

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL NO. 890

6 By: Smalley and David

7 COMMITTEE SUBSTITUTE

8 An Act relating to statutory terms; amending 10 O.S.
9 2011, Section 1408, 1410, 1411, 1414, 1414.1, 1415,
10 1415.1, 1416, 1417, 1417.1, 1425 and 1430.20, which
11 relate to children; updating terms; deleting
12 definition; clarifying language; making language
13 gender-neutral; amending 10A O.S. 2011, Section 2-7-
14 502, which relates to Children and Juvenile Code;
15 updating terms; amending 10A O.S. 2011, Section 2-7-
16 503, as amended by Section 7, Chapter 362, O.S.L.
17 2014 (10A O.S. Supp. 2018, Section 2-7-503), which
18 relates to Children and Juvenile Code; updating term;
19 amending 10A O.S. 2011, Section 2-7-601, as amended
20 by Section 3, Chapter 234, O.S.L. 2016 (10A O.S.
21 Supp. 2018, Section 2-7-601), which relates to the
22 Office of Juvenile Affairs' powers and duties;
23 updating term; amending 21 O.S. 2011, Sections 152,
24 643, 701.10b and 833, which relate to crimes and
punishments; updating terms; amending 22 O.S. 2011,
Section 1161, as last amended by Section 1, Chapter
375, O.S.L. 2017 (22 O.S. Supp. 2018, Section 1161),
which relates to criminal procedure; updating term;
amending 22 O.S. 2011, Section 1175.3, as amended by
Section 1, Chapter 300, O.S.L. 2015 (22 O.S. Supp.
2018, Section 1175.3), which relates to criminal
procedure; updating term; amending 22 O.S. 2011,
Sections 1175.5 and 1175.6, which relate to criminal
procedure; updating term; updating statutory
references; amending 22 O.S. 2011, Section 1175.6a,
as last amended by Section 2, Chapter 290, O.S.L.
2018 (22 O.S. Supp. 2018, Section 1175.6a), which
relates to criminal procedure; updating term;
amending 22 O.S. 2011, Sections 1175.6b and 1175.6c,
which relate to criminal procedure; updating term;

1 amending 25 O.S. 2011, Section 40; updating term;
2 deleting obsolete date; directing certain use of
3 language; amending 30 O.S. 2011, Section 1-111, which
4 relates to guardian and ward; updating term; amending
5 43A O.S. 2011, Section 1-103, as last amended by
6 Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp.
7 2018, Section 1-103), which relates to mental health;
8 deleting term; amending 43A O.S. 2011, Section 10-
9 103, as amended by Section 1, Chapter 39, O.S.L. 2016
10 (43A O.S. Supp. 2018, Section 10-103), which relates
11 to mental health; deleting term; amending 43A O.S.
12 2011, Section 10-104, as amended by Section 1,
13 Chapter 318, O.S.L. 2016 (43A O.S. Supp. 2018,
14 Section 10-104), which relates to mental health;
15 updating term; amending 47 O.S. 2011, Section 1104.1,
16 which relates to motor vehicles; updating terms;
17 amending 56 O.S. 2011, Sections 198.11c, 602, 1017.2,
18 1017.3, 1025.1 and 1030.1, which relate to poor
19 persons; updating terms; modifying definition;
20 amending 56 O.S. 2011, Section 2002, as last amended
21 by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
22 2018, Section 2002), which relates to poor persons;
23 updating terms; amending 56 O.S. 2011, Sections 343,
24 347, 530.2, 530.3, 530.6 and 367.3, which relate to
poor persons; updating terms; amending 62 O.S. 2011,
Section 57.32, which relates to the Building Bonds
Commission; updating term; amending 63 O.S. 2011,
Sections 1-1925.2, 1-219, 1-222.1 and 1-222.2, which
relate to public health and safety; updating terms;
amending 63 O.S. 2011, Section 1-502.1, as amended by
Section 1, Chapter 246, O.S.L. 2013 (63 O.S. Supp.
2018, Section 1-502.1), which relates to public
health and safety; updating term; amending 63 O.S.
2011, Sections 1-533 and 1-851.1, which relate to
public health and safety; updating term; amending 63
O.S. 2011, Section 1-1902, as amended by Section 1,
Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2018, Section
1-1902), which relates to public health and safety;
updating terms; amending 63 O.S. 2011, Section 1-
1912, as last amended by Section 1, Chapter 251,
O.S.L. 2014 (63 O.S. Supp. 2018, Section 1-1912),
which relates to public health and safety; updating
term; amending 63 O.S. 2011, Sections 330.51 and
5026, which relates to public health and safety;
updating term; amending 70 O.S. 2011, Section 6-105,
as amended by Section 1, Chapter 78, O.S.L. 2012 (70
O.S. Supp. 2018, Section 6-105), which relates to

1 schools; updating term; amending 74 O.S. 2011,
2 Section 255, which relates to state government;
3 updating term; updating statutory name; and providing
4 an effective date.

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

6 SECTION 1. AMENDATORY 10 O.S. 2011, Section 1408, is
7 amended to read as follows:

8 Section 1408. A. "~~Mentally retarded~~ Intellectually disabled
9 person" as used in Sections 1406 through 1424 of this title means a
10 person who has significantly subaverage functioning, ~~IQ~~ intelligence
11 quotient of less than ~~70~~ seventy (70), manifested before the age ~~18~~
12 of eighteen (18) and existing concurrently with related limitations
13 in two or more of the following applicable adaptive skill areas:

- 14 1. Communication;
- 15 2. Self-care;
- 16 3. Home living;
- 17 4. Social skills;
- 18 5. Use of community resources;
- 19 6. Self-direction;
- 20 7. Health and safety;
- 21 8. Functional academics;
- 22 9. Leisure; and
- 23 10. Work.

1 B. "Resident" as used in Sections 1406 through 1424 of this
2 title shall mean a person admitted to and in residence in any of the
3 institutions named in Section 1406 of this title, or on a vacation
4 or extended vacation status from such institution.

5 ~~C. "Accreditation Council for Services for Mentally Retarded
6 and Other Developmentally Disabled Individuals" means the national
7 private nonprofit organization established for the purpose of
8 promoting quality services for mentally retarded persons which is
9 incorporated under that name.~~

10 ~~D. "Developmental~~ "Intellectual disability" as used in Sections
11 1406 through 1424 of this title means a severe, chronic disability
12 of a person which:

13 1. Is attributable to a mental or physical impairment or
14 combination of mental and physical impairments, such as ~~mental~~
15 ~~retardation~~ intellectual developmental disorder, cerebral palsy, or
16 autism;

17 2. Is manifested before the person attains twenty-two (22)
18 years of age;

19 3. Is likely to continue indefinitely;

20 4. Results in substantial functional limitations in three or
21 more of the following areas of major life activity:

22 a. self-care,

23 b. receptive and expressive language,

24 c. learning,

- d. mobility,
- e. self-direction,
- f. capacity for independent living, and
- g. economic self-sufficiency; and

5 5. Reflects the person's need for a combination and sequence of
6 special, interdisciplinary, or generic care, treatment, or other
7 services which are of lifelong or extended duration and are
8 individually planned and coordinated. The term ~~developmental~~
9 intellectual disability shall not include mentally ill persons, as
10 those persons are defined by Section 1-103 of Title 43A of the
11 Oklahoma Statutes, whose sole disability is mental illness.

12 E. Nothing in subsection D of this section shall be construed
13 to render persons who are receiving services upon ~~the effective date~~
14 ~~of this act~~ September 1, 1991, through programs and services for
15 ~~mentally retarded~~ intellectually disabled persons offered by the
16 Department of Human Services as ineligible for such services. The
17 Department of Human Services may provide, within the limitations of
18 funds and other resources available for such purpose, programs and
19 services for persons with ~~developmental~~ intellectual disabilities
20 who are not presently served by the Department of Human Services.

21 SECTION 2. AMENDATORY 10 O.S. 2011, Section 1410, is
22 amended to read as follows:

23 Section 1410. (a) All personal properties, records, equipment,
24 and supplies now owned and in use by the above-named institutions

1 shall be transferred to and become the property of the ~~Commission~~
2 ~~for~~ Department of Human Services.

3 (b) All contracts, leases, and other such agreements as may have
4 been entered into by the Board of Mental Health and Substance Abuse
5 Services or any of its agents, relative to the institutions referred
6 to in Section 1406 of this title and such duties and
7 responsibilities as are in effect on ~~the effective date of this act~~
8 July 1, 1963, shall be assumed by and become binding upon the
9 Commission for Human Services and the Department of Human Services.

10 (c) All unexpended funds to the credit of the above-named
11 institutions and all unexpended appropriations for such institutions
12 shall be transferred by the State Treasurer to the Department of
13 Human Services and placed in a separate fund. The fund shall be
14 known as the "Fund for ~~Mentally Retarded~~ Intellectually disabled."

15 SECTION 3. AMENDATORY 10 O.S. 2011, Section 1411, is
16 amended to read as follows:

17 Section 1411. (a) The ~~Commission~~ Director of Human Services is
18 authorized and directed to promulgate and adopt all rules and
19 regulations necessary to carry out the provisions of ~~this act~~
20 Section 1406 et seq. of this title.

21 (b) The ~~Commission~~ Director shall establish and maintain such
22 methods of administration (including methods relating to the
23 establishment and maintenance of personnel standards on a merit
24 basis) as are necessary for the proper and efficient administration

1 of the programs and institutions named in Section ~~1 of this act~~ 1406
2 of this title; shall maintain records and prepare reports; shall
3 prescribe a uniform accounting system; and shall exercise any other
4 powers necessary to carry out the provisions of ~~this act~~ Section
5 1406 et seq. of this title.

6 (c) The ~~Commission~~ Director may provide for the repair,
7 alterations, or remodeling of any existing building at the above-
8 named institutions, or at any other institution under its
9 jurisdiction, necessary for the proper and efficient administration
10 and to conserve the properties and the state's investment in such
11 properties. Funds available for operating expenses and revolving
12 funds of institutions under the control of the ~~Commission~~ Department
13 may be used for such purposes, and may also be expended for land and
14 other capital outlay, whenever the ~~Commission~~ Department finds the
15 same is needed for the proper discharge of its responsibilities.
16 Any county may convey to the State of Oklahoma, for the use of any
17 such institution, land owned but not needed by the county; and such
18 conveyance may be made without consideration, appraisal,
19 advertisement for bids, or offer to the highest bidder, if the board
20 of county commissioners determines that the same will not be to the
21 detriment of the county.

22 (d) The ~~Commission~~ Department is authorized to receive grants of
23 federal funds for the purpose of combating or preventing ~~mental~~
24 ~~retardation~~ intellectual disabilities, including but not limited to

1 funds for the treatment, care, rehabilitation, or training of the
2 ~~mentally retarded~~ intellectually disabled, or for the establishment
3 or expansion of any programs or facilities or research projects
4 relating to the ~~mentally retarded~~ intellectually disabled, or for
5 construction of research centers and facilities for the ~~mentally~~
6 ~~retarded~~ intellectually disabled, and is authorized to cooperate in
7 any reasonable manner with the federal agency or agencies granting
8 such federal funds for such purposes, including compliance with any
9 conditions prescribed by federal authorities for the granting of
10 such funds. The ~~Commission~~ Department may serve as the sole
11 designated state agency for receiving, disbursing, or administering
12 federal funds for any of the aforesaid purposes, provided federal
13 law requires such an agency and the ~~Commission~~ Department is
14 eligible to be such an agency under federal law. Provided, however,
15 that this section shall not prevent any other agency from receiving,
16 disbursing, or administering federal grants for any of the aforesaid
17 purposes, if authorized or required by federal law.

18 (e) The ~~Commission~~ Department shall establish the duties and fix
19 the compensation of the superintendent and other personnel needed at
20 each of the institutions referred to in Section ~~1 of this act~~ 1406
21 of this title. Appointments to all such positions shall be made by
22 the Director ~~subject to the approval of the Commission~~.

23 (f) The ~~Commission~~ Director shall have authority to provide for
24 the expenditure of all funds for the administration and operations

1 of the institutions specified in Section ~~1 of this act~~ 1406 of this
2 title and for a compliance with the provisions of ~~this act~~ Section
3 1406 et seq. of this title.

4 SECTION 4. AMENDATORY 10 O.S. 2011, Section 1414, is
5 amended to read as follows:

6 Section 1414. A. 1. ~~Mentally retarded~~ Intellectually disabled
7 persons who are legal residents of this state and who have a mental
8 age not above that of the average nine-year-old child, as determined
9 by psychological examination, may be admitted to an institution
10 named in Section 1406 of this title or provided community services,
11 if available, on a voluntary basis only upon written application to
12 the Director on forms provided for such purpose. Other ~~mentally~~
13 ~~retarded~~ intellectually disabled persons who are residents of this
14 state and who are above such mental age may be admitted or provided
15 community services, on a voluntary basis only, upon recommendation
16 of the superintendent of the institution and approval of the
17 Director.

18 2. The application shall be signed by any parent having legal
19 custody of such person, a guardian appointed by a court, or other
20 legal custodian of such person.

21 3. The psychological examination provided for in this section
22 shall be on forms provided by the Department and must be completed
23 before an application can be approved and the applicant admitted to
24 the institution.

1 B. Release of a resident of any of the institutions named in
2 Section 1406 of this title shall be subject to such reasonable rules
3 and conditions as may be prescribed by the ~~Commission for~~ Director
4 of Human Services and shall be made only to the parent, guardian
5 appointed by a court, or legal custodian of the resident; provided,
6 however, a resident eighteen (18) years of age or older who has not
7 been found by a court to be incompetent or incapacitated may request
8 and obtain such person's own release.

9 SECTION 5. AMENDATORY 10 O.S. 2011, Section 1414.1, is
10 amended to read as follows:

11 Section 1414.1. A. In addition to the admissions requirements
12 of Section 1414 of this title, the Greer Center Facility located on
13 the grounds of the Northern Oklahoma Resource Center of Enid in
14 Enid, Oklahoma, shall be established as a separate entity from the
15 Northern Oklahoma Resource Center of Enid and further shall provide
16 for the admission of persons who have been dually diagnosed as
17 follows:

18 1. Primary diagnosis of ~~mental retardation~~ an intellectual
19 disability by a psychologist, physician or psychiatrist. The
20 diagnosis shall be in accordance with any statutory requirements and
21 shall include intellectual evaluation, adaptive behavior evaluation,
22 and evidence that ~~retardation~~ the disability occurred within the
23 developmental period. Preference shall be given for those
24

1 individuals whose ~~retardation~~ disability level falls within the mild
2 and moderate ranges; and

3 2. Secondly, clinical evidence of behavioral or emotional
4 problems pursuant to a formal, written evaluation by a psychologist,
5 psychiatrist or physician describing the nature of the problem, the
6 frequency of occurrence of the problem, any prior treatment efforts
7 and reasons why the applicant cannot receive appropriate treatment
8 in the applicant's current environment and a secondary diagnosis of
9 mental illness in accordance with the Diagnostic and Statistical
10 Manual of Mental Disorders, as revised and published by the American
11 Psychiatric Association.

12 B. A person shall not be considered for voluntary admission
13 into the Greer Center Facility unless it can be clinically
14 demonstrated that the behavior of the person does not pose an
15 unreasonable risk of injury, death or sexual assault to others or an
16 unreasonable risk of injury or death to self. Persons considered
17 for admission shall not be considered by a psychologist,
18 psychiatrist, or physician as homicidal or suicidal and shall not
19 have exhibited homicidal or suicidal tendencies for six (6) months
20 prior to application for admission.

21 C. An applicant who requires skilled nursing care shall not be
22 admitted to the Greer Center Facility. Applicants having a medical
23 condition which is degenerative in nature that will require skilled
24 nursing shall be considered on a case by case basis to ensure that

1 sufficient staff is available to ensure quality of care. If an
2 applicant has any existing medical or surgical condition that is
3 correctable, the condition shall be remedied by the referring
4 facility before admission to the Greer Center Facility is
5 considered.

6 D. Any person seeking admission to the Greer Center Facility
7 for treatment who qualifies under subsection A of this section,
8 subject to the availability of space, shall be admitted. All
9 persons admitted to the Greer Center Facility shall submit to the
10 director of the Greer Center Facility a referral packet that
11 contains at a minimum, the following information or records:

- 12 1. Results of a current physical exam;
- 13 2. Recent physician orders and progress notes for up to one (1)
14 year, if available;
- 15 3. Recent nursing notes for up to one (1) year, if available;
- 16 4. Fact sheet (medical records);
- 17 5. Legal papers, including, but not limited to, birth
18 certificate, marriage certificate and guardianship;
- 19 6. Social history, with a recent social evaluation or update
20 within one (1) year;
- 21 7. Psychological exam administered or updated within ninety
22 (90) days of referral;
- 23 8. Dental records;
- 24 9. Immunization record;

1 10. Multidisciplinary progress notes for up to one (1) year, if
2 available;

3 11. Medical and medication history; and

4 12. Individual Habilitation Plan or Care Plan, if available.

5 E. The Greer Center Admissions Committee shall consist of a
6 representative from the Greer Center Facility, and other
7 representatives selected by the Director of the Department of Human
8 Services. The Committee shall make decisions regarding admissions
9 to the programs of the Greer Center Facility. The Committee may
10 request additional information concerning an applicant from the
11 referring agency or participation by referring agency personnel as
12 necessary.

13 F. Persons entering the Greer Center Facility shall receive a
14 comprehensive evaluation of their intellectual functioning, adaptive
15 behavior skills, and mental health status, and shall receive a
16 continuous active treatment program, which includes aggressive,
17 consistent implementation of a program of specialized and generic
18 training, treatment, health services and related services. The
19 evaluation and assessment shall be completed within thirty (30) days
20 of admission to the Greer Center Facility.

21 G. After the evaluation and assessment by the Greer Center
22 Facility, staff shall present the referral packet of the individual
23 and their findings to the Greer Center Admissions Committee with a
24 recommendation for continued admission or alternate treatment.

1 1. The Greer Center Admissions Committee shall:

2 a. make decisions regarding continued admission, and

3 b. notify the Department of Human Services, and the
4 referring agency in writing, stating specifically the
5 decisions of the Committee regarding admission,
6 including specific reasons for denial of admission.

7 2. If admission of an applicant is not continued at the Greer
8 Center Facility after undergoing the evaluation process, the
9 referring agency shall reimburse the Department of Human Services
10 for the number of bed days used at the Medicaid rate for that unit.
11 If admission of an applicant is continued, the applicant shall be
12 certified for Medicaid reimbursement from the initial date of
13 admission.

14 H. Individuals who have been admitted and served by the Greer
15 Center Facility shall be eligible for readmission services on the
16 same basis as an individual initially seeking services.

17 I. In addition to other discharge procedures and requirements
18 provided by law, the interdisciplinary team of the Greer Center
19 Facility shall have recommended discharge based upon a determination
20 that the mental or physical condition of the individual prevents the
21 individual from receiving appropriate services at the Greer Center
22 Facility or that the individual has made progress in behavioral and
23 emotional habilitation goals such that the individual no longer
24

1 requires the specialized resources at the Greer Center Facility, and
2 may function in a less restrictive setting.

3 J. A referral to discharge is made to the Greer Center
4 Discharge Committee, and the final decision to discharge is made by
5 the Greer Center Discharge Committee.

6 K. The Greer Center Discharge Committee shall:

7 1. Consist of a representative from the Greer Center Facility
8 and representatives selected by the Director of the Department of
9 Human Services; and

10 2. Review the discharge referral and related materials to
11 ensure that the individual can safely reside in a less restrictive
12 setting with appropriate supports.

13 L. The ~~Commission for~~ Director of Human Services is authorized
14 and hereby directed to promulgate and amend rules necessary to
15 implement the provisions of this section.

16 SECTION 6. AMENDATORY 10 O.S. 2011, Section 1415, is
17 amended to read as follows:

18 Section 1415. A. The voluntary placement of a child in an
19 institution for the ~~mentally retarded~~ intellectually disabled by the
20 child's parents shall not, by itself, abrogate the rights and
21 authority of the parents.

22 B. 1. Except as otherwise provided in this paragraph, no later
23 than January 1, 1988, all residents of the institutions specified in
24 Section 1406 of this title and all residents of other residential

1 facilities for ~~mentally retarded~~ intellectually disabled persons
2 operated by the Department of Human Services who are eighteen (18)
3 years of age or older shall have a guardian appointed by a court. A
4 guardian shall not be required for a resident of ~~said~~ the
5 institution eighteen (18) years of age or older for whom a guardian
6 is not recommended as provided in subsection C of this section or
7 who has not been found to be incompetent or incapacitated by the
8 court.

9 2. The guardian shall be the parent of the resident or a
10 relative or other adult person appointed by a court to be the
11 guardian of the resident or former resident. A parent whose
12 parental rights have not been terminated by a court, and who is
13 otherwise qualified to serve as guardian, shall have first priority
14 for appointment as guardian. If a parent is not available or
15 willing to serve, a relative who is otherwise qualified to serve as
16 guardian shall have next priority for appointment as guardian.

17 3. The guardian shall not be the superintendent or other
18 employee of the institution or residential facility in which ~~said~~
19 the person resides or an employee of the Department of Human
20 Services, except where the superintendent or employee is also the
21 parent or relative of the resident or former resident. A
22 superintendent may serve as guardian ad litem as provided in
23 subsection D of this section.

24

1 C. 1. An assessment of the competency of a resident of an
2 institution or residential facility for the ~~mentally retarded~~
3 intellectually disabled operated by the Department shall be
4 completed within six (6) months:

- 5 a. prior to the eighteenth birthday of the resident; ~~or,~~
- 6 b. after institutionalization if the resident is an adult
7 at the time of institutionalization; ~~or~~
- 8 c. after ~~the effective date of this act~~ June 30, 1987, if
9 the resident is an adult who was institutionalized
10 prior to ~~the effective date of this act~~ June 30, 1987,
11 and for whom no competency assessment has been
12 performed or no guardian appointed.

13 2. The assessment shall be made by a panel composed of the
14 resident's social worker, the attending physician of the resident,
15 and a licensed psychiatrist or licensed psychologist with training
16 and experience in the area of ~~mental retardation and developmental~~
17 intellectual disabilities. The panel shall make a recommendation to
18 the superintendent as to whether or not the condition of the
19 resident is such that appointment of a guardian is warranted. Upon
20 the finding by the panel that appointment of a guardian is
21 warranted, the superintendent shall initiate guardianship
22 proceedings.

23 D. If the parents or other relative of the resident are unable
24 to serve as guardian or cannot be located, the Department may in a

1 guardianship proceeding request the court to appoint a guardian ad
2 litem until such time as a guardian is appointed by a court. If the
3 court is satisfied, after inquiry into the matter, that a parent or
4 other relative qualified and willing to serve as guardian cannot
5 with due diligence be located, the court may appoint a guardian ad
6 litem.

- 7 1. The court may appoint as guardian ad litem:
- 8 a. a qualified relative or other adult person; or
 - 9 b. a public guardian if available; or
 - 10 c. the superintendent of the facility in which the
11 resident resides.

12 In all cases, a qualified relative or other qualified adult
13 shall have priority over the Department of Human Services for
14 appointment as a guardian.

15 2. The appointment of a guardian ad litem shall be as guardian
16 ad litem of the person only of ~~said~~ the resident, and the court
17 shall set forth in its appointment order the specific powers and
18 duties of the guardian ad litem. The guardian ad litem shall not
19 change the place of residence of the resident unless authorized by
20 the court.

21 3. The guardian ad litem may serve without bond.

22 E. The Department of Human Services may provide assistance to
23 residents and former residents of the institutions named in Section
24 1406 of this title as necessary to assure compliance with the

1 requirements of subsection B of this section, including filing a
2 petition to have a guardian of the person appointed for the
3 resident.

4 F. The superintendent of the institution shall have the custody
5 of any resident during the time ~~said~~ the resident remains in the
6 institution and shall be responsible for the care, treatment, and
7 education of the resident during the time ~~said~~ the resident remains
8 in the institution.

9 SECTION 7. AMENDATORY 10 O.S. 2011, Section 1415.1, is
10 amended to read as follows:

11 Section 1415.1. A. 1. All institutions named in Section 1406
12 of this title within the Department of Human Services, which are
13 established primarily for the purpose of caring for the ~~mentally~~
14 ~~retarded~~ intellectually disabled, shall maintain an adequate
15 clinical record of each resident. Such record shall contain initial
16 social, psychological, and medical evaluation results, as well as
17 interval reports of the resident's condition, the treatment and
18 training prescribed, and the progress shown.

19 2. The ~~Commission for~~ Director of Human Services shall
20 establish an ombudsman program for each of the institutions and
21 residential facilities for the ~~mentally-retarded~~ intellectually
22 disabled operated by the Department, which shall include, but not be
23 limited to, an appeals procedure for the resolution of grievances or
24 complaints of the residents of the institutions and facilities and

1 the grievances or complaints of the parents or the court-appointed
2 guardians of the residents.

3 B. The educational and physical capabilities of each resident
4 shall be assessed at least one time each year by appropriate
5 professional personnel for the purpose of determining such further
6 treatment or training as may be required. A report of the findings
7 and recommendations of such assessments shall be filed in the
8 clinical record of the resident. Failure on the part of the
9 superintendent of the institution to institute a policy of annual
10 evaluations, if sufficient personnel are available, shall constitute
11 dereliction of duty.

