

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 3892

By: Townley

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 requiring compliance with certain orders; amending 59
9 O.S. 2021, Section 567.6a, which relates to the
10 Oklahoma Nursing Practice Act; making certain persons
11 comply with orders; amending 63 O.S. 2021, Section 1-
12 1951, which relates to the Nursing Home Care Act;
13 making certain persons comply with orders; providing
14 for codification; and providing an effective date.

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

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

19 Within the scope of practice of a Certified Nurse Practitioner,
20 any Advanced Unlicensed Assistant, Certified Nurse Aide,
21 nontechnical services worker or any other person shall be required
22 to comply with orders issued by a Certified Nurse Practitioner and
23 shall further be subject to the direction of a Certified Nurse
24 Practitioner.

SECTION 2. AMENDATORY 59 O.S. 2021, Section 567.6a, is
amended to read as follows:

1 Section 567.6a A. All applicants for a certificate to practice
2 as an Advanced Unlicensed Assistant shall be subject to Section
3 567.8 of this title.

4 B. An applicant for a certificate to practice as an Advanced
5 Unlicensed Assistant shall submit to the Oklahoma Board of Nursing
6 certified evidence that the applicant:

7 1. Has successfully completed the prescribed curricula in a
8 state-approved education program for Advanced Unlicensed Assistants
9 and holds or is entitled to hold a diploma or certificate therefrom,
10 or equivalent courses in a formal program of instruction;

11 2. Has never been convicted of a felony crime that
12 substantially relates to the occupation of nursing and poses a
13 reasonable threat to public safety;

14 3. Has submitted a criminal history records search that is
15 compliant with Section 567.18 of this title;

16 4. Is a minimum of eighteen (18) years of age; and

17 5. Has met such other reasonable preliminary qualification
18 requirements as the Board may prescribe.

19 C. The applicant for a certificate to practice as an Advanced
20 Unlicensed Assistant shall be required to pass an examination in
21 such subjects as the Board may require. Upon the applicant
22 successfully passing such examination, the Board may issue to the
23 applicant a certificate to practice as an Advanced Unlicensed
24 Assistant. An applicant who fails such examination shall be subject

1 to reexamination according to the rules of the Board. The passing
2 criteria shall be established by Board rules.

3 D. Any person who holds a certificate to practice as an
4 Advanced Unlicensed Assistant in this state shall have the right to
5 use both the title "Advanced Unlicensed Assistant" and the
6 abbreviation "A.U.A.". No other person shall assume such title or
7 use such abbreviation or any other words, letters, signs, or figures
8 to indicate that the person using the same is an Advanced Unlicensed
9 Assistant. Any individual doing so shall be guilty of a
10 misdemeanor, which shall be punishable, upon conviction, by
11 imprisonment in the county jail for not more than one (1) year or by
12 a fine of not less than One Hundred Dollars (\$100.00) nor more than
13 One Thousand Dollars (\$1,000.00), or by both such imprisonment and
14 fine for each offense.

15 E. As used in this section:

16 1. "Substantially relates" means the nature of criminal conduct
17 for which the person was convicted has a direct bearing on the
18 fitness or ability to perform one or more of the duties or
19 responsibilities necessarily related to the occupation; and

20 2. "Poses a reasonable threat" means the nature of criminal
21 conduct for which the person was convicted involved an act or threat
22 of harm against another and has a bearing on the fitness or ability
23 to serve the public or work with others in the occupation.

24

1 F. Any person who holds a certificate to practice as an
2 Advanced Unlicensed Assistant in this state shall be subject to the
3 provisions of Section 1 of this act.

4 SECTION 3. AMENDATORY 63 O.S. 2021, Section 1-1951, is
5 amended to read as follows:

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

8 1. Issue certificates of training and competency for nurse
9 aides;

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

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

18 4. Establish and maintain a registry for certified nurse aides
19 and for nurse aide trainees;

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

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

1 7. Suspend or revoke any certification issued to any nurse
2 aide, if:

3 a. the nurse aide is found to meet any of the
4 requirements contained in subsection D of Section 1-
5 1947 of this title,

6 b. the nurse aide is found to meet any of the
7 requirements contained in subsection C of Section 1-
8 1950.1 of this title, or

9 c. the nurse aide is found to have committed abuse,
10 neglect or exploitation of a resident or
11 misappropriation of resident or client property
12 pursuant to the requirements contained in paragraph 7
13 of subsection D F of this section. The action to
14 revoke or suspend may be included with the filing of
15 any action pursuant to the requirements of paragraph 7
16 of subsection D F of this section.

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

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

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

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

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

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

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

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

- a. is sufficiently accessible to promptly meet the needs of the public and employers, and
- b. provides a process for notification and investigation of alleged abuse, exploitation or neglect of residents of a facility or home, clients of an agency or center, or of misappropriation of resident or client property.

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

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

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

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

Certified nurse aides and nurse aide trainees shall maintain with the registry current residential addresses and shall notify the registry, in writing, of any change of name. Notification of change of name shall require certified copies of any marriage license or other court document which reflects the change of name. Notice of change of address or telephone number

1 shall be made within ten (10) days of the effected
2 change. Notice shall not be accepted over the phone,
3 c. the date the individual became eligible for placement
4 in the registry, and
5 d. information on any finding of the Department of abuse,
6 neglect or exploitation by the certified nurse aide or
7 nurse aide trainee, including:

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

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

14 (3) statement by the individual disputing the finding
15 if the individual chooses to make one.

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

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

23 b. the Board is notified of the death of the certified
24 nurse aide or nurse aide trainee.

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

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

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

1 nurse aide in a long-term care facility, a residential care
2 facility, assisted living facility, day care facility, or any entity
3 that requires certification of nurse aides, and notice of any
4 further appeal rights shall also be sent to the nurse aide.

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

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

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

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

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

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

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

23 ~~G.~~ H. 1. For purposes of this section, "feeding assistant"
24 means an individual who is paid to feed residents by a facility or

1 | who is used under an arrangement with another agency or organization
2 | and meets the requirements cited in 42 CFR Parts 483 and 488.

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

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

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