

ENROLLED SENATE
BILL NO. 738

By: Morgan of the Senate

and

Blackwell, Denney and
McPeak of the House

An Act relating to public health and safety; amending 63 O.S. 2001, Sections 1-890.2, 330.52 and 330.58, as last amended by Sections 2 and 7, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2006, Sections 330.52 and 330.58), which relate to long-term care; modifying definitions; permitting certain persons to receive specified services; directing certain facilities to monitor specified services; permitting certain person to contract for specified services; requiring certain consensus and plan of accommodation; requiring certain notification; requiring certain meeting; permitting injunctive relief in certain circumstance; specifying certain responsibility; defining terms; permitting participation in certain pilot program; directing the State Department of Health to establish and maintain certain pilot program; requiring certain reports; requiring certain assignment; directing certain duties of the State Department of Health; directing submission of certain evidence; permitting certain conference call; requiring certain order of presentation; providing certain time limit; exempting certain rules in specified circumstances; permitting certain panel to accept or deny specified information; prohibiting certain recording; specifying participation in certain meeting; requiring certain written statements; directing certain distribution; directing certain amendments; limiting scope of certain process; permitting certain authorization; requiring certain recusal; prohibiting

publication of certain complaints in specified circumstances; adding duty of certain board; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-890.2, is amended to read as follows:

Section 1-890.2 As used in the Continuum of Care and Assisted Living Act:

1. "Assisted living center" means any home or establishment offering, coordinating or providing services to two or more persons who:

- a. are domiciled therein,
- b. are unrelated to the operator,
- c. by choice or functional impairments, need assistance with personal care or nursing supervision,
- d. may need intermittent or unscheduled nursing care,
- e. may need medication assistance, and
- f. may need assistance with transfer and/or ambulation-

~~Intermittent nursing care and home health aide services may be provided in an assisted living facility by a home health agency;~~

2. "Board" means the State Board of Health;

3. "Commissioner" means the Commissioner of Health; and

4. "Continuum of care facility" means a home, establishment or institution providing nursing facility services as defined in

Section 1-1902 of ~~Title 63 of the Oklahoma Statutes~~ this title and one or both of the following:

- a. assisted living center services as defined in the Continuum of Care and Assisted Living Act, and
- b. adult day care center services as defined in Section 1-872 of ~~Title 63 of the Oklahoma Statutes~~ this title.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-890.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Residents of an assisted living center may receive home care services and intermittent, periodic, or recurrent nursing care through a home care agency under the provisions of the Home Care Act.

B. Residents of an assisted living center may receive hospice home services under the provisions of the Oklahoma Hospice Licensing Act.

C. Nothing in the foregoing provisions shall be construed to prohibit any resident of an assisted living center from receiving such services from any person who is exempt from the provisions of the Home Care Act.

D. The assisted living center shall monitor and assure the delivery of those services. All nursing services shall be in accordance with the written orders of the personal or attending physician of the resident.

E. Notwithstanding the foregoing provisions, a resident of an assisted living center, or the family or legal representative of the resident, may privately contract or arrange for private nursing services under the orders and supervision of the personal or attending physician of the resident, private monitoring, private sitters or companions, personal domestic servants, or personal staff.

F. If a resident of an assisted living center develops a disability or a condition that is consistent with the facility's discharge criteria:

1. The personal or attending physician of a resident, a representative of the assisted living center and the resident or the designated representative of the resident shall determine by and through a consensus of the foregoing persons any reasonable and necessary accommodations and additional services required to permit the resident to remain in place in the assisted living center as the least restrictive environment and with privacy and dignity;

2. All accommodations or additional services shall be described in a written plan of accommodation, signed by the personal or attending physician of the resident, a representative of the assisted living center and the resident or the designated representative of the resident;

3. The person or persons responsible for performing, monitoring and assuring compliance with the plan of accommodation shall be expressly specified in the plan of accommodation and shall include the assisted living center and any of the following:

- a. the personal or attending physician of the resident,
- b. a home care agency,
- c. a hospice, or
- d. other designated persons;

The plan of accommodation shall be reviewed at least quarterly by a licensed health care professional.

