

1 ENGROSSED HOUSE  
2 BILL NO. 2754

By: Dank and Denney of the  
House

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4 Leftwich of the Senate  
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7 An Act relating to long-term care; amending 63 O.S.  
8 2001, Section 330.58, as last amended by Section 11,  
9 Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2007, Section  
10 330.58), which relates to duties of the Oklahoma  
11 State Board of Examiners for Long-Term Care  
12 Administrators; providing for the generation of  
13 complaints by the Board or staff; specifying certain  
14 enforcement; amending Sections 4 and 5, Chapter 168,  
15 O.S.L. 2005, as amended by Sections 11 and 12,  
16 Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007,  
17 Sections 330.64 and 330.65), which relate to long-  
18 term care administrators; eliminating requirements  
19 for extension of certain time period; modifying  
20 complaint procedures; establishing a probable cause  
21 committee to review complaints and make  
22 recommendations; specifying certain powers of the  
23 Director of the Oklahoma State Board of Examiners for  
24 Long-Term Care Administrators; providing for  
confidentiality of records; specifying exceptions;  
providing for informal resolution process; providing  
for notice and hearing; providing for certain  
recusal; and providing an effective date.

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

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

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

3 1. Develop, impose, and enforce standards which must be met by  
4 individuals in order to receive a license as a long-term care  
5 administrator, which standards shall be designed to ensure that  
6 long-term care administrators will be individuals who are of good  
7 character and are otherwise suitable, and who, by training or  
8 experience in the field of institutional administration, are  
9 qualified to serve as long-term care administrators;

10 2. Develop and apply appropriate techniques, including  
11 examinations and investigations, for determining whether an  
12 individual meets such standards;

13 3. Issue licenses to individuals determined, after the  
14 application of such techniques, to meet such standards. The Board  
15 may deny an initial application, deny a renewal application, and  
16 revoke or suspend licenses previously issued by the Board in any  
17 case where the individual holding any such license is determined  
18 substantially to have failed to conform to the requirements of such  
19 standards. The Board may also warn, censure, impose administrative  
20 fines or use other remedies that may be considered to be less than  
21 revocation and suspension. Administrative fines imposed pursuant to  
22 this section shall not exceed One Thousand Dollars (\$1,000.00) per  
23 violation. The Board shall consider the scope, severity and  
24

1 repetition of the violation and any additional factors deemed  
2 appropriate by the Board when issuing a fine;

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

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

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

24 a. establishing a complaint review process, and

1           b.     creating a formal complaint file;

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

7           8.     Conduct a continuing study and investigation of long-term  
8 care facilities and administrators of long-term care facilities  
9 within the state with a view toward the improvement of the standards  
10 imposed for the licensing of such administrators and of procedures  
11 and methods for the enforcement of such standards with respect to  
12 administrators of long-term care facilities who have been licensed;

13         ~~8.~~ 9.     Cooperate with and provide assistance when necessary to  
14 state regulatory agencies in investigations of complaints;

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

21         ~~10.~~ 11.   Report a final adverse action against a long-term care  
22 administrator to the Healthcare Integrity and Protection Data Bank  
23 pursuant to federal regulatory requirements;

1       ~~11.~~ 12. Refer completed investigations to the proper law  
2 enforcement authorities for prosecution of criminal activities;

3       ~~12.~~ 13. Impose administrative fines, in an amount to be  
4 determined by the Board, against persons who do not comply with the  
5 provisions of this act or the rules adopted by the Board.

6 Administrative fines imposed pursuant to this section shall not  
7 exceed One Thousand Dollars (\$1,000.00) per violation. The Board  
8 shall consider the scope, severity and repetition of the violation  
9 and any additional factors deemed appropriate by the Board when  
10 issuing a fine;

11       ~~13.~~ 14. Assess the costs of the hearing process, including  
12 attorney fees;

13       ~~14.~~ 15. Grant short-term provisional licenses to individuals  
14 who do not meet all of the licensing requirements, provided the  
15 individual obtains the services of a currently licensed  
16 administrator to act as a consultant and meets any additional  
17 criteria for a provisional license established by the Board;

18       ~~15.~~ 16. Order a summary suspension of an administrator's  
19 license or an Administrator in Training (AIT) permit, if, in the  
20 course of an investigation, it is determined that a licensee or AIT  
21 candidate for licensure has engaged in conduct of a nature that is  
22 detrimental to the health, safety or welfare of the public, and  
23 which conduct necessitates immediate action to prevent further harm;  
24 and

1        ~~16.~~ 17. The Oklahoma State Board of Examiners for Long-Term  
2 Care Administrators shall promulgate rules governing the employment  
3 of assistant administrators for long-term care facilities including,  
4 but not limited to, minimum qualifications.

5        SECTION 2.        AMENDATORY        Section 4, Chapter 168, O.S.L.  
6 2005, as amended by Section 11, Chapter 291, O.S.L. 2006 (63 O.S.  
7 Supp. 2007, Section 330.64), is amended to read as follows:

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

19        B. Effective May 13, 2005, the Board shall create and maintain  
20 a registry of all verified complaints or other referrals complaining  
21 of acts or omissions of licensed administrators that have been  
22 verified. The registry shall be maintained in both electronic and  
23 paper formats and shall be available for inspection by the public.  
24 Such registry shall be organized in chronological order both by the

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

6 SECTION 3. AMENDATORY Section 5, Chapter 168, O.S.L.  
7 2005, as amended by Section 12, Chapter 291, O.S.L. 2006 (63 O.S.  
8 Supp. 2007, Section 330.65), is amended to read as follows:

