

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 2257

By: Terrill

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Section 1-1914.2, as last amended by
9 Section 1, Chapter 202, O.S.L. 2005 (63 O.S. Supp.
10 2008, Section 1-1914.2), which relates to temporary
11 managers; specifying conditions upon which a certain
12 action shall accrue; and providing an effective date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1914.2, as
15 last amended by Section 1, Chapter 202, O.S.L. 2005 (63 O.S. Supp.
16 2008, Section 1-1914.2), is amended to read as follows:

17 Section 1-1914.2 A. The State Commissioner of Health may place
18 a qualified person in a facility as a temporary manager to assume
19 operating control of the facility and to ensure that the health and
20 safety of the residents of the facility are protected when any of
21 the following conditions exist:

- 22 1. The conditions at the facility pose immediate jeopardy to
23 the health and safety of the residents of the facility;
- 24 2. The facility is operating without a license;

1 3. The State Department of Health has suspended, revoked, or
2 refused to renew the existing license of the facility;

3 4. The financial condition of the facility poses an immediate
4 risk to the proper operation of the facility or to the health,
5 safety, or welfare of the residents of the facility;

6 5. The facility has closed or has informed the Department that
7 it intends to close and adequate arrangements for the relocation of
8 residents have not been made at least thirty (30) days prior to
9 closure; or

10 6. The Department has terminated certification status under
11 Medicare/Medicaid.

12 B. The Department shall notify the owner or operator of the
13 action taken, the reason or reasons why ~~such~~ the action was taken,
14 and the right of the owner or operator to have a hearing on the
15 matter.

16 C. Any owner or operator subject to placement of a temporary
17 manager may appeal ~~such~~ the action by filing a petition for hearing
18 with the district court within five (5) days of the appointment of a
19 temporary manager. The court shall conduct the hearing within ten
20 (10) days of the filing of ~~such~~ the petition. On the basis of the
21 hearing, the court may continue the order in effect, revoke it, or
22 modify it. The petition for hearing, when docketed, shall have
23 priority over all cases pending on the docket except criminal cases.

1 D. All funds due or available to the facility from any source,
2 to include funds held by a predecessor temporary manager of the
3 facility, during the pendency of the temporary management shall be
4 made available to the temporary manager who shall use the funds to
5 ensure the health and safety of the residents of the facility.
6 Unless prior written approval has been obtained from the
7 Commissioner for such expenditure, any use of funds for a purpose
8 other than to ensure the health and safety of the residents of the
9 facility shall constitute a breach of the ~~temporary manager's~~
10 fiduciary duty of the temporary manager and a violation of the
11 Nursing Home Care Act.

12 E. The Commissioner shall establish qualifications for persons
13 to be appointed as temporary managers and shall maintain a list of
14 all ~~such~~ qualified persons. The Commissioner may appoint any person
15 from the list to serve as a temporary manager, provided that the
16 Commissioner shall not appoint any owner or affiliate of the
17 facility as its temporary manager.

18 F. The temporary manager shall make provisions for the
19 continued protection of the health and safety of all residents of
20 the facility. The temporary manager appointed pursuant to the
21 Nursing Home Care Act shall exercise those powers and shall perform
22 those duties set out by the Commissioner in writing. The
23 Commissioner shall provide for the temporary manager to have
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1 sufficient power and duties to ensure that the residents of the
2 facility receive adequate care.

3 G. If funds are insufficient to meet the expenses of performing
4 the powers and duties conferred on the temporary manager, the
5 temporary manager may borrow the funds or contract for indebtedness
6 as necessary; provided, any such indebtedness shall not be construed
7 to be a debt of the state or made on behalf of the state. The State
8 of Oklahoma is not liable, directly or indirectly, for any liability
9 incurred by any temporary manager in the performance of the
10 ~~manager's~~ official duties of the manager pursuant to law. The State
11 Board of Health shall, by rule, establish a fund, to be drawn out of
12 the discretionary funds of the Department, to assist temporary
13 managers in the continuation of care of the residents of a facility
14 where, in the judgment of the Commissioner, funds are not available
15 from other sources; provided, any such advances by the Department
16 shall be repaid by the temporary manager at the time the final
17 account is rendered. If ~~such~~ the advances are not repaid in full,
18 any amount not repaid shall constitute a lien against any and all
19 assets of any owner and shall also constitute a lien as provided in
20 paragraph 4 of subsection L of this section.

21 H. The Commissioner shall set the compensation of the temporary
22 manager, who shall be paid by the facility.

23 I. A temporary manager may be held liable in a personal
24 capacity only for the ~~manager's~~ gross negligence, intentional acts,

1 or breaches of fiduciary duty of the manager. The Commissioner may
2 require a temporary manager to post a bond. The right to such
3 action by any party shall not accrue until after a full accounting
4 has been rendered by the Department, a final agency order is issued,
5 and the order becomes final for appellate purposes.

6 J. The Department shall issue a conditional license to a
7 facility in which a temporary manager is placed. The duration of a
8 license issued under this section is limited to the duration of the
9 temporary managership.

