

1 ENGROSSED SENATE AMENDMENT
TO

2 ENGROSSED HOUSE
3 BILL NO. 3238

By: Lawson of the House

and

Garvin of the Senate

7 An Act relating to poor persons; defining terms;
8 designating the Oklahoma Health Care Authority as the
9 state administering agency for PACE program
10 agreements; authorizing the Authority to enter into
11 PACE program agreements; requiring enforcement of
12 certain federal laws and regulations; authorizing the
13 Authority to enter into certain agreements with the
14 State Department of Health; directing the Department
15 to create and issue certain license; stating minimum
16 licensure requirements; directing monitoring of PACE
17 organizations; prohibiting certain regulation;
18 authorizing certain action for noncompliance;
19 directing promulgation of rules; amending 63 O.S.
20 2021, Section 1-872, which relates to the Adult Day
21 Care Act; modifying definition; amending 63 O.S.
22 2021, Section 1-1961, which relates to the Home Care
23 Act; modifying definition; updating statutory
24 language; providing for codification; and providing
an effective date.

18 AUTHOR: Add the following House Coauthor: Waldron

19 AMENDMENT NO. 1. Page 1, strike the title, enacting clause and
20 entire bill and insert

21 "An Act relating to long-term care; defining terms;
22 designating the Oklahoma Health Care Authority as the
23 state administering agency for programs of all-
24 inclusive care for the elderly (PACE) agreements;
requiring enforcement of certain federal regulations;
providing certain powers and duties; exempting PACE
organizations from certain licensure; providing

1 certain construction; authorizing certain interagency
2 agreement; authorizing promulgation of rules;
3 amending 63 O.S. 2021, Section 1-872, which relates
4 to definitions used in the Adult Day Care Act;
5 modifying definition; amending 63 O.S. 2021, Section
6 1-1961, which relates to definitions used in the Home
7 Care Act; modifying definition; updating statutory
8 language; providing for codification; and declaring
9 an emergency.

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

11 SECTION 1. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 1017.7 of Title 56, unless there
13 is created a duplication in numbering, reads as follows:

14 A. As used in this section:

15 1. "PACE" stands for programs of all-inclusive care for the
16 elderly; and

17 2. The terms "PACE program agreement", "PACE organization",
18 "participant" and "state administering agency" have the same meaning
19 as provided by 42 C.F.R., Section 460.6.

20 B. The Oklahoma Health Care Authority shall serve as the state
21 administering agency responsible for administering PACE program
22 agreements under 42 C.F.R., Part 460, Subpart C.

23 C. The Authority shall enforce the federal regulations of the
24 Centers for Medicare and Medicaid Services governing PACE codified
at 42 C.F.R., Part 460. The Authority shall have all the powers and
duties provided to the state administering agency under 42 C.F.R.,
Part 460.

1 D. PACE organizations shall be exempt from licensure by the
2 State Department of Health under the Home Care Act, the Adult Day
3 Care Act, or any other act that governs a different type of facility
4 or provider. This subsection shall not be construed to prevent the
5 Department from enforcing such acts with respect to facilities or
6 providers contracted by the PACE organization to provide services to
7 PACE program participants.

8 E. The Authority may, as necessary, execute an interagency
9 agreement with the State Department of Health to carry out any of
10 the functions of the state administering agency under 42 C.F.R.,
11 Part 460.

12 F. The Oklahoma Health Care Authority Board may promulgate
13 rules as necessary to implement this section.

14 SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-872, is
15 amended to read as follows:

16 Section 1-872. As used in the Adult Day Care Act:

17 1. "Adult day care center" or "center" means a facility which
18 provides basic day care services to unrelated impaired adults for
19 more than four (4) hours in a twenty-four-hour period. A center
20 shall be a distinct entity, either freestanding or a separate
21 program of a larger organization. A center shall have a separately
22 verifiable staff, space, budget and participant record system. The
23 terms ~~"adult day care center"~~ adult day care center or ~~"center"~~
24 center shall not include retirement centers ~~and,~~ senior citizen

1 centers, or PACE organizations as defined by 42 C.F.R., Section
2 460.6;

3 2. "Basic day care services" means supervised health, social
4 supportive, and recreational services in a structured daytime
5 program which serves functionally impaired adults who continue to
6 live in their own homes, usually with the aid of family care givers;

7 3. "Department" means the State Department of Health; and

8 4. "Participant" means any person attending an adult day care
9 center.

