SENATE FLOOR VERSION
February 27, 2017

SENATE BILL NO. 180 By: McCortney

An Act relating to nurse aides; amending 63 O.S. 2011, Section 1-860.4, as amended by Section 1, Chapter 34, O.S.L. 2015 (63 O.S. Supp. 2016, Section 1-860.4), which relates to certain requirements; providing certain construction; amending 63 O.S. 2011, Section 1-1951, as last amended by Section 1, Chapter 122, O.S.L. 2015 (63 O.S. Supp. 2016, Section 1-1951), which relates to certification; specifying certain qualifications; amending 63 O.S. 2011, Section 1-1962, as last amended by Section 2, Chapter 265, O.S.L. 2012 (63 O.S. Supp. 2016, Section 1-1962), which relates to certain requirements; broadening certain exemption to include certified nurse aides; amending 63 O.S. 2011, Section 1-1963, which relates to promulgation of rules; providing certain construction; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-860.4, as amended by Section 1, Chapter 34, O.S.L. 2015 (63 O.S. Supp. 2016, Section 1-860.4), is amended to read as follows:

Section 1-860.4. A. A hospice shall comply with the following:

1. A hospice shall coordinate its services with those of the patient's primary or attending physician;

2. A hospice shall coordinate its services with professional and nonprofessional services already in the community. A hospice may contract for some elements of its services to a patient and family, provided direct patient care is maintained with the patient and the hospice team so that overall coordination of services can be maintained by the hospice team. The majority of hospice services available through a hospice shall be provided directly by the licensee. Any contract entered into between a hospice and health care provider shall specify that the hospice retain the responsibility for planning, coordinating and prescribing hospice services on behalf of a hospice patient and the hospice patient's family. No hospice may charge fees for services provided directly by the hospice team which duplicate contractual services provided to the patient or the patient's family;

3. The hospice team shall be responsible for coordination and continuity between inpatient and home care aspects of care;

4. A hospice shall not contract with a health care provider or another hospice that has or has been given a conditional license within the last eighteen (18) months;

5. Hospice services shall provide a symptom control process, to be provided by a hospice team skilled in physical and psychosocial management of distressing signs and symptoms;

6. Hospice care shall be available twenty-four (24) hours a day, seven (7) days a week;

7. A hospice shall have a bereavement program which shall provide a continuum of supportive and therapeutic services for the family;

8. The unit of care in a hospice program shall be composed of the patient and family;

9. A hospice program shall provide a continuum of care and a continuity of care providers throughout the length of care for the patient and to the family through the bereavement period;

10. A hospice program shall not impose the dictates of any value or belief system on its patients and their families;

11. a. Admission to a hospice shall be upon the order of a physician licensed pursuant to the laws of this state and shall be dependent on the expressed request and informed consent of the patient and family.

b. The hospice program shall have admission criteria and procedures that reflect:

(1) the patient and family's desire and need for service,

(2) the participation of the attending physician, and

(3) the diagnosis and prognosis of the patient.

c. (1) Any hospice or employee or agent thereof who knowingly or intentionally solicits patients or pays to or offers a benefit to any person, firm, association, partnership, corporation or other

legal entity for securing or soliciting patients for the hospice or hospice services in this state, upon conviction thereof, shall be guilty of a misdemeanor and shall be punished by a fine of not less than Five Hundred Dollars ($500.00) and not more than Two Thousand Dollars ($2,000.00).

(2) In addition to any other penalties or remedies provided by law:

(a) a violation of this section by a hospice or employee or agent thereof shall be grounds for disciplinary action by the State Department of Health, and

(b) the State Department of Health may institute an action to enjoin violation or potential violation of this section. The action for an injunction shall be in addition to any other action, proceeding or remedy authorized by law.

(3) This subparagraph shall not be construed to prohibit:

(a) advertising, except that advertising which:

(i) is false, misleading or deceptive,

(ii) advertises professional superiority or the performance of a professional service in a superior manner, and

(iii) is not readily subject to verification, and

(b) remuneration for advertising, marketing or other services that are provided for the purpose of securing or soliciting patients, provided the remuneration is:

(i) set in advance,

(ii) consistent with the fair market value of the services, and

(iii) not based on the volume or value of any patient referrals or business otherwise generated between the parties, and

(c) any payment, business arrangements or payments practice not prohibited by 42 U.S.C., Section 1320a-7b(b), or any regulations promulgated pursuant thereto.

