

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1879

By: Newberry

4
5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2001, Section 1-1939, as amended by Section
9 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2009,
10 Section 1-1939), which relates to nursing homes;
11 requiring incidents where rape is suspected to be
12 reported to local law enforcement immediately; and
13 providing an effective date.

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

15 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as
16 amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2009,
17 Section 1-1939), is amended to read as follows:

18 Section 1-1939. A. The owner and licensee are liable to a
19 resident for any intentional or negligent act or omission of their
20 agents or employees which injures the resident. In addition, any
21 state employee that aids, abets, assists, or conspires with an owner
22 or licensee to perform an act that causes injury to a resident shall
23 be individually liable.
24

1 B. A resident may maintain an action under the Nursing Home
2 Care Act for any other type of relief, including injunctive and
3 declaratory relief, permitted by law.

4 C. Any damages recoverable under this section, including
5 minimum damages as provided by this section, may be recovered in any
6 action which a court may authorize to be brought as a class action.
7 The remedies provided in this section, are in addition to and
8 cumulative with any other legal remedies available to a resident.
9 Exhaustion of any available administrative remedies shall not be
10 required prior to commencement of suit hereunder.

11 D. Any waiver by a resident or the legal representative of the
12 resident of the right to commence an action under this section,
13 whether oral or in writing, shall be null and void, and without
14 legal force or effect.

15 E. Any party to an action brought under this section shall be
16 entitled to a trial by jury and any waiver of the right to a trial
17 by a jury, whether oral or in writing, prior to the commencement of
18 an action, shall be null and void, and without legal force or
19 effect.

20 F. A licensee or its agents or employees shall not transfer,
21 discharge, evict, harass, dismiss or retaliate against a resident, a
22 resident's guardian or an employee or agent who makes a report,
23 brings, or testifies in, an action under this section, or files a
24 complaint because of a report, testimony or complaint.

1 G. Any person, institution or agency, under the Nursing Home
2 Care Act, participating in good faith in the making of a report, or
3 in the investigation of such a report shall not be deemed to have
4 violated any privileged communication and shall have immunity from
5 any liability, civil or criminal, or any other proceedings, civil or
6 criminal, as a consequence of making such report. The good faith of
7 any persons required, or permitted to report cases of suspected
8 resident abuse or neglect under this act shall be presumed.

9 H. A facility employee or agent who becomes aware of abuse,
10 neglect or exploitation of a resident prohibited by the Nursing Home
11 Care Act shall immediately report the matter to the facility
12 administrator. A facility administrator who becomes aware of abuse,
13 neglect, or exploitation of a resident shall immediately act to
14 rectify the problem and shall make a report of the incident and its
15 correction to the Department.

16 I. 1. The facility shall be responsible for reporting the
17 following serious incidents to the Department within twenty-four
18 (24) hours:

- 19 a. communicable diseases,
- 20 b. deaths by unusual occurrence, including accidental
21 deaths or deaths other than by natural causes, and
22 deaths that may be attributed to a medical device,

23
24

- 1 c. missing residents. In addition, the facility shall
2 make a report to local law enforcement agencies within
3 two (2) hours if the resident is still missing,
4 d. situations arising where criminal intent is suspected.
5 Such situations shall also be reported to local law
6 enforcement. Situations where rape is suspected shall
7 be reported to local law enforcement immediately, and
8 e. resident abuse, neglect and misappropriation of the
9 property of a resident.

10 2. All other incident reports shall be made in accordance with
11 federal law.

12 3. All initial written reports of incidents or situations shall
13 be mailed to the Department within five (5) working days after the
14 incident or situation. The final report shall be filed with the
15 Department when the full investigation is complete.

16 SECTION 2. This act shall become effective November 1, 2010.
17

18 52-2-3407 JM 2/3/2010 6:49:01 PM
19
20
21
22
23
24