

STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

COMMITTEE SUBSTITUTE
FOR

SENATE BILL 629

By: Simpson of the Senate

and

Hardin of the House

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 56 O.S. 2011, Section 2002, as amended by Section 241, Chapter 304, O.S.L. 2012 (56 O.S. Supp. 2012, Section 2002), which relates to the Nursing Facilities Quality of Care Fee; exempting facilities operated by the Oklahoma Department of Veterans Affairs; amending 63 O.S. 2011, Section 1-890.4, which relates to application fees; exempting facilities operated by the Oklahoma Department of Veterans Affairs; amending 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 2), which relates to the Continuum of Care and Assisted Living Act; directing the State Department of Health to initiate complaints based on investigations and to cooperate in prosecution; providing for inspections by the State Department of Health of Continuum of Care and Assisted Living facilities operated by the Oklahoma Department of Veterans Affairs; permitting certain entry; providing standards for evaluation; directing the State Department of Health to submit certain report; 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 Nursing Home Care Act exemptions; removing facilities operated by the Oklahoma Department of Veterans Affairs from exemption; amending 63 O.S. 2011, Section 1-1905, which relates to license renewal fees; exempting any facility operated by the Oklahoma

1 Department of Veterans Affairs; amending 63 O.S.
2 2011, Section 1-1911, which relates to inspections;
3 including any facility operated by the Oklahoma
4 Department of Veterans Affairs; amending 63 O.S.
5 2011, Section 1-1912, which relates to violations of
6 the Nursing Home Care Act; providing for corrective
7 measures; directing the State Department of Health to
8 submit certain report; amending 63 O.S. 2011, Section
9 1-1916, which relates to correcting violations;
10 applying certain prohibitions to any person at any
11 facility operated by the Oklahoma Department of
12 Veterans Affairs; amending 63 O.S. 2011, Section 1-
13 1950.1, as amended by Section 3, Chapter 358, O.S.L.
14 2012 (63 O.S. Supp. 2012, Section 1-1950.1), which
15 relates to criminal background checks; updating
16 definition; amending 63 O.S. 2011, Section 1-1950.3,
17 which relates to staffing; deleting obsolete
18 language; updating definition; amending 63 O.S. 2011,
19 Section 1-1951, as last amended by Section 6, Chapter
20 358, O.S.L. 2012 (63 O.S. Supp. 2012, Section 1-
21 1951), which relates to training programs; updating
22 powers and duties of the State Department of Health;
23 exempting certain programs; providing for
24 codification; and declaring an emergency.

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

SECTION 1. AMENDATORY 56 O.S. 2011, Section 2002, as
amended by Section 241, Chapter 304, O.S.L. 2012 (56 O.S. Supp.
2012, Section 2002), is amended to read as follows:

Section 2002. A. For the purpose of providing quality care
enhancements, the Oklahoma Health Care Authority is authorized to
and shall assess a Nursing Facilities Quality of Care Fee pursuant
to this section upon each nursing facility licensed in this state,
except that any facility operated by the Oklahoma Department of
Veterans Affairs under control of the Oklahoma War Veterans

1 Commission shall be exempt from the fee. Quality of care
2 enhancements include, but are not limited to, the purposes specified
3 in this section.

4 B. As a basis for determining the Nursing Facilities Quality of
5 Care Fee assessed upon each licensed nursing facility, the Oklahoma
6 Health Care Authority shall calculate a uniform per-patient day
7 rate. The rate shall be calculated by dividing six percent (6%) of
8 the total annual patient gross receipts of all licensed nursing
9 facilities in this state by the total number of patient days for all
10 licensed nursing facilities in this state. The result shall be the
11 per-patient day rate. Beginning July 15, 2004, the Nursing
12 Facilities Quality of Care Fee shall not be increased unless
13 specifically authorized by the Legislature.

14 C. The Nursing Facilities Quality of Care Fee owed by a
15 licensed nursing facility shall be calculated by the Oklahoma Health
16 Care Authority by adding the daily patient census of a licensed
17 nursing facility, as reported by the facility for each day of the
18 month, and by multiplying the ensuing figure by the per-patient day
19 rate determined pursuant to the provisions of subsection B of this
20 section.

21 D. Each licensed nursing facility which is assessed the Nursing
22 Facilities Quality of Care Fee shall be required to file a report on
23 a monthly basis with the Oklahoma Health Care Authority detailing
24

1 the daily patient census and patient gross receipts at such time and
2 in such manner as required by the Oklahoma Health Care Authority.