(4) This paragraph shall not apply to licensed insurers, including but not limited to group hospital service corporations or health maintenance organizations which reimburse, provide, offer to provide or administer hospice

services under a health benefits plan for which it is the payor when it is providing those services under a health benefits plan;

12. A hospice program shall develop and maintain a quality assurance program that includes:

a. evaluation of services,

b. regular chart audits, and

c. organizational review; and

13. A hospice program shall be managed by an administrator meeting the requirements as set forth in Section ~~2~~ 1-862 of this ~~act~~ title.

B. A hospice team shall consist of, as a minimum, a physician, a registered nurse, and a social worker or counselor, each of whom shall be licensed as required by the laws of this state. The team may also include clergy and such volunteers as are necessary to provide hospice services. A registered nurse licensed pursuant to the laws of this state shall be employed by the hospice as a patient care coordinator to supervise and coordinate the palliative and supportive care for patients and families provided by a hospice team. Nothing in this section shall be construed as to require a hospice to employ a certified home health aide in the provision of hospice services so long as the hospice employs a certified nurse aide.

C. 1. An up-to-date record of the services given to the patient and family shall be kept by the hospice team. Records shall contain pertinent past and current medical, nursing, social, and such other information that is necessary for the safe and adequate care of the patient and the family. Notations regarding all aspects of care for the patient and family shall be made in the record. When services are terminated, the record shall show the date and reason for termination.

2. Information received by persons employed by or providing services to a hospice, or information received by the State Department of Health through reports or inspection shall be deemed privileged and confidential information and shall not be disclosed to any person other than the patient or the family without the written consent of that patient, the patient's guardian or the patient's family.

D. 1. A hospice program shall have a clearly defined and organized governing body, which has autonomous authority for the conduct of the hospice program.

2. The hospice program shall have an administrator who shall be responsible for the overall coordination and administration of the hospice program.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1951, as last amended by Section 1, Chapter 122, O.S.L. 2015 (63 O.S. Supp. 2016, Section 1-1951), is amended to read as follows:

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

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

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

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

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

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

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

7. Suspend or revoke any certification issued to any nurse aide, if:

a. the nurse aide is found to meet any of the requirements contained in subsection D of Section 1-1947 of this title,

b. the nurse aide is found to meet any of the requirements contained in subsection C of Section 1-1950.1 of this title, or

c. the nurse aide is found to have committed abuse, neglect or exploitation of a resident or misappropriation of resident or client property pursuant to the requirements contained in paragraph 7 of subsection D of ~~Section 1-1951 of this title~~ this section. The action to revoke or suspend may be included with the filing of any action pursuant to the requirements of paragraph 7 of subsection D of ~~Section 1-1951 of this title~~ this section.

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

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

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

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

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

D. A person qualified by the Department as a certified nurse aide shall be deemed to have met the requirements to work as a home health aide pursuant to the provisions of the Home Care Act and shall require no further licensure for performing services within the scope of practice of home health aides.

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

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

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

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

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

b. met all the requirements for certification, or

c. received a waiver from the Board.

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

a. the full name of the individual,

b. information necessary to identify each individual. Certified nurse aides and nurse aide trainees shall maintain with the registry current residential addresses and shall notify the registry, in writing, of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number shall be made within ten (10) days of the effected change. Notice shall not be accepted over the phone,

c. the date the individual became eligible for placement in the registry, and

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

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

8. In any proceeding in which the Department is required to serve notice or an order on an individual, the Department may send written correspondence to the address on file with the registry. If the correspondence is returned and a notation of the United States Postal Service indicates "unclaimed" or "moved" or "refused" or any other nondelivery markings and the records of the registry indicate that no change of address as required by this subsection has been received by the registry, the notice and any subsequent notices or orders shall be deemed by the court as having been legally served for all purposes.

