

1 STATE OF OKLAHOMA

2 1st Session of the 55th Legislature (2015)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1435

By: Stone

6  
7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending  
9 63 O.S. 2011, Section 1-1951, as last amended by  
10 Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp.  
11 2014, Section 1-1951), which relates to certifying  
12 nurse aides; permitting Department to suspend or  
13 revoke certification under certain conditions;  
14 requiring certified nurse aides and nurse aide  
15 trainees to provide updated information for registry;  
16 requiring notices and orders to be considered legally  
17 served under certain circumstances; and providing an  
18 effective date.

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

20 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1951, as  
21 last amended by Section 7, Chapter 379, O.S.L. 2013 (63 O.S. Supp.  
22 2014, Section 1-1951), is amended to read as follows:

23 Section 1-1951. A. The State Department of Health shall have  
24 the power and duty to:

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

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

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

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

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

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

16       7. Suspend or revoke any certification issued to any nurse  
17 aide, if:

18            a. the nurse aide is found to meet any of the  
19            requirements contained in subsection D of Section 1-  
20            1947 of this title,

21            b. the nurse aide is found to meet any of the  
22            requirements contained in subsection C of Section 1-  
23            1950.1 of this title, or

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1           c. the nurse aide is found to have committed abuse,  
2           neglect or exploitation of a resident or  
3           misappropriation of resident or client property  
4           pursuant to the requirements contained in paragraph 7  
5           of subsection D of Section 1-1951 of this title. The  
6           action to revoke or suspend may be included with the  
7           filing of any action pursuant to the requirements of  
8           paragraph 7 of subsection D of Section 1-1951 of this  
9           title.

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

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

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

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

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

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

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

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

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

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

4           a. the full name of the individual,

5           b. information necessary to identify each individual.

6           Certified nurse aides and nurse aide trainees shall  
7           maintain with the registry current residential  
8           addresses and shall notify the registry, in writing,  
9           of any change of name. Notification of change of name  
10           shall require certified copies of any marriage license  
11           or other court document which reflects the change of  
12           name. Notice of change of address or telephone number  
13           shall be made within ten (10) days of the effected  
14           change. Notice shall not be accepted over the phone,

15           c. the date the individual became eligible for placement  
16           in the registry, and

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

20           (1) documentation of the Department's investigation,  
21           including the nature of the allegation and the  
22           evidence that led the Department to confirm the  
23           allegation,

- 1 (2) the date of the hearing, if requested by the  
2 certified nurse aide or nurse aide trainee, and  
3 (3) statement by the individual disputing the finding  
4 if the individual chooses to make one.

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

- 9 a. it has been determined by an administrative law judge,  
10 a district court or an appeal court that the finding  
11 was in error, or  
12 b. the Board is notified of the death of the certified  
13 nurse aide or nurse aide trainee.

14 5. Upon receipt of an allegation of abuse, exploitation or  
15 neglect of a resident or client, or an allegation of  
16 misappropriation of resident or client property by a certified nurse  
17 aide or nurse aide trainee, the Department shall place a pending  
18 notation in the registry until a final determination has been made.  
19 If the investigation, or administrative hearing held to determine  
20 whether the certified nurse aide or nurse aide trainee is in  
21 violation of the law or rules promulgated pursuant thereto, reveals  
22 that the abuse, exploitation or neglect, or misappropriation of  
23 resident or client property was unsubstantiated, the pending  
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1 notation shall be removed within twenty-four (24) hours of receipt  
2 of notice by the Department.

3 6. The Department shall, after notice to the individuals  
4 involved and a reasonable opportunity for a hearing, make a finding  
5 as to the accuracy of the allegations.