12 C. When annual evaluations of a resident reflect improvement in
13 social or physical capabilities sufficient enough to permit the
14 resident to be released from the institution, either completely or
15 conditionally, the superintendent shall return such resident to the
16 resident's immediate family, or shall provide assistance for the
17 placement of the resident in some other appropriate residential
18 setting.

19 D. 1. The Department of Human Services may enter into
20 contracts for the development of residential settings and attendant
21 community services prior to the release of the resident.

22 2. The Department shall establish procedures which specify the
23 conditions and requirements for recipients of such contracts. In
24 establishing reimbursement rates for recipients of such contracts,

1 the Department may take into consideration any unusual or increased
2 costs of the recipient relating to the care and treatment of
3 ~~developmentally~~ intellectually disabled clients including, but not
4 limited to, workers' compensation costs.

5 3. A copy of these procedures shall be made available to any
6 person upon request.

7 E. 1. In addition to any other form of assistance provided,
8 the Department is authorized to pay stipends to eligible relatives
9 and certified volunteers for the sole purpose of acquiring legal
10 representation to initiate guardianship proceedings.

11 2. Financial guidelines and other criteria pertaining to
12 eligibility of relatives and certified volunteers applying for a
13 stipend shall be established by rules promulgated by the Commission.

14 F. Reports of the reviews of the administration of psychotropic
15 medications shall be made available to the parent or the court-
16 appointed guardian of a resident of the institutions. The parent or
17 the court-appointed guardian of a resident of the institution shall
18 have access to all clinical records pertaining to the condition,
19 treatment, training, and education of the resident which are
20 maintained at the institution, or elsewhere, by the Department of
21 Human Services.

22 SECTION 8. AMENDATORY 10 O.S. 2011, Section 1416, is
23 amended to read as follows:

24

1 Section 1416. A resident at an institution named in Section
2 1406 of this title is liable for his or her care and treatment.
3 This claim of the state for such care and treatment shall constitute
4 a valid indebtedness against ~~said~~ the resident and his or her estate
5 and shall not be barred by any statute of limitations. At the death
6 of ~~said~~ the resident this claim shall be allowed and paid as other
7 lawful claims against the estate. Persons making application for
8 admission of ~~a mentally retarded~~ an intellectually disabled person
9 to ~~said~~ the institution are also liable for the care and treatment
10 of ~~said~~ the resident, provided that such persons are legally
11 obligated to support ~~said~~ the resident. No person shall be liable
12 for ~~said~~ care and treatment solely on the grounds that ~~said~~ the
13 person has been appointed guardian of ~~said~~ the resident. Provided,
14 further, that no admission or detention of ~~a mentally retarded~~ an
15 intellectually disabled person in ~~said~~ the institution shall be
16 limited or conditioned in any manner by the financial status or
17 ability to pay of ~~a mentally retarded~~ an intellectually disabled
18 person, his or her estate, or any relative.

19 SECTION 9. AMENDATORY 10 O.S. 2011, Section 1417, is
20 amended to read as follows:

21 Section 1417. (a) The Department of Human Services may
22 establish and direct such mental hygiene clinics and child guidance
23 clinics in local areas of the state where such clinics are deemed
24

1 most advantageous for the public welfare as a distinct part of the
2 general health program.

3 (b) Outpatient facilities and day care centers to be operated in
4 conjunction with state schools for the ~~mentally retarded~~
5 intellectually disabled shall be established, maintained and
6 operated by the Department to provide outpatient care for ~~mentally~~
7 ~~retarded~~ intellectually disabled persons. The number and location
8 of such facilities and day care centers shall be determined by the
9 ~~Oklahoma Public Welfare Commission~~ Director of Human Services.

10 SECTION 10. AMENDATORY 10 O.S. 2011, Section 1417.1, is
11 amended to read as follows:

12 Section 1417.1. A. Payments under the Medicaid Program shall
13 be made to reserve a bed in an intermediate care facility for the
14 ~~mentally retarded~~ intellectually disabled during the absence of a
15 resident, other than for periods of inpatient hospitalization,
16 pursuant to the provisions of 42 C.F.R. 447.40. Such payments for
17 periods of absence shall be limited to payment for a maximum of
18 sixty (60) days absent in a calendar year.

19 B. The Department of Human Services shall amend the Medicaid
20 State Plan to conform with the requirements of this section.

21 SECTION 11. AMENDATORY 10 O.S. 2011, Section 1425, is
22 amended to read as follows:

23 Section 1425. (a) (1) The Department of ~~Public Welfare~~ Human
24 Services and a county (through its board of county commissioners)

1 may enter into an agreement for the operation of a Community ~~Mental~~
2 ~~Retardation~~ Complex Facility, where day care services, beneficial or
3 necessary for ~~mentally retarded~~ intellectually disabled persons and
4 their families, may be provided.

5 (2) If a building for the facility is constructed, the county
6 shall be required to provide the site or the cost of the site; and
7 not less than sixteen percent (16%) of the cost of constructing the
8 building and of the cost of equipment for the facility. If space
9 for the facility is rented, the county shall be required to pay the
10 rental, and not less than sixteen percent (16%) of the cost of
11 equipment for the facility.

12 (3) The cost of operating the facility shall be paid by the
13 Department and the county in such proportions as may be specified in
14 the agreement.

15 (4) The facility shall be operated in accordance with standards,
16 rules and regulations adopted by the ~~Oklahoma Public Welfare~~
17 ~~Commission~~ Department.

18 (b) A similar agreement with any other non-profit public or
19 private agency or organization may be entered into by the Department
20 ~~of Public Welfare~~. Such agency or organization shall be subject to
21 the same requirements as those hereinabove specified for a county.

22 SECTION 12. AMENDATORY 10 O.S. 2011, Section 1430.20, is
23 amended to read as follows:

24

1 Section 1430.20. A. Rules promulgated by the ~~Commission for~~
2 Director of Human Services regarding the rights and responsibilities
3 of residents shall be available in each group home subject to the
4 provisions of the Group Homes for Persons with ~~Developmental~~
5 Intellectual or Physical Disabilities Act, and each resident and
6 guardian or advocate of the resident, if any, shall be provided a
7 copy of these rules prior to or upon admission. The provider or
8 licensee shall ensure that the staff is familiar with and observes
9 the rights and responsibilities enumerated in this section.

10 B. A statement of rights and responsibilities shall include,
11 but not be limited to, the following:

12 1. Every resident's civil and religious liberties, including
13 the right to independent personal decisions and knowledge of
14 available choices, shall not be infringed and the provider shall
15 encourage and assist in the exercise of these rights;

16 2. Every resident shall have the right to have private
17 communications and consultations with the physician, attorney or any
18 other person of the resident's choice, and may send and promptly
19 receive, unopened, the resident's personal mail;

20 3. Every resident shall have the right, without fear of
21 reprisal, to present grievances on behalf of the resident or others
22 to the provider's staff or administrator, to governmental officials
23 or to any other person, and to join with other residents or
24

1 individuals within or outside of the facility to work for
2 improvements in resident care;

3 4. Every resident shall have the right to manage his or her own
4 financial affairs, unless the resident delegates the responsibility,
5 in writing, to the provider. The resident shall have at least a
6 quarterly accounting of any personal financial transactions
7 undertaken in the resident's behalf by the provider during any
8 period of time the resident has delegated such responsibilities to
9 the provider;

10 5. Every resident shall have the right to receive adequate and
11 appropriate medical care consistent with established and recognized
12 medical practice standards within the community. Every resident
13 shall be fully informed by the resident's attending physician of the
14 resident's own medical condition and proposed treatment in terms and
15 language that the resident can understand, and shall have the right
16 to refuse medication and treatment after being fully informed of and
17 understanding the consequences of such actions;

18 6. Every resident shall receive respect and privacy in the
19 resident's medical care program. Case discussion, consultation,
20 examination and treatment shall remain confidential and shall be
21 conducted discreetly. Personal and medical records shall be
22 confidential;

23 7. Every resident shall have the right to retain and use his or
24 her personal clothing and possessions, unless prohibited by law, and

1 shall have the right to security in the storage and use of such
2 clothing and possessions;

3 8. Every resident shall have the right to be treated
4 courteously and respectfully and shall be furnished by the provider
5 with a written statement of the services and related charges;

6 9. Every resident shall be free from mental and physical abuse,
7 and free from physical and chemical restraints, except those
8 physical and chemical restraints which are authorized in writing by
9 a physician, in accordance with rules promulgated by the Department,
10 for a specified period of time;

11 10. Every resident shall receive a statement of the provider's
12 guidelines and an explanation of the resident's responsibility to
13 comply with all reasonable regulations of the group home and to
14 respect the personal rights and private property of the other
15 residents;

16 11. Every resident shall receive a statement that should they
17 be adjudicated incompetent, the above rights and responsibilities
18 shall be exercised by a court-appointed guardian;

19 12. No resident shall be required to perform services for a
20 provider, except for normal, shared household tasks;

21 13. Every resident shall have privacy for conjugal visits. A
22 resident may share a room with a spouse, if the spouse is residing
23 in the same group home; and

24

1 14. Every resident shall be entitled to all rights provided in
2 OAC 340:100-3-1.2.

3 C. No provider shall deny appropriate care on the basis of the
4 resident's source of payment.

5 D. Each provider shall provide appropriate staff training to
6 implement each resident's rights as stated in this section.

7 E. The rights enumerated in subsection B of this section may be
8 limited for residents of an alternative group home, as described in
9 OAC 340:100-5-22.6, if the resident has been placed in the
10 alternative group home pursuant to Section 1175.6b or Section
11 1175.6c of Title 22 of the Oklahoma Statutes, or if the resident has
12 ~~mental retardation~~ an intellectual disability and a current
13 community protection issue, which include, but are not limited to:

14 1. Allegation(s), charge, or conviction of a sexual offense;

15 2. A history of stalking or opportunistic behavior which
16 demonstrates a likelihood of committing a sexually violent or
17 predatory act;

18 3. A pattern of violence towards others;

19 4. A diagnosis of ~~mental retardation~~ an intellectual disability
20 and mental illness with ongoing episodes that are dangerous as
21 defined in Section 1175.1 of Title 22 of the Oklahoma Statutes; or

22 5. Evidence of commission of a violent crime.

23 F. An action may be brought against an individual by any
24 resident who is injured by any violation of this section, or who

1 shall suffer injury from any person whose threats would cause a
2 violation of this section if carried through, may maintain an action
3 to prevent, restrain or enjoin a violation or threatened violation.
4 If a violation or threatened violation of this section shall be
5 established in any action, the court shall enjoin and restrain or
6 otherwise prohibit the violation or threatened violation and assess
7 in favor of the plaintiff and against the defendant the cost of the
8 suit, and the reasonable attorney fees incurred by the plaintiff.
9 If damages are alleged and proved in the action, the plaintiff shall
10 be entitled to recover from the defendant the actual damages
11 sustained by the plaintiff. If it is proved in an action that the
12 defendant's conduct was willful or in reckless disregard of the
13 rights provided by this section, punitive damages may be assessed.

14 G. Any employee of the Department of Human Services who
15 inspects any group home shall report any flagrant violations of ~~this~~
16 ~~act~~ Section 1430.1 et seq. of this title or any other statute to the
17 Director of Human Services, or a designee, who shall immediately
18 take whatever steps are necessary to correct the situation
19 including, when appropriate, reporting the violation to the district
20 attorney of the county in which the violation occurred.

21 H. Upon the death of a resident who has no sources of payment
22 for funeral services, the provider shall immediately notify
23 appropriate county officials who shall be responsible for funeral
24

1 and burial procedures of the deceased in the same manner as with any
2 indigent resident of the county.

3 SECTION 13. AMENDATORY 10A O.S. 2011, Section 2-7-502,
4 is amended to read as follows:

5 Section 2-7-502. A. Whenever a child who has been adjudicated
6 by the court as a child in need of supervision has been committed to
7 the Office of Juvenile Affairs, the Office may place the child in
8 the home of the child, the home of a relative of the child, foster
9 home, group home, transitional living program, independent living
10 program, community-based setting, rehabilitative facility or child
11 care facility under the operation of or licensure of the state, or
12 in a state school for the ~~mentally-retarded~~ intellectually disabled
13 if eligible for admission thereto. No child in need of supervision
14 shall be placed in an Office-operated institution, other than a
15 rehabilitative facility.

16 B. The Office of Juvenile Affairs may establish and maintain
17 one or more rehabilitative facilities to be used exclusively for the
18 custody of children in need of supervision. Each such facility
19 shall be, primarily, a nonsecure facility having as its primary
20 purpose the rehabilitation of children adjudicated to be in need of
21 supervision. Such facility shall have a bed capacity for no more
22 than twenty children, and shall minimize the institutional
23 atmosphere and prepare the child for reintegration into the
24 community. Provided however, that such facility may be designed and

1 operated as a secure facility used exclusively for children in need
2 of supervision whom the court has specifically found to be so
3 unmanageable, ungovernable and antisocial that no other reasonable
4 alternative exists for treatment or restraint other than placement
5 in such a secure facility. Such facility shall not rely on locked
6 rooms, fences, or physical restraints.

7 C. A child in need of supervision who has been found by a court
8 to be a minor in need of treatment shall be placed as provided by
9 Section 2-2-804 of this title and the Inpatient Mental Health and
10 Substance Abuse Treatment of Minors Act.

11 SECTION 14. AMENDATORY 10A O.S. 2011, Section 2-7-503,
12 as amended by Section 7, Chapter 362, O.S.L. 2014 (10A O.S. Supp.
13 2018, Section 2-7-503), is amended to read as follows:

14 Section 2-7-503. A. It is the intent of the Legislature of
15 this state to provide for the creation of all reasonable means and
16 methods that can be established by a state for:

- 17 1. The prevention of delinquency;
- 18 2. The care and rehabilitation of delinquent children; and
- 19 3. The protection of the public.

20 It is further the intent of the Legislature that this state, through
21 the Office of Juvenile Affairs, establish, maintain and continuously
22 refine and develop a balanced and comprehensive state program for
23 children who are potentially delinquent or are delinquent.

24

1 B. Except as provided in subsection C of this section, whenever
2 a child who has been adjudicated by the court as a delinquent child
3 has been committed to the Office of Juvenile Affairs, the Office
4 shall provide for placement pursuant to any option authorized by
5 paragraphs 1 through 7 of this subsection; provided, nothing in this
6 subsection shall be construed to establish a priority in regard to
7 the selection of an option or to mandate the exclusive use of one
8 particular option:

9 1. Place the child in a secure facility, including a collocated
10 secure facility, or other institution or facility maintained,
11 operated or contracted by the state for delinquent children if the
12 child has:

- 13 a. exhibited seriously violent, aggressive or assaultive
14 behavior,
- 15 b. committed a serious felony constituting violent,
16 aggressive and assaultive behavior,
- 17 c. habitually committed delinquent acts if such acts
18 would constitute felonies if committed by an adult,
- 19 d. committed multiple serious delinquent acts, or
20 e. violated any condition of probation or parole,

21 to the extent that it is necessary for the protection of the public.
22 For purposes of placement, all deferred prosecutions for serious,
23 habitual, violent, aggressive or assaultive crimes shall count
24 toward placement decisions;

1 2. Place the child in a facility maintained, operated or
2 contracted by the state for children, or in a foster home, group
3 home, transitional living program or community residential center;

4 3. Allow the child his or her liberty, under supervision, in an
5 independent living program;

6 4. Allow the child his or her liberty, under supervision,
7 either immediately or after a period in one of the facilities
8 referred to in paragraphs 1 and 2 of this subsection;

9 5. Place the child in a state school for ~~mentally retarded~~ the
10 intellectually disabled, if the child is eligible for admission
11 thereto;

12 6. Place the child in any licensed private facility deemed by
13 the Office of Juvenile Affairs to be in the best interest of the
14 child; or

15 7. Place the child as provided by Section 2-2-804 of this title
16 and the Inpatient Mental Health and Substance Abuse Treatment of
17 Minors Act, if the delinquent child has been found by a court to be
18 in need of mental health or substance abuse treatment.

19 C. The Office shall place priority on the placement of
20 delinquent youth held in secure juvenile detention facilities.

21 D. Placement of a juvenile pursuant to this section or any
22 other provision of law shall be the responsibility of the Office of
23 Juvenile Affairs and shall occur as soon as reasonably possible
24

1 after adjudication and after the selected placement option becomes
2 available.

3 The court shall not have authority to require specific placement
4 of a juvenile in a time frame which would require the removal of any
5 other juvenile from such placement.

6 SECTION 15. AMENDATORY 10A O.S. 2011, Section 2-7-601,
7 as amended by Section 3, Chapter 234, O.S.L. 2016 (10A O.S. Supp.
8 2018, Section 2-7-601), is amended to read as follows:

9 Section 2-7-601. A. In addition to the other powers and duties
10 prescribed by law, the Office of Juvenile Affairs shall have the
11 following duties and powers with regard to juveniles placed in
12 Office-operated institutions and facilities:

13 1. Provide for the care, education, training, treatment and
14 rehabilitation of juveniles who are placed in the institutions and
15 facilities. The Office shall provide for a uniform system of
16 assessment of the reading ability of each juvenile upon initial
17 placement in an Office-operated institution or facility. The
18 assessment shall include, but not be limited to, the following
19 skills:

- 20 a. the level of word decoding skills of the juvenile,
- 21 b. the level of vocabulary and spelling ability of the
22 juvenile, and
- 23 c. the comprehension level of the juvenile.

24

1 The Office may give assistance to local school districts in
2 providing an education to such juveniles, may supplement such
3 education, and may provide facilities for such purposes. It shall
4 be the duty of the Office to assure that juveniles in the aforesaid
5 institutions and facilities receive educational services which
6 provide each juvenile with a balanced and comprehensive reading
7 program, which includes as its primary and foundational components:

- 8 (1) an organized, systematic, explicit skills program
9 that may include phonics, word recognition
10 strategies and other word decoding skills to
11 address the needs of the individual juvenile as
12 determined by the entry level needs assessment,
- 13 (2) a strong language arts and comprehension program
14 that includes a balance of oral and written
15 language, an ongoing individualized evaluation
16 and diagnosis that informs the teacher and an
17 assessment that assures accountability, and
- 18 (3) writing, mathematics, science and vocational-
19 technical education;

20 2. Transfer from a juvenile institution to another facility
21 under the jurisdiction of the Office, a juvenile who has been
22 adjudicated delinquent, if the Office believes it advisable to do
23 so; transfer from a facility for juveniles in need of supervision to
24 another such facility, a juvenile who has been adjudicated in need

1 of supervision, provided that such transfer is consistent with the
2 treatment needs of the juvenile; transfer from a juvenile
3 institution or facility to a state school for the ~~mentally retarded~~
4 intellectually disabled, any juvenile eligible for admission
5 thereto, if the juvenile appears to be in need of the care and
6 treatment provided at such school; transfer from a facility for
7 delinquent or in need of supervision juveniles to an appropriate
8 facility or to the Department of Mental Health and Substance Abuse
9 Services any juvenile found by the court to be a minor in need of
10 treatment pursuant to the Inpatient Mental Health and Substance
11 Abuse Treatment of Minors Act and committed to inpatient mental
12 health or substance abuse treatment as provided by the Inpatient
13 Mental Health and Substance Abuse Treatment of Minors Act. If a
14 transfer is made pursuant to this paragraph, the Office shall comply
15 with the notification requirements of Section 2-2-504 of this title;

16 3. Release on parole a juvenile previously adjudicated to be
17 delinquent, subject to terms and conditions specified by the Office,
18 whenever the Office determines that such release will not be
19 detrimental to society and that the juvenile is ready to be returned
20 to the community and revoke ~~said~~ the parole for violation of the
21 specified terms or conditions of parole pursuant to the provisions
22 of this section and the rules and procedures established by the
23 Office for such revocation;

24

1 4. Release any juvenile from a juvenile institution for
2 placement in a group home, transitional living program, independent
3 living program, other community-based facility or program or out-of-
4 home care subject to terms and conditions specified by the Office;
5 and

6 5. Provide parole services for juveniles released on parole
7 from juvenile institutions, and aftercare services for juveniles
8 discharged from juvenile institutions or facilities. Persons
9 designated as Juvenile Parole Officers by the Office shall have the
10 power to serve process and to apprehend and detain juveniles and
11 make arrests in accordance with the laws of the state.

12 B. The transfer of a juvenile from a nonsecure placement to a
13 secure placement shall be subject to an administrative transfer
14 hearing and any revocation of parole shall be subject to a parole
15 revocation hearing.

16 1. In any administrative transfer or parole revocation
17 proceeding, the following minimum standards shall apply:

18 a. the juvenile shall have the right to notice of the
19 proposed transfer or parole revocation hearing and the
20 alleged violation of administrative or parole rules on
21 which the proposed transfer or parole revocation is
22 based,

23 b. the juvenile shall have the right to representation by
24 an attorney,

1 c. the juvenile shall have the right to present evidence
2 on behalf of the juvenile, and

3 d. the juvenile shall have a right to bail, except that
4 the right to bail shall not be construed to require
5 that a juvenile who is in residence in an Office-
6 operated institution or other facility at the time of
7 an alleged violation leading to an administrative
8 transfer proceeding be released from such institution
9 or facility.

10 2. The situs of the hearings shall be the county in which the
11 alleged violation of administrative or parole rules occurred or the
12 county of original jurisdiction. The judge having juvenile docket
13 jurisdiction in the county shall aid the administrative transfer or
14 parole revocation process of the Office by:

15 a. determining eligibility for and amount of bail,

16 b. deciding any intermediate custody or placement issue,
17 and

18 c. if legal counsel for the juvenile has not otherwise
19 been obtained, appointing legal counsel for the
20 juvenile and fixing the amount of compensation for the
21 legal counsel. The judge shall also determine if the
22 juvenile is eligible for free legal services. If the
23 juvenile is not eligible for free legal services, the
24

1 court shall order the parents or legal guardian of the
2 juvenile to pay for such services.

3 3. If legal counsel for the juvenile has not otherwise been
4 obtained, the appointment of legal counsel for the juvenile, the
5 setting of the amount of compensation for such counsel, and the
6 determination of whether or not the juvenile is eligible for free
7 legal services shall be provided for pursuant to the Indigent
8 Defense Act; provided, however, in those counties subject to the
9 provisions of Section 138.1 of Title 19 of the Oklahoma Statutes,
10 the legal services shall be provided by the county indigent defender
11 as provided by law. If the juvenile is not eligible for free legal
12 services, the court shall order the parents or legal guardian of the
13 juvenile to pay for such services.

14 C. The Office may participate in federal programs relating to
15 delinquent juveniles, or juveniles in need of supervision, or
16 institutions and services for such juveniles and apply for, receive,
17 use and administer federal funds for such purposes.

18 D. The Office shall receive interest earnings on the investment
19 by the State Treasurer of monies, to be credited to an agency
20 special account, for the benefit of and held in trust for persons
21 placed in the custody of the Office or in residence at institutions
22 or facilities maintained by the Office.

23 SECTION 16. AMENDATORY 21 O.S. 2011, Section 152, is
24 amended to read as follows:

1 Section 152. All persons are capable of committing crimes,
2 except those belonging to the following classes:

3 1. Children under the age of seven (7) years;

4 2. Children over the age of seven (7) years, but under the age
5 of fourteen (14) years, in the absence of proof that at the time of
6 committing the act or neglect charged against them, they knew its
7 wrongfulness;

8 3. Persons who are impaired by reason of ~~mental retardation~~ an
9 intellectual disability upon proof that at the time of committing
10 the act charged against them they were incapable of knowing its
11 wrongfulness;

12 4. Mentally ill persons, and all persons of unsound mind,
13 including persons temporarily or partially deprived of reason, upon
14 proof that at the time of committing the act charged against them
15 they were incapable of knowing its wrongfulness;

16 5. Persons who committed the act, or made the omission charged,
17 under an ignorance or mistake of fact which disproves any criminal
18 intent. But ignorance of the law does not excuse from punishment
19 for its violation;

20 6. Persons who committed the act charged without being
21 conscious thereof; and

22 7. Persons who committed the act, or make the omission charged,
23 while under involuntary subjection to the power of superiors.

