

SENATE COMMITTEE SUBSTITUTE

STATE OF OKLAHOMA

1 2nd Session of the 50th Legislature (2006)

2 COMMITTEE SUBSTITUTE

3 FOR

4 SENATE BILL 1850 By: Cain

5 COMMITTEE SUBSTITUTE

6 An Act relating to public health and safety;  
amending

7 63 O.S. 2001, Section 330.51, as amended by  
Section

8 1, Chapter 168, O.S.L. 2005, 330.52, as amended by

9 Section 2, Chapter 168, O.S.L. 2005, 330.53,  
330.54,

10 330.56, 330.57, 330.58, as amended by Section 3,

11 Chapter 168, O.S.L. 2005, 330.59, 330.61, 330.62,

12 Section 4, Chapter 168, O.S.L. 2005 and Section 5,

13 Chapter 168, O.S.L. 2005 (63 O.S. Supp. 2005,

14 Sections 330.51, 330.52, 330.58, 330.64 and  
330.65),

15 which relate to the Oklahoma State Board of  
Examiners

16 for Nursing Home Administrators; modifying  
language;

17 deleting definition; deleting certain authority of

18 qualified mental retardation professionals;

19 specifying authority of certain Board; repealing  
63

20 O.S. 2001, Section 330.63, which relates to the

21 Oklahoma State Board of Examiners for Nursing Home

22 Administrators Revolving Fund; and providing an  
23 effective date.

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

1

1 SECTION 1. AMENDATORY 63 O.S. 2001, Section  
330.51, as

2 amended by Section 1, Chapter 168, O.S.L. 2005 (63 O.S. Supp.  
2005,

3 Section 330.51), is amended to read as follows:

4 Section 330.51 For the purposes of this act, and as used  
5 herein:

6 1. "Board" means the Oklahoma State Board of Examiners  
for

7 [~~Nursing Home~~] Long-Term Care Administrators;

8 2. "[~~Nursing home~~] Long-term care administrator" means a  
person

9 licensed by the State of Oklahoma [~~who is in charge of a~~  
~~facility~~]

10 pursuant to this act. A [~~nursing home~~] long-term care  
administrator

11 must devote at least one-half (1/2) of such person's working  
time to

12 on-the-job supervision of [~~such~~] a long-term care facility;  
provided

13 that this requirement shall not apply to [~~a nursing home~~] an  
14 administrator of an intermediate care facility for the mentally

15 retarded with sixteen or fewer beds (ICF-MR/16), in which case  
the

16 person licensed by the state may be in charge of more than one  
17 ICF-MR/16, if such facilities are located within a circle that

has a

18 radius of not more than fifteen (15) miles, and the total  
number of

19 facilities and beds does not exceed six facilities and sixty-  
four

20 beds. The facilities may be free-standing in a community or  
may be

21 on campus with a parent institution. The ICF-MR/16 may be

22 independently owned and operated or may be part of a larger

23 institutional ownership and operation;

24 3. "Nursing home", "rest home" and "specialized home"  
shall

25 have the same meaning as the term "nursing facility" as such  
term is

26 defined in the Nursing Home Care Act; and

27 4. "Administrator" and "owner" shall have the same  
meanings

2

1 as such terms are defined in the Nursing Home Care Act[~~;~~ ~~and~~]

2 [~~5. "Qualified mental retardation professional" shall be  
an~~

~~3 individual determined by the State Department of Health,  
pursuant to~~

~~4 Section 483.430, 42 C.F.R., to:~~

~~5 a. have at least one (1) year of experience working~~

~~6 directly with persons with mental retardation or other  
developmental~~

~~7 disabilities, and~~

~~8 b. be one of the following:~~

~~9 (1) a doctor of medicine or osteopathy licensed to~~

~~10 practice in this state,~~

~~11 (2) a registered nurse, or~~

~~12 (3) an individual who holds at least a bachelor's  
degree~~

~~13 in a related field].~~

14                   []SECTION 2.        AMENDATORY        63 O.S. 2001, Section  
330.52, as

