

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 629

By: Simpson of the Senate

and

6 Hardin and Lockhart of the
7 House

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9
10 COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; amending
12 63 O.S. 2011, Section 1-890.6, as amended by Section
13 2, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
14 Section 1-890.6), which relates to Continuum of Care
15 and Assisted Living Act; directing the State
16 Department of Health to initiate complaints based on
17 investigations and to cooperate in prosecution in
18 facilities operated by the Oklahoma Department of
19 Veterans Affairs; providing for inspections and
20 visits by the State Department of Health of continuum
21 of care and assisted living facilities operated by
22 the Oklahoma Department of Veterans Affairs;
23 permitting certain entry; providing standards for
24 evaluations; directing the State Department of Health
to submit certain report; limiting utilization of
certain inspectors; amending 63 O.S. 2011, Section 1-
1903, as amended by Section 3, Chapter 12, O.S.L.
2012 (63 O.S. Supp. 2012, Section 1-1903), which
relates to the Nursing Home Care Act exemptions;
removing facilities operated by the Oklahoma
Department of Veterans Affairs from exemption;
requiring Oklahoma Veterans Center nursing facilities
to be regulated as an existing nursing facility;
amending 63 O.S. 2011, Section 1-1911, which relates
to inspections; including facilities operated by the
Oklahoma Department of Veterans Affairs; amending 63
O.S. 2011, Section 1-1912, which relates to

1 violations of the Nursing Home Care Act; providing
2 for corrective measures; directing the State
3 Department of Health to submit certain report;
4 amending 63 O.S. 2011, Section 1-1916, which relates
5 to correcting violations; applying certain
6 prohibitions to any person at any facility operated
7 by the Oklahoma Department of Veterans Affairs;
8 amending 63 O.S. 2011, Section 1-1950.1, as amended
9 by Section 3, Chapter 358, O.S.L. 2012 (63 O.S. Supp.
10 2012, Section 1-1950.1), which relates to criminal
11 background checks; updating definition; amending 63
12 O.S. 2011, Section 1950.3, which relates to staffing;
13 deleting obsolete language; updating definition;
14 requiring a waiver for certain employees; allowing
15 certain actions by certain employees in facilities
16 operated by the Oklahoma Department of Veterans
17 Affairs; amending 63 O.S. 2011, Section 1-1951, as
18 amended by Section 6, Chapter 358, O.S.L. 2012 (63
19 O.S. Supp. 2012, Section 1-1951), which relates to
20 training programs; updating powers and duties of the
21 State Department of Health; providing for
22 codification; and declaring an emergency.

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

24 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-890.6, as
amended by Section 2, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
Section 1-890.6), is amended to read as follows:

Section 1-890.6 A. The Continuum of Care and Assisted Living
Act shall not apply to residential care homes, adult companion
homes, domiciliary care units operated by the United States
Department of Veterans Affairs, the private residences of persons
with developmental disabilities receiving services provided by the
Developmental Disabilities Services Division of the Department of
Human Services or through the Home- and Community-Based Waiver or

1 the Alternative Disposition Plan Waiver of the Oklahoma Health Care
2 Authority, or to hotels, motels, boardinghouses, rooming houses, a
3 home or facility approved and annually reviewed by the United States
4 Department of Veterans Affairs as a medical foster home in which
5 care is provided exclusively to three or fewer veterans, or other
6 places that furnish board or room to their residents. The Continuum
7 of Care and Assisted Living Act shall not apply to facilities not
8 charging or receiving periodic compensation for services rendered
9 and not receiving any county, state or federal assistance.

10 B. The State Commissioner of Health may ban admissions to, or
11 deny, suspend, refuse to renew or revoke the license of, any
12 continuum of care facility or assisted living center which fails to
13 comply with the Continuum of Care and Assisted Living Act or rules
14 promulgated by the State Board of Health.

15 C. Any person who has been determined by the Commissioner to
16 have violated any provision of the Continuum of Care and Assisted
17 Living Act or any rule promulgated hereunder shall be liable for an
18 administrative penalty of not more than Five Hundred Dollars
19 (\$500.00) for each day that the violation occurs.