10 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-1961, is
11 amended to read as follows:

12 Section 1-1961. As used in the Home Care Act:

13 1. "Board" means the State Board of Health;

14 2. "Certification" means verification of appropriate training
15 and competence established by the State Commissioner of Health by
16 rules promulgated pursuant to the Home Care Act for home health
17 aides and home care agency administrators;

18 3. "Department" means the State Department of Health;

19 4. ~~"Healthcare~~ "Health care provider" means a physician,
20 physician assistant or Advanced Practice Registered Nurse recognized
21 by the Oklahoma Board of Nursing as a Certified Nurse Practitioner
22 or a Clinical Nurse Specialist;

23 5. "Home care agency" means any sole proprietorship,
24 partnership, association, corporation or other organization which

1 administers, offers or provides home care services, for a fee or
2 pursuant to a contract for such services, to clients in their place
3 of residence. The term "~~home care agency~~" home care agency shall
4 not include:

5 a. individuals who contract with the Department of Human
6 Services to provide personal care services, provided
7 such individuals shall not be exempt from
8 certification as home health aides,

9 b. organizations that contract with the Oklahoma Health
10 Care Authority as Intermediary Services Organizations
11 (ISO) to provide federal Internal Revenue Service
12 fiscal and supportive services to Oklahoma Consumer-
13 Directed Personal Assistance Supports and Support
14 Services (CD-PASS) waiver program participants who
15 have employer responsibility for hiring, training,
16 directing and managing an individual personal care
17 attendant, ~~or~~

18 c. CD-PASS waiver program employer participants, or

19 d. PACE organizations as defined by 42 C.F.R., Section
20 460.6;

21 6. "Home care services" means skilled or personal care services
22 provided to clients in their place of residence for a fee;
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1 7. "Home health aide" means an individual who provides personal
2 care to clients in their temporary or permanent place of residence
3 for a fee;

4 8. "Home care agency administrator" means a person who
5 operates, manages, or supervises, or is in charge of a home care
6 agency;

7 9. "Personal care" means assistance with dressing, bathing,
8 ambulation, exercise or other personal needs;

9 10. "Skilled care" means home care services performed on a
10 regular basis by a trained ~~Respiratory Therapist/Technician~~
11 respiratory therapist/technician or by a person currently licensed
12 by this state including but not limited to a Licensed Practical
13 Nurse, Registered Nurse, ~~Physical Therapist, Occupational Therapist,~~
14 ~~Speech Therapist~~ physical therapist, occupational therapist, speech
15 therapist, or ~~Social Worker~~ social worker;

16 11. "Standby assistance" means supervision of client directed
17 activities with verbal prompting and infrequent, incidental hands-on
18 intervention only; and

19 12. "Supportive home assistant" means an individual employed by
20 a home care agency who provides standby assistance to ambulatory
21 clients, in conjunction with other companionship or homemaker
22 services, in the temporary or permanent place of residence of the
23 client for a fee.

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12 PACE program agreements; requiring enforcement of
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14 Authority to enter into certain agreements with the
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21 2021, Section 1-872, which relates to the Adult Day
22 Care Act; modifying definition; amending 63 O.S.
23 2021, Section 1-1961, which relates to the Home Care
24 Act; modifying definition; updating statutory
language; providing for codification; and providing
an effective date.

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

SECTION 5. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 1017.7 of Title 56, unless there
is created a duplication in numbering, reads as follows:

A. As used in this section:

1 1. "PACE" shall mean the program of all-inclusive care for the
2 elderly; and

3 2. The terms "PACE program agreement", "PACE organization", and
4 "state administering agency" shall have the same meaning as provided
5 by 42 C.F.R., Section 460.6.

6 B. 1. The Oklahoma Health Care Authority shall serve as the
7 state administering agency responsible for administering PACE
8 program agreements under 42 C.F.R., Part 460, Subpart C. The
9 Authority may enter into PACE program agreements with PACE
10 organizations and the Centers for Medicare and Medicaid Services.

11 2. The Authority shall enforce applicable federal laws and
12 regulations governing PACE organizations, including, but not limited
13 to, regulations of the Centers for Medicare and Medicaid Services
14 codified at 42 C.F.R., Part 460. The Authority may enter into an
15 agreement with the State Department of Health to carry out any
16 duties or functions of the state administering agency under 42
17 C.F.R., Part 460 or other applicable federal laws or regulations.

18 C. 1. The State Department of Health shall create and issue to
19 qualifying applicants a license for PACE organizations. Qualifying
20 PACE organizations shall at a minimum meet all requirements of 42
21 C.F.R., Part 460, Subpart B.