15        amended by Section 2, Chapter 168, O.S.L. 2005 (63 O.S. Supp.  
2005,

16        Section 330.52), is amended to read as follows:

17                   Section 330.52 A. There is hereby re-created, to  
continue

18        until July 1, 2012, in accordance with the provisions of the

19        Oklahoma Sunset Law, the Oklahoma State Board of Examiners for

20        [~~Nursing Home~~] Long-Term Care Administrators. The Oklahoma  
State

21        Board of Examiners for [~~Nursing Home~~] Long-Term Care  
Administrators

22        shall consist of fifteen (15) members, ten of whom shall be

23        representative of the professions and institutions concerned  
with

24        the care and treatment of critically ill or infirm elderly  
patients,

25        three members representing the general public, and the State

26        Commissioner of Health and the Director of the Department of  
Human

27        Services, or their designees. The thirteen members shall be

1        appointed by the Governor, with the advice and consent of the

2        Senate.

3                   B. Five of the thirteen appointive members shall each be

4        presently an owner or a licensed administrator and shall have  
had

5        five (5) years' experience in the nursing home profession as an

6        owner or administrator. Three members shall be representatives  
of

7        the general public. No members other than the five owners or

8 licensed administrators shall have a direct or indirect  
financial

9 interest in nursing homes.

10 C. Effective July 1, 2005, all appointed positions of  
the

11 current Board shall be deemed vacant. The Governor shall make

12 initial appointments pursuant to the provisions of this  
subsection

13 upon the effective date of this act. Initial appointments  
shall

14 become effective on July 1, 2005. The new members of the Board

15 shall be initially appointed as follows:

16 1. Two members who are owners or licensed  
administrators, one

17 member representing the general public and two other members  
shall

18 be appointed for a term of one (1) year to expire on July 1,  
2006;

19 2. Two members who are owners or licensed  
administrators, one

20 member representing the general public and two other members  
shall

21 be appointed for a term of two (2) years to expire on July 1,  
2007;

22 and

23 3. One member who is an owner or licensed administrator,  
one

24 member representing the general public and one other member  
shall be

25 appointed for a term of three (3) years to expire on July 1,  
2008.

26 D. After the initial terms, the terms of all appointive  
27 members shall be three (3) years. Any vacancy occurring in the

1 position of an appointive member shall be filled by the  
Governor,

2 with the advice and consent of the Senate, for the unexpired  
term.

3 SECTION 3. AMENDATORY 63 O.S. 2001, Section  
330.53, is

4 amended to read as follows:

5 Section 330.53 A. The Oklahoma State Board of Examiners  
for

6 [~~Nursing Home~~] Long-Term Care Administrators shall have  
authority to

7 issue licenses to qualified persons as [~~nursing home~~] long-term  
care

8 administrators, and shall establish qualification criteria for  
such

9 [~~nursing home~~] long-term care administrators.

10 B. No license shall be issued to a person as a [~~nursing~~  
~~home~~]

11 long-term care administrator unless:

12 1. The person shall have submitted evidence satisfactory  
to

13 the Board that the person is:

14 a. not less than twenty-one (21) years of age, and

15 b. of reputable and responsible character[~~7~~]; and

16 [~~c. in sound physical and mental health; and~~]

17 2. The person shall have submitted evidence satisfactory  
to

18 the Board of the person's ability to supervise a nursing home  
or

19 specialized home.

20 [~~C. 1. A qualified mental retardation professional, as~~  
21 ~~defined in Section 330.51 of this title, shall be determined to~~  
~~meet~~

22 ~~the educational requirements as a licensed nursing home~~

23 ~~administrator and shall be eligible to take the National~~

24 ~~Administrator Board and State Standards Examinations.]~~

25 ~~[2. A qualified mental retardation professional who~~  
26 ~~meets the~~

27 ~~requirements of paragraph 1 of this subsection may serve as the~~  
28 ~~licensed administrator for no more than four (4) intermediate~~  
29 ~~care~~

5

1 ~~facilities for the mentally retarded with sixteen or less beds~~  
2 ~~(ICF-MR/16).]~~

3 SECTION 4. AMENDATORY 63 O.S. 2001, Section  
330.54, is

4 amended to read as follows:

5 Section 330.54 Each person licensed as a [~~nursing home~~]  
6 long-term care administrator pursuant to the provisions of  
Section

7 330.53 of this title shall be required to pay an annual license  
8 fee

9 which shall be deposited in the Oklahoma State Board of  
Examiners

10 for [~~Nursing Home~~] Long-Term Care Administrators Revolving  
Fund. Such

11 fee shall be determined by the Oklahoma State Board of  
Examiners for

12 [~~Nursing Home~~] Long-Term Care Administrators [~~in an amount not~~  
13 ~~to~~

14 ~~exceed Two Hundred Dollars (\$200.00)]. Each such license shall~~  
15 expire on the 31st day of December following its issuance, and  
shall

16 be renewable for a calendar year, upon payment of the annual  
license

17 fee.

