

1 STATE OF OKLAHOMA

2 2nd Session of the 58th Legislature (2022)

3 SENATE BILL 1434

By: Garvin

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5
6 AS INTRODUCED

7 An Act relating to long-term care; requiring certain
8 regulation of intermediate care facilities for
9 individuals with intellectual disabilities with
10 sixteen or fewer beds (ICFs/IID-16); directing State
11 Department of Health to enforce certain federal laws
12 and regulations; requiring administrator of ICF/IID-
13 16 to meet certain qualifications; directing
14 promulgation of rules; stating qualifications of
15 administrator; amending 63 O.S. 2021, Section 1-1902,
16 which relates to definitions used in the Nursing Home
17 Care Act; modifying definitions; excluding ICFs/IID-
18 16 from certain definition; making language gender
19 neutral; providing for codification; and providing an
20 effective date.

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

22 SECTION 1. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 1-899.2 of Title 63, unless
24 there is created a duplication in numbering, reads as follows:

25 A. The State Department of Health shall regulate intermediate
26 care facilities for individuals with intellectual disabilities with
27 sixteen or fewer beds (ICFs/IID-16) as distinct facilities and shall
28 not regulate ICFs/IID-16 under the Nursing Home Care Act or any
29 other act that governs a different type of facility.

1 B. The State Department of Health shall enforce applicable
2 federal laws and regulations governing intermediate care facilities
3 for individuals with intellectual disabilities (ICFs/IID) and hired
4 or contracted staff of ICFs/IID including, but not limited to,
5 regulations of the Centers for Medicare and Medicaid Services.

6 C. The administrator of an ICF/IID-16 shall meet the
7 qualifications of Section 2 of this act.

8 D. The State Commissioner of Health shall promulgate rules to
9 implement this section with input from experienced professionals
10 currently working in ICFs/IID-16 in this state. Such rules may
11 include but not be limited to licensure, licensure fees, staffing,
12 quality of resident care, minimum standards for facilities,
13 inspections, penalties, and violations. Such rules shall be
14 separate and distinct from rules regulating facilities under the
15 Nursing Home Care Act or any other act that governs a different type
16 of facility.

17 SECTION 2. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 330.53a of Title 63, unless
19 there is created a duplication in numbering, reads as follows:

20 The administrator of an intermediate care facility for
21 individuals with intellectual disabilities with sixteen or fewer
22 beds (ICF/IID-16) shall be:

23 1. A nursing facility administrator licensed by the Oklahoma
24 State Board of Examiners for Long-Term Care Administrators; or

1 2. An assisted living facility administrator licensed by the
2 Oklahoma State Board of Examiners for Long-Term Care Administrators
3 with not less than three (3) years of experience working with
4 individuals with intellectual disabilities in a professional
5 setting.

6 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-1902, is
7 amended to read as follows:

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

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

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

1 the privacy of the other residents without first obtaining their
2 consent;

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

20 4. "Advisory Board" means the Long-Term Care Facility Advisory
21 Board;

22 5. "Adult companion home" means any home or establishment,
23 funded and certified by the Department of Human Services, which
24 provides homelike residential accommodations and supportive
25

1 assistance to three or fewer adults with intellectual or
2 developmental disabilities;

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

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

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

6 9. "Facility" means a nursing facility and a specialized home;
7 provided, u this term shall not include a residential care home or an
8 adult companion home;

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

- 12 a. skilled nursing care and related services for
- 13 residents who require medical or nursing care,
- 14 b. rehabilitation services for the rehabilitation of
- 15 injured, disabled, or sick persons, or
- 16 c. on a regular basis, health-related care and services
- 17 to individuals who because of their mental or physical
- 18 condition require care and services beyond the level
- 19 of care provided by a residential care home and which
- 20 can be made available to them only through a nursing
- 21 facility.

22 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
23 this title, a facility constructed or operated by an entity
24 described in paragraph 7 of subsection B of Section 6201 of Title 74

1 of the Oklahoma Statutes or the nursing care component of a
2 continuum of care facility, as such term is defined under the
3 Continuum of Care and Assisted Living Act, to the extent that the
4 facility constructed or operated by an entity described in paragraph
5 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
6 Statutes contains such a nursing care component;

7 11. a. "Specialized facility" means any home, establishment,
8 or institution which offers or provides inpatient
9 long-term care services on a twenty-four-hour basis to
10 a limited category of persons requiring such services,
11 including but not limited to a facility providing
12 health or habilitation services for individuals with
13 intellectual or developmental disabilities, ~~but.~~

14 b. Specialized facility does not mean, ~~for:~~

15 (1) for purposes of Section 1-851.1 of this title, a
16 facility constructed or operated by an entity
17 described in paragraph 7 of subsection B of
18 Section 6201 of Title 74 of the Oklahoma Statutes
19 or the nursing care component of a continuum of
20 care facility, as such term is defined under the
21 Continuum of Care and Assisted Living Act, to the
22 extent that the facility constructed or operated
23 by an entity described in paragraph 7 of
24 subsection B of Section 6201 of Title 74 of the

Oklahoma Statutes contains such a nursing care component, or

(2) an intermediate care facility for individuals with intellectual disabilities with sixteen or fewer beds (ICF/IID-16);

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

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

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

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

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

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

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

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

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

1 SECTION 4. This act shall become effective November 1, 2022.

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