An Act

ENROLLED HOUSE
BILL NO. 2549

By: Cox of the House

and

Quinn of the Senate

An Act relating to the Nursing Home Care Act; amending 63 O.S. 2011, Section 1-1902, which relates to definitions; requiring certain interpretation and providing certain authorizations under certain circumstances; amending 63 O.S. 2011, Section 1-1905, as amended by Section 3, Chapter 183, O.S.L. 2013 (63 O.S. Supp. 2015, Section 1-1905), which relates to fees; specifying issuance of certain fee; increasing duration of certain license; providing an effective date; and declaring an emergency.

SUBJECT: Nursing Home Care Act

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

SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1902, is amended to read as follows:

Section 1-1902. As used in the Nursing Home Care Act:

1. "Abuse" means the willful infliction of injury, unreasonable confinement, intimidation or punishment, with resulting physical harm, impairment or mental anguish;

2. "Access" means the right of a person to enter a facility to communicate privately and without unreasonable restriction when invited to do so by a resident. The state or local "ombudsman", as that term is defined by the Aging Services Division of the Department of Human Services pursuant to the Older Americans' Act, 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager

employed by the Department of Mental Health and Substance Abuse Services or one of its contract agencies shall have right of access to enter a facility, communicate privately and without unreasonable restriction with any resident who consents to the communication, to seek consent to communicate privately and without restriction with any resident, and to observe all areas of the facility that directly pertain to the patient care of the resident without infringing upon the privacy of the other residents without first obtaining their consent;

3. "Administrator" means the person licensed by the State of Oklahoma who is in charge of a facility. An administrator must devote at least one-third (1/3) of such person's working time to on-the-job supervision of the facility; provided that this requirement shall not apply to an administrator of an intermediate care facility for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in which case the person licensed by the state may be in charge of more than one ICF-MR/16 facility, if such facilities are located within a circle that has a radius of not more than fifteen (15) miles, the total number of facilities and beds does not exceed six facilities and sixty-four beds, and each ICF-MR/16 facility is supervised by a qualified mental retardation professional. The facilities may be free-standing in a community or may be on campus with a parent institution. The ICF-MR/16 may be independently owned and operated or may be part of a larger institutional operation;

4. "Advisory Board" means the Long-Term Care Facility Advisory Board;

5. "Adult companion home" means any home or establishment, funded and certified by the Department of Human Services, which provides homelike residential accommodations and supportive assistance to three or fewer mentally retarded or developmentally disabled adults;

6. "Board" means State Board of Health;

7. "Commissioner" means State Commissioner of Health;

8. "Department" means the State Department of Health;

9. "Facility" means a nursing facility and a specialized home; provided this term shall not include a residential care home or an adult companion home;

10. "Nursing facility" means a home, an establishment or an institution, a distinct part of which is primarily engaged in providing:

a. skilled nursing care and related services for residents who require medical or nursing care,

b. rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or

c. on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services beyond the level of care provided by a residential care home and which can be made available to them only through a nursing facility.

"Nursing facility" does not mean, for purposes of Section 1-851.1 of this title, a facility constructed or operated by an entity described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes or the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, to the extent that the facility constructed or operated by an entity described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes contains such a nursing care component;

11. "Specialized facility" means any home, establishment, or institution which offers or provides inpatient long-term care services on a twenty-four-hour basis to a limited category of persons requiring such services, including but not limited to a facility providing health or habilitation services for mentally retarded or developmentally disabled persons, but does not mean, for purposes of Section 1-851.1 of this title, a facility constructed or operated by an entity described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes or the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, to the extent that the facility constructed or operated by an entity described in paragraph 7 of subsection B of Section 6201 of Title 74 of the Oklahoma Statutes contains such a nursing care component;

12. "Residential care home" means any home, establishment, or institution licensed pursuant to the provisions of the Residential Care Act other than a hotel, motel, fraternity or sorority house, or

college or university dormitory, which offers or provides residential accommodations, food service, and supportive assistance to any of its residents or houses any resident requiring supportive assistance. The residents shall be persons who are ambulatory and essentially capable of managing their own affairs, but who do not routinely require nursing care; provided, the term "residential care home" shall not mean a hotel, motel, fraternity or sorority house, or college or university dormitory, if the facility operates in a manner customary to its description and does not house any person who requires supportive assistance from the facility in order to meet an adequate level of daily living;

13. "Licensee" means the person, a corporation, partnership, or association who is the owner of the facility which is licensed by the Department pursuant to the provisions of the Nursing Home Care Act;

14. "Maintenance" means meals, shelter, and laundry services;

15. "Neglect" means failure to provide goods and/or services necessary to avoid physical harm, mental anguish, or mental illness;

