

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

2ND CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2218

By: Morgan of the House

and

Williams of the Senate

2ND CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-1925.2, as amended by Section 22 of Enrolled House Bill No. 2924 of the 2nd Session of the 48th Oklahoma Legislature, which relates to the Nursing Facility Quality of Care Fund; including certain Intermediate Care Facilities for the Mentally Retarded in minimum direct-care-staff-to-resident ratio requirements; making certain requirements subject to availability of funds; providing option to ratios; allowing specified facilities to implement flexible staff scheduling, with specified provision on certain date; providing for and modifying certain minimum direct-care staffing ratio requirements; specifying conditions; defining term; requiring shift-based, staff-to-resident ratios if facility has been deficient with regard to specified criteria; requiring maintenance of shift-based, staff-to-resident ratios for specified time periods; providing for reinstatement of flexible staff-scheduling privileges upon correction of all deficiencies by a facility; requiring monitoring and evaluation of facility compliance with flexible staff-scheduling provisions; requiring certain ratios for certain facilities; requiring identification of quality-of-care problems and requiring issuance of directed plan of correction; requiring posting direct care staff; directing the State Board of Health to promulgate specified rules; allowing the right to appeal and to informal dispute resolution by facilities with regard to staffing noncompliance; specifying staffing ratios when reimbursement rate is a certain amount; directing promulgation of rules for staff-to-resident ratios for noncompliant facilities; requiring Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds to submit monthly report on staffing ratios; modifying certain term; prohibiting the accrual of administrative penalties until the facility has been notified in writing that report was not timely submitted; prohibiting the assessment of administrative penalties for computational errors; requiring specified deposit and utilization of administrative penalties; requiring expansion of statewide toll-free, Senior-Info Line; removing outdated language; requiring the Oklahoma Health Care Authority to develop nursing facility cost reporting system and

stating criteria; requiring utilization of most current cost report data in estimating certain costs; authorizing apportionment of certain funds for implementation of section; requiring the Oklahoma Health Care Authority to make application for specified waiver by specified date; requiring development of certain program at certain time; providing effective date for establishment of abuse registry and requirements of criminal arrest check provision; defining terms; requiring creation of an abuse registry; requiring promulgation of rules to establish and maintain nontechnical services worker abuse registry and providing for contents; allowing specified persons to seek judicial review; allowing appeal of specified finding to district court within specified time period; requiring service of copy of petition to general counsel of Department; stating specification before any nursing facility makes an offer to employ a nontechnical services worker; authorizing the obtaining of specified records; requiring nursing facility to request a criminal history records search of nontechnical services workers; requiring the Oklahoma State Bureau of Investigation to conduct criminal history records search on specified applicants; allowing the offer of temporary employment to nontechnical services worker pending results of search and registry review; requiring provision of certain information to Bureau within certain time period; prohibiting permanent employment before receipt of search and registry review; requiring completion of search and report of results within specified time period; specifying requirements of certain applicants for employment before making offer of permanent employment; prohibiting the hiring of or contracting with and immediate termination of persons with specified criminal history records; specifying exclusive use of criminal history records; prohibiting release or disclosure of records, with exception; providing penalty for unauthorized disclosure of records; requiring Department to review employment records to ensure compliance with criminal history records provision; providing penalties; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as amended by Section 22 of Enrolled House Bill No. 2924 of the 2nd Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 1-1925.2 A. The Oklahoma Health Care Authority shall fully recalculate and reimburse nursing facilities and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) from the Nursing

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

1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR), and shall be calculated in the same manner as has been mutually understood by the long-term care industry and the Oklahoma Health Care Authority.

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

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

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

2. From September 1, 2001, through August 31, ~~2002~~ 2003, ~~all~~ nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities, ~~shall maintain~~ the following minimum direct-care-staff-to-resident ratios:

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

3. On and after September 1, ~~2002~~ 2003, ~~all~~ subject to the availability of funds, nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities, ~~shall maintain~~ the following minimum direct-care-staff-to-resident ratios:

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

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

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

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

c. As used in this paragraph, "flexible staff-scheduling" 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 maintain the shift-based, staff-to-resident ratios

provided in paragraph 3 of this subsection for a minimum of three (3) months before being considered eligible to implement flexible staff scheduling as defined in subparagraph c of paragraph 5 of this subsection.

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

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

b. If the Department identifies any quality-of-care problems related to insufficient staffing in such facility, the Department shall issue a directed plan of correction to the facility found to be out of compliance with the provisions of this subsection.

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

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

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

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

D. The State Board of Health shall promulgate rules prescribing staffing requirements for Intermediate Care Facilities for the Mentally Retarded serving six or fewer clients and for Intermediate Care Facilities for the Mentally Retarded serving sixteen or fewer clients.