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

13 B. ~~At least five (5) working days prior~~ Any person or agency  
14 may submit to the Board a complaint against a long-term care  
15 administrator. Complaints may also be generated by the Board or  
16 staff meeting at which a decision will be made, each member of the  
17 Board shall be furnished a complete written report which shall  
18 include, but not be limited to, the following information:

- 19 1. ~~The exact nature of the complaint(s);~~
- 20 2. ~~The identity of the administrator;~~
- 21 3. ~~A description of the investigation;~~
- 22 4. ~~The identity of the investigator;~~
- 23 5. ~~The identity of the witnesses interviewed, unless the~~  
24 ~~witness wishes to remain anonymous and is a current resident, a~~

1 ~~current staff member, or the personal or legal representative of a~~  
2 ~~current resident;~~

3 ~~6. A description of documents or other tangible items examined~~  
4 ~~in the course of the investigation;~~

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

7 ~~8. All evidence that would either explain or mitigate the~~  
8 ~~complained act or omission.~~

9 ~~C. Each complaint shall be acted upon pursuant to a motion~~  
10 ~~after an opportunity for discussion by the A committee or committees~~  
11 ~~of three Board members appointed by the chair. Following discussion~~  
12 ~~of the evidence, any member of the Board shall review complaints to~~  
13 ~~determine if probable cause exists that a violation of this act or~~  
14 ~~the rules of the Board has occurred. No committee shall be entirely~~  
15 ~~composed of board members who are long-term care administrators.~~  
16 ~~The committee may investigate the allegations, and, if this~~  
17 ~~committee determines that such probable cause exists, this committee~~  
18 ~~shall draft a formal complaint against the long-term care~~  
19 ~~administrator alleged to have committed the violation ~~make a motion~~~~  
20 ~~~~to continue the investigation in order to gather additional evidence~~~~  
21 ~~~~or to make further inquiries. The investigation may be extended for~~~~  
22 ~~~~sixty (60) days upon a finding of good cause as provided for in~~~~  
23 ~~~~subsection A of Section 330.64 of this title. If the motion to~~~~

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1 ~~extend the investigation fails, the Board shall vote upon the merits~~  
2 ~~of the complaint.~~

3 D. ~~No recommendation on a~~ The formal complaint shall be made  
4 submitted to the respondent who shall answer and may submit  
5 exculpatory evidence. Further investigation of the complaint may be  
6 conducted. Board by a subcommittee or a staff member of the Board.  
7 ~~Each member~~ The Director of the Board shall have the power to issue  
8 subpoenas for the attendance of witnesses and the furnishing of  
9 information, including documents, required by the Board or requested  
10 by the respondent ~~vote based on the evidence presented in the report~~  
11 ~~required pursuant to the provisions of this section.~~

12 E. ~~The~~ To ensure the confidentiality of information obtained  
13 during the investigation, the information ~~report furnished to the~~  
14 ~~Board pursuant to the provisions of this section shall be considered~~  
15 ~~a confidential investigation document until a motion to vote on the~~  
16 ~~complaint is made, at which time the report shall not be deemed to~~  
17 be considered a public record as that term is defined in the  
18 Oklahoma Open Records Act nor shall the information be subject to  
19 subpoena or discovery in any civil or criminal proceeding, except  
20 that the Board may give the information to law enforcement and other  
21 state licensing agencies as necessary and appropriate in the  
22 discharge of the duties of that agency and only under circumstances  
23 that will ensure against unauthorized access to the information.  
24 ~~After the vote upon the complaint is made and recorded, the Board~~

1 ~~shall maintain as a public record a full and complete copy of the~~  
2 ~~investigation~~ The respondent may acquire information obtained during  
3 an investigation, unless the disclosure of the information is  
4 otherwise prohibited, except for the investigative report, if the  
5 respondent signs a protective order whereby the respondent agrees to  
6 use the information solely for the purpose of defense in the Board  
7 proceeding and in any appeal therefrom and agrees not to otherwise  
8 disclose the information indexed by docket number or similar  
9 ~~internal reference.~~

10 F. Upon completion of an investigation, the probable cause  
11 committee may make a recommendation to the Board to set the case for  
12 hearing, or for dismissal or other action.

13 G. The respondent may be given an opportunity to participate in  
14 an informal resolution of the case. Discussions to resolve the case  
15 without a hearing may be conducted by the Director, the prosecutor  
16 of the Board, or both the Director and the prosecutor, in  
17 consultation with the probable cause committee. Any recommendation  
18 for informal resolution shall be presented to the Board for its  
19 consideration and approval.

20 H. ~~Notice of a Board decision issued to a long term care~~  
21 ~~administrator who is the subject of a complaint shall be issued~~ If  
22 the case is not resolved, the respondent shall be afforded notice  
23 and a hearing in accordance with the provisions of Article II of the  
24 Administrative Procedures Act ~~governing individual proceedings.~~ ~~Any~~

1 ~~request for~~ The members of the probable cause committee that  
2 reviewed the complaint shall recuse themselves from any  
3 participation in a hearing by a long term care administrator  
4 ~~regarding the proposed action of the Board shall be received by the~~  
5 ~~Board within ten (10) days of the receipt of the notice of the Board~~  
6 ~~decision by the long term care administrator.~~ Any party aggrieved  
7 by a decision of the Board following a hearing may appeal directly  
8 to district court pursuant to the provisions of Section 318 of Title  
9 75 of the Oklahoma Statutes.

10 SECTION 4. This act shall become effective November 1, 2008.

11 Passed the House of Representatives the 13th day of March, 2008.

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Presiding Officer of the House of  
Representatives

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Passed the Senate the \_\_\_\_ day of \_\_\_\_\_, 2008.

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Presiding Officer of the Senate

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