

SENATE CHAMBER
STATE OF OKLAHOMA

DISPOSITION

FLOOR AMENDMENT

No. _____

COMMITTEE AMENDMENT

(Date)

Mr./Madame President:

I move to amend Senate Bill No. 890, by substituting the attached floor substitute for the title, enacting clause and entire body of the measure.

Submitted by:

Senator Smalley

Smalley-DC-FS-Req#2023
3/7/2019 11:39 AM

(Floor Amendments Only) Date and Time Filed: _____

Untimely

Amendment Cycle Extended

Secondary Amendment

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 FLOOR SUBSTITUTE
4 FOR

5 SENATE BILL NO. 890

By: Smalley and David of the
Senate

6 and

7 Roberts (Sean) of the House

8
9 FLOOR SUBSTITUTE

10 An Act relating to statutory terms; amending 10 O.S.
11 2011, Section 1408, 1410, 1411, 1414, 1414.1, 1415,
12 1415.1, 1416, 1417, 1417.1, 1425 and 1430.20, which
13 relate to children; updating terms; deleting
14 definition; clarifying language; making language
15 gender-neutral; amending 10A O.S. 2011, Section 2-7-
16 502, which relates to Children and Juvenile Code;
17 updating terms; amending 10A O.S. 2011, Section 2-7-
18 503, as amended by Section 7, Chapter 362, O.S.L.
19 2014 (10A O.S. Supp. 2018, Section 2-7-503), which
20 relates to Children and Juvenile Code; updating term;
21 amending 10A O.S. 2011, Section 2-7-601, as amended
22 by Section 3, Chapter 234, O.S.L. 2016 (10A O.S.
23 Supp. 2018, Section 2-7-601), which relates to the
24 Office of Juvenile Affairs' powers and duties;
updating term; amending 21 O.S. 2011, Sections 152,
643, 701.10b and 833, which relate to crimes and
punishments; updating terms; amending 22 O.S. 2011,
Section 1161, as last amended by Section 1, Chapter
375, O.S.L. 2017 (22 O.S. Supp. 2018, Section 1161),
which relates to criminal procedure; updating term;
amending 22 O.S. 2011, Section 1175.3, as amended by
Section 1, Chapter 300, O.S.L. 2015 (22 O.S. Supp.
2018, Section 1175.3), which relates to criminal
procedure; updating term; amending 22 O.S. 2011,
Sections 1175.5 and 1175.6, which relate to criminal
procedure; updating term; updating statutory
references; amending 22 O.S. 2011, Section 1175.6a,

1 as last amended by Section 2, Chapter 290, O.S.L.
2 2018 (22 O.S. Supp. 2018, Section 1175.6a), which
3 relates to criminal procedure; updating term;
4 amending 22 O.S. 2011, Sections 1175.6b and 1175.6c,
5 which relate to criminal procedure; updating term;
6 amending 25 O.S. 2011, Section 40; updating term;
7 deleting obsolete date; directing certain use of
8 language; amending 30 O.S. 2011, Section 1-111, which
9 relates to guardian and ward; updating term; amending
10 43A O.S. 2011, Section 1-103, as last amended by
11 Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp.
12 2018, Section 1-103), which relates to mental health;
13 deleting term; amending 43A O.S. 2011, Section 10-
14 103, as amended by Section 1, Chapter 39, O.S.L. 2016
15 (43A O.S. Supp. 2018, Section 10-103), which relates
16 to mental health; deleting term; amending 43A O.S.
17 2011, Section 10-104, as amended by Section 1,
18 Chapter 318, O.S.L. 2016 (43A O.S. Supp. 2018,
19 Section 10-104), which relates to mental health;
20 updating term; amending 47 O.S. 2011, Section 1104.1,
21 which relates to motor vehicles; updating terms;
22 amending 56 O.S. 2011, Sections 198.11c, 602, 1017.2,
23 1017.3, 1025.1 and 1030.1, which relate to poor
24 persons; updating terms; modifying definitions;
amending 56 O.S. 2011, Section 2002, as last amended
by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
2018, Section 2002), which relates to poor persons;
updating terms; amending 56 O.S. 2011, Sections 343,
347, 530.2, 530.3, 530.6 and 367.3, which relate to
poor persons; updating terms; amending 62 O.S. 2011,
Section 57.32, which relates to the Building Bonds
Commission; updating term; amending 63 O.S. 2011,
Sections 1-1925.2, 1-219, 1-222.1 and 1-222.2, which
relate to public health and safety; updating terms;
amending 63 O.S. 2011, Section 1-502.1, as amended by
Section 1, Chapter 246, O.S.L. 2013 (63 O.S. Supp.
2018, Section 1-502.1), which relates to public
health and safety; updating term; amending 63 O.S.
2011, Sections 1-533 and 1-851.1, which relate to
public health and safety; updating term; amending 63
O.S. 2011, Section 1-1902, as amended by Section 1,
Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2018, Section
1-1902), which relates to public health and safety;
updating terms; amending 63 O.S. 2011, Section 1-
1912, as last amended by Section 1, Chapter 251,
O.S.L. 2014 (63 O.S. Supp. 2018, Section 1-1912),
which relates to public health and safety; updating

1 term; amending 63 O.S. 2011, Sections 330.51 and
2 5026, which relates to public health and safety;
3 updating term; amending 70 O.S. 2011, Section 6-105,
4 as amended by Section 1, Chapter 78, O.S.L. 2012 (70
5 O.S. Supp. 2018, Section 6-105), which relates to
6 schools; updating term; amending 74 O.S. 2011,
7 Section 255, which relates to state government;
8 updating term; updating statutory name; and providing
9 an effective date.

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

11 SECTION 1. AMENDATORY 10 O.S. 2011, Section 1408, is
12 amended to read as follows:

13 Section 1408. A. "~~Mentally retarded person~~ Individual with
14 intellectual disability" as used in Sections 1406 through 1424 of
15 this title means a person who has significantly subaverage
16 functioning, ~~IQ~~ intelligence quotient of less than ~~70~~ seventy (70),
17 manifested before the age ~~18~~ of eighteen (18) and existing
18 concurrently with related limitations in two or more of the
19 following applicable adaptive skill areas:

- 20 1. Communication;
- 21 2. Self-care;
- 22 3. Home living;
- 23 4. Social skills;
- 24 5. Use of community resources;
6. Self-direction;
7. Health and safety;

1 8. Functional academics;

2 9. Leisure; and

3 10. Work.

4 B. "Resident" as used in Sections 1406 through 1424 of this
5 title shall mean a person admitted to and in residence in any of the
6 institutions named in Section 1406 of this title, or on a vacation
7 or extended vacation status from such institution.

8 C. ~~"Accreditation Council for Services for Mentally Retarded
9 and Other Developmentally Disabled Individuals" means the national
10 private nonprofit organization established for the purpose of
11 promoting quality services for mentally retarded persons which is
12 incorporated under that name.~~

13 ~~D.~~ "Developmental disability" as used in Sections 1406 through
14 1424 of this title means a severe, chronic disability of a person
15 which:

16 1. Is attributable to a mental or physical impairment or
17 combination of mental and physical impairments, such as ~~mental~~
18 ~~retardation~~ intellectual developmental disorder, cerebral palsy, or
19 autism;

20 2. Is manifested before the person attains twenty-two (22)
21 years of age;

22 3. Is likely to continue indefinitely;

23 4. Results in substantial functional limitations in three or
24 more of the following areas of major life activity:

- a. self-care,
- b. receptive and expressive language,
- c. learning,
- d. mobility,
- e. self-direction,
- f. capacity for independent living, and
- g. economic self-sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated. The term developmental disability shall not include mentally ill persons, as those persons are defined by Section 1-103 of Title 43A of the Oklahoma Statutes, whose sole disability is mental illness.

~~E. D.~~ D. Nothing in subsection ~~D~~ C of this section shall be construed to render persons who are receiving services upon ~~the effective date of this act~~ September 1, 1991, through programs and services for ~~mentally retarded persons~~ individuals with intellectual disability offered by the Department of Human Services as ineligible for such services. The Department of Human Services may provide, within the limitations of funds and other resources available for such purpose, programs and services for persons with developmental disabilities who are not presently served by the Department of Human Services.

1 SECTION 2. AMENDATORY 10 O.S. 2011, Section 1410, is
2 amended to read as follows:

3 Section 1410. (a) All personal properties, records, equipment,
4 and supplies now owned and in use by the above-named institutions
5 shall be transferred to and become the property of the ~~Commission~~
6 for Department of Human Services.

7 (b) All contracts, leases, and other such agreements as may have
8 been entered into by the Board of Mental Health and Substance Abuse
9 Services or any of its agents, relative to the institutions referred
10 to in Section 1406 of this title and such duties and
11 responsibilities as are in effect on ~~the effective date of this act~~
12 July 1, 1963, shall be assumed by and become binding upon the
13 ~~Commission for Human Services and the~~ Department of Human Services.

14 (c) All unexpended funds to the credit of the above-named
15 institutions and all unexpended appropriations for such institutions
16 shall be transferred by the State Treasurer to the Department of
17 Human Services and placed in a separate fund. The fund shall be
18 known as the "Fund for ~~Mentally Retarded~~ Intellectual Disabilities."

19 SECTION 3. AMENDATORY 10 O.S. 2011, Section 1411, is
20 amended to read as follows:

21 Section 1411. (a) The ~~Commission~~ Director of Human Services is
22 authorized and directed to promulgate and adopt all rules and
23 regulations necessary to carry out the provisions of ~~this act~~
24 Section 1406 et seq. of this title.

1 (b) The ~~Commission~~ Director shall establish and maintain such
2 methods of administration (including methods relating to the
3 establishment and maintenance of personnel standards on a merit
4 basis) as are necessary for the proper and efficient administration
5 of the programs and institutions named in Section ~~1 of this act~~ 1406
6 of this title; shall maintain records and prepare reports; shall
7 prescribe a uniform accounting system; and shall exercise any other
8 powers necessary to carry out the provisions of ~~this act~~ Section
9 1406 et seq. of this title.

10 (c) The ~~Commission~~ Director may provide for the repair,
11 alterations, or remodeling of any existing building at the above-
12 named institutions, or at any other institution under its
13 jurisdiction, necessary for the proper and efficient administration
14 and to conserve the properties and the state's investment in such
15 properties. Funds available for operating expenses and revolving
16 funds of institutions under the control of the ~~Commission~~ Department
17 may be used for such purposes, and may also be expended for land and
18 other capital outlay, whenever the ~~Commission~~ Department finds the
19 same is needed for the proper discharge of its responsibilities.
20 Any county may convey to the State of Oklahoma, for the use of any
21 such institution, land owned but not needed by the county; and such
22 conveyance may be made without consideration, appraisal,
23 advertisement for bids, or offer to the highest bidder, if the board
24

1 of county commissioners determines that the same will not be to the
2 detriment of the county.

3 (d) The ~~Commission~~ Department is authorized to receive grants of
4 federal funds for the purpose of combating or preventing ~~mental~~
5 ~~retardation~~ intellectual disabilities, including but not limited to
6 funds for the treatment, care, rehabilitation, or training of ~~the~~
7 ~~mentally retarded~~ individuals with intellectual disabilities, or for
8 the establishment or expansion of any programs or facilities or
9 research projects relating to ~~the mentally retarded~~ individuals with
10 intellectual disabilities, or for construction of research centers
11 and facilities for ~~the mentally retarded~~ individuals with
12 intellectual disabilities, and is authorized to cooperate in any
13 reasonable manner with the federal agency or agencies granting such
14 federal funds for such purposes, including compliance with any
15 conditions prescribed by federal authorities for the granting of
16 such funds. The ~~Commission~~ Department may serve as the sole
17 designated state agency for receiving, disbursing, or administering
18 federal funds for any of the aforesaid purposes, provided federal
19 law requires such an agency and the ~~Commission~~ Department is
20 eligible to be such an agency under federal law. Provided, however,
21 that this section shall not prevent any other agency from receiving,
22 disbursing, or administering federal grants for any of the aforesaid
23 purposes, if authorized or required by federal law.

24

1 (e) The ~~Commission~~ Department shall establish the duties and fix
2 the compensation of the superintendent and other personnel needed at
3 each of the institutions referred to in Section ~~1 of this act~~ 1406
4 of this title. Appointments to all such positions shall be made by
5 the Director ~~subject to the approval of the Commission~~.

6 (f) The ~~Commission~~ Director shall have authority to provide for
7 the expenditure of all funds for the administration and operations
8 of the institutions specified in Section ~~1 of this act~~ 1406 of this
9 title and for a compliance with the provisions of ~~this act~~ Section
10 1406 et seq. of this title.

11 SECTION 4. AMENDATORY 10 O.S. 2011, Section 1414, is
12 amended to read as follows:

13 Section 1414. A. 1. ~~Mentally retarded persons~~ Individuals
14 with intellectual disability who are legal residents of this state
15 and who have a mental age not above that of the average nine-year-
16 old child, as determined by psychological examination, may be
17 admitted to an institution named in Section 1406 of this title or
18 provided community services, if available, on a voluntary basis only
19 upon written application to the Director on forms provided for such
20 purpose. Other ~~mentally retarded persons~~ individuals with
21 intellectual disability who are residents of this state and who are
22 above such mental age may be admitted or provided community
23 services, on a voluntary basis only, upon recommendation of the
24 superintendent of the institution and approval of the Director.

1 2. The application shall be signed by any parent having legal
2 custody of such person, a guardian appointed by a court, or other
3 legal custodian of such person.

4 3. The psychological examination provided for in this section
5 shall be on forms provided by the Department and must be completed
6 before an application can be approved and the applicant admitted to
7 the institution.

8 B. Release of a resident of any of the institutions named in
9 Section 1406 of this title shall be subject to such reasonable rules
10 and conditions as may be prescribed by the ~~Commission for~~ Director
11 of Human Services and shall be made only to the parent, guardian
12 appointed by a court, or legal custodian of the resident; provided,
13 however, a resident eighteen (18) years of age or older who has not
14 been found by a court to be incompetent or incapacitated may request
15 and obtain such person's own release.

16 SECTION 5. AMENDATORY 10 O.S. 2011, Section 1414.1, is
17 amended to read as follows:

18 Section 1414.1. A. In addition to the admissions requirements
19 of Section 1414 of this title, the Greer Center Facility located on
20 the grounds of the Northern Oklahoma Resource Center of Enid in
21 Enid, Oklahoma, shall be established as a separate entity from the
22 Northern Oklahoma Resource Center of Enid and further shall provide
23 for the admission of persons who have been dually diagnosed as
24 follows:

1 1. Primary diagnosis of ~~mental retardation~~ an intellectual
2 disability by a psychologist, physician or psychiatrist. The
3 diagnosis shall be in accordance with any statutory requirements and
4 shall include intellectual evaluation, adaptive behavior evaluation,
5 and evidence that ~~retardation~~ the disability occurred within the
6 developmental period. Preference shall be given for those
7 individuals whose ~~retardation~~ disability level falls within the mild
8 and moderate ranges; and

9 2. Secondly, clinical evidence of behavioral or emotional
10 problems pursuant to a formal, written evaluation by a psychologist,
11 psychiatrist or physician describing the nature of the problem, the
12 frequency of occurrence of the problem, any prior treatment efforts
13 and reasons why the applicant cannot receive appropriate treatment
14 in the applicant's current environment and a secondary diagnosis of
15 mental illness in accordance with the Diagnostic and Statistical
16 Manual of Mental Disorders, as revised and published by the American
17 Psychiatric Association.

18 B. A person shall not be considered for voluntary admission
19 into the Greer Center Facility unless it can be clinically
20 demonstrated that the behavior of the person does not pose an
21 unreasonable risk of injury, death or sexual assault to others or an
22 unreasonable risk of injury or death to self. Persons considered
23 for admission shall not be considered by a psychologist,
24 psychiatrist, or physician as homicidal or suicidal and shall not

1 have exhibited homicidal or suicidal tendencies for six (6) months
2 prior to application for admission.

3 C. An applicant who requires skilled nursing care shall not be
4 admitted to the Greer Center Facility. Applicants having a medical
5 condition which is degenerative in nature that will require skilled
6 nursing shall be considered on a case by case basis to ensure that
7 sufficient staff is available to ensure quality of care. If an
8 applicant has any existing medical or surgical condition that is
9 correctable, the condition shall be remedied by the referring
10 facility before admission to the Greer Center Facility is
11 considered.

12 D. Any person seeking admission to the Greer Center Facility
13 for treatment who qualifies under subsection A of this section,
14 subject to the availability of space, shall be admitted. All
15 persons admitted to the Greer Center Facility shall submit to the
16 director of the Greer Center Facility a referral packet that
17 contains at a minimum, the following information or records:

- 18 1. Results of a current physical exam;
- 19 2. Recent physician orders and progress notes for up to one (1)
20 year, if available;
- 21 3. Recent nursing notes for up to one (1) year, if available;
- 22 4. Fact sheet (medical records);
- 23 5. Legal papers, including, but not limited to, birth
24 certificate, marriage certificate and guardianship;

1 6. Social history, with a recent social evaluation or update
2 within one (1) year;

3 7. Psychological exam administered or updated within ninety
4 (90) days of referral;

5 8. Dental records;

6 9. Immunization record;

7 10. Multidisciplinary progress notes for up to one (1) year, if
8 available;

9 11. Medical and medication history; and

10 12. Individual Habilitation Plan or Care Plan, if available.

11 E. The Greer Center Admissions Committee shall consist of a
12 representative from the Greer Center Facility, and other
13 representatives selected by the Director of the Department of Human
14 Services. The Committee shall make decisions regarding admissions
15 to the programs of the Greer Center Facility. The Committee may
16 request additional information concerning an applicant from the
17 referring agency or participation by referring agency personnel as
18 necessary.

19 F. Persons entering the Greer Center Facility shall receive a
20 comprehensive evaluation of their intellectual functioning, adaptive
21 behavior skills, and mental health status, and shall receive a
22 continuous active treatment program, which includes aggressive,
23 consistent implementation of a program of specialized and generic
24 training, treatment, health services and related services. The

1 evaluation and assessment shall be completed within thirty (30) days
2 of admission to the Greer Center Facility.

3 G. After the evaluation and assessment by the Greer Center
4 Facility, staff shall present the referral packet of the individual
5 and their findings to the Greer Center Admissions Committee with a
6 recommendation for continued admission or alternate treatment.

7 1. The Greer Center Admissions Committee shall:

8 a. make decisions regarding continued admission, and

9 b. notify the Department of Human Services, and the
10 referring agency in writing, stating specifically the
11 decisions of the Committee regarding admission,
12 including specific reasons for denial of admission.

13 2. If admission of an applicant is not continued at the Greer
14 Center Facility after undergoing the evaluation process, the
15 referring agency shall reimburse the Department of Human Services
16 for the number of bed days used at the Medicaid rate for that unit.
17 If admission of an applicant is continued, the applicant shall be
18 certified for Medicaid reimbursement from the initial date of
19 admission.

20 H. Individuals who have been admitted and served by the Greer
21 Center Facility shall be eligible for readmission services on the
22 same basis as an individual initially seeking services.

23 I. In addition to other discharge procedures and requirements
24 provided by law, the interdisciplinary team of the Greer Center

1 Facility shall have recommended discharge based upon a determination
2 that the mental or physical condition of the individual prevents the
3 individual from receiving appropriate services at the Greer Center
4 Facility or that the individual has made progress in behavioral and
5 emotional habilitation goals such that the individual no longer
6 requires the specialized resources at the Greer Center Facility, and
7 may function in a less restrictive setting.

8 J. A referral to discharge is made to the Greer Center
9 Discharge Committee, and the final decision to discharge is made by
10 the Greer Center Discharge Committee.

11 K. The Greer Center Discharge Committee shall:

12 1. Consist of a representative from the Greer Center Facility
13 and representatives selected by the Director of the Department of
14 Human Services; and

15 2. Review the discharge referral and related materials to
16 ensure that the individual can safely reside in a less restrictive
17 setting with appropriate supports.

18 L. The ~~Commission for~~ Director of Human Services is authorized
19 and hereby directed to promulgate and amend rules necessary to
20 implement the provisions of this section.

21 SECTION 6. AMENDATORY 10 O.S. 2011, Section 1415, is
22 amended to read as follows:

23 Section 1415. A. The voluntary placement of a child in an
24 institution for ~~the mentally retarded~~ individuals with intellectual

1 disabilities by the child's parents shall not, by itself, abrogate
2 the rights and authority of the parents.

3 B. 1. Except as otherwise provided in this paragraph, no later
4 than January 1, 1988, all residents of the institutions specified in
5 Section 1406 of this title and all residents of other residential
6 facilities for ~~mentally retarded persons~~ individuals with
7 intellectual disabilities operated by the Department of Human
8 Services who are eighteen (18) years of age or older shall have a
9 guardian appointed by a court. A guardian shall not be required for
10 a resident of ~~said~~ the institution eighteen (18) years of age or
11 older for whom a guardian is not recommended as provided in
12 subsection C of this section or who has not been found to be
13 incompetent or incapacitated by the court.

14 2. The guardian shall be the parent of the resident or a
15 relative or other adult person appointed by a court to be the
16 guardian of the resident or former resident. A parent whose
17 parental rights have not been terminated by a court, and who is
18 otherwise qualified to serve as guardian, shall have first priority
19 for appointment as guardian. If a parent is not available or
20 willing to serve, a relative who is otherwise qualified to serve as
21 guardian shall have next priority for appointment as guardian.

22 3. The guardian shall not be the superintendent or other
23 employee of the institution or residential facility in which ~~said~~
24 the person resides or an employee of the Department of Human

1 Services, except where the superintendent or employee is also the
2 parent or relative of the resident or former resident. A
3 superintendent may serve as guardian ad litem as provided in
4 subsection D of this section.

5 C. 1. An assessment of the competency of a resident of an
6 institution or residential facility for ~~the mentally retarded~~
7 individuals with intellectual disabilities operated by the
8 Department shall be completed within six (6) months:

- 9 a. prior to the eighteenth birthday of the resident, ~~or,~~
- 10 b. after institutionalization if the resident is an adult
11 at the time of institutionalization, ~~or~~
- 12 c. after ~~the effective date of this act~~ June 30, 1987, if
13 the resident is an adult who was institutionalized
14 prior to ~~the effective date of this act~~ June 30, 1987,
15 and for whom no competency assessment has been
16 performed or no guardian appointed.

17 2. The assessment shall be made by a panel composed of the
18 resident's social worker, the attending physician of the resident,
19 and a licensed psychiatrist or licensed psychologist with training
20 and experience in the area of ~~mental retardation~~ intellectual and
21 developmental disabilities. The panel shall make a recommendation
22 to the superintendent as to whether or not the condition of the
23 resident is such that appointment of a guardian is warranted. Upon
24 the finding by the panel that appointment of a guardian is

1 warranted, the superintendent shall initiate guardianship
2 proceedings.

3 D. If the parents or other relative of the resident are unable
4 to serve as guardian or cannot be located, the Department may in a
5 guardianship proceeding request the court to appoint a guardian ad
6 litem until such time as a guardian is appointed by a court. If the
7 court is satisfied, after inquiry into the matter, that a parent or
8 other relative qualified and willing to serve as guardian cannot
9 with due diligence be located, the court may appoint a guardian ad
10 litem.

11 1. The court may appoint as guardian ad litem:

12 a. a qualified relative or other adult person; or

13 b. a public guardian if available; or

14 c. the superintendent of the facility in which the
15 resident resides.

16 In all cases, a qualified relative or other qualified adult
17 shall have priority over the Department of Human Services for
18 appointment as a guardian.

19 2. The appointment of a guardian ad litem shall be as guardian
20 ad litem of the person only of ~~said~~ the resident, and the court
21 shall set forth in its appointment order the specific powers and
22 duties of the guardian ad litem. The guardian ad litem shall not
23 change the place of residence of the resident unless authorized by
24 the court.

1 3. The guardian ad litem may serve without bond.

2 E. The Department of Human Services may provide assistance to
3 residents and former residents of the institutions named in Section
4 1406 of this title as necessary to assure compliance with the
5 requirements of subsection B of this section, including filing a
6 petition to have a guardian of the person appointed for the
7 resident.

8 F. The superintendent of the institution shall have the custody
9 of any resident during the time ~~said~~ the resident remains in the
10 institution and shall be responsible for the care, treatment, and
11 education of the resident during the time ~~said~~ the resident remains
12 in the institution.

13 SECTION 7. AMENDATORY 10 O.S. 2011, Section 1415.1, is
14 amended to read as follows:

15 Section 1415.1. A. 1. All institutions named in Section 1406
16 of this title within the Department of Human Services, which are
17 established primarily for the purpose of caring for ~~the mentally~~
18 ~~retarded~~ individuals with intellectual disabilities, shall maintain
19 an adequate clinical record of each resident. Such record shall
20 contain initial social, psychological, and medical evaluation
21 results, as well as interval reports of the resident's condition,
22 the treatment and training prescribed, and the progress shown.

23 2. The ~~Commission for~~ Director of Human Services shall
24 establish an ombudsman program for each of the institutions and

1 residential facilities for ~~the mentally retarded~~ individuals with
2 intellectual disabilities operated by the Department, which shall
3 include, but not be limited to, an appeals procedure for the
4 resolution of grievances or complaints of the residents of the
5 institutions and facilities and the grievances or complaints of the
6 parents or the court-appointed guardians of the residents.