18 SECTION 5. AMENDATORY 63 O.S. 2001, Section  
330.56, is

17 amended to read as follows:

18 Section 330.56 The Oklahoma State Board of Examiners for  
19 Long-Term Care Administrators shall elect from its membership a  
20 [~~president~~] chair, [~~vice-president~~] vice-chair, and secretary-  
treasurer,

21 and shall adopt rules [~~and regulations~~] to govern its  
proceedings.

22 Each member shall be allowed necessary travel expenses, as may  
be

23 approved by the Board pursuant to the State Travel  
Reimbursement

24 Act. The Board may employ and fix the compensation and duties  
of

25 necessary personnel to assist it in the performance of its  
duties.

26 SECTION 6. AMENDATORY 63 O.S. 2001, Section  
330.57, is

27 amended to read as follows:

6

1 Section 330.57 The Oklahoma State Board of Examiners for  
2 [~~Nursing Home~~] Long-Term Care Administrators shall have sole  
and

3 exclusive authority to determine the qualifications, skill and  
4 fitness of any person to serve as an administrator of a nursing  
home

5 or specialized home under the provisions of the Nursing Home  
Care

6 Act[, ~~Section 1-1901 et seq. of this title~~]. The holder of a  
license

7 under the provisions of [~~this act~~] Section 330.51 et seq. of  
this

8 title shall be deemed qualified to serve as the administrator  
of a

9 nursing home or specialized home.

10                   SECTION 7.           AMENDATORY           63 O.S. 2001, Section  
330.58, as

11           amended by Section 3, Chapter 168, O.S.L. 2005 (63 O.S. Supp.  
2005,

12           Section 330.58), is amended to read as follows:

13                   Section 330.58   The Oklahoma State Board of Examiners for  
14           [~~Nursing Home~~] Long-Term Care Administrators shall:

15                   1.   Develop, impose, and enforce standards which must be  
met

16           by individuals in order to receive a license as a [~~nursing~~  
~~home~~]

17           long-term care administrator, which standards shall be designed  
to

18           ensure that [~~nursing home~~] long-term care administrators will  
be

19           individuals who are of good character and are otherwise  
suitable,

20           and who, by training or experience in the field of  
institutional

21           administration, are qualified to serve as [~~nursing home~~] long-  
term

22           care administrators;

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

26                   3.   Issue licenses to individuals determined, after the  
27           application of such techniques, to meet such standards. The  
Board

1           may deny an initial application, deny a renewal application,  
and

2           revoke or suspend licenses previously issued by the Board in  
any

3 case where the individual holding any such license is  
determined

4 substantially to have failed to conform to the requirements of  
such

5 standards. The Board may also warn, censure, impose  
administrative

6 fines or use other remedies that may be considered to be less  
than

7 revocation and suspension;

8 4. Establish and carry out procedures designed to ensure  
that

9 individuals licensed as [~~nursing home~~] long-term care  
administrators

10 will, during any period that they serve as such, comply with  
the

11 requirements of such standards;

12 5. Receive, investigate, and take appropriate action  
with

13 respect to any charge or complaint filed with the Board to the

14 effect that any individual licensed as a [~~nursing home~~] long-  
term care

15 administrator has failed to comply with the requirements of  
such

16 standards. The long-term care ombudsman program of the Aging

17 Services Division of the Department of Human Services shall be

18 notified of all complaint investigations of the Board so that  
they

19 may be present at any such complaint investigation for the  
purpose

20 of representing [~~nursing home~~] long-term care facility  
consumers;

