

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 SENATE BILL 2040

By: Johnson (Constance)

4
5
6 AS INTRODUCED

7 An Act relating to end stage renal disease treatment
8 facility licensure; creating the End Stage Renal
9 Disease Facilities Act; providing short title;
10 defining terms; prohibiting operation without license
11 after specified date; providing exemptions;
12 authorizing the State Board of Health to promulgate
13 rules and minimum standards and stating criteria
14 thereof; requiring facilities to submit application;
15 establishing nonrefundable application fee; providing
16 conditions for issuance and denial of license;
17 authorizing temporary license and setting expiration
18 date; providing for license renewal; prohibiting
19 transfer or assignment of license; requiring posting
20 of license; directing distribution of funds into
21 specified revolving fund; authorizing Department to
22 take legal action to redress or restrain violations;
23 establishing jurisdiction of court; establishing
24 civil penalty; establishing administrative penalty
and providing criteria for determination of penalty
amount; creating End Stage Renal Disease Revolving
Fund and stating procedures relating thereto;
creating the Oklahoma End Stage Renal Disease
Advisory Council and requiring State Commissioner of
Health to make appointments; stating purpose;
establishing powers and duties of Advisory Council
and setting parameters thereof; providing for
membership, appointment, qualifications, terms of
office and vacancies; providing for meetings,
election, duties of chair and travel reimbursement;
requiring action in accordance with specified acts;
providing for codification; providing an effective
date; and declaring an emergency.

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

2 SECTION 1. NEW LAW A new section of law to be codified
3 in the Oklahoma Statutes as Section 1-2603.1 of Title 63, unless
4 there is created a duplication in numbering, reads as follows:

5 This act shall be known and may be cited as the "End Stage Renal
6 Disease Facilities Act".

7 SECTION 2. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 1-2603.2 of Title 63, unless
9 there is created a duplication in numbering, reads as follows:

10 As used in the End Stage Renal Disease Facilities Act:

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

12 2. "Chief technician" means the facility-based supervisor of
13 the facility's mechanical, reuse and water treatment systems;

14 3. "Commissioner" means the State Commissioner of Health;

15 4. "Competency" means the demonstrated ability to carry out
16 specified tasks or activities with reasonable skill and safety in
17 adherence with the prevailing standard of practice;

18 5. "Department" means the State Department of Health;

19 6. "Dialysis" means a process by which dissolved substances are
20 removed from a patient's body by diffusion from one fluid
21 compartment to another across a semipermeable membrane including,
22 but not limited to, hemodialysis and peritoneal dialysis;

23 7. "Dialysis technician or patient care technician" means an
24 individual who is not a registered nurse or licensed physician who

1 provides dialysis care under the supervision of a registered nurse
2 or licensed physician;

3 8. "End stage renal disease" means that stage of renal
4 impairment that appears irreversible and permanent and requires a
5 regular course of dialysis or kidney transplantation to maintain
6 life;

7 9. "End stage renal disease facility" means a facility that
8 provides dialysis treatment or dialysis training to individuals with
9 end stage renal disease; and

10 10. "ESRD Network 13" means a regional agency under contract
11 with the Center for Medicare and Medicaid Services (CMS) to assess
12 and improve the quality of care provided to patients with end stage
13 renal disease (ESRD) in the states of Oklahoma, Arkansas and
14 Louisiana.

15 SECTION 3. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-2603.3 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 A. After November 1, 2014, no end stage renal disease facility
19 shall operate without first obtaining a license as required by the
20 End Stage Renal Disease Facilities Act.

21 B. The provisions of this act shall not apply to:

22 1. A hospital licensed by the State Department of Health which
23 provides dialysis only to individuals receiving inpatient services
24 from such hospital; or

1 2. The office of a licensed physician if the office is not used
2 primarily as an end stage renal disease facility.

