

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 SENATE BILL 629

By: Simpson

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6 AS INTRODUCED

7 An Act relating to public health and safety; amending
8 56 O.S. 2011, Section 2002, as amended by Section
9 241, Chapter 304, O.S.L. 2012 (56 O.S. Supp. 2012,
10 Section 2002), which relates to the Nursing
11 Facilities Quality of Care Fee; exempting facilities
12 operated by the Oklahoma Department of Veterans
13 Affairs; amending 63 O.S. 2011, Section 1-890.4,
14 which relates to application fees; exempting
15 facilities operated by the Oklahoma Department of
16 Veterans Affairs; amending 63 O.S. 2011, Section 1-
17 890.6, as amended by Section 2, Chapter 12, O.S.L.
18 2012 (63 O.S. Supp. 2012, Section 2), which relates
19 to the Continuum of Care and Assisted Living Act;
20 directing the State Department of Health to initiate
21 complaints based on investigations and to cooperate
22 in prosecution; providing for inspections by the
23 State Department of Health of Continuum of Care and
24 Assisted Living facilities operated by the Oklahoma
Department of Veterans Affairs; permitting certain
entry; providing standards for evaluation; directing
the State Department of Health to submit certain
report; amending 63 O.S. 2011, Section 1-1903, as
amended by Section 3, Chapter 12, O.S.L. 2012 (63
O.S. Supp. 2012, Section 1-1903), which relates to
Nursing Home Care Act exemptions; removing facilities
operated by the Oklahoma Department of Veterans
Affairs from exemption; amending 63 O.S. 2011,
Section 1-1905, which relates to license renewal
fees; exempting any facility operated by the Oklahoma
Department of Veterans Affairs; amending 63 O.S.
2011, Section 1-1911, which relates to inspections;
including any facility operated by the Oklahoma
Department of Veterans Affairs; amending 63 O.S.
2011, Section 1-1912, which relates to violations of
the Nursing Home Care Act; providing for corrective

1 measures; directing the State Department of Health to
2 submit certain report; amending 63 O.S. 2011, Section
3 1-1916, which relates to correcting violations;
4 applying certain prohibitions to any person at any
5 facility operated by the Oklahoma Department of
6 Veterans Affairs; amending 63 O.S. 2011, Section 1-
7 1950.1, as amended by Section 3, Chapter 358, O.S.L.
8 2012 (63 O.S. Supp. 2012, Section 1-1950.1), which
9 relates to criminal background checks; updating
10 definition; amending 63 O.S. 2011, Section 1-1950.3,
11 which relates to staffing; deleting obsolete
12 language; applying certain prohibitions to certain
13 facilities; updating definition; amending 63 O.S.
14 2011, Section 1-1951, as last amended by Section 6,
15 Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012, Section
16 1-1951), which relates to training programs; updating
17 powers and duties of the State Department of Health;
18 exempting certain programs; providing for
19 codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2011, Section 2002, as
amended by Section 241, Chapter 304, O.S.L. 2012 (56 O.S. Supp.
2012, Section 2002), is amended to read as follows:

Section 2002. A. For the purpose of providing quality care
enhancements, the Oklahoma Health Care Authority is authorized to
and shall assess a Nursing Facilities Quality of Care Fee pursuant
to this section upon each nursing facility licensed in this state,
except that any facility operated by the Oklahoma Department of
Veterans Affairs under control of the Oklahoma War Veterans
Commission shall be exempt from the fee. Quality of care

1 enhancements include, but are not limited to, the purposes specified
2 in this section.

3 B. As a basis for determining the Nursing Facilities Quality of
4 Care Fee assessed upon each licensed nursing facility, the Oklahoma
5 Health Care Authority shall calculate a uniform per-patient day
6 rate. The rate shall be calculated by dividing six percent (6%) of
7 the total annual patient gross receipts of all licensed nursing
8 facilities in this state by the total number of patient days for all
9 licensed nursing facilities in this state. The result shall be the
10 per-patient day rate. Beginning July 15, 2004, the Nursing
11 Facilities Quality of Care Fee shall not be increased unless
12 specifically authorized by the Legislature.

13 C. The Nursing Facilities Quality of Care Fee owed by a
14 licensed nursing facility shall be calculated by the Oklahoma Health
15 Care Authority by adding the daily patient census of a licensed
16 nursing facility, as reported by the facility for each day of the
17 month, and by multiplying the ensuing figure by the per-patient day
18 rate determined pursuant to the provisions of subsection B of this
19 section.

20 D. Each licensed nursing facility which is assessed the Nursing
21 Facilities Quality of Care Fee shall be required to file a report on
22 a monthly basis with the Oklahoma Health Care Authority detailing
23 the daily patient census and patient gross receipts at such time and
24 in such manner as required by the Oklahoma Health Care Authority.

1 E. 1. The Nursing Facilities Quality of Care Fee for a
2 licensed nursing facility for the period beginning October 1, 2000,
3 shall be determined using the daily patient census and annual
4 patient gross receipts figures reported to the Oklahoma Health Care
5 Authority for the calendar year 1999 upon forms supplied by the
6 Authority.

7 2. The Nursing Facilities Quality of Care Fee for the fiscal
8 year beginning July 1, 2001, and each fiscal year thereafter shall
9 be determined by:

- 10 a. using the daily patient census and patient gross
11 receipts reports received by the Authority covering
12 the six-month period October 1 through March 31 of the
13 prior fiscal year, and
- 14 b. annualizing those figures.

15 For the 2005 fiscal year and each fiscal year thereafter, the
16 annualization of the Nursing Facilities Quality of Care Fee
17 specified in this paragraph shall be subject to the limitation in
18 subsection B of this section.

19 F. The payment of the Nursing Facilities Quality of Care Fee by
20 licensed nursing facilities shall be an allowable cost for Medicaid
21 reimbursement purposes.

22 G. 1. There is hereby created in the State Treasury a
23 revolving fund to be designated the "Nursing Facility Quality of
24 Care Fund".

1 2. The fund shall be a continuing fund, not subject to fiscal
2 year limitations, and shall consist of:

- 3 a. all monies received by the Authority pursuant to this
4 section and otherwise specified or authorized by law,
- 5 b. monies received by the Authority due to federal
6 financial participation pursuant to Title XIX of the
7 Social Security Act, and
- 8 c. interest attributable to investment of money in the
9 fund.

