

1 STATE OF OKLAHOMA

2 2nd Session of the 53rd Legislature (2012)

3 HOUSE BILL 2462

By: Moore

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5
6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 1-820, which relates to
9 Residential Care Act definitions; modifying
10 definition; amending 63 O.S. 2011, Section 1-890.6,
11 which relates to the applicability of the Continuum
12 of Care and Assisted Living Act; specifying certain
13 medical foster homes shall be exempt from act;
14 amending 63 O.S. 2011, Section 1-1903, which relates
15 to the applicability of the Nursing Home Care Act;
16 specifying certain medical foster homes shall be
17 exempt from act; amending 63 O.S. 2011, Section 1-
18 1962, which relates to the Home Care Act; specifying
19 certain medical foster homes shall be exempt from
20 act; and providing an effective date.

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

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

24 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;

- 1 2. "Access" means the right of a person to enter a home to
2 communicate privately and without unreasonable restriction;
- 3 3. "Administrator" means the person who is in charge of a home
4 and who devotes at least one-third (1/3) of his or her full working
5 time to on-the-job supervision of such home;
- 6 4. "Adult companion home" means any home or establishment,
7 funded and certified by the Department of Human Services, which
8 provides homelike residential accommodations and supportive
9 assistance to three or fewer mentally retarded or developmentally
10 disabled adults;
- 11 5. "Advisory Board" means the Long-Term Care Facility Advisory
12 Board;
- 13 6. "Ambulatory" means any resident who is capable of self-
14 movement, including in and out of wheelchairs, to all areas of the
15 home;
- 16 7. "Board" means the State Board of Health;
- 17 8. "Commissioner" means the State Commissioner of Health;
- 18 9. "Department" means the State Department of Health;
- 19 10. "Habilitation" means procedures and interventions designed
20 to assist a mentally ill, drug-dependent or alcohol-dependent person
21 eighteen (18) years of age or older to achieve greater physical,
22 mental and social development by enhancing the well-being of the
23 person and teaching skills which increase the possibility that the
24 resident will make progressively independent and responsible

1 decisions about social behavior, quality of life, job satisfaction
2 and personal relationships;

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

4 12. "Residential care home":

5 a. means any establishment or institution which offers,
6 provides or supports residential accommodations, food
7 service, and supportive assistance to any of its
8 residents or houses any residents requiring supportive
9 assistance who are not related to the owner or
10 administrator of the home by blood or marriage. A

11 residential care home shall not include:

12 (1) an adult companion home,

13 (2) a group home,

14 (3) a hotel,

15 (4) a motel,

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

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

20 (7) college or university dormitory, or

21 (8) a United States Department of Veterans Affairs
22 approved medical foster home.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 assistance, whether or not a guardian has been appointed for such
2 person;

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

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

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

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

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

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

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

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1 C. Any person who has been determined by the Commissioner to
2 have violated any provision of the Continuum of Care and Assisted
3 Living Act or any rule promulgated hereunder shall be liable for an
4 administrative penalty of not more than Five Hundred Dollars
5 (\$500.00) for each day that such violation occurs.

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

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

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

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

23 B. The Nursing Home Care Act shall not apply to any facility
24 operated by the Oklahoma Department of Veterans Affairs under

1 control of the Oklahoma War Veterans Commission residential care
2 homes, medical foster homes approved by the Department of Veterans
3 Affairs, assisted living facilities or adult companion homes which
4 are operated in conjunction with a nursing facility, or to hotels,
5 motels, boarding houses, rooming houses, or other places that
6 furnish board or room to their residents.

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

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

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

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

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

22 B. 1. No home care agency, except as otherwise provided by
23 this subsection, shall place an individual in the role of supportive
24 home assistant with a client on a full-time, temporary, per diem, or

1 other basis, unless the individual has completed agency-based
2 supportive home assistant training taught by a registered nurse in
3 the sections applicable to the assistance required by the client.
4 Each supportive home assistant who successfully completes agency-
5 based training shall demonstrate competence by testing through an
6 independent entity approved by the State Department of Health. The
7 requirements related to application, approval, renewal, and denial
8 of such testing entities shall be set forth in administrative rules
9 promulgated by the State Board of Health.

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

- 12 a. observation, reporting, and documentation of client
13 status and the standby assistance or other services
14 furnished,
- 15 b. maintenance of a clean, safe, and healthy environment,
- 16 c. recognizing an emergency and necessary emergency
17 procedures,
- 18 d. safe techniques to provide standby assistance with
19 bathing, grooming, and toileting,
- 20 e. assistance with meal preparation and safe food
21 handling and storage,
- 22 f. client rights and responsibilities and the need for
23 respect for the client and for the privacy and
24 property of the client, and

1 g. basic infection control practices to include, at a
2 minimum, instruction in acceptable hand hygiene
3 techniques and the application of standard
4 precautions.

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

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

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

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

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

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

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

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

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

21 2. A person who provides maid services only;

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

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

5 5. A nurse-midwife;

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

18 7. An individual, agency or organization that provides or
19 supports the provision of personal care services to an individual
20 who performs individual employer responsibilities of hiring,
21 training, directing and managing a personal care attendant as part
22 of the Oklahoma Health Care Authority Consumer-Directed Personal
23 Assistance Supports and Services (CD-PASS) waiver program. An
24 individual, agency or organization otherwise covered under the

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

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

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

17 10. An individual who:

- 18 a. is employed by a licensed home care agency exclusively
19 to provide personal care services on a live-in basis,
20 b. has no convictions pursuant to a criminal history
21 investigation as provided in Section 1-1950.1 of this
22 title,

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1 c. is being continuously trained by a registered nurse to
2 provide care that is specific to the needs of the
3 particular client receiving the care, and

4 d. is supervised by a registered nurse via an on-site
5 visit at least once each month.

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

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