

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 COMMITTEE SUBSTITUTE  
4 FOR

5 HOUSE BILL NO. 2642

6 By: Peters

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending  
9 63 O.S. 2001, Sections 1-1961 and 1-1962, as amended  
10 by Sections 1 and 2, Chapter 249, O.S.L. 2004 (63  
11 O.S. Supp. 2007, Sections 1-1961 and 1-1962), which  
12 relate to the Home Care Act; adding definitions;  
13 providing training requirements for personal home  
14 care assistants; requiring training plan for personal  
15 home care assistants; providing requirements for  
16 plan; prohibiting certain acts; providing for  
17 supervisory visits; prohibiting employment of certain  
18 persons; providing for background check; and  
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1961, as  
22 amended by Section 1, Chapter 249, O.S.L. 2004 (63 O.S. Supp. 2007,  
23 Section 1-1961), is amended to read as follows:

24 Section 1-1961. As used in the Home Care Act:

- 25 1. "Board" means the State Board of Health;
- 26 2. "Certification" means verification of appropriate training  
27 and competence established by the State Board of Health by rules

1 promulgated pursuant to the Home Care Act for home health aides and  
2 home care agency administrators;

3 3. "Department" means the State Department of Health;

4 4. "Home care agency" means any sole proprietorship,  
5 partnership, association, corporation or other organization which  
6 administers, offers or provides home care services, for a fee or  
7 pursuant to a contract for such services, to clients in their place  
8 of residence. The term "home care agency" shall not include:

9 a. individuals who contract with the Department of Human  
10 Services to provide personal care services, provided  
11 such individuals shall not be exempt from  
12 certification as home health aides,

13 b. organizations that contract with the Oklahoma Health  
14 Care Authority as Intermediary Services Organizations  
15 (ISO) to provide federal Internal Revenue Service  
16 fiscal and supportive services to Consumer-Directed  
17 Personal Assistance Supports and Services (CD-PASS)  
18 waiver program participants who have employer  
19 responsibility for hiring, training, directing and  
20 managing an individual personal care attendant, or

21 c. CD-PASS waiver program employer participants;

22 5. "Home care services" means skilled or personal care services  
23 provided to clients in their place of residence for a fee;

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1       6. "Home health aide" means an individual who provides personal  
2 care to clients in their temporary or permanent place of residence  
3 for a fee;

4       7. "Home care agency administrator" means a person who  
5 operates, manages, or supervises, or is in charge of a home care  
6 agency;

7       8. "Personal care" means assistance with dressing, bathing,  
8 ambulation, exercise or other personal needs; and

9       9. "Personal home care assistant" means an individual employed  
10 by a private duty agency who provides nonmedical personal care to  
11 clients in their temporary or permanent place of residence for a  
12 fee;

13       10. "Private duty agency" means a home care agency that is not  
14 certified by Medicare; and

15       11. "Skilled care" means home care services performed on a  
16 regular basis by a trained Respiratory Therapist/Technician or by a  
17 person currently licensed by this state, including but not limited  
18 to a Licensed Practical Nurse, Registered Nurse, Physical Therapist,  
19 Occupational Therapist, Speech Therapist, or Social Worker.

20       SECTION 2.       AMENDATORY       63 O.S. 2001, Section 1-1962, as  
21 amended by Section 2, Chapter 249, O.S.L. 2004 (63 O.S. Supp. 2007,  
22 Section 1-1962), is amended to read as follows:

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1 Section 1-1962. A. No home care agency as such term is defined  
2 by this act shall operate without first obtaining a license as  
3 required by the Home Care Act.

4 B. 1. No employer or contractor, except as otherwise provided  
5 by this subsection, shall employ or contract with any individual as  
6 a ~~home health aide~~ personal home care assistant for more than four  
7 (4) months, on a full-time, temporary, per diem or other basis,  
8 unless ~~such~~ the individual has completed agency-based personal care  
9 training supervised by a registered nurse. The agency shall  
10 document the dates and hours of personal home care assistant  
11 training received by the personal home care assistant in the  
12 assistant's personnel file.

13 2. The agency shall develop a written training plan for  
14 personal home care assistants, approved by the nursing supervisor,  
15 which shall include, at a minimum, the following requirements:

- 16 a. observation, reporting, and documentation of client  
17 status and the care or services furnished,
- 18 b. maintenance of a clean, safe, and healthy environment,
- 19 c. recognizing an emergency and necessary emergency  
20 procedures,
- 21 d. safe bathing techniques,
- 22 e. assistance in toileting,
- 23 f. safe transfer techniques and ambulation,
- 24 g. assistance with feeding and fluid intake, and

1           h. client rights and responsibilities, the need for  
2           respect for the client, and the client's privacy and  
3           property.

