

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 HOUSE BILL 1282

By: Dank

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2001, Section 330.51, as last amended by  
9 Section 1, Chapter 291, O.S.L. 2006 (63 O.S. Supp.  
10 2010, Section 330.51), which relates to definitions;  
11 revising certain terms; adding certain terms;  
12 amending 63 O.S. 2001, Section 330.52, as last  
13 amended by Section 10, Chapter 347, O.S.L. 2007 (63  
14 O.S. Supp. 2010, Section 330.52), which relates to  
15 the Oklahoma State Board of Examiners for Long-Term  
16 Care Administrators; re-creating the Board for  
17 certain term; modifying composition of Board  
18 membership; providing effective date for Board  
19 vacancy; providing effective date for appointments;  
20 providing for terms; amending 63 O.S. 2001, Section  
21 330.53, as last amended by Section 2, Chapter 273,  
22 O.S.L. 2006 (63 O.S. Supp. 2010, Section 330.53),  
23 which relates to qualifications for licenses;  
24 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;  
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

1 penalty; amending Section 5, Chapter 168, O.S.L.  
2 2005, as last amended by Section 4, Chapter 411,  
3 O.S.L. 2008 (63 O.S. Supp. 2010, Section 330.65),  
4 which relates to Board complaint procedures;  
5 requiring three persons to review certain complaints;  
6 and providing an effective date.

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

8 SECTION 1. AMENDATORY 63 O.S. 2001, Section 330.51, as  
9 last amended by Section 1, Chapter 291, O.S.L. 2006 (63 O.S. Supp.  
10 2010, Section 330.51), is amended to read as follows:

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

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

15 2. "Long-term care administrator" means a person licensed by  
16 the State of Oklahoma pursuant to this act or certified as a nursing  
17 facility administrator, an assisted living facility administrator, a  
18 residential care facility administrator, or an adult day care center  
19 administrator pursuant to this act. A long-term care administrator  
20 must devote at least one-half (1/2) of such person's working time to  
21 on-the-job supervision of a long-term care facility which shall be a  
22 minimum of twenty (20) hours per work week; provided that this  
23 requirement shall not apply to an administrator of an intermediate  
24 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

1 in charge of more than one ICF-MR/16, if such facilities are located  
2 within a circle that has a radius of not more than fifteen (15)  
3 miles, and the total number of facilities and beds does not exceed  
4 six facilities and sixty-four beds. The facilities may be free-  
5 standing in a community or may be on campus with a parent  
6 institution. The ICF-MR/16 may be independently owned and operated  
7 or may be part of a larger institutional ownership and operation;

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

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

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

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

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

23 ~~4. "Administrator" and "owner" shall have the same meanings as~~  
24 ~~such terms are defined in the Nursing Home Care Act~~ "assisted living

1 center" and "continuum of care facility" shall have the same meaning  
2 as such terms are defined in the Continuum of Care and Assisted  
3 Living Act; "home" and "residential care home" shall have the same  
4 meaning as the terms are used in the Residential Care Act; and  
5 "adult day care center" and "center" shall have the same meaning as  
6 such terms are used in the Adult Day Care Act.

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

10 Section 330.52 A. There is hereby re-created, to continue  
11 until July 1, ~~2012~~ 2018, in accordance with the provisions of the  
12 Oklahoma Sunset Law, the Oklahoma State Board of Examiners for Long-  
13 Term Care Administrators. The Oklahoma State Board of Examiners for  
14 Long-Term Care Administrators shall consist of fifteen (15) members,  
15 ~~ten~~ eight of whom shall be ~~representative~~ representatives of the  
16 professions and institutions ~~concerned with the care and treatment~~  
17 ~~of critically ill or infirm elderly patients, three~~ of long-term  
18 care, with representation from each type of administrator defined in  
19 Section 330.51 of this title. In order to be eligible to serve as a  
20 member, such administrators shall be licensed or certified in their  
21 defined facility type, and be in good standing and have at least  
22 five (5) years of experience as an administrator. Four members  
23 ~~representing~~ shall represent the general public, ~~and~~ of which at  
24 least two shall be licensed medical professionals concerned with the