3 SECTION 4. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-2603.4 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 A. The State Board of Health shall have the power and duty to
7 promulgate, amend and repeal rules necessary to implement the
8 provisions of the End Stage Renal Disease Facilities Act, including
9 rules which:

10 1. Address the establishment and enforcement of qualifications,
11 standards and requirements for licensure of end stage renal disease
12 facilities;

13 2. Provide procedures for issuing, reviewing, revoking and/or
14 denying a license or a license renewal to any facility making
15 application when the requirements for licensure or renewal are not
16 met;

17 3. Provide procedures for transfer of ownership of a licensed
18 facility;

19 4. Provide procedures for Department entry into any end stage
20 renal disease facility when reasonably necessary for the sole
21 purpose of inspecting and investigating conditions of the facility
22 in accordance with provisions of the End Stage Renal Disease
23 Facilities Act;

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1 5. Provide for administrative penalties for violations of the
2 End Stage Renal Disease Facilities Act;

3 6. Provide procedures for receipt and investigation of
4 complaints regarding an end stage renal disease facility. A
5 complaint regarding an end stage renal disease facility shall not be
6 made public unless a complete investigation substantiates the
7 violations alleged in the complaint; and

8 7. Provide for license and renewal fees, not to exceed
9 reasonable costs incurred by the Department in implementing this
10 act, taking into account the number of dialysis stations and patient
11 census served at licensed facilities.

12 B. The State Department of Health shall establish minimum
13 standards to protect the health and safety of a patient at an end
14 stage renal disease facility, including:

15 1. Design and space requirements for safe access by patients
16 and personnel and which ensure patient privacy and dignity;

17 2. Emergency and disaster preparedness;

18 3. Facility communication responsibilities;

19 4. Water treatment and reuse by the facility;

20 5. Sanitary and hygienic conditions in the facility;

21 6. Equipment used by the facility in relationship to the health
22 and safety of patients;

23 7. Indicators of the quality of care provided by the facility;

24 8. Patient care and treatment;

1 9. Qualifications and supervision of the professional staff,
2 including physicians, as well as other personnel; and

3 10. Patient and facility rights and responsibilities.

4 SECTION 5. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 1-2603.5 of Title 63, unless
6 there is created a duplication in numbering, reads as follows:

7 A. Any facility making application for a license under this act
8 shall submit an application to the State Department of Health on a
9 form prescribed by the Department.

10 B. An application for an initial license to establish or
11 operate a new end stage renal disease facility shall be accompanied
12 by a nonrefundable application fee set by the State Board of Health.
13 The Department shall issue a license if, after inspection and
14 investigation, it finds the facility in compliance with this act and
15 rules of the Board. An application for a license for an end stage
16 renal disease facility may be denied for failure to meet any of the
17 minimum standards of this act or the rules promulgated by the Board.

18 C. The Department may grant a temporary initial license to a
19 facility making application. The temporary initial license expires
20 on the earlier of:

21 1. The date the Department issues or denies the license
22 provided for in subsection B or D of this section; or

23 2. Six (6) months after the date the temporary initial license
24 was issued.

1 D. The license provided for in subsection B shall be renewable
2 annually after submission of:

3 1. The renewal application and fee; and

4 2. An annual report on a form prescribed by the Department
5 including information related to the quality of care at the end
6 stage renal disease facility.

7 E. No license shall be transferable or assignable.

8 F. Every license shall be posted in a conspicuous place on the
9 licensed premises and shall be issued only for the premises named in
10 the application.

11 G. All funds collected pursuant to this section shall be
12 deposited in the End Stage Renal Disease Facilities Revolving Fund
13 created in Section 9 of this act.

14 SECTION 6. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 1-2603.6 of Title 63, unless
16 there is created a duplication in numbering, reads as follows:

17 The State Department of Health may bring an action in a court of
18 competent jurisdiction for equitable relief to redress or restrain a
19 violation by any person of a provision of the Oklahoma End Stage
20 Renal Disease Facilities Act or any rule promulgated pursuant to the
21 provisions of the act. The court shall have jurisdiction to
22 determine such action, and to grant the necessary or appropriate
23 relief including, but not limited to, mandatory or prohibitive
24 injunctive relief or interim equitable relief.

1 SECTION 7. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 1-2603.7 of Title 63, unless
3 there is created a duplication in numbering, reads as follows:

4 A. A person who knowingly violates the End Stage Renal Disease
5 Facilities Act or knowingly fails to comply with any rule
6 promulgated thereto, shall be liable for a civil penalty of not more
7 than One Thousand Dollars (\$1,000.00) for each violation if the
8 State Department of Health finds that the violation threatens the
9 health and safety of a patient of an end stage renal disease
10 facility.

