

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

HOUSE BILL NO. 3892

By: Townley

5
6 COMMITTEE SUBSTITUTE

7 An Act relating to professions and occupations;
8 requiring compliance with certain orders; amending 63
9 O.S. 2021, Section 1-1951, which relates to the
10 Nursing Home Care Act; making certain persons comply
with orders; providing for codification; and
providing an effective date.

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

13 SECTION 1. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 567.5b of Title 59, unless there
15 is created a duplication in numbering, reads as follows:

16 An Advanced Practice Registered Nurse in the role of Certified
17 Nurse Practitioner, Certified Nurse-Midwife, or Clinical Nurse
18 Specialist shall be responsible for the delegation and supervision
19 of nursing tasks to unlicensed personnel. Tasks that may be
20 assigned to unlicensed personnel shall be stated in the employer's
21 policies, and the employer shall verify the training of the
22 personnel and competencies to perform the tasks.
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1 SECTION 2. AMENDATORY 63 O.S. 2021, Section 1-1951, is
2 amended to read as follows:

3 Section 1-1951. A. The State Department of Health shall have
4 the power and duty to:

5 1. Issue certificates of training and competency for nurse
6 aides;

7 2. Approve training and competency programs including, but not
8 limited to, education-based programs and employer-based programs,
9 including those programs established pursuant to Section 223.1 of
10 Title 72 of the Oklahoma Statutes;

11 3. Determine curricula and standards for training and
12 competency programs. The Department shall require such training to
13 include a minimum of ten (10) hours of training in the care of
14 Alzheimer's patients;

15 4. Establish and maintain a registry for certified nurse aides
16 and for nurse aide trainees;

17 5. Establish categories and standards for nurse aide
18 certification and registration, including feeding assistants as
19 defined in 42 CFR Parts 483 and 488;

20 6. Exercise all incidental powers as necessary and proper to
21 implement and enforce the provisions of this section; and

22 7. Suspend or revoke any certification issued to any nurse
23 aide, if:
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- 1 a. the nurse aide is found to meet any of the
2 requirements contained in subsection D of Section 1-
3 1947 of this title,
4 b. the nurse aide is found to meet any of the
5 requirements contained in subsection C of Section 1-
6 1950.1 of this title, or
7 c. the nurse aide is found to have committed abuse,
8 neglect or exploitation of a resident or
9 misappropriation of resident or client property
10 pursuant to the requirements contained in paragraph 7
11 of subsection D F of this section. The action to
12 revoke or suspend may be included with the filing of
13 any action pursuant to the requirements of paragraph 7
14 of subsection D F of this section.

15 B. The State Board of Health shall promulgate rules to
16 implement the provisions of this section and shall have power to
17 assess fees.

18 1. Each person certified as a nurse aide pursuant to the
19 provisions of this section shall be required to pay certification
20 and recertification fees in amounts to be determined by the State
21 Board of Health, not to exceed Fifteen Dollars (\$15.00).

22 2. In addition to the certification and recertification fees,
23 the State Board of Health may impose fees for training or education
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1 programs conducted or approved by the Department, except for those
2 programs operated by the Oklahoma Department of Veterans Affairs.

3 3. All revenues collected as a result of fees authorized in
4 this section and imposed by the Board shall be deposited into the
5 Public Health Special Fund.

6 C. Only a person who has qualified as a certified nurse aide
7 and who holds a valid current nurse aide certificate for use in this
8 state shall have the right and privilege of using the title
9 Certified Nurse Aide and to use the abbreviation CNA after the name
10 of such person. Any person who violates the provisions of this
11 section shall be subject to a civil monetary penalty to be assessed
12 by the Department.

13 D. A person qualified by the Department as a certified nurse
14 aide shall be deemed to have met the requirements to work as a home
15 health aide pursuant to the provisions of the Home Care Act and
16 shall require no further licensure for performing services within
17 the scope of practice of home health aides.

18 E. A person qualified by the Department as a certified nurse
19 aide shall be subject to the provisions of Section 1 of this act.

20 F. 1. The State Department of Health shall establish and
21 maintain a certified nurse aide, nurse aide trainee and feeding
22 assistant registry that:

23 a. is sufficiently accessible to promptly meet the needs
24 of the public and employers, and

1 b. provides a process for notification and investigation
2 of alleged abuse, exploitation or neglect of residents
3 of a facility or home, clients of an agency or center,
4 or of misappropriation of resident or client property.

5 2. The registry shall contain information as to whether a nurse
6 aide has:

- 7 a. successfully completed a certified nurse aide training
8 and competency examination,
9 b. met all the requirements for certification, or
10 c. received a waiver from the Board.

11 3. The registry shall include, but not be limited to, the
12 following information on each certified nurse aide or nurse aide
13 trainee:

- 14 a. the full name of the individual,
15 b. information necessary to identify each individual.

