

1 STATE OF OKLAHOMA

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

3 SENATE BILL 1268

By: Dugger

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2011, Section 1-821, which relates to rules;  
9 modifying scope of rules; providing for exceptions;  
10 defining term; amending 63 O.S. 2011, Section 1-  
11 890.3, as last amended by Section 1, Chapter 31,  
12 O.S.L. 2015 (63 O.S. Supp. 2017, Section 1-890.3),  
13 which relates to the promulgation of necessary rules;  
14 modifying scope of rules; providing for exceptions;  
15 defining term; amending 63 O.S. 2011, Section 1-1942,  
16 which relates to rules and regulations; modifying  
17 scope of rules; defining term; providing for  
18 exceptions; updating statutory references; creating  
19 specified income tax credit for a portion of expenses  
20 incurred by a qualified facility to provide  
21 alternative power; defining terms; providing that  
22 credit is nonrefundable; authorizing specified  
23 carryforward; providing for codification; and  
24 providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-821, is  
amended to read as follows:

Section 1-821. A. The State Board of Health shall promulgate  
rules to enforce the provisions of the Residential Care Act ~~which~~.  
Such rules shall include, but not be limited to, r:

1 ~~provisions~~ 1. Provisions for temperature settings, lighting,  
2 ventilation, and other physical conditions that affect the health,  
3 safety and welfare of the residents in a home;

4 2. Provisions to be effective on or before November 1, 2022,  
5 requiring the availability of alternative power for heating systems  
6 in residential care homes that provide services to fifty or more  
7 individuals. Exceptions shall be allowed for residential care homes  
8 that can demonstrate financial hardship and waivers shall be granted  
9 for residential care homes connected by a corridor to a residential  
10 care home with a generator. For purposes of this section,  
11 "financial hardship" means that the state tax returns of the  
12 residential care home demonstrate three (3) consecutive years of net  
13 operating loss. Such losses shall be determined solely by reference  
14 to Section 172 of the Internal Revenue Code, 26 U.S.C., with the  
15 exception that the terms "net operating loss" and "taxable income"  
16 shall be replaced with "Oklahoma net operating loss" and "Oklahoma  
17 taxable income"; and

18 3. Provisions requiring the filing of an evacuation plan with  
19 the county emergency management department and the local fire  
20 department.

21 Residential care homes that provide care for three or fewer  
22 residents shall be subject to the provisions of the Residential Care  
23 Act; provided, however, if such rules unduly restrict operation of  
24 the home, the Board shall be authorized and shall promulgate

1 additional rules for residential care homes based upon the number of  
2 residents in a home.

3 B. The State Department of Health shall have the power and duty  
4 to:

5 1. Issue, renew, deny, modify, suspend, and revoke licenses for  
6 homes pursuant to the provisions of the Residential Care Act;

7 2. Enforce the provisions of the Residential Care Act and any  
8 rules promulgated pursuant thereto by the Board, and require the  
9 submission and review of reports from any person establishing or  
10 operating a home;

11 3. Enter upon any public or private property for the purpose  
12 of:

13 a. inspecting and investigating conditions of the  
14 residents in the home,

15 b. inspecting and investigating the home for compliance  
16 with the provisions of the Residential Care Act or  
17 rules promulgated pursuant thereto, or

18 c. determining if services are being provided without a  
19 license;

20 4. Employ or designate personnel to conduct investigations and  
21 inspections, to make reports of the condition of homes and the  
22 residents of such homes, and to take necessary action pursuant to  
23 the provisions of the Residential Care Act to protect and safeguard  
24 the health, safety, and welfare of residents of homes;

1           5. Establish a procedure for receipt and investigation of  
2 complaints regarding a home or concerning the condition, care, and  
3 treatment of a resident of a home;

4           6. Report to the district attorney having jurisdiction or the  
5 Attorney General any act committed by an owner, administrator,  
6 operator, or employee of a home which may constitute a misdemeanor  
7 pursuant to the provisions of the Residential Care Act;

