

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 2743

By: Roussetot

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5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Section 1-1918, as last amended by  
9 Section 8, Chapter 390, O.S.L. 2003 (63 O.S. Supp.  
10 2009, Section 1-1918), which relates to rights of  
11 nursing home residents; establishing right to select  
12 certain hospice providers; requiring nursing homes to  
13 provide certain list; specifying recipients of list;  
14 and providing an effective date.

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

16 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1918, as  
17 last amended by Section 8, Chapter 390, O.S.L. 2003 (63 O.S. Supp.  
18 2009, Section 1-1918), is amended to read as follows:

19 Section 1-1918. A. All principles enumerated in this section  
20 shall be posted in a conspicuous, easily accessible location in each  
21 facility. Each resident and personally appointed representative of  
22 the resident, if any, shall be verbally advised and provided a  
23 written copy of such principles prior to or upon admission to the  
24 facility. The facility shall ensure that its staff is familiar with

1 and observes the rights and responsibilities enumerated in this  
2 section. The facility shall make available to each resident, upon  
3 reasonable request, a current written statement of such rights and  
4 responsibilities.

5 B. A statement of rights and responsibilities shall include,  
6 but not be limited to, the following:

7 1. Every resident's civil and religious liberties, including  
8 the right to independent personal decisions and knowledge of  
9 available choices, shall not be infringed upon and the facility  
10 shall encourage and assist in the exercise of these rights;

11 2. Every resident shall have the right to have private  
12 communications, including telephonic communications and visits and  
13 consultations with a physician or an attorney, and meetings of  
14 family and resident groups or any other person or persons of the  
15 resident's choice, and may send and promptly receive, unopened, the  
16 resident's personal mail;

17 3. a. Every resident shall have the right, without fear of  
18 reprisal or discrimination, to:

19 (1) present grievances with respect to treatment or  
20 care that is or fails to be furnished on behalf  
21 of the resident or others to:

22 (a) the facility's staff,

23 (b) the facility's administrator,

24 (c) the facility's attending physician,

- (d) the resident's personal physician, if any,
- (e) governmental officials, or
- (f) any other person, and

(2) organize or to join with other residents or individuals within or outside of the facility to work for improvements in resident care.

b. The family of a resident shall have the right to meet in the facility with other residents' families.

c. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;

4. Every resident shall have the right to manage such resident's own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;

5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident, unless adjudged to be mentally incapacitated, shall be fully informed by the resident's attending physician of the resident's

1 medical condition and advised in advance of proposed treatment or  
2 changes in treatment in terms and language that the resident can  
3 understand, unless medically contraindicated, and to participate in  
4 the planning of care and treatment or changes in care and treatment.  
5 Every resident shall have the right to refuse medication and  
6 treatment after being fully informed of and understanding the  
7 consequences of such actions unless adjudged to be mentally  
8 incapacitated;

9       6. Every resident shall receive respect and privacy in the  
10 medical care program of the resident. Case discussion,  
11 consultation, examination and treatment shall remain confidential  
12 and shall be conducted discreetly. Personal and medical records  
13 shall be confidential, and shall include such documentation or  
14 information so as to alert a health care provider or an emergency  
15 medical care facility of the existence of a directive to physicians  
16 or a living will;

17       7. Every resident shall have the right to reside and to receive  
18 services with reasonable accommodation of individual needs and  
19 preferences, except where the health or safety of the individual or  
20 other residents would be endangered;

21       8.    a.   Every resident shall have the right to select a  
22               provider of hospice if such services are necessary.

23        b.   Every resident shall be informed by the facility, at  
24               the time of admission, of the ~~facility's policy~~

1 ~~regarding the provision~~ right of the resident to  
2 select a provider of hospice services if such services  
3 are necessary. The ~~facility's policy~~ facility shall:

- 4 (1) ~~specify whether the facility provides hospice~~  
5 ~~services, either directly or through contractual~~  
6 ~~arrangements with other hospice providers~~ provide  
7 to the resident and to any appointed  
8 representative of the resident a list of licensed  
9 hospice providers available to the resident, and
- 10 (2) ~~specify whether the facility permits hospice~~  
11 ~~services to be provided in the facility by any~~  
12 ~~other hospice services or only by hospice~~  
13 ~~services contracted by the facility,~~
- 14 ~~(3) provide that each resident shall receive a list~~  
15 ~~of hospice services with which the facility~~  
16 ~~contracts, and~~
- 17 ~~(4) provide for complete disclosure to the resident~~  
18 ~~of the facility's relationship with any hospice~~  
19 ~~service that is the result of ownership or an~~  
20 ~~ownership interest of five percent (5%) or more.~~

21 ~~b.~~ c. A facility shall, at the point that a resident  
22 requires hospice services, again inform the resident  
23 ~~or the~~ personally and any appointed representative of  
24 the resident, if any, verbally and in writing of the

1 resident's right to select a provider of hospice  
2 services pursuant to the facility's policy at the time  
3 of the resident's admission;