10 K. The Commissioner shall require that the temporary manager
11 report to the Department on a regular basis as to the progress of
12 the facility in reaching substantial compliance with the Nursing
13 Home Care Act and the rules promulgated thereto, and the
14 establishment of mechanisms which will ensure the continued
15 compliance of the facility.

16 L. 1. The Commissioner may release the temporary manager
17 under any of the following circumstances:

- 18 a. the Commissioner determines that the facility is and
19 will continue to be in substantial compliance with the
20 Nursing Home Care Act and rules promulgated thereto,
- 21 b. a receiver or bankruptcy trustee is appointed,
- 22 c. the Commissioner appoints a new temporary manager,
- 23 d. a new owner, operator, or manager is licensed,

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1 e. the Department, the temporary manager, or the receiver
2 closes the facility through an orderly transfer of the
3 residents, or

4 f. an administrative hearing or court order ends the
5 temporary manager appointment.

6 2. a. Within thirty (30) days after release, the temporary
7 manager shall render to the Department a complete
8 accounting of all property of which the temporary
9 manager has taken possession, of all funds collected,
10 and of the expenses of the temporary managership, to
11 include, if requested by the Department, copies of all
12 documents supporting the reasonableness and necessity
13 of ~~such~~ the expenditures.

14 b. The rendition of ~~such~~ the accounting may be extended
15 only by order of the Commissioner for cause and shall
16 in no event be extended more than one hundred twenty
17 (120) days after release of the temporary manager.

18 c. Failure to timely render a complete final accounting
19 in accordance with generally accepted accounting
20 practices shall constitute a breach of the ~~temporary~~
21 ~~manager's~~ fiduciary duties of the temporary manager.

22 d. Upon a ~~temporary manager's~~ default of the temporary
23 manager in the timely rendition of a complete final
24 accounting, the Commissioner shall enter an order that

1 the temporary manager is personally liable for all
2 amounts or monies collected for which a final
3 accounting is not made. Such order for disgorgement
4 or remittance directed to a temporary manager may be
5 filed as a judgment in any district court in the State
6 of Oklahoma, and shall not be dischargeable in
7 bankruptcy or other insolvency proceeding.

8 3. After a complete accounting, and payment of reasonable
9 expenses incurred as a result of the temporary managership, the
10 Commissioner shall order payment of the surplus to the owner. If
11 funds are insufficient to pay reasonable expenses incurred as a
12 result of the temporary managership, the owner shall be liable for
13 the deficiency. Any funds recovered from the owner shall be used to
14 reimburse any unpaid expenses due and owing as a result of the
15 temporary managership.

16 4. In order to protect the health, welfare, and safety of the
17 residents of any nursing facility for which a temporary manager has
18 been appointed, the Department is authorized to provide the monies
19 from any funds appropriated or otherwise made available to the
20 Department to protect the residents of the nursing facility. The
21 Department shall have a lien for any payment made pursuant to this
22 section upon any beneficial interest, direct or indirect, of any
23 owner in the following property:

24 a. the building in which the facility is located,

- 1 b. any fixtures, equipment, or goods used in the
2 operation of the facility,
3 c. the land on which the facility is located, or
4 d. the proceeds from any conveyance of property described
5 in subparagraphs a, b, or c of this paragraph made by
6 the owner prior to the order placing the temporary
7 manager.

8 M. Nothing in the Nursing Home Care Act shall be deemed to
9 relieve any owner, administrator, or employee of a facility in which
10 a temporary manager is placed of any civil or criminal liability
11 incurred, or any duty imposed by law, by reason of acts or omissions
12 of the owner, administrator, or employee prior to the appointment of
13 a temporary manager; provided, nothing contained in the Nursing Home
14 Care Act shall be construed to suspend during the temporary
15 managership any obligation of the owner, administrator, or employee
16 for payment of taxes or other operating and maintenance expenses of
17 the facility or of the owner, administrator, employee, or any other
18 person for the payment of mortgages or liens.

19 N. The Commissioner may institute any legal proceeding to
20 recover any monies or other thing of value determined to have been
21 expended unnecessarily or in an excessive amount necessary for the
22 maintenance of the health and safety of the residents of a facility,
23 or that was expended in violation of the ~~temporary manager's~~
24 fiduciary duties of the temporary manager, or which expenditure was

1 otherwise unlawful under state or federal law. Such legal
2 proceeding for wrongful expenditure of these funds may be brought
3 against the temporary manager and against any other person or entity
4 who receives ~~such~~ the wrongful expenditure and who was not a bona
5 fide vendor in good faith to the temporary manager, or who was not
6 otherwise a bona fide recipient of ~~such~~ the funds in good faith.
7 Costs for ~~such~~ an action by the Department for funds wrongfully
8 expended shall be awarded if the Department prevails, and shall
9 include all court costs, interest at the statutory rate from and
10 after the date of the wrongful expenditure, and a reasonable
11 attorney fee. The temporary manager and the bad faith
12 vendor/recipient shall be jointly and severally liable for all funds
13 wrongfully expended and for all related litigation costs.

14 SECTION 2. This act shall become effective November 1, 2009.

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16 52-1-5206 SAB 01/11/09

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