SENATE FLOOR VERSION
April 7, 2011

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 1282 By: Dank, Pittman and Moore of the House

and

Treat of the Senate

An Act relating to public health and safety; amending 63 O.S. 2001, Section 330.51, as last amended by Section 1, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.51), which relates to definitions; revising certain terms; adding certain terms; amending 63 O.S. 2001, Section 330.52, as last amended by Section 10, Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2010, Section 330.52), which relates to the Oklahoma State Board of Examiners for Long-Term Care Administrators; re-creating the Board for certain term; modifying composition of Board membership; providing effective date for Board vacancy; providing effective date for appointments; providing for terms; amending 63 O.S. 2001, Section 330.53, as last amended by Section 3, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.53), which relates to qualifications for licenses; providing for license or certificate to serve in facility; permitting certain persons to continue to serve in their current capacity; amending 63 O.S. 2001, Section 330.54, as amended by Section 4, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.54), which relates to license fees; requiring person to meet renewal requirements for license or certification; amending 63 O.S. 2001, Section 330.57, as amended by Section 6, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.57), which relates to qualifications of administrators; authorizing the promulgation of certain rules; amending 63 O.S. 2001, Section 330.58, as last amended by Section 2, Chapter 411, O.S.L. 2008 (63 O.S. Supp. 2010, Section

330.58), which relates to duties of the Board; modifying duties of the Board; amending 63 O.S. 2001, Section 330.59, as amended by Section 8, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.59), which creates certain civil penalty; amending Section 5, Chapter 168, O.S.L. 2005, as last amended by Section 4, Chapter 411, O.S.L. 2008 (63 O.S. Supp. 2010, Section 330.65), which relates to Board complaint procedures; requiring three persons to review certain complaints; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.51, as last amended by Section 1, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.51), is amended to read as follows:

Section 330.51 For the purposes of this act, and as used herein:

1. "Board" means the Oklahoma State Board of Examiners for Long-Term Care Administrators;

2. "Long-term care administrator" means a person licensed ~~by the State of Oklahoma~~ <u>or certified as a nursing facility administrator, an assisted living facility administrator, a residential care facility administrator, or an adult day care center administrator</u> pursuant to this act. A long-term care administrator must devote at least one-half (1/2) of such person's working time to on-the-job supervision of a long-term care facility; provided that this requirement shall not apply to an administrator of an

intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in which case the person licensed by the state may be in charge of more than one ICF-MR/16, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, and the total number of facilities and beds does not exceed six facilities and sixty-four beds. The facilities may be free-standing in a community or may be on campus with a parent institution. The ICF-MR/16 may be independently owned and operated or may be part of a larger institutional ownership and operation;

3. "Nursing facility administrator" means a person licensed by the State of Oklahoma to perform the duties of an administrator serving in a skilled nursing or nursing or ICF/MR facility;

4. "Assisted living facility administrator" means a person licensed or certified by the State of Oklahoma to perform the duties of an administrator serving in an assisted living facility;

5. "Residential care facility administrator" means a person licensed or certified by the State of Oklahoma to perform the duties of an administrator serving in a residential care facility;

6. "Adult day care center administrator" means a person licensed or certified by the State of Oklahoma to perform the duties of an administrator serving in an adult day care center; and

7. "Nursing home", "rest home" and "specialized home" shall have the same meaning as the term "nursing facility" as such term is defined in the Nursing Home Care Act; ~~and~~

~~4. "Administrator" and "owner" shall have the same meanings as such terms are defined in the Nursing Home Care Act~~ "assisted living center" and "continuum of care facility" shall have the same meaning as such terms are defined in the Continuum of Care and Assisted Living Act; "home" and "residential care home" shall have the same meaning as the terms are used in the Residential Care Act; and "adult day care center" and "center" shall have the same meaning as such terms are used in the Adult Day Care Act.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 330.52, as last amended by Section 10, Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2010, Section 330.52), is amended to read as follows:

