

1 ENGROSSED SENATE AMENDMENT  
TO  
2 ENGROSSED HOUSE  
BILL NO. 2549

By: Cox of the House

and

Quinn of the Senate

An Act relating to public health and safety; amending  
63 O.S. 2011, Section 1-1902, which relates to  
definitions used in the Nursing Home Care Act;  
modifying certain definition; and providing an  
effective date.

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and  
entire bill and insert

"An Act relating to the Nursing Home Care Act;  
amending 63 O.S. 2011, Section 1-1902, which relates  
to definitions; requiring certain interpretation and  
providing certain authorizations under certain  
circumstances; amending 63 O.S. 2011, Section 1-1905,  
as amended by Section 3, Chapter 183, O.S.L. 2013 (63  
O.S. Supp. 2015, Section 1-1905), which relates to  
fees; specifying issuance of certain fee; increasing  
duration of certain license; providing an effective  
date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1902, is  
amended to read as follows:

1 Section 1-1902. As used in the Nursing Home Care Act:

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

5 2. "Access" means the right of a person to enter a facility to  
6 communicate privately and without unreasonable restriction when  
7 invited to do so by a resident. The state or local "ombudsman", as  
8 that term is defined by the Aging Services Division of the  
9 Department of Human Services pursuant to the Older Americans' Act,  
10 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager  
11 employed by the Department of Mental Health and Substance Abuse  
12 Services or one of its contract agencies shall have right of access  
13 to enter a facility, communicate privately and without unreasonable  
14 restriction with any resident who consents to the communication, to  
15 seek consent to communicate privately and without restriction with  
16 any resident, and to observe all areas of the facility that directly  
17 pertain to the patient care of the resident without infringing upon  
18 the privacy of the other residents without first obtaining their  
19 consent;

20 3. "Administrator" means the person licensed by the State of  
21 Oklahoma who is in charge of a facility. An administrator must  
22 devote at least one-third (1/3) of such person's working time to on-  
23 the-job supervision of the facility; provided that this requirement  
24 shall not apply to an administrator of an intermediate care facility

1 for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in  
2 which case the person licensed by the state may be in charge of more  
3 than one ICF-MR/16 facility, if such facilities are located within a  
4 circle that has a radius of not more than fifteen (15) miles, the  
5 total number of facilities and beds does not exceed six facilities  
6 and sixty-four beds, and each ICF-MR/16 facility is supervised by a  
7 qualified mental retardation professional. The facilities may be  
8 free-standing in a community or may be on campus with a parent  
9 institution. The ICF-MR/16 may be independently owned and operated  
10 or may be part of a larger institutional operation;

11 4. "Advisory Board" means the Long-Term Care Facility Advisory  
12 Board;

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

18 6. "Board" means State Board of Health;

19 7. "Commissioner" means State Commissioner of Health;

20 8. "Department" means the State Department of Health;

21 9. "Facility" means a nursing facility and a specialized home;  
22 provided this term shall not include a residential care home or an  
23 adult companion home;

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1       10. "Nursing facility" means a home, an establishment or an  
2 institution, a distinct part of which is primarily engaged in  
3 providing:

- 4           a. skilled nursing care and related services for
- 5                 residents who require medical or nursing care,
- 6           b. rehabilitation services for the rehabilitation of
- 7                 injured, disabled, or sick persons, or
- 8           c. on a regular basis, health-related care and services
- 9                 to individuals who because of their mental or physical
- 10                condition require care and services beyond the level
- 11                of care provided by a residential care home and which
- 12                can be made available to them only through a nursing
- 13                facility.

14 "Nursing facility" does not mean, for purposes of Section 1-851.1 of  
15 this title, a facility constructed or operated by an entity  
16 described in paragraph 7 of subsection B of Section 6201 of Title 74  
17 of the Oklahoma Statutes or the nursing care component of a  
18 continuum of care facility, as such term is defined under the  
19 Continuum of Care and Assisted Living Act, to the extent that the  
20 facility constructed or operated by an entity described in paragraph  
21 7 of subsection B of Section 6201 of Title 74 of the Oklahoma  
22 Statutes contains such a nursing care component;

23       11. "Specialized facility" means any home, establishment, or  
24 institution which offers or provides inpatient long-term care

1 services on a twenty-four-hour basis to a limited category of  
2 persons requiring such services, including but not limited to a  
3 facility providing health or habilitation services for mentally  
4 retarded or developmentally disabled persons, but does not mean, for  
5 purposes of Section 1-851.1 of this title, a facility constructed or  
6 operated by an entity described in paragraph 7 of subsection B of  
7 Section 6201 of Title 74 of the Oklahoma Statutes or the nursing  
8 care component of a continuum of care facility, as such term is  
9 defined under the Continuum of Care and Assisted Living Act, to the  
10 extent that the facility constructed or operated by an entity  
11 described in paragraph 7 of subsection B of Section 6201 of Title 74  
12 of the Oklahoma Statutes contains such a nursing care component;

