

1 **SENATE FLOOR VERSION**

2 March 29, 2012

3 As Amended

4 ENGROSSED HOUSE
5 BILL NO. 2207

6 By: Bennett, Hoskin, Stiles,
7 Moore and Roan of the House

8 and

9 Allen and Ivester of the
10 Senate

11 **[public health and safety - foster homes - effective
12 date]**

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

14 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-820, is
15 amended to read as follows:

16 Section 1-820. As used in the Residential Care Act:

17 1. "Abuse" means the willful infliction of injury, unreasonable
18 confinement, intimidation or punishment, with resulting physical
19 harm, impairment or mental anguish;

20 2. "Access" means the right of a person to enter a home to
21 communicate privately and without unreasonable restriction;

22 3. "Administrator" means the person who is in charge of a home
23 and who devotes at least one-third (1/3) of his or her full working
24 time to on-the-job supervision of such home;

1 4. "Adult companion home" means any home or establishment,
2 funded and certified by the Department of Human Services, which
3 provides homelike residential accommodations and supportive
4 assistance to three or fewer mentally retarded or developmentally
5 disabled adults;

6 5. "Advisory Board" means the Long-Term Care Facility Advisory
7 Board;

8 6. "Ambulatory" means any resident who is capable of self-
9 movement, including in and out of wheelchairs, to all areas of the
10 home;

11 7. "Board" means the State Board of Health;

12 8. "Commissioner" means the State Commissioner of Health;

13 9. "Department" means the State Department of Health;

14 10. "Habilitation" means procedures and interventions designed
15 to assist a mentally ill, drug-dependent or alcohol-dependent person
16 eighteen (18) years of age or older to achieve greater physical,
17 mental and social development by enhancing the well-being of the
18 person and teaching skills which increase the possibility that the
19 resident will make progressively independent and responsible
20 decisions about social behavior, quality of life, job satisfaction
21 and personal relationships;

22 11. "Home" means a residential care home;

23 12. "Residential care home":
24

1 a. means any establishment or institution which offers,
2 provides or supports residential accommodations, food
3 service, and supportive assistance to any of its
4 residents or houses any residents requiring supportive
5 assistance who are not related to the owner or
6 administrator of the home by blood or marriage. A
7 residential care home shall not include:

- 8 (1) an adult companion home,
9 (2) a group home,
10 (3) a hotel,
11 (4) a motel,
12 (5) a residential mental health facility operated by
13 the Department of Mental Health and Substance
14 Abuse Services,
15 (6) a fraternity or a sorority house, ~~or~~
16 (7) college or university dormitory, or
17 (8) a United States Department of Veterans Affairs
18 approved medical foster home.

19 The residents of a residential care home shall be
20 ambulatory and essentially capable of participating in
21 their own activities of daily living, but shall not
22 routinely require nursing services, and

23 b. may consist of a series of units or buildings which
24 are not connected or part of the same structure if:

- 1 (1) such buildings or units are owned by the same
2 owner or operator,
- 3 (2) all residents of the units or buildings are fully
4 capable of ambulation to and from the buildings
5 or units,
- 6 (3) the location and construction of the buildings or
7 units ensure the health, safety, and protection
8 from fire hazards and other hazards and provide
9 for the convenience and accessibility of the
10 residents to each residential building or unit,
- 11 (4) any out-of-doors premise or thoroughfare is
12 adequately maintained to ensure the health and
13 safety of the residents, and
- 14 (5) the buildings or units are within one hundred
15 seventy-five (175) feet of the building housing
16 the main kitchen and dining room. The units or
17 buildings must be located in the most convenient
18 and accessible location for residents;
- 19 provided, however, the leasing of rooms directly or
20 indirectly to residents of a home shall not void the
21 application of the provisions of the Residential Care
22 Act or rules promulgated pursuant thereto.
- 23
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1 The State Board of Health shall promulgate rules for such
2 residential homes pursuant to the provisions of Section 1-836 of
3 this title;

4 13. "Licensee" means a person, corporation, partnership, or
5 association who is the owner of a home which is licensed pursuant to
6 the provisions of the Residential Care Act;

7 14. "Maintenance" means meals, shelter, and laundry services;

8 15. "Neglect" means failure to provide goods and/or services
9 necessary to avoid physical harm, mental anguish, or mental illness;

10 16. "Operator" means the person who is not the administrator
11 but who manages the home;

12 17. "Owner" means a person, corporation, partnership,
13 association, or other entity which owns or leases a home or part of
14 a home, directly or indirectly, to residents. The person or entity
15 that stands to profit or lose as a result of the financial success
16 or failure of the operation shall be presumed to be the owner of the
17 home;