21 6. Receive, investigate, and take appropriate action on  
any

22 complaint received by the Board from the Department of Human

23 Services or any other regulatory agency. The Board shall  
promulgate

24 rules that include, but are not limited to, provisions for:  
25 a. establishing a complaint review process, and  
26 b. creating a formal complaint file;  
27 7. Conduct a continuing study and investigation of  
[nursing

8

1 ~~homes]~~ long-term care facilities and administrators of [~~nursing~~  
~~homes]~~

2 long-term care facilities within the state with a view toward  
the

3 improvement of the standards imposed for the licensing of such  
4 administrators and of procedures and methods for the  
enforcement of

5 such standards with respect to administrators of [~~nursing~~  
~~homes]~~

6 long-term care facilities who have been licensed;

7 8. Cooperate with and provide assistance when necessary  
to

8 state regulatory agencies in investigations of complaints;

9 9. Develop a code of ethics for [~~nursing home]~~ long-term  
care

10 administrators which includes, but is not limited to, a  
statement

11 that administrators have a fiduciary duty to the facility and  
cannot

12 serve as guardian of the person or of the estate, or hold a  
durable

13 power of attorney or power of attorney for any resident of a

14 facility of which they are an administrator;

15 10. Report a final adverse action against a [~~nursing~~  
~~home]~~

16 long-term care administrator to the Healthcare Integrity and

17 Protection Data Bank pursuant to federal regulatory  
requirements;

18 [and]

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

21 12. Impose administrative fines, in an amount to be  
22 determined by the Board, against persons who do not comply with  
23 the provisions of this act or the rules adopted by the Board;

24 13. Assess the costs of the hearing process, including  
25 attorney fees;

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

9

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

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

11 SECTION 8. AMENDATORY 63 O.S. 2001, Section  
12 330.59, is

13 amended to read as follows:

14 Section 330.59 It shall be unlawful and a misdemeanor  
15 for any

13 person to act or serve in the capacity as a [~~nursing home~~]  
14 long-term

15 care administrator unless [~~he~~] the person is the holder of a  
16 license

17 as a [~~nursing home~~] long-term care administrator, issued in  
18 accordance

19 with the provisions of this act.

20 SECTION 9. AMENDATORY 63 O.S. 2001, Section  
21 330.61, is

22 amended to read as follows:

23 Section 330.61 A. In addition to [~~the annual license~~]  
24 fees

25 necessary to implement the provisions of this act, the Oklahoma

26 State Board of Examiners for [~~Nursing Home~~] Long-Term Care

27 Administrators may impose fees for:

28 1. Training programs conducted or approved by the Board;  
29 and

30 2. Education programs conducted or approved by the  
31 Board.

32 B. All revenues collected as a result of fees authorized  
33 in

34 this section and imposed by the Board shall be deposited into  
35 the

36 Oklahoma State Board of Examiners for [~~Nursing Home~~] Long-Term  
37 Care

10

1 Administrators Revolving Fund.

2 SECTION 10. AMENDATORY 63 O.S. 2001, Section  
3 330.62,

4 is amended to read as follows:

5 Section 330.62 There is hereby created in the State  
6 Treasury

7 a revolving fund for the Oklahoma State Board of Examiners for

6        [~~Nursing Home~~] Long-Term Care Administrators to be designated  
the  
7        "Oklahoma State Board of Examiners for [~~Nursing Home~~] Long-Term  
Care  
8        Administrators Revolving Fund". The fund shall be a continuing  
9        fund, not subject to fiscal year limitations, and shall consist  
of  
10       such sources of income as are provided by law. All monies  
accruing  
11       to the credit of said fund are hereby appropriated and may be  
12       budgeted and expended by the Oklahoma State Board of Examiners  
for  
13       [~~Nursing Home~~] Long-Term Care Administrators to carry out the  
duties  
14       established by law. Expenditures from said fund shall be made  
upon  
15       warrants issued by the State Treasurer against claims filed as  
16       prescribed by law with the Director of State Finance for  
approval  
17       and payment.

18                    SECTION 11.            AMENDATORY            Section 4, Chapter 168,  
O.S.L.

19        2005 (63 O.S. Supp. 2005, Section 330.64), is amended to read  
as

20        follows:

21                    Section 330.64 A. Each investigation of a complaint  
received

22        by the Oklahoma State Board of Examiners for [~~Nursing Home~~]  
Long-Term

23        Care Administrators shall be completed within one hundred  
eighty

24        (180) days from the date the complaint is received by the  
Board.