20 D. If a continuum of care facility's failure to comply with the
21 Continuum of Care and Assisted Living Act or rules involves nursing
22 care services, the Commissioner shall have authority to exercise
23 additional remedies provided under the Nursing Home Care Act. If a
24 continuum of care facility's failure to comply with the Continuum of

1 Care and Assisted Living Act or rules involves adult day care
2 services, then the Commissioner shall have authority to exercise
3 additional remedies provided under the Adult Day Care Act.

4 E. In taking any action to deny, suspend, deny renewal, or
5 revoke a license, or to impose an administrative fee, the
6 Commissioner shall comply with requirements of the Administrative
7 Procedures Act.

8 F. For continuum of care and assisted living facilities
9 operated by the Oklahoma Department of Veterans Affairs, if an
10 inspection reveals to the State Department of Health the commission
11 of a crime or crimes incidental to the operations of an Oklahoma
12 Department of Veterans Affairs nursing facility, it shall be the
13 duty of the State Department of Health to initiate a complaint with
14 the appropriate district attorney, and to cooperate in the
15 prosecution of the alleged offender in the event an information is
16 filed pursuant to such complaint.

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 1-900.9 of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 A. For continuum of care and assisted living facilities
21 operated by the Oklahoma Department of Veterans Affairs:

22 1. The State Department of Health shall conduct at least one
23 annual unannounced inspection, as well as unannounced visits to
24 occur at least once monthly, of all continuum of care and assisted

1 living facilities operated by the Oklahoma Department of Veterans
2 Affairs.

3 2. Inspectors employed by the State Department of Health shall
4 be permitted to enter the premises and administrative offices of all
5 Oklahoma Department of Veterans Affairs nursing facilities for the
6 purpose of performing their assigned duties.

7 3. Each continuum of care and assisted living facility operated
8 by the Oklahoma Department of Veterans Affairs shall be evaluated
9 for the purpose of compliance with the Continuum of Care and
10 Assisted Living Act, any applicable requirements of the Nursing Home
11 Care Act, and rules promulgated thereto.

12 4. Within thirty (30) days of receipt of a plan of correction
13 by the Oklahoma State Department of Health from any facility
14 operated by the Oklahoma Department of Veterans Affairs, the
15 Oklahoma State Department of Health shall submit the results of the
16 inspection, including a list of deficiencies in the condition or
17 operation of the facility and recommendations for corrective
18 measures in the form of a written report to the person immediately
19 responsible for the administration of the facility inspected, to the
20 Oklahoma Department of Veterans Affairs, to the Governor, to the
21 Speaker of the House of Representatives, and to the President Pro
22 Tempore of the Senate.

23 B. Inspectors employed by the State Department of Health to
24 inspect Oklahoma Department of Veterans Affairs continuum of care

1 and assisted living facilities shall not be utilized for any other
2 purposes.

3 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1903, as
4 amended by Section 3, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
5 Section 1-1903), is amended to read as follows:

6 Section 1-1903. A. No person shall establish, operate, or
7 maintain in this state any nursing facility without first obtaining
8 a license as required by the Nursing Home Care Act.

9 B. The Nursing Home Care Act shall not apply to ~~any facility~~
10 ~~operated by the Oklahoma Department of Veterans Affairs under~~
11 ~~control of the Oklahoma War Veterans Commission~~ residential care
12 homes, assisted living facilities or adult companion homes which are
13 operated in conjunction with a nursing facility, a home or facility
14 approved and annually reviewed by the United States Department of
15 Veterans Affairs as a medical foster home in which care is provided
16 exclusively to three or fewer veterans, or to hotels, motels,
17 boarding houses, rooming houses, or other places that furnish board
18 or room to their residents.

19 C. Each Oklahoma Veterans Center nursing facility licensed
20 pursuant to the provisions of this section shall be regulated as an
21 existing nursing facility for the purposes of meeting state and
22 federal standards.
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1 D. Certificate of need review shall not be required for any
2 addition, deletion, modification or new construction of current or
3 future State Veterans Center nursing facilities.

