

1 STATE OF OKLAHOMA

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

3 SUBCOMMITTEE RECOMMENDATION  
4 FOR

5 HOUSE BILL NO. 2754

6 By: Dank

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to long-term care; amending 63 O.S.  
9 2001, Section 330.58, as last amended by Section 11,  
10 Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2007, Section  
11 330.58), which relates to duties of the Oklahoma  
12 State Board of Examiners for Long-Term Care  
13 Administrators; providing for the generation of  
14 complaints by the Board or staff; specifying certain  
15 enforcement; amending Section 5, Chapter 168, O.S.L.  
16 2005, as amended by Section 12, Chapter 291, O.S.L.  
17 2006 (63 O.S. Supp. 2007, Section 330.65), which  
18 relates to complaint procedures; providing subpoena  
19 power to the Director of the Board; and providing an  
20 effective date.

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

22 SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.58, as  
23 last amended by Section 11, Chapter 347, O.S.L. 2007 (63 O.S. Supp.  
24 2007, Section 330.58), is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for Long-  
Term Care Administrators shall:

1. Develop, impose, and enforce standards which must be met by  
individuals in order to receive a license as a long-term care  
administrator, which standards shall be designed to ensure that

1 long-term care administrators will be individuals who are of good  
2 character and are otherwise suitable, and who, by training or  
3 experience in the field of institutional administration, are  
4 qualified to serve as long-term care administrators;

5 2. Develop and apply appropriate techniques, including  
6 examinations and investigations, for determining whether an  
7 individual meets such standards;

8 3. Issue licenses to individuals determined, after the  
9 application of such techniques, to meet such standards. The Board  
10 may deny an initial application, deny a renewal application, and  
11 revoke or suspend licenses previously issued by the Board in any  
12 case where the individual holding any such license is determined  
13 substantially to have failed to conform to the requirements of such  
14 standards. The Board may also warn, censure, impose administrative  
15 fines or use other remedies that may be considered to be less than  
16 revocation and suspension. Administrative fines imposed pursuant to  
17 this section shall not exceed One Thousand Dollars (\$1,000.00) per  
18 violation. The Board shall consider the scope, severity and  
19 repetition of the violation and any additional factors deemed  
20 appropriate by the Board when issuing a fine;

21 4. Establish and carry out procedures designed to ensure that  
22 individuals licensed as long-term care administrators will, during  
23 any period that they serve as such, comply with the requirements of  
24 such standards;

1           5. Receive, investigate, and take appropriate action with  
2 respect to any charge or complaint filed with the Board to the  
3 effect that any individual licensed as a long-term care  
4 administrator has failed to comply with the requirements of such  
5 standards. The long-term care ombudsman program of the Aging  
6 Services Division of the Department of Human Services shall be  
7 notified of all complaint investigations of the Board so that they  
8 may be present at any such complaint investigation for the purpose  
9 of representing long-term care facility consumers;

10           6. Receive, investigate, and take appropriate action on any  
11 complaint or referral received by the Board from the Department of  
12 Human Services or any other regulatory agency. Complaints may also  
13 be generated by the Board or staff. A complaint shall not be  
14 published on the website of the Oklahoma State Board of Examiners  
15 for Long-Term Care Administrators unless there is a finding by the  
16 Board that the complaint has merit. The Board shall promulgate  
17 rules that include, but are not limited to, provisions for:

- 18           a. establishing a complaint review process, and
- 19           b. creating a formal complaint file;

20           7. Enforce the provisions of Sections 330.51 through 330.65 of  
21 this title against all persons who are in violation thereof  
22 including, but not limited to, individuals who are practicing or  
23 attempting to practice as long-term care administrators without  
24 proper authorization from the Board;

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

7        ~~8.~~ 9. Cooperate with and provide assistance when necessary to  
8 state regulatory agencies in investigations of complaints;

9        ~~9.~~ 10. Develop a code of ethics for long-term care  
10 administrators which includes, but is not limited to, a statement  
11 that 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.~~ 11. Report a final adverse action against a long-term care  
16 administrator to the Healthcare Integrity and Protection Data Bank  
17 pursuant to federal regulatory requirements;

18        ~~11.~~ 12. Refer completed investigations to the proper law  
19 enforcement authorities for prosecution of criminal activities;

20        ~~12.~~ 13. Impose administrative fines, in an amount to be  
21 determined by the Board, against persons who do not comply with the  
22 provisions of this act or the rules adopted by the Board.  
23 Administrative fines imposed pursuant to this section shall not  
24 exceed One Thousand Dollars (\$1,000.00) per violation. The Board

1 shall consider the scope, severity and repetition of the violation  
2 and any additional factors deemed appropriate by the Board when  
3 issuing a fine;

4 ~~13.~~ 14. Assess the costs of the hearing process, including  
5 attorney fees;

6 ~~14.~~ 15. Grant short-term provisional licenses to individuals  
7 who do not meet all of the licensing requirements, provided the  
8 individual obtains the services of a currently licensed  
9 administrator to act as a consultant and meets any additional  
10 criteria for a provisional license established by the Board;

11 ~~15.~~ 16. Order a summary suspension of an administrator's  
12 license or an Administrator in Training (AIT) permit, if, in the  
13 course of an investigation, it is determined that a licensee or AIT  
14 candidate for licensure has engaged in conduct of a nature that is  
15 detrimental to the health, safety or welfare of the public, and  
16 which conduct necessitates immediate action to prevent further harm;  
17 and

18 ~~16.~~ 17. The Oklahoma State Board of Examiners for Long-Term  
19 Care Administrators shall promulgate rules governing the employment  
20 of assistant administrators for long-term care facilities including,  
21 but not limited to, minimum qualifications.

22 SECTION 2. AMENDATORY Section 5, Chapter 168, O.S.L.  
23 2005, as amended by Section 12, Chapter 291, O.S.L. 2006 (63 O.S.  
24 Supp. 2007, Section 330.65), is amended to read as follows:

1 Section 330.65 A. Any decision by the Oklahoma State Board of  
2 Examiners for Long-Term Care Administrators pursuant to a complaint  
3 received against an individual administrator shall be voted upon by  
4 a quorum of the Board in an open meeting.

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

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

23 C. Each complaint shall be acted upon pursuant to a motion  
24 after an opportunity for discussion by the Board. Following

1 discussion of the evidence, any member of the Board may make a  
2 motion to continue the investigation in order to gather additional  
3 evidence or to make further inquiries. The investigation may be  
4 extended for sixty (60) days upon a finding of good cause as  
5 provided for in subsection A of Section 330.64 of this title. If  
6 the motion to extend the investigation fails, the Board shall vote  
7 upon the merits of the complaint.

8 D. The Director of the Board shall have the power to issue  
9 subpoenas for the attendance of witnesses and the furnishing of  
10 information, including documents, required by the Board or requested  
11 by the complainant or the respondent.

12 E. 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.~~ F. The investigation report furnished to the Board pursuant  
17 to 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.

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1        ~~F.~~ G. Notice of a Board decision issued to a long-term care  
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 long-term care 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 long-  
8 term care administrator. Any party aggrieved by a decision of the  
9 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 3. This act shall become effective November 1, 2008.

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14            51-2-10117        SAB        02/18/08

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