4. If the parties identified in paragraph 1 of this subsection fail to reach a consensus on a plan of accommodation, the assisted living center shall give written notice to the resident, the legal representative or the resident or such persons as are designated in the resident's contract with the assisted living center, of the termination of the residency of the resident in the assisted living center in accordance with the provisions of the resident's contract with the assisted living center. Such notice shall not be less than

thirty (30) calendar days prior to the date of termination, unless the assisted living center or the personal or attending physician of the resident determines the resident is in imminent peril or the continued residency of the resident places other persons at risk of imminent harm;

5. If any party identified in paragraph 1 of this subsection determines that the plan of accommodation is not being met, such party shall notify the other parties and a meeting shall be held between the parties within ten (10) business days to re-evaluate the plan of accommodation; and

6. Any resident aggrieved by a decision to terminate residency may seek injunctive relief in the district court of the county in which the assisted living center is located. Such action shall be filed no later than ten (10) days after the receipt of the written notice of termination.

G. Nothing in this section shall be construed to abrogate an assisted living center's responsibility to provide care for and oversight of a resident.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.11 of Title 63, unless there is created a duplication in numbering, reads as follows:

For purposes of Sections 3 through 8 of this act:

1. "Impartial decision-making panel" means a group of individuals who are qualified volunteers and employees or contractors with the State Department of Health and shall consist of five (5) members as follows:

- a. two members shall be impartial representative volunteers who have experience in the operation of a long-term care setting, such as an administrator, operator or director of nursing,
- b. one member shall be an employee of the Department who has experience in the survey process,

- c. one member shall be a person representing the aging or disabled community, and
- d. one member shall be an impartial person who is not employed by the Protective Health Services, Long-Term Care Division of the State Department of Health; and

2. "Alternative informal dispute resolution" means a nonjudicial process or forum before an impartial decision-making panel that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency within the pilot program established in Sections 3 through 8 of this act.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.12 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon written request, a long-term care facility may choose to participate in a pilot program to be offered by the State Department of Health as an alternative to the informal dispute resolution process outlined in Sections 1-1914.3 through 1-1914.10 of this title.

B. The State Department of Health shall establish the pilot program as described in Sections 3 through 8 of this act on or before the effective date of this act and shall maintain the pilot program until November 1, 2008.

C. The State Department of Health shall submit a preliminary report to the Legislature detailing the initial findings of the pilot program by March 1, 2008. A final report summarizing the main findings of the pilot program shall be submitted to the Legislature by November 1, 2008.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.13 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Upon receipt of a request for an alternative informal dispute resolution from a facility, the State Department of Health shall assign the matter to an impartial decision-making panel.

B. The Department shall:

1. Schedule a time and date for a meeting; and
2. Inform the parties of the time and date of the alternative informal dispute resolution.

C. If the request for an alternative informal dispute resolution includes a request by the facility for a meeting at which the facility may appear before the decision-making panel, the Department shall:

1. Arrange for facilities appropriate for conducting the meeting; and
2. Inform the parties of the location of the meeting.

D. Each party shall submit to the impartial decision-making panel all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the Department.

E. 1. If the request for an alternative informal dispute resolution does not include a request by the facility for a meeting at which the facility may appear before the impartial decision-making panel, or upon agreement of the facility and the Department, the impartial decision-making panel may conduct the meeting by telephone conference call or by a review of documentary evidence submitted by the parties.

2. a. If the alternative informal dispute resolution is conducted by record review, the impartial decision-making panel may request, and the facility shall provide, a written statement setting forth the facility's position on accepting, rejecting, or modifying each deficiency in dispute.
- b. The written statement shall specify the documentary evidence that supports the position of the facility for each deficiency in dispute.

- c. The facility shall provide its written statement to the impartial decision-making panel and the Department.
- d. The Department shall then provide its written statement in rebuttal to the impartial decision-making panel and the facility.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.14 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. In all alternative informal dispute resolution cases except record review, the State Department of Health shall present the initial arguments.

2. The facility shall then present its arguments.

B. 1. The alternative informal dispute resolution shall be limited to no more than two (2) hours in length, with each party being permitted one (1) hour to present its arguments;

2. However, the impartial decision-making panel may grant each party additional equal time for good cause as determined by the impartial decision making-panel.

C. 1. Rules of evidence or procedure shall not apply to the alternative informal dispute resolution except as provided in this section.

2. The impartial decision-making panel may:

- a. accept any information that the impartial decision-making panel deems material to the issue being presented, and
- b. reject any information that the impartial decision-making panel deems immaterial to the issue being presented.

D. 1. The alternative informal dispute resolution may not be recorded.

2. However, the impartial decision-making panel may make written or recorded notes of the arguments.

E. Only employees of the facility, attending physicians of residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility, may appear or participate in the alternative informal dispute resolution for, or on the behalf of, the facility.