7 B. The educational and physical capabilities of each resident
8 shall be assessed at least one time each year by appropriate
9 professional personnel for the purpose of determining such further
10 treatment or training as may be required. A report of the findings
11 and recommendations of such assessments shall be filed in the
12 clinical record of the resident. Failure on the part of the
13 superintendent of the institution to institute a policy of annual
14 evaluations, if sufficient personnel are available, shall constitute
15 dereliction of duty.

16 C. When annual evaluations of a resident reflect improvement in
17 social or physical capabilities sufficient enough to permit the
18 resident to be released from the institution, either completely or
19 conditionally, the superintendent shall return such resident to the
20 resident's immediate family, or shall provide assistance for the
21 placement of the resident in some other appropriate residential
22 setting.

23

24

1 D. 1. The Department of Human Services may enter into
2 contracts for the development of residential settings and attendant
3 community services prior to the release of the resident.

4 2. The Department shall establish procedures which specify the
5 conditions and requirements for recipients of such contracts. In
6 establishing reimbursement rates for recipients of such contracts,
7 the Department may take into consideration any unusual or increased
8 costs of the recipient relating to the care and treatment of
9 ~~developmentally disabled~~ clients with developmental disabilities
10 including, but not limited to, workers' compensation costs.

11 3. A copy of these procedures shall be made available to any
12 person upon request.

13 E. 1. In addition to any other form of assistance provided,
14 the Department is authorized to pay stipends to eligible relatives
15 and certified volunteers for the sole purpose of acquiring legal
16 representation to initiate guardianship proceedings.

17 2. Financial guidelines and other criteria pertaining to
18 eligibility of relatives and certified volunteers applying for a
19 stipend shall be established by rules promulgated by the ~~Commission~~
20 Director.

21 F. Reports of the reviews of the administration of psychotropic
22 medications shall be made available to the parent or the court-
23 appointed guardian of a resident of the institutions. The parent or
24 the court-appointed guardian of a resident of the institution shall

1 have access to all clinical records pertaining to the condition,
2 treatment, training, and education of the resident which are
3 maintained at the institution, or elsewhere, by the Department of
4 Human Services.

5 SECTION 8. AMENDATORY 10 O.S. 2011, Section 1416, is
6 amended to read as follows:

7 Section 1416. A resident at an institution named in Section
8 1406 of this title is liable for his or her care and treatment.
9 This claim of the state for such care and treatment shall constitute
10 a valid indebtedness against ~~said~~ the resident and his or her estate
11 and shall not be barred by any statute of limitations. At the death
12 of ~~said~~ the resident this claim shall be allowed and paid as other
13 lawful claims against the estate. Persons making application for
14 admission of ~~a mentally retarded person~~ an individual with
15 intellectual disability to ~~said~~ the institution are also liable for
16 the care and treatment of ~~said~~ the resident, provided that such
17 persons are legally obligated to support ~~said~~ the resident. No
18 person shall be liable for ~~said~~ care and treatment solely on the
19 grounds that ~~said~~ the person has been appointed guardian of ~~said~~ the
20 resident. Provided, further, that no admission or detention of a
21 ~~mentally retarded person~~ an individual with intellectual disability
22 in ~~said~~ the institution shall be limited or conditioned in any
23 manner by the financial status or ability to pay of ~~a mentally~~

24

1 ~~retarded person~~ an individual with intellectual disability, his or
2 her estate, or any relative.

3 SECTION 9. AMENDATORY 10 O.S. 2011, Section 1417, is
4 amended to read as follows:

5 Section 1417. (a) The Department of Human Services may
6 establish and direct such mental hygiene clinics and child guidance
7 clinics in local areas of the state where such clinics are deemed
8 most advantageous for the public welfare as a distinct part of the
9 general health program.

10 (b) Outpatient facilities and day care centers to be operated in
11 conjunction with state schools for ~~the mentally retarded~~ individuals
12 with intellectual disabilities shall be established, maintained and
13 operated by the Department to provide outpatient care for ~~mentally~~
14 ~~retarded persons~~ individuals with intellectual disabilities. The
15 number and location of such facilities and day care centers shall be
16 determined by the ~~Oklahoma Public Welfare Commission~~ Director of
17 Human Services.

18 SECTION 10. AMENDATORY 10 O.S. 2011, Section 1417.1, is
19 amended to read as follows:

20 Section 1417.1. A. Payments under the Medicaid Program shall
21 be made to reserve a bed in an intermediate care facility for ~~the~~
22 ~~mentally retarded~~ individuals with intellectual disabilities
23 (ICF/IID) during the absence of a resident, other than for periods
24 of inpatient hospitalization, pursuant to the provisions of 42

1 C.F.R. 447.40. Such payments for periods of absence shall be
2 limited to payment for a maximum of sixty (60) days absent in a
3 calendar year.

4 B. The Department of Human Services shall amend the Medicaid
5 State Plan to conform with the requirements of this section.

6 SECTION 11. AMENDATORY 10 O.S. 2011, Section 1425, is
7 amended to read as follows:

8 Section 1425. (a) (1) The Department of ~~Public Welfare~~ Human
9 Services and a county (through its board of county commissioners)
10 may enter into an agreement for the operation of a Community ~~Mental~~
11 ~~Retardation~~ Complex Facility, where day care services, beneficial or
12 necessary for ~~mentally retarded persons~~ individuals with
13 intellectual disabilities and their families, may be provided.

14 (2) If a building for the facility is constructed, the county
15 shall be required to provide the site or the cost of the site; and
16 not less than sixteen percent (16%) of the cost of constructing the
17 building and of the cost of equipment for the facility. If space
18 for the facility is rented, the county shall be required to pay the
19 rental, and not less than sixteen percent (16%) of the cost of
20 equipment for the facility.

21 (3) The cost of operating the facility shall be paid by the
22 Department and the county in such proportions as may be specified in
23 the agreement.

24

1 (4) The facility shall be operated in accordance with standards,
2 rules and regulations adopted by the ~~Oklahoma Public Welfare~~
3 ~~Commission~~ Department.

4 (b) A similar agreement with any other non-profit public or
5 private agency or organization may be entered into by the Department
6 ~~of Public Welfare~~. Such agency or organization shall be subject to
7 the same requirements as those hereinabove specified for a county.

8 SECTION 12. AMENDATORY 10 O.S. 2011, Section 1430.20, is
9 amended to read as follows:

10 Section 1430.20. A. Rules promulgated by the ~~Commission for~~
11 Director of Human Services regarding the rights and responsibilities
12 of residents shall be available in each group home subject to the
13 provisions of the Group Homes for Persons with Developmental or
14 Physical Disabilities Act, and each resident and guardian or
15 advocate of the resident, if any, shall be provided a copy of these
16 rules prior to or upon admission. The provider or licensee shall
17 ensure that the staff is familiar with and observes the rights and
18 responsibilities enumerated in this section.

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

21 1. Every resident's civil and religious liberties, including
22 the right to independent personal decisions and knowledge of
23 available choices, shall not be infringed and the provider shall
24 encourage and assist in the exercise of these rights;

1 2. Every resident shall have the right to have private
2 communications and consultations with the physician, attorney or any
3 other person of the resident's choice, and may send and promptly
4 receive, unopened, the resident's personal mail;

5 3. Every resident shall have the right, without fear of
6 reprisal, to present grievances on behalf of the resident or others
7 to the provider's staff or administrator, to governmental officials
8 or to any other person, and to join with other residents or
9 individuals within or outside of the facility to work for
10 improvements in resident care;

11 4. Every resident shall have the right to manage his or her own
12 financial affairs, unless the resident delegates the responsibility,
13 in writing, to the provider. The resident shall have at least a
14 quarterly accounting of any personal financial transactions
15 undertaken in the resident's behalf by the provider during any
16 period of time the resident has delegated such responsibilities to
17 the provider;

18 5. Every resident shall have the right to receive adequate and
19 appropriate medical care consistent with established and recognized
20 medical practice standards within the community. Every resident
21 shall be fully informed by the resident's attending physician of the
22 resident's own medical condition and proposed treatment in terms and
23 language that the resident can understand, and shall have the right
24

1 to refuse medication and treatment after being fully informed of and
2 understanding the consequences of such actions;

3 6. Every resident shall receive respect and privacy in the
4 resident's medical care program. Case discussion, consultation,
5 examination and treatment shall remain confidential and shall be
6 conducted discreetly. Personal and medical records shall be
7 confidential;

8 7. Every resident shall have the right to retain and use his or
9 her personal clothing and possessions, unless prohibited by law, and
10 shall have the right to security in the storage and use of such
11 clothing and possessions;

12 8. Every resident shall have the right to be treated
13 courteously and respectfully and shall be furnished by the provider
14 with a written statement of the services and related charges;

15 9. Every resident shall be free from mental and physical abuse,
16 and free from physical and chemical restraints, except those
17 physical and chemical restraints which are authorized in writing by
18 a physician, in accordance with rules promulgated by the Department,
19 for a specified period of time;

20 10. Every resident shall receive a statement of the provider's
21 guidelines and an explanation of the resident's responsibility to
22 comply with all reasonable regulations of the group home and to
23 respect the personal rights and private property of the other
24 residents;

1 11. Every resident shall receive a statement that should they
2 be adjudicated incompetent, the above rights and responsibilities
3 shall be exercised by a court-appointed guardian;

4 12. No resident shall be required to perform services for a
5 provider, except for normal, shared household tasks;

6 13. Every resident shall have privacy for conjugal visits. A
7 resident may share a room with a spouse, if the spouse is residing
8 in the same group home; and

9 14. Every resident shall be entitled to all rights provided in
10 OAC 340:100-3-1.2.

11 C. No provider shall deny appropriate care on the basis of the
12 resident's source of payment.

13 D. Each provider shall provide appropriate staff training to
14 implement each resident's rights as stated in this section.

15 E. The rights enumerated in subsection B of this section may be
16 limited for residents of an alternative group home, as described in
17 OAC 340:100-5-22.6, if the resident has been placed in the
18 alternative group home pursuant to Section 1175.6b or Section
19 1175.6c of Title 22 of the Oklahoma Statutes, or if the resident has
20 ~~mental retardation~~ an intellectual disability and a current
21 community protection issue, which include, but are not limited to:

22 1. Allegation(s), charge, or conviction of a sexual offense;
23
24

1 2. A history of stalking or opportunistic behavior which
2 demonstrates a likelihood of committing a sexually violent or
3 predatory act;

4 3. A pattern of violence towards others;

5 4. A diagnosis of ~~mental retardation~~ an intellectual disability
6 and mental illness with ongoing episodes that are dangerous as
7 defined in Section 1175.1 of Title 22 of the Oklahoma Statutes; or

8 5. Evidence of commission of a violent crime.

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

1 G. Any employee of the Department of Human Services who
2 inspects any group home shall report any flagrant violations of ~~this~~
3 ~~act~~ Section 1430.1 et seq. of this title or any other statute to the
4 Director of Human Services, or a designee, who shall immediately
5 take whatever steps are necessary to correct the situation
6 including, when appropriate, reporting the violation to the district
7 attorney of the county in which the violation occurred.

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

13 SECTION 13. AMENDATORY 10A O.S. 2011, Section 2-7-502,
14 is amended to read as follows:

15 Section 2-7-502. A. Whenever a child who has been adjudicated
16 by the court as a child in need of supervision has been committed to
17 the Office of Juvenile Affairs, the Office may place the child in
18 the home of the child, the home of a relative of the child, foster
19 home, group home, transitional living program, independent living
20 program, community-based setting, rehabilitative facility or child
21 care facility under the operation of or licensure of the state, or
22 in a state school for ~~the mentally retarded~~ individuals with
23 intellectual disabilities if eligible for admission thereto. No
24

1 child in need of supervision shall be placed in an Office-operated
2 institution, other than a rehabilitative facility.

3 B. The Office of Juvenile Affairs may establish and maintain
4 one or more rehabilitative facilities to be used exclusively for the
5 custody of children in need of supervision. Each such facility
6 shall be, primarily, a nonsecure facility having as its primary
7 purpose the rehabilitation of children adjudicated to be in need of
8 supervision. Such facility shall have a bed capacity for no more
9 than twenty children, and shall minimize the institutional
10 atmosphere and prepare the child for reintegration into the
11 community. Provided however, that such facility may be designed and
12 operated as a secure facility used exclusively for children in need
13 of supervision whom the court has specifically found to be so
14 unmanageable, ungovernable and antisocial that no other reasonable
15 alternative exists for treatment or restraint other than placement
16 in such a secure facility. Such facility shall not rely on locked
17 rooms, fences, or physical restraints.

18 C. A child in need of supervision who has been found by a court
19 to be a minor in need of treatment shall be placed as provided by
20 Section 2-2-804 of this title and the Inpatient Mental Health and
21 Substance Abuse Treatment of Minors Act.

22 SECTION 14. AMENDATORY 10A O.S. 2011, Section 2-7-503,
23 as amended by Section 7, Chapter 362, O.S.L. 2014 (10A O.S. Supp.
24 2018, Section 2-7-503), is amended to read as follows:

1 Section 2-7-503. A. It is the intent of the Legislature of
2 this state to provide for the creation of all reasonable means and
3 methods that can be established by a state for:

- 4 1. The prevention of delinquency;
- 5 2. The care and rehabilitation of delinquent children; and
- 6 3. The protection of the public.

7 It is further the intent of the Legislature that this state, through
8 the Office of Juvenile Affairs, establish, maintain and continuously
9 refine and develop a balanced and comprehensive state program for
10 children who are potentially delinquent or are delinquent.

11 B. Except as provided in subsection C of this section, whenever
12 a child who has been adjudicated by the court as a delinquent child
13 has been committed to the Office of Juvenile Affairs, the Office
14 shall provide for placement pursuant to any option authorized by
15 paragraphs 1 through 7 of this subsection; provided, nothing in this
16 subsection shall be construed to establish a priority in regard to
17 the selection of an option or to mandate the exclusive use of one
18 particular option:

19 1. Place the child in a secure facility, including a collocated
20 secure facility, or other institution or facility maintained,
21 operated or contracted by the state for delinquent children if the
22 child has:

- 23 a. exhibited seriously violent, aggressive or assaultive
24 behavior,

1 b. committed a serious felony constituting violent,
2 aggressive and assaultive behavior,

3 c. habitually committed delinquent acts if such acts
4 would constitute felonies if committed by an adult,

5 d. committed multiple serious delinquent acts, or

6 e. violated any condition of probation or parole,

7 to the extent that it is necessary for the protection of the public.

8 For purposes of placement, all deferred prosecutions for serious,
9 habitual, violent, aggressive or assaultive crimes shall count
10 toward placement decisions;

11 2. Place the child in a facility maintained, operated or
12 contracted by the state for children, or in a foster home, group
13 home, transitional living program or community residential center;

14 3. Allow the child his or her liberty, under supervision, in an
15 independent living program;

16 4. Allow the child his or her liberty, under supervision,
17 either immediately or after a period in one of the facilities
18 referred to in paragraphs 1 and 2 of this subsection;

19 5. Place the child in a state school for ~~mentally retarded~~
20 individuals with intellectual disabilities, if the child is eligible
21 for admission thereto;

22 6. Place the child in any licensed private facility deemed by
23 the Office of Juvenile Affairs to be in the best interest of the
24 child; or

1 7. Place the child as provided by Section 2-2-804 of this title
2 and the Inpatient Mental Health and Substance Abuse Treatment of
3 Minors Act, if the delinquent child has been found by a court to be
4 in need of mental health or substance abuse treatment.

5 C. The Office shall place priority on the placement of
6 delinquent youth held in secure juvenile detention facilities.

7 D. Placement of a juvenile pursuant to this section or any
8 other provision of law shall be the responsibility of the Office of
9 Juvenile Affairs and shall occur as soon as reasonably possible
10 after adjudication and after the selected placement option becomes
11 available.

12 The court shall not have authority to require specific placement
13 of a juvenile in a time frame which would require the removal of any
14 other juvenile from such placement.

15 SECTION 15. AMENDATORY 10A O.S. 2011, Section 2-7-601,
16 as amended by Section 3, Chapter 234, O.S.L. 2016 (10A O.S. Supp.
17 2018, Section 2-7-601), is amended to read as follows:

18 Section 2-7-601. A. In addition to the other powers and duties
19 prescribed by law, the Office of Juvenile Affairs shall have the
20 following duties and powers with regard to juveniles placed in
21 Office-operated institutions and facilities:

22 1. Provide for the care, education, training, treatment and
23 rehabilitation of juveniles who are placed in the institutions and
24 facilities. The Office shall provide for a uniform system of

1 assessment of the reading ability of each juvenile upon initial
2 placement in an Office-operated institution or facility. The
3 assessment shall include, but not be limited to, the following
4 skills:

- 5 a. the level of word decoding skills of the juvenile,
- 6 b. the level of vocabulary and spelling ability of the
7 juvenile, and
- 8 c. the comprehension level of the juvenile.

9 The Office may give assistance to local school districts in
10 providing an education to such juveniles, may supplement such
11 education, and may provide facilities for such purposes. It shall
12 be the duty of the Office to assure that juveniles in the aforesaid
13 institutions and facilities receive educational services which
14 provide each juvenile with a balanced and comprehensive reading
15 program, which includes as its primary and foundational components:

- 16 (1) an organized, systematic, explicit skills program
17 that may include phonics, word recognition
18 strategies and other word decoding skills to
19 address the needs of the individual juvenile as
20 determined by the entry level needs assessment,
- 21 (2) a strong language arts and comprehension program
22 that includes a balance of oral and written
23 language, an ongoing individualized evaluation

24

1 and diagnosis that informs the teacher and an
2 assessment that assures accountability, and
3 (3) writing, mathematics, science and vocational-
4 technical education;

5 2. Transfer from a juvenile institution to another facility
6 under the jurisdiction of the Office, a juvenile who has been
7 adjudicated delinquent, if the Office believes it advisable to do
8 so; transfer from a facility for juveniles in need of supervision to
9 another such facility, a juvenile who has been adjudicated in need
10 of supervision, provided that such transfer is consistent with the
11 treatment needs of the juvenile; transfer from a juvenile
12 institution or facility to a state school for ~~the mentally retarded~~
13 individuals with intellectual disabilities, any juvenile eligible
14 for admission thereto, if the juvenile appears to be in need of the
15 care and treatment provided at such school; transfer from a facility
16 for delinquent or in need of supervision juveniles to an appropriate
17 facility or to the Department of Mental Health and Substance Abuse
18 Services any juvenile found by the court to be a minor in need of
19 treatment pursuant to the Inpatient Mental Health and Substance
20 Abuse Treatment of Minors Act and committed to inpatient mental
21 health or substance abuse treatment as provided by the Inpatient
22 Mental Health and Substance Abuse Treatment of Minors Act. If a
23 transfer is made pursuant to this paragraph, the Office shall comply
24 with the notification requirements of Section 2-2-504 of this title;

1 3. Release on parole a juvenile previously adjudicated to be
2 delinquent, subject to terms and conditions specified by the Office,
3 whenever the Office determines that such release will not be
4 detrimental to society and that the juvenile is ready to be returned
5 to the community and revoke ~~said~~ the parole for violation of the
6 specified terms or conditions of parole pursuant to the provisions
7 of this section and the rules and procedures established by the
8 Office for such revocation;

9 4. Release any juvenile from a juvenile institution for
10 placement in a group home, transitional living program, independent
11 living program, other community-based facility or program or out-of-
12 home care subject to terms and conditions specified by the Office;
13 and

14 5. Provide parole services for juveniles released on parole
15 from juvenile institutions, and aftercare services for juveniles
16 discharged from juvenile institutions or facilities. Persons
17 designated as Juvenile Parole Officers by the Office shall have the
18 power to serve process and to apprehend and detain juveniles and
19 make arrests in accordance with the laws of the state.

20 B. The transfer of a juvenile from a nonsecure placement to a
21 secure placement shall be subject to an administrative transfer
22 hearing and any revocation of parole shall be subject to a parole
23 revocation hearing.

24

1 1. In any administrative transfer or parole revocation
2 proceeding, the following minimum standards shall apply:

- 3 a. the juvenile shall have the right to notice of the
4 proposed transfer or parole revocation hearing and the
5 alleged violation of administrative or parole rules on
6 which the proposed transfer or parole revocation is
7 based,
- 8 b. the juvenile shall have the right to representation by
9 an attorney,
- 10 c. the juvenile shall have the right to present evidence
11 on behalf of the juvenile, and
- 12 d. the juvenile shall have a right to bail, except that
13 the right to bail shall not be construed to require
14 that a juvenile who is in residence in an Office-
15 operated institution or other facility at the time of
16 an alleged violation leading to an administrative
17 transfer proceeding be released from such institution
18 or facility.

19 2. The situs of the hearings shall be the county in which the
20 alleged violation of administrative or parole rules occurred or the
21 county of original jurisdiction. The judge having juvenile docket
22 jurisdiction in the county shall aid the administrative transfer or
23 parole revocation process of the Office by:

- 24 a. determining eligibility for and amount of bail,

- 1 b. deciding any intermediate custody or placement issue,
2 and
3 c. if legal counsel for the juvenile has not otherwise
4 been obtained, appointing legal counsel for the
5 juvenile and fixing the amount of compensation for the
6 legal counsel. The judge shall also determine if the
7 juvenile is eligible for free legal services. If the
8 juvenile is not eligible for free legal services, the
9 court shall order the parents or legal guardian of the
10 juvenile to pay for such services.

11 3. If legal counsel for the juvenile has not otherwise been
12 obtained, the appointment of legal counsel for the juvenile, the
13 setting of the amount of compensation for such counsel, and the
14 determination of whether or not the juvenile is eligible for free
15 legal services shall be provided for pursuant to the Indigent
16 Defense Act; provided, however, in those counties subject to the
17 provisions of Section 138.1 of Title 19 of the Oklahoma Statutes,
18 the legal services shall be provided by the county indigent defender
19 as provided by law. If the juvenile is not eligible for free legal
20 services, the court shall order the parents or legal guardian of the
21 juvenile to pay for such services.

22 C. The Office may participate in federal programs relating to
23 delinquent juveniles, or juveniles in need of supervision, or
24

1 institutions and services for such juveniles and apply for, receive,
2 use and administer federal funds for such purposes.

3 D. The Office shall receive interest earnings on the investment
4 by the State Treasurer of monies, to be credited to an agency
5 special account, for the benefit of and held in trust for persons
6 placed in the custody of the Office or in residence at institutions
7 or facilities maintained by the Office.

8 SECTION 16. AMENDATORY 21 O.S. 2011, Section 152, is
9 amended to read as follows:

10 Section 152. All persons are capable of committing crimes,
11 except those belonging to the following classes:

12 1. Children under the age of seven (7) years;

13 2. Children over the age of seven (7) years, but under the age
14 of fourteen (14) years, in the absence of proof that at the time of
15 committing the act or neglect charged against them, they knew its
16 wrongfulness;

17 3. Persons who are impaired by reason of ~~mental retardation~~ an
18 intellectual disability upon proof that at the time of committing
19 the act charged against them they were incapable of knowing its
20 wrongfulness;

21 4. Mentally ill persons, and all persons of unsound mind,
22 including persons temporarily or partially deprived of reason, upon
23 proof that at the time of committing the act charged against them
24 they were incapable of knowing its wrongfulness;

1 5. Persons who committed the act, or made the omission charged,
2 under an ignorance or mistake of fact which disproves any criminal
3 intent. But ignorance of the law does not excuse from punishment
4 for its violation;

5 6. Persons who committed the act charged without being
6 conscious thereof; and

7 7. Persons who committed the act, or make the omission charged,
8 while under involuntary subjection to the power of superiors.

9 SECTION 17. AMENDATORY 21 O.S. 2011, Section 643, is
10 amended to read as follows:

11 Section 643. To use or to attempt to offer to use force or
12 violence upon or toward the person of another is not unlawful in the
13 following cases:

14 1. When necessarily committed by a public officer in the
15 performance of any legal duty, or by any other person assisting such
16 officer or acting by such officer's direction;

17 2. When necessarily committed by any person in arresting one
18 who has committed any felony, and delivering such person to a public
19 officer competent to receive such person in custody;

20 3. When committed either by the person about to be injured, or
21 by any other person in such person's aid or defense, in preventing
22 or attempting to prevent an offense against such person, or any
23 trespass or other unlawful interference with real or personal
24

1 property in such person's lawful possession; provided the force or
2 violence used is not more than sufficient to prevent such offense;

3 4. When committed by a parent or the authorized agent of any
4 parent, or by any guardian, master or teacher, in the exercise of a
5 lawful authority to restrain or correct such person's child, ward,
6 apprentice or scholar, provided restraint or correction has been
7 rendered necessary by the misconduct of such child, ward, apprentice
8 or scholar, or by the child's refusal to obey the lawful command of
9 such parent or authorized agent or guardian, master or teacher, and
10 the force or violence used is reasonable in manner and moderate in
11 degree;

12 5. When committed by a carrier of passengers, or the authorized
13 agents or servants of such carrier, or by any person assisting them
14 at their request, in expelling from any carriage, railroad car,
15 vessel or other vehicle, any passenger who refuses to obey a lawful
16 and reasonable regulation prescribed for the conduct of passengers,
17 if such vehicle has first been stopped and the force and violence
18 used is not more than is sufficient to expel the offending
19 passenger, with a reasonable regard to such passenger's personal
20 safety; and

21 6. When committed by any person in preventing a person who is
22 impaired by reason of ~~mental retardation~~ intellectual or
23 developmental disability as defined by Section 1430.2 of Title 10 of
24 the Oklahoma Statutes, a mentally ill person, insane person or other

1 person of unsound mind, including persons temporarily or partially
2 deprived of reason, from committing an act dangerous to such
3 person's self or to another, or enforcing such restraint as is
4 necessary for the protection of the person or for restoration to
5 health, during such period only as shall be necessary to obtain
6 legal authority for the restraint or custody of the person.