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

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

11. Upon a written request by a certified nurse aide or nurse aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified nurse aide or

nurse aide trainee when a finding of abuse, exploitation or neglect is confirmed and placed in the registry.

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

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

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

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

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

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

SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1962, as last amended by Section 2, Chapter 265, O.S.L. 2012 (63 O.S. Supp. 2016, Section 1-1962), is amended to read as follows:

Section 1-1962. A. No home care agency as that term is defined by the Home Care Act shall operate without first obtaining a license as required by the Home Care Act.

B. 1. No home care agency, except as otherwise provided by this subsection, shall place an individual in the role of supportive home assistant with a client on a full-time, temporary, per diem, or other basis, unless the individual has completed agency-based supportive home assistant training taught by a registered nurse in the sections applicable to the assistance required by the client. Each supportive home assistant who successfully completes agency-based training shall demonstrate competence by testing through an independent entity approved by the State Department of Health. The requirements related to application, approval, renewal, and denial of such testing entities shall be set forth in administrative rules promulgated by the State Board of Health.

2. The home care agency shall develop a written training plan that shall include, at a minimum, the following:

a. observation, reporting, and documentation of client status and the standby assistance or other services furnished,

b. maintenance of a clean, safe, and healthy environment,

c. recognizing an emergency and necessary emergency procedures,

d. safe techniques to provide standby assistance with bathing, grooming, and toileting,

e. assistance with meal preparation and safe food handling and storage,

f. client rights and responsibilities and the need for respect for the client and for the privacy and property of the client, and

g. basic infection control practices to include, at a minimum, instruction in acceptable hand hygiene techniques and the application of standard precautions.

3. Supervisory visits shall be made according to the client need, as determined by the nursing supervisor, but no less than once every six (6) months.

4. No supportive home assistant shall provide services to a client until a criminal history background check and a check of the nurse aide registry maintained by the State Department of Health is performed in accordance with Section 1-1950.1 of this title and the

assistant is found to have no notations of abuse of any kind on the registry and no convictions of the crimes listed in subsection F of Section 1-1950.1 of this title.

5. No home care agency may employ a supportive home assistant listed on the Department of Human Services Community Services Worker Registry.

6. No licensed health care facility, licensed physician, advanced practice registered nurse, physician assistant, or state agency employee acting in the performance of his or her duties shall refer a client for personal care services as defined in paragraph 8 of Section 1-1961 of this title or for companion or sitter services as defined in paragraph 1 of subsection A of Section 1-1972 of this title, except to an agency licensed to provide such services. For purposes of this subsection, "licensed health care facility" shall include acute care hospitals, long-term acute care hospitals, rehabilitation hospitals, skilled nursing facilities, assisted living facilities, residential care homes, home care agencies, adult day care centers and hospice agencies.

C. 1. No employer or contractor, except as otherwise provided by this subsection, shall employ or contract with any individual as a home health aide for more than four (4) months, on a full-time, temporary, per diem or other basis, unless the individual is a licensed health professional or unless the individual has satisfied

the requirements for certification and placement on the home health aide registry maintained by the State Department of Health.

2. a. Any person in the employment of a home care agency as a home health aide on June 30, 1992, with continuous employment through June 30, 1993, shall be granted home health aide certification by the Department on July 1, 1993. The home care agency shall maintain responsibility for assurance of specific competencies of the home health aide and shall only assign the home health aide to tasks for which the aide has been determined to be competent.

b. Any home health aide employed between the dates of July 1, 1992, and June 30, 1993, shall be eligible for certification by passing a competency evaluation and testing as required by the Department.

c. Any home health aide employed on and after July 1, 1996, shall complete any specified training, competency evaluation and testing required by the Department.

