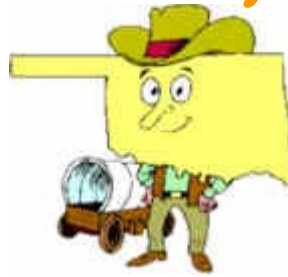


WILL'S CORNER, OKLAHOMA



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(Serving the Disability Community of Oklahoma)

AN OKLAHOMA ADVOCATE

On May 25, 2005 an Oklahoma advocate for people with disabilities received state recognition for a job well done. Dale Atkinson of Oklahoma City has crusaded for over 30 years for the rights of people with disabilities even as he himself suffered the debilitating effects of multiple disabilities. Dale is well known to city officials where he has repeatedly drawn their attention to the lack of access in public places to people with disabilities and handicapped parking violations.

It was not until the 2005 Oklahoma Legislative session that Mr. Atkinson ventured into state advocacy with his support and nurture of House Bill 1524 which prevents the killing of service animals used by people with disabilities. This issue had impacted Dale directly when the City of Oklahoma City threatened to take his service monkey away and impose high fines on him until he paid a city licensing fee. "I simply was not able to pay the licensing fee, and fines of \$200 per day which the city threatened me with were far beyond my small

Social Security income. Under duress, I found my monkey a home outside Oklahoma City where I knew it would be safe and could help another person with disabilities."



Governor Brad Henry signed House Bill 1524 which made it illegal to kill a service animal in the state of Oklahoma

From left to right is Dale Atkinson, Representative Al Lindley, Scott Ellis, Governor Henry, and Shawn Tracy

Still smarting from the loss of his service monkey, Mr. Atkinson found an issue near to him when the second session of the Oklahoma 49th Legislature passed a bill preventing the killing of service dogs. There was only one problem. Today people with disabilities use a lot more than just dogs to help them in daily living skills. There is still the wide variety of breeds of dogs used for multiple purposes, but there is also the use of other species of animals such as monkeys and even miniature horses to meet the needs of people

with disabilities. "I used a service monkey for my needs," Dale explains, "and the language of that bill was not broad enough to protect all the animals that people use." Dale Atkinson would need to get

(Continued on page 2)

AN OKLAHOMA ADVOCATE (CONTINUED)

another bill through the Oklahoma Legislature which broadened the prohibition of the killing of service dogs to any animal used by a person with disabilities to help them live a better life. This was no small challenge to a man who was not familiar with the legislative process in Oklahoma, but Dale Atkinson refused to be deterred. He had to get Oklahoma law changed to reflect the reality that many species of animals are used in service of people with disabilities.

To begin with, he approached the sponsor of the bill in 2004 which prevented the killing of service dogs. Dale explained to Representative Al Lindley that the terminology of “service dogs” was not broad enough. Mr. Lindley agreed to sponsor another bill to be introduced to the 2005 Legislative session with the improved language—a bill which would prevent the killing of any service animal used by people with disabilities. This was a good start, but there would be many hurdles yet to overcome.

House Bill 1524 was introduced to the Oklahoma Legislature early in 2005 and was soon assigned to a committee. Armed with the knowledge that a committee chair had the power to kill a bill just by refusing to hear it, Dale called the committee chair to explain the importance of this issue to people with disabilities. He anxiously awaited the Do Pass signaling that the bill had made it out of committee and would be referred to the House for passage. By March 16, 2005 HB 1524 had passed the Oklahoma House of Representatives and was ready to be considered by the Senate. Dale got on the phone again when he found out the bill had been assigned to committee. This time the bill was sent to the Senate Public Safety & Homeland Security Committee

where Senator Bernest Cain was a member. And guess what? Bernest Cain is Dale Atkinson’s senator representing him in District 46 of Oklahoma City. The bill passed committee but was amended in the general session. The fines for killing a service animal were reduced from the original version, but an added measure was introduced making it illegal for municipalities to charge a licensing fee for service animals. It was this amended bill which passed both houses of the legislature and was sent to Governor Brad Henry for signature.