24

1 SECTION 17. AMENDATORY 21 O.S. 2011, Section 643, is
2 amended to read as follows:

3 Section 643. To use or to attempt to offer to use force or
4 violence upon or toward the person of another is not unlawful in the
5 following cases:

6 1. When necessarily committed by a public officer in the
7 performance of any legal duty, or by any other person assisting such
8 officer or acting by such officer's direction;

9 2. When necessarily committed by any person in arresting one
10 who has committed any felony, and delivering such person to a public
11 officer competent to receive such person in custody;

12 3. When committed either by the person about to be injured, or
13 by any other person in such person's aid or defense, in preventing
14 or attempting to prevent an offense against such person, or any
15 trespass or other unlawful interference with real or personal
16 property in such person's lawful possession; provided the force or
17 violence used is not more than sufficient to prevent such offense;

18 4. When committed by a parent or the authorized agent of any
19 parent, or by any guardian, master or teacher, in the exercise of a
20 lawful authority to restrain or correct such person's child, ward,
21 apprentice or scholar, provided restraint or correction has been
22 rendered necessary by the misconduct of such child, ward, apprentice
23 or scholar, or by the child's refusal to obey the lawful command of
24 such parent or authorized agent or guardian, master or teacher, and

1 the force or violence used is reasonable in manner and moderate in
2 degree;

3 5. When committed by a carrier of passengers, or the authorized
4 agents or servants of such carrier, or by any person assisting them
5 at their request, in expelling from any carriage, railroad car,
6 vessel or other vehicle, any passenger who refuses to obey a lawful
7 and reasonable regulation prescribed for the conduct of passengers,
8 if such vehicle has first been stopped and the force and violence
9 used is not more than is sufficient to expel the offending
10 passenger, with a reasonable regard to such passenger's personal
11 safety; and

12 6. When committed by any person in preventing a person who is
13 impaired by reason of ~~mental retardation or developmental~~ an
14 intellectual disability as defined by Section 1430.2 of Title 10 of
15 the Oklahoma Statutes, a mentally ill person, insane person or other
16 person of unsound mind, including persons temporarily or partially
17 deprived of reason, from committing an act dangerous to such
18 person's self or to another, or enforcing such restraint as is
19 necessary for the protection of the person or for restoration to
20 health, during such period only as shall be necessary to obtain
21 legal authority for the restraint or custody of the person.

22 SECTION 18. AMENDATORY 21 O.S. 2011, Section 701.10b, is
23 amended to read as follows:

24 Section 701.10b. A. For purposes of this section:

1 1. "~~Mental retardation~~ Intellectual disability" or "~~mentally~~
2 ~~retarded~~ intellectually disabled" means significantly subaverage
3 general intellectual functioning, existing concurrently with
4 significant limitations in adaptive functioning;

5 2. "Significant limitations in adaptive functioning" means
6 significant limitations in two or more of the following adaptive
7 skill areas; communication, self-care, home living, social skills,
8 community use, self-direction, health, safety, functional academics,
9 leisure skills and work skills; and

10 3. "Significantly subaverage general intellectual functioning"
11 means an intelligence quotient of seventy (70) or below.

12 B. Regardless of any provision of law to the contrary, no
13 defendant who is ~~mentally retarded~~ intellectually disabled shall be
14 sentenced to death; provided, however, the onset of the ~~mental~~
15 ~~retardation~~ intellectual disability must have been manifested before
16 the defendant attained the age of eighteen (18) years.

17 C. The defendant has the burden of production and persuasion to
18 demonstrate ~~mental retardation~~ intellectual disability by showing
19 significantly subaverage general intellectual functioning,
20 significant limitations in adaptive functioning, and that the onset
21 of the ~~mental retardation~~ intellectual disability was manifested
22 before the age of eighteen (18) years. An intelligence quotient of
23 seventy (70) or below on an individually administered,
24 scientifically recognized standardized intelligence quotient test

1 administered by a licensed psychiatrist or psychologist is evidence
2 of significantly subaverage general intellectual functioning;
3 however, it is not sufficient without evidence of significant
4 limitations in adaptive functioning and without evidence of
5 manifestation before the age of eighteen (18) years. In determining
6 the intelligence quotient, the standard measurement of error for the
7 test administered shall be taken into account.

8 However, in no event shall a defendant who has received an
9 intelligence quotient of seventy-six (76) or above on any
10 individually administered, scientifically recognized, standardized
11 intelligence quotient test administered by a licensed psychiatrist
12 or psychologist, be considered ~~mentally-retarded~~ intellectually
13 disabled and, thus, shall not be subject to any proceedings under
14 this section.

15 D. A defendant charged with capital murder who intends to raise
16 ~~mental-retardation~~ an intellectual disability as a bar to the death
17 sentence shall provide to the state notice of such intention at
18 least ninety (90) days after formal arraignment or within ninety
19 (90) days after the filing of a bill of particulars, whichever is
20 later. The notice shall include a brief but detailed statement
21 specifying the witnesses, nature and type of evidence sought to be
22 introduced. The notice must demonstrate sufficient facts that
23 demonstrate a good-faith belief as to the ~~mental-retardation~~
24 intellectual disability of the defendant.

1 E. The district court shall conduct an evidentiary hearing to
2 determine whether the defendant is ~~mentally retarded~~ intellectually
3 disabled. If the court determines, by clear and convincing
4 evidence, that the defendant is ~~mentally retarded~~ intellectually
5 disabled, the defendant, if convicted, shall be sentenced to life
6 imprisonment or life without parole. If the district court
7 determines that the defendant is not ~~mentally retarded~~
8 intellectually disabled, the capital trial of the offense may
9 proceed. A request for a hearing under this section shall not waive
10 entitlement by the defendant to submit the issue of ~~mental~~
11 ~~retardation~~ an intellectual disability to a jury during the
12 sentencing phase in a capital trial if convicted of an offense
13 punishable by death. The court's determination on the issue of
14 ~~mental retardation~~ an intellectual disability shall not be the
15 subject of an interlocutory appeal.

16 F. The court shall submit a special issue to the jury as to
17 whether the defendant is ~~mentally retarded~~ intellectually disabled.
18 This special issue shall be considered and answered by the jury
19 during the sentencing stage and prior to the determination of
20 sentence. If the jury unanimously determines that the defendant is
21 ~~mentally retarded~~ intellectually disabled, the defendant may only be
22 sentenced to life imprisonment or life without parole. The
23 defendant has the burden of production and persuasion to demonstrate
24

1 ~~mental retardation~~ an intellectual disability to the jury by a
2 preponderance of the evidence.

3 G. If the jury determines that the defendant is not ~~mentally~~
4 ~~retarded~~ intellectually disabled or is unable to reach a unanimous
5 decision, the jury shall proceed to determine the existence of
6 aggravating and mitigating factors in determining whether the
7 sentence of death shall be imposed. In those deliberations, the
8 jury may consider any evidence of ~~mental retardation~~ an intellectual
9 disability as a mitigating factor in sentencing the defendant.

10 H. If the jury determines that the defendant is not ~~mentally~~
11 ~~retarded~~ intellectually disabled and imposes a death sentence, the
12 trial court shall make findings of fact and conclusions of law
13 relating to the issue of whether the determination on the issue of
14 ~~mental retardation~~ an intellectual disability was made under the
15 influence of passion, prejudice, or any other arbitrary factor. The
16 findings shall be attached as an exhibit to the report of the trial
17 judge required under Section 701.13 of Title 21 of the Oklahoma
18 Statutes. If the trial court finds that the determination of ~~mental~~
19 ~~retardation~~ an intellectual disability was not supported by the
20 evidence, the issue may be raised on appeal to the Oklahoma Court of
21 Criminal Appeals for consideration as part of its mandatory sentence
22 review.

23 I. The standard of review for a trier of fact ~~mental~~
24 ~~retardation~~ intellectual disability determination shall be whether,

1 after reviewing the evidence in the light most favorable to the
2 state, any rational trier of fact could have found the defendant not
3 ~~mentally retarded~~ intellectually disabled as defined by this
4 section, giving full deference to the findings of the trier of fact.

5 J. The court shall give appropriate instructions in those cases
6 in which evidence of the ~~mental retardation~~ intellectual disability
7 of the defendant requires the consideration by the jury of the
8 provisions of this section.

9 SECTION 19. AMENDATORY 21 O.S. 2011, Section 833, is
10 amended to read as follows:

11 Section 833. Every overseer of the poor, constable, keeper of a
12 jail, or other person who confines a person who is impaired by
13 reason of ~~mental retardation or developmental~~ an intellectual
14 disability, as defined by Section 1430.2 of Title 10 of the Oklahoma
15 Statutes, mentally ill person, insane person or other person of
16 unsound mind, in any other manner or in any other place than is
17 authorized by law, is guilty of a misdemeanor.

18 SECTION 20. AMENDATORY 22 O.S. 2011, Section 1161, as
19 last amended by Section 1, Chapter 375, O.S.L. 2017 (22 O.S. Supp.
20 2018, Section 1161), is amended to read as follows:

21 Section 1161. A. 1. An act committed by a person in a state
22 of mental illness or mental defect shall be adjudicated as guilty
23 with mental defect or as not guilty by reason of mental illness.

24

1 2. If a person is found guilty with mental defect or enters a
2 plea of guilty with mental defect which is accepted by the court,
3 the court at the time of sentencing shall impose any sentence that
4 could be imposed by law upon a person who is convicted of the same
5 offense, and the person shall serve the sentence in custody of a
6 county jail or the Oklahoma Department of Corrections.

7 3. If a person who is found guilty with mental defect is placed
8 on probation under the jurisdiction of the sentencing court as
9 provided by law, the court shall immediately issue an order for the
10 person to be examined by the Department of Mental Health and
11 Substance Abuse Services. The time and place of such examination
12 shall be determined by the Department. Within forty-five (45) days,
13 the Department shall provide to the court a recommendation of
14 treatment for the person, which shall be made a condition of
15 probation. Reports as specified by the trial judge shall be filed
16 with the probation officer and the sentencing court. Failure to
17 continue treatment, except by agreement with the treating agency and
18 the sentencing court, is grounds for revocation of probation.
19 Treatment shall be provided by an agency of the Department or, with
20 the approval of the sentencing court and at the expense of the
21 person, by private agencies, private physicians or other mental
22 health personnel. A psychiatric report shall be filed with the
23 probation officer and the sentencing court every six (6) months
24 during the period of probation.

1 4. When in any criminal action by indictment or information,
2 the defense of mental illness is raised, but the defendant is not
3 acquitted on the ground that the defendant was mentally ill at the
4 time of the commission of the crime charged, an issue concerning
5 such defense may be raised on appeal. If the appellate court finds
6 relief is required, the appellate court shall not have authority to
7 modify the judgment or sentence, but will only have the authority to
8 order a new trial or order resentencing without recommendations to
9 sentencing.

10 5. When in any criminal action by indictment or information the
11 defense of mental illness is interposed either singly or in
12 conjunction with some other defense, the jury shall state in the
13 verdict, if it is one of acquittal, whether or not the defendant is
14 acquitted on the ground of mental illness. When the defendant is
15 acquitted on the ground that the defendant was mentally ill at the
16 time of the commission of the crime charged, the person shall not be
17 discharged from custody until the court has made a determination
18 that the person is not dangerous to the public peace and safety and
19 is a person requiring treatment.

20 B. 1. To assist the court in its determination, the court
21 shall immediately issue an order for the person to be examined by
22 the Department of Mental Health and Substance Abuse Services at a
23 facility the Department has designated to examine and treat forensic
24

1 individuals. Upon the issuance of the order, the sheriff shall
2 deliver the person to the designated facility.

3 2. Within forty-five (45) days of the court entering such an
4 order, a hearing shall be conducted by the court to ascertain
5 whether the person is dangerous to the public peace or safety
6 because the person is a person requiring treatment or, if not, is in
7 need of continued supervision as a result of unresolved symptoms of
8 mental illness or a history of treatment noncompliance. During the
9 required period of hospitalization the Department of Mental Health
10 and Substance Abuse Services shall have the person examined by two
11 qualified psychiatrists or one such psychiatrist and one qualified
12 clinical psychologist whose training and experience enable the
13 professional to form expert opinions regarding mental illness,
14 competency, dangerousness and criminal responsibility.

15 C. 1. Each examiner shall, within thirty-five (35) days of
16 hospitalization, individually prepare and submit to the court, the
17 district attorney and the trial counsel of the person a report of
18 the psychiatric examination findings of the person and an evaluation
19 concerning whether the person is dangerous to the public peace or
20 safety.

21 2. If the court is dissatisfied with the reports or if a
22 disagreement on the issue of mental illness and dangerousness exists
23 between the two examiners, the court may designate one or more
24

1 additional examiners and have them submit their findings and
2 evaluations as specified in paragraph 1 of this subsection.

3 3. a. Within ten (10) days after the reports are filed, the
4 court must conduct a hearing to determine the present
5 condition of the person as to the issue of whether:

6 (1) the person is dangerous to the public peace or
7 safety because the person is a person requiring
8 treatment, or

9 (2) if not believed to be dangerous to the public
10 peace or safety, the person is in need of
11 continued supervision as a result of unresolved
12 symptoms of mental illness or a history of
13 treatment noncompliance.

14 b. The district attorney must establish the foregoing by
15 a preponderance of the evidence. At this hearing the
16 person shall have the assistance of counsel and may
17 present independent evidence.

18 D. 1. If the court finds that the person is not dangerous to
19 the public peace or safety because the person is a person requiring
20 treatment and is not in need of continued supervision as a result of
21 unresolved symptoms of mental illness or a history of treatment
22 noncompliance, it shall immediately discharge the person from
23 hospitalization.

24

1 2. If the court finds that the person is dangerous to the
2 public peace and safety, it shall commit the person to the custody
3 of the Department of Mental Health and Substance Abuse Services.
4 The person shall then be subject to discharge pursuant to the
5 procedure set forth in this section.

6 a. During the period of hospitalization, the Department
7 of Mental Health and Substance Abuse Services may
8 administer or cause to be administered to the person
9 such psychiatric, medical or other therapeutic
10 treatment as in its judgment should be administered.

11 b. The person shall be subject to discharge or
12 conditional release pursuant to the procedures set
13 forth in this section.

14 E. If at any time the court finds the person is not dangerous
15 to the public peace or safety because the person is a person
16 requiring treatment, but is in need of continued supervision as a
17 result of unresolved symptoms of mental illness or a history of
18 treatment noncompliance, the court may:

19 1. Discharge the person pursuant to the procedure set forth in
20 this section;

21 2. Discharge the person, and upon the motion of the court or
22 the district attorney commence civil involuntary commitment
23 proceedings against the person pursuant to the provisions of Title
24 43A of the Oklahoma Statutes; or

1 3. Order conditional release, as set forth in subsection F of
2 this section.

3 F. There is hereby created a Forensic Review Board to be
4 composed of seven (7) members appointed by the Governor with the
5 advice and consent of the Senate. The Board members shall serve for
6 a term of five (5) years except that for members first appointed to
7 the Board: one shall serve for a term ending December 31, 2008, two
8 shall serve for a term ending December 31, 2009, two shall serve a
9 term ending December 31, 2010, and two shall serve for a term ending
10 December 31, 2011.

11 1. The Board shall be composed of:

- 12 a. four licensed mental health professionals with
13 experience in treating mental illness, at least one of
14 whom is licensed as a Doctor of Medicine, a Doctor of
15 Osteopathy, or a licensed clinical psychologist and
16 shall be appointed from a list of seven names
17 submitted to the Governor by the Department of Mental
18 Health and Substance Abuse Services,
- 19 b. one member who shall be an attorney licensed to
20 practice in this state and shall be appointed from a
21 list of not less than three names submitted to the
22 Governor by the Board of Governors of the Oklahoma Bar
23 Association,

- 1 c. one member who shall be a retired judge licensed to
2 practice in this state and shall be appointed from a
3 list of not less than three names submitted to the
4 Governor by the Judicial Nominating Committee, and
5 d. one at-large member.

6 The attorney and retired judge members of the Board shall be
7 prohibited from representing in the courts of this state persons
8 charged with felony offenses while serving on the Board.

9 2. The Board shall meet as necessary to determine which
10 individuals confined with the Department of Mental Health and
11 Substance Abuse Services are eligible for therapeutic visits,
12 conditional release or discharge and whether the Board wishes to
13 make such a recommendation to the court of the county where the
14 individual was found not guilty by reason of insanity or not guilty
15 by reason of mental illness for those persons adjudicated as such
16 upon or after ~~the effective date of this act~~ November 1, 2016.

- 17 a. Forensic Review Board meetings shall not be considered
18 subject to the Oklahoma Open Meeting Act and are not
19 open to the public. Other than the Forensic Review
20 Board members, only the following individuals shall be
21 permitted to attend Board meetings:

- 22 (1) the individual the Board is considering for
23 therapeutic visits, conditional release or
24

1 discharge, his or her treatment advocate, and
2 members of his or her treatment team,

3 (2) the Commissioner of Mental Health and Substance
4 Abuse Services or designee,

5 (3) the Advocate General for the Department of Mental
6 Health and Substance Abuse Services or designee,

7 (4) the General Counsel for the Department of Mental
8 Health and Substance Abuse Services or designee,

9 and

10 (5) any other persons the Board and Commissioner of
11 Mental Health and Substance Abuse Services wish
12 to be present.

13 b. The Department of Mental Health and Substance Abuse
14 Services shall provide administrative staff to the
15 Board to take minutes of meetings and prepare
16 necessary documents and correspondence for the Board
17 to comply with its duties as set forth in this
18 section. The Department of Mental Health and
19 Substance Abuse Services shall also transport the
20 individuals being reviewed to and from the Board
21 meeting site.

22 c. The Board shall promulgate rules concerning the
23 granting and structure of therapeutic visits,
24 conditional releases and discharge.

1 d. For purposes of this subsection, "therapeutic visit"
2 means a scheduled time period off campus which
3 provides for progressive tests of the ability of the
4 consumer to maintain and demonstrate coping skills.

5 3. The Forensic Review Board shall submit any recommendation
6 for therapeutic visit, conditional release or discharge to the court
7 and district attorney of the county where the person was found not
8 guilty by reason of mental illness, the trial counsel of the person,
9 the Department of Mental Health and Substance Abuse Services and the
10 person at least fourteen (14) days prior to the scheduled visit.

11 a. The district attorney may file an objection to a
12 recommendation for a therapeutic visit within ten (10)
13 days of receipt of the notice.

14 b. If an objection is filed, the therapeutic visit is
15 stayed until a hearing is held. The court shall hold
16 a hearing not less than ten (10) days following an
17 objection to determine whether the therapeutic visit
18 is necessary for treatment, and if necessary, the
19 nature and extent of the visit.

20 4. During the period of hospitalization the Department of
21 Mental Health and Substance Abuse Services shall submit an annual
22 report on the status of the person to the court, the district
23 attorney and the patient advocate general of the Department of
24 Mental Health and Substance Abuse Services.

1 G. Upon motion by the district attorney or upon a
2 recommendation for conditional release or discharge by the Forensic
3 Review Board, the court shall conduct a hearing to ascertain if the
4 person is dangerous and a person requiring treatment. This hearing
5 shall be conducted under the same procedure as the first hearing and
6 must occur not less than ten (10) days following the motion or
7 request by the Forensic Review Board.

8 1. If the court determines that the person continues to be
9 dangerous to the public peace and safety because the person is a
10 person requiring treatment, it shall order the return of the person
11 to the hospital for additional treatment.

12 2. If the court determines that the person is not dangerous but
13 subject to certain conditions, the court may conditionally release
14 the person subject to the following:

- 15 a. the Forensic Review Board has made a recommendation
16 for conditional release, including a written plan for
17 outpatient treatment and a list of recommendations for
18 the court to place as conditions on the release,
- 19 b. in its order of conditional release, the court shall
20 specify conditions of release and shall direct the
21 appropriate agencies or persons to submit annual
22 reports regarding the compliance of the person with
23 the conditions of release and progress in treatment,

24

- 1 c. the person must agree, in writing, that during the
2 period the person is granted conditional release and
3 is subject to the provisions thereof, there shall be
4 free transmission of all pertinent information,
5 including clinical information regarding the person,
6 among the Department of Mental Health and Substance
7 Abuse Services, the appropriate community mental
8 health centers and the appropriate district attorneys,
9 law enforcement and court personnel,
- 10 d. the order of the court placing the person on
11 conditional release shall include notice that the
12 conditional release of the person may be revoked upon
13 good cause. The person placed on conditional release
14 shall remain under the supervision of the Department
15 of Mental Health and Substance Abuse Services until
16 the committing court enters a final discharge order.
17 The Department of Mental Health and Substance Abuse
18 Services shall assess the person placed on conditional
19 release annually and shall have the authority to
20 recommend discharge of the person to the Board, and
- 21 e. any agency or individual involved in providing
22 treatment with regard to the conditional release plan
23 of the person may prepare and file an affidavit under
24 oath if the agency or individual believes that the

1 person has failed to comply with the conditions of
2 release or that such person has progressed to the
3 point that inpatient care is appropriate.

4 (1) Any peace officer who receives such an affidavit
5 shall take the person into protective custody and
6 return the person to the forensic unit of the
7 state hospital.

8 (2) A hearing shall be conducted within three (3)
9 days, excluding holidays and weekends, after the
10 person is returned to the forensic unit of the
11 state hospital to determine if the person has
12 violated the conditions of release, or if full-
13 time hospitalization is the least restrictive
14 alternative consistent with the needs of the
15 person and the need for public safety. Notice of
16 the hearing shall be issued, at least twenty-four
17 (24) hours before the hearing, to the hospital
18 superintendent, the person, trial counsel for the
19 person, and the patient advocate general of the
20 Department of Mental Health and Substance Abuse
21 Services. If the person requires hospitalization
22 because of a violation of the conditions of
23 release or because of progression to the point
24

1 that inpatient care is appropriate, the court may
2 then modify the conditions of release.

3 3. If the court determines that the person is not dangerous to
4 the public peace or safety because the person is not a person
5 requiring treatment, it shall order that the person be discharged
6 from the custody of the Department of Mental Health and Substance
7 Abuse Services.

8 H. As used in this section:

9 1. "Antisocial personality disorder" means antisocial
10 personality disorder as defined by the Diagnostic and Statistical
11 Manual of Mental Disorders, 5th Edition (DSM-5), or subsequent
12 editions;

13 2. "Court" or "sentencing court" means the court sitting in the
14 county where the person has been found to be not guilty by reason of
15 mental illness or guilty with mental defect;

16 3. "Dangerous" means a person who because of mental illness
17 poses a substantial risk of physical harm in the near future to
18 another person or persons. Dangerousness shall be determined by
19 such factors as whether the person has placed another person or
20 persons in a reasonable fear of violent behavior, and medication and
21 treatment compliance;

22 4. "Guilty with mental defect" means the person committed the
23 act and was either unable to understand the nature and consequences
24 of his or her actions or was unable to differentiate right from

1 wrong, and has been diagnosed with antisocial personality disorder
2 which substantially contributed to the act for which the person has
3 been charged;

4 5. "Mental defect" means the person has been diagnosed with
5 antisocial personality disorder which substantially contributed to
6 the act for which the person has been charged;

7 6. "Mental illness" means a substantial disorder of thought,
8 mood, perception, psychological orientation or memory that
9 significantly impairs judgment, behavior, capacity to recognize
10 reality or ability to meet the ordinary demands of life;

11 7. "Not guilty by reason of mental illness" means the person
12 committed the act while mentally ill and was either unable to
13 understand the nature and consequences of his or her actions or was
14 unable to differentiate right from wrong, and has not been diagnosed
15 with antisocial personality disorder which substantially contributed
16 to the act for which the person has been charged; and

17 8. a. "Person requiring treatment" means a person who because
18 of mental illness:

19 (1) poses a substantial risk of physical harm to self
20 as manifested by evidence or serious threats of
21 or attempts at suicide or other significant self-
22 inflicted bodily harm,

23 (2) poses a substantial risk of physical harm to
24 another person or persons as manifested by

1 evidence of violent behavior directed toward
2 another person or persons,

3 (3) has placed another person or persons in
4 reasonable fear of serious physical harm or
5 violent behavior directed toward such person or
6 persons as manifested by serious and immediate
7 threats,

8 (4) is in a condition of severe deterioration such
9 that, without immediate intervention, there
10 exists a substantial risk that severe impairment
11 or injury will result to the person, or

12 (5) poses a substantial risk of serious physical
13 injury to self or death as manifested by evidence
14 that the person is unable to provide for and is
15 not providing for his or her basic physical
16 needs.

17 b. The mental health or substance abuse history of the
18 person may be used as part of the evidence to
19 determine whether the person is a person requiring
20 treatment. The mental health or substance abuse
21 history of the person shall not be the sole basis for
22 this determination.
23
24

1 c. Unless a person also meets the criteria established in
2 subparagraph a of this paragraph, "person requiring
3 treatment" shall not mean:

4 (1) a person whose mental processes have been
5 weakened or impaired by reason of advanced years,
6 dementia or Alzheimer's disease,

7 (2) ~~a mentally retarded or developmentally~~ an
8 intellectually disabled person as defined in
9 Title 10 of the Oklahoma Statutes,

10 (3) a person with seizure disorder, or

11 (4) a person with a traumatic brain injury.

12 I. Proceedings hereunder may be held in conformance with the
13 provisions of Section 3006 of Title 20 of the Oklahoma Statutes for
14 allowable use of videoconferencing.

15 SECTION 21. AMENDATORY 22 O.S. 2011, Section 1175.3, as
16 amended by Section 1, Chapter 300, O.S.L. 2015 (22 O.S. Supp. 2018,
17 Section 1175.3), is amended to read as follows:

18 Section 1175.3. A. Upon filing of an application for
19 determination of competency, the court shall set a hearing date,
20 which shall be as soon as practicable, but at least one (1) day
21 after service of notice as provided by Section 1175.2 of this title.

