

1 ENGROSSED SENATE
2 BILL NO. 629

By: Simpson of the Senate

3 and

4 Hardin and Lockhart of the
5 House

6
7 An Act relating to public health and safety; amending
8 63 O.S. 2011, Section 1-890.6, as amended by Section
9 2, Chapter 12, O.S.L. 2012 (63 O.S. Supp. 2012,
10 Section 1-890.6), which relates to Continuum of Care
11 and Assisted Living Act; directing the State
12 Department of Health to initiate complaints based on
13 investigations and to cooperate in prosecution in
14 facilities operated by the Oklahoma Department of
15 Veterans Affairs; providing for inspections by the
16 State Department of Health of continuum of care and
17 assisted living facilities operated by the Oklahoma
18 Department of Veterans Affairs; permitting certain
19 entry; providing standards for evaluations; directing
20 the State Department of Health to submit certain
21 report; amending 63 O.S. 2011, Section 1-1903, as
22 amended by Section 3, Chapter 12, O.S.L. 2012 (63
23 O.S. Supp.2012, Section 1-1903), which relates to the
24 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 violations of
the Nursing Home Care Act; providing for corrective
measures; directing the State Department of Health to
submit certain report; amending 63 O.S. 2011, Section
1-1916, which relates to correcting violations;
applying certain prohibitions to any person at any
facility operated by the Oklahoma Department of
Veterans Affairs; amending 63 O.S. 2011, Section 1-
1950.1, as amended by Section 3, Chapter 358, O.S.L.
2012 (63 O.S. Supp. 2012, Section 1-1950.1), which

1 relates to criminal background checks; updating
2 definition; amending 63 O.S. 2011, Section 1950.3,
3 which relates to staffing; deleting obsolete
4 language; updating definition; requiring a waiver for
5 certain employees; allowing certain actions by
6 certain employees in facilities operated by the
7 Oklahoma Department of Veterans Affairs; amending 63
8 O.S. 2011, Section 1-1951, as amended by Section 6,
9 Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012, Section
10 1-1951), which relates to training programs; updating
11 powers and duties of the State Department of Health;
12 providing for codification; and declaring an
13 emergency.

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

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 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 the Alternative
Disposition Plan Waiver of the Oklahoma Health Care Authority, or to
hotels, motels, boardinghouses, rooming houses, a home or facility
approved and annually reviewed by the United States Department of
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, if an
7 inspection reveals to the State Department of Health the commission
8 of a crime or crimes incidental to the operations of an Oklahoma
9 Department of Veterans Affairs nursing facility, it shall be the
10 duty of the State Department of Health to initiate a complaint with
11 the appropriate district attorney, and to cooperate in the
12 prosecution of the alleged offender in the event an information is
13 filed pursuant to such complaint.

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

17 For continuum of care and assisted living facilities operated by
18 the Oklahoma Department of Veterans Affairs:

19 1. The State Department of Health shall conduct unannounced
20 inspections of all continuum of care and assisted living facilities
21 operated by the Oklahoma Department of Veterans Affairs as deemed
22 necessary by the State Department of Health.

23 2. Inspectors employed by the State Department of Health shall
24 be permitted to enter the premises and administrative offices of all

Oklahoma Department of Veterans Affairs nursing facilities for the purpose of performing their assigned duties.

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

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

SECTION 3. AMENDATORY 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), is amended to read as follows:

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

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

11 C. Each Oklahoma Veterans Center nursing facility licensed
12 pursuant to the provisions of this section shall be regulated as an
13 existing nursing facility for the purposes of meeting state and
14 federal standards.

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

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

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

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

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

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

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

2. Any employee of the State Department of Health who discloses to any unauthorized person, prior to an inspection, information regarding an unannounced nursing home inspection required pursuant to the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor. In addition, such action shall be

1 construed to be a misuse of office and punishable as a violation of
2 rules promulgated by the Ethics Commission.

3 3. a. The Department may periodically visit a facility for
4 the purpose of consultation and may notify the
5 facility in advance of such a visit. An inspection,
6 survey, or evaluation, other than an inspection of
7 financial records or a consultation visit, shall be
8 conducted without prior notice to the facility.