10 3. All monies accruing to the credit of the fund are hereby
11 appropriated and shall be budgeted and expended by the Authority
12 for:

- 13 a. reimbursement of the additional costs paid to
14 Medicaid-certified nursing facilities for purposes
15 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
16 Title 63 of the Oklahoma Statutes,
- 17 b. reimbursement of the Medicaid rate increases for
18 intermediate care facilities for the mentally retarded
19 (ICFs/MR),
- 20 c. nonemergency transportation services for Medicaid-
21 eligible nursing home clients,
- 22 d. eyeglass and denture services for Medicaid-eligible
23 nursing home clients,

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- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,
- h. costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,
- i. durable medical equipment and supplies services for Medicaid-eligible elderly adults, and
- j. personal needs allowance increases for residents of nursing homes and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

4. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by

1 law with the Director of the Office of Management and Enterprise
2 Services for approval and payment.

3 5. The fund and the programs specified in this section funded
4 by revenues collected from the Nursing Facilities Quality of Care
5 Fee pursuant to this section are exempt from budgetary cuts,
6 reductions, or eliminations.

7 6. The Medicaid rate increases for intermediate care facilities
8 for the mentally retarded (ICFs/MR) shall not exceed the net
9 Medicaid rate increase for nursing facilities including, but not
10 limited to, the Medicaid rate increase for which Medicaid-certified
11 nursing facilities are eligible due to the Nursing Facilities
12 Quality of Care Fee less the portion of that increase attributable
13 to treating the Nursing Facilities Quality of Care Fee as an
14 allowable cost.

15 7. The reimbursement rate for nursing facilities shall be made
16 in accordance with Oklahoma's Medicaid reimbursement rate
17 methodology and the provisions of this section.

18 8. No nursing facility shall be guaranteed, expressly or
19 otherwise, that any additional costs reimbursed to the facility will
20 equal or exceed the amount of the Nursing Facilities Quality of Care
21 Fee paid by the nursing facility.

22 H. 1. In the event that federal financial participation
23 pursuant to Title XIX of the Social Security Act is not available to
24 the Oklahoma Medicaid program, for purposes of matching expenditures

1 from the Nursing Facility Quality of Care Fund at the approved
2 federal medical assistance percentage for the applicable fiscal
3 year, the Nursing Facilities Quality of Care Fee shall be null and
4 void as of the date of the nonavailability of such federal funding,
5 through and during any period of nonavailability.

6 2. In the event of an invalidation of this section by any court
7 of last resort under circumstances not covered in subsection I of
8 this section, the Nursing Facilities Quality of Care Fee shall be
9 null and void as of the effective date of that invalidation.

10 3. In the event that the Nursing Facilities Quality of Care Fee
11 is determined to be null and void for any of the reasons enumerated
12 in this subsection, any Nursing Facilities Quality of Care Fee
13 assessed and collected for any periods after such invalidation shall
14 be returned in full within sixty (60) days by the Oklahoma Health
15 Care Authority to the nursing facility from which it was collected.

16 I. 1. If any provision of this section or the application
17 thereof shall be adjudged to be invalid by any court of last resort,
18 such judgment shall not affect, impair or invalidate the provisions
19 of the section, but shall be confined in its operation to the
20 provision thereof directly involved in the controversy in which such
21 judgment was rendered. The applicability of such provision to other
22 persons or circumstances shall not be affected thereby.

23 2. This subsection shall not apply to any judgment that affects
24 the rate of the Nursing Facilities Quality of Care Fee, its

1 applicability to all licensed nursing homes in the state, the usage
2 of the fee for the purposes prescribed in this section, and/or the
3 ability of the Oklahoma Health Care Authority to obtain full federal
4 participation to match its expenditures of the proceeds of the fee.

5 J. The Oklahoma Health Care Authority shall promulgate rules
6 for the implementation and enforcement of the Nursing Facilities
7 Quality of Care Fee established by this section.

8 K. The Authority shall provide for administrative penalties in
9 the event nursing facilities fail to:

- 10 1. Submit the Quality of Care Fee;
- 11 2. Submit the fee in a timely manner;
- 12 3. Submit reports as required by this section; or
- 13 4. Submit reports timely.

14 L. As used in this section:

15 1. "Nursing facility" means any home, establishment or
16 institution, or any portion thereof, licensed by the State
17 Department of Health as defined in Section 1-1902 of Title 63 of the
18 Oklahoma Statutes;

19 2. "Medicaid" means the medical assistance program established
20 in Title XIX of the federal Social Security Act and administered in
21 this state by the Oklahoma Health Care Authority;

22 3. "Patient gross revenues" means gross revenues received in
23 compensation for services provided to residents of nursing
24 facilities including, but not limited to, client participation. The

1 term "patient gross revenues" shall not include amounts received by
2 nursing facilities as charitable contributions; and

3 4. "Additional costs paid to Medicaid-certified nursing
4 facilities under Oklahoma's Medicaid reimbursement methodology"
5 means both state and federal Medicaid expenditures including, but
6 not limited to, funds in excess of the aggregate amounts that would
7 otherwise have been paid to Medicaid-certified nursing facilities
8 under the Medicaid reimbursement methodology which have been updated
9 for inflationary, economic, and regulatory trends and which are in
10 effect immediately prior to the inception of the Nursing Facilities
11 Quality of Care Fee.

12 M. If any provision of this section, or the application
13 thereof, is determined by any controlling federal agency, or any
14 court of last resort to prevent the state from obtaining federal
15 financial participation in the state's Medicaid program, such
16 provision shall be deemed null and void as of the date of the
17 nonavailability of such federal funding and through and during any
18 period of nonavailability. All other provisions of the bill shall
19 remain valid and enforceable.

20 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.4, is
21 amended to read as follows:

22 Section 1-890.4. A. Each application for establishment of a
23 continuum of care facility or assisted living center shall be
24 accompanied by a nonrefundable application fee. The State Board of

1 Health shall develop a sliding fee scale not to exceed One Thousand
2 Dollars (\$1,000.00) for each application, except that any facility
3 operated by the Oklahoma Department of Veterans Affairs under
4 control of the Oklahoma War Veterans Commission shall be exempt from
5 the fee. The scale shall be based upon the bed capacity of the
6 continuum of care facilities or assisted living centers.

