STATE OF OKLAHOMA

1st Session of the 55th Legislature (2015)

HOUSE BILL 1327 By: Morrissette

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2011, Section 1-1922, which relates to a residents' advisory council; requiring facility to hire certain individual under certain circumstance; requiring nursing facilities to establish a family council; requiring nursing facility to have emergency medical resuscitation equipment; requiring nursing facility to designate physician as medical director; requiring nursing facility to disclose certain information to State Department of Health; requiring Department to post certain information on its website; requiring Department to create section on website for veterans; amending 63 O.S. 2011, Section 1-1925.2, which relates to the staffing ratios at nursing facilities; modifying certain staffing ratios; amending 63 O.S. 2011, Section 1-1939, which relates to nursing facility liability; requiring certain information if facility uses arbitration agreements; amending 63 O.S. 2011, Section 1-1940, which relates to public nuisances; requiring certain collateral resources; amending 63 O.S. 2011, Section 1-1951, as last amended by Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-1951), which relates to certifying nurse aides; permitting Department to suspend or revoke certification under certain conditions; requiring certified nurse aides and nurse aide trainees to provide updated information for registry; requiring notices and orders to be considered legally served under certain circumstances; amending Section 4, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-1953.4), which relates to admissibility of evidence; creating rebuttable presumption; providing for codification; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1922, is amended to read as follows:

Section 1-1922. A. Each facility shall establish a residents' advisory council. The administrator shall designate a member of the facility staff to coordinate the establishment of, and render assistance to, said council.

B. The composition of the residents' advisory council shall be specified by Department regulation, but no employee or affiliate of a facility shall be a member of any such council.

C. The residents' advisory council shall meet at least once each month with the staff coordinator who shall provide assistance to said council in preparing and disseminating a report of each meeting as specified by the regulations to all residents, the administrator, and the staff.

D. Records of the residents' advisory council meetings shall be maintained in the office of the administrator.

E. The residents' advisory council shall communicate to the administrator the opinions and concerns of the residents. The council shall review procedures for implementing residents' rights, facility responsibilities and make recommendations for changes or additions which will strengthen the facility's policies and procedures as they affect residents' rights and facility responsibilities.

F. The residents' advisory council shall be forum for:

1. Obtaining and disseminating information;

2. Soliciting and adopting recommendations for facility programming and improvements; and

3. Early identification and recommendation of orderly resolution of problems.

G. The residents' advisory council may present complaints as provided in Section 1-1924 of this title on behalf of a resident to the Department.

H. The State Long-Term Care Ombudsman shall monitor during his or her regular routine visits that each facility allows a residents' advisory council to meet on a monthly basis. The State Long-Term Care Ombudsman or designee shall provide notice to the Department if it is determined that the facility has failed to establish a residents' advisory council. The Department shall be required to notify the facility of such failure. If the facility fails to establish a residents' advisory council within thirty (30) days of such notice, then the facility must hire an individual qualified to assist and develop a residents' advisory council for a period to last until the council is functioning as determined by the State Long-Term Care Ombudsman in order to retain its license to operate and is also subject to civil penalties to be assessed by the Department not to exceed an amount prohibited by federal law.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1922.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A nursing facility, subject to the Nursing Home Care Act, shall allow and enable a family council by scheduling a monthly family council meeting and inviting residents' family members and designated representatives by written invitation, electronically or otherwise.

B. The purpose of the family council is to:

1. Protect the well-being and rights of the nursing facility's residents;

2. Provide support for the families and friends of the residents;

3. Inform council members of statutes, regulations, policies, practices and other issues including care plans, signs and symptoms of abuse and neglect, etc.;

4. Improve the quality of life and happiness of all residents;

5. Communicate concerns to the nursing facility's administrator;

6. Submit unresolved concerns to the State Department of Health as complaints; and

7. Report any suspected case of abuse, neglect or exploitation to local law enforcement, then to the Department of Human Services.

C. Members of a family council can include family members or representatives of current residents and any other individual approved by the majority of the family council.

1. Nursing facility owners and staff cannot participate in the family council unless that staff member has a family member within the second degree of consanguinity currently residing in the nursing facility.