22 B. The court shall hold a hearing on the date provided. At the
23 hearing, the court shall examine the application for determination
24 of competency to determine if it alleges facts sufficient to raise a

1 doubt as to the competency of the person. Any additional evidence
2 tending to create a doubt as to the competency of the person may be
3 presented at this hearing.

4 C. If the court finds there is no doubt as to the competency of
5 the person, it shall order the criminal proceedings to resume.

6 D. 1. a. If the court finds there is a doubt as to the
7 competency of the person, it shall order the person to
8 be examined by the Department of Mental Health and
9 Substance Abuse Services or by a qualified forensic
10 examiner designated by the Department to perform
11 competency examinations.

12 b. In addition, the Developmental Disabilities Services
13 Division of the Department of Human Services shall
14 receive written notice from the district attorney who
15 filed the criminal petition, and be authorized by
16 order of the court to have a psychologist or other
17 appropriate clinician participate with professionals
18 assigned by any other public or private agency in any
19 competency evaluation wherein ~~mental retardation or~~
20 ~~other developmental~~ an intellectual disability may be
21 involved. The psychologist or clinician employed, by
22 contract or otherwise, by the Department of Human
23 Services may issue a separate opinion and
24 recommendation to the court.

1 2. The person shall be examined by a qualified forensic
2 examiner on an outpatient basis prior to referral for any necessary
3 inpatient evaluation, as ordered by the court. The outpatient
4 examination may be conducted in the community, the jail or detention
5 facility where the person is held.

6 3. If the court determines that the person whose competency is
7 in question may be dangerous as defined in Section 1175.1 of this
8 title, it shall order the person retained in a secure facility until
9 the completion of the competency hearing provided in Section 1175.4
10 of this title. If the court determines the person may be dangerous
11 as defined in Section 1175.1 of this title because the individual is
12 a person requiring treatment as defined in Section 1-103 of Title
13 43A of the Oklahoma Statutes, it may commit the person to the
14 custody of the Department of Mental Health and Substance Abuse
15 Services or any other state agency or private facility for the
16 examination required by this subsection. The person shall be
17 required to undergo examination for a period of time sufficient for
18 the qualified forensic examiner(s) to reach a conclusion as to
19 competency, and the court shall impose a reasonable time limitation
20 for such period of examination.

21 E. The qualified forensic examiner(s) shall receive
22 instructions that they shall examine the patient to determine:

23 1. If the person is able to appreciate the nature of the
24 charges made against such person;

1 2. If the person is able to consult with the lawyer and
2 rationally assist in the preparation of the defense of such person;

3 3. If the person is unable to appreciate the nature of the
4 charges or to consult and rationally assist in the preparation of
5 the defense, whether the person can attain competency within a
6 reasonable period of time as defined in Section 1175.1 of this title
7 if provided with a course of treatment, therapy or training;

8 4. If the person is a person requiring treatment as defined by
9 Section 1-103 of Title 43A of the Oklahoma Statutes;

10 5. If the person is incompetent because the person is ~~mentally~~
11 ~~retarded~~ intellectually disabled as defined in Section 1408 of Title
12 10 of the Oklahoma Statutes;

13 6. If the answers to questions 4 and 5 are no, why the
14 defendant is incompetent; and

15 7. If the person were released, whether such person would
16 presently be dangerous as defined in Section 1175.1 of this title.

17 F. Upon completion of the competency evaluation, the Department
18 of Mental Health and Substance Abuse Services or qualified forensic
19 examiner designated by the Department to perform competency
20 examinations shall notify the court of its findings. If the person
21 is in the custody of the Department of Mental Health and Substance
22 Abuse Services, the person shall be returned to the court in the
23 customary manner within five (5) business days. If the person is
24 not returned within that time, the county in which the proceedings

1 are to be held shall pay the costs of maintaining the person at the
2 institution or facility for the period of time the person remains at
3 the institution or facility in excess of the five-day period.

4 SECTION 22. AMENDATORY 22 O.S. 2011, Section 1175.5, is
5 amended to read as follows:

6 Section 1175.5. The jury or the court, as the case may be,
7 shall answer the following questions in determining the disposition
8 of the person whose competency is in question:

9 1. Is the person incompetent to undergo further criminal
10 proceedings at this time? If the answer is no, criminal proceedings
11 shall be resumed. If the answer is yes, the following questions
12 shall be answered.

13 2. Can the incompetency of the person be corrected within a
14 reasonable period of time, as defined by Section 1175.1 of this
15 title, through treatment, therapy or training?

16 3. Is the person incompetent because the person is ~~mentally~~
17 ~~retarded~~ intellectually disabled as defined in Section 1408 of Title
18 10 of the Oklahoma Statutes?

19 4. Is the person incompetent because the person is a person
20 requiring treatment as defined by Section 1-103 of Title 43A of the
21 Oklahoma Statutes?

22 5. If the answers to questions 3 and 4 are no, why is the
23 defendant incompetent?
24

1 6. Is the person presently dangerous as defined in Section
2 1175.1 of this title if released?

3 SECTION 23. AMENDATORY 22 O.S. 2011, Section 1175.6, is
4 amended to read as follows:

5 Section 1175.6. A. Upon the finding by the jury or the court
6 as provided by Section 1175.5 of this title, the court shall issue
7 the appropriate order regarding the person as follows:

8 1. If the person is found to be competent, the criminal
9 proceedings shall be resumed;

10 2. If the person is found to be incompetent because the person
11 is a person requiring treatment as defined in Title 43A of the
12 Oklahoma Statutes, the court shall issue the appropriate order as
13 set forth in Section ~~6~~ 1175.6a of this ~~act~~ title;

14 3. If the person is found to be incompetent because the person
15 is ~~mentally retarded~~ intellectually disabled as defined in Section
16 1408 of Title 10 of the Oklahoma Statutes, the court shall issue the
17 appropriate order as set forth in Section ~~7~~ 1175.6b of this ~~act~~
18 title; and

19 4. If the person is found to be incompetent for reasons other
20 than the person is a person requiring treatment as defined by
21 Section 1-103 of Title 43A of the Oklahoma Statutes, or for reasons
22 other than the person is ~~mentally retarded~~ intellectually disabled
23 as defined in Section 1408 of Title 10 of the Oklahoma Statutes, the
24

1 court shall issue the appropriate order as set forth in Section 8
2 1175.6c of this ~~act~~ title.

3 SECTION 24. AMENDATORY 22 O.S. 2011, Section 1175.6a, as
4 last amended by Section 2, Chapter 290, O.S.L. 2018 (22 O.S. Supp.
5 2018, Section 1175.6a), is amended to read as follows:

6 Section 1175.6a. A. If the person is found to be incompetent
7 prior to conviction because he or she is a person requiring
8 treatment as defined in Section 1-103 of Title 43A of the Oklahoma
9 Statutes, but capable of achieving competence with treatment within
10 a reasonable period of time as defined by Section 1175.1 of this
11 title, the court shall suspend the criminal proceedings and order
12 the Department of Mental Health and Substance Abuse Services to
13 provide treatment, therapy or training which is calculated to allow
14 the person to achieve competency. The Department may designate a
15 willing entity to provide such competency restoration services on
16 behalf of the Department, provided the entity has qualified
17 personnel. The court shall further order the Department to take
18 custody of the individual as soon as a forensic bed becomes
19 available, unless both the Department and the county jail where the
20 person is being held determine that it is in the best interests of
21 the person to remain in the county jail. Such competency
22 restoration services shall begin within a reasonable period of time
23 after the court has determined that the person is not competent to
24 stand trial.

1 The person shall remain in the custody of the county jail until
2 such time as the Department has a bed available at the forensic
3 facility unless competency restoration services are provided by a
4 designee of the Department, in which case custody of the person
5 shall be transferred to the Department.

6 B. The Department of Mental Health and Substance Abuse Services
7 or designee shall make periodic reports to the court as to the
8 competency of the defendant.

9 C. If the person is determined by the Department of Mental
10 Health and Substance Abuse Services or designee to have regained
11 competency, or is no longer incompetent because the person is a
12 person requiring treatment as defined by Title 43A of the Oklahoma
13 Statutes, a hearing shall be scheduled within twenty (20) days:

14 1. If found competent by the court or a jury after such
15 rehearing, criminal proceedings shall be resumed;

16 2. If the person is found to continue to be incompetent because
17 the person is a person requiring treatment as defined in Title 43A
18 of the Oklahoma Statutes, the person shall be returned to the
19 custody of the Department of Mental Health and Substance Abuse
20 Services or designee;

21 3. If the person is found to be incompetent because the person
22 is ~~mentally retarded~~ intellectually disabled as defined by Title 10
23 of the Oklahoma Statutes, the court shall issue the appropriate
24 order as set forth in Section 1175.6b of this title;

1 4. If the person is found to be incompetent for reasons other
2 than the person is a person requiring treatment as defined by Title
3 43A of the Oklahoma Statutes, and other than the person is ~~mentally~~
4 ~~retarded~~ intellectually disabled as defined in Title 10 of the
5 Oklahoma Statutes, and is also found to be not dangerous as defined
6 by Section 1175.1 of this title, the court shall issue the

7 appropriate order as set forth in Section 1175.6b of this title; or

8 5. If the person is found to be incompetent for reasons other
9 than the person is a person requiring treatment as defined by Title
10 43A of the Oklahoma Statutes, and other than the person is ~~mentally~~
11 ~~retarded~~ intellectually disabled as defined in Title 10 of the
12 Oklahoma Statutes, but is also found to be dangerous as defined by
13 Section 1175.1 of this title, the court shall issue the appropriate
14 order as set forth in Section 1175.6c of this title.

15 D. If the person is found to be incompetent because the person
16 is a person requiring treatment as defined by Section 1-103 of Title
17 43A of the Oklahoma Statutes, but not capable of achieving
18 competence with treatment within a reasonable period of time as
19 defined by Section 1175.1 of this title, the court shall commence
20 civil commitment proceedings pursuant to Title 43A and shall dismiss
21 without prejudice the criminal proceeding. If the person is
22 subsequently committed to the Department of Mental Health and
23 Substance Abuse Services pursuant to Title 43A, the statute of
24 limitations for the criminal charges which were dismissed by the

1 court shall be tolled until the person is discharged from the
2 Department of Mental Health and Substance Abuse Services pursuant to
3 Section 7-101 of Title 43A of the Oklahoma Statutes.

4 SECTION 25. AMENDATORY 22 O.S. 2011, Section 1175.6b, is
5 amended to read as follows:

6 Section 1175.6b. A. If the person is found to be incompetent
7 primarily because the person is ~~mentally retarded~~ intellectually
8 disabled as defined in Section 1408 of Title 10 of the Oklahoma
9 Statutes, and is also found by the court to be dangerous as defined
10 by Section 1175.1 of this Title, the court shall suspend the
11 criminal proceedings, and shall place the person into the custody of
12 the Office of Public Guardian. The Office of Public Guardian shall
13 act with all powers set forth in the Oklahoma Public Guardianship
14 Act, and:

15 1. The Office of Public Guardian shall place any person placed
16 in its custody under this title in a facility or residential
17 setting, private or public, willing to accept the individual and
18 that has a level of supervision and security that is appropriate to
19 the needs of the person;

20 2. Such placements shall be within the sole discretion of the
21 Office of Public Guardian;

22 3. All such placements made by the Office of Public Guardian
23 shall be made within six (6) months of the date of the order
24 awarding custody to the Office of Public Guardian;

1 4. The Office of Public Guardian shall report to the court at
2 least every six (6) months as to the status of the person including,
3 but not limited to, the type of placement, services provided, level
4 of supervision, the medical and psychological health of the person,
5 whether the person would be dangerous if conditionally released into
6 a nonsecure environment, the assistance and services that would be
7 required for such conditional release and whether the person has
8 achieved competency;

9 5. If the person is determined by the Office of Public Guardian
10 to have regained competency or that conditional release to a private
11 guardian or other caretaker is appropriate, a hearing shall be
12 scheduled within twenty (20) days. If found competent by the court
13 or a jury after such rehearing, criminal proceedings shall be
14 resumed. If the court finds conditional release to be appropriate,
15 the court shall make an appropriate order for conditional release;
16 and

17 6. The provisions of subsections C, H and I of Section 6-101 of
18 Title 30 of the Oklahoma Statutes shall not apply to custody orders
19 arising under this title.

20 B. If the person is found to be incompetent for reasons other
21 than the person is a person requiring treatment as defined by
22 Section 1-103 of Title 43A of the Oklahoma Statutes and is found to
23 be not dangerous as defined by Section 1175.1 of this title, the
24 court shall suspend the criminal proceedings and either refer the

1 person to the Department of Human Services for consideration of
2 voluntary assistance or conditionally release the person as set
3 forth in this section.

4 1. For any person recommended for conditional release, a
5 written plan for services shall be prepared by the Department of
6 Human Services and filed with the court. In its order of
7 conditional release, the court shall specify the conditions of
8 release and shall direct the appropriate agencies or persons to
9 submit annual reports regarding the person's compliance with the
10 conditions of release and progress:

11 a. to be eligible for conditional release, the person
12 shall agree, in writing, that during the period the
13 person is granted conditional release and is subject
14 to the provisions thereof, there shall be free
15 transmission of all pertinent information, including
16 clinical information regarding the person, among the
17 person's treatment providers, the appropriate district
18 attorneys, law enforcement and court personnel. To
19 affect this agreement, the person shall execute any
20 releases required by law to allow for the
21 dissemination of this information,

22 b. the court's order placing the person on conditional
23 release shall include notice that the person's
24 conditional release may be revoked upon good cause,

1 c. the district attorney, as well as any agency or
2 individual involved in providing services with regard
3 to the person's conditional release, may prepare and
4 file an affidavit under oath if the district attorney,
5 agency, or individual believes that the person has
6 failed to comply with the conditions of release. The
7 court shall then conduct a hearing to determine if the
8 person has violated the conditions of release. Notice
9 of the hearing shall be issued, at least twenty-four
10 (24) hours before the hearing, to the Department of
11 Human Services, the person, trial counsel for the
12 person, and the client advocate general of the
13 Department of Human Services. After reviewing the
14 evidence concerning any alleged violation of the
15 conditions of the release, the person's progress,
16 treatment alternatives, and the need for public
17 safety, the court may order no change to the
18 conditions for the person's release or modify the
19 conditions of release, and

20 d. the person placed on conditional release shall remain
21 in a conditional release status until the reviewing
22 court issues a full release from all conditions.
23
24

1 2. If the person is determined by the Department of Human
2 Services to have regained competency, a hearing shall be scheduled
3 within twenty (20) days:

4 a. if found competent by the court or a jury after such
5 rehearing, criminal proceedings shall be resumed,

6 b. if the person is found to continue to be incompetent,
7 the person shall be returned to either conditional
8 release or referred to the Department of Human
9 Services for consideration of voluntary assistance.

10 SECTION 26. AMENDATORY 22 O.S. 2011, Section 1175.6c, is
11 amended to read as follows:

12 Section 1175.6c. A. If the person is found to be incompetent
13 for reasons other than the person is a person requiring treatment as
14 defined by Title 43A of the Oklahoma Statutes, or the person is
15 ~~mentally retarded~~ intellectually disabled as defined by Title 10 of
16 the Oklahoma Statutes, but is also found to be dangerous as defined
17 by Section 1175.1 of this title, the court shall suspend the
18 criminal proceedings and refer the matter to the Department of Human
19 Services and Department of Mental Health and Substance Abuse
20 Services for determination of appropriate placement.

21 B. The Department of Human Services and the Department of
22 Mental Health and Substance Abuse Services shall jointly establish
23 procedures by ~~the effective date of this act~~ April 1, 2005, to
24 determine the appropriate placement of individuals who are found to

1 be incompetent to stand trial for reasons other than the person is a
2 person requiring treatment as defined by Title 43A of the Oklahoma
3 Statutes, or the person is ~~mentally retarded~~ intellectually disabled
4 as defined by Title 10 of the Oklahoma Statutes. Both agencies
5 shall then submit their joint recommendation to the court for
6 determination of appropriate placement.

7 SECTION 27. AMENDATORY 25 O.S. 2011, Section 40, is
8 amended to read as follows:

9 Section 40. A. ~~Beginning November 1, 2006, all~~ All new and
10 revised statutes, administrative rules, local laws, ordinances,
11 charters, or regulations promulgated or any publication published by
12 the state or any political subdivision that refers to persons with
13 disabilities shall:

14 1. Avoid language that:

- 15 a. implies that a person as a whole is disabled, such as
16 the "mentally ill" or the "learning disabled", or
17 b. equates persons with their condition, such as
18 "epileptics", "autistics", or "quadriplegics"; and

19 2. Replace nonrespectful language by:

- 20 a. referring to persons with disabilities as persons
21 first; for example, persons with disabilities, ~~persons~~
22 ~~with developmental disabilities~~, persons with mental
23 illness, persons with autism, or persons with ~~mental~~
24 ~~retardation~~ intellectual disabilities, and

1 b. referring to terms such as "mental retardation" or
2 "mentally retarded" with terms such as "intellectual
3 disabilities" or "intellectually disabled".

4 B. Violation of this section shall not be grounds to invalidate
5 any new or revised statutes, administrative rules, local laws,
6 ordinances, charters, or regulations promulgated or any publication
7 published by the state or any political subdivision; provided,
8 however, such documents shall be changed to reflect the provisions
9 of this section in subsequent revisions.

10 C. Nothing in this section shall constitute a requirement to
11 change the name of any agency or program. Existing printed material
12 may be utilized until such time as supplies are required to be
13 replenished.

14 SECTION 28. AMENDATORY 30 O.S. 2011, Section 1-111, is
15 amended to read as follows:

16 Section 1-111. A. As used in the Oklahoma Guardianship and
17 Conservatorship Act:

18 1. "Abuse" means the intentional infliction of physical pain,
19 injury, or mental anguish or the deprivation of food, clothing,
20 shelter, or medical care to an incapacitated person, partially
21 incapacitated person, or a minor by a guardian or other person
22 responsible for providing these services;

23 2. "Confidential information" means medical records, physical,
24 psychological or other evaluations of a ward or subject of the

1 proceeding, initial and subsequent guardianship plans, reports of
2 guardians, limited guardians and conservators submitted to the court
3 in connection with a proceeding pursuant to the provisions of the
4 Oklahoma Guardianship and Conservatorship Act;

5 3. "Court" means a judge of the district court assigned to hear
6 probate matters or assigned to the division of the district court
7 designated to exercise probate jurisdiction;

8 4. "Estate" means the property of the person whose affairs are
9 subject to a guardianship proceeding;

10 5. "Evaluation" means a professional assessment of:

11 a. the ability of an adult to receive and evaluate
12 information effectively or communicate decisions,

13 b. the impact of any impairment of these skills on the
14 capacity of the individual to meet the essential
15 requirements for his physical health or safety, or to
16 manage his financial resources, and

17 c. the services necessary to provide for the ward;

18 6. "Exploitation" means an unjust or improper use of the
19 resources of an incapacitated person, a partially incapacitated
20 person, or a minor for the profit or advantage, pecuniary or
21 otherwise, of a person other than an incapacitated person, a
22 partially incapacitated person, or a minor through the use of undue
23 influence, coercion, harassment, duress, deception, false
24 representation, or false pretense;

1 7. A "guardian of an incapacitated person" means a person who
2 has been appointed by a court to serve as the guardian of an
3 incapacitated person to assure that the essential requirements for
4 the health and safety of ~~said~~ the person are met, to manage the
5 estate or financial resources of ~~said~~ the person, or both;

6 8. "Guardian ad litem" means, with respect to a guardianship
7 proceeding, a person appointed by the court to assist the subject of
8 the proceeding in making decisions with regard to the guardianship
9 proceeding, or to make ~~said~~ the decisions when the subject of the
10 proceeding is wholly incapable of making ~~said~~ the decisions even
11 with assistance;

12 9. "Guardianship plan" means the plan for the care and
13 treatment of a ward, the plan for the management of the financial
14 resources of a ward, or both;

15 10. "Guardianship proceeding" means a proceeding for the
16 appointment of a guardian, or for other orders regarding the
17 condition, care or treatment or for the management of the financial
18 resources of a ward;

19 11. "Guardianship report" means any report required by the
20 provisions of Sections 4-305 and 4-306 of this title;

21 12. "Incapacitated person" means a person eighteen (18) years
22 of age or older:

23 a. who is impaired by reason of:

24

- 1 (1) mental illness as defined by Section 1-103 of
- 2 Title 43A of the Oklahoma Statutes,
- 3 (2) ~~mental retardation or developmental~~ intellectual
- 4 disability as defined by Section ~~1-818.2 of Title~~
- 5 ~~63~~ 1430.2 of Title 10 of the Oklahoma Statutes,
- 6 (3) physical illness or disability,
- 7 (4) drug or alcohol dependency as defined by Section
- 8 3-403 of Title 43A of the Oklahoma Statutes, or
- 9 (5) such other similar cause, and

10 b. whose ability to receive and evaluate information
11 effectively or to make and to communicate responsible
12 decisions is impaired to such an extent that ~~said~~ the
13 person:

- 14 (1) lacks the capacity to meet essential requirements
- 15 for his physical health or safety, or
- 16 (2) is unable to manage his financial resources.

17 Whenever in the Oklahoma Statutes the term "incompetent person"
18 appears and refers to a person who has been found by a district
19 court to be an incompetent person because of an impairment or
20 condition described in this paragraph it shall have the same meaning
21 as "incapacitated person" but shall not include a person who is a
22 partially incapacitated person;

23 13. "Least restrictive dispositional alternative" means the
24 form of assistance that least interferes with the legal ability of

1 an incapacitated or partially incapacitated person to act in his own
2 behalf;

3 14. "Intangible personal property" means cash, stocks and
4 bonds, mutual funds, money market accounts, certificates of deposit,
5 insurance contracts, commodity accounts, and other assets of a
6 similar nature;

7 15. "Letters" means a document issued by the court subsequent
8 to the appointment of a guardian which designates the name of the
9 guardian and specifies the authority and powers of ~~said~~ the
10 guardian. Such document shall be endorsed thereon with the oath of
11 the guardian that he will perform the duties of his office as
12 guardian according to law;

13 16. A "limited guardian" means a person appointed by the court
14 to serve as the guardian of a partially incapacitated person and who
15 is authorized by the court to exercise only:

16 a. some of the powers of a guardian of the person or
17 whose power as guardian of the person extends only to
18 certain matters pertaining to the care or control of
19 the ward as specified by the court, or

20 b. certain powers as guardian of the property over the
21 estate or financial resources of the ward, or whose
22 powers as guardian of the property extend only to some
23 portion of the estate or financial resources of the
24 ward;

1 17. "Manage financial resources" or "manage the estate" means
2 those actions necessary to obtain, administer, and dispose of real
3 property, business property, benefits and income, and to otherwise
4 manage personal financial or business affairs;

5 18. "Meet the essential requirements for physical health or
6 safety" means those actions necessary to provide the health care,
7 food, shelter, clothing, personal hygiene and other care without
8 which serious physical injury is more likely than not to occur;

9 19. "Minor" means a person under eighteen (18) years of age;

10 20. "Neglect" means the failure to provide protection for an
11 incapacitated person, a partially incapacitated person, or a minor
12 who is unable to protect the person's own interest; or the failure
13 to provide adequate shelter or clothing; or the harming or
14 threatening with harm through action or inaction by either another
15 individual or through the person's own action or inaction because of
16 a lack of awareness, incompetence, or incapacity, which has resulted
17 or may result in physical or mental injury;

18 21. "Organization" means a corporation, trust, business trust,
19 partnership, association, or other legal entity;

20 22. "Partially incapacitated person" means an incapacitated
21 person whose impairment is only to the extent that without the
22 assistance of a limited guardian ~~said~~ the person is unable to:

- 23 a. meet the essential requirements for his physical
24 health or safety, or

1 b. manage all of his financial resources or to engage in
2 all of the activities necessary for the effective
3 management of his financial resources.

4 A finding that an individual is a partially incapacitated person
5 shall not constitute a finding of legal incompetence. A partially
6 incapacitated person shall be legally competent in all areas other
7 than the area or areas specified by the court in its dispositional
8 or subsequent orders. Such person shall retain all legal rights and
9 abilities other than those expressly limited or curtailed in ~~said~~
10 the orders;

11 23. "Party" means the person or entity filing a petition,
12 application, motion, acceptance of a testamentary nomination, or
13 objection; the subject of a guardianship proceeding; and the
14 guardian, the guardian ad litem and the conservator, if any such
15 persons have been appointed;

16 24. "Person" means an individual;

17 25. "Property" means real property, personal property, income,
18 any interest in such real or personal property and includes anything
19 that may be the subject of ownership;

20 26. "Restrictions on the legal capacity of a person to act in
21 his own behalf" means powers of an incapacitated or partially
22 incapacitated person which are assigned to a guardian;

23 27. "Subject of the proceeding" means a minor or an adult:
24

- a. who is the subject of a petition requesting the appointment of a guardian, limited guardian or special guardian,
- b. for whom a guardian or limited guardian has been appointed by the court, or
- c. an adult for whom a conservator is requested or appointed; and

28. "Surcharge" means the imposition of personal liability by a court on a guardian or limited guardian for willful or negligent misconduct in the administration of the estate or other financial resources of a ward.

