SENATE FLOOR VERSION
February 21, 2012

SENATE BILL NO. 1210 By: Simpson, Allen, Childers, David, Garrison, Ivester, Johnson (Constance) and Shortey of the Senate

and

Hardin of the House

An Act relating to long-term care; amending 63 O.S. 2011, Sections 1-820, 1-890, 1-1903 and 1-1962, which relate to long-term care facilities; exempting certain facilities from certain regulation; and declaring an emergency.

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

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

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

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

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

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

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

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

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

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

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

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

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

11. "Home" means a residential care home;

12. "Residential care home":

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

(1) an adult companion home,

(2) a group home,

(3) a hotel,

(4) a motel,

(5) a residential mental health facility operated by the Department of Mental Health and Substance Abuse Services,

(6) a fraternity or a sorority house, ~~or~~

(7) college or university dormitory, or

(8) a home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans.

The residents of a residential care home shall be ambulatory and essentially capable of participating in

their own activities of daily living, but shall not routinely require nursing services, and

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

(1) such buildings or units are owned by the same owner or operator,

(2) all residents of the units or buildings are fully capable of ambulation to and from the buildings or units,

(3) the location and construction of the buildings or units ensure the health, safety, and protection from fire hazards and other hazards and provide for the convenience and accessibility of the residents to each residential building or unit,

(4) any out-of-doors premise or thoroughfare is adequately maintained to ensure the health and safety of the residents, and

(5) the buildings or units are within one hundred seventy-five (175) feet of the building housing the main kitchen and dining room. The units or buildings must be located in the most convenient and accessible location for residents;

provided, however, the leasing of rooms directly or indirectly to residents of a home shall not void the

application of the provisions of the Residential Care Act or rules promulgated pursuant thereto.

The State Board of Health shall promulgate rules for such residential homes pursuant to the provisions of Section 1-836 of this title;

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

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

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

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

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

18. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is unable to manage all activities of daily living without

assistance, whether or not a guardian has been appointed for ~~such~~ the person;

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

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

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

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

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

Section 1-890.6. A. The Continuum of Care and Assisted Living Act shall not apply to residential care homes, adult companion homes, domiciliary care units operated by the Department of Veterans Affairs, the private residences of persons with developmental disabilities receiving services provided by the Developmental Disabilities Services Division of the Department of Human Services or through the Home- and Community-Based Waiver or the Alternative Disposition Plan Waiver of the Oklahoma Health Care Authority, or to hotels, motels, boardinghouses, rooming houses, a home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans, or other places that furnish board or room to their residents. The Continuum of Care and Assisted Living Act shall not apply to facilities not charging or receiving periodic compensation for services rendered and not receiving any county, state or federal assistance.

B. The State Commissioner of Health may ban admissions to, or deny, suspend, refuse to renew or revoke the license of, any continuum of care facility or assisted living center which fails to

comply with the Continuum of Care and Assisted Living Act or rules promulgated by the State Board of Health.

C. Any person who has been determined by the Commissioner to have violated any provision of the Continuum of Care and Assisted Living Act or any rule promulgated hereunder shall be liable for an administrative penalty of not more than Five Hundred Dollars ($500.00) for each day that ~~such~~ the violation occurs.

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

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

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

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

B. The Nursing Home Care Act shall not apply to any facility operated by the Oklahoma Department of Veterans Affairs under control of the Oklahoma War Veterans Commission residential care homes, assisted living facilities or adult companion homes which are operated in conjunction with a nursing facility, a home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans, or to hotels, motels, boarding houses, rooming houses, or other places that furnish board or room to their residents.

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

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

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

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

Section 1-1962. A. No home care agency as ~~such~~ that term is defined by ~~this act~~ the Home Care 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.

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~~ the individual is a licensed health professional or unless ~~such~~ the 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~~ developmental disabilities or that contracts with the Department of Human Services to provide community services to persons with ~~mental retardation~~ developmental disabilities; provided, that staff members and individuals providing ~~such~~ the 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; or

10. A home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans.

SECTION 5. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

COMMITTEE REPORT BY: COMMITTEE ON VETERANS & MILITARY AFFAIRS, dated 2-8-12 - DO PASS, As Coauthored.