ENROLLED HOUSE
BILL NO. 2704

By: Steele, Dank, Hilliard, McDaniel (Jeannie), Terrill, Hickman, Kern, Tibbs and Denney of the House

and

Adelson, Leftwich, Rice, Riley and Garrison of the Senate

An Act relating to public health and safety; directing the State Department of Health to initiate a request for proposal for a long-term care facility for certain sex offenders; providing for the promulgation of rules; amending 63 O.S. 2001, Section 330.58, as last amended by Section 11, Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2007, Section 330.58), which relates to the Oklahoma State Board of Examiners for Long-term Care Administrators; modifying duties of the Board; amending Section 4, Chapter 168, O.S.L. 2005, as amended by Section 11, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.64), which relates to complaint procedures; modifying specified times for certain processes; qualifying complaints or referrals to be included in certain registry; amending Section 5, Chapter 168, O.S.L. 2005, as amended by Section 12, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.65), which relates to complaint procedures; modifying procedures for a decision by the Board; authorizing complaints to be generated by the Board or staff; establishing probable cause committees to review complaints for certain determination before review by the Board; providing for confidentiality of an investigative file; providing for informal resolution of case; providing for notice and hearing; providing for recusal of members of probable cause committee

upon certain hearing; providing for codification; and providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-849 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall initiate a request for proposal for the operation of a stand-alone long-term care facility for sex offenders who are assigned a numeric risk level of II or III as provided in the Sex Offenders Registration Act. The request for proposal shall set forth surveillance and security specifications providing for heightened security of residents to protect the public and residents of the facility.

B. The State Board of Health shall promulgate rules and establish procedures necessary to implement the request for proposal and the operation of the stand-alone long-term care facility for Level II and III sex offenders.

SECTION 2. AMENDATORY 63 O.S. 2001, Section 330.58, as last amended by Section 11, Chapter 347, O.S.L. 2007 (63 O.S. Supp. 2007, Section 330.58), is amended to read as follows:

Section 330.58 The Oklahoma State Board of Examiners for Long-Term Care Administrators shall:

1. Develop, impose, and enforce standards which must be met by individuals in order to receive a license as a long-term care administrator, which standards shall be designed to ensure that long-term care administrators will be individuals who are of good character and are otherwise suitable, and who, by training or experience in the field of institutional administration, are qualified to serve as long-term care administrators;

2. Develop and apply appropriate techniques, including examinations and investigations, for determining whether an individual meets such standards;

3. Issue licenses to individuals determined, after the application of such techniques, to meet such standards. The Board may deny an initial application, deny a renewal application, and revoke or suspend licenses previously issued by the Board in any case where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards. The Board may also warn, censure, impose administrative fines or use other remedies that may be considered to be less than revocation and suspension. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board when issuing a fine;

4. Establish and carry out procedures designed to ensure that individuals licensed as long-term care administrators will, during any period that they serve as such, comply with the requirements of such standards;

5. Receive, investigate, and take appropriate action with respect to any charge or complaint filed with the Board to the effect that any individual licensed as a long-term care administrator has failed to comply with the requirements of such standards. The long-term care ombudsman program of the Aging Services Division of the Department of Human Services shall be notified of all complaint investigations of the Board so that they may be present at any such complaint investigation for the purpose of representing long-term care facility consumers;

6. Receive~~, investigate,~~ and take appropriate action on any complaint or referral received by the Board from the Department of Human Services or any other regulatory agency. Complaints may also be generated by the Board or staff. A complaint shall not be published on the ~~website~~ web site of the Oklahoma State Board of Examiners for Long-Term Care Administrators unless there is a finding by the Board that the complaint has merit. The Board shall promulgate rules that include, but are not limited to, provisions for:

a. establishing a complaint review process, ~~and~~

b. creating a formal complaint file, and

c. establishing a protocol for investigation of complaints;

7. Enforce the provisions of Sections 330.51 through 330.65 of this title against all persons who are in violation thereof including, but not limited to, individuals who are practicing or attempting to practice as long-term care administrators without proper authorization from the Board;