D. The provisions of the Home Care Act shall not apply to:

1. A person acting alone who provides services in the home of a relative, neighbor or friend;

2. A person who provides maid services only;

3. A nurse service or home aide service conducted by and for the adherents to any religious denomination, the tenets of which include reliance on spiritual means through prayer alone for healing;

4. A person providing hospice services pursuant to the Oklahoma Hospice Licensing Act;

5. A nurse-midwife;

6. An individual, agency, or organization that contracts with the Oklahoma Health Care Authority to provide services under the Home- and Community-Based Waiver for persons with developmental disabilities or that contracts with the Department of Human Services to provide community services to persons with developmental disabilities; provided, that staff members and individuals providing the services shall receive a level of training, approved by the Department of Human Services, which meets or exceeds the level required pursuant to the Home Care Act. An individual, agency or organization otherwise covered under the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under contracts referenced in this paragraph;

7. An individual, agency or organization that provides or supports the provision of personal care services to an individual who performs individual employer responsibilities of hiring, training, directing and managing a personal care attendant as part of the Oklahoma Health Care Authority Consumer-Directed Personal

Assistance Supports and Services (CD-PASS) waiver program. An individual, agency or organization otherwise covered under the provisions of the Home Care Act shall be exempt from the act only for those paraprofessional direct care services provided under Oklahoma Health Care Authority contracts referenced in this paragraph, but shall not be exempt from the criminal history background check required under the Home Care Act and Section 1-1950.1 of this title for other paraprofessional direct care service providers. A personal care attendant hired by a consumer under the CD-PASS program shall be exempt from certification as a home health aide, provided such personal care attendant receives the training required and approved by the Department of Human Services;

8. An individual who only provides Medicaid home- and community-based personal care services pursuant to a contract with the Oklahoma Health Care Authority;

9. An individual who:

a. is employed by a licensed home care agency exclusively to provide personal care services on a live-in basis,

b. has no convictions pursuant to a criminal history investigation as provided in Section 1-1950.1 of this title,

c. is being continuously trained by a registered nurse to provide care that is specific to the needs of the particular client receiving the care, and

d. is supervised by a registered nurse via an on-site visit at least once each month; ~~or~~

10. 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 exclusively to three or fewer veterans; or

11. A person qualified by the Department as a certified nurse aide pursuant to the provisions of Section 1-1951 of this title.

SECTION 4. AMENDATORY 63 O.S. 2011, Section 1-1963, is amended to read as follows:

Section 1-1963. A. The State Department of Health shall have the power and duty to:

1. Issue, renew, deny, modify, suspend and revoke licenses and deny renewal of licenses for agencies, and issue, renew, deny, modify, suspend and revoke certificates and deny renewal of certificates for home health aides pursuant to the provisions of the Home Care Act;

2. Establish and enforce qualifications, standards and requirements for licensure of home care agencies and certification of home health aides; provided, nothing in this paragraph shall be construed as to require a hospice to employ a home health aide as a condition of licensure;

3. Issue or renew a license to establish or operate a home care agency if the Department determines that the agency meets the

requirements of or is accredited or certified by one of the following accrediting or certifying organizations or programs. In addition, the accredited home care agency through this paragraph will not be subject to an inspection or examination by the Department unless necessary to investigate complaints under subsection B of this section:

a. Title XVIII or XIX of the federal Social Security Act,

b. the Joint Commission on Accreditation of Healthcare Organizations/Home Care Accreditation Services (JCAHO),

c. the Community Health Accreditation Program of the National League for Nursing (CHAP), or

d. the Accreditation Commission for Health Care (ACHC);

4. Establish and maintain a registry of certified home health aides;

5. Enter any home care agency when reasonably necessary for the sole purpose of inspecting and investigating conditions of the agency for compliance with the provisions of the Home Care Act, or compliance with the standards and requirements for licensure or certification developed by the Department pursuant to the provisions of the Home Care Act;

6. Establish administrative penalties for violations of the provisions of the Home Care Act; and

7. Exercise all incidental powers as necessary and proper for the administration of the Home Care Act.

B. 1. The State Board of Health shall promulgate rules necessary for the investigation and hearing of complaints regarding a home care agency or home health aide.

2. The Department shall establish procedures for receipt and investigation of complaints regarding a home care agency or home health aide.

3. A complaint regarding a home care agency or home health aide shall not be made public unless a completed investigation substantiates the violations alleged in the complaint.

SECTION 5. This act shall become effective November 1, 2017.

COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES
February 27, 2017 - DO PASS