

1 ENGROSSED HOUSE
2 BILL NO. 1435

By: McDaniel (Jeannie) of the
House

3 and

4 Simpson of the Senate

5
6
7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 1-1951, as last amended by
9 Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp.
10 2014, Section 1-1951), which relates to certifying
11 nurse aides; permitting Department to suspend or
12 revoke certification under certain conditions;
13 requiring certified nurse aides and nurse aide
14 trainees to provide updated information for registry;
15 requiring notices and orders to be considered legally
16 served under certain circumstances; and providing an
17 effective date.

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

19 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1951, as
20 last amended by Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp.
21 2014, Section 1-1951), is amended to read as follows:

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

- 24 1. Issue certificates of training and competency for nurse
aides;
2. Approve training and competency programs including, but not
limited to, education-based programs and employer-based programs,

1 including those programs established pursuant to Section 223.1 of
2 Title 72 of the Oklahoma Statutes;

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

7 4. Establish and maintain a registry for certified nurse aides
8 and for nurse aide trainees;

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

12 6. Exercise all incidental powers as necessary and proper to
13 implement and enforce the provisions of this section; and

14 7. Suspend or revoke any certification issued to any nurse
15 aide, if:

16 a. the nurse aide is found to meet any of the
17 requirements contained in subsection D of Section 1-
18 1947 of this title,

19 b. the nurse aide is found to meet any of the
20 requirements contained in subsection C of Section 1-
21 1950.1 of this title, or

22 c. the nurse aide is found to have committed abuse,
23 neglect or exploitation of a resident or
24 misappropriation of resident or client property

1 pursuant to the requirements contained in paragraph 7
2 of subsection D of Section 1-1951 of this title. The
3 action to revoke or suspend may be included with the
4 filing of any action pursuant to the requirements of
5 paragraph 7 of subsection D of Section 1-1951 of this
6 title.

7 B. The State Board of Health shall promulgate rules to
8 implement the provisions of this section and shall have power to
9 assess fees.

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

14 2. In addition to the certification and recertification fees,
15 the State Board of Health may impose fees for training or education
16 programs conducted or approved by the Department, except for those
17 programs operated by the Oklahoma Department of Veterans Affairs.

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

21 C. Only a person who has qualified as a certified nurse aide
22 and who holds a valid current nurse aide certificate for use in this
23 state shall have the right and privilege of using the title
24 Certified Nurse Aide and to use the abbreviation CNA after the name

1 of such person. Any person who violates the provisions of this
2 section shall be subject to a civil monetary penalty to be assessed
3 by the Department.

4 D. 1. The State Department of Health shall establish and
5 maintain a certified nurse aide, nurse aide trainee and feeding
6 assistant registry that:

7 a. is sufficiently accessible to promptly meet the needs
8 of the public and employers, and

9 b. provides a process for notification and investigation
10 of alleged abuse, exploitation or neglect of residents
11 of a facility or home, clients of an agency or center,
12 or of misappropriation of resident or client property.

13 2. The registry shall contain information as to whether a nurse
14 aide has:

15 a. successfully completed a certified nurse aide training
16 and competency examination,

17 b. met all the requirements for certification, or

18 c. received a waiver from the Board.

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

22 a. the full name of the individual,

23 b. information necessary to identify each individual.

24 Certified nurse aides and nurse aide trainees shall

1 maintain with the registry current residential
2 addresses and shall notify the registry, in writing,
3 of any change of name. Notification of change of name
4 shall require certified copies of any marriage license
5 or other court document which reflects the change of
6 name. Notice of change of address or telephone number
7 shall be made within ten (10) days of the effected
8 change. Notice shall not be accepted over the phone,

9 c. the date the individual became eligible for placement
10 in the registry, and

11 d. information on any finding of the Department of abuse,
12 neglect or exploitation by the certified nurse aide or
13 nurse aide trainee, including:

14 (1) documentation of the Department's investigation,
15 including the nature of the allegation and the
16 evidence that led the Department to confirm the
17 allegation,

18 (2) the date of the hearing, if requested by the
19 certified nurse aide or nurse aide trainee, and

20 (3) statement by the individual disputing the finding
21 if the individual chooses to make one.

22 4. The Department shall include the information specified in
23 subparagraph d of paragraph 3 of this subsection in the registry
24

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. In any proceeding in which the Department is required to
13 serve notice or an order on an individual, the Department may send
14 written correspondence to the address on file with the registry. If
15 the correspondence is returned and a notation of the United States
16 Postal Service indicates "unclaimed" or "moved" or "refused" or any
17 other nondelivery markings and the records of the registry indicate
18 that no change of address as required by this subsection has been
19 received by the registry, the notice and any subsequent notices or
20 orders shall be deemed by the court as having been legally served
21 for all purposes.

22 9. The Department shall require that each facility check the
23 nurse aide registry before hiring a person to work as a nurse aide.
24 If the registry indicates that an individual has been found, as a

1 result of a hearing, to be personally responsible for abuse, neglect
2 or exploitation, that individual shall not be hired by the facility.

3 ~~9.~~ 10. If the state finds that any other individual employed by
4 the facility has neglected, abused, misappropriated property or
5 exploited in a facility, the Department shall notify the appropriate
6 licensing authority and the district attorney for the county where
7 the abuse, neglect or exploitation, or misappropriation of resident
8 or client property occurred.

9 ~~10.~~ 11. Upon a written request by a certified nurse aide or
10 nurse aide trainee, the Board shall provide within twenty (20)
11 working days all information on the record of the certified nurse
12 aide or nurse aide trainee when a finding of abuse, ~~exploited~~
13 exploitation or neglect is confirmed and placed in the registry.

14 ~~11.~~ 12. Upon request and except for the names of residents and
15 clients, the Department shall disclose all of the information
16 relating to the confirmed determination of abuse, exploitation and
17 neglect by the certified nurse aide or nurse aide trainee to the
18 person requesting such information, and may disclose additional
19 information the Department determines necessary.

20 ~~12.~~ 13. A person who has acted in good faith to comply with
21 state reporting requirements and this section of law shall be immune
22 from liability for reporting allegations of abuse, neglect or
23 exploitation.
24

1 E. Each nurse aide trainee shall wear a badge which clearly
2 identifies the person as a nurse aide trainee. Such badge shall be
3 furnished by the facility employing the trainee. The badge shall be
4 nontransferable and shall include the first and last name of the
5 trainee.

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

10 2. Each facility that employs or contracts employment of a
11 feeding assistant shall maintain a record of all individuals, used
12 by the facility as feeding assistants, who have successfully
13 completed a training course approved by the state for paid feeding
14 assistants.

15 ~~G. An individual shall not be eligible for certification as a~~
16 ~~nurse aide for the period the individual satisfied one or more of~~
17 ~~the disqualifying criteria found in subsection D of Section 1-1947~~
18 ~~of this title. A nurse aide certified on or after November 1, 2012,~~
19 ~~and subsequently found to satisfy one or more of the disqualifying~~
20 ~~criteria found in subsection D of Section 1-1947 of this title~~
21 ~~shall, for the period he or she satisfies the criteria, be subject~~
22 ~~to revocation or nonrenewal of certification after reasonable~~
23 ~~opportunity for notice and hearing pursuant to the Administrative~~
24 ~~Procedures Act.~~