4 9. Every resident shall have the right to receive notice before  
5 the room or roommate of the resident in the facility is changed and  
6 if the resident has a telephone in his or her room, the resident  
7 must be informed of any charges to be incurred when moving;

8 10. Every resident shall have the right to retain and use  
9 personal clothing and possessions, unless medically contraindicated,  
10 and shall have the right to security in the storage and use of such  
11 clothing and possessions;

12 11. Every resident shall have the right to receive courteous  
13 and respectful care and treatment and a written statement of the  
14 services provided by the facility, including those required to be  
15 offered on an as-needed basis, and a statement of related charges,  
16 including any costs for services not covered under Medicare or  
17 Medicaid, or not covered by the facility's basic per diem rate;

18 12. Every resident shall be free from mental and physical abuse  
19 and neglect, as such terms are defined in Section 10-103 of Title  
20 43A of the Oklahoma Statutes, corporal punishment, involuntary  
21 seclusion, and from any physical and chemical restraints imposed for  
22 purposes of discipline or convenience and not required to treat the  
23 resident's medical symptoms, except those restraints authorized in  
24 writing by a physician for a specified period of time or as are

1 necessitated by an emergency where the restraint may only be applied  
2 by a physician, qualified licensed nurse or other personnel under  
3 the supervision of the physician who shall set forth in writing the  
4 circumstances requiring the use of restraint. Use of a chemical or  
5 physical restraint shall require the consultation of a physician  
6 within twenty-four (24) hours of such emergency;

7 13. Every resident shall receive a statement of the facility's  
8 regulations and an explanation of the resident's responsibility to  
9 obey all reasonable regulations of the facility and to respect the  
10 personal rights and private property of the other residents;

11 14. Every resident shall receive a statement that, should they  
12 be adjudicated incompetent and have no ability to be restored to  
13 legal capacity, the above rights and responsibilities shall be  
14 exercised by a court-appointed representative;

15 15. No resident shall be required to perform services for a  
16 facility;

17 16. Every resident shall have privacy for spousal visits.  
18 Every resident may share a room with the resident's spouse, if the  
19 spouse is residing in the same facility;

20 17. When a physician indicates it is appropriate, a facility  
21 shall immediately notify the resident's next of kin, or  
22 representative of the resident's death or when the resident's death  
23 appears to be imminent;

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1 18. Every resident shall have the right to participate in  
2 social, religious, and community activities that do not interfere  
3 with the rights of other residents in the facility; and

4 19. Every resident shall have the right to examine, upon  
5 reasonable request, the results of the most recent survey of the  
6 facility conducted by the State Department of Health with respect to  
7 the facility and any plan of correction in effect with respect to  
8 the facility.

9 C. No licensed facility shall deny appropriate care on the  
10 basis of the resident's source of payment as defined in the  
11 regulations. Appropriate care shall not include duplication of  
12 services by a nursing home, hospice, or any combination of care  
13 providers.

14 D. Each facility shall prepare a written plan and provide  
15 appropriate staff training to implement each resident's rights as  
16 stated in this section.

17 E. Any person convicted of violating any provisions of this  
18 section shall be guilty of a misdemeanor, punishable by a fine of  
19 not less than One Hundred Dollars (\$100.00), nor more than Three  
20 Hundred Dollars (\$300.00), or imprisonment in the county jail for  
21 not more than thirty (30) days, or by both such fine and  
22 imprisonment.

23 F. In addition to the penalties provided in this section, an  
24 action may be brought against an individual by any resident who is

1 injured by any violation of this section, or who shall suffer injury  
2 from any person whose threats would cause a violation of this  
3 section if carried through, may maintain an action to prevent,  
4 restrain or enjoin a violation or threatened violation. If a  
5 violation or threatened violation of this section shall be  
6 established in any action, the court shall enjoin and restrain or  
7 otherwise prohibit the violation or threatened violation and assess  
8 in favor of the plaintiff and against the defendant the cost of the  
9 suit. If damages are alleged and proved in the action, the  
10 plaintiff shall be entitled to recover from the defendant the actual  
11 damages sustained by the plaintiff. If it is proved in an action  
12 that the defendant's conduct was willful or in reckless disregard of  
13 the rights provided by this section, punitive damages may be  
14 assessed.

15 G. Any employee of a state agency that inspects any nursing  
16 facility or special facility shall report any flagrant violations of  
17 this act or any other statute to the administrative head of the  
18 state agency, who shall immediately take whatever steps are  
19 necessary to correct the situation including, when appropriate,  
20 reporting the violation to the district attorney of the county in  
21 which the violation occurred.

22 H. Upon the death of a resident who has no sources of payment  
23 for funeral services, the facility shall immediately notify  
24 appropriate county officials who shall be responsible for funeral

1 and burial procedures of the deceased in the same manner as with any  
2 indigent resident of the county.

3 SECTION 2. This act shall become effective November 1, 2010.

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