

**NURSING HOME CARE ACT and LONG-TERM CARE SECURITY ACT
TITLE 63 OF THE OKLAHOMA STATUTES
Section 1-1901 et seq. and Section 1-1944 et seq.**

As amended in 2013

"Unofficial Version"

§63-1-1900.2 State Health Commissioner - Authority to Waive Provisions of Nursing Home Care Act - Rules

A. It is the intent of the Legislature to foster the development of resident autonomy, individualization and culture change in nursing facilities licensed by the State Department of Health.

B. The Commissioner of Health is authorized to waive any provision of the Nursing Home Care Act and any rules promulgated pursuant thereto, provided:

1. The waiver will not cause the State of Oklahoma to fail to comply with any applicable requirements established by the Centers for Medicare and Medicaid Services;

2. The waiver is granted to allow a nursing facility to satisfy the spirit of a statutory or administrative requirement by alternative means;

3. The waiver will not adversely affect the health, safety or welfare of any resident of a nursing facility; and

4. The waiver is in support of a deinstitutionalization model that restores individuals to a self-contained residence in the community that is designed like a private home and houses no more than twelve individuals.

C. The State Board of Health shall promulgate rules and establish procedures necessary to implement the waiver process established by this section.

Added by Laws 2007, HB 1510, c. 28, § 1.

§63-1-1901. Short title

This act shall be known and may be cited as the "Nursing Home Care Act".

Laws 1980, c. 241, § 1, eff. Oct. 1, 1980.

§63-1-1902. Definitions

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;

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.

Added by Laws 1980, c. 241, § 2, eff. October 1, 1980. Amended by Laws 1981, c. 182, § 1; Amended by Laws 1984, c. 128, § 2, eff. November 1, 1984; Amended by Laws 1987, c. 98, § 22, emerg. eff. May 20, 1987; Amended by Laws 1989, c. 330, § 6, eff. Nov. 1, 1989; Amended by Laws 1990, c. 51, § 126, emerg. eff. April 9, 1990; Amended by Laws 1990, c. 337, § 17; Amended by Laws 1991, c. 127, § 1, emerg. eff. April 29, 1991; Amended by Laws 1993, c. 159, § 16, eff. July 1, 1993; Amended by Laws 1995, c. 230, § 8, eff. July 1, 1995; Amended by Laws 1996, c. 118, § 1, eff. November 1, 1996; Amended by Laws 1997, c. 292, § 10, eff. July 1, 1997; Amended by Laws 2004, HB 2723, c. 436, § 10, emerg. eff. June 4, 2004.

§63-1-1903. Licensure Requirement - Applicability of Act

A. No person shall establish, operate, or maintain in this state any nursing facility without first obtaining a license as required by the Nursing Home Care Act.

B. The Nursing Home Care Act shall not apply to residential care homes, assisted living facilities or adult companion homes which are operated in conjunction with a nursing facility, a home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a medical foster home in which care is provided exclusively to three or fewer veterans, or to hotels, motels, boarding houses, rooming houses, or other places that furnish board or room to their residents.

C. Each Oklahoma Veterans Center nursing facility licensed pursuant to the provisions of this section shall be regulated as an existing nursing facility for the purposes of meeting state and federal standards.

D. Certificate of need review shall not be required for any addition, deletion, modification or new construction of current or future State Veterans Center nursing facilities.

E. The Nursing Home Care Act shall not authorize any person to engage in any manner in the practice of the healing arts or the practice of medicine, as defined by law.

F. The Nursing Home Care Act shall not apply to a facility which is not charging or receiving periodic compensation for services rendered, and not receiving any county, state, or federal assistance.

Laws 1980, c. 241, § 3, eff. Oct. 1, 1980; Laws 1984, c. 128, § 3, eff. Nov. 1, 1984; Laws 1987, c. 98, § 23, emerg. eff. May 20, 1987; Laws 1991, c. 127, § 2, emerg. eff. April 29, 1991; Laws 1993, c. 234, § 2, eff. July 1, 1993; Laws 1993, c. 360, § 7, eff. July 1, 1993; Laws 1993, c. 159, § 17, repealed by Laws 1993, c. 360, § 16, emerg. eff. June 10, 1993; Amended by Laws

2003, HB 1034, c. 89, § 1, emerg. eff. April 15, 2003; Amended by Laws 2012, [SB 1210](#), c. 12, § 3, emerg. eff. April 5, 2012; Amended by Laws 2013, SB 629, c. 379, § 1, emerg. eff. May 29, 2013.

§63-1-1904. Licensure and Certification - Purpose - Procedure - Violations - Applications

A. The State Department of Health shall establish a comprehensive system of licensure and certification for facilities in accordance with the Nursing Home Care Act for the purposes of:

1. Protecting the health, welfare and safety of residents;
2. Assuring the accountability for reimbursed care provided in certified facilities participating in a federal or state health program as provided by or through the Oklahoma Health Care Authority; and
3. Assuring consistent application of uniform inspection protocols.

B. The licensing and certification procedures and standards provided in this act, or by rules of the State Board of Health, shall be no less than provided in statute and rules currently governing nursing facilities.

C. It shall be unlawful and upon conviction thereof, punishable as a misdemeanor for any person to operate, manage or open a facility unless such operation and management shall have been approved and regularly licensed as hereinafter provided.

D. Before an initial license shall be issued pursuant to the Nursing Home Care Act to operate and manage a facility, the applicant shall provide the following:

1. An application on a form provided by the Department containing, at a minimum, the following information:
 - a. the name and address of the applicant, if an individual, and that the applicant is not less than twenty-one (21) years of age, of reputable and responsible character, and in sound physical and mental health; and if a firm, partnership, or association, of every member thereof; and in the case of a corporation, the name and address thereof and of its officers and its registered agent and like evidence for officers, as submitted for an individual,
 - b. the name and location of the facility for which a license is sought,
 - c. the name and address of the person or persons under whose management or supervision the facility will be conducted, and a copy of the written agreement between the manager and the applicant,

- d. the name and address of any other person holding an interest of at least five percent (5%) in the ownership, operation or management of the facility,
- e. the number and type of residents for which maintenance, personal care, specialized or nursing facility services are to be provided, and
- f. a projected staffing pattern for providing patient care;

2. A statement from the unit of local government having zoning jurisdiction over the facility's location stating that the location of the facility is not in violation of a zoning ordinance; and

3. Documentation that the administrator is the holder of a current license as a Nursing Home Administrator issued by the Oklahoma State Board of Examiners for Nursing Home Administrators.

E. Before issuing an initial license, the Department shall find that the individual applicant, or the corporation, partnership or other entity, if the applicant is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a facility by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the Department and lack of revocation of a license during the previous five (5) years. In determining the applicant's responsibility and suitability to operate or to direct or participate in the operation of a facility, the Department may also consider the applicant's record of suspensions, receivership, administrative penalties, or noncompliance with lawful orders of this Department or of other departments of other states with similar responsibilities.

Added by Laws 1980, c. 241, § 4, eff. Oct. 1, 1980. Amended by Laws 1987, HB 1092, c. 98, § 25, emerg. eff. May 20, 1987; Amended by Laws 1991, HB 1616, c. 127, § 3, emerg. eff. April 29, 1991; Amended by Laws 2000, HB 2019, c. 340, § 14, emerg. eff. July 1, 2000; Amended by Laws 2002, HB 2604, c. 230, § 3, eff. November 1, 2002.

§63-1-1905. Fee for each Bed - Nature of License - Issuance or Renewal of License - Unannounced Inspection

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 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 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) 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.

Added by Laws 1980, HB 1853, c. 241, § 5, eff. Oct. 1, 1980. Amended by Laws 1991, HB 1616, c. 127, § 4, emerg. eff. April 29, 1991; Amended by Laws 1993, HB 1830, c. 269, § 12, eff. Sept. 1, 1993; Amended by Laws 1995, HB 1293, c. 230, § 9, emerg. eff. July 1, 1995; Amended by Laws 2011, HB 1397, c. 105, § 36, eff. November 1, 2011; Amended by Laws 2013, SB 237, c. 183, § 3, emerg. eff. April 29, 2013.

§63-1-1906. Issuance and Renewal of Licenses - Initial License - Denial of Application - Notice of Denial - Suspension or Revocation - Administrative Penalties - Effective Date of Nonrenewal or Revocation - Application Following Revocation

A. The State Commissioner of Health shall issue and renew licenses for the operation of facilities which are found to comply with the provisions of the Nursing Home Care Act, and standards and rules of the State Board of Health.

B. For any new facility or for any facility that has undergone a transfer of ownership or operation the State Department of Health shall issue only an initial license. An initial license shall be valid for one hundred eighty (180) days unless sooner suspended or revoked under this act. Prior to the termination of an initial license, the Department shall fully and completely inspect the facility and, if the facility meets the applicable requirements for licensure, shall issue a license under this act. If the Department finds that the facility does not meet the requirements for licensure but has made substantial progress toward meeting those requirements, the initial license may be extended once for a period not to exceed one hundred twenty (120) days from the expiration date of the initial license.

C. An application for a license may be denied for any of the following reasons:

1. Failure to meet any of the minimum standards set forth by this act or by rules promulgated by the Board under this act;

2. Conviction of the applicant, or of any member of an applicant that is a firm, partnership or association or, if a corporation, the conviction of the corporation or any of its officers or a majority stockholder, or of a person designated to manage or supervise a facility, of a felony, meaning a crime that would have a bearing on the operation of a nursing home, the conviction to be shown by a certified copy of the record of the court of conviction, if the Department determines, after investigation, that such applicant has not been sufficiently rehabilitated to warrant the public trust, or other satisfactory

evidence that the moral character of the applicant, or administrator, or manager, or supervisor of the facility is not reputable;

3. Personnel insufficient in number or unqualified by training or experience properly to care for the proposed number and type of residents to be determined by standards set by the Department with the standards not being less than those set by federal statute; or

4. Insufficient financial or other resources that would render a facility incapable of providing adequate patient care.

D. Immediately upon the denial of any application or reapplication for a license under this act, the Department shall notify the applicant in writing. Notice of denial shall include a clear and concise statement of the violations on which denial is based and notice of the opportunity for a hearing. If the applicant desires to contest the denial of a license, it shall provide written notice to the Department of a request for a hearing within ten (10) days after receipt of the notice of denial and the Department shall commence the hearing.

E. The Commissioner may suspend or revoke a license on any of the following grounds:

1. Violation of any of the provisions of this act or the rules, regulations and standards issued pursuant thereto;

2. Permitting, aiding or abetting the commission of any illegal act in a licensed facility;

3. Conduct of practices deemed by the Commissioner to be detrimental to the welfare of the patients or residents of a facility;

4. Insufficient financial or other resources that would render a facility incapable of providing adequate patient care; or

5. The facility has closed.

F. 1. The Department, after notice to the applicant or licensee, may suspend, revoke, refuse to renew a license or assess administrative penalties in any case in which the Department finds that there has been a substantial failure to comply with this act or the rules promulgated by the Board under this act;

2. Notice under this section shall include a clear and concise statement of the violations on which the nonrenewal, revocation or administrative penalty is based, the statute or rule violated and notice of the opportunity for a hearing;

3. If a facility desires to contest the nonrenewal or revocation of a license or the assessment of administrative penalties, the facility shall, within ten (10) days after receipt of notice under paragraph 2 of this section, notify the Commissioner in writing of its request for a hearing. Upon

receipt of the request the Commissioner shall send notice to the facility and hold a hearing;

4. The effective date of nonrenewal or revocation of a license by the Commissioner shall be any of the following:

- a. until otherwise ordered by the district court, revocation is effective on the date set by the Commissioner in the notice of revocation, or upon final action after hearing, whichever is later,
- b. until otherwise ordered by the district court, nonrenewal is effective on the date of expiration of any existing license, or upon final action after hearing, whichever is later, or
- c. the Department may extend the effective date of license revocation or expiration in any case in order to permit orderly removal and relocation of residents.

G. A new application, following revocation, shall be considered by the Commissioner on receipt of evidence that the conditions upon which revocation was based have been corrected; and a new license may then be granted after proper inspection has been made and all provisions of this act have been complied with, and the rules, regulations and standards of the Board have been satisfied.

H. The Department may suspend, for a period not to exceed three (3) years, the license of a facility that has temporarily closed or ceased operations for remodeling, renovation, replacement or relocation, or that has closed or ceased operations pending a change of ownership, operator or management.

1. The facility shall provide periodic reports to the Department not less than once every six (6) months demonstrating the facility's progress towards reopening.

2. The Department may extend the period of suspension upon a demonstration of extenuating or unusual circumstances, a clear showing of good faith efforts to proceed towards the reopening of the facility, and a determination by the Department that a continuation of the period of suspension poses no harm to the public.

3. Whenever, after receipt of a six-month report, the Department determines that there has been no progress towards reopening the facility, no demonstration of extenuating or unusual circumstances or clear showing of good faith efforts to proceed towards the reopening of the facility, the Department may initiate a proceeding to revoke the license of the facility.

4. At or before the conclusion of the suspension period, the facility shall meet applicable requirements for licensure and shall reopen, or the license shall expire.

5. Any closed facility that has a suspended license on the effective date of this act may be issued a suspended license for a period not to exceed three (3) years from the effective date of this act.

Added by Laws 1980, c. 241, § 6, eff. Oct. 1, 1980. Amended by Laws 1987, c. 98, § 26, emerg. eff. May 20, 1987; Amended by Laws 1991, c. 127, § 5, emerg. eff. April 29, 1991; Amended by Laws 2002, HB 2604, c. 230, § 4, eff. November 1, 2002.

§63-1-1907. Repealed by Laws 1991, HB 1616, c. 127, § 13, emerg. eff. April 29, 1991

§63-1-1908. Fire Safety Standards - Review of Plans for Increase in Beds - Vendor Payments

A. No facility shall be licensed to operate or continue to operate unless, in addition to compliance with other current licensure requirements, the building is of one-hour fire resistant construction and approved by the Department and the State Fire Marshal. If the building is not of one-hour fire resistant construction in addition to the other current licensure requirements, the facility must be approved by the State Department of Health and the State Fire Marshal. In addition, the facility must have an approved automatic sprinkler system, as rated and approved by the National Fire Protection Association Standards.

B. Each facility that proposes an increase in beds, whether through new construction or modification, shall submit construction plans to the Department for review prior to the start of construction. The Department may assess a fee for such review in an amount not more than two one-hundredths percent (0.02%) or One Thousand Dollars (\$1,000.00), whichever is the least amount, per project of the total construction cost of the facility or modification. The maximum fee for plan review for a ten-bed or ten percent (10%) expansion project authorized under subsection C of Section 1-852 of this title shall be One Thousand Dollars (\$1,000.00). The State Board of Health shall promulgate rules for submission and resubmission of construction plans to ensure the timely review of such plans by the Department.

C. The Department of Human Services and the Oklahoma Health Care Authority shall not make a vendor payment to any individual or facility on behalf of any person for medical care rendered in the form of nursing service outside such person's home, unless such individual or facility holds a current nursing facility, continuum of care facility, assisted living, or adult day care license issued by the Commissioner or other state agency authorized to issue such license.

Added by Laws 1980, c. 241, § 8, eff. Oct. 1, 1980. Amended by Laws 1997, c. 223, § 8, emerg. eff. May 20, 1997; Amended by Laws 2004, HB 2723, c. 436, § 11, emerg. eff. June 4, 2004.

§63-1-1908.1. Amendment of State Medicaid Plan to Provide for Payment of Temporary Managers or State Monitors

A. The Oklahoma Health Care Authority shall amend the state Medicaid plan to provide a funding source for payment of temporary managers, state monitors or receivers in facilities certified to provide long-term care services under Medicaid, upon request of the State Department of Health, pursuant to 42 U.S.C.A., Section 1396r(h)(z).

B. There is hereby created in the State Treasury a revolving fund for the State Department of Health to be designated the "Nursing Facility Administrative Penalties Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the State Department of Health from administrative penalties imposed under the Nursing Home Care Act. Monies collected as a result of administrative penalties imposed under the Nursing Home Care Act shall be deposited into the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the protection of health or property of residents of nursing and specialized nursing facilities that have been placed under temporary managers, state monitors or receivers requested by the Department, including, but not limited to, the following purposes:

1. Relocation expenses incurred by the Department, in the event of closure of a facility;
2. Maintenance of facility operation pending correction of deficiencies or closure, such as temporary management, state monitor or receivership, in the event that the revenues of the facility are insufficient; or
3. The costs associated with informational meetings held by the Department with residents, family members, and interested parties in an affected community where the Department proceeds with appointment of a temporary manager, state monitor or receivership petition.

Added by Laws 1995, c. 230, § 10, eff. July 1, 1995; Amended by Laws 2002, HB 2604, c. 230, § 5, eff. November 1, 2002.

§63-1-1909. Documents and Papers Required to be Displayed

Every long-term care facility as defined by Section 3 of this act¹ shall conspicuously post for display in an area of its

¹ 63 O.S. § 1-1945

offices accessible to residents, employees and visitors the following:

1. Its current license;
2. A description, provided by the State Department of Health, of complaint procedures established under this act and the name, address and telephone number of a person authorized by the Department to receive complaints. A copy of the complaint procedure shall also be given to each resident or in certain cases, the court appointed guardian;
3. A copy of any order pertaining to the facility issued by the Department or a court which is currently in effect;
4. A copy of any notification from the local law enforcement authority of the registration of any person residing in the facility who is required to register pursuant to the provisions of the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act; and
5. A list of the material available for public inspection under Section 1-1910 of this title.

Added by Laws 1980, HB 1853, c. 241, § 9, eff. October 1, 1980; Amended by Laws 2005, HB 1963, c. 465, § 1, emerg. eff. June 9, 2005.

§63-1-1910. Records Required to be Retained for Public Inspection

A facility shall retain the following for public inspection:

1. A complete copy of every inspection report of the facility received from the Department during the past three (3) years;
2. A copy of every order pertaining to the facility issued by the Department or a court during the past three (3) years;
3. A description of the services provided by the facility and the rates charged for those services and items for which a resident may be separately charged;
4. A copy of the statement of ownership;
5. A record of personnel who are licensed, certified or registered and employed or retained by the facility who are responsible for patient care; and
6. A complete copy of the most recent inspection report of the facility received from the Department.

Laws 1980, c. 241, § 10, eff. Oct. 1, 1980.

§63-1-1911. Inspection of Licensed Buildings, Institutions, or Establishments - Open Meetings - Reports - Facility Files

A. 1. Every building, institution, or establishment for which a license has been issued, including any facility operated by the Oklahoma Department of Veterans Affairs, shall be periodically inspected by a duly appointed representative of the

State Department of Health, pursuant to rules promulgated by the State Board of Health with the advice and counsel of the Long-Term Care Facility Advisory Board, created in Section 1-1923 of this title.

2. Inspection reports shall be prepared on forms prescribed by the Commissioner with the advice and counsel of the Advisory Board.

B. 1. The Department, whenever it deems necessary, shall inspect, survey, and evaluate every facility, including any facility operated by the Oklahoma Department of Veterans Affairs, to determine compliance with applicable licensure and certification requirements and standards. All inspections of facilities shall be unannounced. The Department may have as many unannounced inspections as it deems necessary.

2. The Department shall conduct at least one unannounced inspection per calendar year of all nursing facilities operated by the Oklahoma Department of Veterans Affairs.

3. Any employee of the State Department of Health who discloses to any unauthorized person, prior to an inspection, information regarding an unannounced nursing home inspection required pursuant to the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor. In addition, such action shall be construed to be a misuse of office and punishable as a violation of rules promulgated by the Ethics Commission.

4. a. The Department may periodically visit a facility for the purpose of consultation and may notify the facility in advance of such a visit. An inspection, survey, or evaluation, other than an inspection of financial records or a consultation visit, shall be conducted without prior notice to the facility.
- b. One person shall be invited by the Department from a statewide organization of the elderly to act as a citizen observer in unannounced inspections. The individual may be a state or local ombudsman as defined by the Aging Services Division of the Department of Human Services, acting pursuant to the provisions of the Older Americans Act of 1965, Public Law No. 89-73, 42 U.S.C.A., Section 3001 *et seq.*, as amended.
- c. The citizen observer shall be reimbursed for expenses in accordance with the provisions of the State Travel Reimbursement Act.
- d. An employee of a state or unit of a local government agency, charged with inspecting, surveying, and evaluating facilities, who aids,

abets, assists, conceals, or conspires with a facility administrator or employee in violation of the provisions of the Nursing Home Care Act shall be guilty, upon conviction thereof, of a misdemeanor and shall be subject to dismissal from employment.

C. The Department shall hold open meetings, as part of its routine licensure survey, in each of the licensed facilities to advise and to facilitate communication and cooperation between facility personnel and the residents of facilities in their mutual efforts to improve patient care. Administrators, employees of the facility, residents, residents' relatives, friends, residents' representatives, and employees from appropriate state and federal agencies shall be encouraged to attend these meetings to contribute to this process.

D. 1. The Department shall require periodic reports and shall have access to books, records, and other documents maintained by the facility to the extent necessary to implement the provisions of the Nursing Home Care Act and the rules promulgated pursuant thereto.