9 b. One person shall be invited by the Department from a
10 statewide organization of the elderly to act as a
11 citizen observer in unannounced inspections. The
12 individual may be a state or local ombudsman as
13 defined by the Aging Services Division of the
14 Department of Human Services, acting pursuant to the
15 provisions of the Older Americans Act of 1965, Public
16 Law No. 89-73, 42 U.S.C.A., Section 3001 et seq., as
17 amended.

18 c. The citizen observer shall be reimbursed for expenses
19 in accordance with the provisions of the State Travel
20 Reimbursement Act.

21 d. An employee of a state or unit of a local government
22 agency, charged with inspecting, surveying, and
23 evaluating facilities, who aids, abets, assists,
24 conceals, or conspires with a facility administrator

1 or employee in violation of the provisions of the
2 Nursing Home Care Act shall be guilty, upon conviction
3 thereof, of a misdemeanor and shall be subject to
4 dismissal from employment.

5 C. The Department shall hold open meetings, as part of its
6 routine licensure survey, in each of the licensed facilities to
7 advise and to facilitate communication and cooperation between
8 facility personnel and the residents of facilities in their mutual
9 efforts to improve patient care. Administrators, employees of the
10 facility, residents, residents' relatives, friends, residents'
11 representatives, and employees from appropriate state and federal
12 agencies shall be encouraged to attend these meetings to contribute
13 to this process.

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

18 2. Any holder of a license or applicant for a license shall be
19 deemed to have given consent to any authorized officer, employee, or
20 agent of the Department to enter and inspect the facility in
21 accordance with the provisions of the Nursing Home Care Act.
22 Refusal to permit said entry or inspection, except for good cause,
23 shall constitute grounds for remedial action or administrative
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1 penalty or both such action and penalty as provided in the Nursing
2 Home Care Act.

3 E. The Department shall maintain a file on each facility in the
4 state. All conditions and practices not in compliance with
5 applicable standards shall be specifically stated. If a violation
6 is corrected or is subject to an approved plan of correction, such
7 action shall be contained in the file. Upon receiving a written
8 request for a copy of the file documents, the Department shall send
9 a copy of the document to any person making the written request.
10 The Department may charge a reasonable fee for copying costs.

11 SECTION 5. AMENDATORY 63 O.S. 2011, Section 1-1912, is
12 amended to read as follows:

13 Section 1-1912. A. The State Department of Health shall
14 promptly serve a notice of violation upon a licensee whenever upon
15 inspection or investigation, the Department determines that:

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

19 2. The financial condition of the facility poses an immediate
20 risk to the proper operation of the facility or to the health,
21 safety or welfare of the residents of the facility.

22 B. Each notice of violation shall be prepared in writing and
23 shall specify the nature of the violation, and the statutory
24 provision, rule or standard alleged to have been violated. The

1 notice of violation shall inform the licensee of its obligation to
2 file a plan of correction within ten (10) working days of receipt of
3 the notice of violation. In the case of a specialized facility for
4 persons with mental retardation, the Department shall offer the
5 licensee an informal opportunity comparable to the process offered
6 to Medicaid-certified nursing facilities pursuant to 42 CFR 488.331,
7 in order to dispute the alleged violations.

8 C. The Department shall notify the licensee of its intent to
9 take any remedial action, impose administrative penalties, place a
10 monitor or temporary manager in the facility, issue a conditional
11 license, or suspend or revoke a license. The Department shall also
12 inform the licensee of the right to an informal dispute resolution,
13 hearing, or both.

14 D. Whenever the Department finds that an emergency exists
15 requiring immediate action to protect the health, safety or welfare
16 of any resident of a facility licensed pursuant to the provisions of
17 this act, the Department may, without notice of hearing, issue an
18 order stating the existence of such an emergency and requiring that
19 action be taken as deemed necessary by the Department to meet the
20 emergency. The order shall be effective immediately. Any person to
21 whom such an order is directed shall comply with such order
22 immediately but, upon application to the Department, shall be
23 afforded a hearing within ten (10) business days of receipt of the
24 application. On the basis of such hearing, the Department may

1 continue the order in effect, revoke it, or modify it. Any person
2 aggrieved by such order continued after the hearing provided in this
3 subsection may appeal to the district court in Oklahoma County
4 within thirty (30) days. Such appeal when docketed shall have
5 priority over all cases pending on the docket, except criminal
6 cases. For purposes of this subsection, the State Board of Health
7 shall define by rule the term "emergency" to include, but not be
8 limited to, a life-endangering situation.

