

1 ENGROSSED SENATE
2 BILL NO. 388

By: Rosino of the Senate

and

West (Josh) of the House

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6 An Act relating to home care; requiring eligibility
7 certification and oversight of care by healthcare
8 provider; providing retroactivity; amending 63 O.S.
9 2011, Section 1-1961, which relates to definitions;
10 adding definition; amending 63 O.S. 2011, Section 1-
11 1962, as last amended by Section 3, Chapter 77,
12 O.S.L. 2017 (63 O.S. Supp. 2020, Section 1-1962),
13 which relates to home care agency license; deleting
14 reference; amending 63 O.S. 2011, Section 1-1964,
15 which relates to rules; modifying term; updating
16 language; providing for codification; and declaring
17 an emergency.

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

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1-1962b of Title 63, unless
there is created a duplication in numbering, reads as follows:

Eligibility of a patient for home care services shall be
certified by a healthcare provider, and care of the patient shall be
overseen by the healthcare provider. This section is retroactive
and shall apply to any eligibility certification conducted on or
after March 27, 2020.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1961, is
amended to read as follows:

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

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

3 2. "Certification" means verification of appropriate training
4 and competence established by the State ~~Board~~ Commissioner of Health
5 by rules promulgated pursuant to the Home Care Act for home health
6 aides and home care agency administrators;

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

8 4. "Healthcare provider" means a physician, physician assistant
9 or Advanced Practice Registered Nurse recognized by the Oklahoma
10 Board of Nursing as a Certified Nurse Practitioner or a Clinical
11 Nurse Specialist;

12 5. "Home care agency" means any sole proprietorship,
13 partnership, association, corporation or other organization which
14 administers, offers or provides home care services, for a fee or
15 pursuant to a contract for such services, to clients in their place
16 of residence. The term "home care agency" shall not include:

17 a. individuals who contract with the Department of Human
18 Services to provide personal care services, provided
19 such individuals shall not be exempt from
20 certification as home health aides,

21 b. organizations that contract with the Oklahoma Health
22 Care Authority as Intermediary Services Organizations
23 (ISO) to provide federal Internal Revenue Service
24 fiscal and supportive services to Consumer-Directed

1 Personal Assistance Supports and Services (CD-PASS)
2 waiver program participants who have employer
3 responsibility for hiring, training, directing and
4 managing an individual personal care attendant, or

5 c. CD-PASS waiver program employer participants;

6 ~~5.~~ 6. "Home care services" means skilled or personal care
7 services provided to clients in their place of residence for a fee;

8 ~~6.~~ 7. "Home health aide" means an individual who provides
9 personal care to clients in their temporary or permanent place of
10 residence for a fee;

11 ~~7.~~ 8. "Home care agency administrator" means a person who
12 operates, manages, or supervises, or is in charge of a home care
13 agency;

14 ~~8.~~ 9. "Personal care" means assistance with dressing, bathing,
15 ambulation, exercise or other personal needs;

16 ~~9.~~ 10. "Skilled care" means home care services performed on a
17 regular basis by a trained Respiratory Therapist/Technician or by a
18 person currently licensed by this state, including but not limited
19 to a Licensed Practical Nurse, Registered Nurse, Physical Therapist,
20 Occupational Therapist, Speech Therapist, or Social Worker;

21 ~~10.~~ 11. "Standby assistance" means supervision of client
22 directed activities with verbal prompting and infrequent, incidental
23 hands-on intervention only; and

1 ~~11.~~ 12. "Supportive home assistant" means an individual
2 employed by a home care agency who provides standby assistance to
3 ambulatory clients, in conjunction with other companionship or
4 homemaker services, in the temporary or permanent place of residence
5 of the client for a fee.