2. Any holder of a license or applicant for a license shall be deemed to have given consent to any authorized officer, employee, or agent of the Department to enter and inspect the facility in accordance with the provisions of the Nursing Home Care Act. Refusal to permit said entry or inspection, except for good cause, shall constitute grounds for remedial action or administrative penalty or both such action and penalty as provided in the Nursing Home Care Act.

E. The Department shall maintain a file on each facility in the state. All conditions and practices not in compliance with applicable standards shall be specifically stated. If a violation is corrected or is subject to an approved plan of correction, such action shall be contained in the file. Upon receiving a written request for a copy of the file documents, the Department shall send a copy of the document to any person making the written request. The Department may charge a reasonable fee for copying costs.

Added by Laws 1980, HB 1853, c. 241, § 11, eff. October 1, 1980; Amended by Laws 1984, HB 1578, c. 39, § 1, emerg. eff. July 1, 1984; Amended by Laws 1987, HB 1092, c. 98, § 24, emerg. eff. May 20, 1987; Amended by Laws 1991, HB 1616, c. 127, § 6, emerg. eff. April 29, 1991; Amended by Laws 1995, HB 1293, c. 230, § 11, emerg. eff. July 1, 1995; Amended by Laws 2000, HB 2019, c. 340, § 15, emerg. eff. July 1, 2000; Amended by Laws 2013, SB 629, c. 379, § 2, emerg. eff. May 29, 2013.

§63-1-1912. Notice of Violation and Right to Hearing

A. The State Department of Health shall promptly serve a notice of violation upon a licensee whenever upon inspection or investigation, the Department determines that:

1. The facility is in violation of the Nursing Home Care Act, any rule promulgated thereunder, or applicable federal certification criteria; or

2. The financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility.

B. Each notice of violation shall be prepared in writing and shall specify the nature of the violation, and the statutory provision, rule or standard alleged to have been violated. The notice of violation shall inform the licensee of its obligation to file a plan of correction within ten (10) working days of receipt of the notice of violation. In the case of a specialized facility for persons with mental retardation, the Department shall offer the licensee an informal opportunity comparable to the process offered to Medicaid-certified nursing facilities pursuant to 42 CFR 488.331, in order to dispute the alleged violations.

C. The Department shall notify the licensee of its intent to take any remedial action, impose administrative penalties, place a monitor or temporary manager in the facility, issue a conditional license, or suspend or revoke a license. The Department shall also inform the licensee of the right to an informal dispute resolution, hearing, or both.

D. Whenever the Department finds that an emergency exists requiring immediate action to protect the health, safety or welfare of any resident of a facility licensed pursuant to the provisions of this act, the Department may, without notice of hearing, issue an order stating the existence of such an emergency and requiring that action be taken as deemed necessary by the Department to meet the emergency. The order shall be effective immediately. Any person to whom such an order is directed shall comply with such order immediately but, upon application to the Department, shall be afforded a hearing within ten (10) business days of receipt of the application. On the basis of such hearing, the Department may continue the order in effect, revoke it, or modify it. Any person aggrieved by such order continued after the hearing provided in this subsection may appeal to the district court in Oklahoma County within thirty (30) days. Such appeal when docketed shall have priority over all cases pending on the docket, except criminal cases. For purposes of this subsection, the State Board of Health shall define by rule the term "emergency" to include, but not be limited to, a life-endangering situation.

E. Within thirty (30) days of receipt of a plan of correction by the State Department of Health from any facility operated by the Oklahoma Department of Veterans Affairs, the State Department of Health shall submit the results of the inspection, including a list of deficiencies in the condition or operation of the facility and recommendations for corrective measures in the form of a written report to the person immediately responsible for the administration of the facility inspected, to the Oklahoma Department of Veterans Affairs, to the Governor, to the Speaker of the House of Representatives, and to the President Pro Tempore of the Senate.

Added by Laws 1980, c. 241, § 12, eff. October 1, 1980; Amended by Laws 1991, c. 127, § 7, emerg. eff. April 29, 1991; Amended by Laws 1995, c. 230, § 12, eff. July 1, 1995; Amended by Laws 2002, HB 2604, c. 230, § 6, eff. November 1, 2002; Amended by Laws 2005, HB 1688, c. 460, § 1, eff. November 1, 2005; Amended by Laws 2013, SB 629, c. 379, § 3, emerg. eff. May 29, 2013.

§63-1-1913. Repealed by Laws 1991, HB 1616, c. 127, § 13, emerg. eff. April 29, 1991

§63-1-1914. Plan of Correction of Violations to be Submitted - Report of Correction - Petition for Time Extension - Contest of Department Action

A. A facility shall have ten (10) working days after receipt of notice of violation in which to prepare and submit a plan of correction. The plan of correction shall include a fixed time period, not to exceed sixty (60) days within which the violations are to be corrected. The Department may extend this period where correction involves substantial structural improvement. If the Department rejects a plan of correction, it shall send notice of the rejection and the reason for the rejection to the facility. The facility shall have ten (10) working days after receipt of the notice of rejection in which to submit a modified plan. If the modified plan is not timely submitted, or if the modified plan is rejected, the Department shall impose a plan of correction which the facility shall follow.

B. If the violation has been corrected prior to submission and approval of a plan of correction, the facility may submit a report of correction in place of a plan of correction.

C. Upon a licensee's written request, the Department shall determine whether to grant a licensee's request for an extended correction time. Such request shall be served on the Department prior to expiration of the correction time originally approved. The burden of proof shall be on the licensee to show good cause

for not being able to comply with the original correction time approved.

D. If a facility desires to contest any Department action under this section, it shall send a written request for an informal dispute resolution, hearing or both to the Department within ten (10) working days of receipt of notice of the contested action and the Department shall commence the informal dispute resolution or hearing.

Added by Laws 1980, c. 241, § 14, eff. October 1, 1980; Amended by Laws 1995, c. 230, § 13, eff. July 1, 1995; Amended by Laws 2005, HB 1688, c. 460, § 2, eff. November 1, 2005.

§63-1-1914.1. Actions for Violations - Considerations

A. For violations of the Nursing Home Care Act, the rules promulgated thereto, or Medicare/Medicaid certification regulations:

1. The State Department of Health shall seek remedial action against a licensee, owner or operator of a facility and may, after notice and opportunity for a hearing, impose the remedy most likely to:

- a. gain and ensure continued compliance with the Nursing Home Care Act, the rules promulgated thereto, or federal certification standards or both rules and standards, or
- b. provide for the financial operation of the facility that ensures the health, safety and welfare of the residents;

2. In the alternative or in addition to any remedial action, the State Commissioner of Health may direct the Oklahoma Health Care Authority to withhold vendor payments due to a facility under its programs until such time as the corrections are made;

3. The Department may deny, refuse to renew, suspend or revoke a license, ban future admissions to a facility, assess administrative penalties, or issue a conditional license; and

4. a. Pursuant to an investigation or inspection that reveals a willful violation of rules pertaining to minimum direct-care staffing requirements, the Commissioner shall notify the Oklahoma Health Care Authority and the Authority shall withhold as a penalty a minimum of twenty percent (20%) of the vendor payments due the facility under its programs for each day such violation continues.
- b. The Commissioner shall impose an equivalent penalty amount under licensure standards for a facility that does not receive vendor payments under its program that is in willful violation of

rules pertaining to minimum direct-care staffing requirements.

B. Whenever the Department takes remedial action against a facility because the financial condition of the facility has endangered or is at risk of endangering the proper operation of the facility or the health, safety or welfare of the residents of the facility, the Department shall also review the conditions of all other facilities in this state owned or operated by a person with a controlling interest as defined Section 1-851.1 of this title, and may take remedial action against the facilities as necessary or appropriate.

C. Remedial action as provided in subsection A or B of this section shall be based on current and past noncompliance or incomplete or partial compliance; repeated violations; or failure to substantially comply with the Nursing Home Care Act and rules promulgated thereto. In determining the most appropriate remedy, the Department shall consider at least the following:

1. The nature, circumstances and gravity of the violations;
2. The repetitive nature of the violations at the facility or others operated by the same or related entities;
3. The previous degree of difficulty in obtaining compliance with the rules at the facility or others operated by the same or related entities; and
4. A clear demonstration of good faith in attempting to achieve and maintain continuing compliance with the provisions of the Nursing Home Care Act.

Added by Laws 1995, HB 1293, c. 230, § 14, emerg. eff. July 1, 1995; Amended by Laws 2000, HB 2019, c. 340, § 16, emerg. eff. July 1, 2000; Amended by Laws 2002, HB 2604, c. 230, § 7, eff. November 1, 2002; Amended by Laws 2005, HB 1688, c. 460, § 3, eff. November 1, 2005.

§63-1-1914.2. Placement of Temporary Managers

A. The State Commissioner of Health may place a qualified person in a facility as a temporary manager to assume operating control of the facility and to ensure that the health and safety of the residents of the facility are protected when any of the following conditions exist:

1. The conditions at the facility pose immediate jeopardy to the health and safety of the residents of the facility;
2. The facility is operating without a license;
3. The State Department of Health has suspended, revoked or refused to renew the existing license of the facility;
4. The financial condition of the facility poses an immediate risk to the proper operation of the facility or to the health, safety or welfare of the residents of the facility;

5. The facility has closed or has informed the Department that it intends to close and adequate arrangements for the relocation of residents have not been made at least thirty (30) days prior to closure; or

6. The Department has terminated certification status under Medicare/Medicaid.

B. The Department shall notify the owner or operator of the action taken, the reason or reasons why such action was taken, and the right of the owner or operator to have a hearing on the matter.

C. Any owner or operator subject to placement of a temporary manager may appeal such action by filing a petition for hearing with the district court within five (5) days of the appointment of a temporary manager. The court shall conduct the hearing within ten (10) days of the filing of such petition. On the basis of the hearing, the court may continue the order in effect, revoke it or modify it. The petition for hearing, when docketed, shall have priority over all cases pending on the docket except criminal cases.

D. All funds due or available to the facility from any source, to include funds held by a predecessor temporary manager of the facility, during the pendency of the temporary management shall be made available to the temporary manager who shall use the funds to ensure the health and safety of the residents of the facility. Unless prior written approval has been obtained from the Commissioner for such expenditure, any use of funds for a purpose other than to ensure the health and safety of the residents of the facility shall constitute a breach of the temporary manager's fiduciary duty and a violation of the Nursing Home Care Act.

E. The Commissioner shall establish qualifications for persons to be appointed as temporary managers and shall maintain a list of all such qualified persons. The Commissioner may appoint any person from the list to serve as a temporary manager, provided that the Commissioner shall not appoint any owner or affiliate of the facility as its temporary manager.

F. The temporary manager shall make provisions for the continued protection of the health and safety of all residents of the facility. The temporary manager appointed pursuant to the Nursing Home Care Act shall exercise those powers and shall perform those duties set out by the Commissioner in writing. The Commissioner shall provide for the temporary manager to have sufficient power and duties to ensure that the residents of the facility receive adequate care.

G. If funds are insufficient to meet the expenses of performing the powers and duties conferred on the temporary manager, the temporary manager may borrow the funds or contract

for indebtedness as necessary; provided, any such indebtedness shall not be construed to be a debt of the state or made on behalf of the state. The State of Oklahoma is not liable, directly or indirectly, for any liability incurred by any temporary manager in the performance of the manager's official duties pursuant to law. The State Board of Health shall, by rule, establish a fund, to be drawn out of the discretionary funds of the Department, to assist temporary managers in the continuation of care of the residents of a facility where, in the judgment of the Commissioner, funds are not available from other sources; provided, any such advances by the Department shall be repaid by the temporary manager at the time the final account is rendered. If such advances are not repaid in full, any amount not repaid shall constitute a lien against any and all assets of any owner and shall also constitute a lien as provided in paragraph 4 of subsection L of this section.

H. The Commissioner shall set the compensation of the temporary manager, who shall be paid by the facility.

I. A temporary manager may be held liable in a personal capacity only for the manager's gross negligence, intentional acts or breaches of fiduciary duty. The Commissioner may require a temporary manager to post a bond.

J. The Department shall issue a conditional license to a facility in which a temporary manager is placed. The duration of a license issued under this section is limited to the duration of the temporary managership.

K. The Commissioner shall require that the temporary manager report to the Department on a regular basis as to the progress of the facility in reaching substantial compliance with the Nursing Home Care Act and the rules promulgated thereto, and the establishment of mechanisms which will ensure the continued compliance of the facility.

L. 1. The Commissioner may release the temporary manager under any of the following circumstances:

- a. the Commissioner determines that the facility is and will continue to be in substantial compliance with the Nursing Home Care Act and rules promulgated thereto,
- b. a receiver or bankruptcy trustee is appointed,
- c. the Commissioner appoints a new temporary manager,
- d. a new owner, operator, or manager is licensed,
- e. the Department, the temporary manager, or the receiver closes the facility through an orderly transfer of the residents, or
- f. an administrative hearing or court order ends the temporary manager appointment.

2. a. Within thirty (30) days after release, the temporary manager shall render to the Department a complete accounting of all property of which the temporary manager has taken possession, of all funds collected, and of the expenses of the temporary managership, to include, if requested by the Department, copies of all documents supporting the reasonableness and necessity of such expenditures.
- b. The rendition of such accounting may be extended only by order of the Commissioner for cause and shall in no event be extended more than one hundred twenty (120) days after release of the temporary manager.
- c. Failure to timely render a complete final accounting in accordance with generally accepted accounting practices shall constitute a breach of the temporary manager's fiduciary duties.
- d. Upon a temporary manager's default in the timely rendition of a complete final accounting, the Commissioner shall enter an order that the temporary manager is personally liable for all amounts or monies collected for which a final accounting is not made. Such order for disgorgement or remittance directed to a temporary manager may be filed as a judgment in any district court in the State of Oklahoma, and shall not be dischargeable in bankruptcy or other insolvency proceeding.

3. After a complete accounting, and payment of reasonable expenses incurred as a result of the temporary managership, the Commissioner shall order payment of the surplus to the owner. If funds are insufficient to pay reasonable expenses incurred as a result of the temporary managership, the owner shall be liable for the deficiency. Any funds recovered from the owner shall be used to reimburse any unpaid expenses due and owing as a result of the temporary managership.

4. In order to protect the health, welfare and safety of the residents of any nursing facility for which a temporary manager has been appointed, the Department is authorized to provide the monies from any funds appropriated or otherwise made available to the Department to protect the residents of the nursing facility. The Department shall have a lien for any payment made pursuant to this section upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the facility is located,

- b. any fixtures, equipment or goods used in the operation of the facility,
- c. the land on which the facility is located, or
- d. the proceeds from any conveyance of property described in subparagraphs a, b, or c of this paragraph made by the owner prior to the order placing the temporary manager.

M. Nothing in the Nursing Home Care Act shall be deemed to relieve any owner, administrator or employee of a facility in which a temporary manager is placed of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator or employee prior to the appointment of a temporary manager; provided, nothing contained in the Nursing Home Care Act shall be construed to suspend during the temporary managership any obligation of the owner, administrator or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee or any other person for the payment of mortgages or liens.

N. The Commissioner may institute any legal proceeding to recover any monies or other thing of value determined to have been expended unnecessarily or in an excessive amount necessary for the maintenance of the health and safety of the residents of a facility, or that was expended in violation of the temporary manager's fiduciary duties, or which expenditure was otherwise unlawful under state or federal law. Such legal proceeding for wrongful expenditure of these funds may be brought against the temporary manager and against any other person or entity who receives such wrongful expenditure and who was not a bona fide vendor in good faith to the temporary manager, or who was not otherwise a bona fide recipient of such funds in good faith. Costs for such an action by the Department for funds wrongfully expended shall be awarded if the Department prevails, and shall include all court costs, interest at the statutory rate from and after the date of the wrongful expenditure, and a reasonable attorney fee. The temporary manager and the bad faith vendor/recipient shall be jointly and severally liable for all funds wrongfully expended and for all related litigation costs. *Added by Laws 1995, HB 1293, c. 230, § 15, emerg. eff. July 1, 1995; Amended by Laws 2002, HB 2604, c. 230, § 8, eff. November 1, 2002; Amended by Laws 2005, SB 49, c. 202, § 1, eff. November 1, 2005 (effective date repealed by Laws 2005, HB 1688, c. 460, § 14, eff. November 1, 2005).*

§63-1-1914.3. Informal Dispute Resolution

A. An informal dispute resolution meeting may be conducted by the State Department of Health.

B. The State Department of Health shall assign all informal dispute resolutions to the unit or section charged with performing survey or inspection activity.

Added by Laws 2005, HB 1688, c. 460, § 4, eff. November 1, 2005.

§63-1-1914.4. Definitions

For purposes of this act:

1. "Deficiency" means a violation or alleged violation by a facility of applicable state or federal laws, rules, or regulations governing the operation or licensure of a facility;

2. "Deficiency identification number" means an alphanumeric designation of a deficiency by the State Department of Health that denotes the applicable state or federal rule, regulation, or law allegedly violated and that is used on the statement of deficiencies;

3. "Impartial decision maker" means an individual employed by or under contract with the State Department of Health to conduct an informal dispute resolution for the agency;

4. "Informal dispute resolution" means a nonjudicial process or forum before an impartial decision maker that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency;

5. "Party" means a facility requesting an informal dispute resolution, the State Department of Health, or both;

6. "State survey agency" means the State Department of Health, the federally designated state entity that performs Medicaid and Medicare surveys and inspections of Oklahoma facilities; and

7. "Statement of deficiencies" means a statement prepared by the State Department of Health citing the applicable state or federal laws, rules, or regulations violated by a facility and the facts supporting the citation.

Added by Laws 2005, HB 1688, c. 460, § 5, eff. November 1, 2005.

§63-1-1914.5. Written Request for Informal Dispute Resolution - Effect of Request

A. A facility that wishes to challenge a deficiency through the informal dispute resolution process shall make a written request to the State Department of Health within ten (10) calendar days of the receipt of the statement of deficiencies from the State Department of Health.

B. The written request for an informal dispute resolution shall include:

1. A list of all deficiencies that the facility wishes to challenge; and

2. A statement indicating whether the facility wants the informal dispute resolution to be conducted by telephone

conference call, by record review of the impartial decision maker, or by a meeting in which the facility and the State Department of Health appear before the impartial decision maker.

C. A request for an informal dispute resolution shall not:

1. Stay any action for enforcement or imposition of remedies;
2. Affect or preclude the right of a facility to judicial or administrative appeal; or
3. Duplicate any procedures already held under the federal requirements for informal dispute resolution.

Added by Laws 2005, HB 1688, c. 460, § 6, eff. November 1, 2005.

§63-1-1914.6. Impartial Decision Maker - Duties

A. Upon receipt of a request for an informal dispute resolution from a facility, the State Department of Health shall assign the matter to an impartial decision maker.

B. The impartial decision maker shall:

1. Schedule a time and date for a meeting; and
2. Inform the parties of the time and date of the informal dispute resolution.

C. If the request for an informal dispute resolution includes a request by the facility for a meeting at which the facility may appear before the impartial decision maker, the impartial decision maker shall:

1. Arrange for facilities appropriate for conducting the meeting; and
2. Inform the parties of the location of the meeting.

D. Each party shall submit to the impartial decision maker all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the impartial decision maker.

E. 1. If the request for an informal dispute resolution does not include a request by the facility for a meeting at which the facility may appear before the impartial decision maker, or upon agreement of the facility and the Department, the impartial decision maker may conduct the meeting by telephone conference call or by a review of documentary evidence submitted by the parties.

2. a. If the informal dispute resolution is conducted by record review, the impartial decision maker may request, and the facility shall provide, a written statement setting forth the facility's position on accepting, rejecting, or modifying each deficiency in dispute.

- b. The written statement shall specify the documentary evidence that supports the position of the facility for each deficiency in dispute.

- c. The facility shall provide its written statement to the impartial decision maker and the Department.
- d. The Department shall then provide its written statement in rebuttal to the impartial decision maker and the facility.

Added by Laws 2005, HB 1688, c. 460, § 7, eff. November 1, 2005.

§63-1-1914.7. Impartial Decision Maker May be Employed by the State Department of Health

The impartial decision maker in the informal dispute resolution process may be an individual employed by or under contract with the State Department of Health.

Added by Laws 2005, HB 1688, c. 460, § 8, eff. November 1, 2005.

§63-1-1914.8. Informal Dispute Resolution - Procedure, Participation, Appearances, Representation

A. 1. In all informal dispute resolution cases except record review, the State Department of Health shall present the initial arguments.

2. The facility shall then present its arguments.

B. 1. The informal dispute resolution shall be limited to no more than two (2) hours in length, with each party being permitted one (1) hour to present its arguments.

2. However, the impartial decision maker may grant each party additional equal time for good cause as determined by the impartial decision maker.

C. 1. Rules of evidence or procedure shall not apply to the informal dispute resolution except as provided in this section.

2. The impartial decision maker may:

a. accept any information that the impartial decision maker deems material to the issue being presented, and

b. reject any information that the impartial decision maker deems immaterial to the issue being presented.

D. 1. The informal dispute resolution may not be recorded.

2. However, the impartial decision maker may make written or recorded notes of the arguments.

E. Only employees of the facility, attending physicians of residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility may appear or participate in the

informal dispute resolution for, or on the behalf of, the facility.