6 7. If the Department after notice and opportunity for hearing  
7 determines with clear and convincing evidence that abuse, neglect or  
8 exploitation, or misappropriation of resident or client property has  
9 occurred and the alleged perpetrator is the person who committed the  
10 prohibited act, notice of the findings shall be sent to the nurse  
11 aide and to the district attorney for the county where the abuse,  
12 neglect or exploitation, or misappropriation of resident or client  
13 property occurred and to the Medicaid Fraud Control Unit of the  
14 Attorney General's Office. Notice of ineligibility to work as a  
15 nurse aide in a long-term care facility, a residential care  
16 facility, assisted living facility, day care facility, or any entity  
17 that requires certification of nurse aides, and notice of any  
18 further appeal rights shall also be sent to the nurse aide.

19 8. In any proceeding in which the Department is required to  
20 serve notice or an order on an individual, the Department may send  
21 written correspondence to the address on file with the registry. If  
22 the correspondence is returned and a notation of the United States  
23 Postal Service indicates "unclaimed" or "moved" or "refused" or any  
24 other nondelivery markings and the records of the registry indicate

1 that no change of address as required by this subsection has been  
2 received by the registry, the notice and any subsequent notices or  
3 orders shall be deemed by the court as having been legally served  
4 for all purposes.

5 9. The Department shall require that each facility check the  
6 nurse aide registry before hiring a person to work as a nurse aide.  
7 If the registry indicates that an individual has been found, as a  
8 result of a hearing, to be personally responsible for abuse, neglect  
9 or exploitation, that individual shall not be hired by the facility.

10 ~~9.~~ 10. If the state finds that any other individual employed by  
11 the facility has neglected, abused, misappropriated property or  
12 exploited in a facility, the Department shall notify the appropriate  
13 licensing authority and the district attorney for the county where  
14 the abuse, neglect or exploitation, or misappropriation of resident  
15 or client property occurred.

16 ~~10.~~ 11. Upon a written request by a certified nurse aide or  
17 nurse aide trainee, the Board shall provide within twenty (20)  
18 working days all information on the record of the certified nurse  
19 aide or nurse aide trainee when a finding of abuse, exploited or  
20 neglect is confirmed and placed in the registry.

21 ~~11.~~ 12. Upon request and except for the names of residents and  
22 clients, the Department shall disclose all of the information  
23 relating to the confirmed determination of abuse, exploitation and  
24 neglect by the certified nurse aide or nurse aide trainee to the



1 person requesting such information, and may disclose additional  
2 information the Department determines necessary.

3 ~~12.~~ 13. A person who has acted in good faith to comply with  
4 state reporting requirements and this section of law shall be immune  
5 from liability for reporting allegations of abuse, neglect or  
6 exploitation.

7 E. Each nurse aide trainee shall wear a badge which clearly  
8 identifies the person as a nurse aide trainee. Such badge shall be  
9 furnished by the facility employing the trainee. The badge shall be  
10 nontransferable and shall include the first and last name of the  
11 trainee.

12 F. 1. For purposes of this section, "feeding assistant" means  
13 an individual who is paid to feed residents by a facility or who is  
14 used under an arrangement with another agency or organization and  
15 meets the requirements cited in 42 CFR Parts 483 and 488.

16 2. Each facility that employs or contracts employment of a  
17 feeding assistant shall maintain a record of all individuals, used  
18 by the facility as feeding assistants, who have successfully  
19 completed a training course approved by the state for paid feeding  
20 assistants.

21 ~~G. An individual shall not be eligible for certification as a  
22 nurse aide for the period the individual satisfied one or more of  
23 the disqualifying criteria found in subsection D of Section 1-1947  
24 of this title. A nurse aide certified on or after November 1, 2012,~~

1 ~~and subsequently found to satisfy one or more of the disqualifying~~  
2 ~~criteria found in subsection D of Section 1-1947 of this title~~  
3 ~~shall, for the period he or she satisfies the criteria, be subject~~  
4 ~~to revocation or nonrenewal of certification after reasonable~~  
5 ~~opportunity for notice and hearing pursuant to the Administrative~~  
6 ~~Procedures Act.~~

7 SECTION 2. This act shall become effective November 1, 2015.

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