2. Representatives of citizen advocacy groups and the State Long-Term Care Ombudsman can participate as family council members, with approval of a majority of the family council.

D. The nursing facility is required to provide contact information for the officers of the family council to any person requesting this information within twenty-four (24) hours of such request, if the officers provide written consent to the release of such information.

E. The State Long-Term Care Ombudsman or designee shall be responsible for monitoring through regular routine visits that each facility allows and enables a family council by scheduling a monthly family council meeting and sending invitation by written notice, electronically or otherwise, to resident family members and their designated representatives. The State Long-Term Care Ombudsman shall provide notice to the Department if it is determined that the facility has failed to establish a family council. The Department shall be required to notify the facility of such failure. If the

facility fails to establish a family council within thirty (30) days of such notice, then the facility must hire an individual qualified to assist and develop a family council for a period to last until the council is functioning as determined by the State Long-Term Care Ombudsman in order to retain its license to operate.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1922.2 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A nursing facility, subject to the Nursing Home Care Act, must have emergency medical resuscitation equipment, commonly referred to as a crash cart, in good working order and staff certified in Advanced Cardiovascular Life Support as certified by the American Heart Association available at all times.

B. Emergency medical resuscitation equipment shall be defined by the State Department of Health and shall include:

1. Emergency portable oxygen;

2. Basic and advanced airways in the facility;

3. A defibrillator or Automated External Defibrillator (AED);

4. IV equipment; and

5. Emergency cardiac drugs as prescribed by a physician.

C. A minimum of one direct-care staff worker must be on duty at all times with certification and proficiency in Advanced Cardiovascular Life Support.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1922.3 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A nursing facility, subject to the Nursing Home Care Act, must designate a physician to serve as medical director.

B. The medical director is responsible for:

1. Implementation of resident care policies; and

2. The coordination of medical care in the facility.

C. The nursing facility shall report, in a manner prescribed by the State Department of Health, the following information for its medical director or medical directors:

1. Medical director's name;

2. Doctor of Medicine or Doctor of Osteopathic Medicine degrees;

3. Business name;

4. Business address, city, state and zip code;

5. Business phone;

6. Business e-mail;

7. Nursing facility; and

8. Nursing facility address, city, state and zip code.

D. The nursing facility shall report any changes of medical director(s) and/or changes in the business name, address, phone or e-mail within thirty (30) days to the Department.

E. The State Department of Health shall create and post the names of medical directors for each nursing home on its Internet website. Updates to the website must be made within thirty (30) days after receipt from the nursing facility.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1922.4 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. A nursing facility, subject to the Nursing Home Care Act, must disclose ownership information to the State Department of Health in a manner prescribed by the Department:

1. When an owner, stockholder, partner, etc. owns two percent (2%) or more of the licensed nursing facility;

2. When an owner, stockholder, partner, etc., who holds any stake in the nursing facility is an elected official or is a government employee; or

3. When an owner, stockholder, partner, etc., who holds any stake in the nursing facility is a former elected official or is a former government employee.

B. The nursing facility shall report any changes of owners and/or changes in the business name, address, phone or e-mail within thirty (30) days to the Department.

C. The Department shall create and post the names of owners for each nursing home on its Internet website. Updates to the website

must be made within thirty (30) days after receipt from the nursing facility.

D. A nursing facility, subject to the Nursing Home Care Act, must disclose any common ownership interests of any owner, stockholder, partner, etc., of an entity licensed to operate a nursing facility with any real estate, administrative or management, physical therapy, food services, pharmacy services, hospice and any other related companies. Disclosure must include the:

1. Names of the common owners; and

2. Entities of common ownership:

   a. type of services provided, i.e. real estate, management, etc.,

   b. business name,

   c. business address,

   d. business phone,

   e. business e-mail,

   f. names of common owners, and

   g. common owners equity in the business.

E. The nursing facility shall report any changes of common owners and/or changes in the business name, address, phone or e-mail within thirty (30) days to the Department.