4 ~~D.~~ E. The Nursing Home Care Act shall not authorize any person
5 to engage in any manner in the practice of the healing arts or the
6 practice of medicine, as defined by law.

7 ~~E.~~ F. The Nursing Home Care Act shall not apply to a facility
8 which is not charging or receiving periodic compensation for
9 services rendered, and not receiving any county, state, or federal
10 assistance.

11 SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1911, is
12 amended to read as follows:

13 Section 1-1911. A. 1. Every building, institution, or
14 establishment for which a license has been issued, including any
15 facility operated by the Oklahoma Department of Veterans Affairs,
16 shall be periodically inspected by a duly appointed representative
17 of the State Department of Health, pursuant to rules promulgated by
18 the State Board of Health with the advice and counsel of the Long-
19 Term Care Facility Advisory Board, created in Section 1-1923 of this
20 title.

21 2. Inspection reports shall be prepared on forms prescribed by
22 the Commissioner with the advice and counsel of the Advisory Board.

23 B. 1. The Department, whenever it deems necessary, shall
24 inspect, survey, and evaluate every facility, including any facility

1 operated by the Oklahoma Department of Veterans Affairs, to
2 determine compliance with applicable licensure and certification
3 requirements and standards. All inspections of facilities shall be
4 unannounced. The Department may have as many unannounced
5 inspections as it deems necessary.

6 2. Any employee of the State Department of Health who discloses
7 to any unauthorized person, prior to an inspection, information
8 regarding an unannounced nursing home inspection required pursuant
9 to the provisions of this section shall, upon conviction thereof, be
10 guilty of a misdemeanor. In addition, such action shall be
11 construed to be a misuse of office and punishable as a violation of
12 rules promulgated by the Ethics Commission.

13 3. a. The Department may periodically visit a facility for
14 the purpose of consultation and may notify the
15 facility in advance of such a visit. An inspection,
16 survey, or evaluation, other than an inspection of
17 financial records or a consultation visit, shall be
18 conducted without prior notice to the facility.

19 b. One person shall be invited by the Department from a
20 statewide organization of the elderly to act as a
21 citizen observer in unannounced inspections. The
22 individual may be a state or local ombudsman as
23 defined by the Aging Services Division of the
24 Department of Human Services, acting pursuant to the

1 provisions of the Older Americans Act of 1965, Public
2 Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as
3 amended.

4 c. The citizen observer shall be reimbursed for expenses
5 in accordance with the provisions of the State Travel
6 Reimbursement Act.

7 d. An employee of a state or unit of a local government
8 agency, charged with inspecting, surveying, and
9 evaluating facilities, who aids, abets, assists,
10 conceals, or conspires with a facility administrator
11 or employee in violation of the provisions of the
12 Nursing Home Care Act shall be guilty, upon conviction
13 thereof, of a misdemeanor and shall be subject to
14 dismissal from employment.

15 C. The Department shall hold open meetings, as part of its
16 routine licensure survey, in each of the licensed facilities to
17 advise and to facilitate communication and cooperation between
18 facility personnel and the residents of facilities in their mutual
19 efforts to improve patient care. Administrators, employees of the
20 facility, residents, residents' relatives, friends, residents'
21 representatives, and employees from appropriate state and federal
22 agencies shall be encouraged to attend these meetings to contribute
23 to this process.

1 D. 1. The Department shall require periodic reports and shall
2 have access to books, records, and other documents maintained by the
3 facility to the extent necessary to implement the provisions of the
4 Nursing Home Care Act and the rules promulgated pursuant thereto.

5 2. Any holder of a license or applicant for a license shall be
6 deemed to have given consent to any authorized officer, employee, or
7 agent of the Department to enter and inspect the facility in
8 accordance with the provisions of the Nursing Home Care Act.
9 Refusal to permit said entry or inspection, except for good cause,
10 shall constitute grounds for remedial action or administrative
11 penalty or both such action and penalty as provided in the Nursing
12 Home Care Act.