13 12. "Residential care home" means any home, establishment, or  
14 institution licensed pursuant to the provisions of the Residential  
15 Care Act other than a hotel, motel, fraternity or sorority house, or  
16 college or university dormitory, which offers or provides  
17 residential accommodations, food service, and supportive assistance  
18 to any of its residents or houses any resident requiring supportive  
19 assistance. The residents shall be persons who are ambulatory and  
20 essentially capable of managing their own affairs, but who do not  
21 routinely require nursing care; provided, the term "residential care  
22 home" shall not mean a hotel, motel, fraternity or sorority house,  
23 or college or university dormitory, if the facility operates in a  
24 manner customary to its description and does not house any person

1 who requires supportive assistance from the facility in order to  
2 meet an adequate level of daily living;

3 13. "Licensee" means the person, a corporation, partnership, or  
4 association who is the owner of the facility which is licensed by  
5 the Department pursuant to the provisions of the Nursing Home Care  
6 Act;

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

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

10 16. "Owner" means a person, corporation, partnership,  
11 association, or other entity which owns a facility or leases a  
12 facility. The person or entity that stands to profit or lose as a  
13 result of the financial success or failure of the operation shall be  
14 presumed to be the owner of the facility. Notwithstanding the  
15 foregoing, any non-state governmental entity that has acquired and  
16 owns or leases a facility and that has entered into an agreement  
17 with the Oklahoma Health Care Authority to participate in the  
18 nursing facility supplemental payment program ("UPL Owner") shall be  
19 deemed the owner of such facility and shall be authorized to obtain  
20 management services from a management services provider ("UPL  
21 Manager"), and to delegate, allocate and assign as between the UPL  
22 Owner and UPL Manager, compensation, profits, losses, liabilities,  
23 decision-making authority and responsibilities, including  
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1 responsibility for the employment, direction, supervision and  
2 control of the facility's administrator and staff;

3 17. "Personal care" means assistance with meals, dressing,  
4 movement, bathing or other personal needs or maintenance, or general  
5 supervision of the physical and mental well-being of a person, who  
6 is incapable of maintaining a private, independent residence, or who  
7 is incapable of managing his person, whether or not a guardian has  
8 been appointed for such person;

9 18. "Resident" means a person residing in a facility due to  
10 illness, physical or mental infirmity, or advanced age;

11 19. "Representative of a resident" means a court-appointed  
12 guardian or, if there is no court-appointed guardian, the parent of  
13 a minor, a relative, or other person, designated in writing by the  
14 resident; provided, that any owner, operator, administrator or  
15 employee of a facility subject to the provisions of the Nursing Home  
16 Care Act, the Residential Care Act, or the Group Homes for the  
17 Developmentally Disabled or Physically Handicapped Persons Act shall  
18 not be appointed guardian or limited guardian of a resident of the  
19 facility unless the owner, operator, administrator or employee is  
20 the spouse of the resident, or a relative of the resident within the  
21 second degree of consanguinity and is otherwise eligible for  
22 appointment; and

23 20. "Supportive assistance" means the service rendered to any  
24 person which is less than the service provided by a nursing facility

1 but which is sufficient to enable the person to meet an adequate  
2 level of daily living. Supportive assistance includes but is not  
3 limited to housekeeping, assistance in the preparation of meals,  
4 assistance in the safe storage, distribution, and administration of  
5 medications, and assistance in personal care as is necessary for the  
6 health and comfort of such person. Supportive assistance shall not  
7 include medical service.

8 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1905, as  
9 amended by Section 3, Chapter 183, O.S.L. 2013 (63 O.S. Supp. 2015,  
10 Section 1-1905), is amended to read as follows:

11 Section 1-1905. A. An application for a license, or renewal  
12 thereof, to operate a facility shall be accompanied by a fee of Ten  
13 Dollars (\$10.00) for each bed per year included in the maximum bed  
14 capacity at such facility, except that any facility operated by the  
15 Oklahoma Department of Veterans Affairs shall be exempt from the  
16 fee. All licenses shall be on a form prescribed by the State  
17 Commissioner of Health, which shall include, but not be limited to,  
18 the maximum bed capacity for which it is granted and the date the  
19 license was issued. The license shall:

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

23 and

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1           4. Expire ~~twelve (12) months~~ three (3) years from the date of  
2 issuance, provided an initial license shall expire one hundred  
3 eighty (180) days after the date of issuance. Licenses may be  
4 issued for a period of more than twelve (12) months, but not more  
5 than ~~twenty-four (24)~~ thirty-six (36) months, for the license period  
6 immediately following the effective date of this provision in order  
7 to permit an equitable distribution of license expiration dates ~~to~~  
8 ~~all months of the year.~~

9           B. The fee for a license amendment to reflect an increase in  
10 bed capacity shall be prorated based on the number of days remaining  
11 in the licensure period and the change in the number of beds, except  
12 that any facility operated by the Oklahoma Department of Veterans  
13 Affairs shall be exempt from the fee.

