

1 ENGROSSED HOUSE AMENDMENT
TO
2 ENGROSSED SENATE BILL NO. 827 By: Smalley of the Senate
3 and
4 Caldwell of the House
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7 [Nursing Home Care Act - certain definition -
8 effective date]
9

10 AUTHOR: Add the following Senate Coauthor: Pittman

11 AMENDMENT NO. 1. Replace the stricken title, enacting clause and
12 entire bill and insert
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14 "An Act relating to the Nursing Home Care Act;
15 amending 63 O.S. 2011, Section 1-1902, as amended by
16 Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp.
17 2016, Section 1-1902), which relates to definitions;
18 expanding certain definition; and providing an
19 effective date.

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

21 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1902, as
22 amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2016,
23 Section 1-1902), is amended to read as follows:
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Section 1-1902. As used in the Nursing Home Care Act:

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

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

19 3. "Administrator" means the person licensed by the State of
20 Oklahoma who is in charge of a facility. An administrator must
21 devote at least one-third (1/3) of such person's working time to on-
22 the-job supervision of the facility; provided that this requirement
23 shall not apply to an administrator of an intermediate care facility
24 for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 16. "Owner" means a person, corporation, partnership,
11 association, or other entity which owns a facility or leases a
12 facility. The person or entity that stands to profit or lose as a
13 result of the financial success or failure of the operation shall be
14 presumed to be the owner of the facility. Notwithstanding the
15 foregoing, any nonstate governmental entity that has acquired and
16 owns or leases a facility and that has entered into an agreement
17 with the Oklahoma Health Care Authority or other state agency
18 including but not limited to the Department of Human Services to
19 participate in the nursing facility supplemental payment program
20 ("UPL Owner") shall be deemed the owner of such facility and shall
21 be authorized to obtain management services from a management
22 services provider ("UPL Manager"), and to delegate, allocate and
23 assign as between the UPL Owner and UPL Manager, compensation,
24 profits, losses, liabilities, decision-making authority and

1 responsibilities, including responsibility for the employment,
2 direction, supervision and control of the facility's administrator
3 and staff;

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

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

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

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

10 SECTION 2. This act shall become effective November 1, 2017."

11 Passed the House of Representatives the 18th day of April, 2017.

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Presiding Officer of the House of
Representatives

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Passed the Senate the ____ day of _____, 2017.

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Presiding Officer of the Senate

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