

1 STATE OF OKLAHOMA

2 2nd Session of the 56th Legislature (2018)

3 COMMITTEE SUBSTITUTE
4 FOR ENGROSSED
5 SENATE BILL NO. 1228

6 By: McCortney of the Senate
7 and
8 Caldwell of the House
9

10 COMMITTEE SUBSTITUTE

11 An Act relating to public health and safety; amending
12 63 O.S. 2011, Section 1-1918, which relates to rights
13 of residents of certain facilities; requiring certain
14 facility to take action upon request; providing for
15 termination of certain requirement; and providing an
16 effective date.

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

18 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1918, is
19 amended to read as follows:

20 Section 1-1918. A. All principles enumerated in this section
21 shall be posted in a conspicuous, easily accessible location in each
22 facility. Each resident and personally appointed representative of
23 the resident, if any, shall be verbally advised and provided a
24 written copy of such principles prior to or upon admission to the
facility. The facility shall ensure that its staff is familiar with

1 and observes the rights and responsibilities enumerated in this
2 section. The facility shall make available to each resident, upon
3 reasonable request, a current written statement of such rights and
4 responsibilities.

5 B. A statement of rights and responsibilities shall include,
6 but not be limited to, the following:

7 1. Every resident's civil and religious liberties, including
8 the right to independent personal decisions and knowledge of
9 available choices, shall not be infringed upon and the facility
10 shall encourage and assist in the exercise of these rights;

11 2. Every resident shall have the right to have private
12 communications, including telephonic communications and visits and
13 consultations with a physician or an attorney, and meetings of
14 family and resident groups or any other person or persons of the
15 resident's choice, and may send and promptly receive, unopened, the
16 resident's personal mail;

17 3. a. Every resident shall have the right, without fear of
18 reprisal or discrimination, to:

19 (1) present grievances with respect to treatment or
20 care that is or fails to be furnished on behalf
21 of the resident or others to:

22 (a) the facility's staff,

23 (b) the facility's administrator,

24 (c) the facility's attending physician,

(d) the resident's personal physician, if any,
(e) governmental officials, or
(f) any other person, and

(2) organize or to join with other residents or
individuals within or outside of the facility to
work for improvements in resident care.

b. The family of a resident shall have the right to meet
in the facility with other residents' families.

c. Every resident shall have the right to prompt efforts
by the facility to resolve grievances the resident may
have, including those with respect to the behavior of
other residents;

4. Every resident shall have the right to manage such
resident's own financial affairs, unless the resident delegates the
responsibility, in writing, to the facility. The resident shall
have at least a quarterly accounting of any personal financial
transactions undertaken in the resident's behalf by the facility
during any period of time the resident has delegated such
responsibilities to the facility;

5. Every resident shall have the right to receive adequate and
appropriate medical care consistent with established and recognized
medical practice standards within the community. Every resident,
unless adjudged to be mentally incapacitated, shall be fully
informed by the resident's attending physician of the resident's

1 medical condition and advised in advance of proposed treatment or
2 changes in treatment in terms and language that the resident can
3 understand, unless medically contraindicated, and to participate in
4 the planning of care and treatment or changes in care and treatment.
5 Every resident shall have the right to refuse medication and
6 treatment after being fully informed of and understanding the
7 consequences of such actions unless adjudged to be mentally
8 incapacitated;

9 6. Every resident shall receive respect and privacy in the
10 medical care program of the resident. Case discussion,
11 consultation, examination and treatment shall remain confidential
12 and shall be conducted discreetly. Personal and medical records
13 shall be confidential, and shall include such documentation or
14 information so as to alert a health care provider or an emergency
15 medical care facility of the existence of a directive to physicians
16 or a living will;

17 7. Every resident shall have the right to reside and to receive
18 services with reasonable accommodation of individual needs and
19 preferences, except where the health or safety of the individual or
20 other residents would be endangered;

21 8. a. Every resident shall be informed by the facility, at
22 the time of admission, of the facility's policy
23 regarding the provision of hospice services. The
24 facility's policy shall:

- 1 (1) specify whether the facility provides hospice
2 services, either directly or through contractual
3 arrangements with other hospice providers,
4 (2) specify whether the facility permits hospice
5 services to be provided in the facility by any
6 other hospice services or only by hospice
7 services contracted by the facility,
8 (3) provide that each resident shall receive a list
9 of hospice services with which the facility
10 contracts, and
11 (4) provide for complete disclosure to the resident
12 of the facility's relationship with any hospice
13 service that is the result of ownership or an
14 ownership interest of five percent (5%) or more.

15 b. If the facility provides hospice services through
16 contractual arrangements with hospice providers but
17 does not contract with at least three entities
18 providing hospice services within a fifty-mile radius
19 of the facility, it shall, upon the request of a
20 current facility resident, contract with additional
21 hospice providers within a fifty-mile radius of the
22 facility as necessary to provide the resident with a
23 choice of three providers. This requirement shall
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1 cease to exist when the requesting resident is no
2 longer living in the facility.