3 E. 1. The Nursing Facilities Quality of Care Fee for a
4 licensed nursing facility for the period beginning October 1, 2000,
5 shall be determined using the daily patient census and annual
6 patient gross receipts figures reported to the Oklahoma Health Care
7 Authority for the calendar year 1999 upon forms supplied by the
8 Authority.

9 2. The Nursing Facilities Quality of Care Fee for the fiscal
10 year beginning July 1, 2001, and each fiscal year thereafter shall
11 be determined by:

12 a. using the daily patient census and patient gross
13 receipts reports received by the Authority covering
14 the six-month period October 1 through March 31 of the
15 prior fiscal year, and

16 b. annualizing those figures.

17 For the 2005 fiscal year and each fiscal year thereafter, the
18 annualization of the Nursing Facilities Quality of Care Fee
19 specified in this paragraph shall be subject to the limitation in
20 subsection B of this section.

21 F. The payment of the Nursing Facilities Quality of Care Fee by
22 licensed nursing facilities shall be an allowable cost for Medicaid
23 reimbursement purposes.
24

1 G. 1. There is hereby created in the State Treasury a
2 revolving fund to be designated the "Nursing Facility Quality of
3 Care Fund".

4 2. The fund shall be a continuing fund, not subject to fiscal
5 year limitations, and shall consist of:

- 6 a. all monies received by the Authority pursuant to this
7 section and otherwise specified or authorized by law,
- 8 b. monies received by the Authority due to federal
9 financial participation pursuant to Title XIX of the
10 Social Security Act, and
- 11 c. interest attributable to investment of money in the
12 fund.

13 3. All monies accruing to the credit of the fund are hereby
14 appropriated and shall be budgeted and expended by the Authority
15 for:

- 16 a. reimbursement of the additional costs paid to
17 Medicaid-certified nursing facilities for purposes
18 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
19 Title 63 of the Oklahoma Statutes,
- 20 b. reimbursement of the Medicaid rate increases for
21 intermediate care facilities for the mentally retarded
22 (ICFs/MR),
- 23 c. nonemergency transportation services for Medicaid-
24 eligible nursing home clients,

- d. eyeglass and denture services for Medicaid-eligible nursing home clients,
- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be suspended if the federal government subsequently extends pharmacy benefits to this population,
- h. costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,
- i. durable medical equipment and supplies services for Medicaid-eligible elderly adults, and
- j. personal needs allowance increases for residents of nursing homes and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

1 4. Expenditures from the fund shall be made upon warrants
2 issued by the State Treasurer against claims filed as prescribed by
3 law with the Director of the Office of Management and Enterprise
4 Services for approval and payment.

5 5. The fund and the programs specified in this section funded
6 by revenues collected from the Nursing Facilities Quality of Care
7 Fee pursuant to this section are exempt from budgetary cuts,
8 reductions, or eliminations.

9 6. The Medicaid rate increases for intermediate care facilities
10 for the mentally retarded (ICFs/MR) shall not exceed the net
11 Medicaid rate increase for nursing facilities including, but not
12 limited to, the Medicaid rate increase for which Medicaid-certified
13 nursing facilities are eligible due to the Nursing Facilities
14 Quality of Care Fee less the portion of that increase attributable
15 to treating the Nursing Facilities Quality of Care Fee as an
16 allowable cost.

17 7. The reimbursement rate for nursing facilities shall be made
18 in accordance with Oklahoma's Medicaid reimbursement rate
19 methodology and the provisions of this section.

20 8. No nursing facility shall be guaranteed, expressly or
21 otherwise, that any additional costs reimbursed to the facility will
22 equal or exceed the amount of the Nursing Facilities Quality of Care
23 Fee paid by the nursing facility.
24

1 H. 1. In the event that federal financial participation
2 pursuant to Title XIX of the Social Security Act is not available to
3 the Oklahoma Medicaid program, for purposes of matching expenditures
4 from the Nursing Facility Quality of Care Fund at the approved
5 federal medical assistance percentage for the applicable fiscal
6 year, the Nursing Facilities Quality of Care Fee shall be null and
7 void as of the date of the nonavailability of such federal funding,
8 through and during any period of nonavailability.

9 2. In the event of an invalidation of this section by any court
10 of last resort under circumstances not covered in subsection I of
11 this section, the Nursing Facilities Quality of Care Fee shall be
12 null and void as of the effective date of that invalidation.