7 SECTION 18. AMENDATORY 21 O.S. 2011, Section 701.10b, is
8 amended to read as follows:

9 Section 701.10b. A. For purposes of this section:

10 1. "~~Mental retardation~~ Intellectual disability" or "~~mentally~~
11 ~~retarded~~ intellectually disabled" means significantly subaverage
12 general intellectual functioning, existing concurrently with
13 significant limitations in adaptive functioning;

14 2. "Significant limitations in adaptive functioning" means
15 significant limitations in two or more of the following adaptive
16 skill areas; communication, self-care, home living, social skills,
17 community use, self-direction, health, safety, functional academics,
18 leisure skills and work skills; and

19 3. "Significantly subaverage general intellectual functioning"
20 means an intelligence quotient of seventy (70) or below.

21 B. Regardless of any provision of law to the contrary, no
22 defendant who is ~~mentally retarded~~ intellectually disabled shall be
23 sentenced to death; provided, however, the onset of the ~~mental~~

24

1 ~~retardation~~ intellectual disability must have been manifested before
2 the defendant attained the age of eighteen (18) years.

3 C. The defendant has the burden of production and persuasion to
4 demonstrate ~~mental retardation~~ intellectual disability by showing
5 significantly subaverage general intellectual functioning,
6 significant limitations in adaptive functioning, and that the onset
7 of the ~~mental retardation~~ intellectual disability was manifested
8 before the age of eighteen (18) years. An intelligence quotient of
9 seventy (70) or below on an individually administered,
10 scientifically recognized standardized intelligence quotient test
11 administered by a licensed psychiatrist or psychologist is evidence
12 of significantly subaverage general intellectual functioning;
13 however, it is not sufficient without evidence of significant
14 limitations in adaptive functioning and without evidence of
15 manifestation before the age of eighteen (18) years. In determining
16 the intelligence quotient, the standard measurement of error for the
17 test administered shall be taken into account.

18 However, in no event shall a defendant who has received an
19 intelligence quotient of seventy-six (76) or above on any
20 individually administered, scientifically recognized, standardized
21 intelligence quotient test administered by a licensed psychiatrist
22 or psychologist, be considered ~~mentally retarded~~ intellectually
23 disabled and, thus, shall not be subject to any proceedings under
24 this section.

1 D. A defendant charged with capital murder who intends to raise
2 ~~mental retardation~~ an intellectual disability as a bar to the death
3 sentence shall provide to the state notice of such intention at
4 least ninety (90) days after formal arraignment or within ninety
5 (90) days after the filing of a bill of particulars, whichever is
6 later. The notice shall include a brief but detailed statement
7 specifying the witnesses, nature and type of evidence sought to be
8 introduced. The notice must demonstrate sufficient facts that
9 demonstrate a good-faith belief as to the ~~mental retardation~~
10 intellectual disability of the defendant.

11 E. The district court shall conduct an evidentiary hearing to
12 determine whether the defendant is ~~mentally retarded~~ intellectually
13 disabled. If the court determines, by clear and convincing
14 evidence, that the defendant is ~~mentally retarded~~ intellectually
15 disabled, the defendant, if convicted, shall be sentenced to life
16 imprisonment or life without parole. If the district court
17 determines that the defendant is not ~~mentally retarded~~
18 intellectually disabled, the capital trial of the offense may
19 proceed. A request for a hearing under this section shall not waive
20 entitlement by the defendant to submit the issue of ~~mental~~
21 ~~retardation~~ an intellectual disability to a jury during the
22 sentencing phase in a capital trial if convicted of an offense
23 punishable by death. The court's determination on the issue of
24

1 ~~mental retardation~~ an intellectual disability shall not be the
2 subject of an interlocutory appeal.

3 F. The court shall submit a special issue to the jury as to
4 whether the defendant is ~~mentally retarded~~ intellectually disabled.
5 This special issue shall be considered and answered by the jury
6 during the sentencing stage and prior to the determination of
7 sentence. If the jury unanimously determines that the defendant is
8 ~~mentally retarded~~ intellectually disabled, the defendant may only be
9 sentenced to life imprisonment or life without parole. The
10 defendant has the burden of production and persuasion to demonstrate
11 ~~mental retardation~~ an intellectual disability to the jury by a
12 preponderance of the evidence.

13 G. If the jury determines that the defendant is not ~~mentally~~
14 ~~retarded~~ intellectually disabled or is unable to reach a unanimous
15 decision, the jury shall proceed to determine the existence of
16 aggravating and mitigating factors in determining whether the
17 sentence of death shall be imposed. In those deliberations, the
18 jury may consider any evidence of ~~mental retardation~~ an intellectual
19 disability as a mitigating factor in sentencing the defendant.

20 H. If the jury determines that the defendant is not ~~mentally~~
21 ~~retarded~~ intellectually disabled and imposes a death sentence, the
22 trial court shall make findings of fact and conclusions of law
23 relating to the issue of whether the determination on the issue of
24 ~~mental retardation~~ an intellectual disability was made under the

1 influence of passion, prejudice, or any other arbitrary factor. The
2 findings shall be attached as an exhibit to the report of the trial
3 judge required under Section 701.13 of Title 21 of the Oklahoma
4 Statutes. If the trial court finds that the determination of ~~mental~~
5 ~~retardation~~ an intellectual disability was not supported by the
6 evidence, the issue may be raised on appeal to the Oklahoma Court of
7 Criminal Appeals for consideration as part of its mandatory sentence
8 review.

9 I. The standard of review for a trier of fact ~~mental~~
10 ~~retardation~~ intellectual disability determination shall be whether,
11 after reviewing the evidence in the light most favorable to the
12 state, any rational trier of fact could have found the defendant not
13 ~~mentally retarded~~ intellectually disabled as defined by this
14 section, giving full deference to the findings of the trier of fact.

15 J. The court shall give appropriate instructions in those cases
16 in which evidence of the ~~mental retardation~~ intellectual disability
17 of the defendant requires the consideration by the jury of the
18 provisions of this section.

19 SECTION 19. AMENDATORY 21 O.S. 2011, Section 833, is
20 amended to read as follows:

21 Section 833. Every overseer of the poor, constable, keeper of a
22 jail, or other person who confines a person who is impaired by
23 reason of ~~mental retardation~~ intellectual or developmental
24 disability, as defined by Section 1430.2 of Title 10 of the Oklahoma

1 Statutes, mentally ill person, insane person or other person of
2 unsound mind, in any other manner or in any other place than is
3 authorized by law, is guilty of a misdemeanor.

4 SECTION 20. AMENDATORY 22 O.S. 2011, Section 1161, as
5 last amended by Section 1, Chapter 375, O.S.L. 2017 (22 O.S. Supp.
6 2018, Section 1161), is amended to read as follows:

7 Section 1161. A. 1. An act committed by a person in a state
8 of mental illness or mental defect shall be adjudicated as guilty
9 with mental defect or as not guilty by reason of mental illness.

10 2. If a person is found guilty with mental defect or enters a
11 plea of guilty with mental defect which is accepted by the court,
12 the court at the time of sentencing shall impose any sentence that
13 could be imposed by law upon a person who is convicted of the same
14 offense, and the person shall serve the sentence in custody of a
15 county jail or the Oklahoma Department of Corrections.

16 3. If a person who is found guilty with mental defect is placed
17 on probation under the jurisdiction of the sentencing court as
18 provided by law, the court shall immediately issue an order for the
19 person to be examined by the Department of Mental Health and
20 Substance Abuse Services. The time and place of such examination
21 shall be determined by the Department. Within forty-five (45) days,
22 the Department shall provide to the court a recommendation of
23 treatment for the person, which shall be made a condition of
24 probation. Reports as specified by the trial judge shall be filed

1 with the probation officer and the sentencing court. Failure to
2 continue treatment, except by agreement with the treating agency and
3 the sentencing court, is grounds for revocation of probation.
4 Treatment shall be provided by an agency of the Department or, with
5 the approval of the sentencing court and at the expense of the
6 person, by private agencies, private physicians or other mental
7 health personnel. A psychiatric report shall be filed with the
8 probation officer and the sentencing court every six (6) months
9 during the period of probation.

10 4. When in any criminal action by indictment or information,
11 the defense of mental illness is raised, but the defendant is not
12 acquitted on the ground that the defendant was mentally ill at the
13 time of the commission of the crime charged, an issue concerning
14 such defense may be raised on appeal. If the appellate court finds
15 relief is required, the appellate court shall not have authority to
16 modify the judgment or sentence, but will only have the authority to
17 order a new trial or order resentencing without recommendations to
18 sentencing.

19 5. When in any criminal action by indictment or information the
20 defense of mental illness is interposed either singly or in
21 conjunction with some other defense, the jury shall state in the
22 verdict, if it is one of acquittal, whether or not the defendant is
23 acquitted on the ground of mental illness. When the defendant is
24 acquitted on the ground that the defendant was mentally ill at the

1 time of the commission of the crime charged, the person shall not be
2 discharged from custody until the court has made a determination
3 that the person is not dangerous to the public peace and safety and
4 is a person requiring treatment.

5 B. 1. To assist the court in its determination, the court
6 shall immediately issue an order for the person to be examined by
7 the Department of Mental Health and Substance Abuse Services at a
8 facility the Department has designated to examine and treat forensic
9 individuals. Upon the issuance of the order, the sheriff shall
10 deliver the person to the designated facility.

11 2. Within forty-five (45) days of the court entering such an
12 order, a hearing shall be conducted by the court to ascertain
13 whether the person is dangerous to the public peace or safety
14 because the person is a person requiring treatment or, if not, is in
15 need of continued supervision as a result of unresolved symptoms of
16 mental illness or a history of treatment noncompliance. During the
17 required period of hospitalization the Department of Mental Health
18 and Substance Abuse Services shall have the person examined by two
19 qualified psychiatrists or one such psychiatrist and one qualified
20 clinical psychologist whose training and experience enable the
21 professional to form expert opinions regarding mental illness,
22 competency, dangerousness and criminal responsibility.

23 C. 1. Each examiner shall, within thirty-five (35) days of
24 hospitalization, individually prepare and submit to the court, the

1 district attorney and the trial counsel of the person a report of
2 the psychiatric examination findings of the person and an evaluation
3 concerning whether the person is dangerous to the public peace or
4 safety.

5 2. If the court is dissatisfied with the reports or if a
6 disagreement on the issue of mental illness and dangerousness exists
7 between the two examiners, the court may designate one or more
8 additional examiners and have them submit their findings and
9 evaluations as specified in paragraph 1 of this subsection.

10 3. a. Within ten (10) days after the reports are filed, the
11 court must conduct a hearing to determine the present
12 condition of the person as to the issue of whether:

13 (1) the person is dangerous to the public peace or
14 safety because the person is a person requiring
15 treatment, or

16 (2) if not believed to be dangerous to the public
17 peace or safety, the person is in need of
18 continued supervision as a result of unresolved
19 symptoms of mental illness or a history of
20 treatment noncompliance.

21 b. The district attorney must establish the foregoing by
22 a preponderance of the evidence. At this hearing the
23 person shall have the assistance of counsel and may
24 present independent evidence.

1 D. 1. If the court finds that the person is not dangerous to
2 the public peace or safety because the person is a person requiring
3 treatment and is not in need of continued supervision as a result of
4 unresolved symptoms of mental illness or a history of treatment
5 noncompliance, it shall immediately discharge the person from
6 hospitalization.

7 2. If the court finds that the person is dangerous to the
8 public peace and safety, it shall commit the person to the custody
9 of the Department of Mental Health and Substance Abuse Services.
10 The person shall then be subject to discharge pursuant to the
11 procedure set forth in this section.

12 a. During the period of hospitalization, the Department
13 of Mental Health and Substance Abuse Services may
14 administer or cause to be administered to the person
15 such psychiatric, medical or other therapeutic
16 treatment as in its judgment should be administered.

17 b. The person shall be subject to discharge or
18 conditional release pursuant to the procedures set
19 forth in this section.

20 E. If at any time the court finds the person is not dangerous
21 to the public peace or safety because the person is a person
22 requiring treatment, but is in need of continued supervision as a
23 result of unresolved symptoms of mental illness or a history of
24 treatment noncompliance, the court may:

1 1. Discharge the person pursuant to the procedure set forth in
2 this section;

3 2. Discharge the person, and upon the motion of the court or
4 the district attorney commence civil involuntary commitment
5 proceedings against the person pursuant to the provisions of Title
6 43A of the Oklahoma Statutes; or

7 3. Order conditional release, as set forth in subsection F of
8 this section.

9 F. There is hereby created a Forensic Review Board to be
10 composed of seven (7) members appointed by the Governor with the
11 advice and consent of the Senate. The Board members shall serve for
12 a term of five (5) years except that for members first appointed to
13 the Board: one shall serve for a term ending December 31, 2008, two
14 shall serve for a term ending December 31, 2009, two shall serve a
15 term ending December 31, 2010, and two shall serve for a term ending
16 December 31, 2011.

17 1. The Board shall be composed of:

18 a. four licensed mental health professionals with
19 experience in treating mental illness, at least one of
20 whom is licensed as a Doctor of Medicine, a Doctor of
21 Osteopathy, or a licensed clinical psychologist and
22 shall be appointed from a list of seven names
23 submitted to the Governor by the Department of Mental
24 Health and Substance Abuse Services,

- 1 b. one member who shall be an attorney licensed to
2 practice in this state and shall be appointed from a
3 list of not less than three names submitted to the
4 Governor by the Board of Governors of the Oklahoma Bar
5 Association,
6 c. one member who shall be a retired judge licensed to
7 practice in this state and shall be appointed from a
8 list of not less than three names submitted to the
9 Governor by the Judicial Nominating Committee, and
10 d. one at-large member.

11 The attorney and retired judge members of the Board shall be
12 prohibited from representing in the courts of this state persons
13 charged with felony offenses while serving on the Board.

14 2. The Board shall meet as necessary to determine which
15 individuals confined with the Department of Mental Health and
16 Substance Abuse Services are eligible for therapeutic visits,
17 conditional release or discharge and whether the Board wishes to
18 make such a recommendation to the court of the county where the
19 individual was found not guilty by reason of insanity or not guilty
20 by reason of mental illness for those persons adjudicated as such
21 upon or after ~~the effective date of this act~~ November 1, 2016.

- 22 a. Forensic Review Board meetings shall not be considered
23 subject to the Oklahoma Open Meeting Act and are not
24 open to the public. Other than the Forensic Review

1 Board members, only the following individuals shall be
2 permitted to attend Board meetings:

- 3 (1) the individual the Board is considering for
4 therapeutic visits, conditional release or
5 discharge, his or her treatment advocate, and
6 members of his or her treatment team,
- 7 (2) the Commissioner of Mental Health and Substance
8 Abuse Services or designee,
- 9 (3) the Advocate General for the Department of Mental
10 Health and Substance Abuse Services or designee,
- 11 (4) the General Counsel for the Department of Mental
12 Health and Substance Abuse Services or designee,
13 and
- 14 (5) any other persons the Board and Commissioner of
15 Mental Health and Substance Abuse Services wish
16 to be present.

17 b. The Department of Mental Health and Substance Abuse
18 Services shall provide administrative staff to the
19 Board to take minutes of meetings and prepare
20 necessary documents and correspondence for the Board
21 to comply with its duties as set forth in this
22 section. The Department of Mental Health and
23 Substance Abuse Services shall also transport the
24

1 individuals being reviewed to and from the Board
2 meeting site.

3 c. The Board shall promulgate rules concerning the
4 granting and structure of therapeutic visits,
5 conditional releases and discharge.

6 d. For purposes of this subsection, "therapeutic visit"
7 means a scheduled time period off campus which
8 provides for progressive tests of the ability of the
9 consumer to maintain and demonstrate coping skills.

10 3. The Forensic Review Board shall submit any recommendation
11 for therapeutic visit, conditional release or discharge to the court
12 and district attorney of the county where the person was found not
13 guilty by reason of mental illness, the trial counsel of the person,
14 the Department of Mental Health and Substance Abuse Services and the
15 person at least fourteen (14) days prior to the scheduled visit.

16 a. The district attorney may file an objection to a
17 recommendation for a therapeutic visit within ten (10)
18 days of receipt of the notice.

19 b. If an objection is filed, the therapeutic visit is
20 stayed until a hearing is held. The court shall hold
21 a hearing not less than ten (10) days following an
22 objection to determine whether the therapeutic visit
23 is necessary for treatment, and if necessary, the
24 nature and extent of the visit.

1 4. During the period of hospitalization the Department of
2 Mental Health and Substance Abuse Services shall submit an annual
3 report on the status of the person to the court, the district
4 attorney and the patient advocate general of the Department of
5 Mental Health and Substance Abuse Services.

6 G. Upon motion by the district attorney or upon a
7 recommendation for conditional release or discharge by the Forensic
8 Review Board, the court shall conduct a hearing to ascertain if the
9 person is dangerous and a person requiring treatment. This hearing
10 shall be conducted under the same procedure as the first hearing and
11 must occur not less than ten (10) days following the motion or
12 request by the Forensic Review Board.

13 1. If the court determines that the person continues to be
14 dangerous to the public peace and safety because the person is a
15 person requiring treatment, it shall order the return of the person
16 to the hospital for additional treatment.

17 2. If the court determines that the person is not dangerous but
18 subject to certain conditions, the court may conditionally release
19 the person subject to the following:

- 20 a. the Forensic Review Board has made a recommendation
21 for conditional release, including a written plan for
22 outpatient treatment and a list of recommendations for
23 the court to place as conditions on the release,
24

1 b. in its order of conditional release, the court shall
2 specify conditions of release and shall direct the
3 appropriate agencies or persons to submit annual
4 reports regarding the compliance of the person with
5 the conditions of release and progress in treatment,

6 c. the person must agree, in writing, that during the
7 period the person is granted conditional release and
8 is subject to the provisions thereof, there shall be
9 free transmission of all pertinent information,
10 including clinical information regarding the person,
11 among the Department of Mental Health and Substance
12 Abuse Services, the appropriate community mental
13 health centers and the appropriate district attorneys,
14 law enforcement and court personnel,

15 d. the order of the court placing the person on
16 conditional release shall include notice that the
17 conditional release of the person may be revoked upon
18 good cause. The person placed on conditional release
19 shall remain under the supervision of the Department
20 of Mental Health and Substance Abuse Services until
21 the committing court enters a final discharge order.
22 The Department of Mental Health and Substance Abuse
23 Services shall assess the person placed on conditional
24

1 release annually and shall have the authority to
2 recommend discharge of the person to the Board, and
3 e. any agency or individual involved in providing
4 treatment with regard to the conditional release plan
5 of the person may prepare and file an affidavit under
6 oath if the agency or individual believes that the
7 person has failed to comply with the conditions of
8 release or that such person has progressed to the
9 point that inpatient care is appropriate.

10 (1) Any peace officer who receives such an affidavit
11 shall take the person into protective custody and
12 return the person to the forensic unit of the
13 state hospital.

14 (2) A hearing shall be conducted within three (3)
15 days, excluding holidays and weekends, after the
16 person is returned to the forensic unit of the
17 state hospital to determine if the person has
18 violated the conditions of release, or if full-
19 time hospitalization is the least restrictive
20 alternative consistent with the needs of the
21 person and the need for public safety. Notice of
22 the hearing shall be issued, at least twenty-four
23 (24) hours before the hearing, to the hospital
24 superintendent, the person, trial counsel for the

1 person, and the patient advocate general of the
2 Department of Mental Health and Substance Abuse
3 Services. If the person requires hospitalization
4 because of a violation of the conditions of
5 release or because of progression to the point
6 that inpatient care is appropriate, the court may
7 then modify the conditions of release.

8 3. If the court determines that the person is not dangerous to
9 the public peace or safety because the person is not a person
10 requiring treatment, it shall order that the person be discharged
11 from the custody of the Department of Mental Health and Substance
12 Abuse Services.

13 H. As used in this section:

14 1. "Antisocial personality disorder" means antisocial
15 personality disorder as defined by the Diagnostic and Statistical
16 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
17 editions;

18 2. "Court" or "sentencing court" means the court sitting in the
19 county where the person has been found to be not guilty by reason of
20 mental illness or guilty with mental defect;

21 3. "Dangerous" means a person who because of mental illness
22 poses a substantial risk of physical harm in the near future to
23 another person or persons. Dangerousness shall be determined by
24 such factors as whether the person has placed another person or

1 persons in a reasonable fear of violent behavior, and medication and
2 treatment compliance;

3 4. "Guilty with mental defect" means the person committed the
4 act and was either unable to understand the nature and consequences
5 of his or her actions or was unable to differentiate right from
6 wrong, and has been diagnosed with antisocial personality disorder
7 which substantially contributed to the act for which the person has
8 been charged;

9 5. "Mental defect" means the person has been diagnosed with
10 antisocial personality disorder which substantially contributed to
11 the act for which the person has been charged;

12 6. "Mental illness" means a substantial disorder of thought,
13 mood, perception, psychological orientation or memory that
14 significantly impairs judgment, behavior, capacity to recognize
15 reality or ability to meet the ordinary demands of life;

16 7. "Not guilty by reason of mental illness" means the person
17 committed the act while mentally ill and was either unable to
18 understand the nature and consequences of his or her actions or was
19 unable to differentiate right from wrong, and has not been diagnosed
20 with antisocial personality disorder which substantially contributed
21 to the act for which the person has been charged; and

22 8. a. "Person requiring treatment" means a person who because
23 of mental illness:

24

- 1 (1) poses a substantial risk of physical harm to self
2 as manifested by evidence or serious threats of
3 or attempts at suicide or other significant self-
4 inflicted bodily harm,
- 5 (2) poses a substantial risk of physical harm to
6 another person or persons as manifested by
7 evidence of violent behavior directed toward
8 another person or persons,
- 9 (3) has placed another person or persons in
10 reasonable fear of serious physical harm or
11 violent behavior directed toward such person or
12 persons as manifested by serious and immediate
13 threats,
- 14 (4) is in a condition of severe deterioration such
15 that, without immediate intervention, there
16 exists a substantial risk that severe impairment
17 or injury will result to the person, or
- 18 (5) poses a substantial risk of serious physical
19 injury to self or death as manifested by evidence
20 that the person is unable to provide for and is
21 not providing for his or her basic physical
22 needs.

23 b. The mental health or substance abuse history of the
24 person may be used as part of the evidence to

1 determine whether the person is a person requiring
2 treatment. The mental health or substance abuse
3 history of the person shall not be the sole basis for
4 this determination.

5 c. Unless a person also meets the criteria established in
6 subparagraph a of this paragraph, "person requiring
7 treatment" shall not mean:

8 (1) a person whose mental processes have been
9 weakened or impaired by reason of advanced years,
10 dementia or Alzheimer's disease,

11 (2) ~~a mentally retarded or developmentally disabled~~
12 person with intellectual or developmental
13 disability as defined in Title 10 of the Oklahoma
14 Statutes,

15 (3) a person with seizure disorder, or

16 (4) a person with a traumatic brain injury.

17 I. Proceedings hereunder may be held in conformance with the
18 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
19 allowable use of videoconferencing.

20 SECTION 21. AMENDATORY 22 O.S. 2011, Section 1175.3, as
21 amended by Section 1, Chapter 300, O.S.L. 2015 (22 O.S. Supp. 2018,
22 Section 1175.3), is amended to read as follows:

23 Section 1175.3. A. Upon filing of an application for
24 determination of competency, the court shall set a hearing date,

1 which shall be as soon as practicable, but at least one (1) day
2 after service of notice as provided by Section 1175.2 of this title.

3 B. The court shall hold a hearing on the date provided. At the
4 hearing, the court shall examine the application for determination
5 of competency to determine if it alleges facts sufficient to raise a
6 doubt as to the competency of the person. Any additional evidence
7 tending to create a doubt as to the competency of the person may be
8 presented at this hearing.

9 C. If the court finds there is no doubt as to the competency of
10 the person, it shall order the criminal proceedings to resume.

11 D. 1. a. If the court finds there is a doubt as to the
12 competency of the person, it shall order the person to
13 be examined by the Department of Mental Health and
14 Substance Abuse Services or by a qualified forensic
15 examiner designated by the Department to perform
16 competency examinations.

17 b. In addition, the Developmental Disabilities Services
18 Division of the Department of Human Services shall
19 receive written notice from the district attorney who
20 filed the criminal petition, and be authorized by
21 order of the court to have a psychologist or other
22 appropriate clinician participate with professionals
23 assigned by any other public or private agency in any
24 competency evaluation wherein ~~mental retardation or~~

1 ~~other~~ developmental or intellectual disability may be
2 involved. The psychologist or clinician employed, by
3 contract or otherwise, by the Department of Human
4 Services may issue a separate opinion and
5 recommendation to the court.

6 2. The person shall be examined by a qualified forensic
7 examiner on an outpatient basis prior to referral for any necessary
8 inpatient evaluation, as ordered by the court. The outpatient
9 examination may be conducted in the community, the jail or detention
10 facility where the person is held.