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

F. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from two and eighty-six one-hundredths (2.86) hours per day per occupied bed to three and two-tenths (3.2) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall

maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and two-tenths (3.2) hours per day per occupied bed.

2. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care flexible staff-scheduling staffing level from three and two-tenths (3.2) hours per day per occupied bed to three and eight-tenths (3.8) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and eight-tenths (3.8) hours per day per occupied bed.

3. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from three and eight-tenths (3.8) hours per day per occupied bed to four and one-tenth (4.1) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-

scheduling staffing levels based on an overall four and one-tenth (4.1) hours per day per occupied bed.

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

5. In the event that the state Medicaid program reimbursement rate for facilities subject to the Nursing Home Care Act, and Intermediate Care Facilities for the Mentally Retarded having seventeen or more beds is reduced below actual audited costs, the requirements for staffing ratio levels shall be adjusted to the appropriate levels provided in paragraphs 1 through 4 of this subsection.

G. For purposes of this subsection:

~~a. "direct-care staff"~~

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

~~b. prior~~

2. Prior to September 1, ~~2002~~ 2003, activity and social services staff who are not providing direct, hands-on care to residents may be included in the direct-care-staff-to-resident ratio in any shift. On and after September 1, ~~2002~~ 2003, such persons shall not be included in the direct-care-staff-to-resident ratio.

~~G.~~ H. 1. The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for the Mentally Retarded with seventeen or more beds to submit a monthly report on staffing ratios on a form that the Authority shall develop.

2. The report shall document the extent to which such ~~nursing~~ facilities are meeting or are failing to meet the minimum direct-

care-staff-to-resident ratios specified by this section. Such report shall be available to the public upon request.

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

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

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

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

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

~~D. I.~~ 1. ~~On or before July 1, 2002, all~~ All entities regulated by this state that provide long-term care services shall utilize a single assessment tool to determine client services needs. The tool shall be developed by the Oklahoma Health Care Authority in consultation with the State Department of Health.

2. The Oklahoma Health Care Authority shall implement a case mix Medicaid reimbursement system for all state-regulated long-term care providers ~~effective November 1, 2003.~~

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

~~E. The State Department of Health, Oklahoma Health Care Authority, State Ombudsman Office and the Nursing Home Industry shall comprise a task force to study staffing, recruitment and retention of staff in Nursing and Specialized Facilities. This task~~

~~force shall commence on September 1, 2001, and provide a written report of its findings to the Governor, the Senate and the House of Representatives by February 1, 2002. The State Department of Health shall direct and assist the task force in the performance of its duties.~~

4. The Oklahoma Health Care Authority shall develop a nursing facility cost-reporting system that reflects the most current costs experienced by nursing and specialized facilities. This reporting system shall require that facilities submit cost report data electronically on a quarterly basis. The Oklahoma Health Care Authority shall utilize the most current cost report data to estimate costs in determining daily per diem rates.

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

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

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

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. Sections 2 through 5 of this act shall be effective September 1, 2003, subject to the availability of funds.

B. For the purposes of Sections 2 through 5 of this act:

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

2. "Bureau" means the Oklahoma State Bureau of Investigation;

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

4. "Nursing facility" means a nursing facility and specialized facility as such terms are defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

5. "Nontechnical services worker" means a person employed by a nursing facility to provide, for compensation, nontechnical services in or upon the premises of a nursing facility. The term "nontechnical services worker" shall not include a nurse aide, or any person who is exempt from the criminal arrest check provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes; and

6. "Nontechnical services" means services that:

a. are performed in or on the premises of a nursing facility and that are predominantly physical or manual in nature, and

b. involve or may involve patient contact including, but not limited to, housekeeping, janitorial or maintenance services, food preparation and administrative services.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.7 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. The State Department of Health shall establish a registry for those nontechnical services workers that have been noted to have committed abuse, verbal abuse, or exploitation of a resident in a nursing facility.

B. The State Board of Health shall promulgate rules to establish and maintain the nontechnical services worker abuse registry. Such rules may include, but need not be limited to:

1. A procedure for notation in the abuse registry of a final State Department of Health investigative finding or an Administrative Law Judge finding of abuse, verbal abuse, or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, of an individual by a nontechnical services worker;

2. A procedure for notice and due process for a nontechnical services worker or applicant before the entering of such person's name in the abuse registry as having a final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse, or exploitation of an individual; and

3. Disclosure requirements for information in the abuse registry.

C. The nontechnical services worker abuse registry shall include, but not be limited to, the following information on each nontechnical services worker:

1. The individual's full name;

2. Information necessary to identify each individual;

3. The date the individual's name was placed in the abuse registry; and

4. Information on any final Department investigative finding or Administrative Law Judge finding of abuse, verbal abuse or exploitation, as these terms are defined in Section 10-103 of Title 43A of the Oklahoma Statutes, concerning the nontechnical services worker.