11 B. Each day of a continuing violation may constitute a separate
12 ground for recovery.

13 SECTION 8. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 1-2603.8 of Title 63, unless
15 there is created a duplication in numbering, reads as follows:

16 The State Department of Health may assess an administrative
17 penalty against a person who violates this act or rules promulgated
18 by the State Board of Health. The penalty shall not exceed Ten
19 Thousand Dollars (\$10,000.00). In determining the amount of an
20 administrative penalty under this section, the Department shall
21 consider:

- 22 1. The seriousness of the violation;
- 23 2. The history of previous violations;
- 24 3. The amount necessary to deter future violations;

1 4. The effort made to correct the violation; and

2 5. Any other matters that justice may require.

3 SECTION 9. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 1-2603.9 of Title 63, unless
5 there is created a duplication in numbering, reads as follows:

6 There is hereby created in the State Treasury a revolving fund
7 for the State Department of Health, to be designated as the "End
8 Stage Renal Disease Revolving Fund". The fund shall be a continuing
9 fund not subject to fiscal year limitations. The fund shall consist
10 of all monies collected pursuant to the provisions of this act. All
11 monies accruing to the fund are hereby appropriated and shall be
12 budgeted and expended by the State Department of Health for
13 licensure and regulation of end stage renal disease facilities.
14 Expenditures from the fund shall be made upon warrants issued by the
15 State Treasurer against claims filed as prescribed by law with the
16 Director of State Finance for approval and payment.

17 SECTION 10. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-2603.10 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 A. The State Commissioner of Health shall appoint an Oklahoma
21 End Stage Renal Disease Advisory Council to advise the State Board
22 of Health, the Commissioner, and the State Department of Health
23 regarding end stage renal disease operations and to recommend
24 actions to improve patient care.

1 B. The Advisory Council shall have the power and duty to:

2 1. Review, in its advisory capacity, rules and standards for
3 end stage renal disease facility licensure;

4 2. Evaluate, review, and make recommendations regarding State
5 Department of Health licensure activities; provided, however, the
6 Advisory Council shall not make recommendations regarding scope of
7 practice for any health care providers or practitioners regulated
8 pursuant to Title 59 of the Oklahoma Statutes; and

9 3. Recommend:

10 a. quality indicators and data submission requirements
11 for end stage renal disease facilities, and

12 b. indicators and data to be used by the Department to
13 monitor compliance with licensure requirements.

14 C. The Advisory Council shall be composed of nine (9) members
15 appointed by the Commissioner, with the advice and consent of the
16 Board, as follows:

17 1. Three patients or immediate family members of a patient
18 diagnosed with end stage renal disease, one of whom shall be of
19 Native American descent. The patient representative may be selected
20 from a population of individuals with current successful renal
21 transplants, if at one time the individual received treatment at an
22 end stage renal disease facility;

23 2. One member who shall be a licensed physician with a practice
24 which includes end stage renal disease services;

1 3. One member who shall be an Oklahoma-based representative of
2 ESRD Network 13, currently employed or serving in an advisory
3 capacity to ESRD Network 13, at the time of nomination to the
4 Advisory Council;

5 4. One member who shall be a licensed, registered nurse and a
6 current member of a nationally recognized nephrology nursing
7 association;

8 5. One member who shall be an end stage renal disease facility
9 administrator;

10 6. One member who shall be a licensed dietician specializing in
11 end stage renal disease; and

12 7. One number who shall be social worker specializing in end
13 stage renal disease.

14 D. Members shall be appointed for terms of three (3) years.
15 Provided, of those members initially appointed to the Advisory
16 Council, five members shall be appointed for two-year terms
17 beginning November 1, 2014, as designated by the Commissioner, and
18 four members shall be appointed for three-year terms beginning
19 November 1, 2014, as designated by the Commissioner. When a vacancy
20 occurs, members shall continue in office until a successor is
21 appointed.

22 E. The Advisory Council shall meet on a quarterly basis and
23 shall annually elect from among its members a chair. The chair
24 shall preside at meetings of the Advisory Council, set the agenda,

1 and perform other duties as may be prescribed by the Commissioner.
2 Members of the Council shall serve without compensation but shall be
3 reimbursed by the Department for travel expenses related to their
4 service as authorized by the State Travel Reimbursement Act.

5 F. The Advisory Council shall act in accordance with the
6 provisions of the Oklahoma Open Meeting Act, the Oklahoma Open
7 Records Act, and the Administrative Procedures Act.

8 SECTION 11. This act shall become effective July 1, 2014.

9 SECTION 12. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

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