7 B. Each application for an initial license, or annual renewal
8 of the license, to operate a continuum of care facility or assisted
9 living center shall be accompanied by a license fee of Ten Dollars
10 (\$10.00) for each bed included in the maximum bed capacity at such
11 facility or center, except that any facility operated by the
12 Oklahoma Department of Veterans Affairs under control of the
13 Oklahoma War Veterans Commission shall be exempt from the fee. Each
14 application for an initial or renewal license for a continuum of
15 care facility that includes an adult day care component shall be
16 accompanied by an additional license fee in an amount to be
17 determined by the Board, but not to exceed Seventy-five Dollars
18 (\$75.00), except that any facility operated by the Oklahoma
19 Department of Veterans Affairs under control of the Oklahoma War
20 Veterans Commission shall be exempt from the fee.

21 C. Each application to establish or license a continuum of care
22 facility or assisted living center shall be on a form approved by
23 the Commissioner to include, but not be limited to, the following:
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1 1. Disclosure of the applicant's identity and background in the
2 operation of continuum of care and assisted living services; and

3 2. Evidence of the adequacy of the applicant's financial
4 resources and ability to ensure adequate staffing.

5 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-890.6, as
6 amended by Section 2, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
7 Section 1-890.6), is amended to read as follows:

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

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

6 C. Any person who has been determined by the Commissioner to
7 have violated any provision of the Continuum of Care and Assisted
8 Living Act or any rule promulgated hereunder shall be liable for an
9 administrative penalty of not more than Five Hundred Dollars
10 (\$500.00) for each day that the violation occurs.

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

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

23 F. For Continuum of Care and Assisted Living facilities
24 operated by the Oklahoma Department of Veterans Affairs under

1 control of the Oklahoma War Veterans Commission, if an inspection
2 reveals to the State Department of Health the commission of a crime
3 or crimes incidental to the operations of an Oklahoma Department of
4 Veterans Affairs nursing facility, it shall be the duty of the State
5 Department of Health to initiate a complaint with the appropriate
6 district attorney, and to cooperate in the prosecution of the
7 alleged offender in the event an information is filed pursuant to
8 such complaint.

9 SECTION 4. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 1-900.9 of Title 63, unless
11 there is created a duplication in numbering, reads as follows:

12 For Continuum of Care and Assisted Living facilities operated by
13 the Oklahoma Department of Veterans Affairs under control of the
14 Oklahoma War Veterans Commission:

15 1. The State Department of Health shall conduct unannounced
16 inspections of all Continuum of Care and Assisted Living facilities
17 operated by the Oklahoma Department of Veterans Affairs under
18 control of the Oklahoma War Veterans Commission as deemed necessary
19 by the State Department of Health.

20 2. Inspectors employed by the State Department of Health shall
21 be permitted to enter the premises and administrative offices of all
22 Oklahoma Department of Veterans Affairs nursing facilities for the
23 purpose of performing their assigned duties.

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1 3. Each Continuum of Care and Assisted Living facility operated
2 by the Oklahoma Department of Veterans Affairs under control of the
3 War Veterans Commission shall be evaluated for the purpose of
4 compliance with the Continuum of Care and Assisted Living Facilities
5 Act, any applicable requirements of the Nursing Home Care Act, and
6 rules promulgated thereto.

7 4. Within thirty (30) days of receipt of a plan of correction
8 by the Oklahoma State Department of Health from any facility
9 operated by the Oklahoma Department of Veterans Affairs under
10 control of the Oklahoma War Veterans Commission, the Oklahoma State
11 Department of Health shall submit the results of the inspection,
12 including a list of deficiencies in the condition or operation of
13 the facility and recommendations for corrective measures in the form
14 of a written report to the person immediately responsible for the
15 administration of the facility inspected, to the Oklahoma Department
16 of Veterans Affairs, to the Oklahoma War Veterans Commission, to the
17 Governor, to the Speaker of the House of Representatives, and to the
18 President Pro Tempore of the Senate.

19 SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-1903, as
20 amended by Section 3, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
21 Section 1-1903), is amended to read as follows:

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

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

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

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

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

21 SECTION 6. AMENDATORY 63 O.S. 2011, Section 1-1905, is
22 amended to read as follows:

23 Section 1-1905. A. An application for a license, or renewal
24 thereof, to operate a facility shall be accompanied by a fee of Ten

1 Dollars (\$10.00) for each bed included in the maximum bed capacity
2 at such facility, except that any facility operated by the Oklahoma
3 Department of Veterans Affairs under control of the Oklahoma War
4 Veterans Commission residential care homes shall be exempt from the
5 fee. All licenses shall be on a form prescribed by the State
6 Commissioner of Health, which shall include, but not be limited to,
7 the maximum bed capacity for which it is granted and the date the
8 license was issued. The license shall:

- 9 1. Not be transferable or assignable;
- 10 2. Be posted in a conspicuous place on the licensed premises;
- 11 3. Be issued only for the premises named in the application;

12 and

- 13 4. Expire twelve (12) months from the date of issuance,
14 provided an initial license shall expire one hundred eighty (180)
15 days after the date of issuance. Licenses may be issued for a
16 period of more than twelve (12) months, but not more than twenty-
17 four (24) months, for the license period immediately following the
18 effective date of this provision in order to permit an equitable
19 distribution of license expiration dates to all months of the year.

20 B. The fee for a license amendment to reflect an increase in
21 bed capacity shall be prorated based on the number of days remaining
22 in the licensure period and the change in the number of beds, except
23 that any facility operated by the Oklahoma Department of Veterans
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1 Affairs under control of the Oklahoma War Veterans Commission shall
2 be exempt from the fee.

3 C. The issuance or renewal of a license after notice of a
4 violation has been sent shall not constitute a waiver by the State
5 Department of Health of its power to rely on the violation as the
6 basis for subsequent license revocation or other enforcement action
7 under this act arising out of the notice of violation.

8 D. 1. When transfer of ownership or operation of a facility is
9 proposed, the transferee shall notify the Department of the transfer
10 and apply for a new license at least thirty (30) days prior to final
11 transfer.

12 2. The transferor shall remain responsible for the operation of
13 the facility until such time as a license is issued to the
14 transferee.

