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February 3, 2021

By: Rader

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

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

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

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

B. 1. No home care agency, except as otherwise provided by this subsection, shall place an individual in the role of supportive home assistant with a client on a full-time, temporary, per diem, or other basis, unless the individual has completed agency-based supportive home assistant training taught by a registered nurse in the sections applicable to the assistance required by the client.

1 Each supportive home assistant who successfully completes agency-  
2 based training shall demonstrate competence by testing through an  
3 independent entity approved by the State Department of Health. The  
4 requirements related to application, approval, renewal, and denial  
5 of such testing entities shall be set forth in administrative rules  
6 promulgated by the State ~~Board~~ Commissioner of Health.

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

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

1 techniques and the application of standard  
2 precautions.

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

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

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

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

1 rehabilitation hospitals, skilled nursing facilities, assisted  
2 living facilities, residential care homes, home care agencies, adult  
3 day care centers and hospice agencies.

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

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

20 b. Any home health aide employed between the dates of  
21 July 1, 1992, and June 30, 1993, shall be eligible for  
22 certification by passing a competency evaluation and  
23 testing as required by the Department.  
24

1           c. Any home health aide employed on and after July 1,  
2                   1996, shall complete any specified training,  
3                   competency evaluation and testing required by the  
4                   Department.

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

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

8           2. A person who provides maid services only;

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

13          4. A person providing hospice services pursuant to the Oklahoma  
14 Hospice Licensing Act;

15          5. A nurse-midwife;

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

1 organization otherwise covered under the Home Care Act shall be  
2 exempt from the act only for those paraprofessional direct care  
3 services provided under contracts referenced in this paragraph;

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

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

24 9. An individual who:

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

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

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

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

19   COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES  
20   February 3, 2021 - DO PASS