8. Conduct a continuing study and investigation of long-term care facilities and administrators of long-term care facilities within the state with a view toward the improvement of the standards imposed for the licensing of such administrators and of procedures and methods for the enforcement of such standards with respect to administrators of long-term care facilities who have been licensed;

~~8.~~ 9. Cooperate with and provide assistance when necessary to state regulatory agencies in investigations of complaints;

~~9.~~ 10. Develop a code of ethics for long-term care administrators which includes, but is not limited to, a statement that administrators have a fiduciary duty to the facility and cannot serve as guardian of the person or of the estate, or hold a durable power of attorney or power of attorney for any resident of a facility of which they are an administrator;

~~10.~~ 11. Report a final adverse action against a long-term care administrator to the Healthcare Integrity and Protection Data Bank pursuant to federal regulatory requirements;

~~11.~~ 12. Refer completed investigations to the proper law enforcement authorities for prosecution of criminal activities;

~~12.~~ 13. Impose administrative fines, in an amount to be determined by the Board, against persons who do not comply with the provisions of this act or the rules adopted by the Board. Administrative fines imposed pursuant to this section shall not exceed One Thousand Dollars ($1,000.00) per violation. The Board shall consider the scope, severity and repetition of the violation and any additional factors deemed appropriate by the Board when issuing a fine;

~~13.~~ 14. Assess the costs of the hearing process, including attorney fees;

~~14.~~ 15. Grant short-term provisional licenses to individuals who do not meet all of the licensing requirements, provided the

individual obtains the services of a currently licensed administrator to act as a consultant and meets any additional criteria for a provisional license established by the Board;

~~15.~~ 16. Order a summary suspension of an administrator's license or an Administrator in Training (AIT) permit, if, in the course of an investigation, it is determined that a licensee or AIT candidate for licensure has engaged in conduct of a nature that is detrimental to the health, safety or welfare of the public, and which conduct necessitates immediate action to prevent further harm; and

~~16. The Oklahoma State Board of Examiners for Long-Term Care Administrators shall promulgate~~

17. Promulgate rules governing the employment of assistant administrators for long-term care facilities including, but not limited to, minimum qualifications.

SECTION 3. AMENDATORY Section 4, Chapter 168, O.S.L. 2005, as amended by Section 11, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.64), is amended to read as follows:

Section 330.64 A. Each investigation of a complaint received by the Oklahoma State Board of Examiners for Long-Term Care Administrators shall be ~~completed~~ initiated within ~~one hundred eighty (180)~~ ninety (90) days from the date the complaint is received by the Board. Each complaint investigation shall be completed within twelve (12) months of initiation. The ~~investigation~~ time period may be extended by the Board for good cause ~~for a maximum of two extensions of sixty (60) days. A public statement of all grounds for such extension shall be prepared and presented to the entire Board prior to the expiration of the initial one hundred eighty (180) days of the investigation. A majority vote of the Board is required to grant an extension of an investigation~~.

B. Effective May 13, 2005, the Board shall create and maintain a registry of all complaints or ~~other~~ referrals, found by the Board to have merit, complaining of acts or omissions of licensed administrators. The registry shall be maintained in both electronic and paper formats and shall be available for inspection by the public. Such registry shall be organized both in chronological order ~~both~~ by the date of the complaint and by the name of the licensed administrator. The registry shall contain information about the nature of the complaint and the action, if any, taken by

the Board. The registry shall also contain the number of complaints made against an individual administrator.

SECTION 4. AMENDATORY Section 5, Chapter 168, O.S.L. 2005, as amended by Section 12, Chapter 291, O.S.L. 2006 (63 O.S. Supp. 2007, Section 330.65), is amended to read as follows:

Section 330.65 A. Any decision by the Oklahoma State Board of Examiners for Long-Term Care Administrators pursuant to a complaint received against an individual administrator shall be voted upon by a quorum of the Board in an open meeting.