15 3. The license granted to the transferee shall be subject to
16 the plan of correction submitted by the previous owner and approved
17 by the Department and any conditions contained in a conditional
18 license issued to the previous owner. If there are outstanding
19 violations and no approved plan of correction has been implemented,
20 the Department may issue a conditional license and plan of
21 correction as provided in this act.

22 4. The transferor shall remain liable for all penalties
23 assessed against the facility which are imposed for violations
24 occurring prior to transfer of ownership.

1 E. Nursing and specialized facilities, as defined and licensed
2 pursuant to the Nursing Home Care Act shall be surveyed through an
3 unannounced inspection at least once every fifteen (15) months, with
4 a statewide average survey cycle of twelve (12) months.

5 SECTION 7. AMENDATORY 63 O.S. 2011, Section 1-1911, is
6 amended to read as follows:

7 Section 1-1911. A. 1. Every building, institution, or
8 establishment for which a license has been issued, including any
9 facility operated by the Oklahoma Department of Veterans Affairs
10 under control of the Oklahoma War Veterans Commission, shall be
11 periodically inspected by a duly appointed representative of the
12 State Department of Health, pursuant to rules promulgated by the
13 State Board of Health with the advice and counsel of the Long-Term
14 Care Facility Advisory Board, created in Section 1-1923 of this
15 title.

16 2. Inspection reports shall be prepared on forms prescribed by
17 the Commissioner with the advice and counsel of the Advisory Board.

18 B. 1. The Department, whenever it deems necessary, shall
19 inspect, survey, and evaluate every facility, including any facility
20 operated by the Oklahoma Department of Veterans Affairs under
21 control of the Oklahoma War Veterans Commission, to determine
22 compliance with applicable licensure and certification requirements
23 and standards. All inspections of facilities shall be unannounced.

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1 The Department may have as many unannounced inspections as it deems
2 necessary.

3 2. Any employee of the State Department of Health who discloses
4 to any unauthorized person, prior to an inspection, information
5 regarding an unannounced nursing home inspection required pursuant
6 to the provisions of this section shall, upon conviction thereof, be
7 guilty of a misdemeanor. In addition, such action shall be
8 construed to be a misuse of office and punishable as a violation of
9 rules promulgated by the Ethics Commission.

10 3. a. The Department may periodically visit a facility for
11 the purpose of consultation and may notify the
12 facility in advance of such a visit. An inspection,
13 survey, or evaluation, other than an inspection of
14 financial records or a consultation visit, shall be
15 conducted without prior notice to the facility.

16 b. One person shall be invited by the Department from a
17 statewide organization of the elderly to act as a
18 citizen observer in unannounced inspections. The
19 individual may be a state or local ombudsman as
20 defined by the Aging Services Division of the
21 Department of Human Services, acting pursuant to the
22 provisions of the Older Americans Act of 1965, Public
23 Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as
24 amended.

1 c. The citizen observer shall be reimbursed for expenses
2 in accordance with the provisions of the State Travel
3 Reimbursement Act.

4 d. An employee of a state or unit of a local government
5 agency, charged with inspecting, surveying, and
6 evaluating facilities, who aids, abets, assists,
7 conceals, or conspires with a facility administrator
8 or employee in violation of the provisions of the
9 Nursing Home Care Act shall be guilty, upon conviction
10 thereof, of a misdemeanor and shall be subject to
11 dismissal from employment.

12 C. The Department shall hold open meetings, as part of its
13 routine licensure survey, in each of the licensed facilities to
14 advise and to facilitate communication and cooperation between
15 facility personnel and the residents of facilities in their mutual
16 efforts to improve patient care. Administrators, employees of the
17 facility, residents, residents' relatives, friends, residents'
18 representatives, and employees from appropriate state and federal
19 agencies shall be encouraged to attend these meetings to contribute
20 to this process.

21 D. 1. The Department shall require periodic reports and shall
22 have access to books, records, and other documents maintained by the
23 facility to the extent necessary to implement the provisions of the
24 Nursing Home Care Act and the rules promulgated pursuant thereto.

1 2. Any holder of a license or applicant for a license shall be
2 deemed to have given consent to any authorized officer, employee, or
3 agent of the Department to enter and inspect the facility in
4 accordance with the provisions of the Nursing Home Care Act.
5 Refusal to permit said entry or inspection, except for good cause,
6 shall constitute grounds for remedial action or administrative
7 penalty or both such action and penalty as provided in the Nursing
8 Home Care Act.

9 E. The Department shall maintain a file on each facility in the
10 state. All conditions and practices not in compliance with
11 applicable standards shall be specifically stated. If a violation
12 is corrected or is subject to an approved plan of correction, such
13 action shall be contained in the file. Upon receiving a written
14 request for a copy of the file documents, the Department shall send
15 a copy of the document to any person making the written request.
16 The Department may charge a reasonable fee for copying costs.

17 SECTION 8. AMENDATORY 63 O.S. 2011, Section 1-1912, is
18 amended to read as follows:

19 Section 1-1912. A. The State Department of Health shall
20 promptly serve a notice of violation upon a licensee whenever upon
21 inspection or investigation, the Department determines that:

22 1. The facility is in violation of the Nursing Home Care Act,
23 any rule promulgated thereunder, or applicable federal certification
24 criteria; or

1 2. The financial condition of the facility poses an immediate
2 risk to the proper operation of the facility or to the health,
3 safety or welfare of the residents of the facility.

4 B. Each notice of violation shall be prepared in writing and
5 shall specify the nature of the violation, and the statutory
6 provision, rule or standard alleged to have been violated. The
7 notice of violation shall inform the licensee of its obligation to
8 file a plan of correction within ten (10) working days of receipt of
9 the notice of violation. In the case of a specialized facility for
10 persons with mental retardation, the Department shall offer the
11 licensee an informal opportunity comparable to the process offered
12 to Medicaid-certified nursing facilities pursuant to 42 CFR 488.331,
13 in order to dispute the alleged violations.

14 C. The Department shall notify the licensee of its intent to
15 take any remedial action, impose administrative penalties, place a
16 monitor or temporary manager in the facility, issue a conditional
17 license, or suspend or revoke a license. The Department shall also
18 inform the licensee of the right to an informal dispute resolution,
19 hearing, or both.

