

THE HOUSE OF REPRESENTATIVES
Thursday, March 6, 2008

Committee Substitute for
House Bill No. 2642

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2642 - By: PETERS of the House and FORD of the Senate.

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

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

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

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

- 5 1. "Board" means the State Board of Health;
- 6 2. "Certification" means verification of appropriate training and competence
7 established by the State Board of Health by rules promulgated pursuant to the Home
8 Care Act for home health aides and home care agency administrators;
- 9 3. "Department" means the State Department of Health;

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

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

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

15 c. CD-PASS waiver program employer participants;

16 5. “Home care services” means skilled or personal care services provided to clients
17 in their place of residence for a fee;

18 6. “Home health aide” means an individual who provides personal care to clients in
19 their temporary or permanent place of residence for a fee;

20 7. “Home care agency administrator” means a person who operates, manages, or
21 supervises, or is in charge of a home care agency;

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

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

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

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

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

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

17 B. 1. No employer or contractor, except as otherwise provided by this subsection,
18 shall employ or contract with any individual as a ~~home health aide~~ personal home care
19 assistant for more than four (4) months, on a full-time, temporary, per diem or other
20 basis, unless ~~such~~ the individual has completed agency-based personal care training
21 supervised by a registered nurse. The agency shall document the dates and hours of

1 personal home care assistant training received by the personal home care assistant in
2 the assistant's personnel file.

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

- 6 a. observation, reporting, and documentation of client status and the care
7 or services furnished,
- 8 b. maintenance of a clean, safe, and healthy environment,
- 9 c. recognizing an emergency and necessary emergency procedures,
- 10 d. safe bathing techniques,
- 11 e. assistance in toileting,
- 12 f. safe transfer techniques and ambulation,
- 13 g. assistance with feeding and fluid intake, and
- 14 h. client rights and responsibilities, the need for respect for the client,
15 and the client's privacy and property.

16 3. No personal home care assistant shall provide personal care services to a client
17 until the assistant has demonstrated competency to the nursing supervisor in the skills
18 required by the plan of service.

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

21 5. No personal home care assistant shall provide services to a client until a
22 criminal history background check is performed in accordance with Section 1-1950.1 of

1 this title and the assistant is found to have no convictions of the crimes listed in
2 subsection F of Section 1-1950.1 of this title.

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

5 C. No Medicare-certified employer or contractor, except as otherwise provided by
6 this subsection, shall employ or contract with any individual as a home health aide for
7 more than four (4) months, on a full-time, temporary, per diem or other basis, unless the
8 individual is a licensed health professional or unless such the individual has satisfied the
9 requirements for certification and placement on the home health aide registry
10 maintained by the State Department of Health; ~~and.~~

11 ~~2. a.~~ 1. Any person in the employment of a home care agency as a home health aide
12 on June 30, 1992, with continuous employment through June 30, 1993, shall be granted
13 home health aide certification by the Department on July 1, 1993. The home care agency
14 shall maintain responsibility for assurance of specific competencies of the home health
15 aide and shall only assign the home health aide to tasks for which the aide has been
16 determined to be competent.

17 ~~b.~~ 2. Any home health aide employed between the dates of July 1, 1992, and June
18 30, 1993, shall be eligible for certification by passing a competency evaluation and testing
19 as required by the Department.

20 ~~e.~~ 3. Any home health aide employed on and after July 1, 1996, shall complete any
21 specified training, competency evaluation and testing required by the Department.

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

- 1 1. A person acting alone who provides services in the home of a relative, neighbor
2 or friend;
- 3 2. A person who provides maid services only;
- 4 3. A nurse service or home aide service conducted by and for the adherents to any
5 religious denomination, the tenets of which include reliance on spiritual means through
6 prayer alone for healing;
- 7 4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing
8 Act;
- 9 5. A nurse-midwife;
- 10 6. An individual, agency, or organization that contracts with the Oklahoma Health
11 Care Authority to provide services under the Home and Community-Based Waiver for
12 persons with mental retardation or that contracts with the Department of Human
13 Services to provide community services to persons with mental retardation; provided,
14 that staff members and individuals providing such services shall receive a level of
15 training, approved by the Department of Human Services, which meets or exceeds the
16 level required pursuant to the Home Care Act. An individual, agency or organization
17 otherwise covered under the Home Care Act shall be exempt from the act only for those
18 paraprofessional direct care services provided under contracts referenced in this
19 paragraph;
- 20 7. An individual, agency or organization that provides or supports the provision of
21 personal care services to an individual who performs individual employer responsibilities
22 of hiring, training, directing and managing a personal care attendant as part of the

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

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

13 9. An individual who:

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

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

1 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03-05-08 - DO
2 PASS, As Amended and Coauthored.