That brings us up to that magical date of May 25, 2005. It was a cool, cloudy morning at the Oklahoma State Capitol building’s Blue Room on the second floor. We were all waiting for the appearance of Governor Henry. Claire Li, a reporter from OETA’s Channel 13 was there with her film crew. Scott Ellis, a supporter of Mr. Atkinson, was present representing the Paralyzed Veterans of Oklahoma. Representative Al Lindley was on the scene, and a proud Dale Atkinson was there on his first-time ever visit to the Oklahoma State Capitol. Dale dismounted from his motorized scooter when Governor Henry entered the room. He watched with tears in his eyes as Governor Brad Henry signed House Bill 1524 which made it illegal to kill a service animal in the state of Oklahoma. The same bill outlawed municipalities charging of licensing fees for owning a service animal. On November 1, 2005 House Bill 1524 will become a part of Oklahoma law. Dale Atkinson had won. With the support of a lot of people along the way, he knew some real success in his first statewide effort to advocate for people with disabilities.

Dale Atkinson spoke to Governor Henry, “I’m just a common, everyday farm boy. Advocating for people with disabilities takes my mind off my own problems. I know I’ve got a short lifespan, but I want people to remember me for what I’ve done to help people with disabilities.” We thank you for what you’ve done and will continue to do. We’ll never forget a true **Oklahoma advocate**. We love you Dale.

State of Oklahoma

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CHILDCARE AND THE AMERICANS WITH DISABILITIES ACT

Here at the Office of Handicapped Concerns we frequently receive phone calls regarding the rights of children with disabilities when they attend a day care center or child care program. These centers or programs that are open to the public must comply like other public accommodations with Title III of the Americans with Disabilities Act (ADA). If the day care services are provided by government agencies or contract with a state or local government such as Head Start, summer programs and extended school day programs, they must comply with Title II of the ADA. There are times when a program may fall under both Titles II and III.

Title III requires that child care providers not discriminate against persons with disabilities. For example, centers cannot exclude children with disabilities from their programs unless their presence would pose a direct threat to the health and safety of others or require a fundamental alteration of the program. They have to make reasonable modifications to their policies and practices to integrate children, parents, and guardians with disabilities into their programs unless doing so would constitute a fundamental alteration. Centers must provide appropriate auxiliary aids and services needed for effective communication with children or adults with disabilities when doing so would not constitute an undue burden. Centers must also make their facilities accessible to persons with disabilities. Existing facilities are subject to the readily achievable standard for barrier removal while newly-constructed facilities and any altered portions of existing facilities must be fully accessible.

Decisions about whether or not to accept a child into a day care program should be done with an individualized assessment of that child to determine whether it can meet the particular needs of the child without fundamentally altering its program. The decision cannot be made based on preconceived fears or stereotypes but should be made after talking to the parents or other professionals who interact with the child. The ADA is a law to even the playing ground for people with disabilities—not to afford extra or special rights. Therefore, a daycare

center is not required to take a child with a disability out of turn if there is a waiting list. Insurance rate increases are not legitimate reasons to refuse service to a child with disabilities.

A day care center cannot reject a child because he or she needs individualized attention unless it would fundamentally alter the nature of the program. For instance, if a child with Down's Syndrome and significant mental retardation applies for admission and needs one-on-one care to benefit from a child care program, and a personal assistant will be provided at no cost to the child care center (usually by the parents or through a government program), the child cannot be excluded from the program solely because of the need for one-on-one care. Any modifications necessary to integrate such a child must be made if they are reasonable and would not fundamentally alter the program. This is not to suggest that all children with Down's Syndrome need one-on-one care or must be accompanied by a personal assistant in order to be successfully integrated into a mainstream child care program. As in other cases, an **individualized** assessment is required. But the ADA generally does not require centers to hire additional staff or provide constant one-on-one supervision of a particular child with a disability. Child care programs do not have to provide care to children who pose a direct threat concern. This means a child who poses a substantial risk of serious harm to the health and safety of others. Again though, a determination cannot be made on generalizations or stereotypes.

(Continued on page 8)

**Love is when
your puppy
licks your
face even
after you left
him alone
all day.**



TRANSPORTATION IN AGRA, OKLAHOMA

Agra, Oklahoma is located in the north central part of the state between Stillwater and Chandler in Lincoln County. The 2000 census listed a population of 356 with at least one VIP out of that small number of people. Nancy Durbin may not be considered a very important person to some people in Agra, but to people with disabilities in that small Oklahoma community she certainly is a very important person. Let me tell you the story.

