

1 STATE OF OKLAHOMA

2 2nd Session of the 55th Legislature (2016)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 HOUSE BILL NO. 2549

By: Cox of the House

and

Quinn of the Senate

6
7
8
9 COMMITTEE SUBSTITUTE

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

20
21
22
23
24
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:

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

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

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

16 3. "Administrator" means the person licensed by the State of
17 Oklahoma who is in charge of a facility. An administrator must
18 devote at least one-third (1/3) of such person's working time to on-
19 the-job supervision of the facility; provided that this requirement
20 shall not apply to an administrator of an intermediate care facility
21 for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in
22 which case the person licensed by the state may be in charge of more
23 than one ICF-MR/16 facility, if such facilities are located within a
24 circle that has a radius of not more than fifteen (15) miles, the

1 total number of facilities and beds does not exceed six facilities
2 and sixty-four beds, and each ICF-MR/16 facility is supervised by a
3 qualified mental retardation professional. The facilities may be
4 free-standing in a community or may be on campus with a parent
5 institution. The ICF-MR/16 may be independently owned and operated
6 or may be part of a larger institutional operation;

7 4. "Advisory Board" means the Long-Term Care Facility Advisory
8 Board;

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

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

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

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

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

20 10. "Nursing facility" means a home, an establishment or an
21 institution, a distinct part of which is primarily engaged in
22 providing:

23 a. skilled nursing care and related services for
24 residents who require medical or nursing care,

1 b. rehabilitation services for the rehabilitation of
2 injured, disabled, or sick persons, or

3 c. on a regular basis, health-related care and services
4 to individuals who because of their mental or physical
5 condition require care and services beyond the level
6 of care provided by a residential care home and which
7 can be made available to them only through a nursing
8 facility.

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

18 11. "Specialized facility" means any home, establishment, or
19 institution which offers or provides inpatient long-term care
20 services on a twenty-four-hour basis to a limited category of
21 persons requiring such services, including but not limited to a
22 facility providing health or habilitation services for mentally
23 retarded or developmentally disabled persons, but does not mean, for
24 purposes of Section 1-851.1 of this title, a facility constructed or

1 operated by an entity described in paragraph 7 of subsection B of
2 Section 6201 of Title 74 of the Oklahoma Statutes or the nursing
3 care component of a continuum of care facility, as such term is
4 defined under the Continuum of Care and Assisted Living Act, to the
5 extent that the facility constructed or operated by an entity
6 described in paragraph 7 of subsection B of Section 6201 of Title 74
7 of the Oklahoma Statutes contains such a nursing care component;

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

22 13. "Licensee" means the person, a corporation, partnership, or
23 association who is the owner of the facility which is licensed by
24

1 the Department pursuant to the provisions of the Nursing Home Care
2 Act;

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

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

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

22 17. "Personal care" means assistance with meals, dressing,
23 movement, bathing or other personal needs or maintenance, or general
24 supervision of the physical and mental well-being of a person, who

1 is incapable of maintaining a private, independent residence, or who
2 is incapable of managing his person, whether or not a guardian has
3 been appointed for such person;

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

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

18 20. "Supportive assistance" means the service rendered to any
19 person which is less than the service provided by a nursing facility
20 but which is sufficient to enable the person to meet an adequate
21 level of daily living. Supportive assistance includes but is not
22 limited to housekeeping, assistance in the preparation of meals,
23 assistance in the safe storage, distribution, and administration of
24 medications, and assistance in personal care as is necessary for the

1 health and comfort of such person. Supportive assistance shall not
2 include medical service.

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

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

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

18 and

- 19 4. Expire ~~twelve (12) months~~ three (3) years from the date of
20 issuance, provided an initial license shall expire one hundred
21 eighty (180) days after the date of issuance. Licenses may be
22 issued for a period of more than twelve (12) months, but not more
23 than ~~twenty-four (24)~~ thirty-six (36) months, for the license period
24 immediately following the effective date of this provision in order

1 to permit an equitable distribution of license expiration dates ~~to~~
2 ~~all months of the year.~~

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

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

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

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

20 3. The license granted to the transferee shall be subject to
21 the plan of correction submitted by the previous owner and approved
22 by the Department and any conditions contained in a conditional
23 license issued to the previous owner. If there are outstanding
24 violations and no approved plan of correction has been implemented,

1 the Department may issue a conditional license and plan of
2 correction as provided in this act.

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

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

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

11 SECTION 4. It being immediately necessary for the preservation
12 of the public peace, health and safety, an emergency is hereby
13 declared to exist, by reason whereof this act shall take effect and
14 be in full force from and after its passage and approval.

15
16 55-2-3279 AM 4/1/2016 10:35:08 AM

17
18
19
20
21
22
23
24