11 3. If the court determines that the person whose competency is
12 in question may be dangerous as defined in Section 1175.1 of this
13 title, it shall order the person retained in a secure facility until
14 the completion of the competency hearing provided in Section 1175.4
15 of this title. If the court determines the person may be dangerous
16 as defined in Section 1175.1 of this title because the individual is
17 a person requiring treatment as defined in Section 1-103 of Title
18 43A of the Oklahoma Statutes, it may commit the person to the
19 custody of the Department of Mental Health and Substance Abuse
20 Services or any other state agency or private facility for the
21 examination required by this subsection. The person shall be
22 required to undergo examination for a period of time sufficient for
23 the qualified forensic examiner(s) to reach a conclusion as to
24

1 competency, and the court shall impose a reasonable time limitation
2 for such period of examination.

3 E. The qualified forensic examiner(s) shall receive
4 instructions that they shall examine the patient to determine:

5 1. If the person is able to appreciate the nature of the
6 charges made against such person;

7 2. If the person is able to consult with the lawyer and
8 rationally assist in the preparation of the defense of such person;

9 3. If the person is unable to appreciate the nature of the
10 charges or to consult and rationally assist in the preparation of
11 the defense, whether the person can attain competency within a
12 reasonable period of time as defined in Section 1175.1 of this title
13 if provided with a course of treatment, therapy or training;

14 4. If the person is a person requiring treatment as defined by
15 Section 1-103 of Title 43A of the Oklahoma Statutes;

16 5. If the person is incompetent because the person is ~~mentally~~
17 ~~retarded~~ intellectually disabled as defined in Section 1408 of Title
18 10 of the Oklahoma Statutes;

19 6. If the answers to questions 4 and 5 are no, why the
20 defendant is incompetent; and

21 7. If the person were released, whether such person would
22 presently be dangerous as defined in Section 1175.1 of this title.

23 F. Upon completion of the competency evaluation, the Department
24 of Mental Health and Substance Abuse Services or qualified forensic

1 examiner designated by the Department to perform competency
2 examinations shall notify the court of its findings. If the person
3 is in the custody of the Department of Mental Health and Substance
4 Abuse Services, the person shall be returned to the court in the
5 customary manner within five (5) business days. If the person is
6 not returned within that time, the county in which the proceedings
7 are to be held shall pay the costs of maintaining the person at the
8 institution or facility for the period of time the person remains at
9 the institution or facility in excess of the five-day period.

10 SECTION 22. AMENDATORY 22 O.S. 2011, Section 1175.5, is
11 amended to read as follows:

12 Section 1175.5. The jury or the court, as the case may be,
13 shall answer the following questions in determining the disposition
14 of the person whose competency is in question:

15 1. Is the person incompetent to undergo further criminal
16 proceedings at this time? If the answer is no, criminal proceedings
17 shall be resumed. If the answer is yes, the following questions
18 shall be answered.

19 2. Can the incompetency of the person be corrected within a
20 reasonable period of time, as defined by Section 1175.1 of this
21 title, through treatment, therapy or training?

22 3. Is the person incompetent because the person is ~~mentally~~
23 ~~retarded~~ intellectually disabled as defined in Section 1408 of Title
24 10 of the Oklahoma Statutes?

1 4. Is the person incompetent because the person is a person
2 requiring treatment as defined by Section 1-103 of Title 43A of the
3 Oklahoma Statutes?

4 5. If the answers to questions 3 and 4 are no, why is the
5 defendant incompetent?

6 6. Is the person presently dangerous as defined in Section
7 1175.1 of this title if released?

8 SECTION 23. AMENDATORY 22 O.S. 2011, Section 1175.6, is
9 amended to read as follows:

10 Section 1175.6. A. Upon the finding by the jury or the court
11 as provided by Section 1175.5 of this title, the court shall issue
12 the appropriate order regarding the person as follows:

13 1. If the person is found to be competent, the criminal
14 proceedings shall be resumed;

15 2. If the person is found to be incompetent because the person
16 is a person requiring treatment as defined in Title 43A of the
17 Oklahoma Statutes, the court shall issue the appropriate order as
18 set forth in Section ~~6~~ 1175.6a of this ~~act~~ title;

19 3. If the person is found to be incompetent because the person
20 is ~~mentally retarded~~ intellectually disabled as defined in Section
21 1408 of Title 10 of the Oklahoma Statutes, the court shall issue the
22 appropriate order as set forth in Section ~~7~~ 1175.6b of this ~~act~~
23 title; and
24

1 4. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by
3 Section 1-103 of Title 43A of the Oklahoma Statutes, or for reasons
4 other than the person is ~~mentally retarded~~ intellectually disabled
5 as defined in Section 1408 of Title 10 of the Oklahoma Statutes, the
6 court shall issue the appropriate order as set forth in Section &
7 1175.6c of this ~~act~~ title.

8 SECTION 24. AMENDATORY 22 O.S. 2011, Section 1175.6a, as
9 last amended by Section 2, Chapter 290, O.S.L. 2018 (22 O.S. Supp.
10 2018, Section 1175.6a), is amended to read as follows:

11 Section 1175.6a. A. If the person is found to be incompetent
12 prior to conviction because he or she is a person requiring
13 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
14 Statutes, but capable of achieving competence with treatment within
15 a reasonable period of time as defined by Section 1175.1 of this
16 title, the court shall suspend the criminal proceedings and order
17 the Department of Mental Health and Substance Abuse Services to
18 provide treatment, therapy or training which is calculated to allow
19 the person to achieve competency. The Department may designate a
20 willing entity to provide such competency restoration services on
21 behalf of the Department, provided the entity has qualified
22 personnel. The court shall further order the Department to take
23 custody of the individual as soon as a forensic bed becomes
24 available, unless both the Department and the county jail where the

1 person is being held determine that it is in the best interests of
2 the person to remain in the county jail. Such competency
3 restoration services shall begin within a reasonable period of time
4 after the court has determined that the person is not competent to
5 stand trial.

6 The person shall remain in the custody of the county jail until
7 such time as the Department has a bed available at the forensic
8 facility unless competency restoration services are provided by a
9 designee of the Department, in which case custody of the person
10 shall be transferred to the Department.

11 B. The Department of Mental Health and Substance Abuse Services
12 or designee shall make periodic reports to the court as to the
13 competency of the defendant.

14 C. If the person is determined by the Department of Mental
15 Health and Substance Abuse Services or designee to have regained
16 competency, or is no longer incompetent because the person is a
17 person requiring treatment as defined by Title 43A of the Oklahoma
18 Statutes, a hearing shall be scheduled within twenty (20) days:

- 19 1. If found competent by the court or a jury after such
20 rehearing, criminal proceedings shall be resumed;
- 21 2. If the person is found to continue to be incompetent because
22 the person is a person requiring treatment as defined in Title 43A
23 of the Oklahoma Statutes, the person shall be returned to the
24

1 custody of the Department of Mental Health and Substance Abuse
2 Services or designee;

3 3. If the person is found to be incompetent because the person
4 is ~~mentally retarded~~ intellectually disabled as defined by Title 10
5 of the Oklahoma Statutes, the court shall issue the appropriate
6 order as set forth in Section 1175.6b of this title;

7 4. If the person is found to be incompetent for reasons other
8 than the person is a person requiring treatment as defined by Title
9 43A of the Oklahoma Statutes, and other than the person is ~~mentally~~
10 ~~retarded~~ intellectually disabled as defined in Title 10 of the
11 Oklahoma Statutes, and is also found to be not dangerous as defined
12 by Section 1175.1 of this title, the court shall issue the
13 appropriate order as set forth in Section 1175.6b of this title; or

14 5. If the person is found to be incompetent for reasons other
15 than the person is a person requiring treatment as defined by Title
16 43A of the Oklahoma Statutes, and other than the person is ~~mentally~~
17 ~~retarded~~ intellectually disabled as defined in Title 10 of the
18 Oklahoma Statutes, but is also found to be dangerous as defined by
19 Section 1175.1 of this title, the court shall issue the appropriate
20 order as set forth in Section 1175.6c of this title.

21 D. If the person is found to be incompetent because the person
22 is a person requiring treatment as defined by Section 1-103 of Title
23 43A of the Oklahoma Statutes, but not capable of achieving
24 competence with treatment within a reasonable period of time as

1 defined by Section 1175.1 of this title, the court shall commence
2 civil commitment proceedings pursuant to Title 43A and shall dismiss
3 without prejudice the criminal proceeding. If the person is
4 subsequently committed to the Department of Mental Health and
5 Substance Abuse Services pursuant to Title 43A, the statute of
6 limitations for the criminal charges which were dismissed by the
7 court shall be tolled until the person is discharged from the
8 Department of Mental Health and Substance Abuse Services pursuant to
9 Section 7-101 of Title 43A of the Oklahoma Statutes.

10 SECTION 25. AMENDATORY 22 O.S. 2011, Section 1175.6b, is
11 amended to read as follows:

12 Section 1175.6b. A. If the person is found to be incompetent
13 primarily because the person is ~~mentally retarded~~ intellectually
14 disabled as defined in Section 1408 of Title 10 of the Oklahoma
15 Statutes, and is also found by the court to be dangerous as defined
16 by Section 1175.1 of this Title, the court shall suspend the
17 criminal proceedings, and shall place the person into the custody of
18 the Office of Public Guardian. The Office of Public Guardian shall
19 act with all powers set forth in the Oklahoma Public Guardianship
20 Act, and:

21 1. The Office of Public Guardian shall place any person placed
22 in its custody under this title in a facility or residential
23 setting, private or public, willing to accept the individual and
24

1 that has a level of supervision and security that is appropriate to
2 the needs of the person;

3 2. Such placements shall be within the sole discretion of the
4 Office of Public Guardian;

5 3. All such placements made by the Office of Public Guardian
6 shall be made within six (6) months of the date of the order
7 awarding custody to the Office of Public Guardian;

8 4. The Office of Public Guardian shall report to the court at
9 least every six (6) months as to the status of the person including,
10 but not limited to, the type of placement, services provided, level
11 of supervision, the medical and psychological health of the person,
12 whether the person would be dangerous if conditionally released into
13 a nonsecure environment, the assistance and services that would be
14 required for such conditional release and whether the person has
15 achieved competency;

16 5. If the person is determined by the Office of Public Guardian
17 to have regained competency or that conditional release to a private
18 guardian or other caretaker is appropriate, a hearing shall be
19 scheduled within twenty (20) days. If found competent by the court
20 or a jury after such rehearing, criminal proceedings shall be
21 resumed. If the court finds conditional release to be appropriate,
22 the court shall make an appropriate order for conditional release;
23 and
24

1 6. The provisions of subsections C, H and I of Section 6-101 of
2 Title 30 of the Oklahoma Statutes shall not apply to custody orders
3 arising under this title.

4 B. If the person is found to be incompetent for reasons other
5 than the person is a person requiring treatment as defined by
6 Section 1-103 of Title 43A of the Oklahoma Statutes and is found to
7 be not dangerous as defined by Section 1175.1 of this title, the
8 court shall suspend the criminal proceedings and either refer the
9 person to the Department of Human Services for consideration of
10 voluntary assistance or conditionally release the person as set
11 forth in this section.

12 1. For any person recommended for conditional release, a
13 written plan for services shall be prepared by the Department of
14 Human Services and filed with the court. In its order of
15 conditional release, the court shall specify the conditions of
16 release and shall direct the appropriate agencies or persons to
17 submit annual reports regarding the person's compliance with the
18 conditions of release and progress:

19 a. to be eligible for conditional release, the person
20 shall agree, in writing, that during the period the
21 person is granted conditional release and is subject
22 to the provisions thereof, there shall be free
23 transmission of all pertinent information, including
24 clinical information regarding the person, among the

1 person's treatment providers, the appropriate district
2 attorneys, law enforcement and court personnel. To
3 affect this agreement, the person shall execute any
4 releases required by law to allow for the
5 dissemination of this information,

6 b. the court's order placing the person on conditional
7 release shall include notice that the person's
8 conditional release may be revoked upon good cause,

9 c. the district attorney, as well as any agency or
10 individual involved in providing services with regard
11 to the person's conditional release, may prepare and
12 file an affidavit under oath if the district attorney,
13 agency, or individual believes that the person has
14 failed to comply with the conditions of release. The
15 court shall then conduct a hearing to determine if the
16 person has violated the conditions of release. Notice
17 of the hearing shall be issued, at least twenty-four
18 (24) hours before the hearing, to the Department of
19 Human Services, the person, trial counsel for the
20 person, and the client advocate general of the
21 Department of Human Services. After reviewing the
22 evidence concerning any alleged violation of the
23 conditions of the release, the person's progress,
24 treatment alternatives, and the need for public

1 safety, the court may order no change to the
2 conditions for the person's release or modify the
3 conditions of release, and

4 d. the person placed on conditional release shall remain
5 in a conditional release status until the reviewing
6 court issues a full release from all conditions.

7 2. If the person is determined by the Department of Human
8 Services to have regained competency, a hearing shall be scheduled
9 within twenty (20) days:

10 a. if found competent by the court or a jury after such
11 rehearing, criminal proceedings shall be resumed,

12 b. if the person is found to continue to be incompetent,
13 the person shall be returned to either conditional
14 release or referred to the Department of Human
15 Services for consideration of voluntary assistance.

16 SECTION 26. AMENDATORY 22 O.S. 2011, Section 1175.6c, is
17 amended to read as follows:

18 Section 1175.6c. A. If the person is found to be incompetent
19 for reasons other than the person is a person requiring treatment as
20 defined by Title 43A of the Oklahoma Statutes, or the person is
21 ~~mentally retarded~~ intellectually disabled as defined by Title 10 of
22 the Oklahoma Statutes, but is also found to be dangerous as defined
23 by Section 1175.1 of this title, the court shall suspend the
24 criminal proceedings and refer the matter to the Department of Human

1 Services and Department of Mental Health and Substance Abuse
2 Services for determination of appropriate placement.

3 B. The Department of Human Services and the Department of
4 Mental Health and Substance Abuse Services shall jointly establish
5 procedures by ~~the effective date of this act~~ April 1, 2005, to
6 determine the appropriate placement of individuals who are found to
7 be incompetent to stand trial for reasons other than the person is a
8 person requiring treatment as defined by Title 43A of the Oklahoma
9 Statutes, or the person is ~~mentally retarded~~ intellectually disabled
10 as defined by Title 10 of the Oklahoma Statutes. Both agencies
11 shall then submit their joint recommendation to the court for
12 determination of appropriate placement.

13 SECTION 27. AMENDATORY 25 O.S. 2011, Section 40, is
14 amended to read as follows:

15 Section 40. A. ~~Beginning November 1, 2006, all~~ All new and
16 revised statutes, administrative rules, local laws, ordinances,
17 charters, or regulations promulgated or any publication published by
18 the state or any political subdivision that refers to persons with
19 disabilities shall:

20 1. Avoid language that:

- 21 a. implies that a person as a whole is disabled, such as
22 the "mentally ill" or the "learning disabled", or
23 b. equates persons with their condition, such as
24 "epileptics", "autistics", or "quadriplegics"; and

1 2. Replace nonrespectful language by:

2 a. referring to persons with disabilities as persons
3 first; for example, persons with disabilities, persons
4 with developmental disabilities, persons with mental
5 illness, persons with autism, or persons with ~~mental~~
6 ~~retardation~~ intellectual disabilities, and

7 b. referring to terms such as "mental retardation" or
8 "mentally retarded" with terms such as "intellectual
9 disabilities" or "intellectually disabled".

10 B. Violation of this section shall not be grounds to invalidate
11 any new or revised statutes, administrative rules, local laws,
12 ordinances, charters, or regulations promulgated or any publication
13 published by the state or any political subdivision; provided,
14 however, such documents shall be changed to reflect the provisions
15 of this section in subsequent revisions.

16 C. Nothing in this section shall constitute a requirement to
17 change the name of any agency or program. Existing printed material
18 may be utilized until such time as supplies are required to be
19 replenished.

20 SECTION 28. AMENDATORY 30 O.S. 2011, Section 1-111, is
21 amended to read as follows:

22 Section 1-111. A. As used in the Oklahoma Guardianship and
23 Conservatorship Act:

1 1. "Abuse" means the intentional infliction of physical pain,
2 injury, or mental anguish or the deprivation of food, clothing,
3 shelter, or medical care to an incapacitated person, partially
4 incapacitated person, or a minor by a guardian or other person
5 responsible for providing these services;

6 2. "Confidential information" means medical records, physical,
7 psychological or other evaluations of a ward or subject of the
8 proceeding, initial and subsequent guardianship plans, reports of
9 guardians, limited guardians and conservators submitted to the court
10 in connection with a proceeding pursuant to the provisions of the
11 Oklahoma Guardianship and Conservatorship Act;

12 3. "Court" means a judge of the district court assigned to hear
13 probate matters or assigned to the division of the district court
14 designated to exercise probate jurisdiction;

15 4. "Estate" means the property of the person whose affairs are
16 subject to a guardianship proceeding;

17 5. "Evaluation" means a professional assessment of:

- 18 a. the ability of an adult to receive and evaluate
19 information effectively or communicate decisions,
- 20 b. the impact of any impairment of these skills on the
21 capacity of the individual to meet the essential
22 requirements for his physical health or safety, or to
23 manage his financial resources, and
- 24 c. the services necessary to provide for the ward;

1 6. "Exploitation" means an unjust or improper use of the
2 resources of an incapacitated person, a partially incapacitated
3 person, or a minor for the profit or advantage, pecuniary or
4 otherwise, of a person other than an incapacitated person, a
5 partially incapacitated person, or a minor through the use of undue
6 influence, coercion, harassment, duress, deception, false
7 representation, or false pretense;

8 7. A "guardian of an incapacitated person" means a person who
9 has been appointed by a court to serve as the guardian of an
10 incapacitated person to assure that the essential requirements for
11 the health and safety of ~~said~~ the person are met, to manage the
12 estate or financial resources of ~~said~~ the person, or both;

13 8. "Guardian ad litem" means, with respect to a guardianship
14 proceeding, a person appointed by the court to assist the subject of
15 the proceeding in making decisions with regard to the guardianship
16 proceeding, or to make ~~said~~ the decisions when the subject of the
17 proceeding is wholly incapable of making ~~said~~ the decisions even
18 with assistance;

19 9. "Guardianship plan" means the plan for the care and
20 treatment of a ward, the plan for the management of the financial
21 resources of a ward, or both;

22 10. "Guardianship proceeding" means a proceeding for the
23 appointment of a guardian, or for other orders regarding the
24

1 condition, care or treatment or for the management of the financial
2 resources of a ward;

3 11. "Guardianship report" means any report required by the
4 provisions of Sections 4-305 and 4-306 of this title;

5 12. "Incapacitated person" means a person eighteen (18) years
6 of age or older:

7 a. who is impaired by reason of:

8 (1) mental illness as defined by Section 1-103 of
9 Title 43A of the Oklahoma Statutes,

10 (2) ~~mental retardation~~ intellectual or developmental
11 disability as defined by Section ~~1-818.2 of Title~~
12 ~~63~~ 1430.2 of Title 10 of the Oklahoma Statutes,

13 (3) physical illness or disability,

14 (4) drug or alcohol dependency as defined by Section
15 3-403 of Title 43A of the Oklahoma Statutes, or

16 (5) such other similar cause, and

17 b. whose ability to receive and evaluate information
18 effectively or to make and to communicate responsible
19 decisions is impaired to such an extent that ~~said~~ the
20 person:

21 (1) lacks the capacity to meet essential requirements
22 for his physical health or safety, or

23 (2) is unable to manage his financial resources.
24

1 Whenever in the Oklahoma Statutes the term "incompetent person"
2 appears and refers to a person who has been found by a district
3 court to be an incompetent person because of an impairment or
4 condition described in this paragraph it shall have the same meaning
5 as "incapacitated person" but shall not include a person who is a
6 partially incapacitated person;

7 13. "Least restrictive dispositional alternative" means the
8 form of assistance that least interferes with the legal ability of
9 an incapacitated or partially incapacitated person to act in his own
10 behalf;

11 14. "Intangible personal property" means cash, stocks and
12 bonds, mutual funds, money market accounts, certificates of deposit,
13 insurance contracts, commodity accounts, and other assets of a
14 similar nature;

15 15. "Letters" means a document issued by the court subsequent
16 to the appointment of a guardian which designates the name of the
17 guardian and specifies the authority and powers of ~~said~~ the
18 guardian. Such document shall be endorsed thereon with the oath of
19 the guardian that he will perform the duties of his office as
20 guardian according to law;

21 16. A "limited guardian" means a person appointed by the court
22 to serve as the guardian of a partially incapacitated person and who
23 is authorized by the court to exercise only:
24

- 1 a. some of the powers of a guardian of the person or
2 whose power as guardian of the person extends only to
3 certain matters pertaining to the care or control of
4 the ward as specified by the court, or
5 b. certain powers as guardian of the property over the
6 estate or financial resources of the ward, or whose
7 powers as guardian of the property extend only to some
8 portion of the estate or financial resources of the
9 ward;

10 17. "Manage financial resources" or "manage the estate" means
11 those actions necessary to obtain, administer, and dispose of real
12 property, business property, benefits and income, and to otherwise
13 manage personal financial or business affairs;

14 18. "Meet the essential requirements for physical health or
15 safety" means those actions necessary to provide the health care,
16 food, shelter, clothing, personal hygiene and other care without
17 which serious physical injury is more likely than not to occur;

18 19. "Minor" means a person under eighteen (18) years of age;

19 20. "Neglect" means the failure to provide protection for an
20 incapacitated person, a partially incapacitated person, or a minor
21 who is unable to protect the person's own interest; or the failure
22 to provide adequate shelter or clothing; or the harming or
23 threatening with harm through action or inaction by either another
24 individual or through the person's own action or inaction because of

1 a lack of awareness, incompetence, or incapacity, which has resulted
2 or may result in physical or mental injury;

3 21. "Organization" means a corporation, trust, business trust,
4 partnership, association, or other legal entity;

5 22. "Partially incapacitated person" means an incapacitated
6 person whose impairment is only to the extent that without the
7 assistance of a limited guardian ~~said~~ the person is unable to:

8 a. meet the essential requirements for his physical
9 health or safety, or

10 b. manage all of his financial resources or to engage in
11 all of the activities necessary for the effective
12 management of his financial resources.

13 A finding that an individual is a partially incapacitated person
14 shall not constitute a finding of legal incompetence. A partially
15 incapacitated person shall be legally competent in all areas other
16 than the area or areas specified by the court in its dispositional
17 or subsequent orders. Such person shall retain all legal rights and
18 abilities other than those expressly limited or curtailed in ~~said~~
19 the orders;

20 23. "Party" means the person or entity filing a petition,
21 application, motion, acceptance of a testamentary nomination, or
22 objection; the subject of a guardianship proceeding; and the
23 guardian, the guardian ad litem and the conservator, if any such
24 persons have been appointed;

1 24. "Person" means an individual;

2 25. "Property" means real property, personal property, income,
3 any interest in such real or personal property and includes anything
4 that may be the subject of ownership;

5 26. "Restrictions on the legal capacity of a person to act in
6 his own behalf" means powers of an incapacitated or partially
7 incapacitated person which are assigned to a guardian;

8 27. "Subject of the proceeding" means a minor or an adult:

9 a. who is the subject of a petition requesting the
10 appointment of a guardian, limited guardian or special
11 guardian,

12 b. for whom a guardian or limited guardian has been
13 appointed by the court, or

14 c. an adult for whom a conservator is requested or
15 appointed; and

16 28. "Surcharge" means the imposition of personal liability by a
17 court on a guardian or limited guardian for willful or negligent
18 misconduct in the administration of the estate or other financial
19 resources of a ward.

20 B. 1. Nothing in this section shall be construed to mean an
21 incapacitated person, a partially incapacitated person, or a minor
22 is abused or neglected for the sole reason that a guardian or other
23 person responsible, in good faith, selects and depends upon
24 spiritual means alone through prayer, in accordance with the tenets

1 and practices of a recognized church or religious denomination, for
2 the treatment or cure of disease or remedial care of the person or
3 minor in their trust, and, in the case of an adult, in accordance
4 with the practices of or the express consent of the incapacitated or
5 partially incapacitated person.

6 2. Nothing contained in this subsection shall prevent a court
7 from immediately assuming custody of a minor, pursuant to the
8 Oklahoma Children's Code, and ordering whatever action may be
9 necessary, including medical treatment, to protect the minor's
10 health or welfare.