18 18. "Personal care" means assistance with meals, dressing,
19 movement, bathing or other personal needs or maintenance, or general
20 supervision of the physical and mental well-being of a person, who
21 is incapable of maintaining a private, independent residence, or who
22 is unable to manage all activities of daily living without
23 assistance, whether or not a guardian has been appointed for such
24 person;

1 19. "Resident" means a person of legal age, residing in a home
2 due to illness, physical or mental infirmity, or advanced age;

3 20. "Representative of a resident" means a court-appointed
4 guardian, or if there is no court-appointed guardian, a relative or
5 other person designated in writing by the resident. No owner,
6 agent, employee, or person with a pecuniary interest in the
7 residential facility or relative thereof shall be a representative
8 of a resident unless such person is appointed by the court;

9 21. "Supportive assistance" means the service rendered to any
10 person which is sufficient to enable the person to meet an adequate
11 level of daily living. Supportive assistance includes, but is not
12 limited to, housekeeping, assistance in the preparation of meals,
13 assistance in the safe storage, distribution and administration of
14 medications, and assistance in personal care as necessary for the
15 health and comfort of such person. The term "supportive assistance"
16 shall not be interpreted or applied so as to prohibit the
17 participation of residents in housekeeping or meal preparation tasks
18 as a part of the written treatment plan for the training,
19 habilitation or rehabilitation of the resident, prepared with the
20 participation of the resident, the mental health or drug or alcohol
21 services case-manager assigned to the resident, and the
22 administrator of the facility or a designee; and

23 22. "Transfer" means a change in location of living
24 arrangements of a resident from one home to another home.

1 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.6, is
2 amended to read as follows:

3 Section 1-890.6 A. The Continuum of Care and Assisted Living
4 Act shall not apply to residential care homes, adult companion
5 homes, domiciliary care units operated by the Department of Veterans
6 Affairs, medical foster homes approved by the Department of Veterans
7 Affairs, the private residences of persons with developmental
8 disabilities receiving services provided by the Developmental
9 Disabilities Services Division of the Department of Human Services
10 or through the Home- and Community-Based Waiver or the Alternative
11 Disposition Plan Waiver of the Oklahoma Health Care Authority, or to
12 hotels, motels, boardinghouses, rooming houses, or other places that
13 furnish board or room to their residents. The Continuum of Care and
14 Assisted Living Act shall not apply to facilities not charging or
15 receiving periodic compensation for services rendered and not
16 receiving any county, state or federal assistance.

17 B. The State Commissioner of Health may ban admissions to, or
18 deny, suspend, refuse to renew or revoke the license of, any
19 continuum of care facility or assisted living center which fails to
20 comply with the Continuum of Care and Assisted Living Act or rules
21 promulgated by the State Board of Health.

22 C. Any person who has been determined by the Commissioner to
23 have violated any provision of the Continuum of Care and Assisted
24 Living Act or any rule promulgated hereunder shall be liable for an

1 administrative penalty of not more than Five Hundred Dollars
2 (\$500.00) for each day that such violation occurs.

3 D. If a continuum of care facility's failure to comply with the
4 Continuum of Care and Assisted Living Act or rules involves nursing
5 care services, the Commissioner shall have authority to exercise
6 additional remedies provided under the Nursing Home Care Act. If a
7 continuum of care facility's failure to comply with the Continuum of
8 Care and Assisted Living Act or rules involves adult day care
9 services, then the Commissioner shall have authority to exercise
10 additional remedies provided under the Adult Day Care Act.

11 E. In taking any action to deny, suspend, deny renewal, or
12 revoke a license, or to impose an administrative fee, the
13 Commissioner shall comply with requirements of the Administrative
14 Procedures Act.

15 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1903, is
16 amended to read as follows:

17 Section 1-1903. A. No person shall establish, operate, or
18 maintain in this state any nursing facility without first obtaining
19 a license as required by the Nursing Home Care Act.

20 B. The Nursing Home Care Act shall not apply to any facility
21 operated by the Oklahoma Department of Veterans Affairs under
22 control of the Oklahoma War Veterans Commission residential care
23 homes, medical foster homes approved by the Department of Veterans
24 Affairs, assisted living facilities or adult companion homes which

1 are operated in conjunction with a nursing facility, or to hotels,
2 motels, boarding houses, rooming houses, or other places that
3 furnish board or room to their residents.