20 D. Whenever the Department finds that an emergency exists
21 requiring immediate action to protect the health, safety or welfare
22 of any resident of a facility licensed pursuant to the provisions of
23 this act, the Department may, without notice of hearing, issue an
24 order stating the existence of such an emergency and requiring that

1 action be taken as deemed necessary by the Department to meet the
2 emergency. The order shall be effective immediately. Any person to
3 whom such an order is directed shall comply with such order
4 immediately but, upon application to the Department, shall be
5 afforded a hearing within ten (10) business days of receipt of the
6 application. On the basis of such hearing, the Department may
7 continue the order in effect, revoke it, or modify it. Any person
8 aggrieved by such order continued after the hearing provided in this
9 subsection may appeal to the district court in Oklahoma County
10 within thirty (30) days. Such appeal when docketed shall have
11 priority over all cases pending on the docket, except criminal
12 cases. For purposes of this subsection, the State Board of Health
13 shall define by rule the term "emergency" to include, but not be
14 limited to, a life-endangering situation.

15 E. Within thirty (30) days of receipt of a plan of correction
16 by the Oklahoma State Department of Health from any facility
17 operated by the Oklahoma Department of Veterans Affairs under the
18 control of the Oklahoma War Veterans Commission, the Oklahoma State
19 Department of Health shall submit the results of the inspection,
20 including a list of deficiencies in the condition or operation of
21 the facility and recommendations for corrective measures in the form
22 of a written report to the person immediately responsible for the
23 administration of the facility inspected, to the Oklahoma Department
24 of Veterans Affairs, to the Oklahoma War Veterans Commission, to the

1 Governor, to the Speaker of the House of Representatives, and to the
2 President Pro Tempore of the Senate.

3 SECTION 9. AMENDATORY 63 O.S. 2011, Section 1-1916, is
4 amended to read as follows:

5 Section 1-1916. A. No person, including any person at any
6 facility operated by the Oklahoma Department of Veterans Affairs
7 under control of the Oklahoma War Veterans Commission shall:

8 1. Intentionally fail to correct or interfere with the
9 correction of a violation within the time specified on the notice or
10 approved plan of correction under this act as the maximum period
11 given for correction, unless an extension is granted and the
12 corrections are made before expiration of extension;

13 2. Intentionally prevent, interfere with, or attempt to impede
14 in any way the work of any duly authorized representative of the
15 Department in the investigation and enforcement of this act;

16 3. Intentionally prevent or attempt to prevent any such
17 representative from examining any relevant books or records in the
18 conduct of official duties under this act;

19 4. Intentionally prevent or interfere with any such
20 representative in the preserving of evidence of any violation of
21 this act or the rules promulgated under this act;

22 5. Intentionally retaliate or discriminate against any resident
23 or employee for contacting or providing information to any state
24

1 official, or for initiating, participating in, or testifying in an
2 action for any remedy authorized under this act;

3 6. Willfully file any false, incomplete or intentionally
4 misleading information required to be filed under this act, or
5 willfully fail or refuse to file any information; or

6 7. Open or operate a facility without a license.

7 B. A violation of this section is a misdemeanor.

8 C. The district attorney of the county in which the facility is
9 located, or the Attorney General, may be requested by the Department
10 to initiate prosecutions under this section.

11 SECTION 10. AMENDATORY 63 O.S. 2011, Section 1-1950.1,
12 as amended by Section 3, Chapter 358, O.S.L. 2012 (63 O.S. Supp.
13 2012, Section 1-1950.1), is amended to read as follows:

14 Section 1-1950.1. A. For purposes of this section:

15 1. "Nurse aide" means any person who provides, for
16 compensation, nursing care or health-related services to residents
17 in a nursing facility, a specialized facility, a residential care
18 home, continuum of care facility, assisted living center or an adult
19 day care center and who is not a licensed health professional. Such
20 term also means any person who provides such services to individuals
21 in their own homes as an employee or contract provider of a home
22 health or home care agency, or as a contract provider of the
23 Medicaid State Plan Personal Care Program;

24

1 2. "Employer" means any of the following facilities, homes,
2 agencies or programs which are subject to the provision of this
3 section:

- 4 a. a nursing facility or specialized facility as such
5 terms are defined in the Nursing Home Care Act,
- 6 b. a residential care home as such term is defined by the
7 Residential Care Act,
- 8 c. an adult day care center as such term is defined in
9 the Adult Day Care Act,
- 10 d. an assisted living center as such term is defined by
11 the Continuum of Care and Assisted Living Act,
- 12 e. a continuum of care facility as such term is defined
13 by the Continuum of Care and Assisted Living Act,
- 14 f. a home health or home care agency, ~~and~~
- 15 g. the Department of Human Services, in its capacity as
16 an operator of any hospital or health care institution
17 or as a contractor with providers under the Medicaid
18 State Plan Personal Care Program, and
- 19 h. any facility operated by the Oklahoma Department of
20 Veterans Affairs under control of the Oklahoma War
21 Veterans Commission;

22 3. "Home health or home care agency" means any person,
23 partnership, association, corporation or other organization which
24 administers, offers or provides health care services or supportive

1 assistance for compensation to three or more ill, disabled, or
2 infirm persons in the temporary or permanent residence of such
3 persons, and includes any subunits or branch offices of a parent
4 home health or home care agency;

5 4. "Bureau" means the Oklahoma State Bureau of Investigation;
6 and

7 5. "Completion of the sentence" means the last day of the
8 entire term of the incarceration imposed by the sentence including
9 any term that is deferred, suspended or subject to parole.

10 B. Before any employer makes an offer to employ or to contract
11 with a nurse aide to provide nursing care, health-related services
12 or supportive assistance to any individual, the employer shall
13 provide for a criminal history background check to be made on the
14 nurse aide pursuant to the provisions of the Long-Term Care Security
15 Act. If the employer is a facility, home or institution which is
16 part of a larger complex of buildings, the requirement of a criminal
17 history background check shall apply only to an offer of employment
18 or contract made to a person who will work primarily in the
19 immediate boundaries of the facility, home or institution.