F. The Department shall create and post the names of common owners for each nursing home on its Internet website. Updates to

the website must be made within thirty (30) days after receipt from the nursing facility.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1922.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

The State Department of Health shall be responsible for creating a section on its website whereby family members of veterans or veteran residents of nursing facilities and VA medical centers in the state and family members of civilians or civilians in licensed Oklahoma nursing facilities may receive information regarding quality-of-care standards. The website shall also provide an option for both veterans and civilians as well as family members to post confidential information regarding any abuse occurring to themselves or to other residents while in care or any abuse observed by such residents or family members.

SECTION 7. AMENDATORY 63 O.S. 2011, Section 1-1925.2, is amended to read as follows:

Section 1-1925.2 A. ~~The Oklahoma Health Care Authority shall fully recalculate and reimburse nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) from the Nursing Facility Quality of Care Fund beginning October 1, 2000, the average actual, audited costs reflected in previously submitted cost reports for the cost-reporting period that began July 1, 1998, and ended June 30, 1999, inflated by the federally published inflationary~~

~~factors for the two (2) years appropriate to reflect present-day costs at the midpoint of the July 1, 2000, through June 30, 2001, rate year.~~

~~1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR), and shall be calculated in the same manner as has been mutually understood by the long-term care industry and the Oklahoma Health Care Authority.~~

~~2. The recalculated reimbursement rate shall be implemented September 1, 2000~~ Nursing facilities subject to the Nursing Home Care Act must provide twenty-four-hour licensed nursing services which are sufficient to meet the nursing needs of each resident. Each nursing facility providing long-term care services must use the services of one registered professional nurse for at least eight (8) consecutive hours a day, seven (7) days a week. Facilities providing Medicare/rehabilitation services must use the services of one registered professional nurse for at least twenty-four (24) hours a day, seven (7) days a week.

B. Nursing facilities subject to the Nursing Home Care Act must:

1. ~~From September 1, 2000, through August 31, 2001, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of~~

~~nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:~~

~~a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every eight residents, or major fraction thereof,~~

~~b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve residents, or major fraction thereof, and~~

~~c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen residents, or major fraction thereof.~~

Care for their residents in such a manner and in such an environment as will promote the maintenance or enhancement of the quality of life of each resident; and

2. ~~From September 1, 2001, through August 31, 2003, nursing facilities subject to the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities, the following minimum direct-care-staff-to-resident ratios:~~

~~a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every seven residents, or major fraction thereof,~~

~~b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents, or major fraction thereof, and~~

~~c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen residents, or major fraction thereof~~

Deliver sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental and psychosocial well-being for each resident in accordance with each resident's written plan of care.

~~3.~~ C. On ~~and after September 1, 2003, subject to the availability of funds~~ November 1, 2015, nursing facilities subject to the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities~~, the following minimum direct-care-staff-to-resident ratios~~:

1. For long-term care facilities:

a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every six residents, or major fraction thereof,

b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents, or major fraction thereof, and

c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every fifteen residents, or major fraction thereof; and

2. For skilled nursing facilities:

a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every three residents, or major fraction thereof,

b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every four residents, or major fraction thereof, and

c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every six residents, or major fraction thereof.

~~4. Effective immediately, facilities shall have the option of varying the starting times for the eight-hour shifts by one (1) hour before or one (1) hour after the times designated in this section without overlapping shifts.~~

~~5. a. On and after January 1, 2004, a facility that has been determined by the State Department of Health to have been in compliance with the provisions of paragraph 3 of this subsection since the implementation date of this subsection, may implement flexible staff scheduling; provided, however, such facility shall continue to maintain a direct-care service rate of at least two and eighty-six one-hundredths (2.86) hours of direct-care service per resident per day.~~

~~b. At no time shall direct-care staffing ratios in a facility with flexible staff-scheduling privileges fall below one direct-care staff to every sixteen residents, and at least two direct-care staff shall be on duty and awake at all times.~~

~~c. As used in this paragraph, "flexible staff-scheduling" means maintaining:~~

~~(1) a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident~~

~~per day rate of not less than two and eighty-six one-hundredths (2.86) hours per day,~~

~~(2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every sixteen residents at all times, and~~

~~(3) at least two direct-care staff persons on duty and awake at all times.~~

~~6. a. On and after January 1, 2004, the Department shall require a facility to maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection if the facility has been determined by the Department to be deficient with regard to:~~