F. Only employees of the Department may appear or participate at the meeting for, or on behalf of, the Department.

G. The State Long-Term Care Ombudsman, or designee, may appear at, or participate in, the meeting.

H. No party may be represented by an attorney.

Added by Laws 2005, HB 1688, c. 460, § 9, eff. November 1, 2005.

§63-1-1914.9. Determinations of Impartial Decision Maker - State Survey Agency Determination - Amended Statement of Deficiencies

A. 1. Upon the conclusion of all arguments by the parties at the informal dispute resolution, the impartial decision maker shall issue a written statement of findings that shall be entitled "Determinations".

2. The determinations shall include:

- a. a recitation of the deficiency identification numbers,
- b. a statement of whether a disputed deficiency should remain, be removed, or be modified on the statement of deficiencies, and
- c. the facts and persuasive arguments that support the finding of the impartial decision maker for each deficiency identification number.

B. 1. The determination of the impartial decision maker shall be provided to all parties.

2. The State Department of Health shall review the determination and shall issue a written document entitled "State Survey Agency Determination".

C. A state survey agency determination is not subject to appeal, reargument, or reconsideration.

D. The Department shall deliver a copy of the state survey agency determination to the facility and to the impartial decision maker.

E. 1. In accordance with the state survey agency determination, the Department shall issue an amended state of deficiencies if the state survey agency determination results in modification to any deficiencies cited in the original statement of deficiencies.

2. If the Department determines that amendments to the statement of deficiencies should result in changes to the scope or severity assigned to any deficiency, the amended statement of deficiencies shall reflect the changes to the scope or severity of any cited deficiency.

F. The amended statement of deficiencies shall be provided to the facility.

Added by Laws 2005, HB 1688, c. 460, § 10, eff. November 1, 2005.

§63-1-1914.10. Subject Matter of Informal Dispute Resolution

A. The informal dispute resolution process is limited to deficiencies cited on a statement of deficiencies.

B. 1. If the impartial decision maker finds that matters not subject to informal dispute resolution are presented, the impartial decision maker shall strike all documentary evidence related to or presented for the purpose of disputing the matter not subject to informal dispute resolution.

2. The impartial decision maker may not include in the determination any matter not subject to informal dispute resolution.

Added by Laws 2005, HB 1688, c. 460, § 11, eff. November 1, 2005.

§63-1-1914.11. Definitions

For purposes of Sections 3 through 8 of this act:

1. "Impartial decision-making panel" means a group of individuals who are qualified volunteers and employees or contractors with the State Department of Health and shall consist of five (5) members as follows:

a. two members shall be impartial representative volunteers who have experience in the operation of a long-term care setting, such as an administrator, operator or director of nursing,

b. one member shall be an employee of the Department who has experience in the survey process,

c. one member shall be a person representing the aging or disabled community, and

d. one member shall be an impartial person who is not employed by the Protective Health Services, Long-Term Care Division of the State Department of Health; and

2. "Alternative informal dispute resolution" means a nonjudicial process or forum before an impartial decision-making panel that provides a facility cited for deficiency with the opportunity to dispute a citation for deficiency within the pilot program established in Sections 3 through 8 of this act.

Added by Laws 2007, SB 738, c. 347, § 3, eff. November 1, 2007.

§63-1-1914.12. Pilot Program - Alternative Informal Dispute Resolution

Upon written request, a long-term care facility may choose to participate in an informal dispute resolution panel to be offered by the State Department of Health as an alternative to

the informal dispute resolution process outlined in Sections 1-1914.3 through 1-1914.10 of this title.

Added by Laws 2007, SB 738, c. 347, § 4, eff. November 1, 2007; Amended by Laws 2009, HB 1729, c. 56, § 1, eff. November 1, 2009.

§63-1-1914.13. Request for Alternative Informal Dispute Resolution - Procedure

- A. Upon receipt of a request for an alternative informal dispute resolution from a facility, the State Department of Health shall assign the matter to an impartial decision-making panel.
- B. The Department shall:
1. Schedule a time and date for a meeting; and
 2. Inform the parties of the time and date of the alternative informal dispute resolution.
- C. If the request for an alternative informal dispute resolution includes a request by the facility for a meeting at which the facility may appear before the decision-making panel, the Department shall:
1. Arrange for facilities appropriate for conducting the meeting; and
 2. Inform the parties of the location of the meeting.
- D. Each party shall submit to the impartial decision-making panel all documentary evidence that the party believes has a bearing on or relevance to the deficiencies in dispute by the date specified by the Department.
- E. 1. If the request for an alternative informal dispute resolution does not include a request by the facility for a meeting at which the facility may appear before the impartial decision-making panel, or upon agreement of the facility and the Department, the impartial decision-making panel may conduct the meeting by telephone conference call or by a review of documentary evidence submitted by the parties.
2. a. If the alternative informal dispute resolution is conducted by record review, the impartial decision-making panel may request, and the facility shall provide, a written statement setting forth the facility's position on accepting, rejecting, or modifying each deficiency in dispute.
 - b. The written statement shall specify the documentary evidence that supports the position of the facility for each deficiency in dispute.
 - c. The facility shall provide its written statement to the impartial decision-making panel and the Department.
 - d. The Department shall then provide its written statement in rebuttal to the impartial decision-making panel and the facility.

Added by Laws 2007, SB 738, c. 347, § 5, eff. November 1, 2007.

§63-1-1914.14. Alternative Informal Dispute Resolution Cases Except Record Review - Procedure - Participants

A. 1. In all alternative informal dispute resolution cases except record review, the State Department of Health shall present the initial arguments.

2. The facility shall then present its arguments.

B. 1. The alternative informal dispute resolution shall be limited to no more than two (2) hours in length, with each party being permitted one (1) hour to present its arguments;

2. However, the impartial decision-making panel may grant each party additional equal time for good cause as determined by the impartial decision making-panel.

C. 1. Rules of evidence or procedure shall not apply to the alternative informal dispute resolution except as provided in this section.

2. The impartial decision-making panel may:

a. accept any information that the impartial decision-making panel deems material to the issue being presented, and

b. reject any information that the impartial decision-making panel deems immaterial to the issue being presented.

D. 1. The alternative informal dispute resolution may not be recorded.

2. However, the impartial decision-making panel may make written or recorded notes of the arguments.

E. Only employees of the facility, attending physicians of residents of the facility at the time of the deficiency, pharmacists providing medications to residents of the facility at the time of the deficiency, and consultant pharmacists or nurse consultants utilized by the facility, or the medical director of the facility, may appear or participate in the alternative informal dispute resolution for, or on the behalf of, the facility.

F. Only employees of the Department may appear or participate at the meeting for, or on behalf of, the Department.

G. The State Long-Term Care Ombudsman or designee, may appear at, or participate in, the meeting.

H. No party may be represented by an attorney.

Added by Laws 2007, SB 738, c. 347, § 6, eff. November 1, 2007.

§63-1-1914.15. Alternative Dispute Resolution - Determinations - State Survey Agency Determination

A. 1. Upon the conclusion of all arguments by the parties at the alternative informal dispute resolution, the impartial decision-making panel shall issue a written statement of findings that shall be entitled "Determinations".

2. The determinations shall include:
 - a. a recitation of the deficiency identification numbers,
 - b. a statement of whether a disputed deficiency should remain, be removed, or be modified on the statement of deficiencies, and
 - c. the facts and persuasive arguments that support the finding of the impartial decision-making panel for each deficiency identification number.
 - B.
 1. The determination of the impartial decision-making panel shall be provided to all parties.
 2. The State Department of Health shall review the determination and shall issue a written document entitled "State Survey Agency Determination".
 - C. A state survey agency determination is not subject to appeal, reargument, or reconsideration.
 - D. The Department shall deliver a copy of the state survey agency determination to the facility and to the impartial decision-making panel.
 - E.
 1. In accordance with the state survey agency determination, the Department shall issue an amended state of deficiencies if the state survey agency determination results in modification to any deficiencies cited in the original statement of deficiencies.
 2. If the Department determines that amendments to the statement of deficiencies should result in changes to the scope or severity assigned to any deficiency, the amended statement of deficiencies shall reflect the changes to the scope or severity of any cited deficiency.
 - F. The amended statement of deficiencies shall be provided to the facility.
- Added by Laws 2007, SB 738, c. 347, § 7, eff. November 1, 2007.*

§63-1-1914.16. Alternative Informal Dispute Resolution Process Limited to Cited Deficiencies.

- A. The alternative informal dispute resolution process is limited to deficiencies cited on a statement of deficiencies.
 - B.
 1. If the impartial decision-making panel finds that matters not subject to alternative informal dispute resolution are presented, the impartial decision-making panel shall strike all documentary evidence related to or presented for the purpose of disputing the matter not subject to alternative informal dispute resolution.
 2. The impartial decision-making panel may not include in the determination any matter not subject to alternative informal dispute resolution.
- Added by Laws 2007, SB 738, c. 347, § 8, eff. November 1, 2007.*

§63-1-1915. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§63-1-1916. Prohibited Acts - Violations - Prosecution

A. No person, including any person at any facility operated by the Oklahoma Department of Veterans Affairs, shall:

1. Intentionally fail to correct or interfere with the correction of a violation within the time specified on the notice or approved plan of correction under this act as the maximum period given for correction, unless an extension is granted and the corrections are made before expiration of extension;

2. Intentionally prevent, interfere with, or attempt to impede in any way the work of any duly authorized representative of the Department in the investigation and enforcement of this act;

3. Intentionally prevent or attempt to prevent any such representative from examining any relevant books or records in the conduct of official duties under this act;

4. Intentionally prevent or interfere with any such representative in the preserving of evidence of any violation of this act or the rules promulgated under this act;

5. Intentionally retaliate or discriminate against any resident or employee for contacting or providing information to any state official, or for initiating, participating in, or testifying in an action for any remedy authorized under this act;

6. Willfully file any false, incomplete or intentionally misleading information required to be filed under this act, or willfully fail or refuse to file any information; or

7. Open or operate a facility without a license.

B. A violation of this section is a misdemeanor.

C. The district attorney of the county in which the facility is located, or the Attorney General, may be requested by the Department to initiate prosecutions under this section. *Laws 1980, c. 241, § 16, eff. Oct. 1, 1980; Amended by Laws 2013, SB 629, c. 379, § 4, emerg. eff. May 29, 2013.*

§63-1-1916.1. Penalties for Violations

A. Any person who has been determined by the State Department of Health to have violated any provision of the Nursing Home Care Act or any rule promulgated or order issued pursuant to the provisions of the Nursing Home Care Act, may be liable for an administrative penalty for each day that said violation or violations continue to exist. Penalties of not less than Fifty Dollars (\$50.00) per day or more than Three Thousand Dollars (\$3,000.00) per day may be imposed for

deficiencies that do not constitute immediate jeopardy to residents. Penalties of not less than Three Thousand Fifty Dollars (\$3,050.00) per day or more than Ten Thousand Dollars (\$10,000.00) per day may be imposed for deficiencies constituting immediate jeopardy to residents; provided, however, that specialized facilities for the developmentally disabled or nursing facilities licensed pursuant to this act, which do not participate in Medicaid or Medicare, shall be liable for the maximum penalty, not to exceed Ten Thousand Dollars (\$10,000.00) for any related series of violations.

B. The amount of the penalty shall be assessed by the Department pursuant to the provisions of subsection A of this section, after notice and opportunity for hearing. Within ten (10) working days of the inspection documenting the violation, the facility may appeal this decision pursuant to Article II of the Administrative Procedures Act. In determining the amount of the penalty, the Department shall include, but not be limited to, consideration of the nature, circumstances and gravity of the violation, the repetitive nature of the violation at this facility or others operated by the same entity, the previous degree of difficulty in obtaining compliance with the rules, and, with respect to the person found to have committed the violation, the degree of culpability, the facility's financial condition and substantial show of good faith in attempting to achieve compliance with the provisions of the Nursing Home Care Act.

C. Any license holder may elect to surrender his license in lieu of said fine but shall be forever barred from obtaining a reissuance of the license or any other license issued pursuant to the Nursing Home Care Act.

Added by Laws 1989, c. 227, § 30, operative July 1, 1989.

Amended by Laws 1991, c. 127, § 9, emerg. eff. April 29, 1991; Laws 1995, c. 230, § 16, eff. July 1, 1995.

§63-1-1916.2. Denial or Refusal to Renew - Suspension or Revocation of License - Administrative Penalties

The State Department of Health may deny, refuse to renew, suspend or revoke a license or assess administrative penalties to an applicant, licensee, or facility which has a history of noncompliance or incomplete or partial compliance with or repeated violations of the provisions of the Nursing Home Care Act or the standards, rules or regulations of the Board issued pursuant to the provisions of the Nursing Home Care Act or other satisfactory evidence which demonstrates that the applicant or licensee is unlikely to manage or operate a facility or to provide care or treatment to the residents of a home in a manner which warrants public trust.

Added by Laws 1989, c. 227, § 31. Amended by Laws 1991, c. 127, § 10, emerg. eff. April 29, 1991.

§63-1-1917. State Agencies to Assist in Carrying Out Provisions of Act

It shall be the duty of the Department of Human Services and the Director of the Oklahoma State Bureau of Investigation to assist the Commissioner in carrying out the provisions of this act insofar as the functions of these respective offices and departments are concerned with the health, welfare and safety of any person or persons cared for in facilities as defined herein. *Laws 1980, c. 241, § 17, eff. Oct. 1, 1980.*

§63-1-1918. Rights and Responsibilities

A. All principles enumerated in this section shall be posted in a conspicuous, easily accessible location in each facility. Each resident and personally appointed representative of the resident, if any, shall be verbally advised and provided a written copy of such principles prior to or upon admission to the facility. The facility shall ensure that its staff is familiar with and observes the rights and responsibilities enumerated in this section. The facility shall make available to each resident, upon reasonable request, a current written statement of such rights and responsibilities.

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

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

2. Every resident shall have the right to have private communications, including telephonic communications and visits and consultations with a physician or an attorney, and meetings of family and resident groups or any other person or persons of the resident's choice, and may send and promptly receive, unopened, the resident's personal mail;

3. a. Every resident shall have the right, without fear of reprisal or discrimination, to:

(1) present grievances with respect to treatment or care that is or fails to be furnished on behalf of the resident or others to:

- (a) the facility's staff,
- (b) the facility's administrator,
- (c) the facility's attending physician,
- (d) the resident's personal physician, if any,

- (e) governmental officials, or
 - (f) any other person, and
 - (2) organize or to join with other residents or individuals within or outside of the facility to work for improvements in resident care.
 - b. The family of a resident shall have the right to meet in the facility with other residents' families.
 - c. Every resident shall have the right to prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents;
4. Every resident shall have the right to manage such resident's own financial affairs, unless the resident delegates the responsibility, in writing, to the facility. The resident shall have at least a quarterly accounting of any personal financial transactions undertaken in the resident's behalf by the facility during any period of time the resident has delegated such responsibilities to the facility;
5. Every resident shall have the right to receive adequate and appropriate medical care consistent with established and recognized medical practice standards within the community. Every resident, unless adjudged to be mentally incapacitated, shall be fully informed by the resident's attending physician of the resident's medical condition and advised in advance of proposed treatment or changes in treatment in terms and language that the resident can understand, unless medically contraindicated, and to participate in the planning of care and treatment or changes in care and treatment. Every resident shall have the right to refuse medication and treatment after being fully informed of and understanding the consequences of such actions unless adjudged to be mentally incapacitated;
6. Every resident shall receive respect and privacy in the medical care program of the resident. Case discussion, consultation, examination and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential, and shall include such documentation or information so as to alert a health care provider or an emergency medical care facility of the existence of a directive to physicians or a living will;
7. Every resident shall have the right to reside and to receive services with reasonable accommodation of individual needs and preferences, except where the health or safety of the individual or other residents would be endangered;
8. a. Every resident shall be informed by the facility, at the time of admission, of the

facility's policy regarding the provision of hospice services. The facility's policy shall:

- (1) specify whether the facility provides hospice services, either directly or through contractual arrangements with other hospice providers,
- (2) specify whether the facility permits hospice services to be provided in the facility by any other hospice services or only by hospice services contracted by the facility,
- (3) provide that each resident shall receive a list of hospice services with which the facility contracts, and
- (4) provide for complete disclosure to the resident of the facility's relationship with any hospice service that is the result of ownership or an ownership interest of five percent (5%) or more.

b. A facility shall, at the point that a resident requires hospice services, again inform the resident or the personally appointed representative of the resident, if any, verbally and in writing of the resident's right to hospice services pursuant to the facility's policy at the time of the resident's admission;

9. Every resident shall have the right to receive notice before the room or roommate of the resident in the facility is changed and if the resident has a telephone in his or her room, the resident must be informed of any charges to be incurred when moving;

10. Every resident shall have the right to retain and use personal clothing and possessions, unless medically contraindicated, and shall have the right to security in the storage and use of such clothing and possessions;

11. Every resident shall have the right to receive courteous and respectful care and treatment and a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and a statement of related charges, including any costs for services not covered under Medicare or Medicaid, or not covered by the facility's basic per diem rate;

12. Every resident shall be free from mental and physical abuse and neglect, as such terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, corporal punishment, involuntary seclusion, and from any physical and chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms, except

those restraints authorized in writing by a physician for a specified period of time or as are necessitated by an emergency where the restraint may only be applied by a physician, qualified licensed nurse or other personnel under the supervision of the physician who shall set forth in writing the circumstances requiring the use of restraint. Use of a chemical or physical restraint shall require the consultation of a physician within twenty-four (24) hours of such emergency;

13. Every resident shall receive a statement of the facility's regulations and an explanation of the resident's responsibility to obey all reasonable regulations of the facility and to respect the personal rights and private property of the other residents;

14. Every resident shall receive a statement that, should they be adjudicated incompetent and have no ability to be restored to legal capacity, the above rights and responsibilities shall be exercised by a court-appointed representative;

15. No resident shall be required to perform services for a facility;

16. Every resident shall have privacy for spousal visits. Every resident may share a room with the resident's spouse, if the spouse is residing in the same facility;

17. When a physician indicates it is appropriate, a facility shall immediately notify the resident's next of kin, or representative of the resident's death or when the resident's death appears to be imminent;

18. Every resident shall have the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility; and

19. Every resident shall have the right to examine, upon reasonable request, the results of the most recent survey of the facility conducted by the State Department of Health with respect to the facility and any plan of correction in effect with respect to the facility.

C. No licensed facility shall deny appropriate care on the basis of the resident's source of payment as defined in the regulations. Appropriate care shall not include duplication of services by a nursing home, hospice, or any combination of care providers.

D. Each facility shall prepare a written plan and provide appropriate staff training to implement each resident's rights as stated in this section.

E. Any person convicted of violating any provisions of this section shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00), nor more than

Three Hundred Dollars (\$300.00), or imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

F. In addition to the penalties provided in this section, an action may be brought against an individual by any resident who is injured by any violation of this section, or who shall suffer injury from any person whose threats would cause a violation of this section if carried through, may maintain an action to prevent, restrain or enjoin a violation or threatened violation. If a violation or threatened violation of this section shall be established in any action, the court shall enjoin and restrain or otherwise prohibit the violation or threatened violation and assess in favor of the plaintiff and against the defendant the cost of the suit. If damages are alleged and proved in the action, the plaintiff shall be entitled to recover from the defendant the actual damages sustained by the plaintiff. If it is proved in an action that the defendant's conduct was willful or in reckless disregard of the rights provided by this section, punitive damages may be assessed.

G. Any employee of a state agency that inspects any nursing facility or special facility shall report any flagrant violations of this act or any other statute to the administrative head of the state agency, who shall immediately take whatever steps are necessary to correct the situation including, when appropriate, reporting the violation to the district attorney of the county in which the violation occurred.

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

Added by Laws 1980, c. 241, § 18, eff. Oct. 1, 1980. Amended by Laws 1981, c. 182, § 3; Laws 1982, c. 171, § 1; Laws 1991, c. 127, § 11, emerg. eff. April 29, 1991; Laws 1992, c. 173, § 1, emerg. eff. May 5, 1992; Laws 1996, c. 231, § 4, eff. July 1, 1996; Laws 2001, c. 393, § 3, emerg. eff. June 4, 2001; Laws 2002, c. 138, § 1, eff. Nov. 1, 2002; Laws 2003, c. 390, § 8, eff. July 1, 2003.

§63-1-1918A. Repealed Laws 2005, HB 1253, c. 108, § 4, emerg. eff. July 1, 2005

§63-1-1918B. Assessing, Documenting, and Treating Pain - Nursing Home Residents

A. It is the intent of the Legislature that pain experienced by nursing home residents be assessed and treated promptly, effectively, and for as long as pain persists.

B. On and after July 1, 2005, every nursing facility licensed pursuant to the Nursing Home Care Act shall, as a condition of licensure, include pain as an item to be assessed at the same time as vital signs are taken. The nursing facility shall ensure that pain assessment is performed in a consistent manner that is appropriate to the patient. The pain assessment shall be noted in the patient's chart in a manner consistent with other vital signs.

C. The State Board of Health shall promulgate rules, pursuant to recommendations issued by the State Advisory Council on Pain Management, for assessing and documenting pain.
Added by Laws 2004, c. 388, § 2, emerg. eff. June 3, 2004.