Section 330.52 A. There is hereby re-created, to continue until July 1, ~~2012~~ 2018, in accordance with the provisions of the Oklahoma Sunset Law, the Oklahoma State Board of Examiners for Long-Term Care Administrators. The Oklahoma State Board of Examiners for Long-Term Care Administrators shall consist of fifteen (15) members, ~~ten~~ eight of whom shall be ~~representative~~ representatives of the professions and institutions ~~concerned with the care and treatment of critically ill or infirm elderly patients, three~~ of long-term care, with representation from each type of administrator defined in Section 330.51 of this title. In order to be eligible to serve as a

member, such administrators shall be licensed or certified in their defined facility type, and be in good standing and have at least five (5) years of experience as an administrator. Four members ~~representing~~ shall represent the general public, ~~and~~ of which at least two shall be licensed medical professionals concerned with the care and treatment of critically ill or infirm elderly patients. The preceding twelve members shall be appointed by the Governor, with the advice and consent of the Senate. The final three members shall constitute the State Commissioner of Health and the Director of the Department of Human Services, and the Director of the Department of Mental Health and Substance Abuse Services, or their designees. ~~The thirteen members shall be appointed by the Governor, with the advice and consent of the Senate.~~

B. ~~Five of the thirteen appointive members shall each be presently an owner or a licensed administrator and shall have had five (5) years' experience in the nursing home profession as an owner or administrator. Three members shall be representatives of the general public.~~ No members other than the ~~five owners or~~ eight licensed or certified administrators shall have a direct or indirect financial interest in ~~nursing homes~~ long-term care facilities.

C. Effective ~~July 1, 2005~~ November 1, 2011, all appointed positions of the current Board shall be deemed vacant. The Governor shall make initial appointments pursuant to the provisions of this subsection ~~upon the effective date of this act~~. Initial

appointments shall become effective on ~~July 1, 2005~~ November 1, 2011. The new members of the Board shall be initially appointed as follows:

1. ~~Two~~ Four of the members ~~who are owners or licensed administrators, one member~~ representing each administrator type, two members representing the general public and two other members shall be appointed for a term of ~~one (1) year~~ two (2) years to expire on ~~July 1, 2006~~ October 31, 2013;

~~2. Two members who are owners or licensed administrators, one member representing the general public and two other members shall be appointed for a term of two (2) years to expire on July 1, 2007;~~ and

~~3. One member who is an owner or licensed administrator, one member~~ 2. Four of the members representing each administrator type, two members representing the general public and one other member shall be appointed for a term of three (3) years to expire on ~~July 1, 2008~~ October 31, 2014.

D. After the initial terms, the terms of all appointive members shall be three (3) years. Any vacancy occurring in the position of an appointive member shall be filled by the Governor, with the advice and consent of the Senate, for the unexpired term.

E. Any member of the Board shall recuse himself or herself from voting on any matter that originated from or involves an entity with which the Board member is affiliated.

SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.53, as last amended by Section 3, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.53), is amended to read as follows:

Section 330.53 A. The Oklahoma State Board of Examiners for Long-Term Care Administrators shall have authority to issue licenses or certifications to qualified persons as long-term care administrators, and shall establish qualification criteria for ~~such~~ each type of long-term care administrators.

B. No license or certification shall be issued to a person as a long-term care administrator unless:

1. The person shall have submitted evidence satisfactory to the Board that the person is:

a. not less than twenty-one (21) years of age, and

b. of reputable and responsible character; and

2. The person shall have submitted evidence satisfactory to the Board of the person's ability to supervise ~~a nursing home or specialized home~~ the defined facility type in which he or she is licensed or certified to serve as a long-term care administrator.

C. ~~For purposes of this section, any person licensed as a nursing home administrator by this state prior to the effective date of this act shall be deemed to have a valid license in accordance with this section~~ All persons currently licensed or certified or lawfully serving as an administrator in their defined facility type shall be permitted to continue to serve in their current capacity

under their current terms of authorization. The Board may promulgate rules pursuant to Section 330.57 of this title to address future certification and licensure requirements for all long-term care administrator types without effect on the licensure or certification status of those currently certified or licensed. The Board shall not include a requirement for a four-year degree in any future licensing or certification requirements for assisted living, residential care or adult day care administrators. Until such rules are promulgated, current licensure and certification processes and standards shall remain in place.