~~(1) the provisions of paragraph 3 of this subsection,~~

~~(2) fraudulent reporting of staffing on the Quality of Care Report,~~

~~(3) a complaint and/or survey investigation that has determined substandard quality of care, or~~

~~(4) a complaint and/or survey investigation that has determined quality-of-care problems related to insufficient staffing.~~

~~b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection for a~~

~~minimum of three (3) months before being considered eligible to implement flexible staff scheduling as defined in subparagraph c of paragraph 5 of this subsection.~~

~~c. Upon a subsequent determination by the Department that the facility has achieved and maintained for at least three (3) months the shift-based, staff-to-resident ratios described in paragraph 3 of this subsection, and has corrected any deficiency described in subparagraph a of this paragraph, the Department shall notify the facility of its eligibility to implement flexible staff-scheduling privileges.~~

~~7. a. For facilities that have been granted flexible staff-scheduling privileges, the Department shall monitor and evaluate facility compliance with the flexible staff-scheduling staffing provisions of paragraph 5 of this subsection through reviews of monthly staffing reports, results of complaint investigations and inspections.~~

~~b. If the Department identifies any quality-of-care problems related to insufficient staffing in such facility, the Department shall issue a directed plan of correction to the facility found to be out of compliance with the provisions of this subsection.~~

~~c. In a directed plan of correction, the Department shall require a facility described in subparagraph b of this paragraph to maintain shift-based, staff-to-resident ratios for the following periods of time:~~

~~(1) the first determination shall require that shift-based, staff-to-resident ratios be maintained until full compliance is achieved,~~

~~(2) the second determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained for a minimum period of six (6) months, and~~

~~(3) the third determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained for a minimum period of twelve (12) months~~

Failure of the owner or administrator to ensure staffing required by this section shall constitute a violation of the Nursing Home Care Act and shall be grounds for revocation of licensure.

~~C. Effective September 1, 2002, facilities~~ D. Facilities shall post the names and titles of direct-care staff on duty each day in a conspicuous place, including the name and title of the supervising nurse. At no time shall the administrator be considered direct-care staff.

~~D.~~ E. The State Board of Health shall promulgate rules prescribing staffing requirements for intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities serving six or fewer clients and for intermediate care facilities for ~~the mentally retarded~~ individuals with intellectual disabilities serving sixteen or fewer clients.

~~E.~~ F. Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and sanctions imposed due to staffing noncompliance.

~~F. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from two and eighty-six one-hundredths (2.86) hours per day per occupied bed to three and two-tenths (3.2) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels~~

~~based on an overall three and two-tenths (3.2) hours per day per occupied bed.~~

~~2. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care flexible staff-scheduling staffing level from three and two-tenths (3.2) hours per day per occupied bed to three and eight-tenths (3.8) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and eight-tenths (3.8) hours per day per occupied bed.~~

~~3. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from three and eight-tenths (3.8) hours~~

~~per day per occupied bed to four and one-tenth (4.1) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall four and one-tenth (4.1) hours per day per occupied bed.~~

~~4. The Board shall promulgate rules for shift-based, staff-to-resident ratios for noncompliant facilities denoting the incremental increases reflected in direct-care, flexible staff-scheduling staffing levels.~~

~~5. In the event that the state Medicaid program reimbursement rate for facilities subject to the Nursing Home Care Act, and intermediate care facilities for the mentally retarded having seventeen or more beds is reduced below actual audited costs, the requirements for staffing ratio levels shall be adjusted to the appropriate levels provided in paragraphs 1 through 4 of this subsection.~~

G. For purposes of this ~~subsection~~ section:

1. "Direct-care staff" means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility. At no time shall the administrator be considered direct-care staff; and

2. ~~Prior to September 1, 2003, activity~~ Activity and social services staff who are not providing direct, hands-on care to residents ~~may be included in the direct-care-staff-to-resident ratio in any shift. On and after September 1, 2003, such persons~~ shall not be included in the direct-care-staff-to-resident ratio.

H. 1. The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds to submit a monthly report on staffing ratios on a form that the Authority shall develop.