8           7. Advise, consult, and cooperate with other agencies of this  
9 state, the federal government, other states and interstate agencies,  
10 and with affected groups and political subdivisions to further the  
11 purposes of the provisions of the Residential Care Act;

12           8. Investigate, request or otherwise obtain the information  
13 necessary to determine the qualifications and background of an  
14 applicant for licensure;

15           9. Establish civil penalties for violations of the provisions  
16 of the Residential Care Act as authorized by the Board pursuant to  
17 the provisions of the Residential Care Act;

18           10. Institute and maintain or intervene in any action or  
19 proceeding where deemed necessary by the Department to protect the  
20 health, safety, and welfare of any resident of a home;

21           11. Assure the accountability for reimbursed care provided in  
22 certified homes participating in a federal or state health program  
23 as provided by or through the Department of Human Services;

24

1       12. Advise, consult, cooperate and assist with technology  
2 center schools or institutions of higher education in this state in  
3 providing the training of persons to distribute and administer  
4 medication to a resident of a home;

5       13. Transfer or discharge a resident or otherwise protect the  
6 health, safety, and welfare of any resident of a home; and

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

9       C. To improve patient care, the Department shall hold a public  
10 meeting at least once every four (4) years in each of the licensed  
11 homes to advise and to facilitate communication and cooperation  
12 between personnel of the home and the residents. Administrators,  
13 employees of the home, residents, friends and relatives of the  
14 residents, representatives of the residents, and employees from  
15 appropriate state and federal agencies shall be invited and  
16 encouraged to attend such meetings.

17       SECTION 2.       AMENDATORY       63 O.S. 2011, Section 1-890.3, as  
18 last amended by Section 1, Chapter 31, O.S.L. 2015 (63 O.S. Supp.  
19 2017, Section 1-890.3), is amended to read as follows:

20       Section 1-890.3. A. The State Board of Health shall promulgate  
21 rules necessary to implement the provisions of the Continuum of Care  
22 and Assisted Living Act. Such rules shall include, but shall not be  
23 limited to:

- 1        1. A uniform comprehensive resident screening instrument to  
2 measure the needs and capabilities of residents in all settings and  
3 to determine appropriate placements of residents;
- 4        2. Physical plant requirements meeting construction and life  
5 safety codes, with provisions accommodating resident privacy and  
6 independence in assisted living centers and in assisted living  
7 components of continuum of care facilities based on the variable  
8 capabilities of residents;
- 9        3. Staffing levels responsive to the variable needs of  
10 residents, with provisions for sharing of staff between components  
11 in a continuum of care facility;
- 12        4. Standards for measuring quality outcomes for residents;
- 13        5. Provisions for individualized services chosen by and  
14 designed for each resident;
- 15        6. Provisions to prohibit facility staff from disclosing a  
16 resident's financial information to third parties without written  
17 consent of the resident or the designated representative of the  
18 resident;
- 19        7. Procedures for inspections and investigations of licensed  
20 entities to ensure compliance with the Continuum of Care and  
21 Assisted Living Act and rules promulgated by the Board;
- 22        8. Enumeration of resident rights and responsibilities to be  
23 observed by each facility and its staff. Such resident rights shall  
24 include the freedom of choice regarding any personal attending

1 physicians and all other providers of medical services and supplies  
2 without a financial penalty or fee charged by the assisted living  
3 center;

4 9. Provisions for a surety bond or deposit from each applicant  
5 in an amount sufficient to guarantee that obligations to residents  
6 will be performed, with provisions for reduction or waiver of the  
7 surety bond or deposit when the assets of the applicant or its  
8 contracts with other persons are sufficient to reasonably ensure the  
9 performance of its obligations;

10 10. Provisions for the development of a consumer guide or  
11 similar resource to be posted on the Internet website of the State  
12 Department of Health to assist individuals and families in  
13 understanding the services provided by assisted living centers and  
14 to compare and select a facility; ~~and~~