§63-1-1918.1. Purpose of Section - Use of Bubble Pack Units - Study - Promulgation of Rules - Report of Findings - Terms Defined.

A. The purpose of this section is to reduce expensive and unnecessary wastage of excess drugs dispensed to residents of nursing homes. In order to determine if the use of bubble pack units and the return and reissuance of unadulterated drugs is cost-effective and administratively efficient there is hereby established a pilot program for dispensing and returning anti-ulcer and antiarthritics in bubble pack units. The pilot program shall terminate January 1, 1998.

B. For the purpose of this study, upon filling a prescription for residents of nursing facilities, a pharmacist shall dispense anti-ulcer and antiarthritics in bubble pack units when available.

C. Any prescription for anti-ulcer and antiarthritics dispensed by a pharmacist in bubble pack units for a resident of a nursing home that is unused and is unadulterated may be returned for credit to the issuing pharmacy. Such medication may be dispensed by the pharmacist to other nursing home patients. The Oklahoma Health Care Authority in concert with the State Board of Pharmacy shall promulgate permanent rules that will provide for the implementation of this subsection. The permanent rules shall be promulgated by the Board pursuant to the provisions of the Administrative Procedures Act.

D. The Oklahoma State Board of Health in concert with the State Board of Pharmacy shall promulgate rules to ensure the integrity of the collection of unadulterated anti-ulcer and antiarthritics within nursing facilities. The rules shall provide for a drug manifest form that shall accompany each shipment of unadulterated anti-ulcer and antiarthritics in

bubble pack units from the nursing facility to the dispensing pharmacy.

E. The State Board of Health shall report the findings of the pilot program to the Speaker of the House of Representatives, the President Pro Tempore of the Senate and the Governor by April 1, 1998.

F. For purposes of this section:

1. "Bubble pack units" means a sealed unit of use container packaged by a pharmacy or pharmaceutical manufacturer that bears the name of the drug, expiration date, and the name of the pharmacy dispensing the drug;

2. "Nursing facility" means a facility as defined by Section 1-1902 of Title 63 of the Oklahoma Statutes;

3. "Unadulterated" means medications that are properly stored, labeled and not past the expiration date; and

4. "Antiarthritics" means legend nonsteroidal anti-inflammatory drugs.

Added by Laws 1995, c. 299, § 1, eff. Sept. 1, 1995.

§63-1-1918.2. Renumbered as 59 O.S. § 367.3 by Laws 2004, HB 1866, c. 374, § 9, emerg. eff. June 3, 2004

§63-1-1919. Person Authorized to Have Access to Facilities - Violations - Exemptions

A. Any employee or agent of a public agency or any representative of a community legal services program or any member of a nonprofit community supported agency which provides health or social services to the elderly, or any member of a church group, association of older persons or community service club which provides volunteers for service to nursing home residents shall be permitted access at reasonable hours, which shall be 10:00 a.m. to 8:00 p.m., to any individual resident of any facility, if the purpose of such agency, program or organization includes rendering assistance to residents without charge, but only if there is neither a commercial purpose nor affect to such access and if the purpose is to do any of the following:

1. Visit, talk with and make personal, social and legal services available to all residents;

2. Inform residents of their rights and entitlements and their corresponding obligations, under federal and state laws, by means of educational materials and discussions in groups and with individual residents;

3. Assist residents in asserting their legal rights regarding claims for public assistance, medical assistance and Social Security benefits, as well as in all other matters in

which residents are aggrieved. Assistance may include counseling and litigation; or

4. Engage in other methods of asserting, advising and representing residents so as to extend to them full enjoyment of their rights.

B. All persons entering a facility under this section shall promptly notify appropriate facility personnel of their presence. They shall, upon request, produce identification to establish their identity. No such person shall enter the immediate living area of any resident without first identifying himself and then receiving permission from the resident to enter. The rights of other residents present in the room shall be respected. A resident may terminate at any time a visit by a person having access to the resident's living area under this section.

C. This section shall not limit the power of the Department or other public agency otherwise permitted or required by law to enter and inspect a facility.

D. Notwithstanding subsection A of this section, the administrator of a facility may refuse access to the facility to any person if the presence of that person in the facility would be injurious to the health and safety of a resident or would threaten the security of the property of a resident or the facility, or if the person seeks access to the facility for commercial purposes. Any person refused access to a facility may within ten (10) days request a hearing. In that proceeding, the burden of proof as to the right of the facility to refuse access under this section shall be on the facility.

E. This section shall not apply to any inspection team of the Department or any other agency.

Laws 1980, c. 241, § 19, eff. Oct. 1, 1980.

§63-1-1920. Protection of Resident's Funds

To protect each resident's funds, the facility or home:

1. Shall reserve a portion of each resident's monthly income, in an amount not less than Twenty-five Dollars (\$25.00), as a personal needs allowance for use by the resident, or for use on behalf of the resident by his guardian, or other representative designated by the resident;

2. Shall at the time of admission, provide each resident, or his representative, with a written statement explaining the resident's rights regarding personal funds and listing the services for which the resident will be charged, and obtain a signed acknowledgment from each resident or his representative that he has received the statement;

3. May accept funds from a resident for safekeeping and managing, if the facility or home receives written authorization

from the resident or his guardian; such authorization shall be attested to by a witness who has no pecuniary interest in the facility or home or its operations, and who is not connected in any way to facility or home personnel or the administrator in any manner whatsoever;

4. Shall maintain and allow each resident and responsible party access to a written record of all financial arrangements and transactions involving the individual resident's funds;

5. Shall provide each resident, or his representative with a written itemized statement on request, of all financial transactions involving the resident's funds;

6. Shall keep any funds received from a resident for safekeeping in an account separate from the facility's or home's funds and shall maintain such funds as required by the Department of Human Services and federal regulations;

7. Shall return to the resident, upon written request by the resident or his guardian, if court-appointed, all or any part of the resident's funds given the facility or home for safekeeping, including the interest accrued from deposits;

8. Shall place any monthly allowance to which a resident is entitled in that resident's personal account, or give it to the resident, unless the facility or home has written authorization from the resident or the resident's guardian or if the resident is a minor, his parent, to handle it differently;

9. Unless otherwise provided by state law, upon the death of a resident, shall provide the administrator or executor of the resident's estate with a complete accounting of all the resident's personal property, including any funds of the resident being held by the facility or home; and

10. If the facility or home is sold, shall provide the buyer with a written verification by a public accountant of all residents' monies and properties being transferred, and obtain a signed receipt from the new owner.

Amended by Laws 1984, c. 128, § 4, eff. Nov. 1, 1984; Laws 1985, c. 135, § 8, emerg. eff. June 7, 1985.

§63-1-1921. Contracts - Provisions and Procedures

A. A written contract shall be executed between a person or his guardian or responsible party or if the resident is a minor, his parent, and a facility or its agent within one hundred twenty (120) days from the time a person is admitted to a facility, or at the expiration of the period of previous contract, or when the source of payment for the resident's care changes from private to public funds or from public to private funds; if a person is a resident of a facility on the effective date of this act and no legally enforceable contract exists, then a contract as described in this section shall be executed

within sixty (60) days after the effective date of this act. If the facility receives or is to receive payment by the state or federal government, an individual contract with the nursing home is not required.

A resident shall not be discharged or transferred at the expiration of the term of a contract, except as provided in Sections 1-1926 through 1-1937 of this title.

B. The contract shall be executed between the resident or the resident's guardian or, if the resident is a minor, his parent or guardian and the licensee.

C. A copy of the contract shall be given to the resident or to the resident's representative at the time of the resident's admission to the facility.

D. A copy of the contract for a resident who is supported by nonpublic funds other than the resident's own funds shall be made available to the person providing the funds for the resident's support.

E. The contract shall be written in clear and unambiguous language and shall be printed in type no smaller than standard typewriter pica or elite type. The general form of the contract shall be prescribed by the Department.

F. The contract shall specify:

1. The term of the contract;
2. The services to be provided under the contract and the charges for the services;
3. The services that may be provided to supplement the contract and the charges for the services;
4. The sources liable for payments due under the contract;
5. The amount of deposit paid; and
6. The rights, duties and obligations of the resident, except that the specification of a resident's rights may be furnished on a separate document which complies with the requirements of Section 1-1918 of this title.

G. The contract shall designate the name of the resident's representative, if any.

H. The contract shall provide that if the resident dies or is compelled by a change in physical or mental health to leave the facility, the contract and all obligations under it shall terminate immediately. All charges shall be prorated as of the date on which the contract terminates, and, if any payments have been made in advance, the excess shall be refunded to the resident. This provision shall not apply to life-care contracts through which a facility agrees to provide maintenance and care for a resident throughout the remainder of his life or to continuing-care contract through which a facility agrees to supplement all available forms of financial support in providing

maintenance and care for a resident throughout the remainder of his life.

Laws 1980, c. 241, § 21, eff. Oct. 1, 1980; Laws 1981, c. 182, § 5.

§63-1-1922. Residents' Advisory Council

A. Each facility shall establish a residents' advisory council. The administrator shall designate a member of the facility staff to coordinate the establishment of, and render assistance to, said council.

B. The composition of the residents' advisory council shall be specified by Department regulation, but no employee or affiliate of a facility shall be a member of any such council.

C. The residents' advisory council shall meet at least once each month with the staff coordinator who shall provide assistance to said council in preparing and disseminating a report of each meeting as specified by the regulations to all residents, the administrator, and the staff.

D. Records of the residents' advisory council meetings shall be maintained in the office of the administrator.

E. The residents' advisory council shall communicate to the administrator the opinions and concerns of the residents. The council shall review procedures for implementing residents' rights, facility responsibilities and make recommendations for changes or additions which will strengthen the facility's policies and procedures as they affect residents' rights and facility responsibilities.

F. The residents' advisory council shall be forum for:

1. Obtaining and disseminating information;
2. Soliciting and adopting recommendations for facility programming and improvements; and
3. Early identification and recommendation of orderly resolution of problems.

G. The residents' advisory council may present complaints as provided in Section 1-1924 of this title on behalf of a resident to the Department.

Laws 1980, c. 241, § 22, eff. Oct. 1, 1980; Laws 1981, c. 182, § 6.

§63-1-1923. Long-Term Care Facility Advisory Board

A. There is hereby re-created, to continue until July 1, 2010, in accordance with the provisions of the Oklahoma Sunset Law, a Long-Term Care Facility Advisory Board which shall be composed as follows:

1. The Governor shall appoint a twenty-seven-member Long-Term Care Facility Advisory Board which shall advise the State

Commissioner of Health. The Advisory Board shall be comprised of the following persons:

- a. one representative from the Office of the State Fire Marshal, designated by the State Fire Marshal,
- b. one representative from the Oklahoma Health Care Authority, designated by the Administrator,
- c. one representative from the Department of Mental Health and Substance Abuse Services, designated by the Commissioner of Mental Health and Substance Abuse Services,
- d. one representative from the Department of Human Services, designated by the Director of Human Services,
- e. one member who shall be a licensed general practitioner of the medical profession,
- f. one member who shall be a general practitioner of the osteopathic profession,
- g. one member who shall be a registered pharmacist,
- h. one member who shall be a licensed registered nurse,
- i. one member who shall be a licensed practical nurse,
- j. three members who shall be of reputable and responsible character and sound physical and mental health and shall be operator-administrators of nursing homes which have current licenses issued pursuant to the Nursing Home Care Act and who shall have had five (5) years' experience in the nursing home profession as operator-administrators,
- k. three members who shall be residential care home operator-administrators licensed pursuant to the provisions of the Residential Care Act,
- l. three members who shall be adult day care facility owner-operators licensed pursuant to the provisions of the Adult Day Care Act,
- m. three members who shall be continuum of care facility or assisted living center owner-operators licensed pursuant to the provisions of the Continuum of Care and Assisted Living Act, and
- n. six members who shall be over the age of sixty-five (65) who shall represent the general public;

2. The designated representative from the Office of the State Fire Marshal, the designated representative from the Department of Mental Health and Substance Abuse Services, the designated representative from the Department of Human Services,

and the designated representative from the State Department of Health shall serve at the pleasure of their designators;

3. The initial appointments of the Governor shall be for the following terms:

- a. the initial term of the member of the medical profession shall be for a three-year term,
- b. the initial term of the member of the osteopathic profession shall be for a three-year term,
- c. the initial term of the registered pharmacist shall be for a two-year term,
- d. the initial term of the licensed registered nurse shall be for a two-year term,
- e. the initial term of the licensed practical nurse shall be for a one-year term,
- f. of the initial terms for the twelve members who are licensed operator-administrators for facilities pursuant to the Nursing Home Care Act, residential care homes pursuant to the Residential Care Act, adult day care facilities pursuant to the Adult Day Care Act, and continuum of care facilities and assisted living centers pursuant to the Continuum of Care and Assisted Living Act, four shall be for one-year terms, four shall be for two-year terms, and four shall be for three-year terms; provided that representatives for each of the terms shall include one individual representing facilities subject to the provisions of the Nursing Home Care Act, one individual representing residential care homes subject to the Residential Care Act, one individual representing facilities subject to the provisions of the Adult Day Care Act, and one individual representing continuum of care facilities and assisted living centers subject to the provisions of the Continuum of Care and Assisted Living Act, and
- g. the initial terms for the six members of the general public over the age of sixty-five (65) shall be for one-, two-, three-, four-, five- and six-year terms respectively.

4. After the initial designations or appointments, the designated representative from the Office of the State Fire Marshal, the designated representative of the Oklahoma Health Care Authority, the designated representative of the Department of Human Services and the designated representative of the Department of Mental Health and Substance Abuse Services shall each serve at the pleasure of their designators. All other terms shall be for a three-year period. In case of a vacancy,

the Governor shall appoint individuals to fill the remainder of the term.

B. The State Department of Health shall provide a clerical staff worker to perform designated duties of the Advisory Board. The Department shall also provide space for meetings of the Advisory Board.

C. The Advisory Board shall annually elect a chair, vice-chair and secretary-treasurer, shall meet at least quarterly, and may hold such special meetings as may be necessary. The members of the Advisory Board shall be reimbursed as provided for by the State Travel Reimbursement Act.

D. The Advisory Board shall have the power and duty to:

1. Serve as an advisory body to the Department for the development and improvement of services to and care and treatment of residents of facilities subject to the provisions of the Nursing Home Care Act, homes subject to the provisions of the Residential Care Act and facilities subject to the provisions of the Adult Day Care Act;

2. Review, make recommendations regarding, and approve in its advisory capacity the system of standards developed by the Department;

3. Evaluate and review the standards, practices, and procedures of the Department regarding the administration and enforcement of the provisions of the Nursing Home Care Act, the Residential Care Act and the Adult Day Care Act, and the quality of services and care and treatment provided to residents of facilities and residential care homes and participants in adult day care centers. The Board may make recommendations to the Department as necessary and appropriate;

4. Evaluate and review financial accountability standards, policies and practices of residential care facilities regarding residents' funds for which the facility is the payee, and evaluate and review expenditures made on behalf of the resident by the facility to ensure that such funds are managed appropriately and in the best interests of the resident; and

5. Publish and distribute an annual report of its activities and any recommendations for the improvement of services and care and treatment to residents of facilities and residential care homes and participants in adult day care centers on or before January 1 of each year to the Governor, the State Commissioner of Health, the State Board of Health, the Speaker of the House of Representatives, the President Pro Tempore of the Senate, and the chief administrative officer of each agency affected by the report.

Added by Laws 1980, c. 241, § 23, eff. Oct. 1, 1980. Amended by Laws 1984, c. 128, § 5, eff. Nov. 1, 1984; Laws 1986, c. 16, § 1, eff. July 1, 1986; Laws 1987, c. 98, § 27, emerg. eff. May

20, 1987; Laws 1989, c. 192, § 10, *eff. Nov. 1, 1989*; Laws 1989, c. 345, § 3, *eff. Oct. 1, 1989*; Laws 1990, c. 51, § 127, *emerg. eff. April 9, 1990*; Laws 1992, c. 109, § 1, *emerg. eff. April 20, 1992*; Laws 1995, c. 230, § 17, *eff. July 1, 1995*; Laws 1998, c. 42, § 1; Laws 2001, c. 17, § 1, *eff. July 1, 2001*; Laws 2004, c. 25, § 1.

§63-1-1923.1. Establishment of Residents and Family State Council and Toll Free 24 Hour Hotline.

The State Department of Health shall:

1. Establish a Residents and Family State Council which shall be composed of fifteen (15) members who are, or who have been within the last twelve (12) months, residents, family members, resident volunteer representatives or guardians of residents of nursing facilities licensed pursuant to the Nursing Home Care Act, but shall not include persons representing residents in facilities for the developmentally disabled. The Council shall annually elect a chair and vice-chair, and shall meet at least quarterly. Meetings shall be conducted in the various areas of the state with at least one meeting in each of the four quadrants of the state to allow for participation by family members and residents where possible. The members of the Council shall be reimbursed pursuant to the State Travel Reimbursement Act. The Council shall have the power and duty to advise the State Department of Health concerning the development and improvement of services to and care and treatment of residents of facilities subject to the provisions of the Nursing Home Care Act and make recommendations to the Department as necessary and appropriate. The members shall serve at the pleasure of the State Commissioner of Health; and

2. Establish a toll free, twenty-four-hour hotline for filing of complaints against facilities licensed pursuant to the provisions of the Nursing Home Care Act.

Added by Laws 1995, c. 230, § 18, eff. July 1, 1995.

§63-1-1924. Information Which May be Disclosed by Department

The following information is subject to disclosure to the public from the Department:

1. Information submitted under Section 40 of this act except information concerning the remuneration of personnel licensed, registered or certified by the Department and monthly charges for an individual private resident;

2. Records of license and certification inspections, surveys and evaluations of facilities, other reports of inspections, surveys and evaluations of resident care, and reports concerning a facility prepared pursuant to Titles XVIII

and XIX of the Social Security Act, subject to the provisions of the Social Security Act; and

3. Complaints filed against a facility and complaint investigation reports, except that a complaint or complaint investigation report shall not be disclosed to a person other than the complainant or complainant's representative before it is disclosed to a facility as provided in Section 40 of this act and, further, except that a complainant or resident's name shall not be disclosed except as provided in Section 40 of this act. *Laws 1980, c. 241, § 24, eff. Oct. 1, 1980.*

§63-1-1924.1. Nursing Home Personnel to Notify Clergy of Patient's Faith if Death Impending

A. Nursing home personnel shall notify clergy of the faith of a patient, upon the impending death of the patient, when practicable.

B. The State Department of Health shall not use the provisions of subsection A of this section for any purpose relating to inspections or investigations. *Added by Laws 2008, HB 1903, c. 281, § 1, eff. November 1, 2008.*

§63-1-1925. Minimum Standards for Facilities

The State Department of Health shall prescribe minimum standards for facilities. These standards shall regulate:

1. Location and construction of the facility, including plumbing, heating, lighting, ventilation, and other physical conditions which shall ensure the health, safety and comfort of residents and protection from fire hazards;

2. Number and qualifications of all personnel, including management and nursing personnel, having responsibility for any part of the care given to residents; specifically, the Department shall establish staffing ratios for facilities which shall specify the number of staff hours per resident of care that are needed for professional nursing care for various types of facilities or areas within facilities;

3. All sanitary conditions within the facility and its surroundings, including water supply, sewage disposal, food handling, and general hygiene, which shall ensure the health and comfort of residents;

4. Diet related to the needs of each resident based on sound nutritional practice and on recommendations which may be made by the physicians attending the resident;

5. Equipment essential to the health and welfare of the residents;

6. Minimum levels of supplies including, but not limited to, food and other perishables;

7. Minimum financial solvency standards to ensure the operation of facilities; and

8. A program of rehabilitation for those residents who would benefit from such programs.

Added by Laws 1980, c. 241, § 25, eff. Oct. 1, 1980. Amended by Laws 2002, c. 230, § 9, eff. Nov. 1, 2002.

§63-1-1925.1. Establishment of Rules and Regulations with Animals in Long-term Health Care Facilities

The State Board of Health shall establish rules and regulations allowing the use of visiting or residential animals in selected long-term health care facilities in this state. Long-term health care facilities which want animals shall be required to apply to the State Department of Health for approval for residential animals. Such rules and regulations shall be established giving consideration to disease prevention, sanitation, prevention of injury to patients and animals, and other concerns deemed appropriate by the Board.

Added by Laws 1984, c. 52, § 1, eff. Nov. 1, 1984.

§63-1-1925.2. Recalculation and Reimbursement from the Nursing Facility Quality Care Fund - Report

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

1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR), and shall be calculated in the same manner as has been mutually understood by the long-term care industry and the Oklahoma Health Care Authority.

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

B. 1. From September 1, 2000, through August 31, 2001, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain the following minimum direct-care-staff-to-resident ratios:

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

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

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

3. On and after September 1, 2003, subject to the availability of funds², nursing facilities subject to the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities, the following minimum direct-care-staff-to-resident ratios:

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

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

5. a. On and after January 1, 2004, a facility that has been determined by the State Department

² The Oklahoma Health Care Authority has not certified the availability of funds to implement this provision of law.