2. The report shall document the extent to which such facilities are meeting or are failing to meet the minimum direct-care-staff-to-resident ratios specified by this section. Such report shall be available to the public upon request.

3. The Authority may assess administrative penalties for the failure of any facility to submit the report as required by the Authority. Provided, however:

a. administrative penalties shall not accrue until the Authority notifies the facility in writing that the report was not timely submitted as required, and

b. a minimum of a one-day penalty shall be assessed in all instances.

4. Administrative penalties shall not be assessed for computational errors made in preparing the report.

5. Monies collected from administrative penalties shall be deposited in the Nursing Facility Quality of Care Fund and utilized for the purposes specified in the Oklahoma Healthcare Initiative Act.

I. 1. All entities regulated by this state that provide long-term care services shall utilize a single assessment tool to determine client services needs. The tool shall be developed by the Oklahoma Health Care Authority in consultation with the State Department of Health.

2. a. The Oklahoma Nursing Facility Funding Advisory Committee is hereby created and shall consist of the following:

(1) four members selected by the Oklahoma Association of Health Care Providers,

(2) three members selected by the Oklahoma Association of Homes and Services for the Aging, and

(3) two members selected by the State Council on Aging.

The Chair shall be elected by the committee. No state employees may be appointed to serve.

b. The purpose of the advisory committee will be to develop a new methodology for calculating state Medicaid program reimbursements to nursing facilities

by implementing facility-specific rates based on expenditures relating to direct care staffing. No nursing home will receive less than the current rate at the time of implementation of facility-specific rates pursuant to this subparagraph.

c. The advisory committee shall be staffed and advised by the Oklahoma Health Care Authority.

d. The new methodology will be submitted for approval to the Board of the Oklahoma Health Care Authority by January 15, 2005, and shall be finalized by July 1, 2005. The new methodology will apply only to new funds that become available for Medicaid nursing facility reimbursement after the methodology of this paragraph has been finalized. Existing funds paid to nursing homes will not be subject to the methodology of this paragraph. The methodology as outlined in this paragraph will only be applied to any new funding for nursing facilities appropriated above and beyond the funding amounts effective on January 15, 2005.

e. The new methodology shall divide the payment into two components:

(1) direct care which includes allowable costs for registered nurses, licensed practical nurses, certified medication aides and certified nurse

aides. The direct care component of the rate shall be a facility-specific rate, directly related to each facility's actual expenditures on direct care, and

(2) other costs.

f. The Oklahoma Health Care Authority, in calculating the base year prospective direct care rate component, shall use the following criteria:

(1) to construct an array of facility per diem allowable expenditures on direct care, the Authority shall use the most recent data available. The limit on this array shall be no less than the ninetieth percentile,

(2) each facility's direct care base-year component of the rate shall be the lesser of the facility's allowable expenditures on direct care or the limit,

(3) other rate components shall be determined by the Oklahoma Nursing Facility Funding Advisory Committee in accordance with federal regulations and requirements, and

(4) rate components in divisions (2) and (3) of this subparagraph shall be re-based and adjusted for

inflation when additional funds are made available.

3. The Department of Human Services shall expand its statewide toll-free, Senior-Info Line for senior citizen services to include assistance with or information on long-term care services in this state.

4. The Oklahoma Health Care Authority shall develop a nursing facility cost-reporting system that reflects the most current costs experienced by nursing and specialized facilities. The Oklahoma Health Care Authority shall utilize the most current cost report data to estimate costs in determining daily per diem rates.

J. 1. ~~When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs, over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period, and the direct-care, flexible staff-scheduling staffing level has been prospectively funding at four and one-tenth (4.1) hours per day per occupied bed, the Authority may apportion funds for the implementation of the provisions of this section.~~

~~2.~~ The Authority shall make application to the United States Centers for Medicare and Medicaid Service for a waiver of the uniform requirement on health-care-related taxes as permitted by Section 433.72 of 42 C.F.R.

~~3.~~ 2. Upon approval of the waiver, the Authority shall develop a program to implement the provisions of the waiver as it relates to all nursing facilities.