F. Only employees of the Department may appear or participate at the meeting for, or on behalf of, the Department.

G. The State Long-Term Care Ombudsman or designee, may appear at, or participate in, the meeting.

H. No party may be represented by an attorney.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.15 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Upon the conclusion of all arguments by the parties at the alternative informal dispute resolution, the impartial decision-making panel shall issue a written statement of findings that shall be entitled "Determinations".

2. The determinations shall include:

- a. a recitation of the deficiency identification numbers,
- b. a statement of whether a disputed deficiency should remain, be removed, or be modified on the statement of deficiencies, and
- c. the facts and persuasive arguments that support the finding of the impartial decision-making panel for each deficiency identification number.

B. 1. The determination of the impartial decision-making panel shall be provided to all parties.

2. The State Department of Health shall review the determination and shall issue a written document entitled "State Survey Agency Determination".

C. A state survey agency determination is not subject to appeal, reargument, or reconsideration.

D. The Department shall deliver a copy of the state survey agency determination to the facility and to the impartial decision-making panel.

E. 1. In accordance with the state survey agency determination, the Department shall issue an amended state of deficiencies if the state survey agency determination results in modification to any deficiencies cited in the original statement of deficiencies.

2. If the Department determines that amendments to the statement of deficiencies should result in changes to the scope or severity assigned to any deficiency, the amended statement of deficiencies shall reflect the changes to the scope or severity of any cited deficiency.

F. The amended statement of deficiencies shall be provided to the facility.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1914.16 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The alternative informal dispute resolution process is limited to deficiencies cited on a statement of deficiencies.

B. 1. If the impartial decision-making panel finds that matters not subject to alternative informal dispute resolution are presented, the impartial decision-making panel shall strike all documentary evidence related to or presented for the purpose of disputing the matter not subject to alternative informal dispute resolution.

2. The impartial decision-making panel may not include in the determination any matter not subject to alternative informal dispute resolution.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1943.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health may authorize long-term care administrators to be the administrator of record for more than one facility, provided that the facilities are within a fifty-mile radius of each other, the sum total of the administrator's responsibility does not exceed more than one hundred twenty (120) occupied beds, and each facility retains an assistant administrator. This provision shall not apply to direct care staff.

SECTION 10. AMENDATORY 63 O.S. 2001, Section 330.52, as last amended by Section 2, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2006, Section 330.52), is amended to read as follows:

Section 330.52 A. There is hereby re-created, to continue until July 1, 2012, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Examiners for Long-Term Care Administrators. The Oklahoma State Board of Examiners for Long-Term Care Administrators shall consist of fifteen (15) members, ten of whom shall be representative of the professions and institutions concerned with the care and treatment of critically ill or infirm elderly patients, three members representing the general public, and the State Commissioner of Health and the Director of the Department of Human Services, or their designees. The thirteen members shall be appointed by the Governor, with the advice and consent of the Senate.

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

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

1. Two members who are owners or licensed administrators, one member representing the general public and two other members shall be appointed for a term of one (1) year to expire on July 1, 2006;

2. Two members who are owners or licensed administrators, one member representing the general public and two other members shall be appointed for a term of two (2) years to expire on July 1, 2007; and

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

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

E. Any member of the Board shall recuse himself or herself from voting on any matter that originated from or involves an entity with which the Board member is affiliated.

SECTION 11. AMENDATORY 63 O.S. 2001, Section 330.58, as last amended by Section 7, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2006, 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 long-term care administrators will be individuals who are of good character and are otherwise suitable, and who, by training or

experience in the field of institutional administration, are qualified to serve as long-term care administrators;

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

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

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

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

6. Receive, investigate, and take appropriate action on any complaint received by the Board from the Department of Human Services or any other regulatory agency. A complaint shall not be published on the website of the Oklahoma State Board of Examiners for Long-Term Care Administrators unless there is a finding by the

Board that the complaint has merit. The Board shall promulgate rules that include, but are not limited to, provisions for:

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

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

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

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

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

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

12. Impose administrative fines, in an amount to be determined by the Board, against persons who do not comply with the provisions of this act or the rules adopted by the Board. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars (\$1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board when issuing a fine;

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

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

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

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

SECTION 12. This act shall become effective November 1, 2007.

Passed the Senate the 24th day of May, 2007.

Presiding Officer of the Senate

Passed the House of Representatives the 25th day of May, 2007.

Presiding Officer of the House
of Representatives