13 E. The Department shall maintain a file on each facility in the
14 state. All conditions and practices not in compliance with
15 applicable standards shall be specifically stated. If a violation
16 is corrected or is subject to an approved plan of correction, such
17 action shall be contained in the file. Upon receiving a written
18 request for a copy of the file documents, the Department shall send
19 a copy of the document to any person making the written request.
20 The Department may charge a reasonable fee for copying costs.

21 SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-1912, is
22 amended to read as follows:
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1 Section 1-1912. A. The State Department of Health shall
2 promptly serve a notice of violation upon a licensee whenever upon
3 inspection or investigation, the Department determines that:

4 1. The facility is in violation of the Nursing Home Care Act,
5 any rule promulgated thereunder, or applicable federal certification
6 criteria; or

7 2. The financial condition of the facility poses an immediate
8 risk to the proper operation of the facility or to the health,
9 safety or welfare of the residents of the facility.

10 B. Each notice of violation shall be prepared in writing and
11 shall specify the nature of the violation, and the statutory
12 provision, rule or standard alleged to have been violated. The
13 notice of violation shall inform the licensee of its obligation to
14 file a plan of correction within ten (10) working days of receipt of
15 the notice of violation. In the case of a specialized facility for
16 persons with mental retardation, the Department shall offer the
17 licensee an informal opportunity comparable to the process offered
18 to Medicaid-certified nursing facilities pursuant to 42 CFR 488.331,
19 in order to dispute the alleged violations.

20 C. The Department shall notify the licensee of its intent to
21 take any remedial action, impose administrative penalties, place a
22 monitor or temporary manager in the facility, issue a conditional
23 license, or suspend or revoke a license. The Department shall also
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1 inform the licensee of the right to an informal dispute resolution,
2 hearing, or both.

3 D. Whenever the Department finds that an emergency exists
4 requiring immediate action to protect the health, safety or welfare
5 of any resident of a facility licensed pursuant to the provisions of
6 this act, the Department may, without notice of hearing, issue an
7 order stating the existence of such an emergency and requiring that
8 action be taken as deemed necessary by the Department to meet the
9 emergency. The order shall be effective immediately. Any person to
10 whom such an order is directed shall comply with such order
11 immediately but, upon application to the Department, shall be
12 afforded a hearing within ten (10) business days of receipt of the
13 application. On the basis of such hearing, the Department may
14 continue the order in effect, revoke it, or modify it. Any person
15 aggrieved by such order continued after the hearing provided in this
16 subsection may appeal to the district court in Oklahoma County
17 within thirty (30) days. Such appeal when docketed shall have
18 priority over all cases pending on the docket, except criminal
19 cases. For purposes of this subsection, the State Board of Health
20 shall define by rule the term "emergency" to include, but not be
21 limited to, a life-endangering situation.

22 E. Within thirty (30) days of receipt of a plan of correction
23 by the State Department of Health from any facility operated by the
24 Oklahoma Department of Veterans Affairs, the State Department of

1 Health shall submit the results of the inspection, including a list
2 of deficiencies in the condition or operation of the facility and
3 recommendations for corrective measures in the form of a written
4 report to the person immediately responsible for the administration
5 of the facility inspected, to the Oklahoma Department of Veterans
6 Affairs, to the Governor, to the Speaker of the House of
7 Representatives, and to the President Pro Tempore of the Senate.

8 SECTION 6. AMENDATORY 63 O.S. 2011, Section 1-1916, is
9 amended to read as follows:

10 Section 1-1916. A. No person, including any person at any
11 facility operated by the Oklahoma Department of Veterans Affairs,
12 shall:

13 1. Intentionally fail to correct or interfere with the
14 correction of a violation within the time specified on the notice or
15 approved plan of correction under this act as the maximum period
16 given for correction, unless an extension is granted and the
17 corrections are made before expiration of extension;

18 2. Intentionally prevent, interfere with, or attempt to impede
19 in any way the work of any duly authorized representative of the
20 Department in the investigation and enforcement of this act;

21 3. Intentionally prevent or attempt to prevent any such
22 representative from examining any relevant books or records in the
23 conduct of official duties under this act;

1 4. Intentionally prevent or interfere with any such
2 representative in the preserving of evidence of any violation of
3 this act or the rules promulgated under this act;

4 5. Intentionally retaliate or discriminate against any resident
5 or employee for contacting or providing information to any state
6 official, or for initiating, participating in, or testifying in an
7 action for any remedy authorized under this act;

8 6. Willfully file any false, incomplete or intentionally
9 misleading information required to be filed under this act, or
10 willfully fail or refuse to file any information; or

11 7. Open or operate a facility without a license.