SECTION 8. AMENDATORY 63 O.S. 2011, Section 1-1939, is amended to read as follows:

Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident or results in the loss or destruction of the resident's personal property. In addition, any state employee that aids, abets, assists, or conspires with an owner or licensee to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under the Nursing Home Care Act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or the legal representative of the resident of the right to commence an action under this section,

whether oral or in writing, shall be null and void, and without legal force or effect. Any facility that uses arbitration agreements shall provide to the resident and his or her representative information that entering into the arbitration agreement does not limit the resident or their representative's right to commence an action in state or federal court that is allowable under the laws of the jurisdiction. At no time shall the refusal to sign an arbitration agreement be grounds for refusal to admit or to discharge a resident.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under the Nursing Home Care Act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or

criminal, as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A facility employee or agent who becomes aware of abuse, neglect or exploitation of a resident prohibited by the Nursing Home Care Act shall immediately report the matter to the facility administrator. A facility administrator who becomes aware of abuse, neglect, or exploitation of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department, law enforcement and adult protective services.

I. 1. The facility shall be responsible for reporting the following serious incidents to the Department within twenty-four (24) hours:

a. communicable diseases,

b. deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device,

c. missing residents. In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing,

d. situations arising where a rape or a criminal act is suspected. Such situations shall also be reported to local law enforcement immediately. The facility shall

make every effort to preserve the scene of the suspected rape or crime until local law enforcement has arrived, and

e. resident abuse, neglect and misappropriation of the property of a resident.

2. All other incident reports shall be made in accordance with federal law.

3. All initial written reports of incidents or situations shall be mailed to the Department within five (5) working days after the incident or situation. The final report shall be filed with the Department when the full investigation is complete.

SECTION 9. AMENDATORY 63 O.S. 2011, Section 1-1940, is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of the Nursing Home Care Act or rules promulgated by the State Board of Health, pursuant thereto, is hereby declared a public nuisance, inimical to the public welfare.

B. The State Commissioner of Health or the Department of Human Services, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

C. 1. Any person with personal knowledge or substantial specific information who believes that the Nursing Home Care Act, a rule promulgated thereto, or a federal certification rule applying to a facility may have been violated may file a complaint.

2. The complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department.

3. Any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of the Nursing Home Care Act, shall be liable in a civil suit for any actual damages suffered by a facility for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

4. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

5. Upon receipt of a complaint pursuant to this subsection, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant thereto, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area. If the Department does not have jurisdiction over the complaint area, the complaint shall

not be investigated by the Department and notice of the decision not to investigate shall be given to the complainant. The complaint shall be immediately referred to the appropriate agency having jurisdiction over the complaint area. A report summarizing the complaint investigation shall be made in writing. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

6. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant. The complainant may direct the Department to send a copy of such findings to one other person. The notice of such findings shall include a copy of the written determination, the remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

D. 1. Upon receipt of a complaint submitted to the State Department of Health by the Department of Human Services or the Attorney General which alleges a violation of the Nursing Home Care Act, any rule promulgated thereto, or federal certification rules, and which also alleges that such violation is a serious threat to the health, safety and welfare of a resident of a nursing facility, the State Department of Health shall take immediate action to remedy

the violation based upon the complaint of the Department of Human Services.

2. The Department of Human Services or the Attorney General as applicable shall be deemed a party pursuant to the Administrative Procedures Act for purposes of any complaint made by the Department of Human Services or the Attorney General as applicable to the State Department of Health for violations of the Nursing Home Care Act, rules promulgated thereto or federal certification rules.

a. Within thirty (30) days of receipt of a final investigative report submitted by the Department of Human Services or the Attorney General as applicable pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken pertaining to the complaint including, but not limited to, any inspection or actions which may be taken by the State Department of Health.

b. Whenever the Department of Human Services or the Attorney General as applicable believes that the conditions giving rise to a complaint alleging a serious threat to the health, safety and welfare of a resident of a nursing facility have not been adequately addressed, the Department of Human Services

may request a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

E. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

F. The Department shall seek any remedial action provided under the Nursing Home Care Act for violations documented during complaint investigations.