- of Health to have been in compliance with the provisions of paragraph 3 of this subsection since the implementation date of this subsection, may implement flexible staff scheduling; provided, however, such facility shall continue to maintain a direct-care service rate of at least two and eighty-six one-hundredths (2.86) hours of direct-care service per resident per day.
- b. At no time shall direct-care staffing ratios in a facility with flexible staff-scheduling privileges fall below one direct-care staff to every sixteen residents, and at least two direct-care staff shall be on duty and awake at all times.
 - c. As used in this paragraph, "flexible staff-scheduling" means maintaining:
 - (1) a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident per day rate of not less than two and eighty-six one-hundredths (2.86) hours per day,
 - (2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every sixteen residents at all times, and
 - (3) at least two direct-care staff persons on duty and awake at all times.
6. a. On and after January 1, 2004, the Department shall require a facility to maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection if the facility has been determined by the Department to be deficient with regard to:
- (1) the provisions of paragraph 3 of this subsection,
 - (2) fraudulent reporting of staffing on the Quality of Care Report,
 - (3) a complaint and/or survey investigation that has determined substandard quality of care, or
 - (4) a complaint and/or survey investigation that has determined quality-of-care problems related to insufficient staffing.
- b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection for a minimum of three (3) months before being considered eligible to implement flexible staff

scheduling as defined in subparagraph c of paragraph 5 of this subsection.

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

- 7.
 - a. For facilities that have been granted flexible staff-scheduling privileges, the Department shall monitor and evaluate facility compliance with the flexible staff-scheduling staffing provisions of paragraph 5 of this subsection through reviews of monthly staffing reports, results of complaint investigations and inspections.
 - b. If the Department identifies any quality-of-care problems related to insufficient staffing in such facility, the Department shall issue a directed plan of correction to the facility found to be out of compliance with the provisions of this subsection.
 - c. In a directed plan of correction, the Department shall require a facility described in subparagraph b of this paragraph to maintain shift-based, staff-to-resident ratios for the following periods of time:
 - (1) the first determination shall require that shift-based, staff-to-resident ratios be maintained until full compliance is achieved,
 - (2) the second determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained for a minimum period of six (6) months, and
 - (3) the third determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained for a minimum period of twelve (12) months.

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

D. The State Board of Health shall promulgate rules prescribing staffing requirements for intermediate care

facilities for the mentally retarded serving six or fewer clients and for intermediate care facilities for the mentally retarded serving sixteen or fewer clients.

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

F. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from two and eighty-six one-hundredths (2.86) hours per day per occupied bed to three and two-tenths (3.2) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and two-tenths (3.2) hours per day per occupied bed.

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

3. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from three and eight-tenths (3.8) hours per day per

occupied bed to four and one-tenth (4.1) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall four and one-tenth (4.1) hours per day per occupied bed.

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

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

G. For purposes of this subsection:

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

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

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

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

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

- a. administrative penalties shall not accrue until the Authority notifies the facility in writing that the report was not timely submitted as required, and
- b. a minimum of a one-day penalty shall be assessed in all instances.

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

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

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

2. a. The Oklahoma Nursing Facility Funding Advisory Committee is hereby created and shall consist of the following:
- (1) four members selected by the Oklahoma Association of Health Care Providers,
 - (2) three members selected by the Oklahoma Association of Homes and Services for the Aging, and
 - (3) two members selected by the State Council on Aging.

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

- b. The purpose of the advisory committee will be to develop a new methodology for calculating state Medicaid program reimbursements to nursing facilities by implementing facility-specific rates based on expenditures relating to direct care staffing. No nursing home will receive less than the current rate at the time of implementation of facility-specific rates pursuant to this subparagraph.
- c. The advisory committee shall be staffed and advised by the Oklahoma Health Care Authority.
- d. The new methodology will be submitted for approval to the Board of the Oklahoma Health Care Authority by January 15, 2005, and shall be finalized by July 1, 2005. The new methodology will apply only to new funds that become available for Medicaid nursing facility reimbursement after the methodology of this paragraph has been finalized. Existing funds paid to nursing homes will not be subject to the methodology of this paragraph. The methodology as outlined in this paragraph will only be applied to any new funding for nursing facilities appropriated above and beyond the funding amounts effective on January 15, 2005.

- e. The new methodology shall divide the payment into two components:
 - (1) direct care which includes allowable costs for registered nurses, licensed practical nurses, certified medication aides and certified nurse aides. The direct care component of the rate shall be a facility-specific rate, directly related to each facility's actual expenditures on direct care, and
 - (2) other costs.
- f. The Oklahoma Health Care Authority, in calculating the base year prospective direct care rate component, shall use the following criteria:
 - (1) to construct an array of facility per diem allowable expenditures on direct care, the Authority shall use the most recent data available. The limit on this array shall be no less than the ninetieth percentile,
 - (2) each facility's direct care base-year component of the rate shall be the lesser of the facility's allowable expenditures on direct care or the limit,
 - (3) other rate components shall be determined by the Oklahoma Nursing Facility Funding Advisory Committee in accordance with federal regulations and requirements, and
 - (4) rate components in divisions (2) and (3) of this subparagraph shall be re-based and adjusted for inflation when additional funds are made available.

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

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

J. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs, over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period, and the direct-care, flexible staff-scheduling staffing level has been

prospectively funding at four and one-tenth (4.1) hours per day per occupied bed, the Authority may apportion funds for the implementation of the provisions of this section.

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

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

Added by Laws 2000, c. 340, § 4, eff. July 1, 2000. Amended by Laws 2001, c. 428, § 7, emerg. eff. June 5, 2001; Laws 2002, c. 22, § 22, emerg. eff. March 8, 2002; Laws 2002, c. 470, § 1, eff. July 1, 2002; Laws 2004, c. 294, § 1, emerg. eff. May 11, 2004; Laws 2005, c. 216, § 1, eff. Nov. 1, 2005.

§63-1-1925.3. Repealed by Laws 2002, HB 2328, c. 112, § 10, eff. December 31, 2002

§63-1-1925.4. Duty to Prepare Emergency Evacuation Plan - Duty of Facility to Disclose Lack of Written Disaster Plan or Emergency Power Generator

A. Upon admittance into the facility, nursing facilities and specialized facilities that do not have emergency power generators available or a written disaster plan on file during an emergency situation shall provide a written disclosure to any resident or resident's caregiver stating that the facility does not have either a generator available or a written disaster plan on file during an emergency situation.

B. All nursing facilities, assisted living centers, residential care homes and specialized facilities shall have an emergency evacuation plan in place. Such plan shall be coordinated and on file at the local emergency management agency. Such plan shall also be filed with the State Department of Health.

C. For purposes of this section, "assisted living center" shall have the same meaning as specified in Section 1-890.2 of Title 63 of the Oklahoma Statutes, and "nursing facility", "residential care home" and "specialized facility" shall have the same meaning as specified in Section 1-1902 of Title 63 of the Oklahoma Statutes.

D. The State Board of Health may promulgate rules as necessary to implement the provisions of this section, including, but not limited to, requirements for disclosure and enforcement.

Added by Laws 2012, SB 1401, c. 265, § 1, eff. November 1, 2012.

§63-1-1926. Involuntary Transfer or Discharge of Resident - Grounds

A facility shall not involuntarily transfer or discharge a resident except for medical reasons, for the resident's safety or for the safety of other residents, or for nonpayment for the resident's stay, unless limited by the Federal Social Security Act.

Laws 1980, c. 241, § 26, eff. Oct. 1, 1980.

§63-1-1927. Notice of Involuntary Transfer or Discharge

Involuntary transfer or discharge of a resident from a facility shall be preceded by a minimum written notice of ten (10) days. The ten day requirement shall not apply in any of the following instances:

1. When an emergency transfer or discharge is mandated by the resident's health care needs and is in accordance with the written orders and medical justification of the attending physician; or

2. When the transfer or discharge is necessary for the physical safety of other residents as documented in the clinical record.

Laws 1980, c. 241, § 27, eff. Oct. 1, 1980.

§63-1-1928. Rules and Regulations for Transfer of Residents by Facility

The Department shall develop reasonable rules and regulations that establish appropriate criteria for the transfer of residents initiated by a facility or a residential care home, including notice and hearings if the resident is aggrieved by the decision. The primary purpose and emphasis of the departmental rules and regulations shall be the preservation of the health, welfare, and safety of the residents.

The process of developing these rules and regulations shall include the consideration of advice and comments from the Long-Term Care Facility Advisory Board, representatives of nursing homes, residential care homes, and representatives of statewide organizations for the elderly.

Amended by Laws 1984, c. 128, § 6, eff. Nov. 1, 1984; Laws 1987, c. 98, § 28, emerg. eff. May 20, 1987.

§63-1-1929. Rules and Regulations for Transfer of Resident by Department

The Department shall develop reasonable rules and regulations that establish appropriate criteria for the transfer of residents initiated by the Department in emergency situations, including notice and hearings if the resident is

aggrieved by the decision. The primary purpose and emphasis of the departmental rules and regulations shall be the preservation of the health, welfare, and safety of the residents. In addition, the Department of Human Services shall cooperate with the Health Department and the Department of Mental Health and Substance Abuse Services to provide assistance in relocation of residents, to provide casework services, and in other ways to minimize the impact of the transfer on the residents.

In the development of these rules and regulations, the Department shall consider advice and comments from the Long-Term Care Facility Advisory Board, representatives of the nursing home residential care home industries, and representatives of statewide organizations for the elderly.

Amended by Laws 1984, c. 128, § 7, eff. Nov. 1, 1984; Laws 1987, c. 98, § 29, emerg. eff. May 20, 1987; Laws 1990, c. 51, § 128, emerg. eff. April 9, 1990.

§63-1-1930. Voluntary Closing of Facility - Notice - Alternative Placement of Residents - Relocation Assistance

Any owner of a facility licensed under this act shall give ninety (90) days' notice prior to voluntarily closing a facility or closing any part of a facility, or prior to closing any part of a facility if closing such part will require the transfer or discharge of more than ten percent (10%) of the residents. Such notice shall be given to the Department, to any resident who must be transferred or discharged, to the resident's representative, and to a member of the resident's family, where practicable. Notice shall state the proposed date of closing and the reason for closing. The facility shall offer to assist the resident in securing an alternative placement and shall advise the resident on available alternatives. Where the resident is unable to choose an alternative placement and is not under guardianship, the Department shall be notified of the need for relocation assistance. The facility shall comply with all applicable laws and regulations until the date of closing, including those related to transfer or discharge of residents. The Department may place a relocation team in the facility if needed. Also, the Department may promulgate rules and regulations that establish criteria for the acceleration of the notice requirement if extraordinary circumstances warrant it. *Laws 1980, c. 241, § 30, eff. Oct. 1, 1980.*

§63-1-1930.1. Written Notification to the State Department of Health on the Occurrence of Certain Events

A. The owner of a nursing facility shall notify the State Department of Health within twenty-four (24) hours of the occurrence of any of the events specified in subsection B of

this section. Such notification may be in written form. When initial notification to the Department is made by telephone or telephone facsimile, it shall be followed by a written confirmation within five (5) calendar days.

B. The occurrence of any of the following events shall require notification pursuant to the provisions of subsection A of this section:

1. The owner of a facility receives notice that a judgment or tax lien has been levied against the facility or any of the assets of the facility or the licensee;

2. A financial institution refuses to honor a check or other instrument issued by the owner, operator or manager to its employees for a regular payroll;

3. The supplies, including food items and other perishables, on hand in the facility fall below the minimum specified in the Nursing Home Care Act or rules promulgated thereto by the State Board of Health;

4. The owner, operator or manager fails to make timely payment of any tax of any governmental agency;

5. The filing of a bankruptcy petition under Title 7 or Title 11 of the United States Code or any other laws of the United States, by any person or entity with a controlling interest in the facility;

6. The appointment of a trustee by the bankruptcy court; and

7. The filing of a petition in any jurisdiction by any person seeking appointment of a receiver for the facility.

Added by Laws 2002, HB2604 c. 230, § 10, eff. Nov. 1, 2002.

Amended by Laws 2003, HB1442 c. 429, § 1, emerg. eff. June 6, 2003.

§63-1-1930.2. Duty of State Commissioner of Health to Protect Residents Under Certain Conditions; Court Petition, Hearings, Receivership

A. Whenever a determination is made that one of the following conditions exists, the State Commissioner of Health shall take whatever steps necessary to protect the health, welfare and safety of the residents including, if necessary, petitioning the court to place the facility under the control of a receiver to ensure that the residents receive adequate care:

1. The facility is operating without a license;

2. The State Department of Health has suspended, revoked or refused to renew the existing license of the facility;

3. The facility is closing or has informed the Department that it intends to close and adequate arrangements for relocation of residents have not been made at least thirty (30) days prior to closure;

4. An emergency exists, whether or not the Department has initiated revocation or nonrenewal procedures, if because of the unwillingness or inability of the licensee to remedy the emergency, the appointment of a receiver is necessary; or

5. It is necessary to ensure that the residents get adequate care in a situation in which the residents' health and safety are threatened.

B. The court shall hold a hearing within five (5) days of the filing of the petition. The petition and notice of the hearing shall be served on the owner, administrator or designated agent of the facility and the petition and notice of hearing shall be posted in a conspicuous place in the facility not later than three (3) days before the time specified for the hearing, unless a different time limit is fixed by order of the court. The court shall appoint a receiver for a limited time period, not to exceed one hundred eighty (180) days, which shall automatically terminate the receivership unless extended by the court.

C. If a petition filed under this section alleges an emergency exists, the court may set the matter for hearing at the earliest possible time. The petitioner shall notify the licensee, administrator of the facility or registered agent of the licensee more than five (5) days prior to the hearing. Any form of written notice may be used. A receivership shall not be established *ex parte* by the court unless the Commissioner, under oath, has provided a statement that the Commissioner has personally determined that there is a life-endangering situation. A waiver of the five-day notice requirement may be approved by the court in life-endangering situations as determined and confirmed under oath, by the Commissioner.
Added by Laws 2002, HB2604 c. 230, § 11, eff. Nov. 1, 2002.

§63-1-1930.3. Court Appointed Receiver

A. The court may appoint any qualified person as a receiver, except it shall not appoint any owner or affiliate of the facility which is in receivership as its receiver. The State Department of Health shall maintain a list of such persons to operate facilities which the court may consider.

B. The receiver shall make provisions for the continued health, safety and welfare of all residents of the facility.

C. A receiver appointed under this section shall exercise those powers and shall perform those duties set out by the court. These powers and duties may include those generally ascribed to receivers and receiverships and may also include the powers and duties of trustees under the 1978 Bankruptcy Code. The court shall provide for the receiver to have sufficient

power and duties to ensure that the residents receive adequate care.

D. All funds due to the facility from any source during the pendency of the receivership shall be made available to the receiver who shall use the funds to assure the health and safety of the facility's residents.

E. A receiver may be held liable in a personal capacity only for the receiver's own gross negligence, intentional acts or breaches of fiduciary duty.

F. Other provisions of this section notwithstanding, the Department may issue a license to a facility placed in receivership. The duration of a license issued under this section is limited to the duration of the receivership.

Added by Laws 2002, HB2604 c. 230, § 12, eff. Nov. 1, 2002.

§63-1-1930.4. Termination of Receivership

A. The court may terminate a receivership:

1. If the time period specified in the order appointing the receiver elapses and is not extended;

2. If the court determines that the receivership is no longer necessary because the conditions which gave rise to the receivership no longer exist or the State Department of Health grants the facility a new license; or

3. If all of the residents in the facility have been transferred or discharged.

B. 1. Within thirty (30) days after termination, the receiver shall give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

2. If the operating funds exceed the reasonable expenses of the receivership, the court shall order payment of the surplus to the owner. If the operating funds are insufficient to cover the reasonable expenses of the receivership, the owner shall be liable for the deficiency.

3. The Department shall have a lien for any payment made to the receiver upon any beneficial interest, direct or indirect, of any owner in the following property:

- a. the building in which the facility is located,
- b. any fixtures, equipment or goods used in the operation of the facility,
- c. the land on which the facility is located, or
- d. the proceeds from any conveyance of property described in subparagraph a, b or c of this paragraph, made by the owner within one (1) year prior to the filing of the petition for receivership.

4. The receiver shall, within sixty (60) days after termination of the receivership, file a notice of any lien created under this section.

Added by Laws 2002, HB2604 c. 230, § 13, eff. Nov. 1, 2002.

§63-1-1930.5. Receivership Exempt from Criminal or Civil Liability

Notwithstanding the general rules of receiverships and trustees, nothing in Sections 10 through 13 of this act shall be deemed to relieve any owner, administrator or employee of a facility placed in receivership of any civil or criminal liability incurred, or any duty imposed by law, by reason of acts or omissions of the owner, administrator or employee prior to the appointment of a receiver; provided, that nothing contained in this act shall be construed to suspend during the receivership any obligation of the owner, administrator or employee for payment of taxes or other operating and maintenance expenses of the facility or of the owner, administrator, employee or any other person for the payment of mortgage or liens. The owner shall retain the right to sell or mortgage any facility under receivership, subject to approval of the court which ordered the receivership.

Added by Laws 2002, HB2604 c. 230, § 14, eff. Nov. 1, 2002.

§ 1-1931. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1932. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1933. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1934. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1935. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1936. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1937. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§ 1-1938. Repealed by Laws 1995, HB 1293, c. 230, § 21, emerg. eff. July 1, 1995

§63-1-1939. Liability to Residents - Injunctive and Declaratory Relief - Damages - Waiver of Rights - Jury Trial - Retaliation Against Residents - Immunity - Report of Abuse or Neglect.

A. The owner and licensee are liable to a resident for any intentional or negligent act or omission of their agents or employees which injures the resident. In addition, any state

employee that aids, abets, assists, or conspires with an owner or licensee to perform an act that causes injury to a resident shall be individually liable.

B. A resident may maintain an action under the Nursing Home Care Act for any other type of relief, including injunctive and declaratory relief, permitted by law.

C. Any damages recoverable under this section, including minimum damages as provided by this section, may be recovered in any action which a court may authorize to be brought as a class action. The remedies provided in this section, are in addition to and cumulative with any other legal remedies available to a resident. Exhaustion of any available administrative remedies shall not be required prior to commencement of suit hereunder.

D. Any waiver by a resident or the legal representative of the resident of the right to commence an action under this section, whether oral or in writing, shall be null and void, and without legal force or effect.

E. Any party to an action brought under this section shall be entitled to a trial by jury and any waiver of the right to a trial by a jury, whether oral or in writing, prior to the commencement of an action, shall be null and void, and without legal force or effect.

F. A licensee or its agents or employees shall not transfer, discharge, evict, harass, dismiss or retaliate against a resident, a resident's guardian or an employee or agent who makes a report, brings, or testifies in, an action under this section, or files a complaint because of a report, testimony or complaint.

G. Any person, institution or agency, under the Nursing Home Care Act, participating in good faith in the making of a report, or in the investigation of such a report shall not be deemed to have violated any privileged communication and shall have immunity from any liability, civil or criminal, or any other proceedings, civil or criminal, as a consequence of making such report. The good faith of any persons required, or permitted to report cases of suspected resident abuse or neglect under this act shall be presumed.

H. A facility employee or agent who becomes aware of abuse, neglect or exploitation of a resident prohibited by the Nursing Home Care Act shall immediately report the matter to the facility administrator. A facility administrator who becomes aware of abuse, neglect, or exploitation of a resident shall immediately act to rectify the problem and shall make a report of the incident and its correction to the Department.

I. 1. The facility shall be responsible for reporting the following serious incidents to the Department within twenty-four (24) hours:

- a. communicable diseases,
- b. deaths by unusual occurrence, including accidental deaths or deaths other than by natural causes, and deaths that may be attributed to a medical device,
- c. missing residents. In addition, the facility shall make a report to local law enforcement agencies within two (2) hours if the resident is still missing,
- d. situations arising where criminal intent is suspected. Such situations shall also be reported to local law enforcement, and
- e. resident abuse, neglect and misappropriation of the property of a resident.

2. All other incident reports shall be made in accordance with federal law.

3. All initial written reports of incidents or situations shall be mailed to the Department within five (5) working days after the incident or situation. The final report shall be filed with the Department when the full investigation is complete.

Added by Laws 1980, c. 241, § 39, eff. Oct. 1, 1980. Amended by Laws 2003, HB1442 c. 429, § 2, emerg. eff. June 6, 2003.

§63-1-1940. Violations Declared Public Nuisance - Injunction - Complaints

A. The operation or maintenance of a facility in violation of the Nursing Home Care Act or rules promulgated by the State Board of Health, pursuant thereto, is hereby declared a public nuisance, inimical to the public welfare.

B. The State Commissioner of Health or the Department of Human Services, in the name of the people of the state, through the Attorney General, or the district attorney of the county in which the facility is located, may, in addition to other remedies herein provided, bring action for an injunction to restrain such violation or to enjoin the future operation or maintenance of any such facility.

C. 1. Any person with personal knowledge or substantial specific information who believes that the Nursing Home Care Act, a rule promulgated thereto, or a federal certification rule applying to a facility may have been violated may file a complaint.

2. The complaint may be submitted to the State Department of Health, in writing, by telephone, or personally. An oral complaint shall be reduced to writing by the Department.

3. Any person who willfully or recklessly makes a false complaint or a report without a reasonable basis in fact for such a complaint, under the provisions of the Nursing Home Care

Act, shall be liable in a civil suit for any actual damages suffered by a facility for any punitive damages set by the court or jury which may be allowed in the discretion of the court or jury when deemed proper by the court or jury.