B. 1. Nothing in this section shall be construed to mean an incapacitated person, a partially incapacitated person, or a minor is abused or neglected for the sole reason that a guardian or other person responsible, in good faith, selects and depends upon spiritual means alone through prayer, in accordance with the tenets and practices of a recognized church or religious denomination, for the treatment or cure of disease or remedial care of the person or minor in their trust, and, in the case of an adult, in accordance with the practices of or the express consent of the incapacitated or partially incapacitated person.

2. Nothing contained in this subsection shall prevent a court from immediately assuming custody of a minor, pursuant to the Oklahoma Children's Code, and ordering whatever action may be

1 necessary, including medical treatment, to protect the minor's
2 health or welfare.

3 SECTION 29. AMENDATORY 43A O.S. 2011, Section 1-103, as
4 last amended by Section 1, Chapter 246, O.S.L. 2017 (43A O.S. Supp.
5 2018, Section 1-103), is amended to read as follows:

6 Section 1-103. When used in this title, unless otherwise
7 expressly stated, or unless the context or subject matter otherwise
8 requires:

9 1. "Department" means the Department of Mental Health and
10 Substance Abuse Services;

11 2. "Chair" means the chair of the Board of Mental Health and
12 Substance Abuse Services;

13 3. "Mental illness" means a substantial disorder of thought,
14 mood, perception, psychological orientation or memory that
15 significantly impairs judgment, behavior, capacity to recognize
16 reality or ability to meet the ordinary demands of life;

17 4. "Board" means the Board of Mental Health and Substance Abuse
18 Services as established by the Mental Health Law;

19 5. "Commissioner" means the individual selected and appointed
20 by the Board to serve as Commissioner of Mental Health and Substance
21 Abuse Services;

22 6. "Indigent person" means a person who has not sufficient
23 assets or resources to support the person and to support members of
24

1 the family of the person lawfully dependent on the person for
2 support;

3 7. "Facility" means any hospital, school, building, house or
4 retreat, authorized by law to have the care, treatment or custody of
5 an individual with mental illness, or drug or alcohol dependency,
6 gambling addiction, eating disorders, an opioid substitution
7 treatment program, including, but not limited to, public or private
8 hospitals, community mental health centers, clinics, satellites or
9 facilities; provided, that facility shall not mean a child guidance
10 center operated by the State Department of Health;

11 8. "Consumer" means a person under care or treatment in a
12 facility pursuant to the Mental Health Law, or in an outpatient
13 status;

14 9. "Care and treatment" means medical care and behavioral
15 health services, as well as food, clothing and maintenance,
16 furnished to a person;

17 10. Whenever in this law or in any other law, or in any rule or
18 order made or promulgated pursuant to this law or to any other law,
19 or in the printed forms prepared for the admission of consumers or
20 for statistical reports, the words "insane", "insanity", "lunacy",
21 "mentally sick", "mental disease" or "mental disorder" are used,
22 such terms shall have equal significance to the words "mental
23 illness";

24 11. "Licensed mental health professional" means:

- a. a psychiatrist who is a diplomate of the American Board of Psychiatry and Neurology,
- b. a psychiatrist who is a diplomate of the American Osteopathic Board of Neurology and Psychiatry,
- c. a physician licensed pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act or the Oklahoma Osteopathic Medicine Act,
- d. a clinical psychologist who is duly licensed to practice by the State Board of Examiners of Psychologists,
- e. a professional counselor licensed pursuant to the Licensed Professional Counselors Act,
- f. a person licensed as a clinical social worker pursuant to the provisions of the Social Worker's Licensing Act,
- g. a licensed marital and family therapist as defined in the Marital and Family Therapist Licensure Act,
- h. a licensed behavioral practitioner as defined in the Licensed Behavioral Practitioner Act,
- i. an advanced practice nurse as defined in the Oklahoma Nursing Practice Act,
- j. a physician's assistant who is licensed in good standing in this state, or

1 k. a licensed drug and alcohol counselor/mental health
2 (LADC/MH) as defined in the Licensed Alcohol and Drug
3 Counselors Act;

4 12. "Mentally incompetent person" means any person who has been
5 adjudicated mentally or legally incompetent by an appropriate
6 district court;

7 13. a. "Person requiring treatment" means a person who
8 because of his or her mental illness or drug or
9 alcohol dependency:

10 (1) poses a substantial risk of immediate physical
11 harm to self as manifested by evidence or serious
12 threats of or attempts at suicide or other
13 significant self-inflicted bodily harm,

14 (2) poses a substantial risk of immediate physical
15 harm to another person or persons as manifested
16 by evidence of violent behavior directed toward
17 another person or persons,

18 (3) has placed another person or persons in a
19 reasonable fear of violent behavior directed
20 towards such person or persons or serious
21 physical harm to them as manifested by serious
22 and immediate threats,

23 (4) is in a condition of severe deterioration such
24 that, without immediate intervention, there

1 exists a substantial risk that severe impairment
2 or injury will result to the person, or
3 (5) poses a substantial risk of immediate serious
4 physical injury to self or death as manifested by
5 evidence that the person is unable to provide for
6 and is not providing for his or her basic
7 physical needs.

8 b. The mental health or substance abuse history of the
9 person may be used as part of the evidence to
10 determine whether the person is a person requiring
11 treatment or an assisted outpatient. The mental
12 health or substance abuse history of the person shall
13 not be the sole basis for this determination.

14 c. Unless a person also meets the criteria established in
15 subparagraph a or b of this paragraph, person
16 requiring treatment or an assisted outpatient shall
17 not mean:

18 (1) a person whose mental processes have been
19 weakened or impaired by reason of advanced years,
20 dementia, or Alzheimer's disease,

21 (2) ~~a mentally retarded or developmentally an~~
22 intellectually disabled person as defined in
23 Title 10 of the Oklahoma Statutes,

24 (3) a person with seizure disorder,

1 (4) a person with a traumatic brain injury, or

2 (5) a person who is homeless.

3 d. A person who meets the criteria established in this
4 section, but who is medically unstable, or the
5 facility holding the person is unable to treat the
6 additional medical conditions of that person should be
7 discharged and transported in accordance with Section
8 1-110 of this title;

9 14. "Petitioner" means a person who files a petition alleging
10 that an individual is a person requiring treatment or an assisted
11 outpatient;

12 15. "Executive director" means the person in charge of a
13 facility as defined in this section;

14 16. "Private hospital or facility" means any general hospital
15 maintaining a neuro-psychiatric unit or ward, or any private
16 hospital or facility for care and treatment of a person having a
17 mental illness, which is not supported by the state or federal
18 government. The term "private hospital" or "facility" shall not
19 include nursing homes or other facilities maintained primarily for
20 the care of elderly and disabled persons;

21 17. "Individualized treatment plan" means a proposal developed
22 during the stay of an individual in a facility, under the provisions
23 of this title, which is specifically tailored to the treatment needs
24 of the individual. Each plan shall clearly include the following:

- 1 a. a statement of treatment goals or objectives, based
2 upon and related to a clinical evaluation, which can
3 be reasonably achieved within a designated time
4 interval,
- 5 b. treatment methods and procedures to be used to obtain
6 these goals, which methods and procedures are related
7 to each of these goals and which include specific
8 prognosis for achieving each of these goals,
- 9 c. identification of the types of professional personnel
10 who will carry out the treatment procedures, including
11 appropriate medical or other professional involvement
12 by a physician or other health professional properly
13 qualified to fulfill legal requirements mandated under
14 state and federal law,
- 15 d. documentation of involvement by the individual
16 receiving treatment and, if applicable, the accordance
17 of the individual with the treatment plan, and
- 18 e. a statement attesting that the executive director of
19 the facility or clinical director has made a
20 reasonable effort to meet the plan's individualized
21 treatment goals in the least restrictive environment
22 possible closest to the home community of the
23 individual;
- 24

1 18. "Telemedicine" means the practice of health care delivery,
2 diagnosis, consultation, evaluation, treatment, transfer of medical
3 data, or exchange of medical education information by means of
4 audio, video, or data communications. Telemedicine uses audio and
5 video multimedia telecommunication equipment which permits two-way
6 real-time communication between a health care practitioner and a
7 patient who are not in the same physical location. Telemedicine
8 shall not include consultation provided by telephone or facsimile
9 machine;

10 19. "Recovery and recovery support" means nonclinical services
11 that assist individuals and families to recover from alcohol or drug
12 problems. They include social support, linkage to and coordination
13 among allied service providers, including but not limited to
14 transportation to and from treatment or employment, employment
15 services and job training, case management and individual services
16 coordination, life skills education, relapse prevention, housing
17 assistance, child care, and substance abuse education;

18 20. "Assisted outpatient" means a person who:

- 19 a. is either currently under the care of a facility
20 certified by the Department of Mental Health and
21 Substance Abuse Services as a Community Mental Health
22 Center, or is being discharged from the custody of the
23 Oklahoma Department of Corrections, or is being
24

1 discharged from a residential placement by the Office
2 of Juvenile Affairs,

3 b. is suffering from a mental illness,

4 c. is unlikely to survive safely in the community without
5 supervision, based on a clinical determination,

6 d. has a history of lack of compliance with treatment for
7 mental illness that has:

8 (1) prior to the filing of a petition, at least twice
9 within the last thirty-six (36) months been a
10 significant factor in necessitating
11 hospitalization or treatment in a hospital or
12 residential facility, or receipt of services in a
13 forensic or other mental health unit of a
14 correctional facility, or a specialized treatment
15 plan for treatment of mental illness in a secure
16 juvenile facility or placement in a specialized
17 residential program for juveniles, or

18 (2) prior to the filing of the petition, resulted in
19 one or more acts of serious violent behavior
20 toward self or others or threats of, or attempts
21 at, serious physical harm to self or others
22 within the last twenty-four (24) months,

23 e. is, as a result of his or her mental illness, unlikely
24 to voluntarily participate in outpatient treatment

1 that would enable him or her to live safely in the
2 community,

- 3 f. in view of his or her treatment history and current
4 behavior, is in need of assisted outpatient treatment
5 in order to prevent a relapse or deterioration which
6 would be likely to result in serious harm to the
7 person or persons as defined in this section, and
8 g. is likely to benefit from assisted outpatient
9 treatment; and

10 21. "Assisted outpatient treatment" means outpatient services
11 which have been ordered by the court pursuant to a treatment plan
12 approved by the court to treat an assisted outpatient's mental
13 illness and to assist the person in living and functioning in the
14 community, or to attempt to prevent a relapse or deterioration that
15 may reasonably be predicted to result in suicide or the need for
16 hospitalization.

17 SECTION 30. AMENDATORY 43A O.S. 2011, Section 10-103, as
18 amended by Section 1, Chapter 39, O.S.L. 2016 (43A O.S. Supp. 2018,
19 Section 10-103), is amended to read as follows:

20 Section 10-103. A. When used in the Protective Services for
21 Vulnerable Adults Act:

22 1. "Protective services" means services which are necessary to
23 aid a vulnerable adult in meeting the essential requirements for
24 mental or physical health and safety that the vulnerable adult is

1 unable to provide or obtain without assistance. The term
2 "protective services" includes but is not limited to services
3 provided to or obtained for such person in order to prevent or
4 remedy the abuse, neglect, or exploitation of such person;

5 2. "Services which are necessary to aid an individual to meet
6 essential requirements for mental or physical health and safety"
7 include, but shall not be limited to:

- 8 a. the identification of vulnerable adults in need of the
9 services,
- 10 b. the provision of medical care for physical and mental
11 health needs,
- 12 c. the provision of social services assistance in
13 personal hygiene, food, clothing, and adequately
14 heated and ventilated shelter,
- 15 d. protection from health and safety hazards,
- 16 e. protection from physical mistreatment,
- 17 f. guardianship referral,
- 18 g. outreach programs, and
- 19 h. the transportation necessary to secure any of such
20 services.

21 The term shall not include taking the person into physical custody
22 without the consent of the person except as provided for in Sections
23 10-107 and 10-108 of this title, and the evaluation, monitoring, and
24 provision of protective placements;

1 3. "Meet essential requirements for mental or physical health
2 and safety" means those actions necessary to provide the health
3 care, food, shelter, clothing, personal hygiene and other care
4 without which physical injury or illness to the vulnerable adult is
5 likely to occur;

6 4. "Incapacitated person" means:

7 a. any person eighteen (18) years of age or older:

8 (1) who is impaired by reason of mental or physical
9 illness or disability, dementia or related
10 disease, ~~mental retardation, developmental~~
11 intellectual disability or other cause, and

12 (2) whose ability to receive and evaluate information
13 effectively or to make and to communicate
14 responsible decisions is impaired to such an
15 extent that such person lacks the capacity to
16 manage his or her financial resources or to meet
17 essential requirements for his or her mental or
18 physical health or safety without assistance from
19 others, or

20 b. a person for whom a guardian, limited guardian, or
21 conservator has been appointed pursuant to the
22 Oklahoma Guardianship and Conservatorship Act;

23 5. "Vulnerable adult" means an individual who is an
24 incapacitated person or who, because of physical or mental

1 disability, including persons with Alzheimer's disease or other
2 dementias, incapacity, or other disability, is substantially
3 impaired in the ability to provide adequately for the care or
4 custody of himself or herself, or is unable to manage his or her
5 property and financial affairs effectively, or to meet essential
6 requirements for mental or physical health or safety, or to protect
7 himself or herself from abuse, verbal abuse, neglect, or
8 exploitation without assistance from others;

9 6. "Caretaker" means a person who has:

- 10 a. the responsibility for the care of a vulnerable adult
11 or the financial management of the resources of a
12 vulnerable adult as a result of a family relationship,
13 b. assumed the responsibility for the care of a
14 vulnerable adult voluntarily, by contract, or as a
15 result of the ties of friendship, or
16 c. been appointed a guardian, limited guardian, or
17 conservator pursuant to the Oklahoma Guardianship and
18 Conservatorship Act;

19 7. "Department" means the Department of Human Services;

20 8. "Abuse" means causing or permitting:

- 21 a. the infliction of physical pain, injury, sexual abuse,
22 sexual exploitation, unreasonable restraint or
23 confinement, or mental anguish, or
24

1 b. the deprivation of nutrition, clothing, shelter,
2 health care, or other care or services without which
3 serious physical or mental injury is likely to occur
4 to a vulnerable adult by a caretaker or other person
5 providing services to a vulnerable adult;

6 9. "Exploitation" or "exploit" means an unjust or improper use
7 of the resources of a vulnerable adult for the profit or advantage,
8 pecuniary or otherwise, of a person other than the vulnerable adult
9 through the use of undue influence, coercion, harassment, duress,
10 deception, false representation or false pretense;

11 10. "Financial neglect" means repeated instances by a
12 caretaker, or other person, who has assumed the role of financial
13 management, of failure to use the resources available to restore or
14 maintain the health and physical well-being of a vulnerable adult,
15 including, but not limited to:

- 16 a. squandering or negligently mismanaging the money,
17 property, or accounts of a vulnerable adult,
- 18 b. refusing to pay for necessities or utilities in a
19 timely manner, or
- 20 c. providing substandard care to a vulnerable adult
21 despite the availability of adequate financial
22 resources;

23 11. "Neglect" means:
24

- a. the failure to provide protection for a vulnerable adult who is unable to protect his or her own interest,
- b. the failure to provide a vulnerable adult with adequate shelter, nutrition, health care, or clothing, or
- c. negligent acts or omissions that result in harm or the unreasonable risk of harm to a vulnerable adult through the action, inaction, or lack of supervision by a caretaker providing direct services;

12. "Sexual abuse" means:

- a. oral, anal, or vaginal penetration of a vulnerable adult by or through the union with the sexual organ of a caretaker or other person providing services to the vulnerable adult, or the anal or vaginal penetration of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult with any other object, or
- b. for the purpose of sexual gratification, the touching, feeling or observation of the body or private parts of a vulnerable adult by a caretaker or other person providing services to the vulnerable adult, or
- c. indecent exposure by a caretaker or other person providing services to the vulnerable adult;

1 13. "Indecent exposure" means forcing or requiring a vulnerable
2 adult to:

3 a. look upon the body or private parts of another person
4 or upon sexual acts performed in the presence of the
5 vulnerable adult, or

6 b. touch or feel the body or private parts of another;

7 14. "Self-neglect" means the action or inaction of a vulnerable
8 adult which causes that person to fail to meet the essential
9 requirements for physical or mental health and safety due to the
10 vulnerable adult's lack of awareness, incompetence or incapacity;

11 15. "Sexual exploitation" includes, but is not limited to, a
12 caretaker's causing, allowing, permitting or encouraging a
13 vulnerable adult to engage in prostitution or in the lewd, obscene,
14 or pornographic photographing, filming or depiction of the
15 vulnerable adult as those acts are defined by state law; and

16 16. "Verbal abuse" means the use of words, sounds, or other
17 communication including, but not limited to, gestures, actions or
18 behaviors, by a caretaker or other person providing services to a
19 vulnerable adult that are likely to cause a reasonable person to
20 experience humiliation, intimidation, fear, shame or degradation.

21 B. Nothing in this section shall be construed to mean a
22 vulnerable adult is abused or neglected for the sole reason the
23 vulnerable adult, in good faith, selects and depends upon spiritual
24 means alone through prayer, in accordance with the practices of a

1 recognized religious method of healing, for the treatment or cure of
2 disease or remedial care, or a caretaker or other person
3 responsible, in good faith, is furnishing such vulnerable adult
4 spiritual means alone through prayer, in accordance with the tenets
5 and practices of a recognized church or religious denomination, for
6 the treatment or cure of disease or remedial care in accordance with
7 the practices of or express consent of the vulnerable adult.

8 SECTION 31. AMENDATORY 43A O.S. 2011, Section 10-104, as
9 amended by Section 1, Chapter 318, O.S.L. 2016 (43A O.S. Supp. 2018,
10 Section 10-104), is amended to read as follows:

11 Section 10-104. A. Any person having reasonable cause to
12 believe that a vulnerable adult is suffering from abuse, neglect, or
13 exploitation shall make a report as soon as the person is aware of
14 the situation to:

- 15 1. The Department of Human Services; or
- 16 2. The municipal police department or sheriff's office in the
17 county in which the suspected abuse, neglect, or exploitation
18 occurred.

19 B. Persons required to make reports pursuant to this section
20 shall include, but not be limited to:

- 21 1. Physicians;
- 22 2. Operators of emergency response vehicles and other medical
23 professionals;
- 24 3. Social workers and mental health professionals;

- 1 4. Law enforcement officials;
- 2 5. Staff of domestic violence programs;
- 3 6. Long-term care facility personnel, including staff of
- 4 nursing facilities, intermediate care facilities for persons with
- 5 ~~mental retardation~~ intellectual disabilities, assisted living
- 6 facilities, and residential care facilities;
- 7 7. Other health care professionals;
- 8 8. Persons entering into transactions with a caretaker or other
- 9 person who has assumed the role of financial management for a
- 10 vulnerable adult;
- 11 9. Staff of residential care facilities, group homes, or
- 12 employment settings for individuals with ~~developmental~~ intellectual
- 13 disabilities;
- 14 10. Job coaches, community service workers, and personal care
- 15 assistants; and
- 16 11. Municipal employees.
- 17 C. 1. If the report is not made in writing in the first
- 18 instance, as soon as possible after it is initially made by
- 19 telephone or otherwise, the report shall be reduced to writing by
- 20 the Department of Human Services, in accordance with rules
- 21 promulgated by the ~~Commission for~~ Director of Human Services, or the
- 22 local municipal police or sheriff's department whichever entity
- 23 received the initial report. The report shall contain the following
- 24 information:

- a. the name and address of the vulnerable adult,
- b. the name and address of the caretaker, guardian, or person having power of attorney over the vulnerable adult's resources if any,
- c. a description of the current location of the vulnerable adult,
- d. a description of the current condition of the vulnerable adult, and
- e. a description of the situation which may constitute abuse, neglect or exploitation of the vulnerable adult.

2. If federal law specifically prohibits the disclosure of any of the information required by this subsection, that information may be excluded from the report.

D. If the initial report is made to the local municipal police department or sheriff's office, such police department or sheriff's office shall notify, as soon as possible, the Department of Human Services of its investigation.

E. Any person who knowingly and willfully fails to promptly report any abuse, neglect, or exploitation as required by the provisions of subsection A of this section, upon conviction, shall be guilty of a misdemeanor punishable by imprisonment in the county jail for a term not exceeding one (1) year or by a fine of not more

1 than One Thousand Dollars (\$1,000.00), or by both such fine and
2 imprisonment.

3 F. 1. Any person participating in good faith and exercising
4 due care in the making of a report pursuant to the provisions of
5 this section shall have immunity from any civil or criminal
6 liability that might otherwise be incurred or imposed. Any such
7 participant shall have the same immunity with respect to
8 participation in any judicial proceeding resulting from the report.

9 2. The same immunity from any civil or criminal liability shall
10 also be extended to previous employers of a person employed to be
11 responsible for the care of a vulnerable adult, who in good faith
12 report to new employers or prospective employers of such caretaker
13 any misconduct of the caretaker including, but not limited to,
14 abuse, neglect or exploitation of a vulnerable adult, whether
15 confirmed or not.

16 G. Any person who willfully or recklessly makes a false report
17 shall be civilly liable for any actual damages suffered by the
18 person being reported and for any punitive damages set by the court
19 or jury which may be allowed in the discretion of the court or jury.

20 H. 1. Every physician or other health care professional making
21 a report concerning the abuse, neglect or exploitation of a
22 vulnerable adult, as required by this section, or examining a
23 vulnerable adult to determine the likelihood of abuse, neglect or
24 exploitation, and every hospital in which a vulnerable adult is

1 examined or treated for abuse, neglect or exploitation shall
2 disclose necessary health information related to the case and
3 provide, upon request by either the Department of Human Services or
4 the local municipal police or sheriff's department receiving the
5 initial report, copies of the results or the records of the
6 examination on which the report was based, and any other clinical
7 notes, x-rays or photographs and other health information which is
8 related to the case if:

9 a. the vulnerable adult agrees to the disclosure of the
10 health information, or

11 b. the individual is unable to agree to the disclosure of
12 health information because of incapacity; and

13 (1) the requesting party represents that the health
14 information for which disclosure is sought is not
15 intended to be used against the vulnerable adult
16 in a criminal prosecution but to provide
17 protective services pursuant to the Protective
18 Services for Vulnerable Adults Act,

19 (2) the disclosure of the information is necessary to
20 conduct an investigation into the alleged abuse,
21 neglect or exploitation of the vulnerable adult
22 subject to the investigation, and

23 (3) immediate enforcement activity that depends upon
24 the disclosure:

- 1 (a) is necessary to protect the health, safety
2 and welfare of the vulnerable adult because
3 of incapacity, or
4 (b) would be materially and adversely affected
5 by waiting until the vulnerable adult is
6 able to agree to the disclosure.

7 2. If federal law specifically prohibits the disclosure of any
8 of the information required by this subsection, that information may
9 be excluded from the disclosed health information.

10 I. After investigating the report, either the county office of
11 the Department of Human Services or the municipal police department
12 or sheriff's office, as appropriate, shall forward its findings to
13 the office of the district attorney in the county in which the
14 suspected abuse, neglect, or exploitation occurred. Unsubstantiated
15 findings shall be labeled as such before transmission to the office
16 of the district attorney. Findings of self-neglect shall not be
17 forwarded to the office of the district attorney unless similar
18 findings were reported within six (6) months prior.

19 J. Any state or county medical examiner or physician who has
20 reasonable cause to suspect that the death of any vulnerable adult
21 may be the result of abuse or neglect as defined by Section 10-103
22 of this title shall make a report to the district attorney or other
23 law enforcement official of the county in which the death occurred.
24 The report shall include the name of the person making the report,

1 the name of the deceased person, the facts or other evidence
2 supporting such suspicion, and any other health information that may
3 be of assistance to the district attorney in conducting an
4 investigation into the matter.

5 K. No employer shall terminate the employment, prevent or
6 impair the practice or occupation of or impose any other sanction on
7 any employee solely for the reason that the employee made or caused
8 to be made a report or cooperated with an investigation pursuant to
9 the Protective Services for Vulnerable Adults Act. A court, in
10 addition to other damages and remedies, may assess reasonable
11 attorney fees against an employer who has been found to have
12 violated the provisions of this subsection.

13 SECTION 32. AMENDATORY 47 O.S. 2011, Section 1104.1, is
14 amended to read as follows:

15 Section 1104.1. A. Twenty-three Dollars (\$23.00) of the fee
16 authorized by Section 1135.5 of this title for university or college
17 supporter license plates which are received each year by the
18 Oklahoma Tax Commission or its motor license agents shall be
19 apportioned as follows:

20 1. Twenty Dollars (\$20.00) of the fee for each license plate
21 designating a particular state university or college shall be
22 apportioned to the particular state university or college so
23 designated on the license plate. Twenty Dollars (\$20.00) of the fee
24 for each license plate designating a particular private university

1 or college shall be apportioned to the particular private university
2 or college so designated on the license plate and may be used by the
3 private university or college as compensation for use of the
4 symbols, words, or letters authorized by the private university or
5 college for use on the license plate; and

6 2. Three Dollars (\$3.00) shall be deposited to the Adaptive
7 Grant Program for Oklahomans with ~~Mental Retardation~~ Intellectual
8 Disabilities Revolving Fund created by this section to be used for
9 educational purposes.