6 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1962, as
7 last amended by Section 3, Chapter 77, O.S.L. 2017 (63 O.S. Supp.
8 2020, Section 1-1962), is amended to read as follows:

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

12 B. 1. No home care agency, except as otherwise provided by
13 this subsection, shall place an individual in the role of supportive
14 home assistant with a client on a full-time, temporary, per diem, or
15 other basis, unless the individual has completed agency-based
16 supportive home assistant training taught by a registered nurse in
17 the sections applicable to the assistance required by the client.
18 Each supportive home assistant who successfully completes agency-
19 based training shall demonstrate competence by testing through an
20 independent entity approved by the State Department of Health. The
21 requirements related to application, approval, renewal, and denial
22 of such testing entities shall be set forth in administrative rules
23 promulgated by the State ~~Board~~ Commissioner of Health.

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

- 3 a. observation, reporting, and documentation of client
4 status and the standby assistance or other services
5 furnished,
- 6 b. maintenance of a clean, safe, and healthy environment,
- 7 c. recognizing an emergency and necessary emergency
8 procedures,
- 9 d. safe techniques to provide standby assistance with
10 bathing, grooming, and toileting,
- 11 e. assistance with meal preparation and safe food
12 handling and storage,
- 13 f. client rights and responsibilities and the need for
14 respect for the client and for the privacy and
15 property of the client, and
- 16 g. basic infection control practices to include, at a
17 minimum, instruction in acceptable hand hygiene
18 techniques and the application of standard
19 precautions.

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

23 4. No supportive home assistant shall provide services to a
24 client until a criminal history background check and a check of the

1 nurse aide registry maintained by the State Department of Health is
2 performed in accordance with Section 1-1950.1 of this title and the
3 assistant is found to have no notations of abuse of any kind on the
4 registry and no convictions of the crimes listed in subsection F of
5 Section 1-1950.1 of this title.

6 5. No home care agency may employ a supportive home assistant
7 listed on the Department of Human Services Community Services Worker
8 Registry.

9 6. No licensed health care facility, licensed physician,
10 advanced practice registered nurse, physician assistant, or state
11 agency employee acting in the performance of his or her duties shall
12 refer a client for personal care services as defined in ~~paragraph 8~~
13 ~~of~~ Section 1-1961 of this title or for companion or sitter services
14 as defined in paragraph 1 of subsection A of Section 1-1972 of this
15 title, except to an agency licensed to provide such services. For
16 purposes of this subsection, "licensed health care facility" shall
17 include acute care hospitals, long-term acute care hospitals,
18 rehabilitation hospitals, skilled nursing facilities, assisted
19 living facilities, residential care homes, home care agencies, adult
20 day care centers and hospice agencies.

21 C. 1. No employer or contractor, except as otherwise provided
22 by this subsection, shall employ or contract with any individual as
23 a home health aide for more than four (4) months, on a full-time,
24 temporary, per diem or other basis, unless the individual is a

1 licensed health professional or unless the individual has satisfied
2 the requirements for certification and placement on the home health
3 aide registry maintained by the State Department of Health.

4 2. a. Any person in the employment of a home care agency as
5 a home health aide on June 30, 1992, with continuous
6 employment through June 30, 1993, shall be granted
7 home health aide certification by the Department on
8 July 1, 1993. The home care agency shall maintain
9 responsibility for assurance of specific competencies
10 of the home health aide and shall only assign the home
11 health aide to tasks for which the aide has been
12 determined to be competent.

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

17 c. Any home health aide employed on and after July 1,
18 1996, shall complete any specified training,
19 competency evaluation and testing required by the
20 Department.

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

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

24 2. A person who provides maid services only;

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

5 4. A person providing hospice services pursuant to the Oklahoma
6 Hospice Licensing Act;

7 5. A nurse-midwife;

8 6. An individual, agency, or organization that contracts with
9 the Oklahoma Health Care Authority to provide services under the
10 Home- and Community-Based Waiver for persons with developmental
11 disabilities or that contracts with the Department of Human Services
12 to provide community services to persons with developmental
13 disabilities; provided, that staff members and individuals providing
14 the services shall receive a level of training, approved by the
15 Department of Human Services, which meets or exceeds the level
16 required pursuant to the Home Care Act. An individual, agency or
17 organization otherwise covered under the Home Care Act shall be
18 exempt from the act only for those paraprofessional direct care
19 services provided under contracts referenced in this paragraph;