1 care and treatment of critically ill or infirm elderly patients.  
2 The preceding twelve members shall be appointed by the Governor,  
3 with the advice and consent of the Senate. The final three members  
4 shall constitute the State Commissioner of Health and the Director  
5 of the Department of Human Services, and the Director of the  
6 Department of Mental Health and Substance Abuse Services, or their  
7 designees. ~~The thirteen members shall be appointed by the Governor,~~  
8 ~~with the advice and consent of the Senate.~~

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

16 C. ~~Effective July 1, 2005~~ November 1, 2011, all appointed  
17 positions of the current Board shall be deemed vacant. The Governor  
18 shall make initial appointments pursuant to the provisions of this  
19 subsection ~~upon the effective date of this act.~~ Initial  
20 appointments shall become effective on ~~July 1, 2005~~ November 1,  
21 2011. The new members of the Board shall be initially appointed as  
22 follows:

23 1. ~~Two~~ Four of the members ~~who are owners or licensed~~  
24 ~~administrators, one member~~ representing each administrator type, two

1 members representing the general public and two other members shall  
2 be appointed for a term of ~~one (1) year~~ two (2) years to expire on  
3 ~~July 1, 2006~~ October 31, 2013;

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

8 ~~3. One member who is an owner or licensed administrator, one~~  
9 ~~member~~ 2. Four of the members representing each administrator type,  
10 two members representing the general public and one other member  
11 shall be appointed for a term of three (3) years to expire on ~~July~~  
12 ~~1, 2008~~ October 31, 2014.

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

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

20 SECTION 3. AMENDATORY 63 O.S. 2001, Section 330.53, as  
21 last amended by Section 2, Chapter 273, O.S.L. 2006 (63 O.S. Supp.  
22 2010, Section 330.53), is amended to read as follows:

23 Section 330.53 A. The Oklahoma State Board of Examiners for  
24 Long-Term Care Administrators shall have authority to issue licenses

1 or certifications to qualified persons as long-term care  
2 administrators, and shall establish qualification criteria for ~~such~~  
3 each type of long-term care administrators.

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

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

- 8 a. not less than twenty-one (21) years of age, and
- 9 b. of reputable and responsible character; and

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

14 C. ~~For purposes of this section, any person licensed as a~~  
15 ~~nursing home administrator by this state prior to the effective date~~  
16 ~~of this act shall be deemed to have a valid license in accordance~~  
17 ~~with this section~~ Until the Board promulgates rules pursuant to  
18 Section 330.57 of this title, all persons currently licensed or  
19 certified or lawfully serving as an administrator in their defined  
20 facility type shall be permitted to continue to serve in their  
21 current capacity under their current terms of authorization.

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

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

4 Section 330.54 Each person licensed or certified as a long-term  
5 care administrator pursuant to the provisions of Section 330.53 of  
6 this title shall be required to pay an annual license or  
7 certification fee which shall be deposited in the Oklahoma State  
8 Board of Examiners for Long-Term Care Administrators Revolving Fund.  
9 Such fee shall be determined by the Oklahoma State Board of  
10 Examiners for Long-Term Care Administrators. Each such license or  
11 certification shall expire on the 31st day of December following its  
12 issuance, and shall be renewable for a calendar year upon meeting  
13 the renewal requirements and upon payment of the annual license fee.

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

17 Section 330.57 The Oklahoma State Board of Examiners for Long-  
18 Term Care Administrators shall have sole and exclusive authority to  
19 determine the qualifications, skill and fitness of any person to  
20 serve as ~~an~~ a long-term care administrator ~~of a nursing home or~~  
21 ~~specialized home~~ under the applicable provisions of the Nursing Home  
22 Care Act, the Continuum of Care and Assisted Living Act, the  
23 Residential Care Act, and the Adult Day Care Act. ~~The holder of a~~  
24 ~~license under the provisions of Section 330.51 et seq. of this title~~

1 ~~shall be deemed qualified to serve as the administrator of a nursing~~  
2 ~~home or specialized home~~ The Board shall promulgate rules to  
3 determine the qualifications for licensure or certification for the  
4 long-term care administrator types as defined in Section 330.51 of  
5 this title. Such rules may include a requirement for licensure  
6 instead of certification for certain long-term care administrator  
7 types.

