all assets of any owner and shall also constitute a lien as provided in paragraph 4 of subsection L of this section.

H. The Commissioner shall set the compensation of the temporary manager, who shall be paid by the facility.

I. A temporary manager may be held liable in a personal capacity only for the manager's gross negligence, intentional acts or breaches of fiduciary duty. The Commissioner may require a temporary manager to post a bond.

J. The Department shall issue a conditional license to a facility in which a temporary manager is placed. The duration of a

license issued under this section is limited to the duration of the temporary managership.

K. The Commissioner shall require that the temporary manager report to the Department on a regular basis as to the progress of the facility in reaching substantial compliance with the Nursing Home Care Act and the rules promulgated thereto, and the establishment of mechanisms which will ensure the continued compliance of the facility.

L. 1. The Commissioner may release the temporary manager under any of the following circumstances:

a. the Commissioner determines that the facility is and will continue to be in substantial compliance with the Nursing Home Care Act and rules promulgated thereto,

b. a receiver or bankruptcy trustee is appointed,

c. the Commissioner appoints a new temporary manager,

d. a new owner, operator, or manager is licensed,

e. the Department, the temporary manager, or the receiver closes the facility through an orderly transfer of the residents, or

f. an administrative hearing or court order ends the temporary manager appointment.

2. a. Within thirty (30) days after release, the temporary manager shall ~~give~~ render to the Department a complete

accounting of all property of which the temporary manager has taken possession, of all funds collected, and of the expenses of the temporary managership, to include, if requested by the Department, copies of all documents supporting the reasonableness and necessity of such expenditures.

b. The rendition of such accounting may be extended only by order of the Commissioner for cause and shall in no event be extended more than one hundred twenty (120) days after release of the temporary manager.

c. Failure to timely render a complete final accounting in accordance with generally accepted accounting practices shall constitute a breach of the temporary manager's fiduciary duties.

d. Upon a temporary manager's default in the timely rendition of a complete final accounting, the Commissioner shall enter an order that the temporary manager is personally liable for all amounts or monies collected for which a final accounting is not made. Such order for disgorgement or remittance directed to a temporary manager may be filed as a judgment in any district court in the State of Oklahoma, and shall not

be dischargeable in bankruptcy or other insolvency proceeding.

3. After a complete accounting, and payment of reasonable expenses incurred as a result of the temporary managership, the Commissioner shall order payment of the surplus to the owner. If funds are insufficient to pay reasonable expenses incurred as a result of the temporary managership, the owner shall be liable for the deficiency. Any funds recovered from the owner shall be used to reimburse any unpaid expenses due and owing as a result of the temporary managership.

4. In order to protect the health, welfare and safety of the residents of any nursing facility for which a temporary manager has been appointed, the Department is authorized to provide the monies from any funds appropriated or otherwise made available to the Department to protect the residents of the nursing facility. The Department shall have a lien for any payment made pursuant to this section upon any beneficial interest, direct or indirect, of any owner in the following property:

a. the building in which the facility is located,

b. any fixtures, equipment or goods used in the operation of the facility,

c. the land on which the facility is located, or

d. the proceeds from any conveyance of property described in subparagraphs a, b, or c of this paragraph made by the owner prior to the order placing the temporary manager.

M. Nothing in the Nursing Home Care Act shall be deemed to relieve any owner, administrator or employee of a facility in which a temporary manager is placed of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator or employee prior to the appointment of a temporary manager; provided, nothing contained in the Nursing Home Care Act shall be construed to suspend during the temporary managership any obligation of the owner, administrator or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee or any other person for the payment of mortgages or liens.

N. The Commissioner may institute any legal proceeding to recover any monies or other thing of value determined to have been expended unnecessarily or in an excessive amount necessary for the maintenance of the health and safety of the residents of a facility, or that was expended in violation of the temporary manager's fiduciary duties, or which expenditure was otherwise unlawful under state or federal law. Such legal proceeding for wrongful expenditure of these funds may be brought against the temporary

manager and against any other person or entity who receives such wrongful expenditure and who was not a bona fide vendor in good faith to the temporary manager, or who was not otherwise a bona fide recipient of such funds in good faith. Costs for such an action by the Department for funds wrongfully expended shall be awarded if the Department prevails, and shall include all court costs, interest at the statutory rate from and after the date of the wrongful expenditure, and a reasonable attorney fee. The temporary manager and the bad faith vendor/recipient shall be jointly and severally liable for all funds wrongfully expended and for all related litigation costs.

SECTION 2. This act shall become effective November 1, 2005.

COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-16-05 - DO PASS, As Amended and Coauthored.