

1 STATE OF OKLAHOMA

2 1st Session of the 58th Legislature (2021)

3 SENATE BILL 504

By: Hicks

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5
6 AS INTRODUCED

7 An Act relating to intermediate care facilities for
8 individuals with intellectual disabilities
9 (ICFs/IID); requiring State Department of Health to
10 regulate ICFs/IID as distinct facilities; requiring
11 Department and Oklahoma Health Care Authority to
12 enforce certain federal laws and regulations;
13 directing promulgation of rules; amending 63 O.S.
14 2011, Section 1-1902, as last amended by Section 55,
15 Chapter 475, O.S.L. 2019 (63 O.S. Supp. 2020, Section
16 1-1902), which relates to definitions used in the
17 Nursing Home Care Act; amending 63 O.S. 2011, Section
18 330.51, as amended by Section 57, Chapter 475, O.S.L.
19 2019 (63 O.S. Supp. 2020, Section 330.51), which
20 relates to nursing home administrators; excluding
21 intermediate care facilities for individuals with
22 intellectual disabilities with sixteen or fewer beds
23 (ICF/IID-16) from certain provisions; providing for
24 codification; and providing an effective date.

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

19 SECTION 1. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 1-900 of Title 63, unless there
21 is created a duplication in numbering, reads as follows:

22 The State Department of Health shall regulate intermediate care
23 facilities for individuals with intellectual disabilities (ICFs/IID)
24 as distinct facilities and shall not regulate ICFs/IID under the

1 Nursing Home Care Act or any other act that governs a different type
2 of facility. The State Department of Health and the Oklahoma Health
3 Care Authority shall enforce applicable federal laws and regulations
4 governing ICFs/IID including, but not limited to, regulations of the
5 Centers for Medicare and Medicaid Services. The State Commissioner
6 of Health and the Oklahoma Health Care Authority Board shall
7 promulgate rules to implement this section.

8 SECTION 2. AMENDATORY 63 O.S. 2011, Section 1-1902, as
9 last amended by Section 55, Chapter 475, O.S.L. 2019 (63 O.S. Supp.
10 2020, Section 1-1902), is amended to read as follows:

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

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

15 2. "Access" means the right of a person to enter a facility to
16 communicate privately and without unreasonable restriction when
17 invited to do so by a resident. The state or local "ombudsman", as
18 that term is defined by the Aging Services Division of the
19 Department of Human Services pursuant to the Older Americans' Act,
20 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
21 employed by the Department of Mental Health and Substance Abuse
22 Services or one of its contract agencies shall have right of access
23 to enter a facility, communicate privately and without unreasonable
24 restriction with any resident who consents to the communication, to

1 seek consent to communicate privately and without restriction with
2 any resident, and to observe all areas of the facility that directly
3 pertain to the patient care of the resident without infringing upon
4 the privacy of the other residents without first obtaining their
5 consent;

6 3. "Administrator" means the person licensed by ~~the State of~~
7 ~~Oklahoma~~ this state who is in charge of a facility. An
8 administrator must devote at least one-third (1/3) of such person's
9 working time to on-the-job supervision of the facility; provided,
10 that this requirement shall not apply to an administrator of an
11 intermediate care facility for individuals with intellectual
12 disabilities with sixteen or fewer beds (ICF/IID-16), in which case
13 the person licensed by the state may be in charge of more than one
14 such ICF/IID-16 facility, if such facilities are located within a
15 circle that has a radius of not more than fifteen (15) miles, the
16 total number of facilities and beds does not exceed six facilities
17 and sixty-four beds, and each such ICF/IID-16 facility is supervised
18 by a qualified professional. The facilities may be free-standing in
19 a community or may be on campus with a parent institution. The
20 ICF/IID-16 facility may be independently owned and operated or may
21 be part of a larger institutional operation;

22 4. "Advisory Board" means the Long-Term Care Facility Advisory
23 Board;

1 5. "Adult companion home" means any home or establishment,
2 funded and certified by the Department of Human Services, which
3 provides homelike residential accommodations and supportive
4 assistance to three or fewer adults with intellectual or
5 developmental disabilities;

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

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

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

9 9. "Facility" means a nursing facility and a specialized home;
10 provided this term shall not include a residential care home ~~or~~, an
11 adult companion home or an intermediate care facility for
12 individuals with intellectual disabilities with sixteen or fewer
13 beds (ICF/IID-16);

14 10. "Nursing facility" means a home, an establishment or an
15 institution, a distinct part of which is primarily engaged in
16 providing:

- 17 a. skilled nursing care and related services for
18 residents who require medical or nursing care,
- 19 b. rehabilitation services for the rehabilitation of
20 injured, disabled, or sick persons, or
- 21 c. on a regular basis, health-related care and services
22 to individuals who because of their mental or physical
23 condition require care and services beyond the level
24 of care provided by a residential care home and which

1 can be made available to them only through a nursing
2 facility.