16 Certified nurse aides and nurse aide trainees shall
17 maintain with the registry current residential
18 addresses and shall notify the registry, in writing,
19 of any change of name. Notification of change of name
20 shall require certified copies of any marriage license
21 or other court document which reflects the change of
22 name. Notice of change of address or telephone number
23 shall be made within ten (10) days of the effected
24 change. Notice shall not be accepted over the phone,

- 1 c. the date the individual became eligible for placement
2 in the registry, and
3 d. information on any finding of the Department of abuse,
4 neglect or exploitation by the certified nurse aide or
5 nurse aide trainee, including:

6 (1) documentation of the Department's investigation,
7 including the nature of the allegation and the
8 evidence that led the Department to confirm the
9 allegation,

10 (2) the date of the hearing, if requested by the
11 certified nurse aide or nurse aide trainee, and

12 (3) statement by the individual disputing the finding
13 if the individual chooses to make one.

14 4. The Department shall include the information specified in
15 subparagraph d of paragraph 3 of this subsection in the registry
16 within ten (10) working days of the substantiating finding and it
17 shall remain in the registry, unless:

18 a. it has been determined by an administrative law judge,
19 a district court or an appeal court that the finding
20 was in error, or

21 b. the Board is notified of the death of the certified
22 nurse aide or nurse aide trainee.

23 5. Upon receipt of an allegation of abuse, exploitation or
24 neglect of a resident or client, or an allegation of

1 misappropriation of resident or client property by a certified nurse
2 aide or nurse aide trainee, the Department shall place a pending
3 notation in the registry until a final determination has been made.
4 If the investigation, or administrative hearing held to determine
5 whether the certified nurse aide or nurse aide trainee is in
6 violation of the law or rules promulgated pursuant thereto, reveals
7 that the abuse, exploitation or neglect, or misappropriation of
8 resident or client property was unsubstantiated, the pending
9 notation shall be removed within twenty-four (24) hours of receipt
10 of notice by the Department.

11 6. The Department shall, after notice to the individuals
12 involved and a reasonable opportunity for a hearing, make a finding
13 as to the accuracy of the allegations.

14 7. If the Department after notice and opportunity for hearing
15 determines with clear and convincing evidence that abuse, neglect or
16 exploitation, or misappropriation of resident or client property has
17 occurred and the alleged perpetrator is the person who committed the
18 prohibited act, notice of the findings shall be sent to the nurse
19 aide and to the district attorney for the county where the abuse,
20 neglect or exploitation, or misappropriation of resident or client
21 property occurred and to the Medicaid Fraud Control Unit of the
22 Attorney General's Office. Notice of ineligibility to work as a
23 nurse aide in a long-term care facility, a residential care
24 facility, assisted living facility, day care facility, or any entity

1 that requires certification of nurse aides, and notice of any
2 further appeal rights shall also be sent to the nurse aide.

3 8. In any proceeding in which the Department is required to
4 serve notice or an order on an individual, the Department may send
5 written correspondence to the address on file with the registry. If
6 the correspondence is returned and a notation of the United States
7 Postal Service indicates "unclaimed" or "moved" or "refused" or any
8 other nondelivery markings and the records of the registry indicate
9 that no change of address as required by this subsection has been
10 received by the registry, the notice and any subsequent notices or
11 orders shall be deemed by the court as having been legally served
12 for all purposes.

13 9. The Department shall require that each facility check the
14 nurse aide registry before hiring a person to work as a nurse aide.
15 If the registry indicates that an individual has been found, as a
16 result of a hearing, to be personally responsible for abuse, neglect
17 or exploitation, that individual shall not be hired by the facility.

18 10. If the state finds that any other individual employed by
19 the facility has neglected, abused, misappropriated property or
20 exploited in a facility, the Department shall notify the appropriate
21 licensing authority and the district attorney for the county where
22 the abuse, neglect or exploitation, or misappropriation of resident
23 or client property occurred.

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1 11. Upon a written request by a certified nurse aide or nurse
2 aide trainee, the Board shall provide within twenty (20) working
3 days all information on the record of the certified nurse aide or
4 nurse aide trainee when a finding of abuse, exploitation or neglect
5 is confirmed and placed in the registry.

6 12. Upon request and except for the names of residents and
7 clients, the Department shall disclose all of the information
8 relating to the confirmed determination of abuse, exploitation and
9 neglect by the certified nurse aide or nurse aide trainee to the
10 person requesting such information, and may disclose additional
11 information the Department determines necessary.

12 13. A person who has acted in good faith to comply with state
13 reporting requirements and this section of law shall be immune from
14 liability for reporting allegations of abuse, neglect or
15 exploitation.

16 ~~F.~~ G. Each nurse aide trainee shall wear a badge which clearly
17 identifies the person as a nurse aide trainee. Such badge shall be
18 furnished by the facility employing the trainee. The badge shall be
19 nontransferable and shall include the first and last name of the
20 trainee.

21 ~~G.~~ H. 1. For purposes of this section, "feeding assistant"
22 means an individual who is paid to feed residents by a facility or
23 who is used under an arrangement with another agency or organization
24 and meets the requirements cited in 42 CFR Parts 483 and 488.

1 2. Each facility that employs or contracts employment of a
2 feeding assistant shall maintain a record of all individuals, used
3 by the facility as feeding assistants, who have successfully
4 completed a training course approved by the state for paid feeding
5 assistants.

6 SECTION 3. This act shall become effective November 1, 2022.

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