11 SECTION 29. AMENDATORY 43A O.S. 2011, Section 1-103, as
12 last amended by Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp.
13 2018, Section 1-103), is amended to read as follows:

14 Section 1-103. When used in this title, unless otherwise
15 expressly stated, or unless the context or subject matter otherwise
16 requires:

17 1. "Department" means the Department of Mental Health and
18 Substance Abuse Services;

19 2. "Chair" means the chair of the Board of Mental Health and
20 Substance Abuse Services;

21 3. "Mental illness" means a substantial disorder of thought,
22 mood, perception, psychological orientation or memory that
23 significantly impairs judgment, behavior, capacity to recognize
24 reality or ability to meet the ordinary demands of life;

1 4. "Board" means the Board of Mental Health and Substance Abuse
2 Services as established by the Mental Health Law;

3 5. "Commissioner" means the individual selected and appointed
4 by the Board to serve as Commissioner of Mental Health and Substance
5 Abuse Services;

6 6. "Indigent person" means a person who has not sufficient
7 assets or resources to support the person and to support members of
8 the family of the person lawfully dependent on the person for
9 support;

10 7. "Facility" means any hospital, school, building, house or
11 retreat, authorized by law to have the care, treatment or custody of
12 an individual with mental illness, or drug or alcohol dependency,
13 gambling addiction, eating disorders, an opioid substitution
14 treatment program, including, but not limited to, public or private
15 hospitals, community mental health centers, clinics, satellites or
16 facilities; provided, that facility shall not mean a child guidance
17 center operated by the State Department of Health;

18 8. "Consumer" means a person under care or treatment in a
19 facility pursuant to the Mental Health Law, or in an outpatient
20 status;

21 9. "Care and treatment" means medical care and behavioral
22 health services, as well as food, clothing and maintenance,
23 furnished to a person;

24

1 10. Whenever in this law or in any other law, or in any rule or
2 order made or promulgated pursuant to this law or to any other law,
3 or in the printed forms prepared for the admission of consumers or
4 for statistical reports, the words "insane", "insanity", "lunacy",
5 "mentally sick", "mental disease" or "mental disorder" are used,
6 such terms shall have equal significance to the words "mental
7 illness";

8 11. "Licensed mental health professional" means:

- 9 a. a psychiatrist who is a diplomate of the American
10 Board of Psychiatry and Neurology,
- 11 b. a psychiatrist who is a diplomate of the American
12 Osteopathic Board of Neurology and Psychiatry,
- 13 c. a physician licensed pursuant to the Oklahoma
14 Allopathic Medical and Surgical Licensure and
15 Supervision Act or the Oklahoma Osteopathic Medicine
16 Act,
- 17 d. a clinical psychologist who is duly licensed to
18 practice by the State Board of Examiners of
19 Psychologists,
- 20 e. a professional counselor licensed pursuant to the
21 Licensed Professional Counselors Act,
- 22 f. a person licensed as a clinical social worker pursuant
23 to the provisions of the Social Worker's Licensing
24 Act,

- 1 g. a licensed marital and family therapist as defined in
2 the Marital and Family Therapist Licensure Act,
3 h. a licensed behavioral practitioner as defined in the
4 Licensed Behavioral Practitioner Act,
5 i. an advanced practice nurse as defined in the Oklahoma
6 Nursing Practice Act,
7 j. a physician's assistant who is licensed in good
8 standing in this state, or
9 k. a licensed drug and alcohol counselor/mental health
10 (LADC/MH) as defined in the Licensed Alcohol and Drug
11 Counselors Act;

12 12. "Mentally incompetent person" means any person who has been
13 adjudicated mentally or legally incompetent by an appropriate
14 district court;

15 13. a. "Person requiring treatment" means a person who
16 because of his or her mental illness or drug or
17 alcohol dependency:

- 18 (1) poses a substantial risk of immediate physical
19 harm to self as manifested by evidence or serious
20 threats of or attempts at suicide or other
21 significant self-inflicted bodily harm,
22 (2) poses a substantial risk of immediate physical
23 harm to another person or persons as manifested
24

1 by evidence of violent behavior directed toward
2 another person or persons,

3 (3) has placed another person or persons in a
4 reasonable fear of violent behavior directed
5 towards such person or persons or serious
6 physical harm to them as manifested by serious
7 and immediate threats,

8 (4) is in a condition of severe deterioration such
9 that, without immediate intervention, there
10 exists a substantial risk that severe impairment
11 or injury will result to the person, or

12 (5) poses a substantial risk of immediate serious
13 physical injury to self or death as manifested by
14 evidence that the person is unable to provide for
15 and is not providing for his or her basic
16 physical needs.

17 b. The mental health or substance abuse history of the
18 person may be used as part of the evidence to
19 determine whether the person is a person requiring
20 treatment or an assisted outpatient. The mental
21 health or substance abuse history of the person shall
22 not be the sole basis for this determination.

23 c. Unless a person also meets the criteria established in
24 subparagraph a or b of this paragraph, person

1 requiring treatment or an assisted outpatient shall
2 not mean:

3 (1) a person whose mental processes have been
4 weakened or impaired by reason of advanced years,
5 dementia, or Alzheimer's disease,

6 (2) a ~~mentally retarded or developmentally disabled~~
7 person with intellectual or developmental
8 disability as defined in Title 10 of the Oklahoma
9 Statutes,

10 (3) a person with seizure disorder,

11 (4) a person with a traumatic brain injury, or

12 (5) a person who is homeless.

13 d. A person who meets the criteria established in this
14 section, but who is medically unstable, or the
15 facility holding the person is unable to treat the
16 additional medical conditions of that person should be
17 discharged and transported in accordance with Section
18 1-110 of this title;

19 14. "Petitioner" means a person who files a petition alleging
20 that an individual is a person requiring treatment or an assisted
21 outpatient;

22 15. "Executive director" means the person in charge of a
23 facility as defined in this section;

1 16. "Private hospital or facility" means any general hospital
2 maintaining a neuro-psychiatric unit or ward, or any private
3 hospital or facility for care and treatment of a person having a
4 mental illness, which is not supported by the state or federal
5 government. The term "private hospital" or "facility" shall not
6 include nursing homes or other facilities maintained primarily for
7 the care of elderly and disabled persons;

8 17. "Individualized treatment plan" means a proposal developed
9 during the stay of an individual in a facility, under the provisions
10 of this title, which is specifically tailored to the treatment needs
11 of the individual. Each plan shall clearly include the following:

- 12 a. a statement of treatment goals or objectives, based
13 upon and related to a clinical evaluation, which can
14 be reasonably achieved within a designated time
15 interval,
- 16 b. treatment methods and procedures to be used to obtain
17 these goals, which methods and procedures are related
18 to each of these goals and which include specific
19 prognosis for achieving each of these goals,
- 20 c. identification of the types of professional personnel
21 who will carry out the treatment procedures, including
22 appropriate medical or other professional involvement
23 by a physician or other health professional properly

1 qualified to fulfill legal requirements mandated under
2 state and federal law,

3 d. documentation of involvement by the individual
4 receiving treatment and, if applicable, the accordance
5 of the individual with the treatment plan, and

6 e. a statement attesting that the executive director of
7 the facility or clinical director has made a
8 reasonable effort to meet the plan's individualized
9 treatment goals in the least restrictive environment
10 possible closest to the home community of the
11 individual;

12 18. "Telemedicine" means the practice of health care delivery,
13 diagnosis, consultation, evaluation, treatment, transfer of medical
14 data, or exchange of medical education information by means of
15 audio, video, or data communications. Telemedicine uses audio and
16 video multimedia telecommunication equipment which permits two-way
17 real-time communication between a health care practitioner and a
18 patient who are not in the same physical location. Telemedicine
19 shall not include consultation provided by telephone or facsimile
20 machine;

21 19. "Recovery and recovery support" means nonclinical services
22 that assist individuals and families to recover from alcohol or drug
23 problems. They include social support, linkage to and coordination
24 among allied service providers, including but not limited to

1 transportation to and from treatment or employment, employment
2 services and job training, case management and individual services
3 coordination, life skills education, relapse prevention, housing
4 assistance, child care, and substance abuse education;

5 20. "Assisted outpatient" means a person who:

- 6 a. is either currently under the care of a facility
7 certified by the Department of Mental Health and
8 Substance Abuse Services as a Community Mental Health
9 Center, or is being discharged from the custody of the
10 Oklahoma Department of Corrections, or is being
11 discharged from a residential placement by the Office
12 of Juvenile Affairs,
- 13 b. is suffering from a mental illness,
- 14 c. is unlikely to survive safely in the community without
15 supervision, based on a clinical determination,
- 16 d. has a history of lack of compliance with treatment for
17 mental illness that has:

- 18 (1) prior to the filing of a petition, at least twice
19 within the last thirty-six (36) months been a
20 significant factor in necessitating
21 hospitalization or treatment in a hospital or
22 residential facility, or receipt of services in a
23 forensic or other mental health unit of a
24 correctional facility, or a specialized treatment

1 plan for treatment of mental illness in a secure
2 juvenile facility or placement in a specialized
3 residential program for juveniles, or

4 (2) prior to the filing of the petition, resulted in
5 one or more acts of serious violent behavior
6 toward self or others or threats of, or attempts
7 at, serious physical harm to self or others
8 within the last twenty-four (24) months,

9 e. is, as a result of his or her mental illness, unlikely
10 to voluntarily participate in outpatient treatment
11 that would enable him or her to live safely in the
12 community,

13 f. in view of his or her treatment history and current
14 behavior, is in need of assisted outpatient treatment
15 in order to prevent a relapse or deterioration which
16 would be likely to result in serious harm to the
17 person or persons as defined in this section, and

18 g. is likely to benefit from assisted outpatient
19 treatment; and

20 21. "Assisted outpatient treatment" means outpatient services
21 which have been ordered by the court pursuant to a treatment plan
22 approved by the court to treat an assisted outpatient's mental
23 illness and to assist the person in living and functioning in the
24 community, or to attempt to prevent a relapse or deterioration that

1 may reasonably be predicted to result in suicide or the need for
2 hospitalization.

3 SECTION 30. AMENDATORY 43A O.S. 2011, Section 10-103, as
4 amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018,
5 Section 10-103), is amended to read as follows:

6 Section 10-103. A. When used in the Protective Services for
7 Vulnerable Adults Act:

8 1. "Protective services" means services which are necessary to
9 aid a vulnerable adult in meeting the essential requirements for
10 mental or physical health and safety that the vulnerable adult is
11 unable to provide or obtain without assistance. The term
12 "protective services" includes but is not limited to services
13 provided to or obtained for such person in order to prevent or
14 remedy the abuse, neglect, or exploitation of such person;

15 2. "Services which are necessary to aid an individual to meet
16 essential requirements for mental or physical health and safety"
17 include, but shall not be limited to:

- 18 a. the identification of vulnerable adults in need of the
19 services,
- 20 b. the provision of medical care for physical and mental
21 health needs,
- 22 c. the provision of social services assistance in
23 personal hygiene, food, clothing, and adequately
24 heated and ventilated shelter,

- d. protection from health and safety hazards,
- e. protection from physical mistreatment,
- f. guardianship referral,
- g. outreach programs, and
- h. the transportation necessary to secure any of such services.

The term shall not include taking the person into physical custody without the consent of the person except as provided for in Sections 10-107 and 10-108 of this title, and the evaluation, monitoring, and provision of protective placements;

3. "Meet essential requirements for mental or physical health and safety" means those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which physical injury or illness to the vulnerable adult is likely to occur;

4. "Incapacitated person" means:

a. any person eighteen (18) years of age or older:

(1) who is impaired by reason of mental or physical illness or disability, dementia or related disease, ~~mental retardation~~, developmental or intellectual disability or other cause, and

(2) whose ability to receive and evaluate information effectively or to make and to communicate responsible decisions is impaired to such an

1 extent that such person lacks the capacity to
2 manage his or her financial resources or to meet
3 essential requirements for his or her mental or
4 physical health or safety without assistance from
5 others, or

- 6 b. a person for whom a guardian, limited guardian, or
7 conservator has been appointed pursuant to the
8 Oklahoma Guardianship and Conservatorship Act;

9 5. "Vulnerable adult" means an individual who is an
10 incapacitated person or who, because of physical or mental
11 disability, including persons with Alzheimer's disease or other
12 dementias, incapacity, or other disability, is substantially
13 impaired in the ability to provide adequately for the care or
14 custody of himself or herself, or is unable to manage his or her
15 property and financial affairs effectively, or to meet essential
16 requirements for mental or physical health or safety, or to protect
17 himself or herself from abuse, verbal abuse, neglect, or
18 exploitation without assistance from others;

19 6. "Caretaker" means a person who has:

- 20 a. the responsibility for the care of a vulnerable adult
21 or the financial management of the resources of a
22 vulnerable adult as a result of a family relationship,
23
24

1 b. assumed the responsibility for the care of a
2 vulnerable adult voluntarily, by contract, or as a
3 result of the ties of friendship, or

4 c. been appointed a guardian, limited guardian, or
5 conservator pursuant to the Oklahoma Guardianship and
6 Conservatorship Act;

7 7. "Department" means the Department of Human Services;

8 8. "Abuse" means causing or permitting:

9 a. the infliction of physical pain, injury, sexual abuse,
10 sexual exploitation, unreasonable restraint or
11 confinement, or mental anguish, or

12 b. the deprivation of nutrition, clothing, shelter,
13 health care, or other care or services without which
14 serious physical or mental injury is likely to occur
15 to a vulnerable adult by a caretaker or other person
16 providing services to a vulnerable adult;

17 9. "Exploitation" or "exploit" means an unjust or improper use
18 of the resources of a vulnerable adult for the profit or advantage,
19 pecuniary or otherwise, of a person other than the vulnerable adult
20 through the use of undue influence, coercion, harassment, duress,
21 deception, false representation or false pretense;

22 10. "Financial neglect" means repeated instances by a
23 caretaker, or other person, who has assumed the role of financial
24 management, of failure to use the resources available to restore or

1 maintain the health and physical well-being of a vulnerable adult,
2 including, but not limited to:

- 3 a. squandering or negligently mismanaging the money,
4 property, or accounts of a vulnerable adult,
- 5 b. refusing to pay for necessities or utilities in a
6 timely manner, or
- 7 c. providing substandard care to a vulnerable adult
8 despite the availability of adequate financial
9 resources;

10 11. "Neglect" means:

- 11 a. the failure to provide protection for a vulnerable
12 adult who is unable to protect his or her own
13 interest,
- 14 b. the failure to provide a vulnerable adult with
15 adequate shelter, nutrition, health care, or clothing,
16 or
- 17 c. negligent acts or omissions that result in harm or the
18 unreasonable risk of harm to a vulnerable adult
19 through the action, inaction, or lack of supervision
20 by a caretaker providing direct services;

21 12. "Sexual abuse" means:

- 22 a. oral, anal, or vaginal penetration of a vulnerable
23 adult by or through the union with the sexual organ of
24 a caretaker or other person providing services to the

1 vulnerable adult, or the anal or vaginal penetration
2 of a vulnerable adult by a caretaker or other person
3 providing services to the vulnerable adult with any
4 other object, or

5 b. for the purpose of sexual gratification, the touching,
6 feeling or observation of the body or private parts of
7 a vulnerable adult by a caretaker or other person
8 providing services to the vulnerable adult, or

9 c. indecent exposure by a caretaker or other person
10 providing services to the vulnerable adult;

11 13. "Indecent exposure" means forcing or requiring a vulnerable
12 adult to:

13 a. look upon the body or private parts of another person
14 or upon sexual acts performed in the presence of the
15 vulnerable adult, or

16 b. touch or feel the body or private parts of another;

17 14. "Self-neglect" means the action or inaction of a vulnerable
18 adult which causes that person to fail to meet the essential
19 requirements for physical or mental health and safety due to the
20 vulnerable adult's lack of awareness, incompetence or incapacity;

21 15. "Sexual exploitation" includes, but is not limited to, a
22 caretaker's causing, allowing, permitting or encouraging a
23 vulnerable adult to engage in prostitution or in the lewd, obscene,
24

1 or pornographic photographing, filming or depiction of the
2 vulnerable adult as those acts are defined by state law; and

3 16. "Verbal abuse" means the use of words, sounds, or other
4 communication including, but not limited to, gestures, actions or
5 behaviors, by a caretaker or other person providing services to a
6 vulnerable adult that are likely to cause a reasonable person to
7 experience humiliation, intimidation, fear, shame or degradation.

8 B. Nothing in this section shall be construed to mean a
9 vulnerable adult is abused or neglected for the sole reason the
10 vulnerable adult, in good faith, selects and depends upon spiritual
11 means alone through prayer, in accordance with the practices of a
12 recognized religious method of healing, for the treatment or cure of
13 disease or remedial care, or a caretaker or other person
14 responsible, in good faith, is furnishing such vulnerable adult
15 spiritual means alone through prayer, in accordance with the tenets
16 and practices of a recognized church or religious denomination, for
17 the treatment or cure of disease or remedial care in accordance with
18 the practices of or express consent of the vulnerable adult.

19 SECTION 31. AMENDATORY 43A O.S. 2011, Section 10-104, as
20 amended by Section 1, Chapter 318, O.S.L. 2016 (43A O.S. Supp. 2018,
21 Section 10-104), is amended to read as follows:

22 Section 10-104. A. Any person having reasonable cause to
23 believe that a vulnerable adult is suffering from abuse, neglect, or
24

1 exploitation shall make a report as soon as the person is aware of
2 the situation to:

- 3 1. The Department of Human Services; or
- 4 2. The municipal police department or sheriff's office in the
5 county in which the suspected abuse, neglect, or exploitation
6 occurred.

7 B. Persons required to make reports pursuant to this section
8 shall include, but not be limited to:

- 9 1. Physicians;
- 10 2. Operators of emergency response vehicles and other medical
11 professionals;
- 12 3. Social workers and mental health professionals;
- 13 4. Law enforcement officials;
- 14 5. Staff of domestic violence programs;
- 15 6. Long-term care facility personnel, including staff of
16 nursing facilities, intermediate care facilities for ~~persons~~
17 individuals with ~~mental retardation~~ intellectual disabilities
18 (ICFs/IID), assisted living facilities, and residential care
19 facilities;
- 20 7. Other health care professionals;
- 21 8. Persons entering into transactions with a caretaker or other
22 person who has assumed the role of financial management for a
23 vulnerable adult;

24

1 9. Staff of residential care facilities, group homes, or
2 employment settings for individuals with ~~developmental~~ intellectual
3 disabilities;

4 10. Job coaches, community service workers, and personal care
5 assistants; and

6 11. Municipal employees.

7 C. 1. If the report is not made in writing in the first
8 instance, as soon as possible after it is initially made by
9 telephone or otherwise, the report shall be reduced to writing by
10 the Department of Human Services, in accordance with rules
11 promulgated by the ~~Commission for~~ Director of Human Services, or the
12 local municipal police or sheriff's department whichever entity
13 received the initial report. The report shall contain the following
14 information:

- 15 a. the name and address of the vulnerable adult,
16 b. the name and address of the caretaker, guardian, or
17 person having power of attorney over the vulnerable
18 adult's resources if any,
19 c. a description of the current location of the
20 vulnerable adult,
21 d. a description of the current condition of the
22 vulnerable adult, and
23
24

1 e. a description of the situation which may constitute
2 abuse, neglect or exploitation of the vulnerable
3 adult.

4 2. If federal law specifically prohibits the disclosure of any
5 of the information required by this subsection, that information may
6 be excluded from the report.

7 D. If the initial report is made to the local municipal police
8 department or sheriff's office, such police department or sheriff's
9 office shall notify, as soon as possible, the Department of Human
10 Services of its investigation.

11 E. Any person who knowingly and willfully fails to promptly
12 report any abuse, neglect, or exploitation as required by the
13 provisions of subsection A of this section, upon conviction, shall
14 be guilty of a misdemeanor punishable by imprisonment in the county
15 jail for a term not exceeding one (1) year or by a fine of not more
16 than One Thousand Dollars (\$1,000.00), or by both such fine and
17 imprisonment.

18 F. 1. Any person participating in good faith and exercising
19 due care in the making of a report pursuant to the provisions of
20 this section shall have immunity from any civil or criminal
21 liability that might otherwise be incurred or imposed. Any such
22 participant shall have the same immunity with respect to
23 participation in any judicial proceeding resulting from the report.
24

1 2. The same immunity from any civil or criminal liability shall
2 also be extended to previous employers of a person employed to be
3 responsible for the care of a vulnerable adult, who in good faith
4 report to new employers or prospective employers of such caretaker
5 any misconduct of the caretaker including, but not limited to,
6 abuse, neglect or exploitation of a vulnerable adult, whether
7 confirmed or not.

8 G. Any person who willfully or recklessly makes a false report
9 shall be civilly liable for any actual damages suffered by the
10 person being reported and for any punitive damages set by the court
11 or jury which may be allowed in the discretion of the court or jury.

12 H. 1. Every physician or other health care professional making
13 a report concerning the abuse, neglect or exploitation of a
14 vulnerable adult, as required by this section, or examining a
15 vulnerable adult to determine the likelihood of abuse, neglect or
16 exploitation, and every hospital in which a vulnerable adult is
17 examined or treated for abuse, neglect or exploitation shall
18 disclose necessary health information related to the case and
19 provide, upon request by either the Department of Human Services or
20 the local municipal police or sheriff's department receiving the
21 initial report, copies of the results or the records of the
22 examination on which the report was based, and any other clinical
23 notes, x-rays or photographs and other health information which is
24 related to the case if:

- 1 a. the vulnerable adult agrees to the disclosure of the
2 health information, or
- 3 b. the individual is unable to agree to the disclosure of
4 health information because of incapacity; and
- 5 (1) the requesting party represents that the health
6 information for which disclosure is sought is not
7 intended to be used against the vulnerable adult
8 in a criminal prosecution but to provide
9 protective services pursuant to the Protective
10 Services for Vulnerable Adults Act,
- 11 (2) the disclosure of the information is necessary to
12 conduct an investigation into the alleged abuse,
13 neglect or exploitation of the vulnerable adult
14 subject to the investigation, and
- 15 (3) immediate enforcement activity that depends upon
16 the disclosure:
- 17 (a) is necessary to protect the health, safety
18 and welfare of the vulnerable adult because
19 of incapacity, or
- 20 (b) would be materially and adversely affected
21 by waiting until the vulnerable adult is
22 able to agree to the disclosure.
- 23
24

1 2. If federal law specifically prohibits the disclosure of any
2 of the information required by this subsection, that information may
3 be excluded from the disclosed health information.

4 I. After investigating the report, either the county office of
5 the Department of Human Services or the municipal police department
6 or sheriff's office, as appropriate, shall forward its findings to
7 the office of the district attorney in the county in which the
8 suspected abuse, neglect, or exploitation occurred. Unsubstantiated
9 findings shall be labeled as such before transmission to the office
10 of the district attorney. Findings of self-neglect shall not be
11 forwarded to the office of the district attorney unless similar
12 findings were reported within six (6) months prior.

13 J. Any state or county medical examiner or physician who has
14 reasonable cause to suspect that the death of any vulnerable adult
15 may be the result of abuse or neglect as defined by Section 10-103
16 of this title shall make a report to the district attorney or other
17 law enforcement official of the county in which the death occurred.
18 The report shall include the name of the person making the report,
19 the name of the deceased person, the facts or other evidence
20 supporting such suspicion, and any other health information that may
21 be of assistance to the district attorney in conducting an
22 investigation into the matter.

23 K. No employer shall terminate the employment, prevent or
24 impair the practice or occupation of or impose any other sanction on

1 any employee solely for the reason that the employee made or caused
2 to be made a report or cooperated with an investigation pursuant to
3 the Protective Services for Vulnerable Adults Act. A court, in
4 addition to other damages and remedies, may assess reasonable
5 attorney fees against an employer who has been found to have
6 violated the provisions of this subsection.

7 SECTION 32. AMENDATORY 47 O.S. 2011, Section 1104.1, is
8 amended to read as follows:

9 Section 1104.1. A. Twenty-three Dollars (\$23.00) of the fee
10 authorized by Section 1135.5 of this title for university or college
11 supporter license plates which are received each year by the
12 Oklahoma Tax Commission or its motor license agents shall be
13 apportioned as follows:

14 1. Twenty Dollars (\$20.00) of the fee for each license plate
15 designating a particular state university or college shall be
16 apportioned to the particular state university or college so
17 designated on the license plate. Twenty Dollars (\$20.00) of the fee
18 for each license plate designating a particular private university
19 or college shall be apportioned to the particular private university
20 or college so designated on the license plate and may be used by the
21 private university or college as compensation for use of the
22 symbols, words, or letters authorized by the private university or
23 college for use on the license plate; and

24

1 2. Three Dollars (\$3.00) shall be deposited to the Adaptive
2 Grant Program for Oklahomans with ~~Mental Retardation~~ Intellectual
3 Disabilities Revolving Fund created by this section to be used for
4 educational purposes.

5 B. There is hereby created in the State Treasury a revolving
6 fund for the Department of Human Services to be designated the
7 "Adaptive Grant Program for Oklahomans with ~~Mental Retardation~~
8 Intellectual Disabilities Revolving Fund". The fund shall be a
9 continuing fund, not subject to fiscal year limitations, and shall
10 consist of all funds deposited therein pursuant to the provisions of
11 paragraph 2 of subsection A of this section. All monies accruing to
12 the credit of the fund are hereby appropriated and may be budgeted
13 and expended by the Department of Human Services for the
14 administration of the Adaptive Grant Program for Oklahomans with
15 ~~Mental Retardation~~ Intellectual Disabilities.

16 C. The Director of the Department of Human Services is hereby
17 directed to promulgate rules to create the Adaptive Grant Program
18 for Oklahomans with ~~Mental Retardation~~ Intellectual Disabilities
19 Program to provide financial assistance in adaptation of
20 furnishings, fixtures, vehicles, equipment or structures in order to
21 meet any special needs of Oklahomans with ~~mental retardation~~
22 intellectual disabilities; provided, recipients of grants awarded
23 pursuant to the program shall be limited to those programs, projects
24 or persons not otherwise qualifying for state or federal funding.

1 The Department of Human Services is authorized to contract with a
2 statewide private, nonprofit foundation certified to be a 501(c)(3)
3 organization by the Internal Revenue Service for administration of
4 the program.

5 D. The ~~Department~~ Director of Human Services shall prepare an
6 annual report on the Program. Such report shall be submitted to the
7 Governor, the President Pro Tempore of the Senate and the Speaker of
8 the House of Representatives.