3 c. A facility shall, at the point that a resident
4 requires hospice services, again inform the resident
5 or the personally appointed representative of the
6 resident, if any, verbally and in writing of the
7 resident's right to hospice services pursuant to the
8 facility's policy at the time of the resident's
9 admission;

10 9. Every resident shall have the right to receive notice before
11 the room or roommate of the resident in the facility is changed and
12 if the resident has a telephone in his or her room, the resident
13 must be informed of any charges to be incurred when moving;

14 10. Every resident shall have the right to retain and use
15 personal clothing and possessions, unless medically contraindicated,
16 and shall have the right to security in the storage and use of such
17 clothing and possessions;

18 11. Every resident shall have the right to receive courteous
19 and respectful care and treatment and a written statement of the
20 services provided by the facility, including those required to be
21 offered on an as-needed basis, and a statement of related charges,
22 including any costs for services not covered under Medicare or
23 Medicaid, or not covered by the facility's basic per diem rate;

1 12. Every resident shall be free from mental and physical abuse
2 and neglect, as such terms are defined in Section 10-103 of Title
3 43A of the Oklahoma Statutes, corporal punishment, involuntary
4 seclusion, and from any physical and chemical restraints imposed for
5 purposes of discipline or convenience and not required to treat the
6 resident's medical symptoms, except those restraints authorized in
7 writing by a physician for a specified period of time or as are
8 necessitated by an emergency where the restraint may only be applied
9 by a physician, qualified licensed nurse or other personnel under
10 the supervision of the physician who shall set forth in writing the
11 circumstances requiring the use of restraint. Use of a chemical or
12 physical restraint shall require the consultation of a physician
13 within twenty-four (24) hours of such emergency;

14 13. Every resident shall receive a statement of the facility's
15 regulations and an explanation of the resident's responsibility to
16 obey all reasonable regulations of the facility and to respect the
17 personal rights and private property of the other residents;

18 14. Every resident shall receive a statement that, should they
19 be adjudicated incompetent and have no ability to be restored to
20 legal capacity, the above rights and responsibilities shall be
21 exercised by a court-appointed representative;

22 15. No resident shall be required to perform services for a
23 facility;
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1 16. Every resident shall have privacy for spousal visits.

2 Every resident may share a room with the resident's spouse, if the
3 spouse is residing in the same facility;

4 17. When a physician indicates it is appropriate, a facility
5 shall immediately notify the resident's next of kin, or
6 representative of the resident's death or when the resident's death
7 appears to be imminent;

8 18. Every resident shall have the right to participate in
9 social, religious, and community activities that do not interfere
10 with the rights of other residents in the facility; and

11 19. Every resident shall have the right to examine, upon
12 reasonable request, the results of the most recent survey of the
13 facility conducted by the State Department of Health with respect to
14 the facility and any plan of correction in effect with respect to
15 the facility.

16 C. No licensed facility shall deny appropriate care on the
17 basis of the resident's source of payment as defined in the
18 regulations. Appropriate care shall not include duplication of
19 services by a nursing home, hospice, or any combination of care
20 providers.

21 D. Each facility shall prepare a written plan and provide
22 appropriate staff training to implement each resident's rights as
23 stated in this section.
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1 E. Any person convicted of violating any provisions of this
2 section shall be guilty of a misdemeanor, punishable by a fine of
3 not less than One Hundred Dollars (\$100.00), nor more than Three
4 Hundred Dollars (\$300.00), or imprisonment in the county jail for
5 not more than thirty (30) days, or by both such fine and
6 imprisonment.

7 F. In addition to the penalties provided in this section, an
8 action may be brought against an individual by any resident who is
9 injured by any violation of this section, or who shall suffer injury
10 from any person whose threats would cause a violation of this
11 section if carried through, may maintain an action to prevent,
12 restrain or enjoin a violation or threatened violation. If a
13 violation or threatened violation of this section shall be
14 established in any action, the court shall enjoin and restrain or
15 otherwise prohibit the violation or threatened violation and assess
16 in favor of the plaintiff and against the defendant the cost of the
17 suit. If damages are alleged and proved in the action, the
18 plaintiff shall be entitled to recover from the defendant the actual
19 damages sustained by the plaintiff. If it is proved in an action
20 that the defendant's conduct was willful or in reckless disregard of
21 the rights provided by this section, punitive damages may be
22 assessed.

23 G. Any employee of a state agency that inspects any nursing
24 facility or special facility shall report any flagrant violations of

1 this act or any other statute to the administrative head of the
2 state agency, who shall immediately take whatever steps are
3 necessary to correct the situation including, when appropriate,
4 reporting the violation to the district attorney of the county in
5 which the violation occurred.

6 H. Upon the death of a resident who has no sources of payment
7 for funeral services, the facility shall immediately notify
8 appropriate county officials who shall be responsible for funeral
9 and burial procedures of the deceased in the same manner as with any
10 indigent resident of the county.

11 SECTION 2. This act shall become effective November 1, 2018.

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