~~D. The provisions of this section shall not be construed to add additional requirements for the licensure of assisted living administrators.~~

SECTION 4. AMENDATORY 63 O.S. 2001, Section 330.54, as amended by Section 4, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.54), is amended to read as follows:

Section 330.54 Each person licensed or certified as a long-term care administrator pursuant to the provisions of Section 330.53 of this title shall be required to pay an annual license or certification fee which shall be deposited in the Oklahoma State Board of Examiners for Long-Term Care Administrators Revolving Fund. Such fee shall be determined by the Oklahoma State Board of Examiners for Long-Term Care Administrators. Each such license or certification shall expire on the 31st day of December following its

issuance, and shall be renewable for a calendar year, upon meeting the renewal requirements and upon payment of the annual license fee.

SECTION 5. AMENDATORY 63 O.S. 2001, Section 330.57, as amended by Section 6, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.57), is amended to read as follows:

Section 330.57 The Oklahoma State Board of Examiners for Long-Term Care Administrators shall have sole and exclusive authority to determine the qualifications, skill and fitness of any person to serve as ~~an~~ a long-term care administrator ~~of a nursing home or specialized home~~ under the applicable provisions of the Nursing Home Care Act, the Continuum of Care and Assisted Living Act, the Residential Care Act, and the Adult Day Care Act. ~~The holder of a license under the provisions of Section 330.51 et seq. of this title shall be deemed qualified to serve as the administrator of a nursing home or specialized home~~ The Board shall promulgate rules to determine the qualifications for licensure or certification for the long-term care administrator types as defined in Section 330.51 of this title. Such rules may include a requirement for licensure instead of certification for certain long-term care administrator types.

SECTION 6. AMENDATORY 63 O.S. 2001, Section 330.58, as last amended by Section 2, Chapter 411, O.S.L. 2008 (63 O.S. Supp. 2010, Section 330.58), is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for Long-Term Care Administrators shall:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license or certification as a long-term care administrator, which standards shall be designed to ensure that long-term care administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as long-term care administrators;

2. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

3. Issue licenses or certifications to individuals determined, after the application of such techniques, to meet such standards. The Board may deny an initial application, deny a renewal application, and revoke or suspend licenses or certifications previously issued by the Board in any case where the individual holding any such license or certification is determined substantially to have failed to conform to the requirements of such standards. The Board may also warn, censure, impose administrative fines or use other remedies that may be considered to be less than revocation and suspension. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and

repetition of the violation and any additional factors deemed appropriate by the Board when issuing a fine;

4. Establish and carry out procedures designed to ensure that individuals licensed or certified as long-term care administrators will, during any period that they serve as such, comply with the requirements of such standards;

5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a long-term care administrator has failed to comply with the requirements of such standards. The long-term care ombudsman program of the Aging Services Division of the Department of Human Services shall be notified of all complaint investigations of the Board so that they may be present at any such complaint investigation for the purpose of representing long-term care facility consumers;

6. Receive and take appropriate action on any complaint or referral received by the Board from the Department of Human Services or any other regulatory agency. Complaints may also be generated by the Board or staff. A complaint shall not be published on the web site of the Oklahoma State Board of Examiners for Long-Term Care Administrators unless there is a finding by the Board that the complaint has merit. The Board shall promulgate rules that include, but are not limited to, provisions for:

a. establishing a complaint review process,

b. creating a formal complaint file, and

c. establishing a protocol for investigation of complaints;

7. Enforce the provisions of Sections 330.51 through 330.65 of this title against all persons who are in violation thereof including, but not limited to, individuals who are practicing or attempting to practice as long-term care administrators without proper authorization from the Board;

8. Conduct a continuing study and investigation of long-term care facilities and administrators of long-term care facilities within the state with a view toward the improvement of the standards imposed for the licensing or certifying of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of long-term care facilities who have been licensed or certified;

9. Cooperate with and provide assistance when necessary to state regulatory agencies in investigations of complaints;

10. Develop a code of ethics for long-term care administrators which includes, but is not limited to, a statement that administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator;