20 7. An individual, agency or organization that provides or
21 supports the provision of personal care services to an individual
22 who performs individual employer responsibilities of hiring,
23 training, directing and managing a personal care attendant as part
24 of the Oklahoma Health Care Authority Consumer-Directed Personal

1 Assistance Supports and Services (CD-PASS) waiver program. An
2 individual, agency or organization otherwise covered under the
3 provisions of the Home Care Act shall be exempt from the act only
4 for those paraprofessional direct care services provided under
5 Oklahoma Health Care Authority contracts referenced in this
6 paragraph, but shall not be exempt from the criminal history
7 background check required under the Home Care Act and Section 1-
8 1950.1 of this title for other paraprofessional direct care service
9 providers. A personal care attendant hired by a consumer under the
10 CD-PASS program shall be exempt from certification as a home health
11 aide, provided such personal care attendant receives the training
12 required and approved by the Department of Human Services;

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

16 9. An individual who:

- 17 a. is employed by a licensed home care agency exclusively
- 18 to provide personal care services on a live-in basis,
- 19 b. has no convictions pursuant to a criminal history
- 20 investigation as provided in Section 1-1950.1 of this
- 21 title,
- 22 c. is being continuously trained by a registered nurse to
- 23 provide care that is specific to the needs of the
- 24 particular client receiving the care, and

1 d. is supervised by a registered nurse via an on-site
2 visit at least once each month;

3 10. A home or facility approved and annually reviewed by the
4 United States Department of Veterans Affairs as a medical foster
5 home in which care is provided exclusively to three or fewer
6 veterans; or

7 11. A person qualified by the Department as a certified nurse
8 aide pursuant to the provisions of Section 1-1951 of this title.

9 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1964, is
10 amended to read as follows:

11 Section 1-1964. The State ~~Board~~ Commissioner of Health shall
12 promulgate rules necessary to implement the provisions of the Home
13 Care Act. Such rules shall include, but shall not be limited to:

14 1. Minimum standards for home care services. In establishing
15 such standards, the ~~Board~~ Commissioner shall consider those
16 standards adopted by state and national home care associations;

17 2. Requirements for the certification and renewal certification
18 of home health aides and home care agency administrators;

19 3. Provisions for transfer of ownership of a licensed agency;

20 4. A requirement that each licensed agency create and disclose
21 to its clients a statement of clients' rights and responsibilities;

22 5. Establishing continuing education requirements for renewal
23 of certifications for home care agency administrators;

1 6. Requirements for financial resources to ensure a home care
2 agency's ability to provide adequate home care services;

3 7. Standards for assessing an applicant's business and
4 professional experience as demonstrated in prior health care
5 provider operations including, but not limited to, nursing homes,
6 residential care homes, and home care and in previous compliance
7 with all lawful orders of suspension, receivership, administrative
8 penalty or sanction issued by the State Department of Health or by
9 other administrative agencies in other states with similar
10 responsibilities;

11 8. Restrictions on any agency, agency employee, or agency
12 contractor providing skilled care or conducting an in-home
13 assessment of the need for skilled care unless and until the agency
14 receives a ~~physician's~~ healthcare provider's order to provide
15 skilled care or to conduct an in-home assessment of the need for
16 skilled care; provided, however, such restrictions shall not prevent
17 an agency from providing personal care to a client without a
18 ~~physician's~~ healthcare provider's order. Provided further, such
19 restrictions shall not apply to in-home assessments of home and
20 community-based waiver clients in the state Medicaid program;

21 9. Restrictions on any agency, agency employee, or agency
22 contractor soliciting, coercing, or harassing a consumer of home
23 care services or who may need home care services; and
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1 10. Standards or other provisions which do not conflict with
2 any federal requirements relating to the federal Medicaid and
3 Medicare programs.

4 SECTION 5. It being immediately necessary for the preservation
5 of the public peace, health or safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

8 Passed the Senate the 11th day of February, 2021.

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Presiding Officer of the Senate

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12 Passed the House of Representatives the ____ day of _____,
13 2021.

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Presiding Officer of the House
of Representatives

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