12 B. A violation of this section is a misdemeanor.

13 C. The district attorney of the county in which the facility is
14 located, or the Attorney General, may be requested by the Department
15 to initiate prosecutions under this section.

16 SECTION 7. AMENDATORY 63 O.S. 2011, Section 1-1950.1, as
17 amended by Section 3, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012,
18 Section 1-1950.1), is amended to read as follows:

19 Section 1-1950.1 A. For purposes of this section:

20 1. "Nurse aide" means any person who provides, for
21 compensation, nursing care or health-related services to residents
22 in a nursing facility, a specialized facility, a residential care
23 home, continuum of care facility, assisted living center or an adult
24 day care center and who is not a licensed health professional. Such

term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency, ~~and~~
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program, and
- h. any facility operated by the Oklahoma Department of Veterans Affairs;

1 3. "Home health or home care agency" means any person,
2 partnership, association, corporation or other organization which
3 administers, offers or provides health care services or supportive
4 assistance for compensation to three or more ill, disabled, or
5 infirm persons in the temporary or permanent residence of such
6 persons, and includes any subunits or branch offices of a parent
7 home health or home care agency;

8 4. "Bureau" means the Oklahoma State Bureau of Investigation;
9 and

10 5. "Completion of the sentence" means the last day of the
11 entire term of the incarceration imposed by the sentence including
12 any term that is deferred, suspended or subject to parole.

13 B. Before any employer makes an offer to employ or to contract
14 with a nurse aide to provide nursing care, health-related services
15 or supportive assistance to any individual, the employer shall
16 provide for a criminal history background check to be made on the
17 nurse aide pursuant to the provisions of the Long-Term Care Security
18 Act. If the employer is a facility, home or institution which is
19 part of a larger complex of buildings, the requirement of a criminal
20 history background check shall apply only to an offer of employment
21 or contract made to a person who will work primarily in the
22 immediate boundaries of the facility, home or institution.

23 Where the provisions of the Long-Term Care Security Act
24 pertaining to registry screenings and national criminal history

1 record check are not in effect pending an effective date established
2 in rulemaking, an employer is authorized to obtain any criminal
3 history background records maintained by the Bureau pursuant to the
4 following:

5 1. The employer shall request the Bureau to conduct a criminal
6 history background check on the nurse aide and shall provide to the
7 Bureau any relevant information required by the Bureau to conduct
8 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
9 to the Bureau for each criminal history background check that is
10 conducted pursuant to such a request;

11 2. An employer may make an offer of temporary employment to a
12 nurse aide pending the results of the criminal history background
13 check. The employer in such instance shall provide to the Bureau
14 the name and relevant information relating to the person within
15 seventy-two (72) hours after the date the person accepts temporary
16 employment. The employer shall not hire or contract with the nurse
17 aide on a permanent basis until the results of the criminal history
18 background check are received;

19 3. An employer may accept a criminal history background report
20 less than one (1) year old of a person to whom such employer makes
21 an offer of employment. The report shall be obtained from the
22 previous employer or contractor of such person and shall only be
23 obtained upon the written consent of such person; and
24

1 4. Every employer while subject to the provisions of this
2 subsection shall inform each applicant for employment, or each
3 prospective contract provider, as applicable, that the employer is
4 required to obtain a criminal history background record before
5 making an offer of permanent employment or contract to a nurse aide.