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

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

21 Section 1-1916. A. No person, including any person at any
22 facility operated by the Oklahoma Department of Veterans Affairs,
23 shall:
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1 1. Intentionally fail to correct or interfere with the
2 correction of a violation within the time specified on the notice or
3 approved plan of correction under this act as the maximum period
4 given for correction, unless an extension is granted and the
5 corrections are made before expiration of extension;

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

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

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

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

19 6. Willfully file any false, incomplete or intentionally
20 misleading information required to be filed under this act, or
21 willfully fail or refuse to file any information; or

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

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

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

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

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

8 1. "Nurse aide" means any person who provides, for
9 compensation, nursing care or health-related services to residents
10 in a nursing facility, a specialized facility, a residential care
11 home, continuum of care facility, assisted living center or an adult
12 day care center and who is not a licensed health professional. Such
13 term also means any person who provides such services to individuals
14 in their own homes as an employee or contract provider of a home
15 health or home care agency, or as a contract provider of the
16 Medicaid State Plan Personal Care Program;

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

20 a. a nursing facility or specialized facility as such
21 terms are defined in the Nursing Home Care Act,

22 b. a residential care home as such term is defined by the
23 Residential Care Act,
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- 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;

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

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

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

4 B. Before any employer makes an offer to employ or to contract
5 with a nurse aide to provide nursing care, health-related services
6 or supportive assistance to any individual, the employer shall
7 provide for a criminal history background check to be made on the
8 nurse aide pursuant to the provisions of the Long-Term Care Security
9 Act. If the employer is a facility, home or institution which is
10 part of a larger complex of buildings, the requirement of a criminal
11 history background check shall apply only to an offer of employment
12 or contract made to a person who will work primarily in the
13 immediate boundaries of the facility, home or institution.

14 Where the provisions of the Long-Term Care Security Act
15 pertaining to registry screenings and national criminal history
16 record check are not in effect pending an effective date established
17 in rulemaking, an employer is authorized to obtain any criminal
18 history background records maintained by the Bureau pursuant to the
19 following:

20 1. The employer shall request the Bureau to conduct a criminal
21 history background check on the nurse aide and shall provide to the
22 Bureau any relevant information required by the Bureau to conduct
23 the check. The employer shall pay a fee of Fifteen Dollars (\$15.00)
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1 to the Bureau for each criminal history background check that is
2 conducted pursuant to such a request;

3 2. An employer may make an offer of temporary employment to a
4 nurse aide pending the results of the criminal history background
5 check. The employer in such instance shall provide to the Bureau
6 the name and relevant information relating to the person within
7 seventy-two (72) hours after the date the person accepts temporary
8 employment. The employer shall not hire or contract with the nurse
9 aide on a permanent basis until the results of the criminal history
10 background check are received;

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

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

21 C. 1. If the results of a criminal history background check
22 reveal that the subject person has been convicted of, pled guilty or
23 no contest to, or received a deferred sentence for, a felony or
24 misdemeanor offense for any of the following offenses in any state

1 or federal jurisdiction, the employer shall not hire or contract
2 with the person:

- 3 a. abuse, neglect or financial exploitation of any person
- 4 entrusted to the care or possession of such person,
- 5 b. rape, incest or sodomy,
- 6 c. child abuse,
- 7 d. murder or attempted murder,
- 8 e. manslaughter,
- 9 f. kidnapping,
- 10 g. aggravated assault and battery,
- 11 h. assault and battery with a dangerous weapon, or
- 12 i. arson in the first degree.

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

- 19 a. assault,
- 20 b. battery,
- 21 c. indecent exposure and indecent exhibition, except
- 22 where such offense disqualifies the applicant as a
- 23 registered sex offender,
- 24 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.

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

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

1 F. As part of the inspections required by the Nursing Home Care
2 Act, Continuum of Care and Assisted Living Act, the Residential Care
3 Act, and the Adult Day Care Act, the State Department of Health
4 shall review the employment files of any facility, home or
5 institution required to obtain a criminal history background
6 determination to ensure such facilities, homes or institutions are
7 in compliance with the provisions of this section.