13 3. In the event that the Nursing Facilities Quality of Care Fee
14 is determined to be null and void for any of the reasons enumerated
15 in this subsection, any Nursing Facilities Quality of Care Fee
16 assessed and collected for any periods after such invalidation shall
17 be returned in full within sixty (60) days by the Oklahoma Health
18 Care Authority to the nursing facility from which it was collected.

19 I. 1. If any provision of this section or the application
20 thereof shall be adjudged to be invalid by any court of last resort,
21 such judgment shall not affect, impair or invalidate the provisions
22 of the section, but shall be confined in its operation to the
23 provision thereof directly involved in the controversy in which such
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1 judgment was rendered. The applicability of such provision to other
2 persons or circumstances shall not be affected thereby.

3 2. This subsection shall not apply to any judgment that affects
4 the rate of the Nursing Facilities Quality of Care Fee, its
5 applicability to all licensed nursing homes in the state, the usage
6 of the fee for the purposes prescribed in this section, and/or the
7 ability of the Oklahoma Health Care Authority to obtain full federal
8 participation to match its expenditures of the proceeds of the fee.

9 J. The Oklahoma Health Care Authority shall promulgate rules
10 for the implementation and enforcement of the Nursing Facilities
11 Quality of Care Fee established by this section.

12 K. The Authority shall provide for administrative penalties in
13 the event nursing facilities fail to:

- 14 1. Submit the Quality of Care Fee;
- 15 2. Submit the fee in a timely manner;
- 16 3. Submit reports as required by this section; or
- 17 4. Submit reports timely.

18 L. As used in this section:

19 1. "Nursing facility" means any home, establishment or
20 institution, or any portion thereof, licensed by the State
21 Department of Health as defined in Section 1-1902 of Title 63 of the
22 Oklahoma Statutes;

1 2. "Medicaid" means the medical assistance program established
2 in Title XIX of the federal Social Security Act and administered in
3 this state by the Oklahoma Health Care Authority;

4 3. "Patient gross revenues" means gross revenues received in
5 compensation for services provided to residents of nursing
6 facilities including, but not limited to, client participation. The
7 term "patient gross revenues" shall not include amounts received by
8 nursing facilities as charitable contributions; and

9 4. "Additional costs paid to Medicaid-certified nursing
10 facilities under Oklahoma's Medicaid reimbursement methodology"
11 means both state and federal Medicaid expenditures including, but
12 not limited to, funds in excess of the aggregate amounts that would
13 otherwise have been paid to Medicaid-certified nursing facilities
14 under the Medicaid reimbursement methodology which have been updated
15 for inflationary, economic, and regulatory trends and which are in
16 effect immediately prior to the inception of the Nursing Facilities
17 Quality of Care Fee.

18 M. If any provision of this section, or the application
19 thereof, is determined by any controlling federal agency, or any
20 court of last resort to prevent the state from obtaining federal
21 financial participation in the state's Medicaid program, such
22 provision shall be deemed null and void as of the date of the
23 nonavailability of such federal funding and through and during any
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1 period of nonavailability. All other provisions of the bill shall
2 remain valid and enforceable.

3 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-890.4, is
4 amended to read as follows:

5 Section 1-890.4. A. Each application for establishment of a
6 continuum of care facility or assisted living center shall be
7 accompanied by a nonrefundable application fee. The State Board of
8 Health shall develop a sliding fee scale not to exceed One Thousand
9 Dollars (\$1,000.00) for each application, except that any facility
10 operated by the Oklahoma Department of Veterans Affairs under
11 control of the Oklahoma War Veterans Commission shall be exempt from
12 the fee. The scale shall be based upon the bed capacity of the
13 continuum of care facilities or assisted living centers.

14 B. Each application for an initial license, or annual renewal
15 of the license, to operate a continuum of care facility or assisted
16 living center shall be accompanied by a license fee of Ten Dollars
17 (\$10.00) for each bed included in the maximum bed capacity at such
18 facility or center, except that any facility operated by the
19 Oklahoma Department of Veterans Affairs under control of the
20 Oklahoma War Veterans Commission shall be exempt from the fee. Each
21 application for an initial or renewal license for a continuum of
22 care facility that includes an adult day care component shall be
23 accompanied by an additional license fee in an amount to be
24 determined by the Board, but not to exceed Seventy-five Dollars

1 (\$75.00), except that any facility operated by the Oklahoma
2 Department of Veterans Affairs under control of the Oklahoma War
3 Veterans Commission shall be exempt from the fee.

