

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1736
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Adopted: _____

Amendment submitted by: Ron Peters

Reading Clerk

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 PROPOSED COMMITTEE
4 SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1736

By: Peters

7 PROPOSED COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending
9 63 O.S. 2001, Sections 1-1961, as amended by Section
10 1, Chapter 249, O.S.L. 2004 and 1-1962, as amended by
11 Section 2, Chapter 249, O.S.L. 2004 (63 O.S. Supp.
12 2008, Sections 1-1961 and 1-1962), which relate to
13 the Home Care Act; modifying definitions; providing
14 requirements for the employment of or contracting
15 with a personal home care assistant; requiring
16 certain plan; providing for certain supervisory
17 visits; providing for certain background checks;
18 prohibiting the employment of certain persons; and
19 providing an effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1961, as
22 amended by Section 1, Chapter 249, O.S.L. 2004 (63 O.S. Supp. 2008,
23 Section 1-1961), is amended to read as follows:

24 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

1 promulgated pursuant to the Home Care Act for home health aides and
2 home care agency administrators;

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

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

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

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

21 c. CD-PASS waiver program employer participants;

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

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

4 7. "Home care agency administrator" means a person who
5 operates, manages, or supervises, or is in charge of a home care
6 agency;

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

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

13 10. "Private duty agency" means a home care agency, or division
14 thereof, that is not certified by Medicare; and

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

20 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1962, as
21 amended by Section 2, Chapter 249, O.S.L. 2004 (63 O.S. Supp. 2008,
22 Section 1-1962), is amended to read as follows:

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

4 B. 1. No employer or contractor, except as otherwise provided
5 by this subsection, shall employ or contract with any individual as
6 a personal home care assistant for more than four (4) months, on a
7 full-time, temporary, per diem, or other basis, unless the
8 individual has completed agency-based personal care training in the
9 sections applicable to the care required by the client and
10 supervised by a registered nurse. The agency shall document the
11 training received by the personal home care assistant in the
12 personnel file of the assistant.

13 2. The agency shall develop a written training plan, approved
14 by the nursing supervisor, which shall include, at a minimum, the
15 following sections:

- 16 a. observation, reporting, and documentation of client
- 17 status and the care or services furnished,
- 18 b. maintenance of a clean, safe, and healthy environment,
- 19 c. recognizing an emergency and necessary emergency
- 20 procedures,
- 21 d. safe bathing techniques,
- 22 e. assistance in toileting,
- 23 f. safe transfer techniques and ambulation,
- 24 g. assistance with feeding and fluid intake, and

1 h. client rights and responsibilities and the need for
2 respect for the client and for the privacy and
3 property of the client.

4 3. If a survey by the State Department of Health determines
5 that a deficiency is attributable to personal home care assistant
6 skill or training, the State Department of Health may require
7 changes in the sections of the agency training plan related to the
8 deficient skill.

9 4. No personal home care assistant shall provide personal care
10 services to a client until the assistant has been oriented to the
11 needs of the client and has demonstrated competency to the nursing
12 supervisor in the skills required by the plan of service.

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

16 6. No personal home care assistant shall provide services to a
17 client until a criminal history background check and a check of the
18 nurse aide registry maintained by the State Department of Health is
19 performed in accordance with Section 1-1950.1 of this title and the
20 assistant is found to have no notations of abuse of any kind on the
21 registry and no convictions of the crimes listed in subsection F of
22 Section 1-1950.1 of this title.

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

4 C. 1. No Medicare certified employer or contractor, except as
5 otherwise provided by this subsection, shall employ or contract with
6 any individual as a home health aide for more than four (4) months,
7 on a full-time, temporary, per diem or other basis, unless such
8 individual is a licensed health professional or unless such
9 individual has satisfied the requirements for certification and
10 placement on the home health aide registry maintained by the State
11 Department of Health; and

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

21 b. Any home health aide employed between the dates of
22 July 1, 1992, and June 30, 1993, shall be eligible for
23 certification by passing a competency evaluation and
24 testing as required by the Department.

1 c. Any home health aide employed on and after July 1,
2 1996, shall complete any specified training,
3 competency evaluation and testing required by the
4 Department.

5 C. The provisions of the Home Care Act shall not apply to:

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

8 2. A person who provides maid services only;

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

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

15 5. A nurse-midwife;

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

1 covered under the Home Care Act shall be exempt from the act only
2 for those paraprofessional direct care services provided under
3 contracts referenced in this paragraph;

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

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

24 9. An individual who:

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

11 SECTION 3. This act shall become effective November 1, 2009.

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