It all began about three and a half years ago when Nancy and her husband bought a used golf cart to transport their foster daughter with disabilities. Because of her disabilities, their foster daughter was not able to drive a car to visit friends. She wasn't even able to bicycle where she wanted to go, but Nancy did not want her to be confined to their home. A golf cart would provide open-air transportation in good weather, and her daughter could visit her friends and socialize in the community. I wish I could tell you that that was all there was to it and they lived happily ever after. I wish I could say that things were that simple, but you know that is not true. You know as well as I do that there are obstacles to people with disabilities when they attempt to get their needs met, and it didn't take long for some of those obstacles to rear their ugly heads.

Once upon a time Nancy and her foster daughter were crossing Highway 18 to get a candy bar at the local Quick Trips. On the way home a large, slow, black and white police car with flashing lights pulled Nancy's golf cart over to the side of the street. Didn't she know that driving a golf cart in Agra was illegal? Go home and park that thing now and don't ever let me see you on the streets again. Yes, that's what he said. It doesn't make any difference that kids are driving four wheelers (off terrain vehicles) all over town. Apparently it doesn't make any difference that people are using mopeds as well. Golf carts seemed to be singled out as the offender and so much for the socialization for her foster daughter. Into the garage it went.

For many of us that would have been the end of the story. We are all too used to "no", but fortunately

that was not the end of the story. Nancy went into action. Here's what she did. She arranged to get onto the agenda for the Town Board Meeting to ask why she could not drive her daughter around the city of Agra in their golf cart. The city had no written documentation to confirm that other citizens had complained as they reported. Nancy had contacted the local water department which also used golf carts to read meters all over town, and their representatives were present as well. The city said that if they allowed golf carts, they'd have to allow four wheelers and other vehicles as well. Nancy brought a dictionary to the meeting to distinguish golf carts from off-terrain vehicles. After making her point, Nancy promised to get some paperwork together for the next Town Board Meeting. (Little did they know what was in store.)

Nancy contacted the Department of Justice for information on the Americans with Disabilities Act (ADA), the civil rights law for people with disabilities. She then contacted Steve Stokes, the director of the Office of Handicapped Concerns, who forwarded her some other written information. She canvassed other nearby communities to see if any of them had an ordinance relating to the use of golf carts on city streets. Sure enough, the nearby town of Perkins had such an ordinance on the books, and Nancy got a copy to bring to the next Town Board Meeting.

She was present at the October 2004 meeting after having mailed a copy of the Perkins ordinance a week ahead of time so all the board members would have the chance to read it before the meeting. Nancy reported that she had checked on insuring her golf cart for street use, and she could add this to her homeowners insurance for a mere \$35 per year. The city would have to consider this information and agreed to discuss it again at the next board meeting.

The Stillwater attorney used by the city of Agra was present at the November meeting. Nancy pointed out that she had gone all over town and

(Continued on page 5)

TRANSPORTATION IN AGRA, OKLAHOMA (continued)

found that none of the public buildings or businesses which served the public were accessible to people with disabilities. She pointed at the few buckling public sidewalks in town as further evidence that Agra was not compliant with the Americans with Disabilities Act. It would sure cost a lot less money for the city to enact a golf cart ordinance than to bring all its buildings and sidewalks into compliance with the ADA. The city attorney then went into a closed door meeting with city officials. When they came out of conference, they had decided to consider an ordinance in Agra which would permit the use of golf carts on city streets—but only after they had done some work on how this activity should be regulated. Things were looking up. Nancy smiled.

It wasn't until March, 2005 that the Town Board Meeting told Nancy that they were going to charge her \$25 per year for a permit to drive a golf cart on city streets. She could not drive on Highway 18 and could cross Highway 18 only at the Roosevelt Street intersection. She must install mirrors, directional lights, and break lights on her golf cart as well as a flag to alert motorists of her presence. Agra adopted a golf cart ordinance patterned after the Perkins ordinance. Nancy Durbin had accomplished what she set out to do. Nancy's foster daughter with disabilities would now once again be able to get out in the community on those warm summer afternoons and visit with the neighbors as they worked in their flowers or catch a conversation with a friend at the local convenience store.

So how did you accomplish this formidable task, Nancy Durbin, when you had some pretty hefty opposition in the local police department and among city officials? "I did my homework before I appeared at the meeting. I came equipped with documentation and outside information directly applicable to the problem at hand. I was always nice to the people I was talking to. I did not allow myself to get angry or belligerent. I stuck to my guns even when my opposition thought I would give up and just go away. Persistence with kindness always pays off." Nancy tells us, "I've been like this my whole life. I'm Polish and German, stubborn and bull headed. If we don't speak up, who's going to do it?" Gosh, Nancy, when you put it that way, I don't know what to say. Maybe all of us can make a difference in our communities. Thanks for the example.