B. ~~At least five (5) working days prior~~ Any person or agency may submit to the Board ~~meeting at which a decision will be made, each member of the Board shall be furnished a complete written report which shall include, but not be limited to, the following information:~~

~~1. The exact nature of the complaint(s);~~

~~2. The identity of the administrator;~~

~~3. A description of the investigation;~~

~~4. The identity of the investigator;~~

~~5. The identity of the witnesses interviewed, unless the witness wishes to remain anonymous and is a current resident, a current staff member, or the personal or legal representative of a current resident;~~

~~6. A description of documents or other tangible items examined in the course of the investigation;~~

~~7. All evidence obtained that would directly or by reference establish the ultimate fact of the complained act or omission; and~~

~~8. All evidence that would either explain or mitigate the complained act or omission~~ a complaint against a long-term care administrator. Complaints may also be generated by the Board or staff.

C. ~~Each complaint shall be acted upon pursuant to a motion after an opportunity for discussion by the~~ A committee or committees of three Board~~. Following discussion of the evidence, any member~~

members appointed by the chair of the Board shall review complaints to determine if probable cause exists that a violation of this act or the rules of the Board has occurred. No committee shall be composed of a majority of board members who are long-term care administrators or owners. The committee may ~~make a motion to continue the investigation in order to gather additional evidence or to make further inquiries. The investigation may be extended for sixty (60) days upon a finding of good cause as provided for in subsection A of Section 330.64 of this title. If the motion to extend the investigation fails, the Board shall vote upon the merits of the complaint~~ cause the allegations to be investigated, and, if this committee determines that such probable cause exists, this committee shall draft a formal complaint against the long-term care administrator alleged to have committed the violation.

D. ~~No recommendation on a complaint shall be made to the Board by a subcommittee or a staff member of the Board. Each member of the Board shall vote based on the evidence presented in the report required pursuant to the provisions of this section.~~

~~E. The~~ To ensure the confidentiality of an investigative file obtained during the investigation ~~report furnished to the Board pursuant to the provisions of this section shall be considered a confidential investigation document until a motion to vote on the complaint is made, at which time the report~~, the information in the investigative file shall not be ~~considered~~ deemed to be a ~~public~~ record as that term is defined in the Oklahoma Open Records Act nor shall the information be subject to subpoena or discovery in any civil or criminal proceeding, except that the Board may give the information to law enforcement and other state licensing agencies as necessary and appropriate in the discharge of the duties of that agency and only under circumstances that will ensure against unauthorized access to the information. ~~After the vote upon the complaint is made and recorded, the Board shall maintain as a public record a full and complete copy of the~~ The respondent may acquire information obtained during an investigation, unless the disclosure of the information is otherwise prohibited, except for the investigative report ~~indexed by docket number or similar internal reference~~, if the respondent signs a protective order whereby the respondent agrees to use the information solely for the purpose of defense in the Board proceeding and in any appeal therefrom and agrees not to otherwise disclose the information.

~~F. Notice of a Board decision issued to a long-term care administrator who is the subject of a complaint shall be issued~~ E.

Upon completion of an investigation, the probable cause committee may make a recommendation to the Board to set the case for hearing, or for dismissal or other action.

F. The respondent may be given an opportunity to participate in an informal resolution of the case. Discussions to resolve the case without a hearing may be conducted by the Director, the prosecutor of the Board, or both the Director and the prosecutor, in consultation with the probable cause committee. Any recommendation for informal resolution shall be presented to the Board for its consideration and approval.

G. If the case is not resolved, the respondent shall be afforded notice and a hearing in accordance with the provisions of Article II of the Administrative Procedures Act ~~governing individual proceedings~~. ~~Any request for~~ The members of the probable cause committee that reviewed the complaint shall recuse themselves from any participation in a hearing ~~by a long-term care administrator regarding the proposed action of the Board shall be received by the Board within ten (10) days of the receipt of the notice of the Board decision by the long-term care administrator~~. Any party aggrieved by a decision of the Board following a hearing may appeal directly to district court pursuant to the provisions of Section 318 of Title 75 of the Oklahoma Statutes.

SECTION 5. This act shall become effective November 1, 2008.

Passed the House of Representatives the 22nd day of May, 2008.

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Presiding Officer of the House of Representatives

Passed the Senate the 22nd day of May, 2008.

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Presiding Officer of the Senate