4 C. Each application to establish or license a continuum of care
5 facility or assisted living center shall be on a form approved by
6 the Commissioner to include, but not be limited to, the following:

7 1. Disclosure of the applicant's identity and background in the
8 operation of continuum of care and assisted living services; and

9 2. Evidence of the adequacy of the applicant's financial
10 resources and ability to ensure adequate staffing.

11 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-890.6, as
12 amended by Section 2, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
13 Section 1-890.6), is amended to read as follows:

14 Section 1-890.6. A. The Continuum of Care and Assisted Living
15 Act shall not apply to residential care homes, adult companion
16 homes, domiciliary care units operated by the Department of Veterans
17 Affairs, the private residences of persons with developmental
18 disabilities receiving services provided by the Developmental
19 Disabilities Services Division of the Department of Human Services
20 or through the Home- and Community-Based Waiver or the Alternative
21 Disposition Plan Waiver of the Oklahoma Health Care Authority, or to
22 hotels, motels, boardinghouses, rooming houses, a home or facility
23 approved and annually reviewed by the United States Department of
24 Veterans Affairs as a medical foster home in which care is provided

1 exclusively to three or fewer veterans, or other places that furnish
2 board or room to their residents. The Continuum of Care and
3 Assisted Living Act shall not apply to facilities not charging or
4 receiving periodic compensation for services rendered and not
5 receiving any county, state or federal assistance.

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

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

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

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

5 F. For Continuum of Care and Assisted Living facilities
6 operated by the Oklahoma Department of Veterans Affairs under
7 control of the Oklahoma War Veterans Commission, if an inspection
8 reveals to the State Department of Health the commission of a crime
9 or crimes incidental to the operations of an Oklahoma Department of
10 Veterans Affairs nursing facility, it shall be the duty of the State
11 Department of Health to initiate a complaint with the appropriate
12 district attorney, and to cooperate in the prosecution of the
13 alleged offender in the event an information is filed pursuant to
14 such complaint.

15 SECTION 4. NEW LAW A new section of law to be codified
16 in the Oklahoma Statutes as Section 1-900.9 of Title 63, unless
17 there is created a duplication in numbering, reads as follows:

18 For Continuum of Care and Assisted Living facilities operated by
19 the Oklahoma Department of Veterans Affairs under control of the
20 Oklahoma War Veterans Commission:

21 1. The State Department of Health shall conduct unannounced
22 inspections of all Continuum of Care and Assisted Living facilities
23 operated by the Oklahoma Department of Veterans Affairs under
24

1 control of the Oklahoma War Veterans Commission as deemed necessary
2 by the State Department of Health.

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 under control of the
9 War Veterans Commission shall be evaluated for the purpose of
10 compliance with the Continuum of Care and Assisted Living Facilities
11 Act, any applicable requirements of the Nursing Home Care Act, and
12 rules promulgated thereto.

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

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

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

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

17 C. Certificate of need review shall not be required for any
18 addition, deletion, modification or new construction of current or
19 future State Veterans Center nursing facilities.

20 D. The Nursing Home Care Act shall not authorize any person to
21 engage in any manner in the practice of the healing arts or the
22 practice of medicine, as defined by law.

23 E. The Nursing Home Care Act shall not apply to a facility
24 which is not charging or receiving periodic compensation for

1 services rendered, and not receiving any county, state, or federal
2 assistance.

3 SECTION 6. AMENDATORY 63 O.S. 2011, Section 1-1905, is
4 amended to read as follows:

5 Section 1-1905. A. An application for a license, or renewal
6 thereof, to operate a facility shall be accompanied by a fee of Ten
7 Dollars (\$10.00) for each bed included in the maximum bed capacity
8 at such facility, except that any facility operated by the Oklahoma
9 Department of Veterans Affairs under control of the Oklahoma War
10 Veterans Commission residential care homes shall be exempt from the
11 fee. All licenses shall be on a form prescribed by the State
12 Commissioner of Health, which shall include, but not be limited to,
13 the maximum bed capacity for which it is granted and the date the
14 license was issued. The license shall:

- 15 1. Not be transferable or assignable;
- 16 2. Be posted in a conspicuous place on the licensed premises;
- 17 3. Be issued only for the premises named in the application;

18 and

19 4. Expire twelve (12) months from the date of issuance,
20 provided an initial license shall expire one hundred eighty (180)
21 days after the date of issuance. Licenses may be issued for a
22 period of more than twelve (12) months, but not more than twenty-
23 four (24) months, for the license period immediately following the
24

1 effective date of this provision in order to permit an equitable
2 distribution of license expiration dates to all months of the year.