11. Report a final adverse action against a long-term care administrator to the Healthcare Integrity and Protection Data Bank pursuant to federal regulatory requirements;

12. Refer completed investigations to the proper law enforcement authorities for prosecution of criminal activities;

13. Impose administrative fines, in an amount to be determined by the Board, against persons who do not comply with the provisions of this act or the rules adopted by the Board. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board when issuing a fine;

14. Assess the costs of the hearing process, including attorney fees;

15. Grant short-term provisional licenses to individuals who do not meet all of the licensing requirements, provided the individual obtains the services of a currently licensed administrator to act as a consultant and meets any additional criteria for a provisional license established by the Board;

16. Order a summary suspension of an administrator's license <u>or certification</u> or an Administrator in Training (AIT) permit, if, in the course of an investigation, it is determined that a licensee<u>, certificate holder</u> or AIT candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety or

welfare of the public, and which conduct necessitates immediate action to prevent further harm; and

17. Promulgate rules governing the employment of assistant administrators for ~~long term care~~ nursing and skilled nursing facilities including, but not limited to, minimum qualifications.

SECTION 7. AMENDATORY 63 O.S. 2001, Section 330.59, as amended by Section 8, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.59), is amended to read as follows:

Section 330.59 It shall be unlawful and a misdemeanor for any person to act or serve in the capacity as a long-term care administrator unless the person is the holder of a license or certification as a long-term care administrator, issued in accordance with the provisions of this act.

SECTION 8. AMENDATORY Section 5, Chapter 168, O.S.L. 2005, as last amended by Section 4, Chapter 411, O.S.L. 2008 (63 O.S. Supp. 2010, Section 330.65), is amended to read as follows:

Section 330.65 A. Any decision by the Oklahoma State Board of Examiners for Long-Term Care Administrators pursuant to a complaint received against an individual administrator shall be voted upon by a quorum of the Board in an open meeting.

B. Any person or agency may submit to the Board a complaint against a long-term care administrator. Complaints may also be generated by the Board or staff.

C. A committee or committees of three ~~Board members~~ (3) persons appointed by the chair of the Board shall review complaints to determine if probable cause exists that a violation of this act or the rules of the Board has occurred. No committee shall be composed of a majority of board members who are long-term care administrators or owners. The committee may cause the allegations to be investigated, and, if this committee determines that such probable cause exists, this committee shall ~~draft~~ file a formal complaint against the long-term care administrator alleged to have committed the violation.

D. To ensure the confidentiality of an investigative file obtained during the investigation, the information in the investigative file shall not be deemed to be a record as that term is defined in the Oklahoma Open Records Act nor shall the information be subject to subpoena or discovery in any civil or criminal proceeding, except that the Board may give the information to law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the duties of that agency and only under circumstances that will ensure against unauthorized access to the information. The respondent may acquire information obtained during an investigation, unless the disclosure of the information is otherwise prohibited, except for the investigative report, if the respondent signs a protective order whereby the respondent agrees to use the information solely for the purpose of

defense in the Board proceeding and in any appeal therefrom and agrees not to otherwise disclose the information.

E. Upon completion of an investigation, the probable cause committee may make a recommendation to the Board to set the case for hearing, or for dismissal or other action.

F. The respondent may be given an opportunity to participate in an informal resolution of the case. Discussions to resolve the case without a hearing may be conducted by the Director, the prosecutor of the Board, or both the Director and the prosecutor, in consultation with the probable cause committee. Any recommendation for informal resolution shall be presented to the Board for its consideration and approval.

G. If the case is not resolved, the respondent shall be afforded notice and a hearing in accordance with the provisions of Article II of the Administrative Procedures Act. The members of the probable cause committee that reviewed the complaint shall recuse themselves from any participation in a hearing. Any party aggrieved by a decision of the Board following a hearing may appeal directly to district court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma Statutes.

SECTION 9. This act shall become effective November 1, 2011.

COMMITTEE REPORT BY: COMMITTEE ON HEALTH & HUMAN SERVICES, dated 4-4-11 - DO PASS, As Amended and Coauthored.