D. A nontechnical services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, verbal abuse or exploitation of an individual may seek judicial review pursuant to the provisions of Article II of the Administrative

Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the nontechnical services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.8 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided in subsection C of this section, before any nursing facility makes an offer to employ a nontechnical services worker applicant subject to subsection A of Section 3 of this act on or after the effective date of Sections 2 through 5 of this act, to provide nontechnical services, the nursing facility shall:

- a. provide for, prior to a check with the State Department of Health, a criminal history records search to be conducted upon the nontechnical services worker applicant pursuant to the provisions of this section, and
- b. check with the Department to determine whether the name of the applicant seeking employment appears on the nontechnical services worker abuse registry created pursuant to the provisions of Section 3 of this act. If the name of the applicant seeking employment with the nursing facility is listed on the abuse registry as having a final Department investigative finding or an Administrative Law Judge finding pursuant to the requirements of Section 3 of this act, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

2. A nursing facility is authorized to obtain records of any criminal conviction, guilty plea, or plea of nolo contendere maintained by the Oklahoma State Bureau of Investigation which the nursing facility is required or authorized to request pursuant to the provisions of this section.

3. The nursing facility shall request the Bureau to conduct a criminal history records search on a nontechnical services worker desiring employment with the nursing facility and shall provide to the Bureau any relevant information required by the Bureau to conduct the search. The nursing facility shall pay a reasonable fee to the Bureau for each criminal history records search that is conducted pursuant to such a request. The fee shall be determined by the Bureau.

B. At the request of the nursing facility, the Bureau shall conduct a criminal history records search on any applicant desiring employment pursuant to the provisions of subsection A of this section or any nontechnical services worker employed by the nursing facility at any time during the period of employment of such worker with the nursing facility.

C. A nursing facility may make an offer of temporary employment to a nontechnical services worker pending the results of such criminal history records search and the abuse registry review on the applicant. The nursing facility in such instance shall provide to the Bureau the name and relevant information relating to the applicant within seventy-two (72) hours after the date the applicant accepts temporary employment. The nursing facility shall not hire an applicant as a nontechnical services worker on a permanent basis until the results of the criminal history records search and the abuse registry review are received.

D. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the

criminal history records search and report the results of the search to the requesting nursing facility.

E. Every nursing facility shall inform each nontechnical services worker applicant for employment of the requirement to obtain a criminal check and an abuse registry review before making an offer of permanent employment with a nontechnical services worker applicant.

F. A nursing facility shall not hire or contract with and shall immediately terminate the employment, contract or volunteer arrangement of any applicant, contract worker or employee for whom the results of a criminal history records search from any jurisdiction reveals that such person has been convicted of, or pled guilty or nolo contendere to:

1. Assault, battery, or assault and battery with a dangerous weapon;

2. Aggravated assault and battery;

3. Murder or attempted murder;

4. Manslaughter, except involuntary manslaughter;

5. Rape, incest or sodomy;

6. Abuse, neglect or financial exploitation of any person entrusted to his or her care or possession;

7. Burglary in the first or second degree;

8. Robbery in the first or second degree;

9. Robbery or attempted robbery with a dangerous weapon, or imitation firearm;

10. Arson in the first or second degree;

11. Unlawful possession or distribution, or intent to distribute unlawfully, Schedule I through V drugs as defined by the Uniform Controlled Dangerous Substances Act;

12. Grand larceny; or

13. Petit larceny or shoplifting within the past seven (7) years.

G. All criminal history records received by the nursing facility are for the exclusive use of the State Department of Health and the nursing facility that requested the information. Except as otherwise provided by Sections 2 through 5 of this act or upon court order or with the written consent of the person being investigated, the criminal history records shall not be released or otherwise disclosed to any other person or agency.

H. Any person releasing or disclosing any information in violation of this section, upon conviction thereof, shall be guilty of a misdemeanor.

I. As part of any inspections required by law, the Department shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure compliance with the provisions of this section.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.9 of Title 63, unless there is created a duplication in numbering, reads as follows:

Any violation of the provisions of Sections 2 through 4 of this act shall be deemed a misdemeanor and, upon conviction or plea of guilty or nolo contendere, shall be punishable by a fine of not less than Three Hundred Dollars (\$300.00), but not more than One Thousand Dollars (\$1,000.00). In addition to the fine, such violator may be imprisoned in the county jail for not more than thirty (30) days. Each day that the violation continues shall be considered to be a separate violation.

SECTION 6. This act shall become effective July 1, 2002.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

48-2-9529 KSM 6/12/15