4. The substance of the complaint shall be provided to the licensee, owner or administrator no earlier than at the commencement of the on-site inspection of the facility which takes place pursuant to the complaint.

5. Upon receipt of a complaint pursuant to this subsection, the Department shall determine whether the Nursing Home Care Act, a rule promulgated pursuant thereto, or a federal certification rule for facilities has been or is being violated and whether the Department has jurisdiction over the complaint area. If the Department does not have jurisdiction over the complaint area, the complaint shall not be investigated by the Department and notice of the decision not to investigate shall be given to the complainant. The complaint shall be immediately referred to the appropriate agency having jurisdiction over the complaint area. A report summarizing the complaint investigation shall be made in writing. The Department shall give priority to investigations of complaints which allege continuing violations or which threaten the health and safety of residents.

6. In all cases, the Department shall inform the complainant of its findings within ten (10) working days of its determination unless otherwise indicated by the complainant. The complainant may direct the Department to send a copy of such findings to one other person. The notice of such findings shall include a copy of the written determination, the remedial action taken, if any, and the state licensure or federal certification, or both, on which the violation is listed.

D. 1. Upon receipt of a complaint submitted to the State Department of Health by the Department of Human Services or the Attorney General which alleges a violation of the Nursing Home Care Act, any rule promulgated thereto, or federal certification rules, and which also alleges that such violation is a serious threat to the health, safety and welfare of a resident of a nursing facility, the State Department of Health shall take immediate action to remedy the violation based upon the complaint of the Department of Human Services.

2. The Department of Human Services or the Attorney General as applicable shall be deemed a party pursuant to the Administrative Procedures Act for purposes of any complaint made by the Department of Human Services or the Attorney General as applicable to the State Department of Health for violations of the Nursing Home Care Act, rules promulgated thereto or federal certification rules.

- a. Within thirty (30) days of receipt of a final investigative report submitted by the Department of Human Services or the Attorney General as applicable pursuant to this section, the State Department of Health shall provide the Department of Human Services with a written summary of any action taken pertaining to the complaint including, but not limited to, any inspection or actions which may be taken by the State Department of Health.
- b. Whenever the Department of Human Services or the Attorney General as applicable believes that the conditions giving rise to a complaint alleging a serious threat to the health, safety and welfare of a resident of a nursing facility have not been adequately addressed, the Department of Human Services may request a hearing on the complaint as provided by Section 309 of Title 75 of the Oklahoma Statutes.

E. A written determination, notice of violation and remedial action taken concerning a complaint shall be available for public inspection at the facility.

F. The Department shall seek any remedial action provided under the Nursing Home Care Act for violations documented during complaint investigations.

G. The State Board of Health shall promulgate rules governing the receipt, investigation and resolution of complaints and reports of violations. The rules promulgated by the Board shall provide for the expeditious investigation and resolution of a complaint or report including, but not limited to:

1. An easily understood and readily accessible method of submitting complaints and reports regarding complaints;
2. Actions to be taken upon the receipt of a complaint or report of a complaint;
3. Establishing a priority for investigations of complaints. Specifically, the Department shall give higher priority to investigations of complaints which allege continuing violations or which threaten the health, safety or welfare of residents;
4. The timely investigation of the complaint or report of a complaint;
5. Written reports to the complainants or persons filing the complaint report;
6. Any necessary or appropriate remedial action as determined by the findings of the investigation;

7. The protection of the identity of the complainant, provided that the person is a current or past resident or resident's representative or designated guardian or a current or past employee of a facility;

8. Specific information to be included in investigative protocols which must include at a minimum an interview with:

- a. the complainant,
- b. the resident, if possible, and
- c. any potential witness, collateral resource or affected resident; and

9. Any additional rules necessary for the timely and thorough investigation and resolution of complaints.

H. The Department is authorized to employ hearing officers, and hire attorneys to represent the Department and Commissioner to ensure that this and other laws pertaining to the Department are properly executed.

Added by Laws 1980, HB 1853, c. 241, § 40, eff. October 1, 1980; Amended by Laws 1995, HB 1293, c. 230, § 19, emerg. eff. July 1, 1995; Amended by Laws 2000, HB 2019, c. 340, § 17, emerg. eff. July 1, 2000 Amended by Laws 2001, HB 1727, c. 379 § 1, emerg. eff. June 4, 2001; Amended by Laws 2001, SB 345, c. 393, § 4, emerg. eff. June 4, 2001; Laws 2001, SB 345, c. 393 repealed by Laws 2002, HB 2924, c. 22, § 34, emerg. eff. March 8, 2002.

§63-1-1941. Copies of Complaints, Inspection or Survey Results to Ombudsman Program of Special Unit on Aging.

All state agencies receiving complaints on, or conducting surveys or inspections of, nursing home facilities shall forward complete copies of complaints or of inspection or survey results to the Ombudsman Program of the Special Unit on Aging.

Laws 1980, c. 241, § 41, eff. Oct. 1, 1980.

§63-1-1942. Rules and Regulations

The Department shall have the power to adopt rules and regulations in furtherance of the purpose of this act.

Laws 1980, c. 241, § 42, eff. Oct. 1, 1980.

§63-1-1943. Application of Administrative Procedure Act

The provisions of the Oklahoma Administrative Procedures Act shall apply to all administrative rules and procedures of the Department under this act.

Laws 1980, c. 241, § 43, eff. Oct. 1, 1980.

§63-1-1943.1 Assignments of Long Term Care Administrators

The State Department of Health may authorize long-term care administrators to be the administrator of record for more than one facility, provided that the facilities are within a fifty-

mile radius of each other, the sum total of the administrator's responsibility does not exceed more than one hundred twenty (120) occupied beds, and each facility retains an assistant administrator. This provision shall not apply to direct care staff.

Added by Laws 2007, SB 738, c. 347, § 9, eff. November 1, 2007.

§63-1-1944. Short title.

Sections 2 through 6 of this act shall be known and may be cited as the "Long-term Care Security Act".

Added by Laws 2005, HB1963 c. 465, § 2, emerg. eff. June 9, 2005.

§63-1-1945. Definitions.

For purposes of the Long-term Care Security Act:

1. "Long-term care facility" means:
 - a. a nursing facility, specialized facility, or residential care home as defined by Section 1-1902 of this title,
 - b. an adult day care center as defined by Section 1-872 of this title,
 - c. skilled nursing care provided in a distinct part of a hospital as defined by Section 1-701 of this title,
 - d. an assisted living center as defined by Section 1-890.2 of this title,
 - e. the nursing care component of a continuum of care facility as defined under the Continuum of Care and Assisted Living Act,
 - f. the nursing care component of a life care community as defined by the Long-term Care Insurance Act, or
 - g. a residential care home as defined by Section 1-820 of this title;
2. "Ombudsman" means the individual employed by the Department of Human Services as the State Long-Term Care Ombudsman;
3. "Nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Oklahoma Personal Care Program;
4. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provisions of Section 1-1947 of this title:
 - a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,
 - b. a residential care home as such term is defined by the Residential Care Act,

- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency,
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Oklahoma Personal Care Program,
- h. a hospice agency as such term is defined in the Oklahoma Hospice Licensing Act,
- i. a Medicaid home- and community-based services waived provider as defined in Section 1915(c) or 1915(i) of the Federal Social Security Act,
- j. a staffing agency with a contracted relationship to provide staff with direct patient access to service recipients of one or more of the other employers listed in this paragraph, and
- k. an independent contractor where the independent contractor has a contracted relationship to provide staff or services with direct patient access to service recipients for one or more of the employers listed in this paragraph;

5. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency;

6. "Bureau" means the Oklahoma State Bureau of Investigation;

7. "FBI" means the Federal Bureau of Investigation;

8. "Applicant" means an individual who applies for employment with an employer, applies to work as an independent contractor to an employer, applies to provide services to service recipients through the granting of clinical privileges by an employer, or applies to a nurse aide scholarship program;

9. "Direct patient access" means access to a service recipient of an employer, through employment, independent contract, or the granting of clinical privileges, in which the performance of duties involves, or may involve one-on-one contact with a service recipient of the employer on an ongoing basis. The term shall include access to a service recipient's

property, medical information or financial information. The term does not include a volunteer unless the volunteer has duties that are equivalent to the duties of a direct patient access employee and those duties involve one-on-one contact with a service recipient of an employer, without line-of-sight supervision by employer staff;

10. "Independent contract" means a contract entered into by an employer with an individual who provides the contracted services independently or a contract entered into by an employer with an organization or agency that employs or contracts with an individual after complying with the requirements of this section to provide the contracted services to the employer on behalf of the organization or agency;

11. "Medicare" means benefits under the Federal Medicare Program established under Title XVIII of the Social Security Act, Title 42 of the United States Code, Sections 1395 to 1395hhh;

12. "Registry screening" means a review of those registries identified in subsection D of Section 1-1947 of this title;

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

14. "Nurse aide scholarship program" means a nurse aide training program operated under contract with the Oklahoma Health Care Authority for the purpose of providing free training to prospective nurse aides in exchange for employment in a SoonerCare contracted facility; and

15. "Service recipient" means a patient, resident, participant, consumer, client, or member receiving services from an employer.

Added by Laws 2005, HB1963 c. 465, § 3, emerg. eff. June 9, 2005; Amended by Laws 2012, HB 2582, c. 358, § 1, eff. November 1, 2012.

§63-1-1946. Registered Sex Offender or Violent Crime Offender Seeking Placement in a Long-Term Care Facility - Notification - Facility's Duty to Determine Registration Status of Applicants for Care, Residents, and Employees

A. 1. The Department of Corrections shall immediately notify the State Department of Health of any person who is registered pursuant to the Sex Offenders Registration Act or any person who is registered pursuant to the Mary Rippy Violent Crime Offenders Registration Act who is seeking placement from a Department of Corrections facility to any long-term care facility in this state. Upon receipt of such notification, the State Department of Health shall notify the long-term care facility in which the sex offender is seeking placement.

2. The State Board of Health shall promulgate rules requiring long-term care facilities to determine from the local

law enforcement authority or the Department of Corrections the registration status of the following individuals who are required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act:

- a. an applicant for admission to a long-term care facility,
- b. a resident of a long-term care facility, and
- c. an employee of a long-term care facility.

3. Once a long-term care facility is notified that an individual who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act is residing at such facility, the facility shall immediately in writing notify the State Department of Health.

B. Upon the effective date of this act, when the Department of Corrections knows of an offender who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act is being released from Department of Corrections jurisdiction, the Department of Corrections shall immediately notify the State Department of Health.

Added by Laws 2005, HB1963 c. 465, § 4, emerg. eff. June 9, 2005.

§63-1-1947. Criminal History Background Check on Employees, Applicants, Contractors, etc. - Employment Screening³

A. 1. The State Department of Health and the Department of Human Services shall conduct criminal history background checks on all current employees and applicants for employment of the State Department of Health and Department of Human Services whose responsibilities include working inside long-term care facilities on behalf of the State Department of Health or the Department of Human Services.

2. A criminal history background check shall be conducted on the following individuals whose responsibilities include working inside long-term care facilities:

- a. any current employee of or applicant for employment with the State of Oklahoma,
- b. any individual contracting with the State of Oklahoma,
- c. any individual volunteering for a state-sponsored program,

³ While the HB2582 passed with an effective date of November 1, 2012, the law at 63 O.S. § 1-1947(Y) authorized staggered implementation of sections D through V of Section 1-1947 through rulemaking. Effective dates for fingerprinting and the requirements in sections D through V of Section 1-1947 will be sometime after March 1, 2013, and will be established through rulemaking and after further notice.

- d. any individual contracting with the Department of Human Services Advantage Waiver Program who enters any long-term care facility,
- e. any individual providing services to the disabled or elderly in a facility or client's home, and
- f. any individual employed by or volunteering for the State Long-term Care Ombudsman Program.

3. The State Department of Health and the Department of Human Services shall not hire or continue employment of an individual that has been convicted of the crimes listed in Section 1-1950.1 of this title. The criminal history background checks required by this section shall follow the requirements of Section 1-1950.1 of this title.

B. The State Department of Health and the Department of Human Services shall also submit a list of all employees of the State Department of Health and the Department of Human Services who work inside long-term care facilities to the Department of Corrections. The Department of Corrections shall promptly notify the State Department of Health and the Department of Human Services of any employee who is required to register pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

C. The State Department of Health shall conduct an employment screening prior to an offer of employment to a Health Facilities Surveyor applicant. Each applicant shall fully disclose all employment history and professional licensure history, including actions taken regarding licensure. The Department shall review the compliance history of the facilities during the time of the applicant's employment. If the applicant served as Director of Nursing or as an administrator during a survey that resulted in substandard quality of care and the facility failed to achieve compliance in an appropriate and timely manner, the applicant shall not be considered for employment. The Department shall also review professional licensure history of each applicant, including actions to suspend or revoke licenses by the Board of Nursing Home Administrators, Board of Nurse Licensure, or other applicable related licenses. Failure to fully disclose employment history and professional licensure actions shall constitute grounds for dismissal or prohibit employment as a surveyor.

D. Except as otherwise provided by subsection F of this section, an employer shall not employ, independently contract with, or grant clinical privileges to any individual who has direct patient access to service recipients of the employer, if one or more of the following are met:

1. If the results of a state and national criminal history records check reveal that the subject person has failed to act

in conformity with all federal, state and municipal laws as applicable to his or her professional license, certification, permit or employment class, as established by the authority having jurisdiction for the subject person's professional license, certification, permit, or employment class;

2. If the individual is currently subject to an exclusion as described under Title 42 of the United States Code, Section 1320a-7;

3. If the individual is currently the subject of a substantiated finding of neglect, abuse, verbal abuse, misappropriation of property, maltreatment, or exploitation, by any state or federal agency pursuant to an investigation conducted in accordance with Title 42 of the United States Code, Section 1395i-3(g)(1)(c) or 1396r(g)(1)(c), or Section 1-1950.7 or 1-1951 of this title;

4. If the individual is entered on the community services worker registry pursuant to Section 1025.3 of Title 56 of the Oklahoma Statutes;

5. If the individual is recorded on the Child Care Restricted Registry pursuant to Section 405.3 of Title 10 of the Oklahoma Statutes;

6. If the individual is registered pursuant to the Sex Offenders Registration Act, the Mary Rippe Violent Crime Offenders Registration Act, or registered on another state's sex offender registry; or

7. If the individual has direct patient access in an employment class not otherwise described in this subsection and is subject to a disqualifying condition identified in subsection B of Section 1-1950.1 of this title.

E. If the results of a registry screening or criminal history check reveal that an employee or a person hired, contracted with, or granted clinical privileges on a temporary basis pursuant to subsection L of this section has been disqualified pursuant to subsection D of this section, the Department shall advise the employer or requesting agency to immediately terminate the person's employment or contract.

F. Except as otherwise provided in subsection L of this section, an employer shall not employ, independently contract with, or grant privileges to, an individual who regularly has direct patient access to service recipients of the employer until the employer conducts a registry screening and criminal history record check in compliance with subsection I of this section. This subsection and subsection D of this section shall not apply to the following:

1. An individual who is employed by, under independent contract to, or granted clinical privileges with, an employer on or before November 1, 2012. An individual who is exempt under

this subsection is not limited to working within the employer with which he or she is employed, under independent contract to, or granted clinical privileges. That individual may transfer to another employer that is under the same ownership with which he or she was employed, under contract, or granted privileges. If that individual wishes to transfer to another employer that is not under the same ownership, he or she may do so provided that a registry screening and criminal history record check are conducted by the new employer in accordance with subsection I of this section.

- a. If an individual who is exempt under this subsection is subsequently found, upon seeking transfer to another employer, ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, then the individual is no longer exempt and shall be terminated from employment or denied employment.
- b. If an individual who is exempt under this subsection is subsequently found ineligible for employment, independent contract, or clinical privileges, as provided in subsection D of this section, based on disqualifying events occurring after November 1, 2012, then the individual is no longer exempt and shall be terminated from employment; and

2. An individual who is an independent contractor to an employer, if the services for which he or she is contracted are not directly related to the provision of services to a service recipient or if the services for which he or she is contracted allow for direct patient access to service recipients but are not performed on an ongoing basis. This exception includes, but is not limited to, an individual who independently contracts with the employer to provide utility, maintenance, construction, or communications services.

G. A nurse aide scholarship program shall not accept into its training program candidates seeking eligibility for listing on the nurse aide registry pursuant to 42 U.S.C. 1395i-3(e)(2)(A) or 42 U.S.C. 1396r(e)(2)(A) until the training program conducts a registry screening and criminal history record check in compliance with subsection I of this section. The candidate shall be subject to the administrative fee in paragraph 1 of subsection J of this section. A nurse aide scholarship program shall not accept into enrollment a candidate ineligible for employment pursuant to Section 1-1950.1 of this title.

H. An applicant shall provide the employer a government photo identification of the applicant and written consent for the employer to conduct a registry screening and the Bureau to

conduct a state and national criminal history record check under this section. The employer shall maintain the written consent and information regarding the individual's identification in their files for audit purposes.

I. 1. Upon receipt of the written consent and identification required under subsection H of this section, an employer shall submit an applicant's name, any aliases, address, former states in which the applicant resided, social security number, and date of birth, through an Internet portal maintained by the Department, as provided in subsection V of this section, for the purpose of conducting a check of all relevant registries established pursuant to federal and state law and regulations for any findings barring employment. If the findings of the check do not reveal any basis that would prevent the employment of the applicant pursuant to subsection D of this section, and where the applicant does not have a monitored employment record pursuant to the provisions in subsection S of this section, the Department shall authorize the collection and submission of fingerprints through an authorized collection site to the Bureau for the performance of a criminal history record check on the applicant, pursuant to Section 150.9 of Title 74 of the Oklahoma Statutes and in accordance with U.S. Public Law 111-148. Results of such search conducted through both the Bureau and FBI databases shall be returned electronically to the Department.

2. The Bureau shall retain one set of fingerprints in the Automated Fingerprint Identification System and submit the other set to the FBI for a national criminal history records search.

3. Fingerprint images may be rejected by the Bureau or the FBI. A rejection of the fingerprints by the Bureau or the FBI shall require the applicant to be fingerprinted again.

4. The applicant shall have ten (10) calendar days, after receipt of authorization as provided in this subsection, to submit his or her fingerprints through an authorized collection site or his or her application shall be deemed withdrawn and the applicant shall be required to commence the application process from the beginning.

5. Medicaid home and community-based services waived providers as defined in Section 1915 (c) or 1915 (i) of the federal Social Security Act may voluntarily participate in the submission of fingerprints for applicants. In lieu of fingerprinting, said providers shall obtain a name-based state criminal history record check from the Bureau at the fee established in Section 150.9 of Title 74 of the Oklahoma Statutes. No other fees shall apply to said providers relying on a name-based state criminal history record check. The determination of employment eligibility shall be made by said

providers based on the criteria established in subsection D of this section.

J. 1. The employer shall pay a fee of Nineteen Dollars (\$19.00) to the Department for each applicant submitted for fingerprinting or criminal history monitoring or both fingerprinting and criminal history monitoring pursuant to subsection S of this section. The prospective employee, independent contractor or clinical privileges candidate authorized for fingerprint collection by the Department shall pay an administrative fee of Ten Dollars (\$10.00) at the time of fingerprinting. Subsequent fingerprinting shall not be required of an applicant if the applicant has a monitored employment record pursuant to subsection S of this section.

2. The Department shall be responsible for screening and fingerprinting and criminal history monitoring fees for persons participating in a Medicaid program who self-direct their own care, and the applicants of such self-directed care employers.

3. The Department shall use National Background Check grant funds, employer fees and administrative fee collections, and available Medicaid matching funds, to reimburse fingerprint collection vendors, pay administrative expenses, and reimburse the Bureau and FBI for each processed fingerprint review and automatic notification services for subsequent arrest. The Department shall reimburse fingerprint collection vendors, the Bureau, and the FBI, the applicable costs for those identified in paragraph 2 of this subsection.

4. At the consent of the current employee and request of an employer, the Department shall authorize the collection and submission of fingerprints for the purposes of conducting a criminal history record check on any person excluded from the criminal history requirements pursuant to subsection F of this section. The employer shall pay a fee of Sixty-five Dollars (\$65.00) to the Department for the cost of registry screening, fingerprint collection and submission, and arrest record monitoring. The collection of fingerprints from those employed, contracted, or granted clinical privileges, prior to the effective date established by rule as authorized in subsection Y of this section, is voluntary and not required for the purposes of this section.

K. 1. If the criminal history record check results reveal information that precludes the Department from making a final determination of employment eligibility, the employer and applicant shall be given notice of such and the applicant shall have sixty (60) days to make any necessary corrections or additions for the Department to review.

2. If the applicant is unable to make corrections or additions to the record within the sixty (60) days, the

Department shall deny employment based on the disqualifying results and shall notify the applicant of his or her right to appeal. The notice shall include the reasons why the applicant is not eligible for employment and a statement that the applicant has a right to appeal the decision made by the Department regarding the employment eligibility. The notice shall also include information regarding where to file and describe the appellate procedures.