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

10 Section 1-1950.3 A. 1. ~~Until November 1, 2004, no employer or~~
11 ~~contractor who is subject to the provisions of Section 1-1950.1 or~~
12 ~~1-1950.2 of this title shall use, on a full-time, temporary, per~~
13 ~~diem, or other basis, any individual who is not a licensed health~~
14 ~~professional as a nurse aide for more than four (4) months, unless~~
15 ~~such individual has satisfied all requirements for certification and~~
16 ~~is eligible for placement on the nurse aide registry maintained by~~
17 ~~the State Department of Health.~~

18 2. ~~a. Effective November 1, 2004, no~~ A nursing facility,
19 specialized facility, continuum of care facility,
20 assisted living center, adult day care or residential
21 home, or facility operated by the Oklahoma Department
22 of Veterans Affairs, shall not employ as a nurse aide,
23 on a full-time, temporary, per diem, or any other
24 basis, any individual who is not certified as a nurse

1 aide in good standing and is not eligible for
2 placement on the nurse aide registry maintained by the
3 State Department of Health.

4 ~~b.~~

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

15 ~~c. From November 1, 2004, until October 31, 2005, the~~
16 ~~Department shall not issue any monetary penalties nor~~
17 ~~shall it issue any licensure deficiency related to the~~
18 ~~provisions of subparagraph a of this paragraph to a~~
19 ~~nursing facility, specialized facility, continuum of~~
20 ~~care facility, assisted living center, adult day care~~
21 ~~or residential care home, which is unable to comply~~
22 ~~with the requirements and which has applied for a~~
23 ~~temporary waiver under subparagraph b of this~~

1 paragraph, whether or not the waiver application has
2 been approved.

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

5 ~~a. is enrolled in a Department-approved training and~~
6 ~~competency evaluation program,~~

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

9 ~~c. has completed the requirements for certification and~~
10 ~~placement on the nurse aide registry. Such waiver~~
11 ~~shall require the following:~~

12 ~~2. 1.~~ An individual employed as a nurse aide who is enrolled in
13 a Department-approved training and competency evaluation program for
14 nurse aides shall successfully complete such training and competency
15 evaluations within four (4) months of entering the training
16 program;i

17 ~~3. 2.~~ The individual shall obtain certification, and the
18 Department shall place the nurse aide on the registry within thirty
19 (30) days after demonstration of competency;i

20 ~~4. 3.~~ Any nursing facility, specialized facility, continuum of
21 care facility, assisted living center, adult day care or residential
22 care home that employs an individual who is in nurse aide training,
23 as provided in this section, shall ensure that the trainee shall:
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- a. complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,
- b. not perform any service for which the trainee has not trained and been determined proficient by the instructor, and
- c. be supervised at all times by no less than a licensed practical nurse; and

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

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

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

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

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

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

- 7 a. correctional facility, as set forth in Section 623 of
- 8 Title 57 of the Oklahoma Statutes,
- 9 b. correctional facility operated by a contractor of the
- 10 Department of Corrections,
- 11 c. county or municipal jail,
- 12 d. nursing facility,
- 13 e. specialized facility,
- 14 f. continuum of care facility,
- 15 g. assisted living center,
- 16 h. adult day care, ~~or~~
- 17 i. residential care home, or
- 18 j. facilities operated by the Oklahoma Department of
- 19 Veterans Affairs.

20 2. Certified medication aides may:

- 21 a. perform fingerstick blood sugars,
- 22 b. administer diabetic medications, including
- 23 subcutaneous injections of insulin, provided that the
- 24 certified medication aide has completed a Department-

1 approved advanced training program on diabetes and the
2 administration of diabetes medications, including
3 injections,

4 c. administer medications, first aid treatments and
5 nutrition; by oral, rectal, vaginal, otic, ophthalmic,
6 nasal, skin, topical, transdermal, and
7 nasogastric/gastrostomy tubes routes, and

8 d. administer oral metered dose inhalers and nebulizers;

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

12 a. competency and practice standards for medication
13 aides,

14 b. maintaining a list of skills and functions that
15 medication aides will be able to perform upon
16 completion of certification course work,