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

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

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

4        3. The license granted to the transferee shall be subject to  
5 the plan of correction submitted by the previous owner and approved  
6 by the Department and any conditions contained in a conditional  
7 license issued to the previous owner. If there are outstanding  
8 violations and no approved plan of correction has been implemented,  
9 the Department may issue a conditional license and plan of  
10 correction as provided in this act.

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

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

18       SECTION 3. This act shall become effective July 1, 2016.

19       SECTION 4. It being immediately necessary for the preservation  
20 of the public peace, health and safety, an emergency is hereby  
21 declared to exist, by reason whereof this act shall take effect and  
22 be in full force from and after its passage and approval."  
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1 Passed the Senate the 13th day of April, 2016.

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3 \_\_\_\_\_  
4 Presiding Officer of the Senate

5 Passed the House of Representatives the \_\_\_\_ day of \_\_\_\_\_,  
6 2016.

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8 \_\_\_\_\_  
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- 23                 condition require care and services beyond the level
- 24                 of care provided by a residential care home and which

1                   can be made available to them only through a nursing  
2                   facility.

3 "Nursing facility" does not mean, for purposes of Section 1-851.1 of  
4 this title, a facility constructed or operated by an entity  
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6 of the Oklahoma Statutes or the nursing care component of a  
7 continuum of care facility, as such term is defined under the  
8 Continuum of Care and Assisted Living Act, to the extent that the  
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3 12. "Residential care home" means any home, establishment, or  
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14 manner customary to its description and does not house any person  
15 who requires supportive assistance from the facility in order to  
16 meet an adequate level of daily living;

17 13. "Licensee" means the person, a corporation, partnership, or  
18 association who is the owner of the facility which is licensed by  
19 the Department pursuant to the provisions of the Nursing Home Care  
20 Act;

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

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23 necessary to avoid physical harm, mental anguish, or mental illness;

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2 association, managing entity, or other entity which owns a facility  
3 or leases a facility. The person or entity that stands to profit or  
4 lose as a result of the financial success or failure of the  
5 operation shall be presumed to be the owner of the facility;

6        17. "Personal care" means assistance with meals, dressing,  
7 movement, bathing or other personal needs or maintenance, or general  
8 supervision of the physical and mental well-being of a person, who  
9 is incapable of maintaining a private, independent residence, or who  
10 is incapable of managing his person, whether or not a guardian has  
11 been appointed for such person;

12        18. "Resident" means a person residing in a facility due to  
13 illness, physical or mental infirmity, or advanced age;

14        19. "Representative of a resident" means a court-appointed  
15 guardian or, if there is no court-appointed guardian, the parent of  
16 a minor, a relative, or other person, designated in writing by the  
17 resident; provided, that any owner, operator, administrator or  
18 employee of a facility subject to the provisions of the Nursing Home  
19 Care Act, the Residential Care Act, or the Group Homes for the  
20 Developmentally Disabled or Physically Handicapped Persons Act shall  
21 not be appointed guardian or limited guardian of a resident of the  
22 facility unless the owner, operator, administrator or employee is  
23 the spouse of the resident, or a relative of the resident within the  
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1 second degree of consanguinity and is otherwise eligible for  
2 appointment; and

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4 person which is less than the service provided by a nursing facility  
5 but which is sufficient to enable the person to meet an adequate  
6 level of daily living. Supportive assistance includes but is not  
7 limited to housekeeping, assistance in the preparation of meals,  
8 assistance in the safe storage, distribution, and administration of  
9 medications, and assistance in personal care as is necessary for the  
10 health and comfort of such person. Supportive assistance shall not  
11 include medical service.

12 SECTION 2. This act shall become effective November 1, 2016.

13 Passed the House of Representatives the 8th day of March, 2016.

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\_\_\_\_\_  
Presiding Officer of the House  
of Representatives

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Passed the Senate the \_\_\_ day of \_\_\_\_\_, 2016.

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Presiding Officer of the Senate

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