

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 SENATE BILL 217

By: Anderson

4  
5 AS INTRODUCED

6 An Act relating to the Home Care Act; amending 63  
7 O.S. 2011, Section 1-1961, which relates to  
8 definitions; deleting certain definition; modifying  
9 definition; amending 63 O.S. 2011, Section 1-1962, as  
10 last amended by Section 2, Chapter 265, O.S.L. 2012  
11 (63 O.S. Supp. 2014, Section 1-1962), which relates  
12 to home care agency licenses; modifying certain  
13 requirement; modifying certain plan components; and  
14 providing an effective date.

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

16 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1961, is  
17 amended to read as follows:

18 Section 1-1961. As used in the Home Care Act:

19 1. "Board" means the State Board of Health;

20 2. "Certification" means verification of appropriate training  
21 and competence established by the State Board of Health by rules  
22 promulgated pursuant to the Home Care Act for home health aides and  
23 home care agency administrators;

24 3. "Department" means the State Department of Health;

4. "Home care agency" means any sole proprietorship,  
partnership, association, corporation or other organization which

1 administers, offers or provides home care services, for a fee or  
2 pursuant to a contract for such services, to clients in their place  
3 of residence. The term "home care agency" shall not include:

- 4 a. individuals who contract with the Department of Human  
5 Services to provide personal care services, provided  
6 such individuals shall not be exempt from  
7 certification as home health aides,
- 8 b. organizations that contract with the Oklahoma Health  
9 Care Authority as Intermediary Services Organizations  
10 (ISO) to provide federal Internal Revenue Service  
11 fiscal and supportive services to Consumer-Directed  
12 Personal Assistance Supports and Services (CD-PASS)  
13 waiver program participants who have employer  
14 responsibility for hiring, training, directing and  
15 managing an individual personal care attendant, or
- 16 c. CD-PASS waiver program employer participants;

17 5. "Home care services" means skilled or personal care services  
18 provided to clients in their place of residence for a fee;

19 6. "Home health aide" means an individual who provides personal  
20 care to clients in their temporary or permanent place of residence  
21 for a fee;

22 7. "Home care agency administrator" means a person who  
23 operates, manages, or supervises, or is in charge of a home care  
24 agency;

1 8. "Personal care" means assistance with dressing, bathing,  
2 ambulation, exercise or other personal needs;

3 9. "Skilled care" means home care services performed on a  
4 regular basis by a trained Respiratory Therapist/Technician or by a  
5 person currently licensed by this state, including but not limited  
6 to a Licensed Practical Nurse, Registered Nurse, Physical Therapist,  
7 Occupational Therapist, Speech Therapist, or Social Worker; and

8 ~~10. "Standby assistance" means supervision of client directed~~  
9 ~~activities with verbal prompting and infrequent, incidental hands-on~~  
10 ~~intervention only; and~~

11 ~~11.~~ "Supportive home assistant" means an individual employed by  
12 a home care agency who provides ~~standby~~ assistance with activities  
13 of daily living, including but not limited to bathing, dressing,  
14 hygiene, and grooming, to ambulatory clients, in conjunction with  
15 other companionship or homemaker services, in the temporary or  
16 permanent place of residence of the client for a fee.

17 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1962, as  
18 last amended by Section 2, Chapter 265, O.S.L. 2012 (63 O.S. Supp.  
19 2014, Section 1-1962), is amended to read as follows:

20 Section 1-1962. A. No home care agency as that term is defined  
21 by the Home Care Act shall operate without first obtaining a license  
22 as required by the Home Care Act.

23 B. 1. No home care agency, except as otherwise provided by  
24 this subsection, shall place an individual in the role of supportive

1 home assistant with a client on a full-time, temporary, per diem, or  
2 other basis, unless the individual has completed agency-based  
3 supportive home assistant training taught by a registered nurse in  
4 the sections applicable to the assistance required by the client.  
5 Each supportive home assistant ~~who~~ shall successfully ~~completes~~  
6 complete agency-based training ~~shall demonstrate competence by~~  
7 ~~testing through an independent entity approved by the State~~  
8 ~~Department of Health. The requirements related to application,~~  
9 ~~approval, renewal, and denial of such testing entities shall be set~~  
10 ~~forth in administrative rules promulgated by the State Board of~~  
11 Health and demonstrate competency to the home care agency to be  
12 approved as a supportive home assistant.

13 2. The home care agency shall develop a written training plan  
14 that shall include, at a minimum, the following:

- 15 a. observation, reporting, and documentation of client  
16 status and the standby assistance or other services  
17 furnished,
- 18 b. maintenance of a clean, safe, and healthy environment,
- 19 c. recognizing an emergency and necessary emergency  
20 procedures,
- 21 d. safe techniques to provide ~~standby~~ assistance with  
22 bathing, grooming, and toileting,
- 23 e. assistance with meal preparation and safe food  
24 handling and storage,

- 1           f.    client rights and responsibilities and the need for  
2                    respect for the client and for the privacy and  
3                    property of the client, and
- 4           g.    basic infection control practices to include, at a  
5                    minimum, instruction in acceptable hand hygiene  
6                    techniques and the application of standard  
7                    precautions.

8           3.    Supervisory visits shall be made according to the client  
9                    need, as determined by the nursing supervisor, but no less than once  
10                  every six (6) months.