20 Where the provisions of the Long-Term Care Security Act
21 pertaining to registry screenings and national criminal history
22 record check are not in effect pending an effective date established
23 in rulemaking, an employer is authorized to obtain any criminal
24

1 history background records maintained by the Bureau pursuant to the
2 following:

3 1. The employer shall request the Bureau to conduct a criminal
4 history background check on the nurse aide and shall provide to the
5 Bureau any relevant information required by the Bureau to conduct
6 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
7 to the Bureau for each criminal history background check that is
8 conducted pursuant to such a request;

9 2. An employer may make an offer of temporary employment to a
10 nurse aide pending the results of the criminal history background
11 check. The employer in such instance shall provide to the Bureau
12 the name and relevant information relating to the person within
13 seventy-two (72) hours after the date the person accepts temporary
14 employment. The employer shall not hire or contract with the nurse
15 aide on a permanent basis until the results of the criminal history
16 background check are received;

17 3. An employer may accept a criminal history background report
18 less than one (1) year old of a person to whom such employer makes
19 an offer of employment. The report shall be obtained from the
20 previous employer or contractor of such person and shall only be
21 obtained upon the written consent of such person; and

22 4. Every employer while subject to the provisions of this
23 subsection shall inform each applicant for employment, or each
24 prospective contract provider, as applicable, that the employer is

1 required to obtain a criminal history background record before
2 making an offer of permanent employment or contract to a nurse aide.

3 C. 1. If the results of a criminal history background check
4 reveal that the subject person has been convicted of, pled guilty or
5 no contest to, or received a deferred sentence for, a felony or
6 misdemeanor offense for any of the following offenses in any state
7 or federal jurisdiction, the employer shall not hire or contract
8 with the person:

- 9 a. abuse, neglect or financial exploitation of any person
10 entrusted to the care or possession of such person,
- 11 b. rape, incest or sodomy,
- 12 c. child abuse,
- 13 d. murder or attempted murder,
- 14 e. manslaughter,
- 15 f. kidnapping,
- 16 g. aggravated assault and battery,
- 17 h. assault and battery with a dangerous weapon, or
- 18 i. arson in the first degree.

19 2. If less than seven (7) years have elapsed since the
20 completion of sentence, and the results of a criminal history check
21 reveal that the subject person has been convicted of, or pled guilty
22 or no contest to, a felony or misdemeanor offense for any of the
23 following offenses, in any state or federal jurisdiction, the
24 employer shall not hire or contract with the person:

- 1 a. assault,
- 2 b. battery,
- 3 c. indecent exposure and indecent exhibition, except
- 4 where such offense disqualifies the applicant as a
- 5 registered sex offender,
- 6 d. pandering,
- 7 e. burglary in the first or second degree,
- 8 f. robbery in the first or second degree,
- 9 g. robbery or attempted robbery with a dangerous weapon,
- 10 or imitation firearm,
- 11 h. arson in the second degree,
- 12 i. unlawful manufacture, distribution, prescription, or
- 13 dispensing of a Schedule I through V drug as defined
- 14 by the Uniform Controlled Dangerous Substances Act,
- 15 j. grand larceny, or
- 16 k. petit larceny or shoplifting.

17 D. An employer shall not employ or continue employing a person
18 addicted to any Schedule I through V drug as specified by the
19 Uniform Controlled Dangerous Substances Act unless the person
20 produces evidence that the person has successfully completed a drug
21 rehabilitation program.

22 E. All employment eligibility determination records received by
23 the employer pursuant to this section are confidential and are for
24 the exclusive use of the State Department of Health and the employer

1 which requested the information. Except on court order or with the
2 written consent of the person being investigated, the records shall
3 not be released or otherwise disclosed to any other person or
4 agency. These records shall be destroyed after one (1) year from
5 the end of employment of the person to whom such records relate.

6 F. As part of the inspections required by the Nursing Home Care
7 Act, Continuum of Care and Assisted Living Act, the Residential Care
8 Act, and the Adult Day Care Act, the State Department of Health
9 shall review the employment files of any facility, home or
10 institution required to obtain a criminal history background
11 determination to ensure such facilities, homes or institutions are
12 in compliance with the provisions of this section.

13 SECTION 11. AMENDATORY 63 O.S. 2011, Section 1-1950.3,
14 is amended to read as follows:

15 Section 1-1950.3 A. 1. ~~Until November 1, 2004, no employer or~~
16 ~~contractor who is subject to the provisions of Section 1-1950.1 or~~
17 ~~1-1950.2 of this title shall use, on a full-time, temporary, per~~
18 ~~diem, or other basis, any individual who is not a licensed health~~
19 ~~professional as a nurse aide for more than four (4) months, unless~~
20 ~~such individual has satisfied all requirements for certification and~~
21 ~~is eligible for placement on the nurse aide registry maintained by~~
22 ~~the State Department of Health.~~

23 2. ~~a. Effective November 1, 2004, no~~ A nursing facility,
24 specialized facility, continuum of care facility,

1 assisted living center, adult day care or residential
2 home, or facility operated by the Oklahoma Department
3 of Veterans Affairs under control of the Oklahoma War
4 Veterans Commission, shall not employ as a nurse aide,
5 on a full-time, temporary, per diem, or any other
6 basis, any individual who is not certified as a nurse
7 aide in good standing and is not eligible for
8 placement on the nurse aide registry maintained by the
9 State Department of Health.

10 ~~b.~~

11 2. The Department may grant a temporary emergency waiver to the
12 provisions of this paragraph to any nursing facility, continuum of
13 care facility, assisted living center or adult day care or
14 residential home which can demonstrate that such facility, home or
15 institution has been unable to successfully meet its staffing
16 requirements related to the provisions of subparagraph a of this
17 paragraph. No later than September 30, 2004, the State Board of
18 Health shall promulgate rules related to eligibility for receipt of
19 such waiver, and the process and the conditions for obtaining the
20 waiver.