3 B. The fee for a license amendment to reflect an increase in
4 bed capacity shall be prorated based on the number of days remaining
5 in the licensure period and the change in the number of beds, except
6 that any facility operated by the Oklahoma Department of Veterans
7 Affairs under control of the Oklahoma War Veterans Commission shall
8 be exempt from the fee.

9 C. The issuance or renewal of a license after notice of a
10 violation has been sent shall not constitute a waiver by the State
11 Department of Health of its power to rely on the violation as the
12 basis for subsequent license revocation or other enforcement action
13 under this act arising out of the notice of violation.

14 D. 1. When transfer of ownership or operation of a facility is
15 proposed, the transferee shall notify the Department of the transfer
16 and apply for a new license at least thirty (30) days prior to final
17 transfer.

18 2. The transferor shall remain responsible for the operation of
19 the facility until such time as a license is issued to the
20 transferee.

21 3. The license granted to the transferee shall be subject to
22 the plan of correction submitted by the previous owner and approved
23 by the Department and any conditions contained in a conditional
24 license issued to the previous owner. If there are outstanding

1 violations and no approved plan of correction has been implemented,
2 the Department may issue a conditional license and plan of
3 correction as provided in this act.

4 4. The transferor shall remain liable for all penalties
5 assessed against the facility which are imposed for violations
6 occurring prior to transfer of ownership.

7 E. Nursing and specialized facilities, as defined and licensed
8 pursuant to the Nursing Home Care Act shall be surveyed through an
9 unannounced inspection at least once every fifteen (15) months, with
10 a statewide average survey cycle of twelve (12) months.

11 SECTION 7. 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 under control of the Oklahoma War Veterans Commission, shall be
17 periodically inspected by a duly appointed representative of the
18 State Department of Health, pursuant to rules promulgated by the
19 State Board of Health with the advice and counsel of the Long-Term
20 Care Facility Advisory Board, created in Section 1-1923 of this
21 title.

22 2. Inspection reports shall be prepared on forms prescribed by
23 the Commissioner with the advice and counsel of the Advisory Board.
24

1 B. 1. The Department, whenever it deems necessary, shall
2 inspect, survey, and evaluate every facility, including any facility
3 operated by the Oklahoma Department of Veterans Affairs under
4 control of the Oklahoma War Veterans Commission, to determine
5 compliance with applicable licensure and certification requirements
6 and standards. All inspections of facilities shall be unannounced.
7 The Department may have as many unannounced inspections as it deems
8 necessary.

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

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

22 b. One person shall be invited by the Department from a
23 statewide organization of the elderly to act as a
24 citizen observer in unannounced inspections. The

1 individual may be a state or local ombudsman as
2 defined by the Aging Services Division of the
3 Department of Human Services, acting pursuant to the
4 provisions of the Older Americans Act of 1965, Public
5 Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as
6 amended.

7 c. The citizen observer shall be reimbursed for expenses
8 in accordance with the provisions of the State Travel
9 Reimbursement Act.

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

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

1 agencies shall be encouraged to attend these meetings to contribute
2 to this process.

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

7 2. Any holder of a license or applicant for a license shall be
8 deemed to have given consent to any authorized officer, employee, or
9 agent of the Department to enter and inspect the facility in
10 accordance with the provisions of the Nursing Home Care Act.

11 Refusal to permit said entry or inspection, except for good cause,
12 shall constitute grounds for remedial action or administrative
13 penalty or both such action and penalty as provided in the Nursing
14 Home Care Act.

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

23 SECTION 8. AMENDATORY 63 O.S. 2011, Section 1-1912, is
24 amended to read as follows:

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 Oklahoma State Department of Health from any facility
24 operated by the Oklahoma Department of Veterans Affairs under the

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

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

12 Section 1-1916. A. No person, including any person at any
13 facility operated by the Oklahoma Department of Veterans Affairs
14 under control of the Oklahoma War Veterans Commission shall:

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

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

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

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

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

11 6. Willfully file any false, incomplete or intentionally
12 misleading information required to be filed under this act, or
13 willfully fail or refuse to file any information; or

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

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

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

19 SECTION 10. AMENDATORY 63 O.S. 2011, Section 1-1950.1,
20 as amended by Section 3, Chapter 358, O.S.L. 2012 (63 O.S. Supp.
21 2012, Section 1-1950.1), is amended to read as follows:

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

23 1. "Nurse aide" means any person who provides, for
24 compensation, nursing care or health-related services to residents

1 in a nursing facility, a specialized facility, a residential care
2 home, continuum of care facility, assisted living center or an adult
3 day care center and who is not a licensed health professional. Such
4 term also means any person who provides such services to individuals
5 in their own homes as an employee or contract provider of a home
6 health or home care agency, or as a contract provider of the
7 Medicaid State Plan Personal Care Program;

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

- 11 a. a nursing facility or specialized facility as such
12 terms are defined in the Nursing Home Care Act,
- 13 b. a residential care home as such term is defined by the
14 Residential Care Act,
- 15 c. an adult day care center as such term is defined in
16 the Adult Day Care Act,
- 17 d. an assisted living center as such term is defined by
18 the Continuum of Care and Assisted Living Act,
- 19 e. a continuum of care facility as such term is defined
20 by the Continuum of Care and Assisted Living Act,
- 21 f. a home health or home care agency, ~~and~~
- 22 g. the Department of Human Services, in its capacity as
23 an operator of any hospital or health care institution
24

1 or as a contractor with providers under the Medicaid
2 State Plan Personal Care Program, and

3 h. any facility operated by the Oklahoma Department of
4 Veterans Affairs under control of the Oklahoma War
5 Veterans Commission;

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

13 4. "Bureau" means the Oklahoma State Bureau of Investigation;
14 and

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

18 B. Before any employer makes an offer to employ or to contract
19 with a nurse aide to provide nursing care, health-related services
20 or supportive assistance to any individual, the employer shall
21 provide for a criminal history background check to be made on the
22 nurse aide pursuant to the provisions of the Long-Term Care Security
23 Act. If the employer is a facility, home or institution which is
24 part of a larger complex of buildings, the requirement of a criminal

1 history background check shall apply only to an offer of employment
2 or contract made to a person who will work primarily in the
3 immediate boundaries of the facility, home or institution.

4 Where the provisions of the Long-Term Care Security Act
5 pertaining to registry screenings and national criminal history
6 record check are not in effect pending an effective date established
7 in rulemaking, an employer is authorized to obtain any criminal
8 history background records maintained by the Bureau pursuant to the
9 following:

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

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

24

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

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

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

- 17 a. abuse, neglect or financial exploitation of any person
- 18 entrusted to the care or possession of such person,
- 19 b. rape, incest or sodomy,
- 20 c. child abuse,
- 21 d. murder or attempted murder,
- 22 e. manslaughter,
- 23 f. kidnapping,
- 24 g. aggravated assault and battery,

- h. assault and battery with a dangerous weapon, or
- i. arson in the first degree.

2. If less than seven (7) years have elapsed since the completion of sentence, and the results of a criminal history check reveal that the subject person has been convicted of, or pled guilty or no contest to, a felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the employer shall not hire or contract with the person:

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

1 D. An employer shall not employ or continue employing a person
2 addicted to any Schedule I through V drug as specified by the
3 Uniform Controlled Dangerous Substances Act unless the person
4 produces evidence that the person has successfully completed a drug
5 rehabilitation program.

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

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

21 SECTION 11. AMENDATORY 63 O.S. 2011, Section 1-1950.3,
22 is amended to read as follows:

23 Section 1-1950.3 A. 1. ~~Until November 1, 2004, no employer or~~
24 ~~contractor who is subject to the provisions of Section 1-1950.1 or~~

1 ~~1-1950.2 of this title shall use, on a full-time, temporary, per~~
2 ~~diem, or other basis, any individual who is not a licensed health~~
3 ~~professional as a nurse aide for more than four (4) months, unless~~
4 ~~such individual has satisfied all requirements for certification and~~
5 ~~is eligible for placement on the nurse aide registry maintained by~~
6 ~~the State Department of Health.~~

7 ~~2. a. Effective November 1, 2004, no~~ A nursing facility,
8 specialized facility, continuum of care facility,
9 assisted living center, adult day care or residential
10 home, or facility operated by the Oklahoma Department
11 of Veterans Affairs under control of the Oklahoma War
12 Veterans Commission, shall not employ as a nurse aide,
13 on a full-time, temporary, per diem, or any other
14 basis, any individual who is not certified as a nurse
15 aide in good standing and is not eligible for
16 placement on the nurse aide registry maintained by the
17 State Department of Health.