Upon further questions to Nancy Durbin, it turns out that this is not the first time she has spoken up for people with disabilities. In 2003 she received an award as the outstanding woman volunteer in the state of Oklahoma. Channel 9 from Oklahoma City did a television news piece about her golf cart success and another story about the Luggage for Foster Children program which she began. But let's talk more about the Luggage for Foster Children in the October issue of *Will's Corner, Oklahoma*. Till then, goodbye for now.



Blessed are those who hunger and thirst, for they are sticking to their diets.

NURSING HOME REFORM

Many younger people with disabilities live in nursing homes as well as older people who also have disabilities. Many of these people are very vulnerable to physical, emotional or financial abuse. Oklahoma has been talking a lot about protecting these people lately. We have talked about solving the problem of convicted sex offenders who become nursing home staff and about sex offenders who are among nursing home residents and threaten the wellbeing of this vulnerable population. We have done something as a state this legislative session which has the potential to affect nursing home administration as well as overall quality of life in nursing homes across our state. House Bill 1453 replaces the present Board of Nursing Home Administrators with a new board which is more accountable to people who live in nursing homes and their families and friends. Let's look at a few ways this may affect these people.

You probably don't know much about the Oklahoma Board of Nursing Home Administrators. They meet the third Tuesday of every month in Oklahoma City, and they work with nursing home administrators. Nursing home administrators by extension affect the lives of the people they serve. The complexion of the Nursing Home Board of Administrators is going to change dramatically this summer. One standing member of this board is Nancy Atkinson who is a State Health Department employee and appointed by the Director of the State Health Department. Nancy will continue to serve as the representative of the State Health Department in the new board, but thirteen new members will be appointed by Governor Henry in the new board.

Here's how some of the change is going to happen. Only five members of the board will be nursing home administrators or owners. The previous board had six members who were both nursing home administrators and owners. This did not allow administrators of nursing homes who were not for profit to be represented on the board. The present structure does allow this. The previous board

had two members who were allowed to be representatives of the general public. The new board will have three members in that category. There will be a shift in the balance of power in the new board.

Five members of the new Board of Nursing Home Administrators will represent professions or institutions in charge of people who are critically ill. This requirement continues with one modification. The five professional members may not have a financial interest in any nursing home. This is designed to prevent a conflict of interest between board members and investigations the board may conduct.

Investigation is another area which the new law embraces. The new Nursing Home Administrators Board must complete complaint investigations within 180 days from receipt of the complaint. Investigations may be extended for good cause for a maximum of two extensions of 60 days upon majority vote of the board. The previous board did not have a time frame, and investigations sometimes accumulated.

Administrators of nursing homes are not allowed to serve as guardian of the person or of the estate, or hold a durable power of attorney for any resident of a facility of which they are an administrator. This rule also prevents conflict of interest. The new Board of Nursing Home Administrators will maintain a **register of complaints** against nursing home administrators and any action taken against that nursing home administrator by the board. This new Oklahoma law was at least partially precipitated by a number of articles in the February, 2005 *Tulsa World* which found that the Oklahoma State Board of Examiners for Nursing Home Administrators was not complying with the state's Open Meetings Act and was routinely dismissing complaints without a public vote.

Let's look at what you can do if you have a family member or a friend in a nursing home and you have a complaint against the nursing home, the staff of a

(Continued on page 7)

NURSING HOME REFORM (continued)

nursing home or the administrator of a nursing home. You have several options. If you know or suspect the abuse of an adult anywhere in Oklahoma, you may report this on the Adult Abuse Hotline, 800-522-3511. You may call 800-211-2116 and ask to speak to an ombudsman to report a complaint. You may call the State Health Department 800-522-0203 daytime or 800-747-8419 evenings and weekends. (The State Health Department certifies nursing homes in all parts of Oklahoma.) Dorya Huser at the State Health Department is the Chief of Long-term Care, and she may be reached at 405-271-6868 in Oklahoma City.

We have been talking about the State Board of Nursing Home Administrators. If you would like to make a complaint directly to the board, you may call Ed Hendricks who is the Executive Director of the State Board of Nursing Home Administrators. That number is 405-521-0991 in Oklahoma City. The new board appointed by Governor Henry will be developing a code of ethics for nursing home administrators. You may want to attend one of the meetings on the third Tuesday of every month.