21 ~~e. From November 1, 2004, until October 31, 2005, the~~
22 ~~Department shall not issue any monetary penalties nor~~
23 ~~shall it issue any licensure deficiency related to the~~
24 ~~provisions of subparagraph a of this paragraph to a~~

1 ~~nursing facility, specialized facility, continuum of~~
2 ~~care facility, assisted living center, adult day care~~
3 ~~or residential care home, which is unable to comply~~
4 ~~with the requirements and which has applied for a~~
5 ~~temporary waiver under subparagraph b of this~~
6 ~~paragraph, whether or not the waiver application has~~
7 ~~been approved.~~

8 B. 1. ~~Until November 1, 2004, no person shall use an~~
9 ~~individual as a nurse aide unless the individual:~~

10 ~~a. is enrolled in a Department-approved training and~~
11 ~~competency evaluation program,~~

12 ~~b. is currently certified and eligible to be listed on~~
13 ~~the nurse aide registry, or~~

14 ~~c. has completed the requirements for certification and~~
15 ~~placement on the nurse aide registry.~~

16 ~~2. An individual employed as a nurse aide who is enrolled in a~~
17 ~~Department-approved training and competency evaluation program for~~
18 ~~nurse aides shall successfully complete such training and competency~~
19 ~~evaluations within four (4) months of entering the training program.~~

20 ~~3. The individual shall obtain certification, and the~~
21 ~~Department shall place the nurse aide on the registry within thirty~~
22 ~~(30) days after demonstration of competency.~~

23 ~~4. Any nursing facility, specialized facility, continuum of~~
24 ~~care facility, assisted living center, adult day care or residential~~

1 ~~care home that employs an individual who is in nurse aide training,~~
2 ~~as provided in this section, shall ensure that the trainee shall:~~

3 ~~a. complete the required training and competency program~~
4 ~~as provided in rules prior to any direct contact with~~
5 ~~a resident or client,~~

6 ~~b. not perform any service for which the trainee has not~~
7 ~~trained and been determined proficient by the~~
8 ~~instructor, and~~

9 ~~c. be supervised at all times by no less than a licensed~~
10 ~~practical nurse.~~

11 ~~5. No employer may use as a nurse aide an individual who has~~
12 ~~not completed the nurse aide training and competency program within~~
13 ~~the required four month period.~~

14 ~~C. For purposes of this section, "four (4) months" means the~~
15 ~~equivalent of four (4) months of full-time employment as a nurse~~
16 ~~aide by any employer in any nursing facility, specialized facility,~~
17 ~~continuum of care facility, assisted living center, adult day care~~
18 ~~or residential care home.~~

19 ~~D. 1. The Department may grant a trainee a one-time extension~~
20 ~~of the four-month training requirement if:~~

21 ~~a. such requirement causes an undue hardship for the~~
22 ~~trainee due to unusual circumstances or illness, and~~

23
24

1 ~~b. the trainee has demonstrated a good faith effort to~~
2 ~~complete the training and competency evaluation~~
3 ~~program.~~

4 ~~2. The State Board of Health shall promulgate rules related to~~
5 ~~the review of and the process and conditions for such an extension.~~

6 ~~E.~~ 1. Certified medication aides, upon successful completion
7 of competency standards or prescribed training courses, shall be
8 eligible to distribute medications or treatments provided by
9 paragraph 2 of this subsection within a:

- 10 a. correctional facility, as set forth in Section 623 of
- 11 Title 57 of the Oklahoma Statutes,
- 12 b. correctional facility operated by a contractor of the
- 13 Department of Corrections,
- 14 c. county or municipal jail,
- 15 d. nursing facility,
- 16 e. specialized facility,
- 17 f. continuum of care facility,
- 18 g. assisted living center,
- 19 h. adult day care, ~~or~~
- 20 i. residential care home, or
- 21 j. facilities operated by the Oklahoma Department of
- 22 Veterans Affairs under control of the Oklahoma War
- 23 Veterans Commission.

24 2. Certified medication aides may:

- a. perform fingerstick blood sugars,
- b. administer diabetic medications, including subcutaneous injections of insulin, provided that the certified medication aide has completed a Department-approved advanced training program on diabetes and the administration of diabetes medications, including injections,
- c. administer medications, first aid treatments and nutrition; by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal, and nasogastric/gastrostomy tubes routes, and
- d. administer oral metered dose inhalers and nebulizers;

3. The State Board of Health shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:

- a. competency and practice standards for medication aides,
- b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,
- c. certification and recertification requirements for medication aides,

1 d. development of criteria and procedures for approval or
2 disapproval of training and competency evaluation
3 programs, and

4 e. procedures for denying, suspending, withdrawing, or
5 refusing to renew certification for a medication aide;

6 4. Each facility shall develop policies and procedures that
7 comply with the provisions of this subsection and rules promulgated
8 by the State Board of Health. This policy shall be reviewed and
9 approved by the facility Medical Director, Director of Nurses and/or
10 Registered Nurse Consultant.

11 ~~F.~~ C. Any person convicted of violating any of the provisions
12 of this section or Section 1-1950.1 of this title shall be guilty of
13 a misdemeanor, punishable by a fine of not less than One Hundred
14 Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00),
15 imprisonment in the county jail for not more than thirty (30) days,
16 or by both such fine and imprisonment.

17 SECTION 12. AMENDATORY 63 O.S. 2011, Section 1-1951, as
18 amended by Section 6, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012,
19 Section 1-1951), is amended to read as follows:

20 Section 1-1951. A. The State Department of Health shall have
21 the power and duty to:

22 1. Issue certificates of training and competency for nurse
23 aides;

1 2. Approve training and competency programs including, but not
2 limited to, education-based programs and employer-based programs,
3 including those programs established pursuant to Section 223.1 of
4 Title 72 of the Oklahoma Statutes;

5 3. Determine curricula and standards for training and
6 competency programs. The Department shall require such training to
7 include a minimum of ten (10) hours of training in the care of
8 Alzheimer's patients;

9 4. Establish and maintain a registry for certified nurse aides
10 and for nurse aide trainees;

11 5. Establish categories and standards for nurse aide
12 certification and registration, including feeding assistants as
13 defined in 42 CFR Parts 483 and 488; and

14 6. Exercise all incidental powers as necessary and proper to
15 implement and enforce the provisions of this section.

16 B. The State Board of Health shall promulgate rules to
17 implement the provisions of this section and shall have power to
18 assess fees.

19 1. Each person certified as a nurse aide pursuant to the
20 provisions of this section shall be required to pay certification
21 and recertification fees in amounts to be determined by the State
22 Board of Health, not to exceed Fifteen Dollars (\$15.00).