18 ~~b.~~

19 2. The Department may grant a temporary emergency waiver to the
20 provisions of this paragraph to any nursing facility, continuum of
21 care facility, assisted living center or adult day care or
22 residential home which can demonstrate that such facility, home or
23 institution has been unable to successfully meet its staffing
24 requirements related to the provisions of subparagraph a of this

1 paragraph. ~~No later than September 30, 2004, the State Board of~~
2 ~~Health shall promulgate rules related to eligibility for receipt of~~
3 ~~such waiver, and the process and the conditions for obtaining the~~
4 ~~waiver.~~

5 c. ~~From November 1, 2004, until October 31, 2005, the~~
6 ~~Department shall not issue any monetary penalties nor~~
7 ~~shall it issue any licensure deficiency related to the~~
8 ~~provisions of subparagraph a of this paragraph to a~~
9 ~~nursing facility, specialized facility, continuum of~~
10 ~~care facility, assisted living center, adult day care~~
11 ~~or residential care home, which is unable to comply~~
12 ~~with the requirements and which has applied for a~~
13 ~~temporary waiver under subparagraph b of this~~
14 ~~paragraph, whether or not the waiver application has~~
15 ~~been approved.~~

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

18 a. ~~is enrolled in a Department-approved training and~~
19 ~~competency evaluation program,~~

20 b. ~~is currently certified and eligible to be listed on~~
21 ~~the nurse aide registry, or~~

22 c. ~~has completed the requirements for certification and~~
23 ~~placement on the nurse aide registry. Such waiver~~
24 ~~shall require the following:~~

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

6 ~~3.~~ 2. The individual shall obtain certification, and the
7 Department shall place the nurse aide on the registry within thirty
8 (30) days after demonstration of competency~~;~~;

9 ~~4.~~ 3. Any nursing facility, specialized facility, continuum of
10 care facility, assisted living center, adult day care or residential
11 care home that employs an individual who is in nurse aide training,
12 as provided in this section, shall ensure that the trainee shall:

13 a. complete the required training and competency program
14 as provided in rules prior to any direct contact with
15 a resident or client,

16 b. not perform any service for which the trainee has not
17 trained and been determined proficient by the
18 instructor, and

19 c. be supervised at all times by no less than a licensed
20 practical nurse~~;~~;

21 ~~5.~~ 4. No employer may use as a nurse aide an individual who has
22 not completed the nurse aide training and competency program within
23 the required four-month period.

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

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

- 8 a. such requirement causes an undue hardship for the
9 trainee due to unusual circumstances or illness, and
- 10 b. the trainee has demonstrated a good faith effort to
11 complete the training and competency evaluation
12 program.

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

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

- 19 a. correctional facility, as set forth in Section 623 of
20 Title 57 of the Oklahoma Statutes,
- 21 b. correctional facility operated by a contractor of the
22 Department of Corrections,
- 23 c. county or municipal jail,
- 24 d. nursing facility,

- e. specialized facility,
- f. continuum of care facility,
- g. assisted living center,
- h. adult day care, ~~or~~
- i. residential care home, or
- j. facilities operated by the Oklahoma Department of Veterans Affairs under control of the Oklahoma War Veterans Commission.

2. Certified medication aides may:

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

3. The State Board of Health shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:

- a. competency and practice standards for medication aides,
- b. maintaining a list of skills and functions that medication aides will be able to perform upon 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.

1 SECTION 12. AMENDATORY 63 O.S. 2011, Section 1-1951, as
2 amended by Section 6, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012,
3 Section 1-1951), is amended to read as follows:

4 Section 1-1951. A. The State Department of Health shall have
5 the power and duty to:

6 1. Issue certificates of training and competency for nurse
7 aides;

8 2. Approve training and competency programs including, but not
9 limited to, education-based programs and employer-based programs,
10 including those programs established pursuant to Section 223.1 of
11 Title 72 of the Oklahoma Statutes;

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

16 4. Establish and maintain a registry for certified nurse aides
17 and for nurse aide trainees;

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

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

23

24

1 B. The State Board of Health shall promulgate rules to
2 implement the provisions of this section and shall have power to
3 assess fees.

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

8 2. In addition to the certification and recertification fees,
9 the State Board of Health may impose fees for training or education
10 programs conducted or approved by the ~~Board~~ Department, except for
11 those programs operated by the Oklahoma Department of Veterans
12 Affairs.

