

**EHB 1736**

**THE STATE SENATE**  
**Thursday, April 2, 2009**

**ENGROSSED**

**House Bill No. 1736**

**As Amended**

ENGROSSED HOUSE BILL NO. 1736 - 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. 2008,  
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, or division  
8 thereof, that is not 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. 2008,  
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 personal home care assistant for more than four (4) months, on a  
23 full-time, temporary, per diem, or other basis, unless the

1 individual has completed agency-based personal care training in the  
2 sections applicable to the care required by the client and  
3 supervised by a registered nurse. The agency shall document the  
4 training received by the personal home care assistant in the  
5 personnel file of the assistant.

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

- 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 and the need for  
19 respect for the client and for the privacy and  
20 property of the client.

21 3. If a survey by the State Department of Health determines  
22 that a deficiency is attributable to personal home care assistant  
23 skill or training, the State Department of Health may require

1 changes in the sections of the agency training plan related to the  
2 deficient skill.

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

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

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

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

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

1 individual is a licensed health professional or unless such  
2 individual has satisfied the requirements for certification and  
3 placement on the home health aide registry maintained by the State  
4 Department of Health; and

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

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

18               c.    Any home health aide employed on and after July 1,  
19                   1996, shall complete any specified training,  
20                   competency evaluation and testing required by the  
21                   Department.

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

- 1           1. A person acting alone who provides services in the home of a  
2 relative, neighbor or friend;
- 3           2. A person who provides maid services only;
- 4           3. A nurse service or home aide service conducted by and for  
5 the adherents to any religious denomination, the tenets of which  
6 include reliance on spiritual means through prayer alone for  
7 healing;
- 8           4. A person providing hospice services pursuant to the Oklahoma  
9 Hospice Licensing Act;
- 10          5. A nurse-midwife;
- 11          6. An individual, agency, or organization that contracts with  
12 the Oklahoma Health Care Authority to provide services under the  
13 Home and Community-Based Waiver for persons with mental retardation  
14 or that contracts with the Department of Human Services to provide  
15 community services to persons with mental retardation; provided,  
16 that staff members and individuals providing such services shall  
17 receive a level of training, approved by the Department of Human  
18 Services, which meets or exceeds the level required pursuant to the  
19 Home Care Act. An individual, agency or organization otherwise  
20 covered under the Home Care Act shall be exempt from the act only  
21 for those paraprofessional direct care services provided under  
22 contracts referenced in this paragraph;

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

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

21           9. An individual who:

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

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

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

10    COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated  
11    3-26-09 - DO PASS, As Amended.