9 SECTION 33. AMENDATORY 56 O.S. 2011, Section 198.11c, is
10 amended to read as follows:

11 Section 198.11c. A. This act shall be known and may be cited
12 as the "Opportunities for Independent Living Act".

13 B. The Legislature finds that:

14 1. In the landmark *Olmstead v. L.C.* decision, the Supreme Court
15 interpreted Title II of the Americans with Disabilities Act to
16 require states to administer programs in the most integrated setting
17 appropriate to meet the needs of qualified persons with
18 disabilities;

19 2. Medicaid is presently structured to provide care to persons
20 with disabilities in institutional settings such as skilled nursing
21 facilities and private intermediate care facilities for ~~persons~~
22 individuals with ~~mental retardation (ICFs-MR)~~ intellectual
23 disabilities (ICFs/IID), and in community-based settings such as
24 group homes and waiver programs; and

1 3. Persons with disabilities living in institutional settings
2 must meet certain low-income standards to become eligible for
3 institutional care. Therefore, when a person with disabilities
4 wishes to move into the community, he or she has little or no
5 resources to pay for rent and utility deposits or purchase basic
6 household items.

7 C. It is the intent of the Legislature to establish a three-
8 year pilot program that:

9 1. Is consistent with and implements the Olmstead Decision;

10 2. Develops eligibility criteria for the pilot program;

11 3. In coordination with the Oklahoma Health Care Authority and
12 the Department of Human Services Aging Division, utilizes the
13 Centers for Medicare and Medicaid Services Minimum Data Set (MDS)
14 information to identify thirty people who have requested to receive
15 their services in a community setting;

16 4. Identifies barriers to moving into the community;

17 5. Works with nurses and case managers to coordinate services
18 for eligible participants within the pilot program to ensure the
19 health and safety of each consumer;

20 6. Establishes an infrastructure to allow for an effective
21 system that allows money to follow the person from Medicaid programs
22 into the community settings;

23 7. Increases the availability of safe, affordable and
24 accessible housing;

- 1 8. Establishes a presence within local hospitals to reduce the
- 2 number of inappropriate placements within institutional settings;
- 3 9. Develops benefits counseling options; and
- 4 10. Allows qualified persons with disabilities the opportunity
- 5 to transition from institutions into the community.

6 D. Subject to the availability of funding, the Oklahoma Health
7 Care Authority shall establish and maintain a three-year pilot
8 program to assist qualified individuals with disabilities living in
9 institutions to transition into the community. The Authority shall
10 act as the lead agency and is authorized to consult and cooperate
11 with the Department of Human Services as necessary to carry out the
12 provisions of ~~this act~~ the Opportunities for Independent Living Act.

13 E. The Authority shall enter into contracts to carry out the
14 provisions of ~~this act~~ the Opportunities for Independent Living Act.
15 Such contracted entities shall be consumer-controlled, non-
16 residence-based, community-based, nonprofit organizations with
17 experience in transitioning persons with disabilities into community
18 settings.

- 19 F. The Authority through its duly contracted entities shall:
- 20 1. Utilize MDS data to identify participants who prefer to
 - 21 receive services within the community;
 - 22 2. Develop eligibility criteria for pilot program participants;
 - 23 3. Provide ongoing assistance to further develop assessment
 - 24 criteria for pilot program participants;

1 4. Work in conjunction with health care providers and case
2 managers to coordinate services for pilot program participants;

3 5. Establish an effective system that allows money to follow
4 pilot program participants from the institutional setting to the
5 community;

6 6. Increase pilot program participant access to safe and
7 affordable housing;

8 7. Offer follow-up services such as training, technical
9 assistance and support for pilot program participants; and

10 8. Develop curriculum and marketing materials to train future
11 service providers.

12 G. The Authority through its duly contracted entities is
13 authorized to use available funding to assist eligible persons under
14 this act to:

15 1. Pay rent deposits;

16 2. Pay utility deposits;

17 3. Purchase initial household supplies;

18 4. Purchase basic initial household appliances; and

19 5. Purchase initial furniture and pay moving expenses.

20 H. The Authority shall promulgate rules as necessary to carry
21 out the provisions of ~~this act~~ the Opportunities for Independent
22 Living Act. Such rules shall include but are not limited to:

23 1. Eligibility criteria for services;

24

1 2. Assessment protocols to identify persons in need of
2 services; and

3 3. Funding to assist eligible persons.

4 I. The Authority and the Department of Human Services shall
5 evaluate the implementation of the pilot program and annually make
6 recommendations to the Legislature regarding its effectiveness.

7 SECTION 34. AMENDATORY 56 O.S. 2011, Section 602, is
8 amended to read as follows:

9 Section 602. As used in the Oklahoma Family Support Act:

10 1. "Department" means the Department of Human Services;

11 2. "Family" means a family member and his or her parent or
12 legal guardian; and

13 3. "Family member" means a person less than eighteen (18) years
14 of age with ~~mental retardation or other~~ developmental or
15 intellectual disability as defined in Section 1408 of Title 10 of
16 the Oklahoma Statutes.

17 SECTION 35. AMENDATORY 56 O.S. 2011, Section 1017.2, is
18 amended to read as follows:

19 Section 1017.2. The Legislature finds that:

20 1. Oklahoma has a successful home- and community-based services
21 program known as the ADvantage Waiver Program for the frail, elderly
22 and adults with physical disabilities age twenty-one (21) and over
23 who do not have ~~mental retardation~~ an intellectual disability nor a
24 cognitive impairment. The ADvantage Waiver Program provides the

1 following services: case management, transitional case management,
2 personal care, advanced supportive/restorative, skilled nursing -
3 home health setting, RN assessment evaluation, occupational therapy,
4 physical therapy, respiratory therapy, speech/language therapy,
5 adult day health, personal care in adult day health, therapy in
6 adult day health, home-delivered meals, NF extended respite, in-home
7 respite, in-home extended respite, environmental modifications,
8 hospice, consumer-directed personal care assistant services and
9 supports, assisted living, and specialized medical equipment and
10 supplies;

11 2. Many Oklahomans who could safely stay at home with cost-
12 effective home- and community-based services go into nursing
13 facilities the day assistance is needed because their eligibility
14 for nursing facility supports is "presumed" by the nursing facility,
15 while eligibility for home and community supports can take weeks or
16 months. If their circumstances are such that they need immediate or
17 urgent care, they lose their choice to live and receive their
18 services at home. Once they are in a nursing facility, they may
19 lose their home or the supports they need to stay at home; and

20 3. The cost of serving Oklahomans who are in nursing facilities
21 when they could be living and receiving services at home is
22 significantly higher than the cost of serving them with home- and
23 community-based services.

24

1 SECTION 36. AMENDATORY 56 O.S. 2011, Section 1017.3, is
2 amended to read as follows:

3 Section 1017.3. To be eligible for the ADvantage Waiver
4 Program, a person shall:

5 1. Qualify financially for Medicaid;

6 2. Be sixty-five (65) years of age or older or be a physically
7 disabled adult as determined by the Social Security Administration,
8 age twenty-one (21) years or older without ~~mental retardation~~ an
9 intellectual disability or cognitive impairment;

10 3. Be determined to meet the nursing facility institutional
11 level of care by the Aging Services Division of the Department of
12 Human Services;

13 4. Reside in his or her own home or a family member's home; and

14 5. Have needs that can be safely met with waiver services and
15 family or community supports.

16 SECTION 37. AMENDATORY 56 O.S. 2011, Section 1025.1, is
17 amended to read as follows:

18 Section 1025.1. For the purposes of this chapter:

19 1. "Bureau" means the Oklahoma State Bureau of Investigation;

20 2. ~~"Commission" means the Commission for Human Services;~~

21 ~~3.~~ "Community services provider" means a community-based
22 program, corporation, or individual who contracts with, or is
23 licensed or funded by, the Department of Human Services to provide
24 residential or vocational services to persons who are elderly or

1 persons with ~~mental retardation~~ intellectual or developmental
2 disabilities, or contracts with the Oklahoma Health Care Authority
3 to provide services to individuals with ~~mental retardation~~
4 intellectual disabilities through a Home and Community-Based Waiver,
5 except a private ~~ICF/MR~~ ICF/IID;

6 4. 3. "Community services worker" means any person employed by
7 or under contract with a community services provider who provides,
8 for compensation or as a volunteer, health-related services,
9 training, or supportive assistance to persons who are elderly or
10 persons with developmental disabilities, and who is not a licensed
11 health professional or any person who contracts with the Oklahoma
12 Health Care Authority to provide specialized foster care,
13 habilitation training specialist services, or homemaker services to
14 persons with developmental disabilities;

15 5. 4. "Department" means the Department of Human Services;

16 6. 5. "Developmental disability" means a severe, chronic
17 disability of a person which:

- 18 a. is attributable to a mental or physical impairment or
19 combination of mental and physical impairments, such
20 as ~~mental retardation~~ an intellectual development
21 disorder, cerebral palsy, or autism,
22 b. is manifested before the person attains twenty-two
23 (22) years of age,
24 c. is likely to continue indefinitely,

1 d. results in substantial functional limitations in three
2 or more of the following areas of major life activity:

3 (1) self-care,

4 (2) receptive and expressive language,

5 (3) learning,

6 (4) mobility,

7 (5) self-direction,

8 (6) capacity for independent living, and

9 (7) economic self-sufficiency, and

10 e. reflects the person's need for a combination and
11 sequence of special, interdisciplinary, or generic
12 care, treatment, or other services which are of
13 lifelong or extended duration and are individually
14 planned and coordinated;

15 ~~7.~~ 6. "Health-related services" means those services provided
16 by community services providers or community services workers to
17 persons who are elderly or persons with developmental disabilities
18 that include, but are not limited to, personal hygiene,
19 transferring, range of motion, supervision or assistance in
20 activities of daily living, basic nursing care such as taking
21 temperature, pulse or respiration, positioning, incontinent care,
22 and identification of signs and symptoms of disease. Certain tasks
23 that may be performed as basic nursing care by community services
24 workers require appropriate training provided or approved by the

1 Department, written agreement by the service recipient's personal
2 support team, and the primary care physician's acknowledgement and
3 specific order related to the task. Under such circumstances, basic
4 nursing care may include, but need not be limited to:

- 5 a. nutrition, including meals by gastrostomy tube or
- 6 jejeunostomy tube,
- 7 b. blood glucose monitoring,
- 8 c. ostomy bag care,
- 9 d. oral suctioning, and
- 10 e. administration of oral metered dose inhalers and
- 11 nebulizers;

12 ~~8.~~ 7. "Supportive assistance" means the service rendered to
13 persons with developmental disabilities which is sufficient to
14 enable such person to meet an adequate level of daily living.
15 Supportive assistance includes, but is not limited to, training,
16 supervision, assistance in housekeeping, assistance in the
17 preparation of meals, and assistance in activities of daily living
18 as necessary for the health and comfort of persons with
19 developmental disabilities;

20 ~~9.~~ 8. "Maltreatment" means abuse, verbal abuse, sexual abuse,
21 neglect, financial neglect, exploitation or sexual exploitation of
22 vulnerable adults as defined in Section 10-103 of Title 43A of the
23 Oklahoma Statutes or abuse, neglect, sexual abuse or sexual
24

1 exploitation of children as defined in Section 1-1-105 of Title 10A
2 of the Oklahoma Statutes;

3 ~~10.~~ 9. "Personal care" means a level of assistance provided in
4 the home of an individual to meet the individual's activities of
5 daily living needs such as bathing, grooming, meal preparation,
6 light housekeeping, laundry, and care plan-directed errands;

7 ~~11.~~ 10. "Medicaid personal care services provider" means a
8 program, corporation or individual who provides services under the
9 state Medicaid program personal care program or Advantage Waiver to
10 individuals who are elderly or who have a physical disability;

11 ~~12.~~ 11. "Medicaid personal care assistant" means a person who
12 provides Medicaid services funded under the state Medicaid program
13 personal care program, who is not a certified nurse aide or a
14 licensed professional;

15 ~~13.~~ 12. "Specialized foster care" means the home- and
16 community-based service as defined in the 1915(c) waiver approved by
17 the Centers for Medicare and Medicaid Services;

18 ~~14.~~ 13. "Habilitatation training specialist services" means the
19 home- and community-based service as defined in the 1915 (c) waiver
20 approved by the Centers for Medicare and Medicaid Services;

21 ~~15.~~ 14. "Homemaker services" means the home- and community-
22 based service as defined in the 1915(c) waiver approved by the
23 Centers for Medicare and Medicaid Services.

24

1 SECTION 38. AMENDATORY 56 O.S. 2011, Section 1030.1, is
2 amended to read as follows:

3 Section 1030.1. A. The Department of Human Services may, upon
4 its own initiative or at the request of an owner, operator or
5 resident of any agency providing residential services to ~~people~~
6 individuals with ~~mental-retardation~~ intellectual disabilities, or at
7 the request of a resident's guardian or relative, petition the court
8 to appoint a receiver to take possession of and operate an agency
9 providing residential services, except a facility subject to the
10 provisions of the Nursing Home Care Act. When requested to file a
11 petition, the Department of Human Services shall determine if proper
12 cause exists, and shall take whatever steps are necessary to protect
13 the health, welfare and safety of residents including, if necessary,
14 petitioning the court to place the agency under the control of a
15 receiver to ensure that the residents receive adequate care.

16 B. Upon the filing of a petition by the Department of Human
17 Services, subject to other provisions of this article, a court may
18 appoint a receiver to take possession of and operate an agency
19 licensed by or contracting with the Department of Human Services or
20 the Oklahoma Health Care Authority to provide community residential
21 supports to individuals with ~~mental-retardation or other~~
22 developmental or intellectual disabilities when there is actual,
23 imminent or substantial risk of serious physical or mental harm or
24

1 death to residents, and no other remedies at law are adequate to
2 protect the health, safety and welfare of the residents.

3 C. Conditions and factors which may result in mental or
4 physical harm or death, or risk of harm or death, as described in
5 subsection B of this section include, but are not limited to,
6 instances when any of the following occur:

7 1. The residential agency has violated, or has demonstrated a
8 pattern and practice of repeated violations of, state or federal
9 law, rule or regulation which affect health and safety;

10 2. The residential agency is in the process of terminating
11 services or intends to cease operations, and arrangements for
12 relocating residents are dangerously inadequate; or

13 3. The residential agency is insolvent as defined in subsection
14 C of Section ~~16 of this act~~ 1030.2 of this title, and a receivership
15 is necessary to protect the health and safety of the residents.

16 D. Petitions filed pursuant to this section shall include the
17 following:

18 1. A description of the specific conditions, conduct, or
19 occurrences existing at the agency which have resulted in serious
20 physical or mental harm or death or which present a substantial risk
21 of serious physical or mental harm or death to residents;

22 2. A statement explaining why other remedies of law are
23 inadequate;

24

1 3. The number of individuals receiving residential services
2 from the agency who have been seriously harmed or died, or are at
3 substantial risk of such harm or death;

4 4. A statement that the facts have been brought to the
5 attention of the owner or administrator and that conditions have not
6 been remedied within a reasonable period of time or that the
7 conditions, though remedied periodically, habitually exist at the
8 agency as a pattern or practice;

9 5. The name and address of the persons holding a contract for
10 the agency or serving as the duly authorized agent of the contract
11 and the address of a designated representative for the Director of
12 the Department of Human Services and the Administrator of the
13 Oklahoma Health Care Authority; and

14 6. A listing of any other reasons that may apply as set forth
15 in this subsection.

16 E. No party, attorney, or person interested in an action shall
17 be appointed a receiver pursuant to this section. To assist the
18 court in identifying persons qualified to be named as receivers, the
19 Director of the Department of Human Services or the Director's
20 designee shall maintain a list of the names of such persons that the
21 court may consider.

22 F. The court may award to a residential agency appropriate
23 costs and expenses, including reasonable attorney fees, if the court
24 determines that a petitioner has initiated a proceeding in bad faith

1 or merely for the purpose of harassing or embarrassing the
2 residential agency.

3 SECTION 39. AMENDATORY 56 O.S. 2011, Section 2002, as
4 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
5 2018, Section 2002), is amended to read as follows:

6 Section 2002. A. For the purpose of providing quality care
7 enhancements, the Oklahoma Health Care Authority is authorized to
8 and shall assess a Nursing Facilities Quality of Care Fee pursuant
9 to this section upon each nursing facility licensed in this state.
10 Facilities operated by the Oklahoma Department of Veterans Affairs
11 shall be exempt from this fee. Quality of care enhancements
12 include, but are not limited to, the purposes specified in this
13 section.

14 B. As a basis for determining the Nursing Facilities Quality of
15 Care Fee assessed upon each licensed nursing facility, the Authority
16 shall calculate a uniform per-patient day rate. The rate shall be
17 calculated by dividing six percent (6%) of the total annual patient
18 gross receipts of all licensed nursing facilities in this state by
19 the total number of patient days for all licensed nursing facilities
20 in this state. The result shall be the per-patient day rate.
21 Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee
22 shall not be increased unless specifically authorized by the
23 Legislature.

24

1 C. Pursuant to any approved Medicaid waiver and pursuant to
2 subsection N of this section, the Nursing Facilities Quality of Care
3 Fee shall not exceed the amount or rate allowed by federal law for
4 nursing home licensed bed days.

5 D. The Nursing Facilities Quality of Care Fee owed by a
6 licensed nursing facility shall be calculated by the Authority by
7 adding the daily patient census of a licensed nursing facility, as
8 reported by the facility for each day of the month, and by
9 multiplying the ensuing figure by the per-patient day rate
10 determined pursuant to the provisions of subsection B of this
11 section.

12 E. Each licensed nursing facility which is assessed the Nursing
13 Facilities Quality of Care Fee shall be required to file a report on
14 a monthly basis with the Authority detailing the daily patient
15 census and patient gross receipts at such time and in such manner as
16 required by the Authority.

17 F. 1. The Nursing Facilities Quality of Care Fee for a
18 licensed nursing facility for the period beginning October 1, 2000,
19 shall be determined using the daily patient census and annual
20 patient gross receipts figures reported to the Authority for the
21 calendar year 1999 upon forms supplied by the Authority.

22 2. Annually the Nursing Facilities Quality of Care Fee shall be
23 determined by:

24

- 1 a. using the daily patient census and patient gross
- 2 receipts reports received by the Authority for the
- 3 most recent available twelve (12) months, and
- 4 b. annualizing those figures.

5 Each year thereafter, the annualization of the Nursing
6 Facilities Quality of Care Fee specified in this paragraph shall be
7 subject to the limitation in subsection B of this section unless the
8 provision of subsection C of this section is met.

9 G. The payment of the Nursing Facilities Quality of Care Fee by
10 licensed nursing facilities shall be an allowable cost for Medicaid
11 reimbursement purposes.

12 H. 1. There is hereby created in the State Treasury a
13 revolving fund to be designated the "Nursing Facility Quality of
14 Care Fund".

15 2. The fund shall be a continuing fund, not subject to fiscal
16 year limitations, and shall consist of:

- 17 a. all monies received by the Authority pursuant to this
- 18 section and otherwise specified or authorized by law,
- 19 b. monies received by the Authority due to federal
- 20 financial participation pursuant to Title XIX of the
- 21 Social Security Act, and
- 22 c. interest attributable to investment of money in the
- 23 fund.

1 3. All monies accruing to the credit of the fund are hereby
2 appropriated and shall be budgeted and expended by the Authority
3 for:

- 4 a. reimbursement of the additional costs paid to
5 Medicaid-certified nursing facilities for purposes
6 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
7 Title 63 of the Oklahoma Statutes,
- 8 b. reimbursement of the Medicaid rate increases for
9 intermediate care facilities for ~~the mentally retarded~~
10 ~~(ICFs/MR)~~ individuals with intellectual disabilities
11 (ICFs/IID),
- 12 c. nonemergency transportation services for Medicaid-
13 eligible nursing home clients,
- 14 d. eyeglass and denture services for Medicaid-eligible
15 nursing home clients,
- 16 e. ten additional ombudsmen employed by the Department of
17 Human Services,
- 18 f. ten additional nursing facility inspectors employed by
19 the State Department of Health,
- 20 g. pharmacy and other Medicaid services to qualified
21 Medicare beneficiaries whose incomes are at or below
22 one hundred percent (100%) of the federal poverty
23 level; provided however, pharmacy benefits authorized
24 for such qualified Medicare beneficiaries shall be

1 suspended if the federal government subsequently
2 extends pharmacy benefits to this population,

3 h. costs incurred by the Authority in the administration
4 of the provisions of this section and any programs
5 created pursuant to this section,

6 i. durable medical equipment and supplies services for
7 Medicaid-eligible elderly adults, and

8 j. personal needs allowance increases for residents of
9 nursing homes and Intermediate Care Facilities for the
10 ~~Mentally Retarded (ICFs/MR)~~ Intellectually Disabled
11 (ICFs/IID) from Thirty Dollars (\$30.00) to Fifty
12 Dollars (\$50.00) per month per resident.

13 4. Expenditures from the fund shall be made upon warrants
14 issued by the State Treasurer against claims filed as prescribed by
15 law with the Director of the Office of Management and Enterprise
16 Services for approval and payment.

17 5. The fund and the programs specified in this section funded
18 by revenues collected from the Nursing Facilities Quality of Care
19 Fee pursuant to this section are exempt from budgetary cuts,
20 reductions, or eliminations.

21 6. The Medicaid rate increases for intermediate care facilities
22 for ~~the mentally retarded (ICFs/MR)~~ individuals with intellectual
23 disabilities (ICFs/IID) shall not exceed the net Medicaid rate
24 increase for nursing facilities including, but not limited to, the

1 Medicaid rate increase for which Medicaid-certified nursing
2 facilities are eligible due to the Nursing Facilities Quality of
3 Care Fee less the portion of that increase attributable to treating
4 the Nursing Facilities Quality of Care Fee as an allowable cost.

5 7. The reimbursement rate for nursing facilities shall be made
6 in accordance with Oklahoma's Medicaid reimbursement rate
7 methodology and the provisions of this section.

8 8. No nursing facility shall be guaranteed, expressly or
9 otherwise, that any additional costs reimbursed to the facility will
10 equal or exceed the amount of the Nursing Facilities Quality of Care
11 Fee paid by the nursing facility.

12 I. 1. In the event that federal financial participation
13 pursuant to Title XIX of the Social Security Act is not available to
14 the Oklahoma Medicaid program, for purposes of matching expenditures
15 from the Nursing Facility Quality of Care Fund at the approved
16 federal medical assistance percentage for the applicable fiscal
17 year, the Nursing Facilities Quality of Care Fee shall be null and
18 void as of the date of the nonavailability of such federal funding,
19 through and during any period of nonavailability.

20 2. In the event of an invalidation of this section by any court
21 of last resort under circumstances not covered in subsection J of
22 this section, the Nursing Facilities Quality of Care Fee shall be
23 null and void as of the effective date of that invalidation.

24

1 3. In the event that the Nursing Facilities Quality of Care Fee
2 is determined to be null and void for any of the reasons enumerated
3 in this subsection, any Nursing Facilities Quality of Care Fee
4 assessed and collected for any periods after such invalidation shall
5 be returned in full within sixty (60) days by the Authority to the
6 nursing facility from which it was collected.

7 J. 1. If any provision of this section or the application
8 thereof shall be adjudged to be invalid by any court of last resort,
9 such judgment shall not affect, impair or invalidate the provisions
10 of the section, but shall be confined in its operation to the
11 provision thereof directly involved in the controversy in which such
12 judgment was rendered. The applicability of such provision to other
13 persons or circumstances shall not be affected thereby.

14 2. This subsection shall not apply to any judgment that affects
15 the rate of the Nursing Facilities Quality of Care Fee, its
16 applicability to all licensed nursing homes in the state, the usage
17 of the fee for the purposes prescribed in this section, and/or the
18 ability of the Authority to obtain full federal participation to
19 match its expenditures of the proceeds of the fee.

20 K. The Authority shall promulgate rules for the implementation
21 and enforcement of the Nursing Facilities Quality of Care Fee
22 established by this section.

23 L. The Authority shall provide for administrative penalties in
24 the event nursing facilities fail to:

- 1 1. Submit the Quality of Care Fee;
- 2 2. Submit the fee in a timely manner;
- 3 3. Submit reports as required by this section; or
- 4 4. Submit reports timely.

5 M. As used in this section:

6 1. "Nursing facility" means any home, establishment or
7 institution, or any portion thereof, licensed by the State
8 Department of Health as defined in Section 1-1902 of Title 63 of the
9 Oklahoma Statutes;

10 2. "Medicaid" means the medical assistance program established
11 in Title XIX of the federal Social Security Act and administered in
12 this state by the Authority;

13 3. "Patient gross revenues" means gross revenues received in
14 compensation for services provided to residents of nursing
15 facilities including, but not limited to, client participation. The
16 term "patient gross revenues" shall not include amounts received by
17 nursing facilities as charitable contributions; and

18 4. "Additional costs paid to Medicaid-certified nursing
19 facilities under Oklahoma's Medicaid reimbursement methodology"
20 means both state and federal Medicaid expenditures including, but
21 not limited to, funds in excess of the aggregate amounts that would
22 otherwise have been paid to Medicaid-certified nursing facilities
23 under the Medicaid reimbursement methodology which have been updated
24 for inflationary, economic, and regulatory trends and which are in

1 effect immediately prior to the inception of the Nursing Facilities
2 Quality of Care Fee.

