

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

SENATE BILL 229

By: Garvin

AS INTRODUCED

An Act relating to long-term care; amending 63 O.S. 2021, Section 1-1940, which relates to violations of the Nursing Home Care Act; requiring the State Department of Health to provide certain information to complainants; updating statutory language; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-1940, is amended to read as follows:

Section 1-1940. A. The operation or maintenance of a facility in violation of the Nursing Home Care Act or rules promulgated by the State ~~Board~~ Commissioner 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

1 or to enjoin the future operation or maintenance of any such
2 facility.

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

7 2. The complaint may be submitted to the State Department of
8 Health, in writing, by telephone, or personally. An oral complaint
9 shall be reduced to writing by the Department. When a complaint is
10 submitted, the Department shall inform the complainant of any
11 potential consequences for willfully or recklessly submitting a
12 false complaint including, but not limited to, civil liability as
13 described in paragraph 3 of this subsection.

14 3. Any person who willfully or recklessly makes a false
15 complaint or a report without a reasonable basis in fact for such a
16 complaint, under the provisions of the Nursing Home Care Act, shall
17 be liable in a civil suit for any actual damages suffered by a
18 facility for any punitive damages set by the court or jury which may
19 be allowed in the discretion of the court or jury when deemed proper
20 by the court or jury.

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

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

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

23 D. 1. Upon receipt of a complaint submitted to the State
24 Department of Health by the Department of Human Services or the

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

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

14 a. Within thirty (30) days of receipt of a final
15 investigative report submitted by the Department of
16 Human Services or the Attorney General as applicable
17 pursuant to this section, the State Department of
18 Health shall provide the Department of Human Services
19 with a written summary of any action taken pertaining
20 to the complaint including, but not limited to, any
21 inspection or actions which may be taken by the State
22 Department of Health.

23 b. Whenever the Department of Human Services or the
24 Attorney General as applicable believes that the
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1 conditions giving rise to a complaint alleging a
2 serious threat to the health, safety and welfare of a
3 resident of a nursing facility have not been
4 adequately addressed, the Department of Human Services
5 may request a hearing on the complaint as provided by
6 Section 309 of Title 75 of the Oklahoma Statutes.

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

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

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

19 1. An easily understood and readily accessible method of
20 submitting complaints and reports regarding complaints;

21 2. Actions to be taken upon the receipt of a complaint or
22 report of a complaint;

23 3. Establishing a priority for investigations of complaints.
24 Specifically, the Department shall give higher priority to

1 investigations of complaints which allege continuing violations or
2 which threaten the health, safety or welfare of residents;

3 4. The timely investigation of the complaint or report of a
4 complaint;

5 5. Written reports to the complainants or persons filing the
6 complaint report;

7 6. Any necessary or appropriate remedial action as determined
8 by the findings of the investigation;

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

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

15 a. the complainant,

16 b. the resident, if possible, and

17 c. any potential witness, collateral resource or affected
18 resident; and

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

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

1 SECTION 2. This act shall become effective November 1, 2023.

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