10 B. There is hereby created in the State Treasury a revolving
11 fund for the Department of Human Services to be designated the
12 "Adaptive Grant Program for Oklahomans with ~~Mental Retardation~~
13 Intellectual Disabilities Revolving Fund". The fund shall be a
14 continuing fund, not subject to fiscal year limitations, and shall
15 consist of all funds deposited therein pursuant to the provisions of
16 paragraph 2 of subsection A of this section. All monies accruing to
17 the credit of the fund are hereby appropriated and may be budgeted
18 and expended by the Department of Human Services for the
19 administration of the Adaptive Grant Program for Oklahomans with
20 ~~Mental Retardation~~ Intellectual Disabilities.

21 C. The Department of Human Services is hereby directed to
22 promulgate rules to create the Adaptive Grant Program for Oklahomans
23 with ~~Mental Retardation~~ Intellectual Disabilities Program to provide
24 financial assistance in adaptation of furnishings, fixtures,

1 vehicles, equipment or structures in order to meet any special needs
2 of Oklahomans with ~~mental retardation~~ intellectual disabilities;
3 provided, recipients of grants awarded pursuant to the program shall
4 be limited to those programs, projects or persons not otherwise
5 qualifying for state or federal funding. The Department of Human
6 Services is authorized to contract with a statewide private,
7 nonprofit foundation certified to be a 501(c)(3) organization by the
8 Internal Revenue Service for administration of the program.

9 D. The ~~Department~~ Director of Human Services shall prepare an
10 annual report on the Program. Such report shall be submitted to the
11 Governor, the President Pro Tempore of the Senate and the Speaker of
12 the House of Representatives.

13 SECTION 33. AMENDATORY 56 O.S. 2011, Section 198.11c, is
14 amended to read as follows:

15 Section 198.11c. A. This act shall be known and may be cited
16 as the "Opportunities for Independent Living Act".

17 B. The Legislature finds that:

18 1. In the landmark *Olmstead v. L.C.* decision, the Supreme Court
19 interpreted Title II of the Americans with Disabilities Act to
20 require states to administer programs in the most integrated setting
21 appropriate to meet the needs of qualified persons with
22 disabilities;

23 2. Medicaid is presently structured to provide care to persons
24 with disabilities in institutional settings such as skilled nursing

1 facilities and private intermediate care facilities for persons with
2 ~~mental retardation~~ (ICFs-MR) intellectual disabilities, and in
3 community-based settings such as group homes and waiver programs;
4 and

5 3. Persons with disabilities living in institutional settings
6 must meet certain low-income standards to become eligible for
7 institutional care. Therefore, when a person with disabilities
8 wishes to move into the community, he or she has little or no
9 resources to pay for rent and utility deposits or purchase basic
10 household items.

11 C. It is the intent of the Legislature to establish a three-
12 year pilot program that:

- 13 1. Is consistent with and implements the Olmstead Decision;
- 14 2. Develops eligibility criteria for the pilot program;
- 15 3. In coordination with the Oklahoma Health Care Authority and
16 the Department of Human Services Aging Division, utilizes the
17 Centers for Medicare and Medicaid Services Minimum Data Set (MDS)
18 information to identify thirty people who have requested to receive
19 their services in a community setting;
- 20 4. Identifies barriers to moving into the community;
- 21 5. Works with nurses and case managers to coordinate services
22 for eligible participants within the pilot program to ensure the
23 health and safety of each consumer;

24

1 6. Establishes an infrastructure to allow for an effective
2 system that allows money to follow the person from Medicaid programs
3 into the community settings;

4 7. Increases the availability of safe, affordable and
5 accessible housing;

6 8. Establishes a presence within local hospitals to reduce the
7 number of inappropriate placements within institutional settings;

8 9. Develops benefits counseling options; and

9 10. Allows qualified persons with disabilities the opportunity
10 to transition from institutions into the community.

11 D. Subject to the availability of funding, the Oklahoma Health
12 Care Authority shall establish and maintain a three-year pilot
13 program to assist qualified individuals with disabilities living in
14 institutions to transition into the community. The Authority shall
15 act as the lead agency and is authorized to consult and cooperate
16 with the Department of Human Services as necessary to carry out the
17 provisions of ~~this act~~ the Opportunities for Independent Living Act.

18 E. The Authority shall enter into contracts to carry out the
19 provisions of ~~this act~~ the Opportunities for Independent Living Act.

20 Such contracted entities shall be consumer-controlled, non-
21 residence-based, community-based, nonprofit organizations with
22 experience in transitioning persons with disabilities into community
23 settings.

24 F. The Authority through its duly contracted entities shall:

- 1 1. Utilize MDS data to identify participants who prefer to
2 receive services within the community;
- 3 2. Develop eligibility criteria for pilot program participants;
- 4 3. Provide ongoing assistance to further develop assessment
5 criteria for pilot program participants;
- 6 4. Work in conjunction with health care providers and case
7 managers to coordinate services for pilot program participants;
- 8 5. Establish an effective system that allows money to follow
9 pilot program participants from the institutional setting to the
10 community;
- 11 6. Increase pilot program participant access to safe and
12 affordable housing;
- 13 7. Offer follow-up services such as training, technical
14 assistance and support for pilot program participants; and
- 15 8. Develop curriculum and marketing materials to train future
16 service providers.

17 G. The Authority through its duly contracted entities is
18 authorized to use available funding to assist eligible persons under
19 this act to:

- 20 1. Pay rent deposits;
- 21 2. Pay utility deposits;
- 22 3. Purchase initial household supplies;
- 23 4. Purchase basic initial household appliances; and
- 24 5. Purchase initial furniture and pay moving expenses.

1 H. The Authority shall promulgate rules as necessary to carry
2 out the provisions of ~~this act~~ the Opportunities for Independent
3 Living Act. Such rules shall include but are not limited to:

- 4 1. Eligibility criteria for services;
- 5 2. Assessment protocols to identify persons in need of
6 services; and
- 7 3. Funding to assist eligible persons.

8 I. The Authority and the Department of Human Services shall
9 evaluate the implementation of the pilot program and annually make
10 recommendations to the Legislature regarding its effectiveness.

11 SECTION 34. AMENDATORY 56 O.S. 2011, Section 602, is
12 amended to read as follows:

13 Section 602. As used in the Oklahoma Family Support Act:

- 14 1. "Department" means the Department of Human Services;
- 15 2. "Family" means a family member and his or her parent or
16 legal guardian; and
- 17 3. "Family member" means a person less than eighteen (18) years
18 of age with ~~mental retardation or other developmental~~ an
19 intellectual disability as defined in Section 1408 of Title 10 of
20 the Oklahoma Statutes.

21 SECTION 35. AMENDATORY 56 O.S. 2011, Section 1017.2, is
22 amended to read as follows:

23 Section 1017.2. The Legislature finds that:
24

1 1. Oklahoma has a successful home- and community-based services
2 program known as the ADvantage Waiver Program for the frail, elderly
3 and adults with physical disabilities age twenty-one (21) and over
4 who do not have ~~mental retardation~~ an intellectual disability nor a
5 cognitive impairment. The ADvantage Waiver Program provides the
6 following services: case management, transitional case management,
7 personal care, advanced supportive/restorative, skilled nursing -
8 home health setting, RN assessment evaluation, occupational therapy,
9 physical therapy, respiratory therapy, speech/language therapy,
10 adult day health, personal care in adult day health, therapy in
11 adult day health, home-delivered meals, NF extended respite, in-home
12 respite, in-home extended respite, environmental modifications,
13 hospice, consumer-directed personal care assistant services and
14 supports, assisted living, and specialized medical equipment and
15 supplies;

16 2. Many Oklahomans who could safely stay at home with cost-
17 effective home- and community-based services go into nursing
18 facilities the day assistance is needed because their eligibility
19 for nursing facility supports is "presumed" by the nursing facility,
20 while eligibility for home and community supports can take weeks or
21 months. If their circumstances are such that they need immediate or
22 urgent care, they lose their choice to live and receive their
23 services at home. Once they are in a nursing facility, they may
24 lose their home or the supports they need to stay at home; and

1 3. The cost of serving Oklahomans who are in nursing facilities
2 when they could be living and receiving services at home is
3 significantly higher than the cost of serving them with home- and
4 community-based services.

5 SECTION 36. AMENDATORY 56 O.S. 2011, Section 1017.3, is
6 amended to read as follows:

7 Section 1017.3. To be eligible for the ADvantage Waiver
8 Program, a person shall:

- 9 1. Qualify financially for Medicaid;
- 10 2. Be sixty-five (65) years of age or older or be a physically
11 disabled adult as determined by the Social Security Administration,
12 age twenty-one (21) years or older without ~~mental-retardation~~ an
13 intellectual disability or cognitive impairment;
- 14 3. Be determined to meet the nursing facility institutional
15 level of care by the Aging Services Division of the Department of
16 Human Services;
- 17 4. Reside in his or her own home or a family member's home; and
- 18 5. Have needs that can be safely met with waiver services and
19 family or community supports.

20 SECTION 37. AMENDATORY 56 O.S. 2011, Section 1025.1, is
21 amended to read as follows:

22 Section 1025.1. For the purposes of this chapter:

- 23 1. "Bureau" means the Oklahoma State Bureau of Investigation;
- 24 2. "Commission" means the Commission for Human Services;

1 3. "Community services provider" means a community-based
2 program, corporation, or individual who contracts with, or is
3 licensed or funded by, the Department of Human Services to provide
4 residential or vocational services to elderly persons or persons
5 with ~~mental retardation or developmental~~ intellectual disabilities,
6 or contracts with the Oklahoma Health Care Authority to provide
7 services to individuals with ~~mental retardation~~ intellectual
8 disabilities through a Home and Community-Based Waiver, except a
9 private ~~ICF/MR~~ ICF/IID;

10 4. "Community services worker" means any person employed by or
11 under contract with a community services provider who provides, for
12 compensation or as a volunteer, health-related services, training,
13 or supportive assistance to persons with ~~developmental~~ intellectual
14 disabilities, and who is not a licensed health professional or any
15 person who contracts with the Oklahoma Health Care Authority to
16 provide specialized foster care, habilitation training specialist
17 services, or homemaker services to persons with ~~developmental~~
18 intellectual disabilities;

19 5. "Department" means the Department of Human Services;

20 6. "Developmental disability" means a severe, chronic
21 disability of a person which:
22 a. is attributable to a mental or physical impairment or
23 combination of mental and physical impairments, such
24

1 as ~~mental retardation~~ an intellectual development
2 disorder, cerebral palsy, or autism,

3 b. is manifested before the person attains twenty-two
4 (22) years of age,

5 c. is likely to continue indefinitely,

6 d. results in substantial functional limitations in three
7 or more of the following areas of major life activity:

8 (1) self-care,

9 (2) receptive and expressive language,

10 (3) learning,

11 (4) mobility,

12 (5) self-direction,

13 (6) capacity for independent living, and

14 (7) economic self-sufficiency, and

15 e. reflects the person's need for a combination and
16 sequence of special, interdisciplinary, or generic
17 care, treatment, or other services which are of
18 lifelong or extended duration and are individually
19 planned and coordinated;

20 7. "Health-related services" means those services provided by
21 community services providers or community services workers to
22 persons with developmental disabilities that include, but are not
23 limited to, personal hygiene, transferring, range of motion,
24 supervision or assistance in activities of daily living, basic

1 nursing care such as taking temperature, pulse or respiration,
2 positioning, incontinent care, and identification of signs and
3 symptoms of disease. Certain tasks that may be performed as basic
4 nursing care by community services workers require appropriate
5 training provided or approved by the Department, written agreement
6 by the service recipient's personal support team, and the primary
7 care physician's acknowledgement and specific order related to the
8 task. Under such circumstances, basic nursing care may include, but
9 need not be limited to:

- 10 a. nutrition, including meals by gastrostomy tube or
- 11 jejeunostomy tube,
- 12 b. blood glucose monitoring,
- 13 c. ostomy bag care,
- 14 d. oral suctioning, and
- 15 e. administration of oral metered dose inhalers and
- 16 nebulizers;

17 8. "Supportive assistance" means the service rendered to
18 persons with developmental disabilities which is sufficient to
19 enable such person to meet an adequate level of daily living.
20 Supportive assistance includes, but is not limited to, training,
21 supervision, assistance in housekeeping, assistance in the
22 preparation of meals, and assistance in activities of daily living
23 as necessary for the health and comfort of persons with
24 developmental disabilities;

1 9. "Maltreatment" means abuse, verbal abuse, sexual abuse,
2 neglect, financial neglect, exploitation or sexual exploitation of
3 vulnerable adults as defined in Section 10-103 of Title 43A of the
4 Oklahoma Statutes or abuse, neglect, sexual abuse or sexual
5 exploitation of children as defined in Section 1-1-105 of Title 10A
6 of the Oklahoma Statutes;

7 10. "Personal care" means a level of assistance provided in the
8 home of an individual to meet the individual's activities of daily
9 living needs such as bathing, grooming, meal preparation, light
10 housekeeping, laundry, and care plan-directed errands;

11 11. "Medicaid personal care services provider" means a program,
12 corporation or individual who provides services under the state
13 Medicaid program personal care program or Advantage Waiver to
14 individuals who are elderly or who have a physical disability;

15 12. "Medicaid personal care assistant" means a person who
16 provides Medicaid services funded under the state Medicaid program
17 personal care program, who is not a certified nurse aide or a
18 licensed professional;

19 13. "Specialized foster care" means the home- and community-
20 based service as defined in the 1915(c) waiver approved by the
21 Centers for Medicare and Medicaid Services;

22 14. "Habilitation training specialist services" means the home-
23 and community-based service as defined in the 1915 (c) waiver
24 approved by the Centers for Medicare and Medicaid Services;

1 15. "Homemaker services" means the home- and community-based
2 service as defined in the 1915(c) waiver approved by the Centers for
3 Medicare and Medicaid Services.

4 SECTION 38. AMENDATORY 56 O.S. 2011, Section 1030.1, is
5 amended to read as follows:

6 Section 1030.1. A. The Department of Human Services may, upon
7 its own initiative or at the request of an owner, operator or
8 resident of any agency providing residential services to people with
9 ~~mental retardation~~ intellectual disabilities, or at the request of a
10 resident's guardian or relative, petition the court to appoint a
11 receiver to take possession of and operate an agency providing
12 residential services, except a facility subject to the provisions of
13 the Nursing Home Care Act. When requested to file a petition, the
14 Department of Human Services shall determine if proper cause exists,
15 and shall take whatever steps are necessary to protect the health,
16 welfare and safety of residents including, if necessary, petitioning
17 the court to place the agency under the control of a receiver to
18 ensure that the residents receive adequate care.

19 B. Upon the filing of a petition by the Department of Human
20 Services, subject to other provisions of this article, a court may
21 appoint a receiver to take possession of and operate an agency
22 licensed by or contracting with the Department of Human Services or
23 the Oklahoma Health Care Authority to provide community residential
24 supports to individuals with ~~mental retardation or other~~

1 ~~developmental~~ intellectual disabilities when there is actual,
2 imminent or substantial risk of serious physical or mental harm or
3 death to residents, and no other remedies at law are adequate to
4 protect the health, safety and welfare of the residents.

5 C. Conditions and factors which may result in mental or
6 physical harm or death, or risk of harm or death, as described in
7 subsection B of this section include, but are not limited to,
8 instances when any of the following occur:

9 1. The residential agency has violated, or has demonstrated a
10 pattern and practice of repeated violations of, state or federal
11 law, rule or regulation which affect health and safety;

12 2. The residential agency is in the process of terminating
13 services or intends to cease operations, and arrangements for
14 relocating residents are dangerously inadequate; or

15 3. The residential agency is insolvent as defined in subsection
16 C of Section ~~16 of this act~~ 1030.2 of this title, and a receivership
17 is necessary to protect the health and safety of the residents.

18 D. Petitions filed pursuant to this section shall include the
19 following:

20 1. A description of the specific conditions, conduct, or
21 occurrences existing at the agency which have resulted in serious
22 physical or mental harm or death or which present a substantial risk
23 of serious physical or mental harm or death to residents;

24

1 2. A statement explaining why other remedies of law are
2 inadequate;

3 3. The number of individuals receiving residential services
4 from the agency who have been seriously harmed or died, or are at
5 substantial risk of such harm or death;

6 4. A statement that the facts have been brought to the
7 attention of the owner or administrator and that conditions have not
8 been remedied within a reasonable period of time or that the
9 conditions, though remedied periodically, habitually exist at the
10 agency as a pattern or practice;

11 5. The name and address of the persons holding a contract for
12 the agency or serving as the duly authorized agent of the contract
13 and the address of a designated representative for the Director of
14 the Department of Human Services and the Administrator of the
15 Oklahoma Health Care Authority; and

16 6. A listing of any other reasons that may apply as set forth
17 in this subsection.

18 E. No party, attorney, or person interested in an action shall
19 be appointed a receiver pursuant to this section. To assist the
20 court in identifying persons qualified to be named as receivers, the
21 Director of the Department of Human Services or the Director's
22 designee shall maintain a list of the names of such persons that the
23 court may consider.

24

1 F. The court may award to a residential agency appropriate
2 costs and expenses, including reasonable attorney fees, if the court
3 determines that a petitioner has initiated a proceeding in bad faith
4 or merely for the purpose of harassing or embarrassing the
5 residential agency.

6 SECTION 39. AMENDATORY 56 O.S. 2011, Section 2002, as
7 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
8 2018, Section 2002), is amended to read as follows:

9 Section 2002. A. For the purpose of providing quality care
10 enhancements, the Oklahoma Health Care Authority is authorized to
11 and shall assess a Nursing Facilities Quality of Care Fee pursuant
12 to this section upon each nursing facility licensed in this state.
13 Facilities operated by the Oklahoma Department of Veterans Affairs
14 shall be exempt from this fee. Quality of care enhancements
15 include, but are not limited to, the purposes specified in this
16 section.

17 B. As a basis for determining the Nursing Facilities Quality of
18 Care Fee assessed upon each licensed nursing facility, the Authority
19 shall calculate a uniform per-patient day rate. The rate shall be
20 calculated by dividing six percent (6%) of the total annual patient
21 gross receipts of all licensed nursing facilities in this state by
22 the total number of patient days for all licensed nursing facilities
23 in this state. The result shall be the per-patient day rate.

24 Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee

1 shall not be increased unless specifically authorized by the
2 Legislature.

3 C. Pursuant to any approved Medicaid waiver and pursuant to
4 subsection N of this section, the Nursing Facilities Quality of Care
5 Fee shall not exceed the amount or rate allowed by federal law for
6 nursing home licensed bed days.

7 D. The Nursing Facilities Quality of Care Fee owed by a
8 licensed nursing facility shall be calculated by the Authority by
9 adding the daily patient census of a licensed nursing facility, as
10 reported by the facility for each day of the month, and by
11 multiplying the ensuing figure by the per-patient day rate
12 determined pursuant to the provisions of subsection B of this
13 section.

14 E. Each licensed nursing facility which is assessed the Nursing
15 Facilities Quality of Care Fee shall be required to file a report on
16 a monthly basis with the Authority detailing the daily patient
17 census and patient gross receipts at such time and in such manner as
18 required by the Authority.

19 F. 1. The Nursing Facilities Quality of Care Fee for a
20 licensed nursing facility for the period beginning October 1, 2000,
21 shall be determined using the daily patient census and annual
22 patient gross receipts figures reported to the Authority for the
23 calendar year 1999 upon forms supplied by the Authority.

24

1 2. Annually the Nursing Facilities Quality of Care Fee shall be
2 determined by:

- 3 a. using the daily patient census and patient gross
4 receipts reports received by the Authority for the
5 most recent available twelve (12) months, and
- 6 b. annualizing those figures.

7 Each year thereafter, the annualization of the Nursing
8 Facilities Quality of Care Fee specified in this paragraph shall be
9 subject to the limitation in subsection B of this section unless the
10 provision of subsection C of this section is met.

11 G. The payment of the Nursing Facilities Quality of Care Fee by
12 licensed nursing facilities shall be an allowable cost for Medicaid
13 reimbursement purposes.

14 H. 1. There is hereby created in the State Treasury a
15 revolving fund to be designated the "Nursing Facility Quality of
16 Care Fund".

17 2. The fund shall be a continuing fund, not subject to fiscal
18 year limitations, and shall consist of:

- 19 a. all monies received by the Authority pursuant to this
20 section and otherwise specified or authorized by law,
- 21 b. monies received by the Authority due to federal
22 financial participation pursuant to Title XIX of the
23 Social Security Act, and

1 c. interest attributable to investment of money in the
2 fund.

3 3. All monies accruing to the credit of the fund are hereby
4 appropriated and shall be budgeted and expended by the Authority
5 for:

6 a. reimbursement of the additional costs paid to
7 Medicaid-certified nursing facilities for purposes
8 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
9 Title 63 of the Oklahoma Statutes,

10 b. reimbursement of the Medicaid rate increases for
11 intermediate care facilities for the ~~mentally retarded~~
12 ~~(ICFs/MR)~~ intellectually disabled (ICF/IID),

13 c. nonemergency transportation services for Medicaid-
14 eligible nursing home clients,

15 d. eyeglass and denture services for Medicaid-eligible
16 nursing home clients,

17 e. ten additional ombudsmen employed by the Department of
18 Human Services,

19 f. ten additional nursing facility inspectors employed by
20 the State Department of Health,

21 g. pharmacy and other Medicaid services to qualified
22 Medicare beneficiaries whose incomes are at or below
23 one hundred percent (100%) of the federal poverty
24 level; provided however, pharmacy benefits authorized

1 for such qualified Medicare beneficiaries shall be
2 suspended if the federal government subsequently
3 extends pharmacy benefits to this population,

4 h. costs incurred by the Authority in the administration
5 of the provisions of this section and any programs
6 created pursuant to this section,

7 i. durable medical equipment and supplies services for
8 Medicaid-eligible elderly adults, and

9 j. personal needs allowance increases for residents of
10 nursing homes and Intermediate Care Facilities for the
11 ~~Mentally Retarded~~

12 ~~(ICFs/MR)~~ Intellectually Disabled (ICF/IID) from Thirty
13 Dollars (\$30.00) to Fifty Dollars (\$50.00) per month
14 per resident.

15 4. Expenditures from the fund shall be made upon warrants
16 issued by the State Treasurer against claims filed as prescribed by
17 law with the Director of the Office of Management and Enterprise
18 Services for approval and payment.

19 5. The fund and the programs specified in this section funded
20 by revenues collected from the Nursing Facilities Quality of Care
21 Fee pursuant to this section are exempt from budgetary cuts,
22 reductions, or eliminations.

23 6. The Medicaid rate increases for intermediate care facilities
24 for the ~~mentally retarded (ICFs/MR)~~ intellectually disabled

1 (ICF/IID) shall not exceed the net Medicaid rate increase for
2 nursing facilities including, but not limited to, the Medicaid rate
3 increase for which Medicaid-certified nursing facilities are
4 eligible due to the Nursing Facilities Quality of Care Fee less the
5 portion of that increase attributable to treating the Nursing
6 Facilities Quality of Care Fee as an allowable cost.

7 7. The reimbursement rate for nursing facilities shall be made
8 in accordance with Oklahoma's Medicaid reimbursement rate
9 methodology and the provisions of this section.

10 8. No nursing facility shall be guaranteed, expressly or
11 otherwise, that any additional costs reimbursed to the facility will
12 equal or exceed the amount of the Nursing Facilities Quality of Care
13 Fee paid by the nursing facility.

14 I. 1. In the event that federal financial participation
15 pursuant to Title XIX of the Social Security Act is not available to
16 the Oklahoma Medicaid program, for purposes of matching expenditures
17 from the Nursing Facility Quality of Care Fund at the approved
18 federal medical assistance percentage for the applicable fiscal
19 year, the Nursing Facilities Quality of Care Fee shall be null and
20 void as of the date of the nonavailability of such federal funding,
21 through and during any period of nonavailability.

22 2. In the event of an invalidation of this section by any court
23 of last resort under circumstances not covered in subsection J of
24

1 this section, the Nursing Facilities Quality of Care Fee shall be
2 null and void as of the effective date of that invalidation.

3 3. In the event that the Nursing Facilities Quality of Care Fee
4 is determined to be null and void for any of the reasons enumerated
5 in this subsection, any Nursing Facilities Quality of Care Fee
6 assessed and collected for any periods after such invalidation shall
7 be returned in full within sixty (60) days by the Authority to the
8 nursing facility from which it was collected.

9 J. 1. If any provision of this section or the application
10 thereof shall be adjudged to be invalid by any court of last resort,
11 such judgment shall not affect, impair or invalidate the provisions
12 of the section, but shall be confined in its operation to the
13 provision thereof directly involved in the controversy in which such
14 judgment was rendered. The applicability of such provision to other
15 persons or circumstances shall not be affected thereby.

16 2. This subsection shall not apply to any judgment that affects
17 the rate of the Nursing Facilities Quality of Care Fee, its
18 applicability to all licensed nursing homes in the state, the usage
19 of the fee for the purposes prescribed in this section, and/or the
20 ability of the Authority to obtain full federal participation to
21 match its expenditures of the proceeds of the fee.