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

12 11. "Specialized facility" means any home, establishment, or
13 institution which offers or provides inpatient long-term care
14 services on a twenty-four-hour basis to a limited category of
15 persons requiring such services, including but not limited to a
16 facility providing health or habilitation services for individuals
17 with intellectual or developmental disabilities except for an
18 intermediate care facility for individuals with intellectual
19 disabilities with sixteen or fewer beds (ICF/IID-16), but does not
20 mean, for purposes of Section 1-851.1 of this title, a facility
21 constructed or operated by an entity described in paragraph 7 of
22 subsection B of Section 6201 of Title 74 of the Oklahoma Statutes or
23 the nursing care component of a continuum of care facility, as such
24 term is defined under the Continuum of Care and Assisted Living Act,

1 to the extent that the facility constructed or operated by an entity
2 described in paragraph 7 of subsection B of Section 6201 of Title 74
3 of the Oklahoma Statutes contains such a nursing care component;

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

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

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

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

1 16. "Owner" means a person, corporation, partnership,
2 association, or other entity which owns a facility or leases a
3 facility. The person or entity that stands to profit or lose as a
4 result of the financial success or failure of the operation shall be
5 presumed to be the owner of the facility. Notwithstanding the
6 foregoing, any nonstate governmental entity that has acquired and
7 owns or leases a facility and that has entered into an agreement
8 with the Oklahoma Health Care Authority to participate in the
9 nursing facility supplemental payment program ("UPL Owner") shall be
10 deemed the owner of such facility and shall be authorized to obtain
11 management services from a management services provider ("UPL
12 Manager"), and to delegate, allocate and assign as between the UPL
13 Owner and UPL Manager, compensation, profits, losses, liabilities,
14 decision-making authority and responsibilities, including
15 responsibility for the employment, direction, supervision and
16 control of the facility's administrator and staff;

17 17. "Personal care" means assistance with meals, dressing,
18 movement, bathing or other personal needs or maintenance, or general
19 supervision of the physical and mental well-being of a person, who
20 is incapable of maintaining a private, independent residence, or who
21 is incapable of managing his person, whether or not a guardian has
22 been appointed for such person;

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

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

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

22 SECTION 3. AMENDATORY 63 O.S. 2011, Section 330.51, as
23 amended by Section 57, Chapter 475, O.S.L. 2019 (63 O.S. Supp. 2020,
24 Section 330.51), is amended to read as follows:

1 Section 330.51. For the purposes of Section 330.51 et seq. of
2 this title, and as used herein:

3 1. "Board" means the Oklahoma State Board of Examiners for
4 Long-Term Care Administrators;

5 2. "Long-term care administrator" means a person licensed or
6 certified as a nursing facility administrator, an assisted living
7 facility administrator, a residential care facility administrator,
8 or an adult day care center administrator pursuant to Section 330.51
9 et seq. of this title. A long-term care administrator must devote
10 at least one-half (1/2) of such person's working time to on-the-job
11 supervision of a long-term care facility; provided, that this
12 requirement shall not apply to an administrator of an intermediate
13 care facility for individuals with intellectual disabilities with
14 sixteen or fewer beds (ICF/IID-16), in which case the person
15 licensed by the state may be in charge of more than one ICF/IID-16,
16 if such facilities are located within a circle that has a radius of
17 not more than fifteen (15) miles, and the total number of facilities
18 and beds does not exceed six facilities and sixty-four beds. The
19 facilities may be free-standing in a community or may be on campus
20 with a parent institution. The ICF/IID-16 may be independently
21 owned and operated or may be part of a larger institutional
22 ownership and operation;

23 3. "Nursing facility administrator" means a person licensed by
24 ~~the State of Oklahoma~~ this state to perform the duties of an
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1 administrator serving in a skilled nursing or nursing ~~or ICF/IID~~
2 facility or intermediate care facility for individuals with
3 intellectual disabilities (ICF-IID) with seventeen or greater beds;

4 4. "Assisted living facility administrator" means a person
5 licensed or certified by ~~the State of Oklahoma~~ this state to perform
6 the duties of an administrator serving in an assisted living
7 facility;

8 5. "Residential care facility administrator" means a person
9 licensed or certified by ~~the State of Oklahoma~~ this state to perform
10 the duties of an administrator serving in a residential care
11 facility or an intermediate care facility for individuals with
12 intellectual disabilities with sixteen or fewer beds (ICF/IID-16);

13 6. "Adult day care center administrator" means a person
14 licensed or certified by ~~the State of Oklahoma~~ this state to perform
15 the duties of an administrator serving in an adult day care center;
16 and

17 7. "Nursing home", "rest home" and "specialized home" shall
18 have the same meaning as the term "nursing facility" as such term is
19 defined in the Nursing Home Care Act; "assisted living center" and
20 "continuum of care facility" shall have the same meaning as such
21 terms are defined in the Continuum of Care and Assisted Living Act;
22 "home" and "residential care home" shall have the same meaning as
23 the terms are used in the Residential Care Act; and "adult day care
24

1 center" and "center" shall have the same meaning as such terms are
2 used in the Adult Day Care Act.

3 SECTION 4. This act shall become effective November 1, 2021.
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