6 C. 1. If the results of a criminal history background check
7 reveal that the subject person has been convicted of, pled guilty or
8 no contest to, or received a deferred sentence for, a felony or
9 misdemeanor offense for any of the following offenses in any state
10 or federal jurisdiction, the employer shall not hire or contract
11 with the person:

- 12 a. abuse, neglect or financial exploitation of any person
- 13 entrusted to the care or possession of such person,
- 14 b. rape, incest or sodomy,
- 15 c. child abuse,
- 16 d. murder or attempted murder,
- 17 e. manslaughter,
- 18 f. kidnapping,
- 19 g. aggravated assault and battery,
- 20 h. assault and battery with a dangerous weapon, or
- 21 i. arson in the first degree.

22 2. If less than seven (7) years have elapsed since the
23 completion of sentence, and the results of a criminal history check
24 reveal that the subject person has been convicted of, or pled guilty

1 or no contest to, a felony or misdemeanor offense for any of the
2 following offenses, in any state or federal jurisdiction, the
3 employer shall not hire or contract with the person:

- 4 a. assault,
- 5 b. battery,
- 6 c. indecent exposure and indecent exhibition, except
7 where such offense disqualifies the applicant as a
8 registered sex offender,
- 9 d. pandering,
- 10 e. burglary in the first or second degree,
- 11 f. robbery in the first or second degree,
- 12 g. robbery or attempted robbery with a dangerous weapon,
13 or imitation firearm,
- 14 h. arson in the second degree,
- 15 i. unlawful manufacture, distribution, prescription, or
16 dispensing of a Schedule I through V drug as defined
17 by the Uniform Controlled Dangerous Substances Act,
- 18 j. grand larceny, or
- 19 k. petit larceny or shoplifting.

20 D. An employer shall not employ or continue employing a person
21 addicted to any Schedule I through V drug as specified by the
22 Uniform Controlled Dangerous Substances Act unless the person
23 produces evidence that the person has successfully completed a drug
24 rehabilitation program.

1 E. All employment eligibility determination records received by
2 the employer pursuant to this section are confidential and are for
3 the exclusive use of the State Department of Health and the employer
4 which requested the information. Except on court order or with the
5 written consent of the person being investigated, the records shall
6 not be released or otherwise disclosed to any other person or
7 agency. These records shall be destroyed after one (1) year from
8 the end of employment of the person to whom such records relate.

9 F. As part of the inspections required by the Nursing Home Care
10 Act, Continuum of Care and Assisted Living Act, the Residential Care
11 Act, and the Adult Day Care Act, the State Department of Health
12 shall review the employment files of any facility, home or
13 institution required to obtain a criminal history background
14 determination to ensure such facilities, homes or institutions are
15 in compliance with the provisions of this section.

16 SECTION 8. AMENDATORY 63 O.S. 2011, Section 1-1950.3, is
17 amended to read as follows:

18 Section 1-1950.3 A. 1. ~~Until November 1, 2004, no employer or~~
19 ~~contractor who is subject to the provisions of Section 1-1950.1 or~~
20 ~~1-1950.2 of this title shall use, on a full-time, temporary, per~~
21 ~~diem, or other basis, any individual who is not a licensed health~~
22 ~~professional as a nurse aide for more than four (4) months, unless~~
23 ~~such individual has satisfied all requirements for certification and~~
24

1 ~~is eligible for placement on the nurse aide registry maintained by~~
2 ~~the State Department of Health.~~

3 ~~2. a. Effective November 1, 2004, no~~

4 A nursing facility, specialized facility, continuum of care
5 facility, assisted living center, adult day care or residential
6 home, or facility operated by the Oklahoma Department of Veterans
7 Affairs, shall not employ as a nurse aide, on a full-time,
8 temporary, per diem, or any other basis, any individual who is not
9 certified as a nurse aide in good standing and is not eligible for
10 placement on the nurse aide registry maintained by the State
11 Department of Health.