4 C. Certificate of need review shall not be required for any
5 addition, deletion, modification or new construction of current or
6 future State Veterans Center nursing facilities.

7 D. The Nursing Home Care Act shall not authorize any person to
8 engage in any manner in the practice of the healing arts or the
9 practice of medicine, as defined by law.

10 E. The Nursing Home Care Act shall not apply to a facility
11 which is not charging or receiving periodic compensation for
12 services rendered, and not receiving any county, state, or federal
13 assistance.

14 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1962, is
15 amended to read as follows:

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

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

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

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

- 9 a. observation, reporting, and documentation of client
10 status and the standby assistance or other services
11 furnished,
- 12 b. maintenance of a clean, safe, and healthy environment,
- 13 c. recognizing an emergency and necessary emergency
14 procedures,
- 15 d. safe techniques to provide standby assistance with
16 bathing, grooming, and toileting,
- 17 e. assistance with meal preparation and safe food
18 handling and storage,
- 19 f. client rights and responsibilities and the need for
20 respect for the client and for the privacy and
21 property of the client, and
- 22 g. basic infection control practices to include, at a
23 minimum, instruction in acceptable hand hygiene

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1 techniques and the application of standard
2 precautions.

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

6 4. No supportive home assistant shall provide services to a
7 client until a criminal history background check and a check of the
8 nurse aide registry maintained by the State Department of Health is
9 performed in accordance with Section 1-1950.1 of this title and the
10 assistant is found to have no notations of abuse of any kind on the
11 registry and no convictions of the crimes listed in subsection F of
12 Section 1-1950.1 of this title.

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

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

23 2. a. Any person in the employment of a home care agency as
24 a home health aide on June 30, 1992, with continuous

1 employment through June 30, 1993, shall be granted
2 home health aide certification by the Department on
3 July 1, 1993. The home care agency shall maintain
4 responsibility for assurance of specific competencies
5 of the home health aide and shall only assign the home
6 health aide to tasks for which the aide has been
7 determined to be competent.

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

12 c. Any home health aide employed on and after July 1,
13 1996, shall complete any specified training,
14 competency evaluation and testing required by the
15 Department.

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

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

19 2. A person who provides maid services only;

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

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

3 5. A nurse-midwife;

4 6. An individual, agency, or organization that contracts with
5 the Oklahoma Health Care Authority to provide services under the
6 Home and Community-Based Waiver for persons with mental retardation
7 or that contracts with the Department of Human Services to provide
8 community services to persons with mental retardation; provided,
9 that staff members and individuals providing such services shall
10 receive a level of training, approved by the Department of Human
11 Services, which meets or exceeds the level required pursuant to the
12 Home Care Act. An individual, agency or organization otherwise
13 covered under the Home Care Act shall be exempt from the act only
14 for those paraprofessional direct care services provided under
15 contracts referenced in this paragraph;

16 7. An individual, agency or organization that provides or
17 supports the provision of personal care services to an individual
18 who performs individual employer responsibilities of hiring,
19 training, directing and managing a personal care attendant as part
20 of the Oklahoma Health Care Authority Consumer-Directed Personal
21 Assistance Supports and Services (CD-PASS) waiver program. An
22 individual, agency or organization otherwise covered under the
23 provisions of the Home Care Act shall be exempt from the act only
24 for those paraprofessional direct care services provided under

1 Oklahoma Health Care Authority contracts referenced in this
2 paragraph, but shall not be exempt from the criminal history
3 background check required under the Home Care Act and Section 1-
4 1950.1 of this title for other paraprofessional direct care service
5 providers. A personal care attendant hired by a consumer under the
6 CD-PASS program shall be exempt from certification as a home health
7 aide, provided such personal care attendant receives the training
8 required and approved by the Department of Human Services;

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

12 9. An individual, agency or organization providing services in
13 a medical foster home subject to the approval of the Department of
14 Veterans Affairs; or

15 10. An individual who:

- 16 a. is employed by a licensed home care agency exclusively
17 to provide personal care services on a live-in basis,
18 b. has no convictions pursuant to a criminal history
19 investigation as provided in Section 1-1950.1 of this
20 title,
21 c. is being continuously trained by a registered nurse to
22 provide care that is specific to the needs of the
23 particular client receiving the care, and
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1 d. is supervised by a registered nurse via an on-site
2 visit at least once each month.

3 SECTION 5. This act shall become effective November 1, 2012.

4 COMMITTEE REPORT BY: COMMITTEE ON VETERANS & MILITARY AFFAIRS, dated
5 3-28-12 - DO PASS, As Amended and Coauthored.

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