23 2. In addition to the certification and recertification fees,
24 the State Board of Health may impose fees for training or education

1 programs conducted or approved by the ~~Board~~ Department, except for
2 those programs operated by the Oklahoma Department of Veterans
3 Affairs.

4 3. All revenues collected as a result of fees authorized in
5 this section and imposed by the Board shall be deposited into the
6 Public Health Special Fund.

7 C. Only a person who has qualified as a certified nurse aide
8 and who holds a valid current nurse aide certificate for use in this
9 state shall have the right and privilege of using the title
10 Certified Nurse Aide and to use the abbreviation CNA after the name
11 of such person. Any person who violates the provisions of this
12 section shall be subject to a civil monetary penalty to be assessed
13 by the Department.

14 D. 1. The State Department of Health shall establish and
15 maintain a certified nurse aide, nurse aide trainee and feeding
16 assistant registry that:

- 17 a. is sufficiently accessible to promptly meet the needs
18 of the public and employers, and
19 b. provides a process for notification and investigation
20 of alleged abuse, exploitation or neglect of residents
21 of a facility or home, clients of an agency or center,
22 or of misappropriation of resident or client property.

23 2. The registry shall contain information as to whether a nurse
24 aide has:

- a. successfully completed a certified nurse aide training and competency examination,
- b. met all the requirements for certification, or
- c. received a waiver from the Board.

3. The registry shall include, but not be limited to, the following information on each certified nurse aide or nurse aide trainee:

- a. the full name of the individual,
- b. information necessary to identify each individual,
- c. the date the individual became eligible for placement in the registry, and
- d. information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:

- (1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,
- (2) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and
- (3) statement by the individual disputing the finding if the individual chooses to make one.

4. The Department shall include the information specified in subparagraph d of paragraph 3 of this subsection in the registry

1 within ten (10) working days of the substantiating finding and it
2 shall remain in the registry, unless:

3 a. it has been determined by an administrative law judge,
4 a district court or an appeal court that the finding
5 was in error, or

6 b. the Board is notified of the death of the certified
7 nurse aide or nurse aide trainee.

8 5. Upon receipt of an allegation of abuse, exploitation or
9 neglect of a resident or client, or an allegation of
10 misappropriation of resident or client property by a certified nurse
11 aide or nurse aide trainee, the Department shall place a pending
12 notation in the registry until a final determination has been made.
13 If the investigation, or administrative hearing held to determine
14 whether the certified nurse aide or nurse aide trainee is in
15 violation of the law or rules promulgated pursuant thereto, reveals
16 that the abuse, exploitation or neglect, or misappropriation of
17 resident or client property was unsubstantiated, the pending
18 notation shall be removed within twenty-four (24) hours of receipt
19 of notice by the Department.

20 6. The Department shall, after notice to the individuals
21 involved and a reasonable opportunity for a hearing, make a finding
22 as to the accuracy of the allegations.

23 7. If the Department after notice and opportunity for hearing
24 determines with clear and convincing evidence that abuse, neglect or

1 exploitation, or misappropriation of resident or client property has
2 occurred and the alleged perpetrator is the person who committed the
3 prohibited act, notice of the findings shall be sent to the nurse
4 aide and to the district attorney for the county where the abuse,
5 neglect or exploitation, or misappropriation of resident or client
6 property occurred and to the Medicaid Fraud Control Unit of the
7 Attorney General's Office. Notice of ineligibility to work as a
8 nurse aide in a long-term care facility, a residential care
9 facility, assisted living facility, day care facility, or any entity
10 that requires certification of nurse aides, and notice of any
11 further appeal rights shall also be sent to the nurse aide.

12 8. The Department shall require that each facility check the
13 nurse aide registry before hiring a person to work as a nurse aide.
14 If the registry indicates that an individual has been found, as a
15 result of a hearing, to be personally responsible for abuse, neglect
16 or exploitation, that individual shall not be hired by the facility.

17 9. If the state finds that any other individual employed by the
18 facility has neglected, abused, misappropriated property or
19 exploited in a facility, the Department shall notify the appropriate
20 licensing authority and the district attorney for the county where
21 the abuse, neglect or exploitation, or misappropriation of resident
22 or client property occurred.

23 10. Upon a written request by a certified nurse aide or nurse
24 aide trainee, the Board shall provide within twenty (20) working

1 days all information on the record of the certified nurse aide or
2 nurse aide trainee when a finding of abuse, exploited or neglect is
3 confirmed and placed in the registry.

4 11. Upon request and except for the names of residents and
5 clients, the Department shall disclose all of the information
6 relating to the confirmed determination of abuse, exploitation and
7 neglect by the certified nurse aide or nurse aide trainee to the
8 person requesting such information, and may disclose additional
9 information the Department determines necessary.

10 12. A person who has acted in good faith to comply with state
11 reporting requirements and this section of law shall be immune from
12 liability for reporting allegations of abuse, neglect or
13 exploitation.

14 E. Each nurse aide trainee shall wear a badge which clearly
15 identifies the person as a nurse aide trainee. Such badge shall be
16 furnished by the facility employing the trainee. The badge shall be
17 nontransferable and shall include the first and last name of the
18 trainee.

19 F. 1. For purposes of this section, "feeding assistant" means
20 an individual who is paid to feed residents by a facility or who is
21 used under an arrangement with another agency or organization and
22 meets the requirements cited in 42 CFR Parts 483 and 488.

23 2. Each facility that employs or contracts employment of a
24 feeding assistant shall maintain a record of all individuals, used

1 by the facility as feeding assistants, who have successfully
2 completed a training course approved by the state for paid feeding
3 assistants.

4 G. An individual shall not be eligible for certification as a
5 nurse aide for the period the individual satisfied one or more of
6 the disqualifying criteria found in subsection D of Section 1-1947
7 of this title. A nurse aide certified on or after November 1, 2012,
8 and subsequently found to satisfy one or more of the disqualifying
9 criteria found in subsection D of Section 1-1947 of this title
10 shall, for the period he or she satisfies the criteria, be subject
11 to revocation or nonrenewal of certification after reasonable
12 opportunity for notice and hearing pursuant to the Administrative
13 Procedures Act.

14 SECTION 13. It being immediately necessary for the preservation
15 of the public peace, health and safety, an emergency is hereby
16 declared to exist, by reason whereof this act shall take effect and
17 be in full force from and after its passage and approval.

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