G. The State Board of Health shall promulgate rules governing the receipt, investigation and resolution of complaints and reports of violations. The rules promulgated by the Board shall provide for the expeditious investigation and resolution of a complaint or report including, but not limited to:

1. An easily understood and readily accessible method of submitting complaints and reports regarding complaints;

2. Actions to be taken upon the receipt of a complaint or report of a complaint;

3. Establishing a priority for investigations of complaints. Specifically, the Department shall give higher priority to investigations of complaints which allege continuing violations or which threaten the health, safety or welfare of residents;

4. The timely investigation of the complaint or report of a complaint;

5. Written reports to the complainants or persons filing the complaint report;

6. Any necessary or appropriate remedial action as determined by the findings of the investigation;

7. The protection of the identity of the complainant, provided that the person is a current or past resident or resident's representative or designated guardian or a current or past employee of a facility;

8. Specific information to be included in investigative protocols which must include at a minimum an interview in person with:

a. the complainant,

b. the resident, if ~~possible~~ the resident is able to communicate by any means. If the resident is outside of the facility and located within the state, the interview shall be conducted where the former resident is located, and

c. any potential witness, collateral resource or affected resident. Collateral resources shall include, but are not limited to:

(1) photos provided by the resident, family members, complainant or other parties,

(2) videos provided by a resident, family members, complainant or other parties, and

(3) records provided by a resident, family members, complainant or other parties.

If the authenticity of any photo, video or record provided by a resident, the resident's representative or family member is challenged, or the complaint is challenged for its authenticity, the party challenging that authenticity is responsible for securing a recognized forensic expert to make such determination. The challenging party shall be responsible for any and all costs associated with such forensic evaluation; and

9. Any additional rules necessary for the timely and thorough investigation and resolution of complaints.

H. The Department is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are properly executed.

SECTION 10. AMENDATORY 63 O.S. 2011, Section 1-1951, as last amended by Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp. 2014, Section 1-1951), is amended to read as follows:

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

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

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

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

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

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

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

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

b. the nurse aide is found to meet any of the requirements contained in Section 1-1950.1C of this title, and

c. the nurse aide is found to have committed abuse, neglect or exploitation of a resident or misappropriation of resident or client property pursuant to the requirements contained in Section 1-1951D(7) of this title. The action to revoke or suspend may be included with the filing of any action pursuant to the requirements of Section 1-1951D(7) of this title.

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

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

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

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

C. Only a person who has qualified as a certified nurse aide and who holds a valid current nurse aide certificate for use in this

state shall have the right and privilege of using the title Certified Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

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

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

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

2. The registry shall contain information as to whether a nurse 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. Certified nurse aides and nurse aide trainees shall maintain with the registry current residential addresses and shall notify the registry, in writing, of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number shall be made within ten (10) days of the effected change. Notice shall not be accepted over the phone,

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

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

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

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

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

7. If the Department after notice and opportunity for hearing determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the nurse aide and to the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a nurse aide in a long-term care facility, a residential care facility, assisted living facility, day care facility, or any entity that requires certification of nurse aides, and notice of any further appeal rights shall also be sent to the nurse aide.

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

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

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

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

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

~~12.~~ 13. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune

from liability for reporting allegations of abuse, neglect or exploitation.

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

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

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

~~G. An individual shall not be eligible for certification as a nurse aide for the period the individual satisfied one or more of the disqualifying criteria found in subsection D of Section 1-1947 of this title. A nurse aide certified on or after November 1, 2012, and subsequently found to satisfy one or more of the disqualifying criteria found in subsection D of Section 1-1947 of this title shall, for the period he or she satisfies the criteria, be subject to revocation or nonrenewal of certification after reasonable~~

~~opportunity for notice and hearing pursuant to the Administrative Procedures Act.~~

SECTION 11. AMENDATORY Section 4, Chapter 204, O.S.L. 2013 (63 O.S. Supp. 2013, Section 1-1953.4), is amended to read as follows:

Section 1-1953.4 Subject to the provisions of law, a tape or recording created through the use of authorized electronic monitoring pursuant to this act may be admitted into evidence in a civil or criminal court action or administrative proceeding. In a criminal action, it shall be a rebuttable presumption that the tape or recording is authentic and the complainant shall bear the cost to prove its invalidity.

SECTION 12. This act shall become effective November 1, 2015.

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