Call the State Nursing Home Board of Administrators at the previous number for time and location of the meeting. Meetings are open to the public, but if you want to speak at a meeting, you must request to be put on the agenda in advance of the meeting.

When you are considering nursing home care for a friend or family member, you want to make the best decision possible based on information about the facility and the administrator of that facility. Nursing homes are required to post the results of their last survey prominently in the facility. You may ask to see this if you are visiting a nursing home. Medicare maintains a website where you may be able to find information on any nursing home in the United States. The website is called Nursing Home Compare, and you may reach it at www.medicare.gov/NHCompare. I hope this information will help you if you are looking for information about a specific nursing home or want to know more what to look for in selecting a nursing home which will be right for your family member or friend.

**In Oklahoma I have
learned that raccoons
will test your crop
of melons
and let you
know when
they're
ripe.**



CHILDCARE AND THE AMERICANS WITH DISABILITIES ACT (continued)

It must be made on an individualized assessment of that child.

Usually a child care program cannot charge a parent for special services. If the service is required by the ADA, a program cannot impose a surcharge for it. It is only if they go beyond what is required by law that they can charge for those services. For instance, if a child requires complicated medical procedures that can only be done by licensed medical personnel and the center does not normally have such personnel on staff, the center would not be required to provide the medical services under the ADA. An example of this would be finger-prick blood glucose tests for children with diabetes. The child center cannot charge the parents extra for those services. To help offset the costs of actions or services that are required by the ADA including but not limited to architectural barrier removal, providing sign language interpreters, or purchasing adaptive equipment, some tax credits and deductions may be available.

One of the commonly-asked questions of parents and child care programs is whether or not the program will be required to diaper a child who is past the usual age of needing a diaper. Generally speaking, centers that provide personal services such as diapering or toileting assistance for young children must reasonably modify their policies and provide diapering services for older children who need it due to a disability. Centers that diaper infants should diaper older children with disabilities when they would not have to leave other children unattended to do so and must also provide diapering services to young children with disabilities who may need it more often than others their age.

Regarding the obligations to provide facility access, including path of travel, parking, playground and building, even if a child care program does not have any disabled people in their program now, they have an ongoing obligation to remove barriers to access for people with disabilities. Existing privately-run child care centers must remove those architectural barriers that limit the participation of

children with disabilities (or parents, or guardians, or prospective customers with disabilities) if removing the barriers is readily achievable—that is, if the barrier removal can be easily accomplished and can be carried out without much difficulty or expense. Centers run by government agencies must insure that overall programs are accessible.

The Department of Justice (DOJ) is the entity which has jurisdiction for receiving and investigating complaints regarding Title II and Title III of the ADA. They have actually sued child care centers for ADA violations on June 30, 1997. The United States filed lawsuits against three child care providers for refusing to enroll a four-year old child because he has HIV. They also occasionally participate in private suits either by intervention or as a friend of the court.

For further information regarding the rights of children with disabilities, you may contact the Office of Handicapped Concerns at 800-522-8224 or 405-521-3736 in the Oklahoma City area. You may also file a complaint with the DOJ by calling 800-514-0301.

**OHC web site:
www.ohc.state.ok.us**

CALENDAR OF EVENTS

- July/August, 2005** In preparation for the new Medicare drug coverage, the Social Security Administration will mail out applications to beneficiaries on limited incomes who may be eligible for special low-cost drug coverage. Call 800-772-1213 or visit your local SSA office for info.
- July 26, 2005** Fifteenth anniversary of the Americans with Disabilities Act which offers civil rights to people with disabilities. See your local disability organization on how they will celebrate.
- August 12, 2005** Seminar on schizophrenia sponsored by the Oklahoma Department of Mental Health and Substance Abuse. Pre-registration by August 5, \$65, registration at the door \$85. The seminar will be at the University of Central Oklahoma in Edmond. For more information contact Sarah Dunn at 405-522-8306 or sadunn@odmhsas.org.
- September 14-16, 2005** Annual Respite and Crisis Care Conference in Oklahoma City at the downtown Sheraton Hotel. For more information, call 800-426-2747.
- September 15-16, 2005** Zarrow Mental Health Symposium, Tulsa Marriott Southern Hills. For more information, call 918-585-1213 or visit www.mhat.org.

If you have an event coming up relating to disability, let us know at 800-522-8224 and we'll help you publicize.

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