

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 58th Legislature (2021)

4 ENGROSSED SENATE
5 BILL NO. 42

 By: Rader and **Bergstrom** of the
 Senate

6 and

7 Dills of the House

8
9
10 An Act relating to home care; amending 63 O.S. 2011,
11 Section 1-1962, as last amended by Section 3, Chapter
12 77, O.S.L. 2017 (63 O.S. Supp. 2020, Section 1-1962),
13 which relates to home care agency license; modifying
14 applicability of act; updating statutory language;
15 and providing an effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1962, as
18 last amended by Section 3, Chapter 77, O.S.L. 2017 (63 O.S. Supp.
19 2020, Section 1-1962), is amended to read as follows:

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

23 B. 1. No home care agency, except as otherwise provided by
24 this subsection, shall place an individual in the role of supportive
 home assistant with a client on a full-time, temporary, per diem, or

1 other basis, unless the individual has completed agency-based
2 supportive home assistant training taught by a registered nurse in
3 the sections applicable to the assistance required by the client.
4 Each supportive home assistant who successfully completes agency-
5 based training shall demonstrate competence by testing through an
6 independent entity approved by the State Department of Health. The
7 requirements related to application, approval, renewal, and denial
8 of such testing entities shall be set forth in administrative rules
9 promulgated by the State ~~Board~~ Commissioner of Health.

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

- 12 a. observation, reporting, and documentation of client
13 status and the standby assistance or other services
14 furnished,
- 15 b. maintenance of a clean, safe, and healthy environment,
- 16 c. recognizing an emergency and necessary emergency
17 procedures,
- 18 d. safe techniques to provide standby assistance with
19 bathing, grooming, and toileting,
- 20 e. assistance with meal preparation and safe food
21 handling and storage,
- 22 f. client rights and responsibilities and the need for
23 respect for the client and for the privacy and
24 property of the client, and

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

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

8 4. No supportive home assistant shall provide services to a
9 client until a criminal history background check and a check of the
10 nurse aide registry maintained by the State Department of Health is
11 performed in accordance with Section 1-1950.1 of this title and the
12 assistant is found to have no notations of abuse of any kind on the
13 registry and no convictions of the crimes listed in subsection F of
14 Section 1-1950.1 of this title.

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

18 6. No licensed health care facility, licensed physician,
19 advanced practice registered nurse, physician assistant, or state
20 agency employee acting in the performance of his or her duties shall
21 refer a client for personal care services as defined in paragraph 8
22 of Section 1-1961 of this title or for companion or sitter services
23 as defined in paragraph 1 of subsection A of Section 1-1972 of this
24 title, except to an agency licensed to provide such services. For

1 purposes of this subsection, "licensed health care facility" shall
2 include acute care hospitals, long-term acute care hospitals,
3 rehabilitation hospitals, skilled nursing facilities, assisted
4 living facilities, residential care homes, home care agencies, adult
5 day care centers and hospice agencies.

6 C. 1. No employer or contractor, except as otherwise provided
7 by this subsection, shall employ or contract with any individual as
8 a home health aide for more than four (4) months, on a full-time,
9 temporary, per diem or other basis, unless the individual is a
10 licensed health professional or unless the individual has satisfied
11 the requirements for certification and placement on the home health
12 aide registry maintained by the State Department of Health.

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

22 b. Any home health aide employed between the dates of
23 July 1, 1992, and June 30, 1993, shall be eligible for
24

1 certification by passing a competency evaluation and
2 testing as required by the Department.

3 c. Any home health aide employed on and after July 1,
4 1996, shall complete any specified training,
5 competency evaluation and testing required by the
6 Department.

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

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

10 2. A person who provides maid services only;

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

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

17 5. A nurse-midwife;

18 6. An individual, agency, or organization that contracts with
19 the Oklahoma Health Care Authority to provide services under the
20 Home- and Community-Based Waiver for persons with developmental
21 disabilities or that contracts with the Department of Human Services
22 to provide community services to persons with developmental
23 disabilities; provided, that staff members and individuals providing
24 the services shall receive a level of training, approved by the

1 Department of Human Services, which meets or exceeds the level
2 required pursuant to the Home Care Act. An individual, agency or
3 organization otherwise covered under the Home Care Act shall be
4 exempt from the act only for those paraprofessional direct care
5 services provided under contracts referenced in this paragraph;

6 7. An individual, agency or organization that provides or
7 supports the provision of personal care services to an individual
8 who performs individual employer responsibilities of hiring,
9 training, directing and managing a personal care attendant as part
10 of the Oklahoma Health Care Authority Consumer-Directed Personal
11 Assistance Supports and Services (CD-PASS) waiver program. An
12 individual, agency or organization otherwise covered under the
13 provisions of the Home Care Act shall be exempt from the act only
14 for those paraprofessional direct care services provided under
15 Oklahoma Health Care Authority contracts referenced in this
16 paragraph, but shall not be exempt from the criminal history
17 background check required under the Home Care Act and Section 1-
18 1950.1 of this title for other paraprofessional direct care service
19 providers. A personal care attendant hired by a consumer under the
20 CD-PASS program shall be exempt from certification as a home health
21 aide, provided such personal care attendant receives the training
22 required and approved by the Department of Human Services;

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

4 9. An individual who:

- 5 a. is employed by a licensed home care agency exclusively
6 to provide personal care services ~~on a live-in basis~~
7 in the home,
- 8 b. has no convictions pursuant to a criminal history
9 investigation as provided in Section 1-1950.1 of this
10 title,
- 11 c. is being continuously trained by a registered nurse to
12 provide care that is specific to the needs of the
13 particular client receiving the care, and
- 14 d. is supervised by a registered nurse via an on-site
15 visit at least once each month;

16 10. A home or facility approved and annually reviewed by the
17 United States Department of Veterans Affairs as a medical foster
18 home in which care is provided exclusively to three or fewer
19 veterans; or

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

22 SECTION 2. This act shall become effective November 1, 2021.

23
24 COMMITTEE REPORT BY: COMMITTEE ON HEALTH SERVICES AND LONG-TERM
CARE, dated 03/30/2021 - DO PASS, As Coauthored.