8 SECTION 6. AMENDATORY 63 O.S. 2001, Section 330.58, as  
9 last amended by Section 2, Chapter 411, O.S.L. 2008 (63 O.S. Supp.  
10 2010, Section 330.58), is amended to read as follows:

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

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

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

23 3. Issue licenses or certifications to individuals determined,  
24 after the application of such techniques, to meet such standards.

1 The Board may deny an initial application, deny a renewal  
2 application, and revoke or suspend licenses or certifications  
3 previously issued by the Board in any case where the individual  
4 holding any such license or certification is determined  
5 substantially to have failed to conform to the requirements of such  
6 standards. The Board may also warn, censure, impose administrative  
7 fines or use other remedies that may be considered to be less than  
8 revocation and suspension. Administrative fines imposed pursuant to  
9 this section shall not exceed One Thousand Dollars (\$1,000.00) per  
10 violation. The Board shall consider the scope, severity and  
11 repetition of the violation and any additional factors deemed  
12 appropriate by the Board when issuing a fine;

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

17 5. Receive, investigate, and take appropriate action with  
18 respect to any charge or complaint filed with the Board to the  
19 effect that any individual licensed as a long-term care  
20 administrator has failed to comply with the requirements of such  
21 standards. The long-term care ombudsman program of the Aging  
22 Services Division of the Department of Human Services shall be  
23 notified of all complaint investigations of the Board so that they  
24

1 may be present at any such complaint investigation for the purpose  
2 of representing long-term care facility consumers;

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

- 11 a. establishing a complaint review process,
- 12 b. creating a formal complaint file, and
- 13 c. establishing a protocol for investigation of  
14 complaints;

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

20 8. Conduct a continuing study and investigation of long-term  
21 care facilities and administrators of long-term care facilities  
22 within the state with a view toward the improvement of the standards  
23 imposed for the licensing or certifying of such administrators and  
24 of procedures and methods for the enforcement of such standards with

1 respect to administrators of long-term care facilities who have been  
2 licensed or certified;

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

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

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

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

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

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

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

6        16. Order a summary suspension of an administrator's license or  
7 certification or an Administrator in Training (AIT) permit, if, in  
8 the course of an investigation, it is determined that a licensee,  
9 certificate holder or AIT candidate for licensure has engaged in  
10 conduct of a nature that is detrimental to the health, safety or  
11 welfare of the public, and which conduct necessitates immediate  
12 action to prevent further harm; and

13        17. Promulgate rules governing the employment of assistant  
14 administrators for long-term care facilities including, but not  
15 limited to, minimum qualifications.

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

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

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1 SECTION 8. AMENDATORY Section 5, Chapter 168, O.S.L.  
2 2005, as last amended by Section 4, Chapter 411, O.S.L. 2008 (63  
3 O.S. Supp. 2010, Section 330.65), is amended to read as follows:

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

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

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

21 D. To ensure the confidentiality of an investigative file  
22 obtained during the investigation, the information in the  
23 investigative file shall not be deemed to be a record as that term  
24 is defined in the Oklahoma Open Records Act nor shall the

1 information be subject to subpoena or discovery in any civil or  
2 criminal proceeding, except that the Board may give the information  
3 to law enforcement and other state licensing agencies as necessary  
4 and appropriate in the discharge of the duties of that agency and  
5 only under circumstances that will ensure against unauthorized  
6 access to the information. The respondent may acquire information  
7 obtained during an investigation, unless the disclosure of the  
8 information is otherwise prohibited, except for the investigative  
9 report, if the respondent signs a protective order whereby the  
10 respondent agrees to use the information solely for the purpose of  
11 defense in the Board proceeding and in any appeal therefrom and  
12 agrees not to otherwise disclose the information.

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

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

23 G. If the case is not resolved, the respondent shall be  
24 afforded notice and a hearing in accordance with the provisions of

1 Article II of the Administrative Procedures Act. The members of the  
2 probable cause committee that reviewed the complaint shall recuse  
3 themselves from any participation in a hearing. Any party aggrieved  
4 by a decision of the Board following a hearing may appeal directly  
5 to district court pursuant to the provisions of Section 318 of Title  
6 75 of the Oklahoma Statutes.

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

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