17 c. certification and recertification requirements for
18 medication aides,

19 d. development of criteria and procedures for approval or
20 disapproval of training and competency evaluation
21 programs, and

22 e. procedures for denying, suspending, withdrawing, or
23 refusing to renew certification for a medication aide;

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

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

12 SECTION 9. AMENDATORY 63 O.S. 2011, Section 1-1951, as
13 amended by Section 6, Chapter 358, O.S.L. 2012 (63 O.S. Supp. 2012,
14 Section 1-1951), is amended to read as follows:

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

17 1. Issue certificates of training and competency for nurse
18 aides;

19 2. Approve training and competency programs including, but not
20 limited to, education-based programs and employer-based programs,
21 including those programs established pursuant to Section 223.1 of
22 Title 72 of the Oklahoma Statutes;

23 3. Determine curricula and standards for training and
24 competency programs. The Department shall require such training to

1 include a minimum of ten (10) hours of training in the care of
2 Alzheimer's patients;

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

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

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

10 B. The State Board of Health shall promulgate rules to
11 implement the provisions of this section and shall have power to
12 assess fees.

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

17 2. In addition to the certification and recertification fees,
18 the State Board of Health may impose fees for training or education
19 programs conducted or approved by the ~~Board~~ Department, except for
20 those programs operated by the Oklahoma Department of Veterans
21 Affairs.

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

1 C. Only a person who has qualified as a certified nurse aide
2 and who holds a valid current nurse aide certificate for use in this
3 state shall have the right and privilege of using the title
4 Certified Nurse Aide and to use the abbreviation CNA after the name
5 of such person. Any person who violates the provisions of this
6 section shall be subject to a civil monetary penalty to be assessed
7 by the Department.

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

11 a. is sufficiently accessible to promptly meet the needs
12 of the public and employers, and

13 b. provides a process for notification and investigation
14 of alleged abuse, exploitation or neglect of residents
15 of a facility or home, clients of an agency or center,
16 or of misappropriation of resident or client property.

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

19 a. successfully completed a certified nurse aide training
20 and competency examination,

21 b. met all the requirements for certification, or

22 c. received a waiver from the Board.
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1 3. The registry shall include, but not be limited to, the
2 following information on each certified nurse aide or nurse aide
3 trainee:

- 4 a. the full name of the individual,
- 5 b. information necessary to identify each individual,
- 6 c. the date the individual became eligible for placement
7 in the registry, and
- 8 d. information on any finding of the Department of abuse,
9 neglect or exploitation by the certified nurse aide or
10 nurse aide trainee, including:
 - 11 (1) documentation of the Department's investigation,
12 including the nature of the allegation and the
13 evidence that led the Department to confirm the
14 allegation,
 - 15 (2) the date of the hearing, if requested by the
16 certified nurse aide or nurse aide trainee, and
 - 17 (3) statement by the individual disputing the finding
18 if the individual chooses to make one.

19 4. The Department shall include the information specified in
20 subparagraph d of paragraph 3 of this subsection in the registry
21 within ten (10) working days of the substantiating finding and it
22 shall remain in the registry, unless:
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- 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 notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nurse aide or nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

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

7. If the Department after notice and opportunity for hearing determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the

1 prohibited act, notice of the findings shall be sent to the nurse
2 aide and to the district attorney for the county where the abuse,
3 neglect or exploitation, or misappropriation of resident or client
4 property occurred and to the Medicaid Fraud Control Unit of the
5 Attorney General's Office. Notice of ineligibility to work as a
6 nurse aide in a long-term care facility, a residential care
7 facility, assisted living facility, day care facility, or any entity
8 that requires certification of nurse aides, and notice of any
9 further appeal rights shall also be sent to the nurse aide.

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

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

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

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

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

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

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

22 2. Each facility that employs or contracts employment of a
23 feeding assistant shall maintain a record of all individuals, used
24 by the facility as feeding assistants, who have successfully

1 completed a training course approved by the state for paid feeding
2 assistants.

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

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

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1 Passed the Senate the 28th day of February, 2013.

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4 Presiding Officer of the Senate

5 Passed the House of Representatives the ____ day of _____,
6 2013.

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8 Presiding Officer of the House
9 of Representatives