3 N. 1. As per any approved federal Medicaid waiver, the
4 assessment rate subject to the provision of subsection C of this
5 section is to remain the same as those rates that were in effect
6 prior to January 1, 2012, for all state-licensed continuum of care
7 facilities.

8 2. Any facilities that made application to the State Department
9 of Health to become a licensed continuum of care facility no later
10 than January 1, 2012, shall be assessed at the same rate as those
11 facilities assessed pursuant to paragraph 1 of this subsection;
12 provided, that any facility making said application shall receive
13 the license on or before September 1, 2012. Any facility that fails
14 to receive such license from the State Department of Health by
15 September 1, 2012, shall be assessed at the rate established by
16 subsection C of this section subsequent to September 1, 2012.

17 O. If any provision of this section, or the application
18 thereof, is determined by any controlling federal agency, or any
19 court of last resort to prevent the state from obtaining federal
20 financial participation in the state's Medicaid program, such
21 provision shall be deemed null and void as of the date of the
22 nonavailability of such federal funding and through and during any
23 period of nonavailability. All other provisions of the bill shall
24 remain valid and enforceable.

1 SECTION 40. AMENDATORY 56 O.S. 2011, Section 343, is
2 amended to read as follows:

3 Section 343. The ~~Commission for~~ Department of Human Services
4 and the University Hospitals Authority shall enter into cooperative
5 agreements between the University Hospitals Authority and the state
6 schools for ~~the mentally retarded~~ individuals with intellectual
7 disabilities in the development of basic medical services programs
8 at the schools for ~~the mentally retarded~~ individuals with
9 intellectual disabilities; provided, that the University Hospitals
10 Authority shall not have the responsibility for implementing such
11 programs or for providing medical services at the schools for ~~the~~
12 ~~mentally retarded~~ individuals with intellectual disabilities.

13 SECTION 41. AMENDATORY 56 O.S. 2011, Section 347, is
14 amended to read as follows:

15 Section 347. The Department of Human Services is hereby
16 authorized to contract for the services of guardians and
17 conservators who will act on behalf of individuals that are
18 recipients of services through the agency's programs including, but
19 not limited to, the program for ~~the mentally retarded~~ individuals
20 with intellectual disabilities and the adult protective services
21 program. The Department is authorized to reimburse such guardians
22 and conservators for any expenses determined to be reimburseable by
23 the Department and incurred as a result of their services as
24 guardian or conservator.

1 SECTION 42. AMENDATORY 56 O.S. 2011, Section 530.2, is
2 amended to read as follows:

3 Section 530.2. A. It is the purpose and policy of the Oklahoma
4 Adult Companion Home Certification Act to ensure maintenance of
5 minimum standards for the care and protection of ~~mentally retarded~~
6 ~~or developmentally disabled~~ adults with intellectual or
7 developmental disability, and to encourage and assist adult
8 companion homes in achieving maximum standards.

9 B. In order to provide care for ~~mentally retarded or~~
10 ~~developmentally disabled~~ adults with intellectual or developmental
11 disability in adult companion homes, a certificate shall be obtained
12 from the Department of Human Services. Such certificate shall be
13 issued on the basis of meeting minimum standards which are essential
14 for the health and welfare of any ~~mentally retarded or~~
15 ~~developmentally disabled~~ adult with intellectual or developmental
16 disability placed for care in such home.

17 SECTION 43. AMENDATORY 56 O.S. 2011, Section 530.3, is
18 amended to read as follows:

19 Section 530.3. For purposes of the provisions of the Oklahoma
20 Adult Companion Home Certification Act:

- 21 1. "Department" means the Department of Human Services; and
- 22 2. "Adult companion home" means any home or establishment,
23 funded and certified by the Department of Human Services, which
24 provides homelike residential accommodations and supportive

1 assistance to three or fewer ~~mentally retarded or developmentally~~
2 ~~disabled~~ adults with intellectual or developmental disability.

3 SECTION 44. AMENDATORY 56 O.S. 2011, Section 530.6, is
4 amended to read as follows:

5 Section 530.6. A. The Department of Human Services shall have
6 authority at any reasonable time to investigate and examine the
7 conditions of any home which receives and cares for ~~mentally~~
8 ~~retarded or developmentally disabled~~ adults with intellectual or
9 developmental disability. The Department shall have authority at
10 any time to require the home to provide information pertaining to
11 ~~mentally retarded or developmentally disabled~~ adults with
12 intellectual or developmental disability in its care.

13 B. The State Department of Health may visit any home at the
14 request of the Department to advise on matters affecting the health
15 of ~~mentally retarded or developmentally disabled~~ adults with
16 intellectual or developmental disability and to inspect the
17 sanitation of the buildings used for their care.

18 C. The State Bureau of Investigation and the State Fire Marshal
19 shall visit any home at the request of the Department to advise on
20 matters affecting the safety of ~~mentally retarded or developmentally~~
21 ~~disabled~~ adults with intellectual or developmental disability and to
22 inspect the condition of the buildings in which their care is
23 provided.

24

1 D. Information obtained by the Department from any home
2 regarding ~~mentally retarded or developmentally disabled~~ adults with
3 intellectual or developmental disability shall be deemed
4 confidential, and shall be properly safeguarded, and shall not be
5 accessible to anyone except as herein provided unless upon order of
6 a court of competent jurisdiction.

7 SECTION 45. AMENDATORY 59 O.S. 2011, Section 367.3, is
8 amended to read as follows:

9 Section 367.3. A. The Board of Pharmacy shall implement
10 statewide a program consistent with public health and safety through
11 which unused prescription drugs, other than prescription drugs
12 defined as controlled dangerous substances in Section 2-101 of Title
13 63 of the Oklahoma Statutes, may be transferred from residential
14 care homes, nursing facilities, assisted living centers, public
15 intermediate care facilities for ~~people~~ individuals with ~~mental~~
16 ~~retardation (ICF/MR)~~ intellectual disabilities (ICFs/IID) or
17 pharmaceutical manufacturers to pharmacies operated by a county. If
18 no county pharmacy exists, or if a county pharmacy chooses not to
19 participate, such unused prescription medications may be transferred
20 to a pharmacy operated by a city-county health department or a
21 pharmacy under contract with a city-county health department, a
22 pharmacy operated by the Department of Mental Health and Substance
23 Abuse Services or a charitable clinic for the purpose of
24

1 distributing the unused prescription medications to Oklahoma
2 residents who are medically indigent.

3 B. The Board of Pharmacy shall promulgate rules and establish
4 procedures necessary to implement the program established by the
5 Utilization of Unused Prescription Medications Act.

6 C. The Board of Pharmacy shall provide technical assistance to
7 entities who may wish to participate in the program.

8 SECTION 46. AMENDATORY 62 O.S. 2011, Section 57.32, is
9 amended to read as follows:

10 Section 57.32. The State of Oklahoma Building Bonds Commission,
11 created by Section 57.302 of Title 62, ~~Oklahoma Statutes 1951,~~
12 ~~Section 57.1 of the Oklahoma Statutes,~~ acting for and on behalf of
13 the State of Oklahoma, shall be the agency by and through which the
14 State of Oklahoma shall incur indebtedness to the extent of the sum
15 of Thirty-five Million Five Hundred Thousand Dollars
16 (\$35,500,000.00) as principal, for the purpose of constructing new
17 buildings and other capital improvements, and for equipping,
18 remodeling, modernizing and repairing any and all existing buildings
19 and capital improvements, at the constituent institutions of the
20 Oklahoma State System of Higher Education provided that Five Million
21 Dollars (\$5,000,000.00) thereof shall be used to construct and equip
22 a school and hospital for ~~mentally-retarded~~ children with
23 intellectual disabilities in Northeastern Oklahoma pursuant to, and
24

1 under authority of, Section 34 of Article X of the Constitution of
2 the State of Oklahoma, and this act.

3 SECTION 47. AMENDATORY 63 O.S. 2011, Section 1-1925.2,
4 is amended to read as follows:

5 Section 1-1925.2. A. The Oklahoma Health Care Authority shall
6 fully recalculate and reimburse nursing facilities and intermediate
7 care facilities for ~~the mentally retarded (ICFs/MR)~~ individuals with
8 intellectual disabilities (ICFs/IID) from the Nursing Facility
9 Quality of Care Fund beginning October 1, 2000, the average actual,
10 audited costs reflected in previously submitted cost reports for the
11 cost-reporting period that began July 1, 1998, and ended June 30,
12 1999, inflated by the federally published inflationary factors for
13 the two (2) years appropriate to reflect present-day costs at the
14 midpoint of the July 1, 2000, through June 30, 2001, rate year.

15 1. The recalculations provided for in this subsection shall be
16 consistent for both nursing facilities and intermediate care
17 facilities for ~~the mentally retarded (ICFs/MR)~~ individuals with
18 intellectual disabilities (ICFs/IID), and shall be calculated in the
19 same manner as has been mutually understood by the long-term care
20 industry and the Oklahoma Health Care Authority.

21 2. The recalculated reimbursement rate shall be implemented
22 September 1, 2000.

23 B. 1. From September 1, 2000, through August 31, 2001, all
24 nursing facilities subject to the Nursing Home Care Act, in addition

1 to other state and federal requirements related to the staffing of
2 nursing facilities, shall maintain the following minimum direct-
3 care-staff-to-resident ratios:

- 4 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
5 every eight residents, or major fraction thereof,
- 6 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
7 every twelve residents, or major fraction thereof, and
- 8 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
9 every seventeen residents, or major fraction thereof.

10 2. From September 1, 2001, through August 31, 2003, nursing
11 facilities subject to the Nursing Home Care Act and ~~intermediate~~
12 ~~care facilities for the mentally retarded~~ ICFs/IID with seventeen or
13 more beds shall maintain, in addition to other state and federal
14 requirements related to the staffing of nursing facilities, the
15 following minimum direct-care-staff-to-resident ratios:

- 16 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
17 every seven residents, or major fraction thereof,
- 18 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
19 every ten residents, or major fraction thereof, and
- 20 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
21 every seventeen residents, or major fraction thereof.

22 3. On and after September 1, 2003, subject to the availability
23 of funds, nursing facilities subject to the Nursing Home Care Act
24 and ~~intermediate care facilities for the mentally retarded~~ ICFs/IID

1 with seventeen or more beds shall maintain, in addition to other
2 state and federal requirements related to the staffing of nursing
3 facilities, the following minimum direct-care-staff-to-resident
4 ratios:

- 5 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
6 every six residents, or major fraction thereof,
- 7 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
8 every eight residents, or major fraction thereof, and
- 9 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
10 every fifteen residents, or major fraction thereof.

11 4. Effective immediately, facilities shall have the option of
12 varying the starting times for the eight-hour shifts by one (1) hour
13 before or one (1) hour after the times designated in this section
14 without overlapping shifts.

15 5. a. On and after January 1, 2004, a facility that has been
16 determined by the State Department of Health to have
17 been in compliance with the provisions of paragraph 3
18 of this subsection since the implementation date of
19 this subsection, may implement flexible staff
20 scheduling; provided, however, such facility shall
21 continue to maintain a direct-care service rate of at
22 least two and eighty-six one-hundredths (2.86) hours
23 of direct-care service per resident per day.

24

1 b. At no time shall direct-care staffing ratios in a
2 facility with flexible staff-scheduling privileges
3 fall below one direct-care staff to every sixteen
4 residents, and at least two direct-care staff shall be
5 on duty and awake at all times.

6 c. As used in this paragraph, "flexible staff-scheduling"
7 means maintaining:

8 (1) a direct-care-staff-to-resident ratio based on
9 overall hours of direct-care service per resident
10 per day rate of not less than two and eighty-six
11 one-hundredths (2.86) hours per day,

12 (2) a direct-care-staff-to-resident ratio of at least
13 one direct-care staff person on duty to every
14 sixteen residents at all times, and

15 (3) at least two direct-care staff persons on duty
16 and awake at all times.

17 6. a. On and after January 1, 2004, the Department shall
18 require a facility to maintain the shift-based, staff-
19 to-resident ratios provided in paragraph 3 of this
20 subsection if the facility has been determined by the
21 Department to be deficient with regard to:

22 (1) the provisions of paragraph 3 of this subsection,

23 (2) fraudulent reporting of staffing on the Quality
24 of Care Report,

1 (3) a complaint and/or survey investigation that has
2 determined substandard quality of care, or

3 (4) a complaint and/or survey investigation that has
4 determined quality-of-care problems related to
5 insufficient staffing.

6 b. The Department shall require a facility described in
7 subparagraph a of this paragraph to achieve and
8 maintain the shift-based, staff-to-resident ratios
9 provided in paragraph 3 of this subsection for a
10 minimum of three (3) months before being considered
11 eligible to implement flexible staff scheduling as
12 defined in subparagraph c of paragraph 5 of this
13 subsection.

14 c. Upon a subsequent determination by the Department that
15 the facility has achieved and maintained for at least
16 three (3) months the shift-based, staff-to-resident
17 ratios described in paragraph 3 of this subsection,
18 and has corrected any deficiency described in
19 subparagraph a of this paragraph, the Department shall
20 notify the facility of its eligibility to implement
21 flexible staff-scheduling privileges.

22 7. a. For facilities that have been granted flexible staff-
23 scheduling privileges, the Department shall monitor
24 and evaluate facility compliance with the flexible

1 staff-scheduling staffing provisions of paragraph 5 of
2 this subsection through reviews of monthly staffing
3 reports, results of complaint investigations and
4 inspections.

5 b. If the Department identifies any quality-of-care
6 problems related to insufficient staffing in such
7 facility, the Department shall issue a directed plan
8 of correction to the facility found to be out of
9 compliance with the provisions of this subsection.

10 c. In a directed plan of correction, the Department shall
11 require a facility described in subparagraph b of this
12 paragraph to maintain shift-based, staff-to-resident
13 ratios for the following periods of time:

14 (1) the first determination shall require that shift-
15 based, staff-to-resident ratios be maintained
16 until full compliance is achieved,

17 (2) the second determination within a two-year period
18 shall require that shift-based, staff-to-resident
19 ratios be maintained for a minimum period of six
20 (6) months, and

21 (3) the third determination within a two-year period
22 shall require that shift-based, staff-to-resident
23 ratios be maintained for a minimum period of
24 twelve (12) months.

1 C. Effective September 1, 2002, facilities shall post the names
2 and titles of direct-care staff on duty each day in a conspicuous
3 place, including the name and title of the supervising nurse.

4 D. The State ~~Board~~ Commissioner of Health shall promulgate
5 rules prescribing staffing requirements for intermediate care
6 facilities for ~~the mentally retarded~~ individuals with intellectual
7 disabilities serving six or fewer clients (ICFs/IID-6) and for
8 intermediate care facilities for ~~the mentally retarded~~ individuals
9 with intellectual disabilities serving sixteen or fewer clients
10 (ICFs/IID-16).

11 E. Facilities shall have the right to appeal and to the
12 informal dispute resolution process with regard to penalties and
13 sanctions imposed due to staffing noncompliance.

14 F. 1. When the state Medicaid program reimbursement rate
15 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
16 plus the increases in actual audited costs over and above the actual
17 audited costs reflected in the cost reports submitted for the most
18 current cost-reporting period and the costs estimated by the
19 Oklahoma Health Care Authority to increase the direct-care, flexible
20 staff-scheduling staffing level from two and eighty-six one-
21 hundredths (2.86) hours per day per occupied bed to three and two-
22 tenths (3.2) hours per day per occupied bed, all nursing facilities
23 subject to the provisions of the Nursing Home Care Act and
24 intermediate care facilities for the ~~mentally retarded~~ individuals

1 with intellectual disabilities (ICFs/IID) with seventeen or more
2 beds, in addition to other state and federal requirements related to
3 the staffing of nursing facilities, shall maintain direct-care,
4 flexible staff-scheduling staffing levels based on an overall three
5 and two-tenths (3.2) hours per day per occupied bed.

6 2. When the state Medicaid program reimbursement rate reflects
7 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
8 increases in actual audited costs over and above the actual audited
9 costs reflected in the cost reports submitted for the most current
10 cost-reporting period and the costs estimated by the Oklahoma Health
11 Care Authority to increase the direct-care flexible staff-scheduling
12 staffing level from three and two-tenths (3.2) hours per day per
13 occupied bed to three and eight-tenths (3.8) hours per day per
14 occupied bed, all nursing facilities subject to the provisions of
15 the Nursing Home Care Act and ~~intermediate care facilities for the~~
16 ~~mentally retarded~~ ICFs/IID with seventeen or more beds, in addition
17 to other state and federal requirements related to the staffing of
18 nursing facilities, shall maintain direct-care, flexible staff-
19 scheduling staffing levels based on an overall three and eight-
20 tenths (3.8) hours per day per occupied bed.

21 3. When the state Medicaid program reimbursement rate reflects
22 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
23 increases in actual audited costs over and above the actual audited
24 costs reflected in the cost reports submitted for the most current

1 cost-reporting period and the costs estimated by the Oklahoma Health
2 Care Authority to increase the direct-care, flexible staff-
3 scheduling staffing level from three and eight-tenths (3.8) hours
4 per day per occupied bed to four and one-tenth (4.1) hours per day
5 per occupied bed, all nursing facilities subject to the provisions
6 of the Nursing Home Care Act and ~~intermediate care facilities for~~
7 ~~the mentally retarded~~ ICFs/IID with seventeen or more beds, in
8 addition to other state and federal requirements related to the
9 staffing of nursing facilities, shall maintain direct-care, flexible
10 staff-scheduling staffing levels based on an overall four and one-
11 tenth (4.1) hours per day per occupied bed.

12 4. The ~~Board~~ Commissioner shall promulgate rules for shift-
13 based, staff-to-resident ratios for noncompliant facilities denoting
14 the incremental increases reflected in direct-care, flexible staff-
15 scheduling staffing levels.

16 5. In the event that the state Medicaid program reimbursement
17 rate for facilities subject to the Nursing Home Care Act, and
18 ~~intermediate care facilities for the mentally retarded~~ ICFs/IID
19 having seventeen or more beds is reduced below actual audited costs,
20 the requirements for staffing ratio levels shall be adjusted to the
21 appropriate levels provided in paragraphs 1 through 4 of this
22 subsection.

23 G. For purposes of this subsection:
24

1 1. "Direct-care staff" means any nursing or therapy staff who
2 provides direct, hands-on care to residents in a nursing facility;
3 and

4 2. Prior to September 1, 2003, activity and social services
5 staff who are not providing direct, hands-on care to residents may
6 be included in the direct-care-staff-to-resident ratio in any shift.
7 On and after September 1, 2003, such persons shall not be included
8 in the direct-care-staff-to-resident ratio.

9 H. 1. The Oklahoma Health Care Authority shall require all
10 nursing facilities subject to the provisions of the Nursing Home
11 Care Act and ~~intermediate care facilities for the mentally retarded~~
12 ICFs/IID with seventeen or more beds to submit a monthly report on
13 staffing ratios on a form that the Authority shall develop.

14 2. The report shall document the extent to which such
15 facilities are meeting or are failing to meet the minimum direct-
16 care-staff-to-resident ratios specified by this section. Such
17 report shall be available to the public upon request.

18 3. The Authority may assess administrative penalties for the
19 failure of any facility to submit the report as required by the
20 Authority. Provided, however:

21 a. administrative penalties shall not accrue until the
22 Authority notifies the facility in writing that the
23 report was not timely submitted as required, and
24

1 b. a minimum of a one-day penalty shall be assessed in
2 all instances.

3 4. Administrative penalties shall not be assessed for
4 computational errors made in preparing the report.

5 5. Monies collected from administrative penalties shall be
6 deposited in the Nursing Facility Quality of Care Fund and utilized
7 for the purposes specified in the Oklahoma Healthcare Initiative
8 Act.

9 I. 1. All entities regulated by this state that provide long-
10 term care services shall utilize a single assessment tool to
11 determine client services needs. The tool shall be developed by the
12 Oklahoma Health Care Authority in consultation with the State
13 Department of Health.

14 2. a. The Oklahoma Nursing Facility Funding Advisory
15 Committee is hereby created and shall consist of the
16 following:

17 (1) four members selected by the Oklahoma Association
18 of Health Care Providers,

19 (2) three members selected by the Oklahoma
20 Association of Homes and Services for the Aging,
21 and

22 (3) two members selected by the State Council on
23 Aging.
24

1 The Chair shall be elected by the committee. No state
2 employees may be appointed to serve.

3 b. The purpose of the advisory committee will be to
4 develop a new methodology for calculating state
5 Medicaid program reimbursements to nursing facilities
6 by implementing facility-specific rates based on
7 expenditures relating to direct care staffing. No
8 nursing home will receive less than the current rate
9 at the time of implementation of facility-specific
10 rates pursuant to this subparagraph.

11 c. The advisory committee shall be staffed and advised by
12 the Oklahoma Health Care Authority.

13 d. The new methodology will be submitted for approval to
14 the Board of the Oklahoma Health Care Authority by
15 January 15, 2005, and shall be finalized by July 1,
16 2005. The new methodology will apply only to new
17 funds that become available for Medicaid nursing
18 facility reimbursement after the methodology of this
19 paragraph has been finalized. Existing funds paid to
20 nursing homes will not be subject to the methodology
21 of this paragraph. The methodology as outlined in
22 this paragraph will only be applied to any new funding
23 for nursing facilities appropriated above and beyond
24 the funding amounts effective on January 15, 2005.

1 e. The new methodology shall divide the payment into two
2 components:

3 (1) direct care which includes allowable costs for
4 registered nurses, licensed practical nurses,
5 certified medication aides and certified nurse
6 aides. The direct care component of the rate
7 shall be a facility-specific rate, directly
8 related to each facility's actual expenditures on
9 direct care, and

10 (2) other costs.

11 f. The Oklahoma Health Care Authority, in calculating the
12 base year prospective direct care rate component,
13 shall use the following criteria:

14 (1) to construct an array of facility per diem
15 allowable expenditures on direct care, the
16 Authority shall use the most recent data
17 available. The limit on this array shall be no
18 less than the ninetieth percentile,

19 (2) each facility's direct care base-year component
20 of the rate shall be the lesser of the facility's
21 allowable expenditures on direct care or the
22 limit,

23 (3) other rate components shall be determined by the
24 Oklahoma Nursing Facility Funding Advisory

1 Committee in accordance with federal regulations
2 and requirements, and

3 (4) rate components in divisions (2) and (3) of this
4 subparagraph shall be re-based and adjusted for
5 inflation when additional funds are made
6 available.

7 3. The Department of Human Services shall expand its statewide
8 toll-free, Senior-Info Line for senior citizen services to include
9 assistance with or information on long-term care services in this
10 state.

11 4. The Oklahoma Health Care Authority shall develop a nursing
12 facility cost-reporting system that reflects the most current costs
13 experienced by nursing and specialized facilities. The Oklahoma
14 Health Care Authority shall utilize the most current cost report
15 data to estimate costs in determining daily per diem rates.

16 J. 1. When the state Medicaid program reimbursement rate
17 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
18 plus the increases in actual audited costs, over and above the
19 actual audited costs reflected in the cost reports submitted for the
20 most current cost-reporting period, and the direct-care, flexible
21 staff-scheduling staffing level has been prospectively funding at
22 four and one-tenth (4.1) hours per day per occupied bed, the
23 Authority may apportion funds for the implementation of the
24 provisions of this section.

1 2. The Authority shall make application to the United States
2 Centers for Medicare and Medicaid Service for a waiver of the
3 uniform requirement on health-care-related taxes as permitted by
4 Section 433.72 of 42 C.F.R.

5 3. Upon approval of the waiver, the Authority shall develop a
6 program to implement the provisions of the waiver as it relates to
7 all nursing facilities.

8 SECTION 48. AMENDATORY 63 O.S. 2011, Section 1-219, is
9 amended to read as follows:

10 Section 1-219. The board of county commissioners of any county,
11 or the board of county commissioners of two or more counties
12 jointly, is hereby authorized, at the option and approval of said
13 board or boards, to conduct a child guidance program, and/or
14 community health center and/or community facility for ~~the mentally~~
15 ~~retarded~~ individuals with intellectual disabilities, separate and
16 apart from or in conjunction with the county department of health,
17 and to request as a part of the county budget an appropriation of
18 not to exceed an amount equal to the net proceeds of a levy of
19 three-fourths (3/4) mill on the dollar valuation of taxable property
20 in the county for such purpose or purposes; and to employ personnel,
21 within the limits of such funds, to conduct such program or
22 programs. Provided, that any center or facility for mental health
23 services established or maintained hereunder shall first be approved
24 by the State Director of Mental Health on advice of the Board of

1 Mental Health and shall operate under the guidelines of the Oklahoma
2 Mental Health Services Act; and any center or facility for ~~mental~~
3 ~~retardation~~ intellectual disability services established or
4 maintained hereunder shall first be approved by the Director of ~~the~~
5 ~~Department of Institutions, Social and Rehabilitative Services on~~
6 ~~the advice of the Oklahoma Welfare Commission and shall operate~~
7 ~~under regulations prescribed by the Oklahoma Public Welfare~~
8 ~~Commission~~ Human Services.