25        The investigation may be extended for good cause for a maximum  
of

26        two extensions of sixty (60) days. A public statement of all

27 grounds for such extension shall be prepared and presented to  
the

11

1 entire Board prior to the expiration of the initial one hundred  
2 eighty (180) days of the investigation. A majority vote of the  
3 Board is required to grant an extension of an investigation.

4 B. [~~Upon the effective date of this act~~] Effective May  
13,

5 2005, the Board shall create and maintain a registry of all  
6 complaints or other referrals complaining of acts or omissions  
of

7 licensed administrators. The registry shall be maintained in  
both

8 electronic and paper formats and shall be available for  
inspection

9 by the public. Such registry shall be organized in  
chronological

10 order both by the date of the complaint and by the name of the  
11 licensed administrator. The registry shall contain information  
12 about the nature of the complaint and the action, if any, taken  
by

13 the Board. The registry shall also contain the number of  
complaints

14 made against an individual administrator.

15 SECTION 12. AMENDATORY Section 5, Chapter 168,  
O.S.L.

16 2005 (63 O.S. Supp. 2005, Section 330.65), is amended to read  
as

17 follows:

18 Section 330.65 A. Any decision by the Oklahoma State  
Board

19 of Examiners for [~~Nursing Home~~] Long-Term Care Administrators  
pursuant

20 to a complaint received against an individual administrator  
shall be

21 voted upon by a quorum of the Board in an open meeting.

22 B. At least five (5) working days prior to the Board  
meeting

23 at which a decision will be made, each member of the Board  
shall be

24 furnished a complete written report which shall include, but  
not be

25 limited to, the following information:

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

27 2. The identity of the administrator;

12

1 3. A description of the investigation;

2 4. The identity of the investigator;

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

6 current resident;

7 6. A description of documents or other tangible items

8 examined in the course of the investigation;

9 7. All evidence obtained that would directly or by  
reference

10 establish the ultimate fact of the complained act or omission;  
and

11 8. All evidence that would either explain or mitigate  
the

12 complained act or omission.

13 C. Each complaint shall be acted upon pursuant to a  
motion

14 after an opportunity for discussion by the Board. Following

15 discussion of the evidence, any member of the Board may make a  
16 motion to continue the investigation in order to gather  
additional  
17 evidence or to make further inquiries. The investigation may  
be  
18 extended for sixty (60) days upon a finding of good cause as  
19 provided for in subsection A of Section [4] 330.64 of this  
[~~act~~] title.

20 If the motion to extend the investigation fails, the Board  
shall  
21 vote upon the merits of the complaint.

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

26 E. The investigation report furnished to the Board  
pursuant  
27 to the provisions of this section shall be considered a  
confidential

13

1 investigation document until a motion to vote on the complaint  
is

2 made, at which time the report shall be considered a public  
record.

3 After the vote upon the complaint is made and recorded, the  
Board

4 shall maintain as a public record a full and complete copy of  
the

5 investigation report indexed by docket number or similar  
internal

6 reference.

7 F. Notice of a Board decision issued to a [~~nursing home~~]

8        long-term care administrator who is the subject of a complaint  
shall

9        be issued in accordance with the provisions of Article II of  
the

10       Administrative Procedures Act governing individual proceedings.  
Any

11       request for a hearing by a [~~nursing home~~] long-term care  
administrator

12       regarding the proposed action of the Board shall be received by  
the

13       Board within ten (10) days of the receipt of the notice of the  
Board

14       decision by the [~~nursing home~~] long-term care administrator.  
Any

15       party aggrieved by a decision of the Board following a hearing  
may

16       appeal directly to district court pursuant to the provisions of  
17       Section 318 of Title 75 of the Oklahoma Statutes.

18                SECTION 13.        REPEALER        63 O.S. 2001, Section  
330.63, is

19        hereby repealed.

20                SECTION 14.    This act shall become effective November 1,  
2006.

21                50-2-3461        JC                2/27/2006 3:02:09 PM

22        Req. No. 3461Page 1