

THE HOUSE OF REPRESENTATIVES  
Thursday, March 6, 2008

Committee Substitute for  
House Bill No. 2754

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 2754 - By: DANK of the House.

An Act relating to long-term care; amending 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), which relates to duties of the Oklahoma State Board of Examiners for Long-Term Care Administrators; providing for the generation of complaints by the Board or staff; specifying certain enforcement; amending Sections 4 and 5, Chapter 168, O.S.L. 2005, as amended by Sections 11 and 12, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Sections 330.64 and 330.65), which relate to long-term care administrators; eliminating requirements for extension of certain time period; modifying complaint procedures; establishing a probable cause committee to review complaints and make recommendations; specifying certain powers of the Director of the Oklahoma State Board of Examiners for 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:

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

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

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

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

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

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

21           5. Receive, investigate, and take appropriate action with respect to any charge or  
22 complaint filed with the Board to the effect that any individual licensed as a long-term

1 care administrator has failed to comply with the requirements of such standards. The  
2 long-term care ombudsman program of the Aging Services Division of the Department of  
3 Human Services shall be notified of all complaint investigations of the Board so that they  
4 may be present at any such complaint investigation for the purpose of representing long-  
5 term care facility consumers;

6 6. Receive, ~~investigate~~, and take appropriate action on any complaint or referral  
7 received by the Board from the Department of Human Services or any other regulatory  
8 agency. Complaints may also be generated by the Board or staff. A complaint shall not  
9 be published on the website of the Oklahoma State Board of Examiners for Long-Term  
10 Care Administrators unless there is a finding by the Board that the complaint has merit.

11 The Board shall promulgate rules that include, but are not limited to, provisions for:

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

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

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

1       ~~8.~~ 9. Cooperate with and provide assistance when necessary to state regulatory  
2 agencies in investigations of complaints;

3       ~~9.~~ 10. Develop a code of ethics for long-term care administrators which includes,  
4 but is not limited to, a statement that administrators have a fiduciary duty to the facility  
5 and cannot serve as guardian of the person or of the estate, or hold a durable power of  
6 attorney or power of attorney for any resident of a facility of which they are an  
7 administrator;

8       ~~10.~~ 11. Report a final adverse action against a long-term care administrator to the  
9 Healthcare Integrity and Protection Data Bank pursuant to federal regulatory  
10 requirements;

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

13       ~~12.~~ 13. Impose administrative fines, in an amount to be determined by the Board,  
14 against persons who do not comply with the provisions of this act or the rules adopted by  
15 the Board. Administrative fines imposed pursuant to this section shall not exceed One  
16 Thousand Dollars (\$1,000.00) per violation. The Board shall consider the scope, severity  
17 and repetition of the violation and any additional factors deemed appropriate by the  
18 Board when issuing a fine;

19       ~~13.~~ 14. Assess the costs of the hearing process, including attorney fees;

20       ~~14.~~ 15. Grant short-term provisional licenses to individuals who do not meet all of  
21 the licensing requirements, provided the individual obtains the services of a currently

1 licensed administrator to act as a consultant and meets any additional criteria for a  
2 provisional license established by the Board;

3 ~~15. 16.~~ Order a summary suspension of an administrator's license or an  
4 Administrator in Training (AIT) permit, if, in the course of an investigation, it is  
5 determined that a licensee or AIT candidate for licensure has engaged in conduct of a  
6 nature that is detrimental to the health, safety or welfare of the public, and which  
7 conduct necessitates immediate action to prevent further harm; and

8 ~~16. 17.~~ The Oklahoma State Board of Examiners for Long-Term Care  
9 Administrators shall promulgate rules governing the employment of assistant  
10 administrators for long-term care facilities including, but not limited to, minimum  
11 qualifications.

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

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

1 B. Effective May 13, 2005, the Board shall create and maintain a registry of all  
2 verified complaints or other referrals complaining of acts or omissions of licensed  
3 administrators that have been verified. The registry shall be maintained in both  
4 electronic and paper formats and shall be available for inspection by the public. Such  
5 registry shall be organized in chronological order both by the date of the complaint and  
6 by the name of the licensed administrator. The registry shall contain information about  
7 the nature of the complaint and the action, if any, taken by the Board. The registry shall  
8 also contain the number of complaints made against an individual administrator.

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

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

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

20 1. ~~The exact nature of the complaint(s);~~

21 2. ~~The identity of the administrator;~~

22 3. ~~A description of the investigation;~~

1 ~~4. The identity of the investigator;~~

2 ~~5. The identity of the witnesses interviewed, unless the witness wishes to remain~~  
3 ~~anonymous and is a current resident, a current staff member, or the personal or legal~~  
4 ~~representative of a current resident;~~

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

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

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

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

1 title. ~~If the motion to 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~~ submitted to the  
4 respondent who shall answer and may submit exculpatory evidence. Further  
5 investigation of the complaint may be conducted. ~~Board by a subcommittee or a staff~~  
6 ~~member of the Board. Each member~~ The Director of the Board shall have the power to  
7 issue subpoenas for the attendance of witnesses and the furnishing of information,  
8 including documents, required by the Board or requested by the respondent ~~vote based~~  
9 ~~on the evidence presented in the report required pursuant to the provisions of this~~  
10 ~~section.~~

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

1 disclosure of the information is otherwise prohibited, except for the investigative report,  
2 if the respondent signs a protective order whereby the respondent agrees to use the  
3 information solely for the purpose of defense in the Board proceeding and in any appeal  
4 therefrom and agrees not to otherwise disclose the information indexed by docket  
5 number or similar internal reference.

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

8 G. The respondent may be given an opportunity to participate in an informal  
9 resolution of the case. Discussions to resolve the case without a hearing may be  
10 conducted by the Director, the prosecutor of the Board, or both the Director and the  
11 prosecutor, in consultation with the probable cause committee. Any recommendation for  
12 informal resolution shall be presented to the Board for its consideration and approval.

13 H. ~~Notice of a Board decision issued to a long-term care administrator who is the~~  
14 ~~subject of a complaint shall be issued~~ If the case is not resolved, the respondent shall be  
15 afforded notice and a hearing in accordance with the provisions of Article II of the  
16 Administrative Procedures Act governing individual proceedings. Any request for The  
17 members of the probable cause committee that reviewed the complaint shall recuse  
18 themselves from any participation in a hearing by a long-term care administrator  
19 ~~regarding the proposed action of the Board shall be received by the Board within ten (10)~~  
20 ~~days of the receipt of the notice of the Board decision by the long-term care~~  
21 ~~administrator.~~ Any party aggrieved by a decision of the Board following a hearing may

1 appeal directly to district court pursuant to the provisions of Section 318 of Title 75 of the  
2 Oklahoma Statutes.

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

4 COMMITTEE REPORT BY: COMMITTEE ON PUBLIC HEALTH, dated 03-05-08 - DO  
5 PASS, As Amended.