9 SECTION 49. AMENDATORY 63 O.S. 2011, Section 1-222.1, is
10 amended to read as follows:

11 Section 1-222.1. A. Every county or combination of counties
12 desirous of establishing a mental health center and/or facilities
13 for ~~the mentally retarded~~ individuals with intellectual disabilities
14 shall establish a community mental health board and/or ~~mental~~
15 ~~retardation~~ intellectual disability governing board each of which
16 shall be composed of not less than seven (7) members. The members
17 of such governing boards shall be appointed by the board of county
18 commissioners of said county. The term of office of members of the
19 governing board shall be three (3) years, except that of the members
20 first appointed the term of three members shall be for one (1) year,
21 and the term of two members shall be for two (2) years. All members
22 shall serve without pay.

23 B. When any combination of counties desires to establish a
24 mental health center and/or facilities for ~~the mentally retarded~~

1 individuals with intellectual disabilities, the ~~chairman~~ chair of
2 the board of county commissioners of each participating county shall
3 appoint two (2) members of a selection committee, which committee
4 shall select the governing board.

5 SECTION 50. AMENDATORY 63 O.S. 2011, Section 1-222.2, is
6 amended to read as follows:

7 Section 1-222.2. The duties of each of the governing boards
8 shall be:

9 1. For the community mental health board, the duties prescribed
10 by the Community Mental Health Services Act, Sections 601 through
11 609, Title 43A, Oklahoma Statutes; and

12 2. For the ~~mental retardation~~ intellectual disability board,
13 the duties prescribed for the ~~Oklahoma Welfare Commission~~ Department
14 of Human Services by Sections 301 through 335, Title 43A, Oklahoma
15 Statutes.

16 SECTION 51. AMENDATORY 63 O.S. 2011, Section 1-502.1, as
17 amended by Section 1, Chapter 246, O.S.L. 2013 (63 O.S. Supp. 2018,
18 Section 1-502.1), is amended to read as follows:

19 Section 1-502.1. A. All agencies and organizations that
20 regularly employ emergency medical technicians, paramedics,
21 firefighters, peace officers, as defined in Section 648 of Title 21
22 of the Oklahoma Statutes, correctional officers and employees, or
23 health care workers, all mental health or ~~mentally retarded~~
24 intellectual disability treatment or evaluation programs that employ

1 persons involved with providing care for patients, the J.D. McCarty
2 Center for Children with Developmental Disabilities, and all
3 juvenile institutions of the Department of Human Services shall
4 implement the universal precautions for the prevention of the
5 transmission of communicable diseases published by the Centers for
6 Disease Control, U.S. Public Health Service, in the Morbidity and
7 Mortality Weekly Report, Volume 36, Number 2S or as subsequently
8 amended.

9 B. The State ~~Board~~ Commissioner of Health shall promulgate
10 rules and guidelines that will implement a system of notification of
11 emergency medical technicians, paramedics, firefighters, health care
12 workers, funeral directors, peace officers, and any person who in
13 good faith renders aid in accordance with the Good Samaritan Act
14 relating to risk exposures during health care activities, emergency
15 response activities or funeral preparations. Risk exposure shall be
16 defined by the State ~~Board~~ Commissioner of Health to be exposure
17 that is epidemiologically demonstrated to have the potential for
18 transmitting a communicable disease.

19 C. The Board of Mental Health and Substance Abuse Services,
20 Department of Human Services, Oklahoma Cerebral Palsy Commission,
21 and State Board of Corrections shall each promulgate rules,
22 guidelines or policies to provide for such notification of risk
23 exposures to persons employed by such agencies.

24

1 SECTION 52. AMENDATORY 63 O.S. 2011, Section 1-533, is
2 amended to read as follows:

3 Section 1-533. A. The State ~~Board~~ Commissioner of Health shall
4 provide, pursuant to the provisions of Section 1-534 of this title,
5 as technologies and funds become available, an intensive educational
6 and newborn screening program among physicians, hospitals, public
7 health nurses, and the public concerning phenylketonuria, related
8 inborn metabolic disorders, and other genetic or biochemical
9 disorders for which:

10 1. Newborn screening will provide early treatment and
11 management opportunities that might not be available without
12 screening; and

13 2. Treatment and management will prevent ~~mental retardation~~
14 intellectual disabilities and/or reduce infant morbidity and
15 mortality.

16 B. This educational and newborn screening program shall include
17 information about:

18 1. The nature of the diseases;

19 2. Examinations for the detection of the diseases in infancy;
20 and

21 3. Follow-up measures to prevent the morbidity and mortality
22 resulting from these diseases.

23 C. For purposes of this section, "phenylketonuria" means an
24 inborn error of metabolism attributable to a deficiency of or a

1 defect in phenylalanine hydroxylase, the enzyme that catalyzes the
2 conversion of phenylalanine to tyrosine. The deficiency permits the
3 accumulation of phenylalanine and its metabolic products in the body
4 fluids. The deficiency can result in ~~mental retardation~~
5 intellectual disabilities (phenylpyruvic oligophrenia), neurologic
6 manifestations (including hyperkinesia, epilepsy, and microcephaly),
7 light pigmentation, and eczema. The disorder is transmitted as an
8 autosomal recessive trait and can be treated by administration of a
9 diet low in phenylalanine.

10 D. The ~~State Board of Health~~ Commissioner shall promulgate any
11 rules necessary to effectuate the provision of this section.

12 SECTION 53. AMENDATORY 63 O.S. 2011, Section 1-851.1, is
13 amended to read as follows:

14 Section 1-851.1. For purposes of the Long-term Care Certificate
15 of Need Act:

- 16 1. "Board" means the State Board of Health;
- 17 2. "Commissioner" means the State Commissioner of Health;
- 18 3. "Department" means the State Department of Health;
- 19 4. "Long-term care facility" means:
 - 20 a. a nursing facility or a specialized facility, as such
 - 21 terms are defined by Section 1-1902 of this title,
 - 22 b. skilled nursing care provided in a distinct part of a
 - 23 hospital as such term is defined by Section 1-701 of
 - 24 this title,

- c. the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, or
- d. the nursing care component of a life care community as such term is defined by the Long-term Care Insurance Act;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by the Long-term Care Certificate of Need Act,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a

1 final agency order or final judgment by a court of
2 record including, but not limited to, final orders or
3 judgments on appeal related to long-term care in the
4 five (5) years immediately preceding the filing of the
5 application. Such actions shall include, without
6 limitation, any permit denial or any sanction imposed
7 by a state regulatory authority or the Centers for
8 Medicare and Medicaid Services, and

- 9 e. a listing of any federal long-term care agency and any
10 state long-term care agency outside this state that
11 has or has had regulatory responsibility over the
12 applicant;

13 6. "History of noncompliance" means three standard or complaint
14 surveys found to be at the substandard quality of care level when
15 the facility does not achieve compliance by date certain in a
16 nursing facility or specialized facility for persons with
17 Alzheimer's disease or related disorders. Additionally, "history of
18 noncompliance" for an intermediate care or specialized facility for
19 persons with ~~mental retardation~~ intellectual disabilities means
20 three consecutive routine or complaint surveys that resulted in
21 determinations that the facility was out of compliance with two or
22 more Conditions of Participation in the Medicaid program within the
23 preceding thirty-six (36) months when the facility does not achieve
24 compliance within sixty (60) days;

1 7. "Person" means any individual, corporation, industry, firm,
2 partnership, association, venture, trust, institution, federal,
3 state or local governmental instrumentality, agency or body or any
4 other legal entity however organized; and

5 8. "Person with a controlling interest" means a person who
6 meets any one or more of the following requirements:

7 a. controls fifty percent (50%) or more of the common
8 stock of the corporate entity involved or controls
9 fifty percent (50%) or more of the interest in the
10 partnership involved,

11 b. controls a percentage of stock greater than any other
12 stockholder or equal to the other single largest
13 stockholder or controls a percentage of partnership
14 interest greater than any other partner or equal to
15 the other single largest partnership interest, or

16 c. a managing member of a Limited Liability Company
17 (LLC).

18 SECTION 54. AMENDATORY 63 O.S. 2011, Section 1-1902, as
19 amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2018,
20 Section 1-1902), is amended to read as follows:

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

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

1 2. "Access" means the right of a person to enter a facility to
2 communicate privately and without unreasonable restriction when
3 invited to do so by a resident. The state or local "ombudsman", as
4 that term is defined by the Aging Services Division of the
5 Department of Human Services pursuant to the Older Americans' Act,
6 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
7 employed by the Department of Mental Health and Substance Abuse
8 Services or one of its contract agencies shall have right of access
9 to enter a facility, communicate privately and without unreasonable
10 restriction with any resident who consents to the communication, to
11 seek consent to communicate privately and without restriction with
12 any resident, and to observe all areas of the facility that directly
13 pertain to the patient care of the resident without infringing upon
14 the privacy of the other residents without first obtaining their
15 consent;

16 3. "Administrator" means the person licensed by the State of
17 Oklahoma who is in charge of a facility. An administrator must
18 devote at least one-third (1/3) of such person's working time to on-
19 the-job supervision of the facility; provided that this requirement
20 shall not apply to an administrator of an intermediate care facility
21 ~~for the mentally retarded~~ individuals with intellectual disabilities
22 with sixteen or fewer beds ~~(ICF-MR/16)~~ (ICF/IID-16), in which case
23 the person licensed by the state may be in charge of more than one
24 ~~ICF-MR/16~~ such ICF/IID-16 facility, if such facilities are located

1 within a circle that has a radius of not more than fifteen (15)
2 miles, the total number of facilities and beds does not exceed six
3 facilities and sixty-four beds, and each ~~ICF-MR/16~~ such ICF/IID-16
4 facility is supervised by a qualified ~~mental-retardation~~
5 professional. The facilities may be free-standing in a community or
6 may be on campus with a parent institution. The ~~ICF-MR/16~~ ICF/IID-
7 16 facility may be independently owned and operated or may be part
8 of a larger institutional operation;

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

11 5. "Adult companion home" means any home or establishment,
12 funded and certified by the Department of Human Services, which
13 provides homelike residential accommodations and supportive
14 assistance to three or fewer ~~mentally-retarded or developmentally~~
15 ~~disabled~~ adults with intellectual or developmental disabilities;

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

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

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

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

22 10. "Nursing facility" means a home, an establishment or an
23 institution, a distinct part of which is primarily engaged in
24 providing:

- 1 a. skilled nursing care and related services for
2 residents who require medical or nursing care,
3 b. rehabilitation services for the rehabilitation of
4 injured, disabled, or sick persons, or
5 c. on a regular basis, health-related care and services
6 to individuals who because of their mental or physical
7 condition require care and services beyond the level
8 of care provided by a residential care home and which
9 can be made available to them only through a nursing
10 facility.

11 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
12 this title, a facility constructed or operated by an entity
13 described in paragraph 7 of subsection B of Section 6201 of Title 74
14 of the Oklahoma Statutes or the nursing care component of a
15 continuum of care facility, as such term is defined under the
16 Continuum of Care and Assisted Living Act, to the extent that the
17 facility constructed or operated by an entity described in paragraph
18 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
19 Statutes contains such a nursing care component;

20 11. "Specialized facility" means any home, establishment, or
21 institution which offers or provides inpatient long-term care
22 services on a twenty-four-hour basis to a limited category of
23 persons requiring such services, including but not limited to a
24 facility providing health or habilitation services for ~~mentally~~

1 ~~retarded or developmentally disabled persons~~ individuals with
2 intellectual or developmental disabilities, but does not mean, for
3 purposes of Section 1-851.1 of this title, a facility constructed or
4 operated by an entity described in paragraph 7 of subsection B of
5 Section 6201 of Title 74 of the Oklahoma Statutes or the nursing
6 care component of a continuum of care facility, as such term is
7 defined under the Continuum of Care and Assisted Living Act, to the
8 extent that the facility constructed or operated by an entity
9 described in paragraph 7 of subsection B of Section 6201 of Title 74
10 of the Oklahoma Statutes contains such a nursing care component;

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

1 13. "Licensee" means the person, a corporation, partnership, or
2 association who is the owner of the facility which is licensed by
3 the Department pursuant to the provisions of the Nursing Home Care
4 Act;

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

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

8 16. "Owner" means a person, corporation, partnership,
9 association, or other entity which owns a facility or leases a
10 facility. The person or entity that stands to profit or lose as a
11 result of the financial success or failure of the operation shall be
12 presumed to be the owner of the facility. Notwithstanding the
13 foregoing, any nonstate governmental entity that has acquired and
14 owns or leases a facility and that has entered into an agreement
15 with the Oklahoma Health Care Authority to participate in the
16 nursing facility supplemental payment program ("UPL Owner") shall be
17 deemed the owner of such facility and shall be authorized to obtain
18 management services from a management services provider ("UPL
19 Manager"), and to delegate, allocate and assign as between the UPL
20 Owner and UPL Manager, compensation, profits, losses, liabilities,
21 decision-making authority and responsibilities, including
22 responsibility for the employment, direction, supervision and
23 control of the facility's administrator and staff;

24

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

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

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

21 20. "Supportive assistance" means the service rendered to any
22 person which is less than the service provided by a nursing facility
23 but which is sufficient to enable the person to meet an adequate
24 level of daily living. Supportive assistance includes but is not

1 limited to housekeeping, assistance in the preparation of meals,
2 assistance in the safe storage, distribution, and administration of
3 medications, and assistance in personal care as is necessary for the
4 health and comfort of such person. Supportive assistance shall not
5 include medical service.

6 SECTION 55. AMENDATORY 63 O.S. 2011, Section 1-1912, as
7 last amended by Section 1, Chapter 251, O.S.L. 2014 (63 O.S. Supp.
8 2018, Section 1-1912), is amended to read as follows:

9 Section 1-1912. A. The State Department of Health shall
10 promptly serve a notice of violation upon a licensee whenever, upon
11 inspection or investigation, the Department determines that:

12 1. The facility is in violation of the Nursing Home Care Act,
13 any rule promulgated thereunder, or applicable federal certification
14 criteria; or

15 2. The financial condition of the facility poses an immediate
16 risk to the proper operation of the facility or to the health,
17 safety or welfare of the residents of the facility.

18 B. Each notice of violation shall be prepared in writing and
19 shall specify the nature of the violation, and the statutory
20 provision, rule or standard alleged to have been violated. The
21 notice of violation shall inform the licensee of its obligation to
22 file a plan of correction within ten (10) working days of receipt of
23 the notice of violation. In the case of a specialized facility for
24 ~~persons~~ individuals with ~~mental retardation~~ intellectual

1 disabilities, the Department shall offer the licensee an informal
2 opportunity comparable to the process offered to Medicaid-certified
3 nursing facilities pursuant to 42 CFR 488.331, in order to dispute
4 the alleged violations.

5 C. The Department shall notify the licensee of its intent to
6 take any remedial action, impose administrative penalties, place a
7 monitor or temporary manager in the facility, issue a conditional
8 license, or suspend or revoke a license. The Department shall also
9 inform the licensee of the right to an informal dispute resolution,
10 hearing, or both.

11 D. Whenever the Department finds that an emergency exists
12 requiring immediate action to protect the health, safety or welfare
13 of any resident of a facility licensed pursuant to the provisions of
14 the Nursing Home Care Act, the Department may, without notice of
15 hearing, issue an order stating the existence of such an emergency
16 and requiring that action be taken as deemed necessary by the
17 Department to meet the emergency. The order shall be effective
18 immediately. Any person to whom such an order is directed shall
19 comply with such order immediately but, upon application to the
20 Department, shall be afforded a hearing within ten (10) business
21 days of receipt of the application. On the basis of such hearing,
22 the Department may continue the order in effect, revoke it, or
23 modify it. Any person aggrieved by such order continued after the
24 hearing provided in this subsection may appeal to the district court

1 in Oklahoma County within thirty (30) days. Such appeal when
2 docketed shall have priority over all cases pending on the docket,
3 except criminal cases. For purposes of this subsection, the State
4 Board of Health shall define by rule the term "emergency" to
5 include, but not be limited to, a life-endangering situation.

6 E. Within thirty (30) days of receipt of a plan of correction
7 by the State Department of Health from any facility operated by the
8 Oklahoma Department of Veterans Affairs, the State Department of
9 Health shall submit the results of the inspection, including a list
10 of deficiencies in the condition or operation of the facility and
11 recommendations for corrective measures in the form of a written
12 report to the person immediately responsible for the administration
13 of the facility inspected, to the Oklahoma Department of Veterans
14 Affairs, to the Governor, to the Speaker of the House of
15 Representatives, and to the President Pro Tempore of the Senate.

16 F. At the conclusion of an inspection, survey, or
17 investigation, the survey team's observations and preliminary
18 findings shall be discussed in an exit conference with the facility
19 personnel. During the exit conference, the facility shall be
20 provided with the opportunity to discuss and supply additional
21 information that they believe is pertinent to the preliminary
22 findings. The following shall be provided to the facility:

23 1. A written list containing preliminary areas of potential
24 noncompliance with state requirements based on findings during the

1 survey, inspection or investigation. The information provided
2 should be adequate to notify staff of surveyor concerns regarding
3 preliminary findings that indicate actual harm or substandard
4 quality of care; and

5 2. Any additional noncompliance with state requirements
6 determined during the review of field notes or in preparation of the
7 final survey report will be communicated to the facility personnel
8 by email or phone before issuing the final survey report.

9 SECTION 56. AMENDATORY 63 O.S. 2011, Section 330.51, is
10 amended to read as follows:

11 Section 330.51. For the purposes of ~~this act~~ Section 330.51 et
12 seq. of this title, and as used herein:

13 1. "Board" means the Oklahoma State Board of Examiners for
14 Long-Term Care Administrators;

15 2. "Long-term care administrator" means a person licensed or
16 certified as a nursing facility administrator, an assisted living
17 facility administrator, a residential care facility administrator,
18 or an adult day care center administrator pursuant to this act. A
19 long-term care administrator must devote at least one-half (1/2) of
20 such person's working time to on-the-job supervision of a long-term
21 care facility; provided that this requirement shall not apply to an
22 administrator of an intermediate care facility for ~~the mentally~~
23 ~~retarded~~ individuals with intellectual disabilities with sixteen or
24 fewer beds ~~(ICF-MR/16)~~ (ICF/IID-16), in which case the person

1 licensed by the state may be in charge of more than one ~~ICF-MR/16~~
2 ICF/IID-16, if such facilities are located within a circle that has
3 a radius of not more than fifteen (15) miles, and the total number
4 of facilities and beds does not exceed six facilities and sixty-four
5 beds. The facilities may be free-standing in a community or may be
6 on campus with a parent institution. The ~~ICF-MR/16~~ ICF/IID-16 may
7 be independently owned and operated or may be part of a larger
8 institutional ownership and operation;

9 3. "Nursing facility administrator" means a person licensed by
10 the State of Oklahoma to perform the duties of an administrator
11 serving in a skilled nursing or nursing or ICF/MR facility;

12 4. "Assisted living facility administrator" means a person
13 licensed or certified by the State of Oklahoma to perform the duties
14 of an administrator serving in an assisted living facility;

15 5. "Residential care facility administrator" means a person
16 licensed or certified by the State of Oklahoma to perform the duties
17 of an administrator serving in a residential care facility;

18 6. "Adult day care center administrator" means a person
19 licensed or certified by the State of Oklahoma to perform the duties
20 of an administrator serving in an adult day care center; and

21 7. "Nursing home", "rest home" and "specialized home" shall
22 have the same meaning as the term "nursing facility" as such term is
23 defined in the Nursing Home Care Act; "assisted living center" and
24 "continuum of care facility" shall have the same meaning as such

1 terms are defined in the Continuum of Care and Assisted Living Act;
2 "home" and "residential care home" shall have the same meaning as
3 the terms are used in the Residential Care Act; and "adult day care
4 center" and "center" shall have the same meaning as such terms are
5 used in the Adult Day Care Act.

6 SECTION 57. AMENDATORY 63 O.S. 2011, Section 5026, is
7 amended to read as follows:

8 Section 5026. A. The Oklahoma Health Care Authority Board
9 shall, in administering the Medicaid prescription drug program,
10 utilize the following definition for "phenylketonuria" to mean: An
11 inborn error of metabolism attributable to a deficiency of or a
12 defect in phenylalanine hydroxylase, the enzyme that catalyzes the
13 conversion of phenylalanine to tyrosine. The deficiency permits the
14 accumulation of phenylalanine and its metabolic products in the body
15 fluids. The deficiency can result in ~~mental retardation~~
16 intellectual disabilities (phenylpyruvic oligophrenia), neurologic
17 manifestations (including hyperkinesia, epilepsy, and microcephaly),
18 light pigmentation, and eczema. The disorder is transmitted as an
19 autosomal recessive trait and can be treated by administration of a
20 diet low in phenylalanine.

21 B. The Oklahoma Health Care Authority Board shall promulgate
22 any rules necessary to effectuate the provisions of this section.

23
24

1 SECTION 58. AMENDATORY 70 O.S. 2011, Section 6-105, as
2 amended by Section 1, Chapter 78, O.S.L. 2012 (70 O.S. Supp. 2018,
3 Section 6-105), is amended to read as follows:

4 Section 6-105. A. If, because of sickness or other reason, a
5 teacher is temporarily unable to perform regular duties, a
6 substitute teacher may be employed for the position for the time of
7 the absence. A substitute teacher shall be paid in an amount and
8 under such terms as may be agreed upon in advance by the substitute
9 teacher and the board of education or according to regulations of
10 the board. If a teacher is absent for reason of personal business
11 the school district shall deduct from the salary of the teacher only
12 the amount necessary to pay the substitute.

13 B. No substitute teacher shall be employed for a total period
14 of time in excess of ninety (90) school days during a school year;
15 or one hundred (100) school days during the school year if the
16 substitute teacher holds a lapsed or expired certificate or has a
17 bachelors level college degree; or no limit of school days during
18 the school year if the substitute teacher holds a valid certificate.
19 Each school district shall adopt a policy which sets forth the
20 maximum number of days a substitute teacher may be employed for the
21 same assignment if the substitute teacher does not hold a valid
22 certificate.

23 C. Substitute teachers who do not hold a valid certificate and
24 who are employed to teach special education for students with

1 physical disabilities or students with ~~mental retardation~~
2 intellectual disabilities shall not be subject to the restrictions
3 on total time a substitute teacher may be employed if no certified
4 teachers are available to teach such students and the students would
5 be denied instruction in special education if the substitute teacher
6 were not employed. Beginning with the 2007-08 school year, any
7 substitute teacher employed to teach special education for the same
8 assignment for more than fifteen (15) consecutive or thirty (30)
9 total school days during a school year who does not hold a valid
10 certificate to teach special education shall be required to complete
11 in-service training as prescribed by the State Board of Education.
12 The training shall be provided at no cost to the substitute teacher.
13 Availability of certified teachers shall be determined after the
14 school has consulted the State Board of Education and any other
15 resources for filling the vacant position with a certified teacher.

16 D. A school district may request a waiver of the restrictions
17 on total time a substitute teacher may be employed from the State
18 Board of Education for a substitute teacher who does not hold a
19 valid certificate. The school district shall submit evidence on the
20 availability of certified substitute teachers and the qualifications
21 of the substitute teacher. The Board shall develop procedures for
22 the filing and processing of substitute teacher waivers pursuant to
23 this subsection.

24

1 E. Payment of salary to a substitute shall have no effect on
2 the amount of salary to which the absent regular teacher is entitled
3 under the applicable leave plan.

4 F. Any substitute or cadet teacher employed in any school
5 system on a monthly or annual basis shall hold a certificate and
6 have a written contract in the manner and under the same conditions
7 as for regular teachers.

8 G. Teachers who are members of the Reserve Forces of the Army,
9 the Navy, the Marine Corps, the Coast Guard, the Air Force, or any
10 other component of the Armed Forces of the United States, including
11 members of the Air or Army National Guard, shall, when ordered by
12 the proper authority to active duty or service, be entitled to a
13 leave of absence from such civil employment for the period of such
14 active service without loss of status or efficiency rating and
15 without loss of pay during the first thirty (30) days of such leave
16 of absence.

17 H. School districts in this state may contract with outside
18 providers for the training and employment of substitute teachers.
19 The State Board of Education shall promulgate guidelines to assist
20 school districts in the sanctioning and approval of an outside
21 provider in accordance with this section.

22 SECTION 59. AMENDATORY 74 O.S. 2011, Section 255, is
23 amended to read as follows:

24

1 Section 255. The heads of the departments except as otherwise
2 herein provided are hereby authorized and empowered to appoint
3 persons to hold positions created in their respective departments.
4 The persons so appointed shall hold office at the will of such state
5 officer and in the case of all boards and commissioners, such board
6 or commission shall, by vote thereof, except as otherwise provided,
7 appoint persons to hold positions created under such boards or
8 commissions by this act, and the said persons so appointed shall
9 hold office at the will of such officer, boards or commissions
10 making said appointment, provided that any board or commission may
11 authorize the secretary of such board or commission to make said
12 appointment.

13 Provided further, that it shall be unlawful for the heads of any
14 department, or any departments, except institutions of higher
15 learning and state hospitals, the State Health Department, the
16 Highway Department in the employment of engineers and technicians,
17 schools for ~~mentally retarded~~ individuals with intellectual
18 disabilities and State Veterans Facilities as pertains to doctors,
19 dentists, nurses and other trained technicians, to employ in any way
20 any person who is not a citizen of the United States, and repealing
21 all laws in conflict herewith. The provisions of this act shall in
22 no way be interpreted to repeal any provision of the laws heretofore
23 enacted creating the Merit System of the State of Oklahoma.

24

SECTION 60. This act shall become effective November 1, 2019.

57-1-2023 DC 3/7/2019 11:39:42 AM

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24