22 K. The Authority shall promulgate rules for the implementation
23 and enforcement of the Nursing Facilities Quality of Care Fee
24 established by this section.

1 L. The Authority shall provide for administrative penalties in
2 the event nursing facilities fail to:

- 3 1. Submit the Quality of Care Fee;
- 4 2. Submit the fee in a timely manner;
- 5 3. Submit reports as required by this section; or
- 6 4. Submit reports timely.

7 M. As used in this section:

8 1. "Nursing facility" means any home, establishment or
9 institution, or any portion thereof, licensed by the State
10 Department of Health as defined in Section 1-1902 of Title 63 of the
11 Oklahoma Statutes;

12 2. "Medicaid" means the medical assistance program established
13 in Title XIX of the federal Social Security Act and administered in
14 this state by the Authority;

15 3. "Patient gross revenues" means gross revenues received in
16 compensation for services provided to residents of nursing
17 facilities including, but not limited to, client participation. The
18 term "patient gross revenues" shall not include amounts received by
19 nursing facilities as charitable contributions; and

20 4. "Additional costs paid to Medicaid-certified nursing
21 facilities under Oklahoma's Medicaid reimbursement methodology"
22 means both state and federal Medicaid expenditures including, but
23 not limited to, funds in excess of the aggregate amounts that would
24 otherwise have been paid to Medicaid-certified nursing facilities

1 under the Medicaid reimbursement methodology which have been updated
2 for inflationary, economic, and regulatory trends and which are in
3 effect immediately prior to the inception of the Nursing Facilities
4 Quality of Care Fee.

5 N. 1. As per any approved federal Medicaid waiver, the
6 assessment rate subject to the provision of subsection C of this
7 section is to remain the same as those rates that were in effect
8 prior to January 1, 2012, for all state-licensed continuum of care
9 facilities.

10 2. Any facilities that made application to the State Department
11 of Health to become a licensed continuum of care facility no later
12 than January 1, 2012, shall be assessed at the same rate as those
13 facilities assessed pursuant to paragraph 1 of this subsection;
14 provided, that any facility making said application shall receive
15 the license on or before September 1, 2012. Any facility that fails
16 to receive such license from the State Department of Health by
17 September 1, 2012, shall be assessed at the rate established by
18 subsection C of this section subsequent to September 1, 2012.

19 O. If any provision of this section, or the application
20 thereof, is determined by any controlling federal agency, or any
21 court of last resort to prevent the state from obtaining federal
22 financial participation in the state's Medicaid program, such
23 provision shall be deemed null and void as of the date of the
24 nonavailability of such federal funding and through and during any

1 period of nonavailability. All other provisions of the bill shall
2 remain valid and enforceable.

3 SECTION 40. AMENDATORY 56 O.S. 2011, Section 343, is
4 amended to read as follows:

5 Section 343. The ~~Commission for~~ Department of Human Services
6 and the University Hospitals Authority shall enter into cooperative
7 agreements between the University Hospitals Authority and the state
8 schools for the ~~mentally retarded~~ intellectually disabled in the
9 development of basic medical services programs at the schools for
10 the ~~mentally retarded~~ intellectually disabled; provided, that the
11 University Hospitals Authority shall not have the responsibility for
12 implementing such programs or for providing medical services at the
13 schools for the ~~mentally retarded~~ intellectually disabled.

14 SECTION 41. AMENDATORY 56 O.S. 2011, Section 347, is
15 amended to read as follows:

16 Section 347. The Department of Human Services is hereby
17 authorized to contract for the services of guardians and
18 conservators who will act on behalf of individuals that are
19 recipients of services through the agency's programs including, but
20 not limited to, the program for the ~~mentally retarded~~ intellectually
21 disabled and the adult protective services program. The Department
22 is authorized to reimburse such guardians and conservators for any
23 expenses determined to be reimburseable by the Department and
24 incurred as a result of their services as guardian or conservator.

1 SECTION 42. AMENDATORY 56 O.S. 2011, Section 530.2, is
2 amended to read as follows:

3 Section 530.2. A. It is the purpose and policy of the Oklahoma
4 Adult Companion Home Certification Act to ensure maintenance of
5 minimum standards for the care and protection of ~~mentally retarded~~
6 ~~or developmentally~~ intellectually disabled adults, and to encourage
7 and assist adult companion homes in achieving maximum standards.

8 B. In order to provide care for ~~mentally retarded or~~
9 ~~developmentally~~ intellectually disabled adults in adult companion
10 homes, a certificate shall be obtained from the Department of Human
11 Services. Such certificate shall be issued on the basis of meeting
12 minimum standards which are essential for the health and welfare of
13 any ~~mentally retarded or developmentally~~ intellectually disabled
14 adult placed for care in such home.

15 SECTION 43. AMENDATORY 56 O.S. 2011, Section 530.3, is
16 amended to read as follows:

17 Section 530.3. For purposes of the provisions of the Oklahoma
18 Adult Companion Home Certification Act:

19 1. "Department" means the Department of Human Services; and

20 2. "Adult companion home" means any home or establishment,
21 funded and certified by the Department of Human Services, which
22 provides homelike residential accommodations and supportive
23 assistance to three or fewer ~~mentally retarded or developmentally~~
24 intellectually disabled adults.

1 SECTION 44. AMENDATORY 56 O.S. 2011, Section 530.6, is
2 amended to read as follows:

3 Section 530.6. A. The Department of Human Services shall have
4 authority at any reasonable time to investigate and examine the
5 conditions of any home which receives and cares for ~~mentally~~
6 ~~retarded or developmentally~~ intellectually disabled adults. The
7 Department shall have authority at any time to require the home to
8 provide information pertaining to ~~mentally retarded or~~
9 ~~developmentally~~ intellectually disabled adults in its care.

10 B. The State Department of Health may visit any home at the
11 request of the Department to advise on matters affecting the health
12 of ~~mentally retarded or developmentally~~ intellectually disabled
13 adults and to inspect the sanitation of the buildings used for their
14 care.

15 C. The State Bureau of Investigation and the State Fire Marshal
16 shall visit any home at the request of the Department to advise on
17 matters affecting the safety of ~~mentally retarded or developmentally~~
18 intellectually disabled adults and to inspect the condition of the
19 buildings in which their care is provided.

20 D. Information obtained by the Department from any home
21 regarding ~~mentally retarded or developmentally~~ intellectually
22 disabled adults shall be deemed confidential, and shall be properly
23 safeguarded, and shall not be accessible to anyone except as herein
24 provided unless upon order of a court of competent jurisdiction.

1 SECTION 45. AMENDATORY 59 O.S. 2011, Section 367.3, is
2 amended to read as follows:

3 Section 367.3. A. The Board of Pharmacy shall implement
4 statewide a program consistent with public health and safety through
5 which unused prescription drugs, other than prescription drugs
6 defined as controlled dangerous substances in Section 2-101 of Title
7 63 of the Oklahoma Statutes, may be transferred from residential
8 care homes, nursing facilities, assisted living centers, public
9 intermediate care facilities for people with ~~mental retardation~~
10 (ICF/MR) intellectual disabilities or pharmaceutical manufacturers
11 to pharmacies operated by a county. If no county pharmacy exists,
12 or if a county pharmacy chooses not to participate, such unused
13 prescription medications may be transferred to a pharmacy operated
14 by a city-county health department or a pharmacy under contract with
15 a city-county health department, a pharmacy operated by the
16 Department of Mental Health and Substance Abuse Services or a
17 charitable clinic for the purpose of distributing the unused
18 prescription medications to Oklahoma residents who are medically
19 indigent.

20 B. The Board of Pharmacy shall promulgate rules and establish
21 procedures necessary to implement the program established by the
22 Utilization of Unused Prescription Medications Act.

23 C. The Board of Pharmacy shall provide technical assistance to
24 entities who may wish to participate in the program.

1 SECTION 46. AMENDATORY 62 O.S. 2011, Section 57.32, is
2 amended to read as follows:

3 Section 57.32. The State of Oklahoma Building Bonds Commission,
4 created by Section 57.302 of Title 62, ~~Oklahoma Statutes 1951,~~
5 ~~Section 57.1 of the Oklahoma Statutes,~~ acting for and on behalf of
6 the State of Oklahoma, shall be the agency by and through which the
7 State of Oklahoma shall incur indebtedness to the extent of the sum
8 of Thirty-five Million Five Hundred Thousand Dollars
9 (\$35,500,000.00) as principal, for the purpose of constructing new
10 buildings and other capital improvements, and for equipping,
11 remodeling, modernizing and repairing any and all existing buildings
12 and capital improvements, at the constituent institutions of the
13 Oklahoma State System of Higher Education provided that Five Million
14 Dollars (\$5,000,000.00) thereof shall be used to construct and equip
15 a school and hospital for ~~mentally retarded~~ intellectually disabled
16 children in Northeastern Oklahoma pursuant to, and under authority
17 of, Section 34 of Article X of the Constitution of the State of
18 Oklahoma, and this act.

19 SECTION 47. AMENDATORY 63 O.S. 2011, Section 1-1925.2,
20 is amended to read as follows:

21 Section 1-1925.2. A. The Oklahoma Health Care Authority shall
22 fully recalculate and reimburse nursing facilities and intermediate
23 care facilities for the ~~mentally retarded (ICFs/MR)~~ intellectually
24 disabled (ICF/IID) from the Nursing Facility Quality of Care Fund

1 beginning October 1, 2000, the average actual, audited costs
2 reflected in previously submitted cost reports for the cost-
3 reporting period that began July 1, 1998, and ended June 30, 1999,
4 inflated by the federally published inflationary factors for the two
5 (2) years appropriate to reflect present-day costs at the midpoint
6 of the July 1, 2000, through June 30, 2001, rate year.

7 1. The recalculations provided for in this subsection shall be
8 consistent for both nursing facilities and intermediate care
9 facilities for the ~~mentally retarded (ICFs/MR)~~ intellectually
10 disabled (ICF/IID), and shall be calculated in the same manner as
11 has been mutually understood by the long-term care industry and the
12 Oklahoma Health Care Authority.

13 2. The recalculated reimbursement rate shall be implemented
14 September 1, 2000.

15 B. 1. From September 1, 2000, through August 31, 2001, all
16 nursing facilities subject to the Nursing Home Care Act, in addition
17 to other state and federal requirements related to the staffing of
18 nursing facilities, shall maintain the following minimum direct-
19 care-staff-to-resident ratios:

- 20 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
21 every eight residents, or major fraction thereof,
- 22 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
23 every twelve residents, or major fraction thereof, and
24

1 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
2 every seventeen residents, or major fraction thereof.

3 2. From September 1, 2001, through August 31, 2003, nursing
4 facilities subject to the Nursing Home Care Act and intermediate
5 care facilities for the ~~mentally retarded~~ intellectually disabled
6 with seventeen or more beds shall maintain, in addition to other
7 state and federal requirements related to the staffing of nursing
8 facilities, the following minimum direct-care-staff-to-resident
9 ratios:

10 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
11 every seven residents, or major fraction thereof,

12 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
13 every ten residents, or major fraction thereof, and

14 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
15 every seventeen residents, or major fraction thereof.

16 3. On and after September 1, 2003, subject to the availability
17 of funds, nursing facilities subject to the Nursing Home Care Act
18 and intermediate care facilities for the ~~mentally retarded~~
19 intellectually disabled with seventeen or more beds shall maintain,
20 in addition to other state and federal requirements related to the
21 staffing of nursing facilities, the following minimum direct-care-
22 staff-to-resident ratios:

23 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
24 every six residents, or major fraction thereof,

- 1 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
2 every eight residents, or major fraction thereof, and
3 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
4 every fifteen residents, or major fraction thereof.

5 4. Effective immediately, facilities shall have the option of
6 varying the starting times for the eight-hour shifts by one (1) hour
7 before or one (1) hour after the times designated in this section
8 without overlapping shifts.

9 5. a. On and after January 1, 2004, a facility that has been
10 determined by the State Department of Health to have
11 been in compliance with the provisions of paragraph 3
12 of this subsection since the implementation date of
13 this subsection, may implement flexible staff
14 scheduling; provided, however, such facility shall
15 continue to maintain a direct-care service rate of at
16 least two and eighty-six one-hundredths (2.86) hours
17 of direct-care service per resident per day.

18 b. At no time shall direct-care staffing ratios in a
19 facility with flexible staff-scheduling privileges
20 fall below one direct-care staff to every sixteen
21 residents, and at least two direct-care staff shall be
22 on duty and awake at all times.

23 c. As used in this paragraph, "flexible staff-scheduling"
24 means maintaining:

- (1) a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident per day rate of not less than two and eighty-six one-hundredths (2.86) hours per day,
- (2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every sixteen residents at all times, and
- (3) at least two direct-care staff persons on duty and awake at all times.

6. a. On and after January 1, 2004, the Department shall require a facility to maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection if the facility has been determined by the Department to be deficient with regard to:

- (1) the provisions of paragraph 3 of this subsection,
- (2) fraudulent reporting of staffing on the Quality of Care Report,
- (3) a complaint and/or survey investigation that has determined substandard quality of care, or
- (4) a complaint and/or survey investigation that has determined quality-of-care problems related to insufficient staffing.

b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and

1 maintain the shift-based, staff-to-resident ratios
2 provided in paragraph 3 of this subsection for a
3 minimum of three (3) months before being considered
4 eligible to implement flexible staff scheduling as
5 defined in subparagraph c of paragraph 5 of this
6 subsection.

7 c. Upon a subsequent determination by the Department that
8 the facility has achieved and maintained for at least
9 three (3) months the shift-based, staff-to-resident
10 ratios described in paragraph 3 of this subsection,
11 and has corrected any deficiency described in
12 subparagraph a of this paragraph, the Department shall
13 notify the facility of its eligibility to implement
14 flexible staff-scheduling privileges.

15 7. a. For facilities that have been granted flexible staff-
16 scheduling privileges, the Department shall monitor
17 and evaluate facility compliance with the flexible
18 staff-scheduling staffing provisions of paragraph 5 of
19 this subsection through reviews of monthly staffing
20 reports, results of complaint investigations and
21 inspections.

22 b. If the Department identifies any quality-of-care
23 problems related to insufficient staffing in such
24 facility, the Department shall issue a directed plan

1 of correction to the facility found to be out of
2 compliance with the provisions of this subsection.

3 c. In a directed plan of correction, the Department shall
4 require a facility described in subparagraph b of this
5 paragraph to maintain shift-based, staff-to-resident
6 ratios for the following periods of time:

7 (1) the first determination shall require that shift-
8 based, staff-to-resident ratios be maintained
9 until full compliance is achieved,

10 (2) the second determination within a two-year period
11 shall require that shift-based, staff-to-resident
12 ratios be maintained for a minimum period of six
13 (6) months, and

14 (3) the third determination within a two-year period
15 shall require that shift-based, staff-to-resident
16 ratios be maintained for a minimum period of
17 twelve (12) months.

18 C. Effective September 1, 2002, facilities shall post the names
19 and titles of direct-care staff on duty each day in a conspicuous
20 place, including the name and title of the supervising nurse.

21 D. The State Board of Health shall promulgate rules prescribing
22 staffing requirements for intermediate care facilities for the
23 ~~mentally retarded~~ intellectually disabled serving six or fewer
24

1 clients and for intermediate care facilities for the ~~mentally~~
2 ~~retarded~~ intellectually disabled serving sixteen or fewer clients.

3 E. Facilities shall have the right to appeal and to the
4 informal dispute resolution process with regard to penalties and
5 sanctions imposed due to staffing noncompliance.

6 F. 1. When the state Medicaid program reimbursement rate
7 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
8 plus the increases in actual audited costs over and above the actual
9 audited costs reflected in the cost reports submitted for the most
10 current cost-reporting period and the costs estimated by the
11 Oklahoma Health Care Authority to increase the direct-care, flexible
12 staff-scheduling staffing level from two and eighty-six one-
13 hundredths (2.86) hours per day per occupied bed to three and two-
14 tenths (3.2) hours per day per occupied bed, all nursing facilities
15 subject to the provisions of the Nursing Home Care Act and
16 intermediate care facilities for the ~~mentally-retarded~~
17 intellectually disabled with seventeen or more beds, in addition to
18 other state and federal requirements related to the staffing of
19 nursing facilities, shall maintain direct-care, flexible staff-
20 scheduling staffing levels based on an overall three and two-tenths
21 (3.2) hours per day per occupied bed.

22 2. When the state Medicaid program reimbursement rate reflects
23 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
24 increases in actual audited costs over and above the actual audited

1 costs reflected in the cost reports submitted for the most current
2 cost-reporting period and the costs estimated by the Oklahoma Health
3 Care Authority to increase the direct-care flexible staff-scheduling
4 staffing level from three and two-tenths (3.2) hours per day per
5 occupied bed to three and eight-tenths (3.8) hours per day per
6 occupied bed, all nursing facilities subject to the provisions of
7 the Nursing Home Care Act and intermediate care facilities for the
8 ~~mentally retarded~~ intellectually disabled with seventeen or more
9 beds, in addition to other state and federal requirements related to
10 the staffing of nursing facilities, shall maintain direct-care,
11 flexible staff-scheduling staffing levels based on an overall three
12 and eight-tenths (3.8) hours per day per occupied bed.

13 3. When the state Medicaid program reimbursement rate reflects
14 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
15 increases in actual audited costs over and above the actual audited
16 costs reflected in the cost reports submitted for the most current
17 cost-reporting period and the costs estimated by the Oklahoma Health
18 Care Authority to increase the direct-care, flexible staff-
19 scheduling staffing level from three and eight-tenths (3.8) hours
20 per day per occupied bed to four and one-tenth (4.1) hours per day
21 per occupied bed, all nursing facilities subject to the provisions
22 of the Nursing Home Care Act and intermediate care facilities for
23 the ~~mentally retarded~~ intellectually disabled with seventeen or more
24 beds, in addition to other state and federal requirements related to

1 the staffing of nursing facilities, shall maintain direct-care,
2 flexible staff-scheduling staffing levels based on an overall four
3 and one-tenth (4.1) hours per day per occupied bed.

4 4. The Board shall promulgate rules for shift-based, staff-to-
5 resident ratios for noncompliant facilities denoting the incremental
6 increases reflected in direct-care, flexible staff-scheduling
7 staffing levels.

8 5. In the event that the state Medicaid program reimbursement
9 rate for facilities subject to the Nursing Home Care Act, and
10 intermediate care facilities for the ~~mentally-retarded~~
11 intellectually disabled having seventeen or more beds is reduced
12 below actual audited costs, the requirements for staffing ratio
13 levels shall be adjusted to the appropriate levels provided in
14 paragraphs 1 through 4 of this subsection.

15 G. For purposes of this subsection:

16 1. "Direct-care staff" means any nursing or therapy staff who
17 provides direct, hands-on care to residents in a nursing facility;
18 and

19 2. Prior to September 1, 2003, activity and social services
20 staff who are not providing direct, hands-on care to residents may
21 be included in the direct-care-staff-to-resident ratio in any shift.
22 On and after September 1, 2003, such persons shall not be included
23 in the direct-care-staff-to-resident ratio.

24

1 H. 1. The Oklahoma Health Care Authority shall require all
2 nursing facilities subject to the provisions of the Nursing Home
3 Care Act and intermediate care facilities for the ~~mentally-retarded~~
4 intellectually disabled with seventeen or more beds to submit a
5 monthly report on staffing ratios on a form that the Authority shall
6 develop.

7 2. The report shall document the extent to which such
8 facilities are meeting or are failing to meet the minimum direct-
9 care-staff-to-resident ratios specified by this section. Such
10 report shall be available to the public upon request.

11 3. The Authority may assess administrative penalties for the
12 failure of any facility to submit the report as required by the
13 Authority. Provided, however:

14 a. administrative penalties shall not accrue until the
15 Authority notifies the facility in writing that the
16 report was not timely submitted as required, and

17 b. a minimum of a one-day penalty shall be assessed in
18 all instances.

19 4. Administrative penalties shall not be assessed for
20 computational errors made in preparing the report.

21 5. Monies collected from administrative penalties shall be
22 deposited in the Nursing Facility Quality of Care Fund and utilized
23 for the purposes specified in the Oklahoma Healthcare Initiative
24 Act.

1 I. 1. All entities regulated by this state that provide long-
2 term care services shall utilize a single assessment tool to
3 determine client services needs. The tool shall be developed by the
4 Oklahoma Health Care Authority in consultation with the State
5 Department of Health.

6 2. a. The Oklahoma Nursing Facility Funding Advisory
7 Committee is hereby created and shall consist of the
8 following:

9 (1) four members selected by the Oklahoma Association
10 of Health Care Providers,

11 (2) three members selected by the Oklahoma
12 Association of Homes and Services for the Aging,
13 and

14 (3) two members selected by the State Council on
15 Aging.

16 The Chair shall be elected by the committee. No state
17 employees may be appointed to serve.

18 b. The purpose of the advisory committee will be to
19 develop a new methodology for calculating state
20 Medicaid program reimbursements to nursing facilities
21 by implementing facility-specific rates based on
22 expenditures relating to direct care staffing. No
23 nursing home will receive less than the current rate
24

1 at the time of implementation of facility-specific
2 rates pursuant to this subparagraph.

3 c. The advisory committee shall be staffed and advised by
4 the Oklahoma Health Care Authority.

5 d. The new methodology will be submitted for approval to
6 the Board of the Oklahoma Health Care Authority by
7 January 15, 2005, and shall be finalized by July 1,
8 2005. The new methodology will apply only to new
9 funds that become available for Medicaid nursing
10 facility reimbursement after the methodology of this
11 paragraph has been finalized. Existing funds paid to
12 nursing homes will not be subject to the methodology
13 of this paragraph. The methodology as outlined in
14 this paragraph will only be applied to any new funding
15 for nursing facilities appropriated above and beyond
16 the funding amounts effective on January 15, 2005.

17 e. The new methodology shall divide the payment into two
18 components:

19 (1) direct care which includes allowable costs for
20 registered nurses, licensed practical nurses,
21 certified medication aides and certified nurse
22 aides. The direct care component of the rate
23 shall be a facility-specific rate, directly
24

1 related to each facility's actual expenditures on
2 direct care, and

3 (2) other costs.

4 f. The Oklahoma Health Care Authority, in calculating the
5 base year prospective direct care rate component,
6 shall use the following criteria:

7 (1) to construct an array of facility per diem
8 allowable expenditures on direct care, the
9 Authority shall use the most recent data
10 available. The limit on this array shall be no
11 less than the ninetieth percentile,

12 (2) each facility's direct care base-year component
13 of the rate shall be the lesser of the facility's
14 allowable expenditures on direct care or the
15 limit,

16 (3) other rate components shall be determined by the
17 Oklahoma Nursing Facility Funding Advisory
18 Committee in accordance with federal regulations
19 and requirements, and

20 (4) rate components in divisions (2) and (3) of this
21 subparagraph shall be re-based and adjusted for
22 inflation when additional funds are made
23 available.

24

1 3. The Department of Human Services shall expand its statewide
2 toll-free, Senior-Info Line for senior citizen services to include
3 assistance with or information on long-term care services in this
4 state.

5 4. The Oklahoma Health Care Authority shall develop a nursing
6 facility cost-reporting system that reflects the most current costs
7 experienced by nursing and specialized facilities. The Oklahoma
8 Health Care Authority shall utilize the most current cost report
9 data to estimate costs in determining daily per diem rates.

10 J. 1. When the state Medicaid program reimbursement rate
11 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
12 plus the increases in actual audited costs, over and above the
13 actual audited costs reflected in the cost reports submitted for the
14 most current cost-reporting period, and the direct-care, flexible
15 staff-scheduling staffing level has been prospectively funding at
16 four and one-tenth (4.1) hours per day per occupied bed, the
17 Authority may apportion funds for the implementation of the
18 provisions of this section.

19 2. The Authority shall make application to the United States
20 Centers for Medicare and Medicaid Service for a waiver of the
21 uniform requirement on health-care-related taxes as permitted by
22 Section 433.72 of 42 C.F.R.

23
24

1 3. Upon approval of the waiver, the Authority shall develop a
2 program to implement the provisions of the waiver as it relates to
3 all nursing facilities.

4 SECTION 48. AMENDATORY 63 O.S. 2011, Section 1-219, is
5 amended to read as follows:

6 Section 1-219. The board of county commissioners of any county,
7 or the board of county commissioners of two or more counties
8 jointly, is hereby authorized, at the option and approval of said
9 board or boards, to conduct a child guidance program, and/or
10 community health center and/or community facility for the ~~mentally~~
11 ~~retarded~~ intellectually disabled, separate and apart from or in
12 conjunction with the county department of health, and to request as
13 a part of the county budget an appropriation of not to exceed an
14 amount equal to the net proceeds of a levy of three-fourths (3/4)
15 mill on the dollar valuation of taxable property in the county for
16 such purpose or purposes; and to employ personnel, within the limits
17 of such funds, to conduct such program or programs. Provided, that
18 any center or facility for mental health services established or
19 maintained hereunder shall first be approved by the State Director
20 of Mental Health on advice of the Board of Mental Health and shall
21 operate under the guidelines of the Oklahoma Mental Health Services
22 Act; and any center or facility for ~~mental retardation~~ intellectual
23 disability services established or maintained hereunder shall first
24 be approved by the Director of ~~the Department of Institutions,~~

1 ~~Social and Rehabilitative Services on the advice of the Oklahoma~~
2 ~~Welfare Commission and shall operate under regulations prescribed by~~
3 ~~the Oklahoma Public Welfare Commission~~ Human Services.

