

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1228

By: McCortney

6 AS INTRODUCED

7 An Act relating to the rights and responsibilities of
8 facility residents; amending 63 O.S. 2011, Section 1-
9 1918; requiring certain facility to take action upon
request; providing for termination of certain
requirement; and providing an effective date.

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

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

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

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

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

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

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

15 (1) present grievances with respect to treatment or
16 care that is or fails to be furnished on behalf
17 of the resident or others to:

- 18 (a) the facility's staff,
19 (b) the facility's administrator,
20 (c) the facility's attending physician,
21 (d) the resident's personal physician, if any,
22 (e) governmental officials, or
23 (f) any other person, and
24

(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 medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in

1 the planning of care and treatment or changes in care and treatment.
2 Every resident shall have the right to refuse medication and
3 treatment after being fully informed of and understanding the
4 consequences of such actions unless adjudged to be mentally
5 incapacitated;

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

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

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

22 (1) specify whether the facility provides hospice
23 services, either directly or through contractual
24 arrangements with other hospice providers,

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

12 b. If the facility provides hospice services through
13 contractual arrangements with hospice providers but
14 does not contract with at least five (5) entities
15 providing hospice services within a fifty-mile radius
16 of the facility, it shall, upon the request of a
17 current facility resident, contract with additional
18 hospice providers within a fifty-mile radius of the
19 facility as necessary to provide the resident with a
20 choice of five (5) providers. This requirement shall
21 cease to exist when the requesting resident is no
22 longer living in the facility.

23 c. A facility shall, at the point that a resident
24 requires hospice services, again inform the resident

1 or the personally appointed representative of the
2 resident, if any, verbally and in writing of the
3 resident's right to hospice services pursuant to the
4 facility's policy at the time of the resident's
5 admission;

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

10 10. Every resident shall have the right to retain and use
11 personal clothing and possessions, unless medically contraindicated,
12 and shall have the right to security in the storage and use of such
13 clothing and possessions;

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

20 12. Every resident shall be free from mental and physical abuse
21 and neglect, as such terms are defined in Section 10-103 of Title
22 43A of the Oklahoma Statutes, corporal punishment, involuntary
23 seclusion, and from any physical and chemical restraints imposed for
24 purposes of discipline or convenience and not required to treat the

1 resident's medical symptoms, except those restraints authorized in
2 writing by a physician for a specified period of time or as are
3 necessitated by an emergency where the restraint may only be applied
4 by a physician, qualified licensed nurse or other personnel under
5 the supervision of the physician who shall set forth in writing the
6 circumstances requiring the use of restraint. Use of a chemical or
7 physical restraint shall require the consultation of a physician
8 within twenty-four (24) hours of such emergency;

9 13. Every resident shall receive a statement of the facility's
10 regulations and an explanation of the resident's responsibility to
11 obey all reasonable regulations of the facility and to respect the
12 personal rights and private property of the other residents;

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

17 15. No resident shall be required to perform services for a
18 facility;

19 16. Every resident shall have privacy for spousal visits.
20 Every resident may share a room with the resident's spouse, if the
21 spouse is residing in the same facility;

22 17. When a physician indicates it is appropriate, a facility
23 shall immediately notify the resident's next of kin, or
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1 representative of the resident's death or when the resident's death
2 appears to be imminent;

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

6 19. Every resident shall have the right to examine, upon
7 reasonable request, the results of the most recent survey of the
8 facility conducted by the State Department of Health with respect to
9 the facility and any plan of correction in effect with respect to
10 the facility.

11 C. No licensed facility shall deny appropriate care on the
12 basis of the resident's source of payment as defined in the
13 regulations. Appropriate care shall not include duplication of
14 services by a nursing home, hospice, or any combination of care
15 providers.

16 D. Each facility shall prepare a written plan and provide
17 appropriate staff training to implement each resident's rights as
18 stated in this section.

19 E. Any person convicted of violating any provisions of this
20 section shall be guilty of a misdemeanor, punishable by a fine of
21 not less than One Hundred Dollars (\$100.00), nor more than Three
22 Hundred Dollars (\$300.00), or imprisonment in the county jail for
23 not more than thirty (30) days, or by both such fine and
24 imprisonment.

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

17 G. Any employee of a state agency that inspects any nursing
18 facility or special facility shall report any flagrant violations of
19 this act or any other statute to the administrative head of the
20 state agency, who shall immediately take whatever steps are
21 necessary to correct the situation including, when appropriate,
22 reporting the violation to the district attorney of the county in
23 which the violation occurred.

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1 H. Upon the death of a resident who has no sources of payment
2 for funeral services, the facility shall immediately notify
3 appropriate county officials who shall be responsible for funeral
4 and burial procedures of the deceased in the same manner as with any
5 indigent resident of the county.

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