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February 27, 2017

By: Smalley

An Act relating to the Nursing Home Care Act; amending 63 O.S. 2011, Section 1-1902, as amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2016, Section 1-1902), which relates to definitions; expanding certain definition; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1902, as amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2016, Section 1-1902), is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act:

1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when invited to do so by a resident. The state or local "ombudsman", as that term is defined by the Aging Services Division of the Department of Human Services pursuant to the Older Americans' Act,

1 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
2 employed by the Department of Mental Health and Substance Abuse
3 Services or one of its contract agencies shall have right of access
4 to enter a facility, communicate privately and without unreasonable
5 restriction with any resident who consents to the communication, to
6 seek consent to communicate privately and without restriction with
7 any resident, and to observe all areas of the facility that directly
8 pertain to the patient care of the resident without infringing upon
9 the privacy of the other residents without first obtaining their
10 consent;

11 3. "Administrator" means the person licensed by the State of
12 Oklahoma who is in charge of a facility. An administrator must
13 devote at least one-third (1/3) of such person's working time to on-
14 the-job supervision of the facility; provided that this requirement
15 shall not apply to an administrator of an intermediate care facility
16 for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in
17 which case the person licensed by the state may be in charge of more
18 than one ICF-MR/16 facility, if such facilities are located within a
19 circle that has a radius of not more than fifteen (15) miles, the
20 total number of facilities and beds does not exceed six facilities
21 and sixty-four beds, and each ICF-MR/16 facility is supervised by a
22 qualified mental retardation professional. The facilities may be
23 free-standing in a community or may be on campus with a parent
24

1 institution. The ICF-MR/16 may be independently owned and operated
2 or may be part of a larger institutional operation;

3 4. "Advisory Board" means the Long-Term Care Facility Advisory
4 Board;

5 5. "Adult companion home" means any home or establishment,
6 funded and certified by the Department of Human Services, which
7 provides homelike residential accommodations and supportive
8 assistance to three or fewer mentally retarded or developmentally
9 disabled adults;

10 6. "Board" means State Board of Health;

11 7. "Commissioner" means State Commissioner of Health;

12 8. "Department" means the State Department of Health;

13 9. "Facility" means a nursing facility and a specialized home;
14 provided this term shall not include a residential care home or an
15 adult companion home;

16 10. "Nursing facility" means a home, an establishment or an
17 institution, a distinct part of which is primarily engaged in
18 providing:

- 19 a. skilled nursing care and related services for
20 residents who require medical or nursing care,
21 b. rehabilitation services for the rehabilitation of
22 injured, disabled, or sick persons, or
23 c. on a regular basis, health-related care and services
24 to individuals who because of their mental or physical

1 condition require care and services beyond the level
2 of care provided by a residential care home and which
3 can be made available to them only through a nursing
4 facility.

5 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
6 this title, a facility constructed or operated by an entity
7 described in paragraph 7 of subsection B of Section 6201 of Title 74
8 of the Oklahoma Statutes or the nursing care component of a
9 continuum of care facility, as such term is defined under the
10 Continuum of Care and Assisted Living Act, to the extent that the
11 facility constructed or operated by an entity described in paragraph
12 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
13 Statutes contains such a nursing care component;

14 11. "Specialized facility" means any home, establishment, or
15 institution which offers or provides inpatient long-term care
16 services on a twenty-four-hour basis to a limited category of
17 persons requiring such services, including but not limited to a
18 facility providing health or habilitation services for mentally
19 retarded or developmentally disabled persons, but does not mean, for
20 purposes of Section 1-851.1 of this title, a facility constructed or
21 operated by an entity described in paragraph 7 of subsection B of
22 Section 6201 of Title 74 of the Oklahoma Statutes or the nursing
23 care component of a continuum of care facility, as such term is
24 defined under the Continuum of Care and Assisted Living Act, to the

1 extent that the facility constructed or operated by an entity
2 described in paragraph 7 of subsection B of Section 6201 of Title 74
3 of the Oklahoma Statutes contains such a nursing care component;

4 12. "Residential care home" means any home, establishment, or
5 institution licensed pursuant to the provisions of the Residential
6 Care Act other than a hotel, motel, fraternity or sorority house, or
7 college or university dormitory, which offers or provides
8 residential accommodations, food service, and supportive assistance
9 to any of its residents or houses any resident requiring supportive
10 assistance. The residents shall be persons who are ambulatory and
11 essentially capable of managing their own affairs, but who do not
12 routinely require nursing care; provided, the term "residential care
13 home" shall not mean a hotel, motel, fraternity or sorority house,
14 or college or university dormitory, if the facility operates in a
15 manner customary to its description and does not house any person
16 who requires supportive assistance from the facility in order to
17 meet an adequate level of daily living;

18 13. "Licensee" means the person, a corporation, partnership, or
19 association who is the owner of the facility which is licensed by
20 the Department pursuant to the provisions of the Nursing Home Care
21 Act;

22 14. "Maintenance" means meals, shelter, and laundry services;

23 15. "Neglect" means failure to provide goods and/or services
24 necessary to avoid physical harm, mental anguish, or mental illness;

1 16. "Owner" means a person, corporation, partnership,
2 association, or other entity which owns a facility or leases a
3 facility. The person or entity that stands to profit or lose as a
4 result of the financial success or failure of the operation shall be
5 presumed to be the owner of the facility. Notwithstanding the
6 foregoing, any nonstate governmental entity that has acquired and
7 owns or leases a facility and that has entered into an agreement
8 with the Oklahoma Health Care Authority or other state agency
9 including but not limited to the Department of Human Services to
10 participate in the nursing facility supplemental payment program
11 ("UPL Owner") shall be deemed the owner of such facility and shall
12 be authorized to obtain management services from a management
13 services provider ("UPL Manager"), and to delegate, allocate and
14 assign as between the UPL Owner and UPL Manager, compensation,
15 profits, losses, liabilities, decision-making authority and
16 responsibilities, including responsibility for the employment,
17 direction, supervision and control of the facility's administrator
18 and staff;

19 17. "Personal care" means assistance with meals, dressing,
20 movement, bathing or other personal needs or maintenance, or general
21 supervision of the physical and mental well-being of a person, who
22 is incapable of maintaining a private, independent residence, or who
23 is incapable of managing his person, whether or not a guardian has
24 been appointed for such person;

1 18. "Resident" means a person residing in a facility due to
2 illness, physical or mental infirmity, or advanced age;

3 19. "Representative of a resident" means a court-appointed
4 guardian or, if there is no court-appointed guardian, the parent of
5 a minor, a relative, or other person, designated in writing by the
6 resident; provided, that any owner, operator, administrator or
7 employee of a facility subject to the provisions of the Nursing Home
8 Care Act, the Residential Care Act, or the Group Homes for the
9 Developmentally Disabled or Physically Handicapped Persons Act shall
10 not be appointed guardian or limited guardian of a resident of the
11 facility unless the owner, operator, administrator or employee is
12 the spouse of the resident, or a relative of the resident within the
13 second degree of consanguinity and is otherwise eligible for
14 appointment; and

15 20. "Supportive assistance" means the service rendered to any
16 person which is less than the service provided by a nursing facility
17 but which is sufficient to enable the person to meet an adequate
18 level of daily living. Supportive assistance includes but is not
19 limited to housekeeping, assistance in the preparation of meals,
20 assistance in the safe storage, distribution, and administration of
21 medications, and assistance in personal care as is necessary for the
22 health and comfort of such person. Supportive assistance shall not
23 include medical service.
24

SECTION 2. This act shall become effective November 1, 2017.

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