

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 HOUSE BILL 2642

By: Peters

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Sections 1-1961 and 1-1962, as amended
9 by Sections 1 and 2, Chapter 249, O.S.L. 2004 (63
10 O.S. Supp. 2007, Sections 1-1961 and 1-1962), which
11 relate to the Home Care Act; adding definitions;
12 providing training requirements for personal home
13 care assistants; requiring training plan for personal
14 home care assistants; providing requirements for
15 plan; prohibiting certain acts; prohibiting
16 employment of certain persons; and providing an
17 effective date.

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

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

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

- 23 1. "Board" means the State Board of Health;
- 24 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;

1 3. "Department" means the State Department of Health;

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

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

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

19 c. CD-PASS waiver program employer participants;

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

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

1 7. "Home care agency administrator" means a person who
2 operates, manages, or supervises, or is in charge of a home care
3 agency;

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

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

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

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

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

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

23 B. 1. No employer or contractor, except as otherwise provided
24 by this subsection, shall employ or contract with any individual as

1 a ~~home health aide~~ personal home care assistant for more than four
2 (4) months, on a full-time, temporary, per diem or other basis,
3 unless ~~such~~ the individual has completed agency-based personal care
4 training supervised by a registered nurse. The agency shall
5 document the dates and hours of personal home care assistant
6 training received by the personal home care assistant in the
7 assistant's personnel file.

8 2. The agency shall have a written training plan for personal
9 home care assistants which shall include, at a minimum, the
10 following requirements:

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

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1 3. No personal home care assistant shall provide personal care
2 services to a client until the assistant has demonstrated competency
3 to the nursing supervisor in the skills required by the care plan.

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

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

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

23 ~~b.~~ 2. Any home health aide employed between the dates of July
24 1, 1992, and June 30, 1993, shall be eligible for certification by

1 passing a competency evaluation and testing as required by the
2 Department.

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

6 ~~€~~ D. The provisions of the Home Care Act shall not apply to:

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

9 2. A person who provides maid services only;

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

14 4. A person providing hospice services pursuant to the Oklahoma
15 Hospice Licensing Act;

16 5. A nurse-midwife;

17 6. An individual, agency, or organization that contracts with
18 the Oklahoma Health Care Authority to provide services under the
19 Home and Community-Based Waiver for persons with mental retardation
20 or that contracts with the Department of Human Services to provide
21 community services to persons with mental retardation; provided,
22 that staff members and individuals providing such services shall
23 receive a level of training, approved by the Department of Human
24 Services, which meets or exceeds the level required pursuant to the

1 Home Care Act. An individual, agency or organization otherwise
2 covered under the Home Care Act shall be exempt from the act only
3 for those paraprofessional direct care services provided under
4 contracts referenced in this paragraph;

5 7. An individual, agency or organization that provides or
6 supports the provision of personal care services to an individual
7 who performs individual employer responsibilities of hiring,
8 training, directing and managing a personal care attendant as part
9 of the Oklahoma Health Care Authority Consumer-Directed Personal
10 Assistance Supports and Services (CD-PASS) waiver program. An
11 individual, agency or organization otherwise covered under the
12 provisions of the Home Care Act shall be exempt from the act only
13 for those paraprofessional direct care services provided under
14 Oklahoma Health Care Authority contracts referenced in this
15 paragraph, but shall not be exempt from the criminal history
16 background check required under the Home Care Act and Section 1-
17 1950.1 of this title for other paraprofessional direct care service
18 providers. A personal care attendant hired by a consumer under the
19 CD-PASS program shall be exempt from certification as a home health
20 aide, provided such personal care attendant receives the training
21 required and approved by the Department of Human Services;

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

1 9. An individual who:

- 2 a. is employed by a licensed home care agency exclusively
3 to provide personal care services on a live-in basis,
4 b. has no convictions pursuant to a criminal history
5 investigation as provided in Section 1-1950.1 of this
6 title,
7 c. is being continuously trained by a registered nurse to
8 provide care that is specific to the needs of the
9 particular client receiving the care, and
10 d. is supervised by a registered nurse via an on-site
11 visit at least once each month.

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

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