

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE
4 FOR
5 HOUSE BILL NO. 1627

By: Pittman

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7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-
9 1939, as amended by Section 2, Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008,
10 Section 1-1939), which relates to the Nursing Home Care Act; requiring certain
acts be reported immediately; and providing an effective date.

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

14 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1939, as amended by Section 2,
15 Chapter 429, O.S.L. 2003 (63 O.S. Supp. 2008, Section 1-1939), is amended to read as follows:

16 Section 1-1939. A. The owner and licensee are liable to a resident for any intentional or
17 negligent act or omission of their agents or employees which injures the resident. In addition, any state
18 employee that aids, abets, assists, or conspires with an owner or licensee to perform an act that causes
19 injury to a resident shall be individually liable.

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

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

4 D. Any waiver by a resident or the legal representative of the resident of the right to commence
5 an action under this section, whether oral or in writing, shall be null and void, and without legal force
6 or effect.

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

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

14 G. Any person, institution or agency, under the Nursing Home Care Act, participating in good
15 faith in the making of a report, or in the investigation of such a report shall not be deemed to have
16 violated any privileged communication and shall have immunity from any liability, civil or criminal, or
17 any other proceedings, civil or criminal, as a consequence of making such report. The good faith of
18 any persons required, or permitted to report cases of suspected resident abuse or neglect under this act
19 shall be presumed.

20 H. A facility employee or agent who becomes aware of abuse, neglect or exploitation of a
21 resident prohibited by the Nursing Home Care Act shall immediately report the matter to the facility
22 administrator. A facility administrator who becomes aware of abuse, neglect, or exploitation of a
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1 resident shall immediately act to rectify the problem and shall make a report of the incident and its
2 correction to the Department.

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

- 5 a. communicable diseases,
- 6 b. deaths by unusual occurrence, including accidental deaths or deaths other than by
7 natural causes, and deaths that may be attributed to a medical device,
- 8 c. missing residents. ~~In addition, the facility shall make a report to local law~~
9 ~~enforcement agencies within two (2) hours if the resident is still missing,~~
- 10 d. situations arising where criminal intent is suspected. ~~Such situations shall also be~~
11 ~~reported to local law enforcement, and~~
- 12 e. resident abuse, neglect, and misappropriation of the property of a resident.

13 2. Situations described in subparagraphs b, c, d and e of paragraph 1 of this subsection shall be
14 reported to local law enforcement immediately upon discovery.

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

16 ~~3.~~ 4. All initial written reports of incidents or situations shall be mailed to the Department within
17 five (5) working days after the incident or situation. The final report shall be filed with the Department
18 when the full investigation is complete.

19 SECTION 2. This act shall become effective November 1, 2009.

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