15 11. Provisions for posting results of routine inspections and  
16 any complaint investigations of each assisted living center on the  
17 Internet website of the Department. Such information shall be  
18 regularly updated to include the facility's plan of correction and  
19 to indicate when a violation of a licensing regulation was corrected  
20 by the facility;

21 12. Provisions to be effective on or before November 1, 2022,  
22 requiring the availability of alternative power for heating systems  
23 in assisted living centers that provide services to fifty or more  
24 individuals. Exceptions shall be allowed for assisted living

1 centers that can demonstrate financial hardship and waivers shall be  
2 granted for assisted living centers connected by a corridor to an  
3 assisted living center with a generator. For purposes of this  
4 section, "financial hardship" means that the state tax returns of  
5 the assisted living center demonstrate three (3) consecutive years  
6 of net operating loss. Such losses shall be determined solely by  
7 reference to Section 172 of the Internal Revenue Code, 26 U.S.C.,  
8 with the exception that the terms "net operating loss" and "taxable  
9 income" shall be replaced with "Oklahoma net operating loss" and  
10 "Oklahoma taxable income"; and

11 13. Provisions requiring the filing of an evacuation plan with  
12 the county emergency management department and the local fire  
13 department.

14 B. The nursing care service of a continuum of care facility  
15 shall be subject to the requirements, procedures and remedies set  
16 out in the Nursing Home Care Act, including provisions relating to  
17 resident rights.

18 C. The adult day care component of a continuum of care facility  
19 shall be subject to requirements and procedures specified under the  
20 Adult Day Care Act.

21 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1942, is  
22 amended to read as follows:

23 Section 1-1942. The Department shall ~~have the power to~~ adopt  
24 rules and regulations in furtherance of the purpose of ~~this act~~ the

1 Nursing Home Care Act. Such rules shall include, but not be limited  
2 to:

3 1. Provisions to be effective on or before November 1, 2022,  
4 requiring the availability of alternative power for heating systems  
5 in nursing facilities, including facilities that provide memory care  
6 services, that provide services to fifty or more individuals.

7 Exceptions shall be allowed for nursing facilities that can  
8 demonstrate financial hardship and waivers shall be granted for  
9 nursing facilities connected by a corridor to a nursing facility  
10 with a generator. For purposes of this section, "financial  
11 hardship" means that the state tax returns of the residential care  
12 home demonstrate three (3) consecutive years of net operating loss.

13 Such losses shall be determined solely by reference to Section 172  
14 of the Internal Revenue Code, 26 U.S.C., with the exception that the  
15 terms "net operating loss" and "taxable income" shall be replaced  
16 with "Oklahoma net operating loss" and "Oklahoma taxable income";  
17 and

18 2. Provisions requiring the filing of an evacuation plan with  
19 the county emergency management department and the local fire  
20 department.

21 SECTION 4. NEW LAW A new section of law to be codified  
22 in the Oklahoma Statutes as Section 2357.404 of Title 68, unless  
23 there is created a duplication in numbering, reads as follows:

24

1       A. For tax years beginning on or after December 31, 2018, there  
2 shall be allowed a credit against the tax imposed by Section 2355 of  
3 this title for fifty percent (50%) of expenses incurred by a  
4 qualified facility to provide alternative power in compliance with  
5 state regulatory requirements.

6       B. As used in this section:

7       1. "Alternative power expenses" means amounts paid by a  
8 qualified facility to comply with the requirements of paragraph 2 of  
9 subsection A of Section 1, paragraph 12 of subsection A of Section 2  
10 and paragraph 1 of Section 3 of this act; and

11       2. "Qualified facility" includes any assisted living center  
12 defined in Section 1-890.2, nursing facility defined in Section 1-  
13 1902 and residential care home defined in Section 1-820 of Title 63  
14 of the Oklahoma Statutes.

15       C. The credit allowed by subsection A of this section shall be  
16 nonrefundable.

17       D. Any credits allowed but not used in any tax year may be  
18 carried over in order to each of the five (5) tax years following  
19 the year of qualification.

20       SECTION 5. This act shall become effective November 1, 2018.

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