L. If an employer determines it necessary to employ, contract with, or grant clinical privileges to an applicant before receiving the results of the applicant's criminal history record check under this section, the employer may conditionally employ, conditionally contract with, or grant conditional clinical privileges to the applicant if all of the following apply:

1. The employer requests the criminal history record check under this section upon conditionally employing, contracting with, or granting clinical privileges to the individual;

2. The individual signs a statement in writing that indicates the applicant affirms and agrees to all of the following:

- a. that the applicant is not disqualified from employment, an independent contract, or clinical privileges, based on the disqualifying criteria defined in subsection D of this section,
- b. that the applicant agrees that, if the information in the registry screening and criminal history record check conducted under this section does not confirm the individual's statements under subparagraph a of this paragraph, his or her employment, independent contract, or clinical privileges shall be terminated by the employer as required under subsection D of this section unless and until the individual appeals and can provide that the information is incorrect, and
- c. that the applicant understands that the conditions described in subparagraphs a and b of this paragraph may result in the termination of his or her employment, independent contract, or clinical privileges, and that those conditions are good cause for termination; and

3. The period of provisional employment shall not exceed sixty (60) days pending the completion of the required background check. During this time the employee shall be subject to direct on-site supervision. The sixty-day time period may only be extended for those employees who are appealing the

results of the background check. The time period shall only be extended for the duration of the appeal.

M. The Department shall develop and distribute a model form for the statement required under paragraph 2 of subsection L of this section. The Department shall make the model form available to health facilities or agencies subject to this section upon request at no charge.

N. If an individual is employed as a conditional employee, has a conditional independent contract, or is granted conditional clinical privileges under subsection L of this section, and the report described in subsection I of this section does not confirm the individual's statement under subparagraph a of paragraph 2 of subsection L of this section, the employer shall terminate the individual's employment, independent contract, or clinical privileges, as required by subsection E of this section.

O. An individual who knowingly provides false information regarding his or her identity, criminal convictions, or substantiated findings on a statement described in subparagraph a of paragraph 2 of subsection L of this section is guilty of a misdemeanor punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

P. The Department shall use criminal history record information obtained under subsection I of this section only for the purpose of evaluating an applicant's qualifications for employment, an independent contract, or clinical privileges, in the position for which he or she has applied and for the purposes of subsections H and N of this section. The Department shall not disclose criminal history record information. An individual who knowingly uses or disseminates the criminal history record information obtained under subsection I of this section in violation of this subsection is guilty of a misdemeanor punishable by imprisonment for not more than thirty (30) days or a fine of not more than Five Hundred Dollars (\$500.00), or both. Except for a knowing or intentional release of false information, the Department or employer has no liability in connection with a criminal history record check conducted under this section.

Q. As a condition of continued employment, each employee, independent contractor, or individual granted clinical privileges shall agree in writing to report to the employer immediately upon being arraigned or indicted for one or more of the criminal offenses listed in subsection D of this section, upon being convicted of, or pleading guilty or nolo contendere to, one or more of the criminal offenses listed in subsection D

of this section, or upon being the subject of a substantiated finding on a relevant registry as described in subsection D of this section. Reporting of an arraignment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

R. An employer convicted for knowingly and willfully failing to conduct the criminal history checks as required under this section may be found guilty of a misdemeanor punishable by a fine of not less than One Thousand Dollars (\$1,000.00) nor more than Three Thousand Dollars (\$3,000.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment.

S. The Department shall establish a database to store the records of an employer's prospective and enrolled employees, the results of the screening and criminal arrest records search, and an identifier issued by the Bureau for the purposes of receiving an automatic notification from the Bureau if and when a subsequent criminal arrest record submitted into the system matches a set of fingerprints previously submitted in accordance with this section. Upon such notification, the Bureau shall immediately notify the Department and the Department shall immediately notify the respective employee. Information in the database established under this subsection is confidential, is not subject to disclosure under the Oklahoma Open Records Act, and shall not be disclosed to any person except for purposes of this act or for law enforcement purposes. The employee shall promptly respond to Department inquiries regarding the status of an arraignment or indictment. Reporting of an arraignment or indictment under this subsection may be cause for leave without pay, placement under direct supervision, restriction from direct patient access, termination, or denial of employment.

T. 1. Any individual who has been disqualified from or denied employment by an employer pursuant to this section may file an appeal with the Department within thirty (30) days of the receipt of the notice of disqualification, if the applicant believes that the criminal history report is inaccurate or that consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, or relevancy of the particular disqualifying information with respect to the current or proposed employment of the individual merits a waiver of the disqualification or employment denial.

2. The Department shall specify in rule the criteria for issuing a waiver of the disqualification or employment denial. The criteria shall include consideration of the passage of time, extenuating circumstances, demonstration of rehabilitation, and

relevancy of the particular disqualifying information with respect to the current or proposed employment of the individual.

3. The appeal shall be conducted as an individual proceeding pursuant to the Administrative Procedures Act.

U. An employer who has acted in good faith to comply with the requirements of this section of law shall be immune from liability in carrying out the provisions of this section.

V. The Department shall maintain an electronic web-based system to assist employers, and nurse aide scholarship programs, required to check relevant registries and conduct criminal history record checks of its prospective students, employees, independent contractors, and those to whom the employer would grant clinical privileges. The employer shall maintain the status of the employment, contract, or privileges in the system, and the Department shall provide for an automated notice to employers for those employees, independent contractors, and those granted clinical privileges, who, since the initial check, have been convicted of a disqualifying offense or have been the subject of a substantiated finding on a relevant registry.

W. The Department is authorized to obtain any criminal history records maintained by the Bureau and FBI which the Department is required or authorized to request by the provisions of this section.

X. There is hereby created in the State Treasury a revolving fund for the Department to be designated the "Oklahoma National Background Check Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Department from employers and administrative fees collected pursuant to this section. Screening and administrative fees collected pursuant to this section shall be deposited into the fund. All monies accruing to the credit of the fund are hereby appropriated and may be budgeted and expended by the Department for the following purposes:

1. Obtaining available Medicaid funds for screening, fingerprinting, the cost of criminal history records obtained from the Bureau and FBI, and program administration;
2. Reimbursement of fingerprint collection vendors;
3. Reimbursement to the Bureau and FBI for criminal history records; and
4. Administrative and other applicable expenses of the Department related to the background check program.

Y. The Department is authorized to phase in implementation of subsections D through V of this section by category of employer. The State Board of Health shall promulgate rules prescribing effective dates and procedures for the implementation of a national criminal history record check for

the employers and nurse aide scholarship programs defined in Section 1-1945 of this title. Said dates may be staggered to facilitate implementation of the requirements of this section.

Z. On or before November 1, 2015, the Department shall submit a written report to the Legislature detailing the fee collections and costs for the previous three (3) years and revolving fund projections for the next five (5) years. A plan shall be provided to cover the costs of the criminal history checks required under this section if funding is inadequate to cover the costs of the criminal history checks required under this section after November 1, 2020.

Added by Laws 2005, HB 1963, c. 465, § 5, emerg. eff. June 9, 2005; Amended by Laws 2012, HB 2582, c.358, § 2, eff. November 1, 2012.

§63-1-1948. State Long-Term Care Ombudsman Prohibited from Employing a Registered Sex Offender or Violent Crime Offender

The State Long-Term Care Ombudsman is prohibited from employing or designating any state, area or local long-term care ombudsman whether paid or unpaid, who is registered pursuant to the Sex Offenders Registration Act or the Mary Rippy Violent Crime Offenders Registration Act.

Added by Laws 2005, HB1963 c. 465, § 6, emerg. eff. June 9, 2005.

§63-1-1949. BLANK

§63-1-1950. Authority of Nursing Facility or Residential Care Facility to Maintain Bulk Supplies of Nonprescription Drugs - Dispensing to Residents - Promulgation of Rules for Proper Control and Dispensing

A. A nursing facility or a residential care facility is authorized to maintain bulk supplies of nonprescription drugs for dispensing to residents of such facility pursuant to the provisions of this section.

B. If ordered or otherwise authorized by a physician currently licensed to practice medicine in this state, nonprescription drugs may be dispensed to a resident of the nursing facility or residential care facility for nonscheduled dosage regimens.

C. 1. The State Board of Health shall promulgate rules necessary for proper control and dispensing of nonprescription drugs in nursing facilities and residential care facilities, relating to:

- a. specific nonprescription drugs to be dispensed,
- b. recordkeeping,
- c. storage of nonprescription drugs, and

d. dispensing requirements.

2. Rules promulgated by the State Board of Health shall not require facilities to package nonprescription drugs in individual containers with individual labels.

Added by Laws 1993, c. 119, § 1, eff. Sept. 1, 1993.

§63-1-1950.1. Definitions - Criminal History Background Checks - Exemptions

A. For purposes of this section:

1. "Nurse aide" means any person who provides, for compensation, nursing care or health-related services to residents in a nursing facility, a specialized facility, a residential care home, continuum of care facility, assisted living center or an adult day care center and who is not a licensed health professional. Such term also means any person who provides such services to individuals in their own homes as an employee or contract provider of a home health or home care agency, or as a contract provider of the Medicaid State Plan Personal Care Program;

2. "Employer" means any of the following facilities, homes, agencies or programs which are subject to the provision of this section:

- a. a nursing facility or specialized facility as such terms are defined in the Nursing Home Care Act,
- b. a residential care home as such term is defined by the Residential Care Act,
- c. an adult day care center as such term is defined in the Adult Day Care Act,
- d. an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act,
- e. a continuum of care facility as such term is defined by the Continuum of Care and Assisted Living Act,
- f. a home health or home care agency, and
- g. the Department of Human Services, in its capacity as an operator of any hospital or health care institution or as a contractor with providers under the Medicaid State Plan Personal Care Program, and
- h. any facility operated by the Oklahoma Department of Veterans Affairs;

3. "Home health or home care agency" means any person, partnership, association, corporation or other organization which administers, offers or provides health care services or supportive assistance for compensation to three or more ill, disabled, or infirm persons in the temporary or permanent residence of such persons, and includes any subunits or branch offices of a parent home health or home care agency;

4. "Bureau" means the Oklahoma State Bureau of Investigation; and

5. "Completion of the sentence" means the last day of the entire term of the incarceration imposed by the sentence including any term that is deferred, suspended or subject to parole.

B. Before any employer makes an offer to employ or to contract with a nurse aide to provide nursing care, health-related services or supportive assistance to any individual, the employer shall provide for a criminal history background check to be made on the nurse aide pursuant to the provisions of the Long-term Care Security Act. If the employer is a facility, home or institution which is part of a larger complex of buildings, the requirement of a criminal history background check shall apply only to an offer of employment or contract made to a person who will work primarily in the immediate boundaries of the facility, home or institution.

Where the provisions of the Long-term Care Security Act pertaining to registry screenings and national criminal history record check are not in effect pending an effective date established in rulemaking, an employer is authorized to obtain any criminal history background records maintained by the Bureau pursuant to the following:

1. The employer shall request the Bureau to conduct a criminal history background check on the nurse aide and shall provide to the Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request;

2. An employer may make an offer of temporary employment to a nurse aide pending the results of the criminal history background check. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with the nurse aide on a permanent basis until the results of the criminal history background check are received;

3. An employer may accept a criminal history background report less than one (1) year old of a person to whom such employer makes an offer of employment. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person; and

4. Every employer while subject to the provisions of this subsection shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record

before making an offer of permanent employment or contract to a nurse aide.

C. 1. If the results of a criminal history background check reveal that the subject person has been convicted of, pled guilty or no contest to, or received a deferred sentence for, a felony or misdemeanor offense for any of the following offenses in any state or federal jurisdiction, the employer shall not hire or contract with the person:

- a. abuse, neglect or financial exploitation of any person entrusted to the care or possession of such person,
- b. rape, incest or sodomy,
- c. child abuse,
- d. murder or attempted murder,
- e. manslaughter,
- f. kidnapping,
- g. aggravated assault and battery,
- h. assault and battery with a dangerous weapon, or
- i. arson in the first degree.

2. If less than seven (7) years have elapsed since the completion of sentence, and the results of a criminal history check reveal that the subject person has been convicted of, or pled guilty or no contest to, a felony or misdemeanor offense for any of the following offenses, in any state or federal jurisdiction, the employer shall not hire or contract with the person:

- a. assault,
- b. battery,
- c. indecent exposure and indecent exhibition, except where such offense disqualifies the applicant as a registered sex offender,
- d. pandering,
- e. burglary in the first or second degree,
- f. robbery in the first or second degree,
- g. robbery or attempted robbery with a dangerous weapon, or imitation firearm,
- h. arson in the second degree,
- i. unlawful manufacture, distribution, prescription, or dispensing of a Schedule I through V drug as defined by the Uniform Controlled Dangerous Substances Act,
- j. grand larceny, or
- k. petit larceny or shoplifting.

D. An employer shall not employ or continue employing a person addicted to any Schedule I through V drug as specified by the Uniform Controlled Dangerous Substances Act unless the person produces evidence that the person has successfully completed a drug rehabilitation program.

E. All employment eligibility determination records received by the employer pursuant to this section are confidential and are for the exclusive use of the State Department of Health and the employer which requested the information. Except on court order or with the written consent of the person being investigated, the records shall not be released or otherwise disclosed to any other person or agency. These records shall be destroyed after one (1) year from the end of employment of the person to whom such records relate.

F. As part of the inspections required by the Nursing Home Care Act, Continuum of Care and Assisted Living Act, the Residential Care Act, and the Adult Day Care Act, the State Department of Health shall review the employment files of any facility, home or institution required to obtain a criminal history background determination to ensure such facilities, homes or institutions are in compliance with the provisions of this section.

Added by Laws 1990, HB 2100, c. 149, § 1, eff. October 1, 1990; Amended by Laws 1991, HB 1690, c. 315, § 1, eff. January 1, 1992; Amended by Laws 1992, HB 2008, c. 139, § 1, eff. September 1, 1992; Amended by Laws 1992, HB 1615, c. 249, § 5, eff. September 1, 1992; Amended by Laws 2004, SB 1184, c. 287, § 1, emerg. eff. July 1, 2004; Amended by Laws 2004, HB 2723, c. 436, § 12, emerg. eff. June 4, 2004; Amended by Laws 2010, SB 1289, c. 185, § 1, eff. November 1, 2010; Amended by Laws 2012, HB 2582, c. 358, § 3, eff. November 1, 2012; Amended by Laws 2013, SB 629, c. 379, § 5, emerg. eff. May 29, 2013.

§63-1-1950.2. Construction of Act

Nothing contained in this act shall be construed as creating an employer-employee relationship between the Department of Human Services and anyone contracting with the Department of Human Services as a nontechnical medical care provider.

Added by Laws 1991, c. 315, § 2, eff. Jan. 1, 1992.

§63-1-1950.3. Use of Unlicensed Health Professionals as Nurses Aids - Competency Evaluation Program - Penalties for Violations

A. 1. A nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential home, or facility operated by the Oklahoma Department of Veterans Affairs, shall not employ as a nurse aide, on a full-time, temporary, per diem, or any other basis, any individual who is not certified as a nurse aide in good standing and is not eligible for placement on the nurse aide registry maintained by the State Department of Health.

2. The Department may grant a temporary emergency waiver to the provisions of this paragraph to any nursing facility,

continuum of care facility, assisted living center or adult day care or residential home which can demonstrate that such facility, home or institution has been unable to successfully meet its staffing requirements related to the provisions of this paragraph.

B. Such waiver shall require the following:

1. An individual employed as a nurse aide who is enrolled in a Department-approved training and competency evaluation program for nurse aides shall successfully complete such training and competency evaluations within four (4) months of entering the training program;

2. The individual shall obtain certification, and the Department shall place the nurse aide on the registry within thirty (30) days after demonstration of competency;

3. Any nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home that employs an individual who is in nurse aide training, as provided in this section, shall ensure that the trainee shall:

- a. complete the required training and competency program as provided in rules prior to any direct contact with a resident or client,
- b. not perform any service for which the trainee has not trained and been determined proficient by the instructor, and
- c. be supervised at all times by no less than a licensed practical nurse; and

4. No employer may use as a nurse aide an individual who has not completed the nurse aide training and competency program within the required four-month period.

C. For purposes of this section, "four (4) months" means the equivalent of four (4) months of full-time employment as a nurse aide by any employer in any nursing facility, specialized facility, continuum of care facility, assisted living center, adult day care or residential care home.

D. 1. The Department may grant a trainee a one-time extension of the four-month training requirement if:

- a. such requirement causes an undue hardship for the trainee due to unusual circumstances or illness, and
- b. the trainee has demonstrated a good faith effort to complete the training and competency evaluation program.

2. The State Board of Health shall promulgate rules related to the review of and the process and conditions for such an extension.

E. 1. Certified medication aides, upon successful completion of competency standards or prescribed training courses, shall be

eligible to distribute medications or treatments provided by paragraph 2 of this subsection within a:

- a. correctional facility, as set forth in Section 623 of Title 57 of the Oklahoma Statutes,
 - b. correctional facility operated by a contractor of the Department of Corrections,
 - c. county or municipal jail,
 - d. nursing facility,
 - e. specialized facility,
 - f. continuum of care facility,
 - g. assisted living center,
 - h. adult day care,
 - i. residential care home, or
 - j. facilities operated by the Oklahoma Department of Veterans Affairs.
2. Certified medication aides may:
- a. perform fingerstick blood sugars,
 - b. administer diabetic medications, including subcutaneous injections of insulin, provided that the certified medication aide has completed a Department-approved advanced training program on diabetes and the administration of diabetes medications, including injections,
 - c. administer medications, first aid treatments and nutrition; by oral, rectal, vaginal, otic, ophthalmic, nasal, skin, topical, transdermal, and nasogastric/gastrostomy tubes routes, and
 - d. administer oral metered dose inhalers and nebulizers;
3. The State Board of Health shall establish rules necessary to ensure the safety of medication administration by certified medication aides, including but not limited to:
- a. competency and practice standards for medication aides,
 - b. maintaining a list of skills and functions that medication aides will be able to perform upon completion of certification course work,
 - c. certification and recertification requirements for medication aides,
 - d. development of criteria and procedures for approval or disapproval of training and competency evaluation programs, and
 - e. procedures for denying, suspending, withdrawing, or refusing to renew certification for a medication aide;
4. Each facility shall develop policies and procedures that comply with the provisions of this subsection and rules promulgated by the State Board of Health. This policy shall be reviewed and approved by the facility Medical Director, Director of Nurses and/or Registered Nurse Consultant.

F. Any person convicted of violating any of the provisions of this section or Section 1-1950.1 of this title shall be guilty of a misdemeanor, punishable by a fine of not less than One Hundred Dollars (\$100.00) nor more than Three Hundred Dollars (\$300.00), imprisonment in the county jail for not more than thirty (30) days, or by both such fine and imprisonment. *Added by Laws 1991, HB 1690, c. 315, § 3, eff. January 1, 1992; Amended by Laws 1999, SB 622, c. 129, § 1, eff. November 1, 1999; Amended by Laws 2002, HB 2604, c. 230, § 15, eff. November 1, 2002; Amended by Laws 2003, HB 1442, c. 429, § 3, emerg. eff. June 6, 2003; Amended by Laws 2004, HB 2282, c. 420, § 1, eff. November 1, 2004 (repealed by Laws 2005, HB 2060, c. 1, § 92, emerg. eff. March 15, 2005); Amended by Laws 2004, HB 2723, c. 436, § 13, emerg. eff. June 4, 2004; Multiple amendment repealed by Laws 2005, HB 2060, c. 1, § 92, emerg. eff. March 15, 2005; Amended by Laws 2005, HB 1688, c. 460, § 12, eff. November 1, 2005; Amended by Laws 2006, HB 2518, c. 79, § 2, emerg. eff. April 21, 2006; Amended by Laws 2011, SB 679, c. 255, § 1, eff. November 1, 2011; Amended by Laws 2013, SB 629, c. 379, § 6, emerg. eff. May 29, 2013.*

§63-1-1950.4. Uniform Employment Application for Nurse Aide Staff - Purpose - Training

A. 1. The State Department of Health, in conjunction with the Office of the State Long-term Care Ombudsman of the Department of Human Services, shall develop a uniform employment application to be used in the hiring of nurse aide staff by a nursing facility or a specialized facility as such terms are defined in the Nursing Home Care Act, a residential care home, as such term is defined by the Residential Care Act, an assisted living center as such term is defined by the Continuum of Care and Assisted Living Act, a continuum of care facility as defined by the Continuum of Care and Assisted Living Act, a hospice inpatient facility or program providing hospice services as such terms are defined by the Hospice Licensing Act, an adult day care center as such term is defined by the Adult Day Care Act, and a home care agency as defined by the Home Care Act. Such uniform application shall be used as the only application for employment of nurse aides in such facilities on and after January 1, 2001.

2. Nothing in this section shall prohibit the State Department of Health or any other state agency from requiring applicants for any position in the classified service to be certified by the state using the State of Oklahoma Employment Application.

B. The uniform employment application shall be designed to gather all pertinent information for entry into the nurse aide

registry maintained by the State Department of Health. The uniform application shall also contain:

1. A signature from the applicant to confirm or deny any previous felony conviction;
2. A release statement for the applicant to sign giving the State Department of Health and the Oklahoma State Bureau of Investigation the authority to proceed with the state or national criminal history record checks; and
3. Such other information deemed necessary by the Department.

