

1 STATE OF OKLAHOMA

2 1st Session of the 56th Legislature (2017)

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 827

By: Smalley of the Senate

and

Caldwell of the House

6
7
8
9 COMMITTEE SUBSTITUTE

10 An Act relating to the Nursing Home Care Act;
11 amending 63 O.S. 2011, Section 1-1902, as amended by
12 Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp.
13 2016, Section 1-1902), which relates to definitions;
14 expanding certain definition; and providing an
15 effective date.

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

17 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1902, as
18 amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2016,
19 Section 1-1902), is amended to read as follows:

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

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

23 2. "Access" means the right of a person to enter a facility to
24 communicate privately and without unreasonable restriction when

1 invited to do so by a resident. The state or local "ombudsman", as
2 that term is defined by the Aging Services Division of the
3 Department of Human Services pursuant to the Older Americans' Act,
4 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
5 employed by the Department of Mental Health and Substance Abuse
6 Services or one of its contract agencies shall have right of access
7 to enter a facility, communicate privately and without unreasonable
8 restriction with any resident who consents to the communication, to
9 seek consent to communicate privately and without restriction with
10 any resident, and to observe all areas of the facility that directly
11 pertain to the patient care of the resident without infringing upon
12 the privacy of the other residents without first obtaining their
13 consent;

14 3. "Administrator" means the person licensed by the State of
15 Oklahoma who is in charge of a facility. An administrator must
16 devote at least one-third (1/3) of such person's working time to on-
17 the-job supervision of the facility; provided that this requirement
18 shall not apply to an administrator of an intermediate care facility
19 for the mentally retarded with sixteen or fewer beds (ICF-MR/16), in
20 which case the person licensed by the state may be in charge of more
21 than one ICF-MR/16 facility, if such facilities are located within a
22 circle that has a radius of not more than fifteen (15) miles, the
23 total number of facilities and beds does not exceed six facilities
24 and sixty-four beds, and each ICF-MR/16 facility is supervised by a

1 qualified mental retardation professional. The facilities may be
2 free-standing in a community or may be on campus with a parent
3 institution. The ICF-MR/16 may be independently owned and operated
4 or may be part of a larger institutional operation;

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

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

12 6. "Board" means State Board of Health;

13 7. "Commissioner" means State Commissioner of Health;

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

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

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

- 21 a. skilled nursing care and related services for
- 22 residents who require medical or nursing care,
- 23 b. rehabilitation services for the rehabilitation of
- 24 injured, disabled, or sick persons, or

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

7 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
8 this title, a facility constructed or operated by an entity
9 described in paragraph 7 of subsection B of Section 6201 of Title 74
10 of the Oklahoma Statutes or the nursing care component of a
11 continuum of care facility, as such term is defined under the
12 Continuum of Care and Assisted Living Act, to the extent that the
13 facility constructed or operated by an entity described in paragraph
14 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
15 Statutes contains such a nursing care component;

16 11. "Specialized facility" means any home, establishment, or
17 institution which offers or provides inpatient long-term care
18 services on a twenty-four-hour basis to a limited category of
19 persons requiring such services, including but not limited to a
20 facility providing health or habilitation services for mentally
21 retarded or developmentally disabled persons, but does not mean, for
22 purposes of Section 1-851.1 of this title, a facility constructed or
23 operated by an entity described in paragraph 7 of subsection B of
24 Section 6201 of Title 74 of the Oklahoma Statutes or the nursing

1 care component of a continuum of care facility, as such term is
2 defined under the Continuum of Care and Assisted Living Act, to the
3 extent that the facility constructed or operated by an entity
4 described in paragraph 7 of subsection B of Section 6201 of Title 74
5 of the Oklahoma Statutes contains such a nursing care component;

6 12. "Residential care home" means any home, establishment, or
7 institution licensed pursuant to the provisions of the Residential
8 Care Act other than a hotel, motel, fraternity or sorority house, or
9 college or university dormitory, which offers or provides
10 residential accommodations, food service, and supportive assistance
11 to any of its residents or houses any resident requiring supportive
12 assistance. The residents shall be persons who are ambulatory and
13 essentially capable of managing their own affairs, but who do not
14 routinely require nursing care; provided, the term "residential care
15 home" shall not mean a hotel, motel, fraternity or sorority house,
16 or college or university dormitory, if the facility operates in a
17 manner customary to its description and does not house any person
18 who requires supportive assistance from the facility in order to
19 meet an adequate level of daily living;

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

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

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

3 16. "Owner" means a person, corporation, partnership,
4 association, or other entity which owns a facility or leases a
5 facility. The person or entity that stands to profit or lose as a
6 result of the financial success or failure of the operation shall be
7 presumed to be the owner of the facility. Notwithstanding the
8 foregoing, any nonstate governmental entity that has acquired and
9 owns or leases a facility and that has entered into an agreement
10 with the Oklahoma Health Care Authority or other state agency
11 including but not limited to the Department of Human Services to
12 participate in the nursing facility supplemental payment program
13 ("UPL Owner") shall be deemed the owner of such facility and shall
14 be authorized to obtain management services from a management
15 services provider ("UPL Manager"), and to delegate, allocate and
16 assign as between the UPL Owner and UPL Manager, compensation,
17 profits, losses, liabilities, decision-making authority and
18 responsibilities, including responsibility for the employment,
19 direction, supervision and control of the facility's administrator
20 and staff;

21 17. "Personal care" means assistance with meals, dressing,
22 movement, bathing or other personal needs or maintenance, or general
23 supervision of the physical and mental well-being of a person, who
24 is incapable of maintaining a private, independent residence, or who

1 is incapable of managing his person, whether or not a guardian has
2 been appointed for such person;

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

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

17 20. "Supportive assistance" means the service rendered to any
18 person which is less than the service provided by a nursing facility
19 but which is sufficient to enable the person to meet an adequate
20 level of daily living. Supportive assistance includes but is not
21 limited to housekeeping, assistance in the preparation of meals,
22 assistance in the safe storage, distribution, and administration of
23 medications, and assistance in personal care as is necessary for the
24

1 health and comfort of such person. Supportive assistance shall not
2 include medical service.

3 SECTION 2. This act shall become effective November 1, 2017.

4

5 56-1-7532 SD 04/11/17

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24