12 ~~b.~~

13 2. The Department may grant a temporary emergency waiver to the
14 provisions of this paragraph to any nursing facility, continuum of
15 care facility, assisted living center or adult day care or
16 residential home which can demonstrate that such facility, home or
17 institution has been unable to successfully meet its staffing
18 requirements related to the provisions of subparagraph a of this
19 paragraph. ~~No later than September 30, 2004, the State Board of~~
20 ~~Health shall promulgate rules related to eligibility for receipt of~~
21 ~~such waiver, and the process and the conditions for obtaining the~~
22 ~~waiver.~~

23 ~~c. From November 1, 2004, until October 31, 2005, the~~

24 ~~Department shall not issue any monetary penalties nor~~

1 ~~shall it issue any licensure deficiency related to the~~
2 ~~provisions of subparagraph a of this paragraph to a~~
3 ~~nursing facility, specialized facility, continuum of~~
4 ~~care facility, assisted living center, adult day care~~
5 ~~or residential care home, which is unable to comply~~
6 ~~with the requirements and which has applied for a~~
7 ~~temporary waiver under subparagraph b of this~~
8 ~~paragraph, whether or not the waiver application has~~
9 ~~been approved.~~

10 B. ~~1. Until November 1, 2004, no person shall use an~~
11 ~~individual as a nurse aide unless the individual:~~

- 12 ~~a. is enrolled in a Department-approved training and~~
13 ~~competency evaluation program,~~
14 ~~b. is currently certified and eligible to be listed on~~
15 ~~the nurse aide registry, or~~
16 ~~c. has completed the requirements for certification and~~
17 ~~placement on the nurse aide registry. Such waiver~~
18 ~~shall require the following:~~

19 ~~2.~~ 1. An individual employed as a nurse aide who is enrolled in
20 a Department-approved training and competency evaluation program for
21 nurse aides shall successfully complete such training and competency
22 evaluations within four (4) months of entering the training
23 program. ;

1 ~~3.~~ 2. The individual shall obtain certification, and the
2 Department shall place the nurse aide on the registry within thirty
3 (30) days after demonstration of competency~~;~~;

4 ~~4.~~ 3. Any nursing facility, specialized facility, continuum of
5 care facility, assisted living center, adult day care or residential
6 care home that employs an individual who is in nurse aide training,
7 as provided in this section, shall ensure that the trainee shall:

8 a. complete the required training and competency program
9 as provided in rules prior to any direct contact with
10 a resident or client,

11 b. not perform any service for which the trainee has not
12 trained and been determined proficient by the
13 instructor, and

14 c. be supervised at all times by no less than a licensed
15 practical nurse~~;~~; and

16 ~~5.~~ 4. No employer may use as a nurse aide an individual who has
17 not completed the nurse aide training and competency program within
18 the required four-month period.

19 C. For purposes of this section, "four (4) months" means the
20 equivalent of four (4) months of full-time employment as a nurse
21 aide by any employer in any nursing facility, specialized facility,
22 continuum of care facility, assisted living center, adult day care
23 or residential care home.

1 D. 1. The Department may grant a trainee a one-time extension
2 of the four-month training requirement if:

- 3 a. such requirement causes an undue hardship for the
4 trainee due to unusual circumstances or illness, and
- 5 b. the trainee has demonstrated a good faith effort to
6 complete the training and competency evaluation
7 program.

8 2. The State Board of Health shall promulgate rules related to
9 the review of and the process and conditions for such an extension.

10 E. 1. Certified medication aides, upon successful completion
11 of competency standards or prescribed training courses, shall be
12 eligible to distribute medications or treatments provided by
13 paragraph 2 of this subsection within a:

- 14 a. correctional facility, as set forth in Section 623 of
15 Title 57 of the Oklahoma Statutes,
- 16 b. correctional facility operated by a contractor of the
17 Department of Corrections,
- 18 c. county or municipal jail,
- 19 d. nursing facility,
- 20 e. specialized facility,
- 21 f. continuum of care facility,
- 22 g. assisted living center,
- 23 h. adult day care, ~~or~~
- 24 i. residential care home, or

1 j. facilities operated by the Oklahoma Department of
2 Veterans Affairs.

