ENGROSSED HOUSE
BILL NO. 2640 By: Schwartz of the House

and

Ford of the Senate

An Act relating to public health and safety; amending 63 O.S. 2011, Section 1-1962, which relates to requirements of a home care agency; prohibiting licensed health care facility and certain individuals from referring client for certain services except to licensed agency; providing definition; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1962, is amended to read as follows:

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

B. 1. No home care agency, except as otherwise provided by this subsection, shall place an individual in the role of supportive home assistant with a client on a full-time, temporary, per diem, or other basis, unless the individual has completed agency-based supportive home assistant training taught by a registered nurse in the sections applicable to the assistance required by the client.

Each supportive home assistant who successfully completes agency-based training shall demonstrate competence by testing through an independent entity approved by the State Department of Health. The requirements related to application, approval, renewal, and denial of such testing entities shall be set forth in administrative rules promulgated by the State Board of Health.

2. The home care agency shall develop a written training plan that shall include, at a minimum, the following:

a. observation, reporting, and documentation of client status and the standby assistance or other services furnished,

b. maintenance of a clean, safe, and healthy environment,

c. recognizing an emergency and necessary emergency procedures,

d. safe techniques to provide standby assistance with bathing, grooming, and toileting,

e. assistance with meal preparation and safe food handling and storage,

f. client rights and responsibilities and the need for respect for the client and for the privacy and property of the client, and

g. basic infection control practices to include, at a minimum, instruction in acceptable hand hygiene

techniques and the application of standard precautions.

3. Supervisory visits shall be made according to the client need, as determined by the nursing supervisor, but no less than once every six (6) months.

4. No supportive home 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.

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

6. No licensed health care facility, licensed physician, advanced practice registered nurse, physician assistant, or state agency employee acting in the performance of his or her duties shall refer a client for personal care services as defined in paragraph 8 of Section 1-1961 of this title or for companion or sitter services as defined in paragraph 1 of subsection A of Section 1-1972 of this title, except to an agency licensed to provide such services. For purposes of this subsection, "licensed health care facility" shall include acute care hospitals, long-term acute care hospitals,

rehabilitation hospitals, skilled nursing facilities, assisted living facilities, residential care homes, home care agencies, adult day care centers and hospice agencies.

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

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

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

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

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

1. A person acting alone who provides services in the home of a relative, neighbor or friend;

2. A person who provides maid services only;

3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;

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

5. A nurse-midwife;

6. An individual, agency, or organization that contracts with the Oklahoma Health Care Authority to provide services under the Home and Community-Based Waiver for persons with mental retardation or that contracts with the Department of Human Services to provide community services to persons with mental retardation; provided, that staff members and individuals providing such services shall receive a level of training, approved by the Department of Human Services, which meets or exceeds the level required pursuant to the Home Care Act. An individual, agency or organization otherwise

covered under the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under contracts referenced in this paragraph;

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

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

9. An individual who:

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 2. This act shall become effective November 1, 2012.

Passed the House of Representatives the 15th day of March, 2012.

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Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2012.

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Presiding Officer of the Senate