

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1736

By: Peters

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7 COMMITTEE SUBSTITUTE

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

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

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

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

- 20 1. "Board" means the State Board of Health;
- 21 2. "Certification" means verification of appropriate training and competence established by the
22 State Board of Health by rules promulgated pursuant to the Home Care Act for home health aides and
23 home care agency administrators;
- 24 3. "Department" means the State Department of Health;

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

- 5 a. individuals who contract with the Department of Human Services to provide
6 personal care services, provided such individuals shall not be exempt from
7 certification as home health aides,
- 8 b. organizations that contract with the Oklahoma Health Care Authority as
9 Intermediary Services Organizations (ISO) to provide federal Internal Revenue
10 Service fiscal and supportive services to Consumer-Directed Personal Assistance
11 Supports and Services (CD-PASS) waiver program participants who have
12 employer responsibility for hiring, training, directing and managing an individual
13 personal care attendant, or
- 14 c. CD-PASS waiver program employer participants;

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

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

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

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

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

4 10. “Private duty agency” means a home care agency, or division thereof, that is not certified by
5 Medicare; and

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

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

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

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

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

- 22 a. observation, reporting, and documentation of client status and the care or services
23 furnished,

- b. maintenance of a clean, safe, and healthy environment,
- c. recognizing an emergency and necessary emergency procedures,
- d. safe bathing techniques,
- e. assistance in toileting,
- f. safe transfer techniques and ambulation,
- g. assistance with feeding and fluid intake, and
- h. client rights and responsibilities and the need for respect for the client and for the privacy and property of the client.

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

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

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

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

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

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

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

12 b. Any home health aide employed between the dates of July 1, 1992, and June 30,
13 1993, shall be eligible for certification by passing a competency evaluation and
14 testing as required by the Department.

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

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

18 1. A person acting alone who provides services in the home of a 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 the adherents to any religious
21 denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;

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

23 5. A nurse-midwife;

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

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

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

23 9. An individual who:
24

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

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

52-1-6752 SAB 02/10/09