3 2. Certified medication aides may:

- 4 a. perform fingerstick blood sugars,
- 5 b. administer diabetic medications, including
- 6 subcutaneous injections of insulin, provided that the
- 7 certified medication aide has completed a Department-
- 8 approved advanced training program on diabetes and the
- 9 administration of diabetes medications, including
- 10 injections,
- 11 c. administer medications, first aid treatments and
- 12 nutrition; by oral, rectal, vaginal, otic, ophthalmic,
- 13 nasal, skin, topical, transdermal, and
- 14 nasogastric/gastrostomy tubes routes, and
- 15 d. administer oral metered dose inhalers and nebulizers;

16 3. The State Board of Health shall establish rules necessary to

17 ensure the safety of medication administration by certified

18 medication aides, including but not limited to:

- 19 a. competency and practice standards for medication
- 20 aides,
- 21 b. maintaining a list of skills and functions that
- 22 medication aides will be able to perform upon
- 23 completion of certification course work,

- c. certification and recertification requirements for medication aides,
- d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and
- e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide;

4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the State Board of Health. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

F. Any person convicted of violating any of the provisions of this section or Section 1-1950.1 of this title shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

SECTION 9. AMENDATORY 63 O.S. 2011, Section 1-1951, as amended by Section 6, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012, 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 1. Issue certificates of training and competency for nurse
2 aides;

3 2. Approve training and competency programs including, but not
4 limited to, education-based programs and employer-based programs,
5 including those programs established pursuant to Section 223.1 of
6 Title 72 of the Oklahoma Statutes;

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

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

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

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

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

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

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

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

9 C. Only a person who has qualified as a certified nurse aide
10 and who holds a valid current nurse aide certificate for use in this
11 state shall have the right and privilege of using the title
12 Certified Nurse Aide and to use the abbreviation CNA after the name
13 of such person. Any person who violates the provisions of this
14 section shall be subject to a civil monetary penalty to be assessed
15 by the Department.

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

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

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

1 2. The registry shall contain information as to whether a nurse
2 aide has:

- 3 a. successfully completed a certified nurse aide training
- 4 and competency examination,
- 5 b. met all the requirements for certification, or
- 6 c. received a waiver from the Board.

7 3. The registry shall include, but not be limited to, the
8 following information on each certified nurse aide or nurse aide
9 trainee:

- 10 a. the full name of the individual,
- 11 b. information necessary to identify each individual,
- 12 c. the date the individual became eligible for placement
- 13 in the registry, and
- 14 d. information on any finding of the Department of abuse,
- 15 neglect or exploitation by the certified nurse aide or
- 16 nurse aide trainee, including:

- 17 (1) documentation of the Department's investigation,
- 18 including the nature of the allegation and the
- 19 evidence that led the Department to confirm the
- 20 allegation,
- 21 (2) the date of the hearing, if requested by the
- 22 certified nurse aide or nurse aide trainee, and
- 23 (3) statement by the individual disputing the finding
- 24 if the individual chooses to make one.

1 4. The Department shall include the information specified in
2 subparagraph d of paragraph 3 of this subsection in the registry
3 within ten (10) working days of the substantiating finding and it
4 shall remain in the registry, unless:

- 5 a. it has been determined by an administrative law judge,
6 a district court or an appeal court that the finding
7 was in error, or
- 8 b. the Board is notified of the death of the certified
9 nurse aide or nurse aide trainee.

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

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

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

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

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

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

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

12 12. A person who has acted in good faith to comply with state
13 reporting requirements and this section of law shall be immune from
14 liability for reporting allegations of abuse, neglect or
15 exploitation.

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

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

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

6 G. An individual shall not be eligible for certification as a
7 nurse aide for the period the individual satisfied one or more of
8 the disqualifying criteria found in subsection D of Section 1-1947
9 of this title. A nurse aide certified on or after November 1, 2012,
10 and subsequently found to satisfy one or more of the disqualifying
11 criteria found in subsection D of Section 1-1947 of this title
12 shall, for the period he or she satisfies the criteria, be subject
13 to revocation or nonrenewal of certification after reasonable
14 opportunity for notice and hearing pursuant to the Administrative
15 Procedures Act.

16 SECTION 10. It being immediately necessary for the preservation
17 of the public peace, health and safety, an emergency is hereby
18 declared to exist, by reason whereof this act shall take effect and
19 be in full force from and after its passage and approval.
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