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

16 C. Only a person who has qualified as a certified nurse aide
17 and who holds a valid current nurse aide certificate for use in this
18 state shall have the right and privilege of using the title
19 Certified Nurse Aide and to use the abbreviation CNA after the name
20 of such person. Any person who violates the provisions of this
21 section shall be subject to a civil monetary penalty to be assessed
22 by the Department.

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

4 a. is sufficiently accessible to promptly meet the needs
5 of the public and employers, and

6 b. provides a process for notification and investigation
7 of alleged abuse, exploitation or neglect of residents
8 of a facility or home, clients of an agency or center,
9 or of misappropriation of resident or client property.

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

12 a. successfully completed a certified nurse aide training
13 and competency examination,

14 b. met all the requirements for certification, or

15 c. received a waiver from the Board.

16 3. The registry shall include, but not be limited to, the
17 following information on each certified nurse aide or nurse aide
18 trainee:

19 a. the full name of the individual,

20 b. information necessary to identify each individual,

21 c. the date the individual became eligible for placement
22 in the registry, and
23
24

d. information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:

(1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,

(2) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and

(3) statement by the individual disputing the finding if the individual chooses to make one.

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

a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or

b. the Board is notified of the death of the certified nurse aide or nurse aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified nurse aide or nurse aide trainee, the Department shall place a pending

1 notation in the registry until a final determination has been made.
2 If the investigation, or administrative hearing held to determine
3 whether the certified nurse aide or nurse aide trainee is in
4 violation of the law or rules promulgated pursuant thereto, reveals
5 that the abuse, exploitation or neglect, or misappropriation of
6 resident or client property was unsubstantiated, the pending
7 notation shall be removed within twenty-four (24) hours of receipt
8 of notice by the Department.

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

12 7. If the Department after notice and opportunity for hearing
13 determines with clear and convincing evidence that abuse, neglect or
14 exploitation, or misappropriation of resident or client property has
15 occurred and the alleged perpetrator is the person who committed the
16 prohibited act, notice of the findings shall be sent to the nurse
17 aide and to the district attorney for the county where the abuse,
18 neglect or exploitation, or misappropriation of resident or client
19 property occurred and to the Medicaid Fraud Control Unit of the
20 Attorney General's Office. Notice of ineligibility to work as a
21 nurse aide in a long-term care facility, a residential care
22 facility, assisted living facility, day care facility, or any entity
23 that requires certification of nurse aides, and notice of any
24 further appeal rights shall also be sent to the nurse aide.

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

6 9. If the state finds that any other individual employed by the
7 facility has neglected, abused, misappropriated property or
8 exploited in a facility, the Department shall notify the appropriate
9 licensing authority and the district attorney for the county where
10 the abuse, neglect or exploitation, or misappropriation of resident
11 or client property occurred.

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

17 11. Upon request and except for the names of residents and
18 clients, the Department shall disclose all of the information
19 relating to the confirmed determination of abuse, exploitation and
20 neglect by the certified nurse aide or nurse aide trainee to the
21 person requesting such information, and may disclose additional
22 information the Department determines necessary.

23 12. A person who has acted in good faith to comply with state
24 reporting requirements and this section of law shall be immune from

1 liability for reporting allegations of abuse, neglect or
2 exploitation.

3 E. Each nurse aide trainee shall wear a badge which clearly
4 identifies the person as a nurse aide trainee. Such badge shall be
5 furnished by the facility employing the trainee. The badge shall be
6 nontransferable and shall include the first and last name of the
7 trainee.

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

12 2. Each facility that employs or contracts employment of a
13 feeding assistant shall maintain a record of all individuals, used
14 by the facility as feeding assistants, who have successfully
15 completed a training course approved by the state for paid feeding
16 assistants.

17 G. An individual shall not be eligible for certification as a
18 nurse aide for the period the individual satisfied one or more of
19 the disqualifying criteria found in subsection D of Section 1-1947
20 of this title. A nurse aide certified on or after November 1, 2012,
21 and subsequently found to satisfy one or more of the disqualifying
22 criteria found in subsection D of Section 1-1947 of this title
23 shall, for the period he or she satisfies the criteria, be subject
24 to revocation or nonrenewal of certification after reasonable

1 opportunity for notice and hearing pursuant to the Administrative
2 Procedures Act.

3 SECTION 13. It being immediately necessary for the preservation
4 of the public peace, health and safety, an emergency is hereby
5 declared to exist, by reason whereof this act shall take effect and
6 be in full force from and after its passage and approval.

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