16. "Owner" means a person, corporation, partnership, association, or other entity which owns a facility or leases a facility. The person or entity that stands to profit or lose as a result of the financial success or failure of the operation shall be presumed to be the owner of the facility. Notwithstanding the foregoing, any nonstate governmental entity that has acquired and owns or leases a facility and that has entered into an agreement with the Oklahoma Health Care Authority to participate in the nursing facility supplemental payment program ("UPL Owner") shall be deemed the owner of such facility and shall be authorized to obtain management services from a management services provider ("UPL Manager"), and to delegate, allocate and assign as between the UPL Owner and UPL Manager, compensation, profits, losses, liabilities, decision-making authority and responsibilities, including responsibility for the employment, direction, supervision and control of the facility's administrator and staff;

17. "Personal care" means assistance with meals, dressing, movement, bathing or other personal needs or maintenance, or general supervision of the physical and mental well-being of a person, who is incapable of maintaining a private, independent residence, or who is incapable of managing his person, whether or not a guardian has been appointed for such person;

18. "Resident" means a person residing in a facility due to illness, physical or mental infirmity, or advanced age;

19. "Representative of a resident" means a court-appointed guardian or, if there is no court-appointed guardian, the parent of a minor, a relative, or other person, designated in writing by the resident; provided, that any owner, operator, administrator or employee of a facility subject to the provisions of the Nursing Home Care Act, the Residential Care Act, or the Group Homes for the Developmentally Disabled or Physically Handicapped Persons Act shall not be appointed guardian or limited guardian of a resident of the facility unless the owner, operator, administrator or employee is the spouse of the resident, or a relative of the resident within the second degree of consanguinity and is otherwise eligible for appointment; and

20. "Supportive assistance" means the service rendered to any person which is less than the service provided by a nursing facility but which is sufficient to enable the person to meet an adequate level of daily living. Supportive assistance includes but is not limited to housekeeping, assistance in the preparation of meals, assistance in the safe storage, distribution, and administration of medications, and assistance in personal care as is necessary for the health and comfort of such person. Supportive assistance shall not include medical service.

SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1905, as amended by Section 3, Chapter 183, O.S.L. 2013 (63 O.S. Supp. 2015, Section 1-1905), is amended to read as follows:

Section 1-1905. A. An application for a license, or renewal thereof, to operate a facility shall be accompanied by a fee of Ten Dollars ($10.00) for each bed <u>per year</u> included in the maximum bed capacity at such facility, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee. All licenses shall be on a form prescribed by the State Commissioner of Health, which shall include, but not be limited to, the maximum bed capacity for which it is granted and the date the license was issued. The license shall:

1. Not be transferable or assignable;

2. Be posted in a conspicuous place on the licensed premises;

3. Be issued only for the premises named in the application; and

4. Expire ~~twelve (12) months~~ three (3) years from the date of issuance, provided an initial license shall expire one hundred eighty (180) days after the date of issuance. Licenses may be issued for a period of more than twelve (12) months, but not more than ~~twenty-four (24)~~ thirty-six (36) months, for the license period immediately following the effective date of this provision in order to permit an equitable distribution of license expiration dates ~~to all months of the year~~.

B. The fee for a license amendment to reflect an increase in bed capacity shall be prorated based on the number of days remaining in the licensure period and the change in the number of beds, except that any facility operated by the Oklahoma Department of Veterans Affairs shall be exempt from the fee.

C. The issuance or renewal of a license after notice of a violation has been sent shall not constitute a waiver by the State Department of Health of its power to rely on the violation as the basis for subsequent license revocation or other enforcement action under this act arising out of the notice of violation.

D. 1. When transfer of ownership or operation of a facility is proposed, the transferee shall notify the Department of the transfer and apply for a new license at least thirty (30) days prior to final transfer.

2. The transferor shall remain responsible for the operation of the facility until such time as a license is issued to the transferee.

3. The license granted to the transferee shall be subject to the plan of correction submitted by the previous owner and approved by the Department and any conditions contained in a conditional license issued to the previous owner. If there are outstanding violations and no approved plan of correction has been implemented, the Department may issue a conditional license and plan of correction as provided in this act.

4. The transferor shall remain liable for all penalties assessed against the facility which are imposed for violations occurring prior to transfer of ownership.

E. Nursing and specialized facilities, as defined and licensed pursuant to the Nursing Home Care Act shall be surveyed through an unannounced inspection at least once every fifteen (15) months, with a statewide average survey cycle of twelve (12) months.

SECTION 3. This act shall become effective July 1, 2016.

SECTION 4. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 5th day of May, 2016.

Presiding Officer of the House
of Representatives

Passed the Senate the 13th day of April, 2016.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this 9th

day of May, 2016, at 2:41 o'clock P M.

By: Audrey Rockwell

Approved by the Governor of the State of Oklahoma this 11th

day of May, 2016, at 3:47 o'clock P M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this 11th

day of May, 2016, at 4:59 o'clock P. M.

By: Ted Wall