11           4.    No supportive home assistant shall provide services to a  
12                    client until a criminal history background check and a check of the  
13                    nurse aide registry maintained by the State Department of Health is  
14                    performed in accordance with Section 1-1950.1 of this title and the  
15                    assistant is found to have no notations of abuse of any kind on the  
16                    registry and no convictions of the crimes listed in subsection F of  
17                    Section 1-1950.1 of this title.

18           5.    No home care agency may employ a supportive home assistant  
19                    listed on the Department of Human Services Community Services Worker  
20                    Registry.

21           6.    No licensed health care facility, licensed physician,  
22                    advanced practice registered nurse, physician assistant, or state  
23                    agency employee acting in the performance of his or her duties shall  
24                    refer a client for personal care services as defined in paragraph 8

1 of Section 1-1961 of this title or for companion or sitter services  
2 as defined in paragraph 1 of subsection A of Section 1-1972 of this  
3 title, except to an agency licensed to provide such services. For  
4 purposes of this subsection, "licensed health care facility" shall  
5 include acute care hospitals, long-term acute care hospitals,  
6 rehabilitation hospitals, skilled nursing facilities, assisted  
7 living facilities, residential care homes, home care agencies, adult  
8 day care centers and hospice agencies.

9 C. 1. No employer or contractor, except as otherwise provided  
10 by this subsection, shall employ or contract with any individual as  
11 a home health aide for more than four (4) months, on a full-time,  
12 temporary, per diem or other basis, unless the individual is a  
13 licensed health professional or unless the individual has satisfied  
14 the requirements for certification and placement on the home health  
15 aide registry maintained by the State Department of Health.

16 2. a. Any person in the employment of a home care agency as  
17 a home health aide on June 30, 1992, with continuous  
18 employment through June 30, 1993, shall be granted  
19 home health aide certification by the Department on  
20 July 1, 1993. The home care agency shall maintain  
21 responsibility for assurance of specific competencies  
22 of the home health aide and shall only assign the home  
23 health aide to tasks for which the aide has been  
24 determined to be competent.

1           b. Any home health aide employed between the dates of  
2           July 1, 1992, and June 30, 1993, shall be eligible for  
3           certification by passing a competency evaluation and  
4           testing as required by the Department.

5           c. Any home health aide employed on and after July 1,  
6           1996, shall complete any specified training,  
7           competency evaluation and testing required by the  
8           Department.

9           D. The provisions of the Home Care Act shall not apply to:

10          1. A person acting alone who provides services in the home of a  
11          relative, neighbor or friend;

12          2. A person who provides maid services only;

13          3. A nurse service or home aide service conducted by and for  
14          the adherents to any religious denomination, the tenets of which  
15          include reliance on spiritual means through prayer alone for  
16          healing;

17          4. A person providing hospice services pursuant to the Oklahoma  
18          Hospice Licensing Act;

19          5. A nurse-midwife;

20          6. An individual, agency, or organization that contracts with  
21          the Oklahoma Health Care Authority to provide services under the  
22          Home- and Community-Based Waiver for persons with developmental  
23          disabilities or that contracts with the Department of Human Services  
24          to provide community services to persons with developmental

1 disabilities; provided, that staff members and individuals providing  
2 the services shall receive a level of training, approved by the  
3 Department of Human Services, which meets or exceeds the level  
4 required pursuant to the Home Care Act. An individual, agency or  
5 organization otherwise covered under the Home Care Act shall be  
6 exempt from the act only for those paraprofessional direct care  
7 services provided under contracts referenced in this paragraph;

8 7. An individual, agency or organization that provides or  
9 supports the provision of personal care services to an individual  
10 who performs individual employer responsibilities of hiring,  
11 training, directing and managing a personal care attendant as part  
12 of the Oklahoma Health Care Authority Consumer-Directed Personal  
13 Assistance Supports and Services (CD-PASS) waiver program. An  
14 individual, agency or organization otherwise covered under the  
15 provisions of the Home Care Act shall be exempt from the act only  
16 for those paraprofessional direct care services provided under  
17 Oklahoma Health Care Authority contracts referenced in this  
18 paragraph, but shall not be exempt from the criminal history  
19 background check required under the Home Care Act and Section 1-  
20 1950.1 of this title for other paraprofessional direct care service  
21 providers. A personal care attendant hired by a consumer under the  
22 CD-PASS program shall be exempt from certification as a home health  
23 aide, provided such personal care attendant receives the training  
24 required and approved by the Department of Human Services;



1 8. An individual who only provides Medicaid home- and  
2 community-based personal care services pursuant to a contract with  
3 the Oklahoma Health Care Authority;

4 9. An individual who:

- 5 a. is employed by a licensed home care agency exclusively
- 6 to provide personal care services on a live-in basis,
- 7 b. has no convictions pursuant to a criminal history
- 8 investigation as provided in Section 1-1950.1 of this
- 9 title,
- 10 c. is being continuously trained by a registered nurse to
- 11 provide care that is specific to the needs of the
- 12 particular client receiving the care, and
- 13 d. is supervised by a registered nurse via an on-site
- 14 visit at least once each month; or

15 10. A home or facility approved and annually reviewed by the  
16 United States Department of Veterans Affairs as a medical foster  
17 home in which care is provided exclusively to three or fewer  
18 veterans.

19 SECTION 3. This act shall become effective November 1, 2015.

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