C. The Department shall provide implementation training on the use of the uniform employment application.

Added by Laws 2000, HB 2019, c. 340, § 23, emerg. eff. July 1, 2000; Amended by Laws 2001, HB 1768, c. 381, § 25, emerg. eff. June 4, 2001; Amended by Laws 2003, SB 591, c. 339, § 5, eff. November 1, 2003; Amended by Laws 2012, HB 2582, c. 358, § 4, eff. November 1, 2012.

§63-1-1950.4a. Employment Application For Nurse Aides - Unlawful To Provide False Information Regarding Criminal Conviction - Penalties

A. It shall be unlawful for any person to provide false information regarding a criminal conviction on the uniform employment application for nurse aides. The State Department of Health shall amend the uniform employment application to include a statement informing the applicant of this provision.

B. Any violation of the provisions of subsection A of this section shall constitute a misdemeanor. Every violator, upon conviction, shall be punished by a fine not to exceed Five Hundred Dollars (\$500.00), by imprisonment in the county jail for a term of not more than one (1) year, or by both such fine and imprisonment.

Added by Laws 2003, HB678 c. 344, § 1, emerg. eff. May 29, 2003.

§63-1-1950.5. Caregiver Soliciting or Accepting Anything of Value

A. 1. It shall be unlawful for a caregiver to solicit or accept anything of value greater than One Dollar (\$1.00) from any person in the caregiver's care; provided, however, nothing in this section shall be construed as prohibiting a group of individuals, including family members and friends of residents, from establishing an employee recognition program consisting of voluntary, anonymous and confidential donations to care providers; provided further, no care provider shall be included in the group making decisions regarding the disbursement. Such donations may be disbursed pursuant to procedures established by the group.

2. As used in this section, "caregiver" means a person who is:

- a. the paid agent or employee of:
 - (1) an assisted living center,
 - (2) a nursing facility, specialized facility, or residential care home as such terms are defined in Section 1-1902 of this title,
 - (3) an adult day care center as such term is defined in Section 1-872 of this title,
 - (4) a home health or home care agency, or
 - (5) the Department of Human Services, in its capacity as an operator of any hospital or health care institution, or as a contractor with providers under the Personal Care Services Program, or
- b. a personal care attendant hired by a consumer under the Oklahoma Consumer-Directed Personal Assistance and Support Services (Oklahoma CD-PASS) Program.

"Caregiver" does not include a guardian, limited guardian, or conservator as such terms are defined in the Oklahoma Guardianship and Conservatorship Act.

B. Any person who violates the provisions of paragraph 1 of subsection A of this section, upon conviction, shall be guilty of a misdemeanor.

Added by Laws 2001, SB 345, c. 393, § 5, eff. November 1, 2001; Amended by Laws 2003, SB 658, c. 71, § 1, eff. November 1, 2003; Amended by Laws 2004, SB 1109, c. 249, § 4, eff. November 1, 2004 (repealed by Laws 2005, HB 2060, c. 1, § 93, emerg. eff. March 15, 2005); Amended by Laws 2004, HB 2300, c. 285, § 2, emerg. eff. July 1, 2004; Multiple amendment repealed by Laws 2005, HB 2060, c. 1, § 93, emerg. eff. March 15, 2005.

§63-1-1950.6. Definitions

A. Sections 1-1950.6 through 1-1950.9 of this title shall be effective September 1, 2005.

B. As used in Sections 1-1950.6 through 1-1950.9 of this title:

1. "Board" means the State Board of Health;
2. "Bureau" means the Oklahoma State Bureau of Investigation;
3. "Department" means the State Department of Health;
4. "Nursing facility" means a nursing facility and specialized facility as such terms are defined in Section 1-1902 of this title;
5. "Nontechnical services worker" means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. The

term "nontechnical services worker" shall not include a nurse aide, or any person who is exempt from the criminal arrest check provisions of Section 1-1950.1 of this title; and

6. "Nontechnical services" means services that:
 - a. are performed in or on the premises of a nursing facility and that are predominantly physical or manual in nature, and
 - b. involve or may involve patient contact including, but not limited to, housekeeping, janitorial or maintenance services, food preparation and administrative services.

Added by Laws 2002, HB1963 c. 470, § 2, eff. July 1, 2002.

Amended by Laws 2005, HB2218 c. 465, § 7, emerg. eff. June 9, 2005.

§63-1-1950.7. Nontechnical Services Workers Abuse Registry

A. The State Department of Health shall establish a registry for those nontechnical services workers that have been noted to have committed abuse, verbal abuse, or exploitation of a resident in a nursing facility.

B. The State Board of Health shall promulgate rules to establish and maintain the nontechnical services worker abuse registry. Such rules may include, but need not be limited to:

1. A procedure for notation in the abuse registry of a final State Department of Health investigative finding or an Administrative Law Judge finding of abuse, verbal abuse, or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, of an individual by a nontechnical services worker;

2. A procedure for notice and due process for a nontechnical services worker or applicant before the entering of such person's name in the abuse registry as having a final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse, or exploitation of an individual; and

3. Disclosure requirements for information in the abuse registry.

C. The nontechnical services worker abuse registry shall include, but not be limited to, the following information on each nontechnical services worker:

1. The individual's full name;
2. Information necessary to identify each individual;
3. The date the individual's name was placed in the abuse registry; and

4. Information on any final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse or exploitation, as these terms are defined in Section 10-

103 of Title 43A of the Oklahoma Statutes, concerning the nontechnical services worker.

D. A nontechnical services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, verbal abuse or exploitation of an individual may seek judicial review pursuant to the provisions of Article II of the Administrative Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the nontechnical services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department.

Added by Laws 2002, HB2218 c. 470, § 3, eff. July 1, 2002.

§63-1-1950.8. Nontechnical Services Workers - Criminal History Check and Abuse Registry Review

A. 1. Before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section 1-1950.7 of this title on or after the effective date of Sections 1-1950.6 through 1-1950.9 of this title, to provide nontechnical services, the nursing facility shall:

- a. provide for a criminal history records search to be conducted upon the nontechnical services worker applicant pursuant to the provisions of the Long-term Care Security Act, and
- b. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section 1-1950.7 of this title. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section 1-1950.7 of this title, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. Where the provisions of the Long-term Care Security Act pertaining to registry screenings and national criminal history record checks are not in effect pending an effective date in rulemaking, an employer is authorized to obtain any criminal history background records maintained by the Oklahoma State Bureau of Investigation pursuant to the following:

- a. the employer shall request the Bureau to conduct a criminal history background check on the nontechnical services worker and shall provide to the

Bureau any relevant information required by the Bureau to conduct the check. The employer shall pay a fee of Fifteen Dollars (\$15.00) to the Bureau for each criminal history background check that is conducted pursuant to such a request,

- b. an employer may make an offer of temporary employment to a nontechnical services worker pending the results of the criminal history background check. The employer in such instance shall provide to the Bureau the name and relevant information relating to the person within seventy-two (72) hours after the date the person accepts temporary employment. The employer shall not hire or contract with the nontechnical services worker on a permanent basis until the results of the criminal history background check are received,
- c. an employer may accept a criminal history background report less than one (1) year old of a nontechnical services worker to whom such employer makes an offer of employment or employment contract. The report shall be obtained from the previous employer or contractor of such person and shall only be obtained upon the written consent of such person, and
- d. every employer while subject to the provisions of this subsection shall inform each applicant for employment, or each prospective contract provider, as applicable, that the employer is required to obtain a criminal history background record before making an offer of permanent employment or contract to a nontechnical services worker.

B. Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a criminal check and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

C. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer arrangement of any applicant, contract worker or employee for whom the results of a criminal history records search from any jurisdiction reveals that such person has a disqualifying criminal offense listed in subsection C of Section 1-1950.1 of this title.

D. All employment eligibility determination records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections 1-1950.6

through 1-1950.9 of this title or upon court order or with the written consent of the person being investigated, the employment eligibility determination records shall not be released or otherwise disclosed to any other person or agency.

E. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

F. As part of any inspections required by law, the Department shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure compliance with the provisions of this section.

Added by Laws 2002, HB2218 c. 470, § 4, eff. July 1, 2002; Amended by Laws 2012, HB 2582, c. 358, § 5, eff. November 1, 2012.

§63-1-1950.9. Misdemeanor Violations

Any violation of the provisions of Sections 2 through 4 of this act shall be deemed a misdemeanor and, upon conviction or plea of guilty or nolo contendere, shall be punishable by a fine of not less than Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00). In addition to the fine, such violator may be imprisoned in the county jail for not more than thirty (30) days. Each day that the violation continues shall be considered to be a separate violation.

Added by Laws 2002, HB2218 c. 470, § 5, eff. July 1, 2002.

§63-1-1951. Power and Duties of State Department of Health - Certified Nursing Aides

A. The State Department of Health shall have the power and duty to:

1. Issue certificates of training and competency for nurse aides;

2. Approve training and competency programs including, but not limited to, education-based programs and employer-based programs, including those programs established pursuant to Section 223.1 of Title 72 of the Oklahoma Statutes;

3. Determine curricula and standards for training and competency programs. The Department shall require such training to include a minimum of ten (10) hours of training in the care of Alzheimer's patients;

4. Establish and maintain a registry for certified nurse aides and for nurse aide trainees;

5. Establish categories and standards for nurse aide certification and registration, including feeding assistants as defined in 42 CFR Parts 483 and 488; and

6. Exercise all incidental powers as necessary and proper to implement and enforce the provisions of this section.

B. The State Board of Health shall promulgate rules to implement the provisions of this section and shall have power to assess fees.

1. Each person certified as a nurse aide pursuant to the provisions of this section shall be required to pay certification and recertification fees in amounts to be determined by the State Board of Health, not to exceed Fifteen Dollars (\$15.00).

2. In addition to the certification and recertification fees, the State Board of Health may impose fees for training or education programs conducted or approved by the Department, except for those programs operated by the Oklahoma Department of Veterans Affairs.

3. All revenues collected as a result of fees authorized in this section and imposed by the Board shall be deposited into the Public Health Special Fund.

C. Only a person who has qualified as a certified nurse aide and who holds a valid current nurse aide certificate for use in this state shall have the right and privilege of using the title Certified Nurse Aide and to use the abbreviation CNA after the name of such person. Any person who violates the provisions of this section shall be subject to a civil monetary penalty to be assessed by the Department.

D. 1. The State Department of Health shall establish and maintain a certified nurse aide, nurse aide trainee and feeding assistant registry that:

- a. is sufficiently accessible to promptly meet the needs of the public and employers, and
- b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home, clients of an agency or center, or of misappropriation of resident or client property.

2. The registry shall contain information as to whether a nurse aide has:

- a. successfully completed a certified nurse aide training and competency examination,
- b. met all the requirements for certification, or
- c. received a waiver from the Board.

3. The registry shall include, but not be limited to, the following information on each certified nurse aide or nurse aide trainee:

- a. the full name of the individual,
- b. information necessary to identify each individual,
- c. the date the individual became eligible for placement in the registry, and

d. information on any finding of the Department of abuse, neglect or exploitation by the certified nurse aide or nurse aide trainee, including:

- (1) documentation of the Department's investigation, including the nature of the allegation and the evidence that led the Department to confirm the allegation,
- (2) the date of the hearing, if requested by the certified nurse aide or nurse aide trainee, and
- (3) statement by the individual disputing the finding if the individual chooses to make one.

4. The Department shall include the information specified in subparagraph d of paragraph 3 of this subsection in the registry within ten (10) working days of the substantiating finding and it shall remain in the registry, unless:

- a. it has been determined by an administrative law judge, a district court or an appeal court that the finding was in error, or
- b. the Board is notified of the death of the certified nurse aide or nurse aide trainee.

5. Upon receipt of an allegation of abuse, exploitation or neglect of a resident or client, or an allegation of misappropriation of resident or client property by a certified nurse aide or nurse aide trainee, the Department shall place a pending notation in the registry until a final determination has been made. If the investigation, or administrative hearing held to determine whether the certified nurse aide or nurse aide trainee is in violation of the law or rules promulgated pursuant thereto, reveals that the abuse, exploitation or neglect, or misappropriation of resident or client property was unsubstantiated, the pending notation shall be removed within twenty-four (24) hours of receipt of notice by the Department.

6. The Department shall, after notice to the individuals involved and a reasonable opportunity for a hearing, make a finding as to the accuracy of the allegations.

7. If the Department after notice and opportunity for hearing determines with clear and convincing evidence that abuse, neglect or exploitation, or misappropriation of resident or client property has occurred and the alleged perpetrator is the person who committed the prohibited act, notice of the findings shall be sent to the nurse aide and to the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred and to the Medicaid Fraud Control Unit of the Attorney General's Office. Notice of ineligibility to work as a nurse aide in a long-term care facility, a residential care facility,

assisted living facility, day care facility, or any entity that requires certification of nurse aides, and notice of any further appeal rights shall also be sent to the nurse aide.

8. The Department shall require that each facility check the nurse aide registry before hiring a person to work as a nurse aide. If the registry indicates that an individual has been found, as a result of a hearing, to be personally responsible for abuse, neglect or exploitation, that individual shall not be hired by the facility.

9. If the state finds that any other individual employed by the facility has neglected, abused, misappropriated property or exploited in a facility, the Department shall notify the appropriate licensing authority and the district attorney for the county where the abuse, neglect or exploitation, or misappropriation of resident or client property occurred.

10. Upon a written request by a certified nurse aide or nurse aide trainee, the Board shall provide within twenty (20) working days all information on the record of the certified nurse aide or nurse aide trainee when a finding of abuse, exploited or neglect is confirmed and placed in the registry.

11. Upon request and except for the names of residents and clients, the Department shall disclose all of the information relating to the confirmed determination of abuse, exploitation and neglect by the certified nurse aide or nurse aide trainee to the person requesting such information, and may disclose additional information the Department determines necessary.

12. A person who has acted in good faith to comply with state reporting requirements and this section of law shall be immune from liability for reporting allegations of abuse, neglect or exploitation.

E. Each nurse aide trainee shall wear a badge which clearly identifies the person as a nurse aide trainee. Such badge shall be furnished by the facility employing the trainee. The badge shall be nontransferable and shall include the first and last name of the trainee.

F. 1. For purposes of this section, "feeding assistant" means an individual who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization and meets the requirements cited in 42 CFR Parts 483 and 488.

2. Each facility that employs or contracts employment of a feeding assistant shall maintain a record of all individuals, used by the facility as feeding assistants, who have successfully completed a training course approved by the state for paid feeding assistants.

G. An individual shall not be eligible for certification as a nurse aide for the period the individual satisfied one or more

of the disqualifying criteria found in subsection D of Section 1-1947 of this title. A nurse aide certified on or after November 1, 2012, and subsequently found to satisfy one or more of the disqualifying criteria found in subsection D of Section 1-1947 of this title shall, for the period he or she satisfies the criteria, be subject to revocation or nonrenewal of certification after reasonable opportunity for notice and hearing pursuant to the Administrative Procedures Act.

Added by Laws 1996, SB 1177, c. 336, § 8, eff. November 1, 1996; Amended by Laws 2002, HB 2604, c. 230, § 16, eff. November 1, 2002; Amended by Laws 2005, SB 950, c. 235, § 1, eff. November 1, 2005 (repealed by Laws 2006, HB 3139, c. 16, § 45, emerg. eff. March 29, 2006); Amended by Laws 2005, HB 1688, c. 460, § 13, eff. November 1, 2005; Amended by Laws 2006, HB 3139, c. 16, § 44, emerg. eff. March 29, 2006; Amended by Laws 2012, HB 2582, c. 358, § 6, eff. November 1, 2012; Amended by Laws 2013, SB 629, c. 379, § 7, emerg. eff. May 29, 2013.

§63-1-1951.1. New Law

The State Board of Health and the War Veterans Commission shall promulgate rules to implement the provisions of this act.
Added by Laws 2013, SB 629, c. 379, § 8, emerg. eff. May 29, 2013.

§63-1-1952. Repealed by Laws 2007, HB 2111, c. 93, § 8, eff. November 1, 2007

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.1 - Definitions

As used in this act:

1. "Authorized electronic monitoring" means the placement of electronic monitoring devices in the common areas or room of a resident of a nursing facility and the tapes or recordings from such devices pursuant to the provisions of this act;
2. "Authorized electronic monitoring devices" means:
 - a. video surveillance cameras installed in the common areas or resident's room under the provisions of this act, or
 - b. audio devices installed in the room of a resident under the provisions of this act that are designed to acquire communications or other sounds occurring in the room;
3. "Nursing facility" means the term as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;
4. "Representative of a resident" means the term as is defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

5. "Resident" means the term as is defined in Section 1-1902 of Title 63 of the Oklahoma Statutes; and

6. "Unauthorized electronic monitoring" means electronic, mechanical, or other devices that do not meet the provisions of this act and that are specifically used for the nonconsensual interception of wire or electronic communications.

Added by Laws 2013, SB 587, c. 204, § 1, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.2. New Law

A. A nursing facility shall provide written notice to each resident, or to the representative of a resident, that authorized electronic monitoring of a resident's room conducted under the provisions of this act is not compulsory and shall only be conducted with the written consent of the resident or the representative of the resident.

B. A nursing facility shall not refuse to admit an individual to residency in the facility and shall not remove a resident from a facility because of authorized electronic monitoring of a resident's room.

C. A nursing facility shall post at or near its main entrances a sign that clearly states that electronic monitoring and audio devices may be in use in the facility.

Added by Laws 2013, SB 587, c. 204, § 2, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.3. New Law

A. No person or entity shall intentionally hamper, obstruct, tamper with, or destroy an electronic monitoring device installed in a nursing facility.

B. Any person or entity that intentionally hampers, obstructs, tampers with, or destroys a recording or an electronic monitoring device installed in a nursing facility shall be subject to the penalties prescribed in Section 1993 of Title 21 of the Oklahoma Statutes.

C. No person or entity shall intercept a communication or disclose or use an intercepted communication of an electronic monitoring device placed or installed in a common area of a nursing facility without the express written consent of the facility, or, for an electronic monitoring device installed in a resident's room, the express written consent of the resident or the representative of the resident.

Added by Laws 2013, SB 587, c. 204, § 3, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.4. New Law

Subject to the provisions of law, a tape or recording created through the use of authorized electronic monitoring pursuant to this act may be admitted into evidence in a civil or criminal court action or administrative proceeding.

Added by Laws 2013, SB 587, c. 204, § 4, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.5. New Law

A. A resident or the representative of a resident may conduct authorized electronic monitoring of the resident's room through the use of authorized electronic monitoring devices placed in the room pursuant to the provisions of this act at the expense of such person or representative of the resident and with the written consent of any other resident living in the room.

B. A resident who conducts authorized electronic monitoring or the representative of the resident may post and maintain a notice at the entrance to the resident's room stating that the room is being monitored by an electronic monitoring device.

C. Nothing in this act shall be construed to prevent a resident or the representative of the resident from placing an electronic monitoring device in the resident's room at the expense of such person; however, if such resident is sharing a room with any other resident, the resident or the representative of the resident shall obtain written consent from such other resident or the representative of the resident living in the room and such consent shall be on a form prescribed by the State Department of Health and shall be placed on file with the administrator of the facility.

D. If a resident residing in a shared room, or the representative of a resident residing in a shared room, desires to utilize an authorized electronic monitoring device and another resident living in such shared room refuses to consent to the use of an authorized electronic monitoring device, the nursing facility shall accommodate the resident or the representative of the resident desiring to utilize an authorized electronic monitoring device to move to another room if the resident or resident's representative requests such a room change within a reasonable amount of time.

Added by Laws 2013, SB 587, c. 204, § 5, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.6. New Law

A. A resident or the representative of a resident may conduct authorized electronic monitoring of the resident's room through the use of authorized electronic monitoring devices placed in the room pursuant to the provisions of this act at the

expense of such person or representative of the resident and with the written consent of any other resident living in the room.

B. A resident who conducts authorized electronic monitoring or the representative of the resident may post and maintain a notice at the entrance to the resident's room stating that the room is being monitored by an electronic monitoring device.

C. Nothing in this act shall be construed to prevent a resident or the representative of the resident from placing an electronic monitoring device in the resident's room at the expense of such person; however, if such resident is sharing a room with any other resident, the resident or the representative of the resident shall obtain written consent from such other resident or the representative of the resident living in the room and such consent shall be on a form prescribed by the State Department of Health and shall be placed on file with the administrator of the facility.

D. If a resident residing in a shared room, or the representative of a resident residing in a shared room, desires to utilize an authorized electronic monitoring device and another resident living in such shared room refuses to consent to the use of an authorized electronic monitoring device, the nursing facility shall accommodate the resident or the representative of the resident desiring to utilize an authorized electronic monitoring device to move to another room if the resident or resident's representative requests such a room change within a reasonable amount of time.

Added by Laws 2013, SB 587, c. 204, § 5, eff. November 1, 2013.

THIS SECTION HAS AN EFFECTIVE DATE OF NOVEMBER 1, 2013

§63-1-1953.7. New Law

Any resident or the representative of the resident utilizing existing electronic monitoring devices prior to November 1, 2013, shall comply with all written consent and disclosure provisions of this act no later than January 1, 2014.

Added by Laws 2013, SB 587, c. 204, § 7, eff. November 1, 2013.