4           3. No personal home care assistant shall provide personal care  
5 services to a client until the assistant has demonstrated competency  
6 to the nursing supervisor in the skills required by the plan of  
7 service.

8           4. Supervisory visits shall be made according to the client  
9 need, as determined by the nursing supervisor, at least once every  
10 six (6) months.

11           5. No personal home care assistant shall provide services to a  
12 client until a criminal history background check is performed in  
13 accordance with Section 1-1950.1 of this title and the assistant is  
14 found to have no convictions of the crimes listed in subsection F of  
15 Section 1-1950.1 of this title.

16           6. No home care agency may employ a personal home care  
17 assistant listed on the Department of Human Services Community  
18 Services Worker Registry.

19           C. No Medicare-certified employer or contractor, except as  
20 otherwise provided by this subsection, shall employ or contract with  
21 any individual as a home health aide for more than four (4) months,  
22 on a full-time, temporary, per diem or other basis, unless the  
23 individual is a licensed health professional or unless such the  
24 individual has satisfied the requirements for certification and

1 placement on the home health aide registry maintained by the State  
2 Department of Health, ~~and~~.

3 ~~2.~~ 1. Any person in the employment of a home care agency as  
4 a home health aide on June 30, 1992, with continuous employment  
5 through June 30, 1993, shall be granted home health aide  
6 certification by the Department on July 1, 1993. The home care  
7 agency shall maintain responsibility for assurance of specific  
8 competencies of the home health aide and shall only assign the home  
9 health aide to tasks for which the aide has been determined to be  
10 competent.

11 ~~b.~~ 2. Any home health aide employed between the dates of July  
12 1, 1992, and June 30, 1993, shall be eligible for certification by  
13 passing a competency evaluation and testing as required by the  
14 Department.

15 ~~c.~~ 3. Any home health aide employed on and after July 1, 1996,  
16 shall complete any specified training, competency evaluation and  
17 testing required by the Department.

18 ~~C.~~ D. The provisions of the Home Care Act shall not apply to:

19 1. A person acting alone who provides services in the home of a  
20 relative, neighbor or friend;

21 2. A person who provides maid services only;

22 3. A nurse service or home aide service conducted by and for  
23 the adherents to any religious denomination, the tenets of which  
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1 include reliance on spiritual means through prayer alone for  
2 healing;

3 4. A person providing hospice services pursuant to the Oklahoma  
4 Hospice Licensing Act;

5 5. A nurse-midwife;

6 6. An individual, agency, or organization that contracts with  
7 the Oklahoma Health Care Authority to provide services under the  
8 Home and Community-Based Waiver for persons with mental retardation  
9 or that contracts with the Department of Human Services to provide  
10 community services to persons with mental retardation; provided,  
11 that staff members and individuals providing such services shall  
12 receive a level of training, approved by the Department of Human  
13 Services, which meets or exceeds the level required pursuant to the  
14 Home Care Act. An individual, agency or organization otherwise  
15 covered under the Home Care Act shall be exempt from the act only  
16 for those paraprofessional direct care services provided under  
17 contracts referenced in this paragraph;

18 7. An individual, agency or organization that provides or  
19 supports the provision of personal care services to an individual  
20 who performs individual employer responsibilities of hiring,  
21 training, directing and managing a personal care attendant as part  
22 of the Oklahoma Health Care Authority Consumer-Directed Personal  
23 Assistance Supports and Services (CD-PASS) waiver program. An  
24 individual, agency or organization otherwise covered under the

1 provisions of the Home Care Act shall be exempt from the act only  
2 for those paraprofessional direct care services provided under  
3 Oklahoma Health Care Authority contracts referenced in this  
4 paragraph, but shall not be exempt from the criminal history  
5 background check required under the Home Care Act and Section 1-  
6 1950.1 of this title for other paraprofessional direct care service  
7 providers. A personal care attendant hired by a consumer under the  
8 CD-PASS program shall be exempt from certification as a home health  
9 aide, provided such personal care attendant receives the training  
10 required and approved by the Department of Human Services;

11 8. An individual who only provides Medicaid home- and  
12 community-based personal care services pursuant to a contract with  
13 the Oklahoma Health Care Authority; or

14 9. An individual who:

- 15 a. is employed by a licensed home care agency exclusively
- 16 to provide personal care services on a live-in basis,
- 17 b. has no convictions pursuant to a criminal history
- 18 investigation as provided in Section 1-1950.1 of this
- 19 title,
- 20 c. is being continuously trained by a registered nurse to
- 21 provide care that is specific to the needs of the
- 22 particular client receiving the care, and
- 23 d. is supervised by a registered nurse via an on-site
- 24 visit at least once each month.

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SECTION 3. This act shall become effective November 1, 2008.

51-2-10384      SAB      02/27/08