4 SECTION 49. AMENDATORY 63 O.S. 2011, Section 1-222.1, is
5 amended to read as follows:

6 Section 1-222.1. A. Every county or combination of counties
7 desirous of establishing a mental health center and/or facilities
8 for the ~~mentally retarded~~ intellectually disabled shall establish a
9 community mental health board and/or ~~mental retardation~~
10 intellectually disabled governing board each of which shall be
11 composed of not less than seven (7) members. The members of such
12 governing boards shall be appointed by the board of county
13 commissioners of said county. The term of office of members of the
14 governing board shall be three (3) years, except that of the members
15 first appointed the term of three members shall be for one (1) year,
16 and the term of two members shall be for two (2) years. All members
17 shall serve without pay.

18 B. When any combination of counties desires to establish a
19 mental health center and/or facilities for the ~~mentally retarded~~
20 intellectually disabled, the ~~chairman~~ chair of the board of county
21 commissioners of each participating county shall appoint two (2)
22 members of a selection committee, which committee shall select the
23 governing board.

24

1 SECTION 50. AMENDATORY 63 O.S. 2011, Section 1-222.2, is
2 amended to read as follows:

3 Section 1-222.2. The duties of each of the governing boards
4 shall be:

5 1. For the community mental health board, the duties prescribed
6 by the Community Mental Health Services Act, Sections 601 through
7 609, Title 43A, Oklahoma Statutes; and

8 2. For the ~~mental-retardation~~ board for services to the
9 intellectually disabled, the duties prescribed for the Oklahoma
10 Welfare Commission by Sections 301 through 335, Title 43A, Oklahoma
11 Statutes.

12 SECTION 51. AMENDATORY 63 O.S. 2011, Section 1-502.1, as
13 amended by Section 1, Chapter 246, O.S.L. 2013 (63 O.S. Supp. 2018,
14 Section 1-502.1), is amended to read as follows:

15 Section 1-502.1. A. All agencies and organizations that
16 regularly employ emergency medical technicians, paramedics,
17 firefighters, peace officers, as defined in Section 648 of Title 21
18 of the Oklahoma Statutes, correctional officers and employees, or
19 health care workers, all mental health or ~~mentally-retarded~~
20 intellectually disabled treatment or evaluation programs that employ
21 persons involved with providing care for patients, the J.D. McCarty
22 Center for Children with Developmental Disabilities, and all
23 juvenile institutions of the Department of Human Services shall
24 implement the universal precautions for the prevention of the

1 transmission of communicable diseases published by the Centers for
2 Disease Control, U.S. Public Health Service, in the Morbidity and
3 Mortality Weekly Report, Volume 36, Number 2S or as subsequently
4 amended.

5 B. The State Board of Health shall promulgate rules and
6 guidelines that will implement a system of notification of emergency
7 medical technicians, paramedics, firefighters, health care workers,
8 funeral directors, peace officers, and any person who in good faith
9 renders aid in accordance with the Good Samaritan Act relating to
10 risk exposures during health care activities, emergency response
11 activities or funeral preparations. Risk exposure shall be defined
12 by the State Board of Health to be exposure that is
13 epidemiologically demonstrated to have the potential for
14 transmitting a communicable disease.

15 C. The Board of Mental Health and Substance Abuse Services,
16 Department of Human Services, Oklahoma Cerebral Palsy Commission,
17 and State Board of Corrections shall each promulgate rules,
18 guidelines or policies to provide for such notification of risk
19 exposures to persons employed by such agencies.

20 SECTION 52. AMENDATORY 63 O.S. 2011, Section 1-533, is
21 amended to read as follows:

22 Section 1-533. A. The State ~~Board~~ Commissioner of Health shall
23 provide, pursuant to the provisions of Section 1-534 of this title,
24 as technologies and funds become available, an intensive educational

1 and newborn screening program among physicians, hospitals, public
2 health nurses, and the public concerning phenylketonuria, related
3 inborn metabolic disorders, and other genetic or biochemical
4 disorders for which:

5 1. Newborn screening will provide early treatment and
6 management opportunities that might not be available without
7 screening; and

8 2. Treatment and management will prevent ~~mental retardation~~
9 intellectual disabilities and/or reduce infant morbidity and
10 mortality.

11 B. This educational and newborn screening program shall include
12 information about:

13 1. The nature of the diseases;

14 2. Examinations for the detection of the diseases in infancy;
15 and

16 3. Follow-up measures to prevent the morbidity and mortality
17 resulting from these diseases.

18 C. For purposes of this section, "phenylketonuria" means an
19 inborn error of metabolism attributable to a deficiency of or a
20 defect in phenylalanine hydroxylase, the enzyme that catalyzes the
21 conversion of phenylalanine to tyrosine. The deficiency permits the
22 accumulation of phenylalanine and its metabolic products in the body
23 fluids. The deficiency can result in ~~mental retardation~~
24 intellectual disabilities (phenylpyruvic oligophrenia), neurologic

1 manifestations (including hyperkinesia, epilepsy, and microcephaly),
2 light pigmentation, and eczema. The disorder is transmitted as an
3 autosomal recessive trait and can be treated by administration of a
4 diet low in phenylalanine.

5 D. The ~~State Board of Health~~ Commissioner shall promulgate any
6 rules necessary to effectuate the provision of this section.

7 SECTION 53. AMENDATORY 63 O.S. 2011, Section 1-851.1, is
8 amended to read as follows:

9 Section 1-851.1. For purposes of the Long-term Care Certificate
10 of Need Act:

- 11 1. "Board" means the State ~~Board~~ Commissioner of Health;
- 12 2. "Commissioner" means the State Commissioner of Health;
- 13 3. "Department" means the State Department of Health;
- 14 4. "Long-term care facility" means:
 - 15 a. a nursing facility or a specialized facility, as such
 - 16 terms are defined by Section 1-1902 of this title,
 - 17 b. skilled nursing care provided in a distinct part of a
 - 18 hospital as such term is defined by Section 1-701 of
 - 19 this title,
 - 20 c. the nursing care component of a continuum of care
 - 21 facility, as such term is defined under the Continuum
 - 22 of Care and Assisted Living Act, or
 - 23
 - 24

1 d. the nursing care component of a life care community as
2 such term is defined by the Long-term Care Insurance
3 Act;

4 5. "Disclosure statement" means a written statement by the
5 applicant which contains:

6 a. the full name, business address, and social security
7 number of the applicant, and all persons with
8 controlling interest as defined by the Long-term Care
9 Certificate of Need Act,

10 b. the full name and address of any legal entity in which
11 the applicant holds a debt or equity interest of at
12 least five percent (5%), or which is a parent company
13 or subsidiary of the applicant,

14 c. a description of the experience and credentials of the
15 applicant, including any past or present permits,
16 licenses, certifications, or operational
17 authorizations relating to long-term care facility
18 regulation,

19 d. a listing and explanation of any administrative, civil
20 or criminal legal actions against the applicant or any
21 person with a controlling interest which resulted in a
22 final agency order or final judgment by a court of
23 record including, but not limited to, final orders or
24 judgments on appeal related to long-term care in the

1 five (5) years immediately preceding the filing of the
2 application. Such actions shall include, without
3 limitation, any permit denial or any sanction imposed
4 by a state regulatory authority or the Centers for
5 Medicare and Medicaid Services, and

6 e. a listing of any federal long-term care agency and any
7 state long-term care agency outside this state that
8 has or has had regulatory responsibility over the
9 applicant;

10 6. "History of noncompliance" means three standard or complaint
11 surveys found to be at the substandard quality of care level when
12 the facility does not achieve compliance by date certain in a
13 nursing facility or specialized facility for persons with
14 Alzheimer's disease or related disorders. Additionally, "history of
15 noncompliance" for an intermediate care or specialized facility for
16 persons with ~~mental retardation~~ intellectual disabilities means three
17 consecutive routine or complaint surveys that resulted in
18 determinations that the facility was out of compliance with two or
19 more Conditions of Participation in the Medicaid program within the
20 preceding thirty-six (36) months when the facility does not achieve
21 compliance within sixty (60) days;

22 7. "Person" means any individual, corporation, industry, firm,
23 partnership, association, venture, trust, institution, federal,
24

1 state or local governmental instrumentality, agency or body or any
2 other legal entity however organized; and

3 8. "Person with a controlling interest" means a person who
4 meets any one or more of the following requirements:

5 a. controls fifty percent (50%) or more of the common
6 stock of the corporate entity involved or controls
7 fifty percent (50%) or more of the interest in the
8 partnership involved,

9 b. controls a percentage of stock greater than any other
10 stockholder or equal to the other single largest
11 stockholder or controls a percentage of partnership
12 interest greater than any other partner or equal to
13 the other single largest partnership interest, or

14 c. a managing member of a Limited Liability Company
15 (LLC).

16 SECTION 54. AMENDATORY 63 O.S. 2011, Section 1-1902, as
17 amended by Section 1, Chapter 288, O.S.L. 2016 (63 O.S. Supp. 2018,
18 Section 1-1902), is amended to read as follows:

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

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

23 2. "Access" means the right of a person to enter a facility to
24 communicate privately and without unreasonable restriction when

1 invited to do so by a resident. The state or local "ombudsman", as
2 that term is defined by the Aging Services Division of the
3 Department of Human Services pursuant to the Older Americans' Act,
4 42 U.S.C.A., Section 3001 et seq., as amended, and a case manager
5 employed by the Department of Mental Health and Substance Abuse
6 Services or one of its contract agencies shall have right of access
7 to enter a facility, communicate privately and without unreasonable
8 restriction with any resident who consents to the communication, to
9 seek consent to communicate privately and without restriction with
10 any resident, and to observe all areas of the facility that directly
11 pertain to the patient care of the resident without infringing upon
12 the privacy of the other residents without first obtaining their
13 consent;

14 3. "Administrator" means the person licensed by the State of
15 Oklahoma who is in charge of a facility. An administrator must
16 devote at least one-third (1/3) of such person's working time to on-
17 the-job supervision of the facility; provided that this requirement
18 shall not apply to an administrator of an intermediate care facility
19 for the ~~mentally retarded~~ intellectually disabled with sixteen or
20 fewer beds (ICF-MR/16), in which case the person licensed by the
21 state may be in charge of more than one ICF-MR/16 such facility, if
22 such facilities are located within a circle that has a radius of not
23 more than fifteen (15) miles, the total number of facilities and
24 beds does not exceed six facilities and sixty-four beds, and each

1 ICF-MR/16 such facility is supervised by a qualified ~~mental~~
2 ~~retardation~~ professional. The facilities may be free-standing in a
3 community or may be on campus with a parent institution. The ICF-
4 MR/16 facility may be independently owned and operated or may be
5 part of a larger institutional operation;

6 4. "Advisory Board" means the Long-Term Care Facility Advisory
7 Board;

8 5. "Adult companion home" means any home or establishment,
9 funded and certified by the Department of Human Services, which
10 provides homelike residential accommodations and supportive
11 assistance to three or fewer ~~mentally retarded or developmentally~~
12 intellectually disabled adults;

13 6. "Board" means State ~~Board~~ Commissioner of Health;

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

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

16 9. "Facility" means a nursing facility and a specialized home;
17 provided this term shall not include a residential care home or an
18 adult companion home;

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

22 a. skilled nursing care and related services for
23 residents who require medical or nursing care,
24

1 b. rehabilitation services for the rehabilitation of
2 injured, disabled, or sick persons, or

3 c. on a regular basis, health-related care and services
4 to individuals who because of their mental or physical
5 condition require care and services beyond the level
6 of care provided by a residential care home and which
7 can be made available to them only through a nursing
8 facility.

9 "Nursing facility" does not mean, for purposes of Section 1-851.1 of
10 this title, a facility constructed or operated by an entity
11 described in paragraph 7 of subsection B of Section 6201 of Title 74
12 of the Oklahoma Statutes or the nursing care component of a
13 continuum of care facility, as such term is defined under the
14 Continuum of Care and Assisted Living Act, to the extent that the
15 facility constructed or operated by an entity described in paragraph
16 7 of subsection B of Section 6201 of Title 74 of the Oklahoma
17 Statutes contains such a nursing care component;

18 11. "Specialized facility" means any home, establishment, or
19 institution which offers or provides inpatient long-term care
20 services on a twenty-four-hour basis to a limited category of
21 persons requiring such services, including but not limited to a
22 facility providing health or habilitation services for ~~mentally~~
23 ~~retarded or developmentally~~ intellectually disabled persons, but
24 does not mean, for purposes of Section 1-851.1 of this title, a

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

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

23 13. "Licensee" means the person, a corporation, partnership, or
24 association who is the owner of the facility which is licensed by

1 the Department pursuant to the provisions of the Nursing Home Care
2 Act;

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

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

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

22 17. "Personal care" means assistance with meals, dressing,
23 movement, bathing or other personal needs or maintenance, or general
24 supervision of the physical and mental well-being of a person, who

1 is incapable of maintaining a private, independent residence, or who
2 is incapable of managing his person, whether or not a guardian has
3 been appointed for such person;

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

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

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

1 health and comfort of such person. Supportive assistance shall not
2 include medical service.

3 SECTION 55. AMENDATORY 63 O.S. 2011, Section 1-1912, as
4 last amended by Section 1, Chapter 251, O.S.L. 2014 (63 O.S. Supp.
5 2018, Section 1-1912), is amended to read as follows:

6 Section 1-1912. A. The State Department of Health shall
7 promptly serve a notice of violation upon a licensee whenever, upon
8 inspection or investigation, the Department determines that:

9 1. The facility is in violation of the Nursing Home Care Act,
10 any rule promulgated thereunder, or applicable federal certification
11 criteria; or

12 2. The financial condition of the facility poses an immediate
13 risk to the proper operation of the facility or to the health,
14 safety or welfare of the residents of the facility.

15 B. Each notice of violation shall be prepared in writing and
16 shall specify the nature of the violation, and the statutory
17 provision, rule or standard alleged to have been violated. The
18 notice of violation shall inform the licensee of its obligation to
19 file a plan of correction within ten (10) working days of receipt of
20 the notice of violation. In the case of a specialized facility for
21 persons with ~~mental retardation~~ intellectual disabilities, the
22 Department shall offer the licensee an informal opportunity
23 comparable to the process offered to Medicaid-certified nursing
24

1 facilities pursuant to 42 CFR 488.331, in order to dispute the
2 alleged violations.

3 C. The Department shall notify the licensee of its intent to
4 take any remedial action, impose administrative penalties, place a
5 monitor or temporary manager in the facility, issue a conditional
6 license, or suspend or revoke a license. The Department shall also
7 inform the licensee of the right to an informal dispute resolution,
8 hearing, or both.

9 D. Whenever the Department finds that an emergency exists
10 requiring immediate action to protect the health, safety or welfare
11 of any resident of a facility licensed pursuant to the provisions of
12 the Nursing Home Care Act, the Department may, without notice of
13 hearing, issue an order stating the existence of such an emergency
14 and requiring that action be taken as deemed necessary by the
15 Department to meet the emergency. The order shall be effective
16 immediately. Any person to whom such an order is directed shall
17 comply with such order immediately but, upon application to the
18 Department, shall be afforded a hearing within ten (10) business
19 days of receipt of the application. On the basis of such hearing,
20 the Department may continue the order in effect, revoke it, or
21 modify it. Any person aggrieved by such order continued after the
22 hearing provided in this subsection may appeal to the district court
23 in Oklahoma County within thirty (30) days. Such appeal when
24 docketed shall have priority over all cases pending on the docket,

1 except criminal cases. For purposes of this subsection, the State
2 Board of Health shall define by rule the term "emergency" to
3 include, but not be limited to, a life-endangering situation.

4 E. Within thirty (30) days of receipt of a plan of correction
5 by the State Department of Health from any facility operated by the
6 Oklahoma Department of Veterans Affairs, the State Department of
7 Health shall submit the results of the inspection, including a list
8 of deficiencies in the condition or operation of the facility and
9 recommendations for corrective measures in the form of a written
10 report to the person immediately responsible for the administration
11 of the facility inspected, to the Oklahoma Department of Veterans
12 Affairs, to the Governor, to the Speaker of the House of
13 Representatives, and to the President Pro Tempore of the Senate.

14 F. At the conclusion of an inspection, survey, or
15 investigation, the survey team's observations and preliminary
16 findings shall be discussed in an exit conference with the facility
17 personnel. During the exit conference, the facility shall be
18 provided with the opportunity to discuss and supply additional
19 information that they believe is pertinent to the preliminary
20 findings. The following shall be provided to the facility:

21 1. A written list containing preliminary areas of potential
22 noncompliance with state requirements based on findings during the
23 survey, inspection or investigation. The information provided
24 should be adequate to notify staff of surveyor concerns regarding

1 preliminary findings that indicate actual harm or substandard
2 quality of care; and

3 2. Any additional noncompliance with state requirements
4 determined during the review of field notes or in preparation of the
5 final survey report will be communicated to the facility personnel
6 by email or phone before issuing the final survey report.

7 SECTION 56. AMENDATORY 63 O.S. 2011, Section 330.51, is
8 amended to read as follows:

9 Section 330.51. For the purposes of ~~this act~~ Section 330.51 et
10 seq. of this title, and as used herein:

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

13 2. "Long-term care administrator" means a person licensed or
14 certified as a nursing facility administrator, an assisted living
15 facility administrator, a residential care facility administrator,
16 or an adult day care center administrator pursuant to this act. A
17 long-term care administrator must devote at least one-half (1/2) of
18 such person's working time to on-the-job supervision of a long-term
19 care facility; provided that this requirement shall not apply to an
20 administrator of an intermediate care facility for the ~~mentally~~
21 ~~retarded~~ intellectually disabled with sixteen or fewer beds ~~(ICF-~~
22 ~~MR/16)~~ (ICF/IID-16), in which case the person licensed by the state
23 may be in charge of more than one ~~ICF-MR/16~~ ICF/IID-16, if such
24 facilities are located within a circle that has a radius of not more

1 than fifteen (15) miles, and the total number of facilities and beds
2 does not exceed six facilities and sixty-four beds. The facilities
3 may be free-standing in a community or may be on campus with a
4 parent institution. The ~~ICF-MR/16~~ ICF/IID-16 may be independently
5 owned and operated or may be part of a larger institutional
6 ownership and operation;

7 3. "Nursing facility administrator" means a person licensed by
8 the State of Oklahoma to perform the duties of an administrator
9 serving in a skilled nursing or nursing or ICF/MR facility;

10 4. "Assisted living facility administrator" means a person
11 licensed or certified by the State of Oklahoma to perform the duties
12 of an administrator serving in an assisted living facility;

13 5. "Residential care facility administrator" means a person
14 licensed or certified by the State of Oklahoma to perform the duties
15 of an administrator serving in a residential care facility;

16 6. "Adult day care center administrator" means a person
17 licensed or certified by the State of Oklahoma to perform the duties
18 of an administrator serving in an adult day care center; and

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

1 the terms are used in the Residential Care Act; and "adult day care
2 center" and "center" shall have the same meaning as such terms are
3 used in the Adult Day Care Act.

4 SECTION 57. AMENDATORY 63 O.S. 2011, Section 5026, is
5 amended to read as follows:

6 Section 5026. A. The Oklahoma Health Care Authority Board
7 shall, in administering the Medicaid prescription drug program,
8 utilize the following definition for "phenylketonuria" to mean: An
9 inborn error of metabolism attributable to a deficiency of or a
10 defect in phenylalanine hydroxylase, the enzyme that catalyzes the
11 conversion of phenylalanine to tyrosine. The deficiency permits the
12 accumulation of phenylalanine and its metabolic products in the body
13 fluids. The deficiency can result in ~~mental retardation~~
14 intellectual disabilities (phenylpyruvic oligophrenia), neurologic
15 manifestations (including hyperkinesia, epilepsy, and microcephaly),
16 light pigmentation, and eczema. The disorder is transmitted as an
17 autosomal recessive trait and can be treated by administration of a
18 diet low in phenylalanine.

19 B. The Oklahoma Health Care Authority Board shall promulgate
20 any rules necessary to effectuate the provisions of this section.

21 SECTION 58. AMENDATORY 70 O.S. 2011, Section 6-105, as
22 amended by Section 1, Chapter 78, O.S.L. 2012 (70 O.S. Supp. 2018,
23 Section 6-105), is amended to read as follows:

24

1 Section 6-105. A. If, because of sickness or other reason, a
2 teacher is temporarily unable to perform regular duties, a
3 substitute teacher may be employed for the position for the time of
4 the absence. A substitute teacher shall be paid in an amount and
5 under such terms as may be agreed upon in advance by the substitute
6 teacher and the board of education or according to regulations of
7 the board. If a teacher is absent for reason of personal business
8 the school district shall deduct from the salary of the teacher only
9 the amount necessary to pay the substitute.

10 B. No substitute teacher shall be employed for a total period
11 of time in excess of ninety (90) school days during a school year;
12 or one hundred (100) school days during the school year if the
13 substitute teacher holds a lapsed or expired certificate or has a
14 bachelors level college degree; or no limit of school days during
15 the school year if the substitute teacher holds a valid certificate.
16 Each school district shall adopt a policy which sets forth the
17 maximum number of days a substitute teacher may be employed for the
18 same assignment if the substitute teacher does not hold a valid
19 certificate.

20 C. Substitute teachers who do not hold a valid certificate and
21 who are employed to teach special education for students with
22 physical disabilities or students with ~~mental retardation~~
23 intellectual disabilities shall not be subject to the restrictions
24 on total time a substitute teacher may be employed if no certified

1 teachers are available to teach such students and the students would
2 be denied instruction in special education if the substitute teacher
3 were not employed. Beginning with the 2007-08 school year, any
4 substitute teacher employed to teach special education for the same
5 assignment for more than fifteen (15) consecutive or thirty (30)
6 total school days during a school year who does not hold a valid
7 certificate to teach special education shall be required to complete
8 in-service training as prescribed by the State Board of Education.
9 The training shall be provided at no cost to the substitute teacher.
10 Availability of certified teachers shall be determined after the
11 school has consulted the State Board of Education and any other
12 resources for filling the vacant position with a certified teacher.

13 D. A school district may request a waiver of the restrictions
14 on total time a substitute teacher may be employed from the State
15 Board of Education for a substitute teacher who does not hold a
16 valid certificate. The school district shall submit evidence on the
17 availability of certified substitute teachers and the qualifications
18 of the substitute teacher. The Board shall develop procedures for
19 the filing and processing of substitute teacher waivers pursuant to
20 this subsection.

21 E. Payment of salary to a substitute shall have no effect on
22 the amount of salary to which the absent regular teacher is entitled
23 under the applicable leave plan.

24

1 F. Any substitute or cadet teacher employed in any school
2 system on a monthly or annual basis shall hold a certificate and
3 have a written contract in the manner and under the same conditions
4 as for regular teachers.

5 G. Teachers who are members of the Reserve Forces of the Army,
6 the Navy, the Marine Corps, the Coast Guard, the Air Force, or any
7 other component of the Armed Forces of the United States, including
8 members of the Air or Army National Guard, shall, when ordered by
9 the proper authority to active duty or service, be entitled to a
10 leave of absence from such civil employment for the period of such
11 active service without loss of status or efficiency rating and
12 without loss of pay during the first thirty (30) days of such leave
13 of absence.

14 H. School districts in this state may contract with outside
15 providers for the training and employment of substitute teachers.
16 The State Board of Education shall promulgate guidelines to assist
17 school districts in the sanctioning and approval of an outside
18 provider in accordance with this section.

19 SECTION 59. AMENDATORY 74 O.S. 2011, Section 255, is
20 amended to read as follows:

21 Section 255. The heads of the departments except as otherwise
22 herein provided are hereby authorized and empowered to appoint
23 persons to hold positions created in their respective departments.
24 The persons so appointed shall hold office at the will of such state

1 officer and in the case of all boards and commissioners, such board
2 or commission shall, by vote thereof, except as otherwise provided,
3 appoint persons to hold positions created under such boards or
4 commissions by this act, and the said persons so appointed shall
5 hold office at the will of such officer, boards or commissions
6 making said appointment, provided that any board or commission may
7 authorize the secretary of such board or commission to make said
8 appointment.

9 Provided further, that it shall be unlawful for the heads of any
10 department, or any departments, except institutions of higher
11 learning and state hospitals, the State Health Department, the
12 Highway Department in the employment of engineers and technicians,
13 schools for ~~mentally retarded~~ intellectually disabled and State
14 Veterans Facilities as pertains to doctors, dentists, nurses and
15 other trained technicians, to employ in any way any person who is
16 not a citizen of the United States, and repealing all laws in
17 conflict herewith. The provisions of this act shall in no way be
18 interpreted to repeal any provision of the laws heretofore enacted
19 creating the Merit System of the State of Oklahoma.

20 SECTION 60. This act shall become effective November 1, 2019.

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