22 2. The Department shall perform onsite visits and other
23 necessary monitoring of PACE organizations under 42 C.F.R., Part
24

1 460, Subpart K and as provided by the agreement with the Authority
2 described in paragraph 2 of subsection B of this section.

3 3. The Department shall not license or regulate PACE
4 organizations under the Home Care Act, the Adult Day Care Act, or
5 any other act that governs a different type of facility or provider.

6 4. The Department may, in cooperation with the Centers for
7 Medicare and Medicaid Services and as provided by the agreement with
8 the Authority described in paragraph 2 of subsection B of this
9 section, take action against noncompliant PACE organizations under
10 42 C.F.R., Part 460, Subpart D.

11 D. The Oklahoma Health Care Authority Board and the State
12 Commissioner of Health shall promulgate rules to implement this
13 section.

14 SECTION 6. AMENDATORY 63 O.S. 2021, Section 1-872, is
15 amended to read as follows:

16 Section 1-872. As used in the Adult Day Care Act:

17 1. "Adult day care center" or "center" means a facility which
18 provides basic day care services to unrelated impaired adults for
19 more than four (4) hours in a twenty-four-hour period. A center
20 shall be a distinct entity, either freestanding or a separate
21 program of a larger organization. A center shall have a separately
22 verifiable staff, space, budget and participant record system. The
23 terms "adult day care center" or "center" shall not include
24

1 retirement centers ~~and~~, senior citizen centers, or PACE
2 organizations as defined by 42 C.F.R., Section 460.6;

3 2. "Basic day care services" means supervised health, social
4 supportive, and recreational services in a structured daytime
5 program which serves functionally impaired adults who continue to
6 live in their own homes, usually with the aid of family care givers;

7 3. "Department" means the State Department of Health; and

8 4. "Participant" means any person attending an adult day care
9 center.

10 SECTION 7. AMENDATORY 63 O.S. 2021, Section 1-1961, is
11 amended to read as follows:

12 Section 1-1961. As used in the Home Care Act:

13 1. "Board" means the State Board of Health;

14 2. "Certification" means verification of appropriate training
15 and competence established by the State Commissioner of Health by
16 rules promulgated pursuant to the Home Care Act for home health
17 aides and home care agency administrators;

18 3. "Department" means the State Department of Health;

19 4. "Healthcare provider" means a physician, physician assistant
20 or Advanced Practice Registered Nurse recognized by the Oklahoma
21 Board of Nursing as a Certified Nurse Practitioner or a Clinical
22 Nurse Specialist;

23 5. "Home care agency" means any sole proprietorship,
24 partnership, association, corporation or other organization which

1 administers, offers or provides home care services, for a fee or
2 pursuant to a contract for such services, to clients in their place
3 of residence. The term "home care agency" shall not include:

4 a. individuals who contract with the Department of Human
5 Services to provide personal care services, provided
6 such individuals shall not be exempt from
7 certification as home health aides,

8 b. organizations that contract with the Oklahoma Health
9 Care Authority as Intermediary Services Organizations
10 (ISO) to provide federal Internal Revenue Service
11 fiscal and supportive services to Consumer-Directed
12 Personal Assistance Supports and Services (CD-PASS)
13 waiver program participants who have employer
14 responsibility for hiring, training, directing and
15 managing an individual personal care attendant, ~~or~~

16 c. CD-PASS waiver program employer participants, or

17 d. PACE organizations as defined by 42 C.F.R., Section
18 460.6;

19 6. "Home care services" means skilled or personal care services
20 provided to clients in their place of residence for a fee;

21 7. "Home health aide" means an individual who provides personal
22 care to clients in their temporary or permanent place of residence
23 for a fee;

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1 8. "Home care agency administrator" means a person who
2 operates, manages, or supervises, or is in charge of a home care
3 agency;

4 9. "Personal care" means assistance with dressing, bathing,
5 ambulation, exercise or other personal needs;

6 10. "Skilled care" means home care services performed on a
7 regular basis by a trained Respiratory Therapist/Technician or by a
8 person currently licensed by this state including but not limited to
9 a Licensed Practical Nurse, Registered Nurse, Physical Therapist,
10 Occupational Therapist, Speech Therapist, or Social Worker;

11 11. "Standby assistance" means supervision of client directed
12 activities with verbal prompting and infrequent, incidental hands-on
13 intervention only; and

14 12. "Supportive home assistant" means an individual employed by
15 a home care agency who provides standby assistance to ambulatory
16 clients, in conjunction with other companionship or homemaker
17 services, in the temporary or permanent place of residence of the
18 client for a fee.

19 SECTION 8. This act shall become effective November 1, 2024.
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