

ENGROSSED

House Bill No. 2642

As Amended

ENGROSSED HOUSE BILL NO. 2642 - By: Peters and Tibbs of the House and Ford of the Senate.

[**public health and safety - Home Care Act - effective date**]

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

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

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

- 1. "Board" means the State Board of Health;
- 2. "Certification" means verification of appropriate training and competence established by the State Board of Health by rules promulgated pursuant to the Home Care Act for home health aides and home care agency administrators;
- 3. "Department" means the State Department of Health;
- 4. "Home care agency" means any sole proprietorship, partnership, association, corporation or other organization which administers, offers or provides home care services, for a fee or

1 pursuant to a contract for such services, to clients in their place
2 of residence. The term "home care agency" shall not include:

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

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

15 c. CD-PASS waiver program employer participants;

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

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

21 7. "Home care agency administrator" means a person who
22 operates, manages, or supervises, or is in charge of a home care
23 agency;

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

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

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

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

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

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

20 B. 1. No employer or contractor, except as otherwise provided
21 by this subsection, shall employ or contract with any individual as
22 a ~~home health aide~~ personal home care assistant for more than four
23 (4) months, on a full-time, temporary, per diem or other basis,

1 ~~unless such~~ the individual has completed agency-based personal care
2 training supervised by a registered nurse. The agency shall
3 document the dates and hours of personal home care assistant
4 training received by the personal home care assistant in the
5 assistant's personnel file.

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

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

21 3. No personal home care assistant shall provide personal care
22 services to a client until the assistant has demonstrated competency

1 to the nursing supervisor in the skills required by the plan of
2 service.

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

6 5. No personal home care assistant shall provide services to a
7 client until a criminal history background check and a check of the
8 nurse aide registry maintained by the State Department of Health is
9 performed in accordance with Section 1-1950.1 of this title and the
10 assistant is found to have no convictions of the crimes listed in
11 subsection F of Section 1-1950.1 of this title.

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

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

1 ~~2.-a.~~ 1. Any person in the employment of a home care agency as
2 a home health aide on June 30, 1992, with continuous employment
3 through June 30, 1993, shall be granted home health aide
4 certification by the Department on July 1, 1993. The home care
5 agency shall maintain responsibility for assurance of specific
6 competencies of the home health aide and shall only assign the home
7 health aide to tasks for which the aide has been determined to be
8 competent.

9 ~~b.~~ 2. Any home health aide employed between the dates of July
10 1, 1992, and June 30, 1993, shall be eligible for certification by
11 passing a competency evaluation and testing as required by the
12 Department.

13 ~~c.~~ 3. Any home health aide employed on and after July 1, 1996,
14 shall complete any specified training, competency evaluation and
15 testing required by the Department.

16 ~~E.~~ D. The provisions of the Home Care Act shall not apply to:

17 1. A person acting alone who provides services in the home of a
18 relative, neighbor or friend;

19 2. A person who provides maid services only;

20 3. A nurse service or home aide service conducted by and for
21 the adherents to any religious denomination, the tenets of which
22 include reliance on spiritual means through prayer alone for
23 healing;

1 4. A person providing hospice services pursuant to the Oklahoma
2 Hospice Licensing Act;

3 5. A nurse-midwife;

4 6. An individual, agency, or organization that contracts with
5 the Oklahoma Health Care Authority to provide services under the
6 Home and Community-Based Waiver for persons with mental retardation
7 or that contracts with the Department of Human Services to provide
8 community services to persons with mental retardation; provided,
9 that staff members and individuals providing such services shall
10 receive a level of training, approved by the Department of Human
11 Services, which meets or exceeds the level required pursuant to the
12 Home Care Act. An individual, agency or organization otherwise
13 covered under the Home Care Act shall be exempt from the act only
14 for those paraprofessional direct care services provided under
15 contracts referenced in this paragraph;

16 7. An individual, agency or organization that provides or
17 supports the provision of personal care services to an individual
18 who performs individual employer responsibilities of hiring,
19 training, directing and managing a personal care attendant as part
20 of the Oklahoma Health Care Authority Consumer-Directed Personal
21 Assistance Supports and Services (CD-PASS) waiver program. An
22 individual, agency or organization otherwise covered under the
23 provisions of the Home Care Act shall be exempt from the act only

1 for those paraprofessional direct care services provided under
2 Oklahoma Health Care Authority contracts referenced in this
3 paragraph, but shall not be exempt from the criminal history
4 background check required under the Home Care Act and Section 1-
5 1950.1 of this title or the check of the nurse aide registry
6 maintained by the State Department of Health for other
7 paraprofessional direct care service providers. A personal care
8 attendant hired by a consumer under the CD-PASS program shall be
9 exempt from certification as a home health aide, provided such
10 personal care attendant receives the training required and approved
11 by the Department of Human Services;

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

15 9. An individual who:

16 a. is employed by a licensed home care agency exclusively
17 to provide personal care services on a live-in basis,

18 b. has no convictions pursuant to a criminal history
19 investigation as provided in Section 1-1950.1 of this
20 title and no documented episodes of abuse, neglect or
21 exploitation as indicated by the nurse aide registry
22 maintained by the State Department of Health,

- 1 c. is being continuously trained by a registered nurse to
2 provide care that is specific to the needs of the
3 particular client receiving the care, and
4 d. is supervised by a registered nurse via an on-site
5 visit at least once each month.

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

7 COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN RESOURCES, dated
8 4-3-08 - DO PASS, As Amended and Coauthored.