

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

CONFERENCE COMMITTEE SUBSTITUTE  
FOR ENGROSSED  
HOUSE BILL NO. 2218

By: Morgan of the House

and

Williams of the Senate

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 direct-care staff-to-resident ratio; modifying certain ratios; modifying staffing levels; authorizing flexible staff scheduling; specifying certain requirements; providing for certain staffing requirements for noncompliant facilities; requiring promulgation of certain rules; providing for contents; providing for appeals and informal dispute resolution; authorizing assessment of penalties; requiring notification; removing outdated language; providing an effective date; and declaring an emergency.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, ~~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, ~~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 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. a. On and after March 1, 2003, a facility that has been determined by the State Department of Health to be in compliance with the provisions of paragraph 3 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 fifteen residents at all times, and at least two direct-care staff 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 an overall hours of direct care service per resident

per day rate of two and eighty-six one hundredths  
(2.86) hours per day per occupied bed,

(2) a direct-care staff-to-resident ratio of one  
direct-care staff person on duty to every fifteen  
residents at all times, and

(3) at least two direct-care staff persons on duty  
and awake at all times.

5. a. On and after March 1, 2003, the Department shall  
require a facility that has been determined by the  
Department to be deficient with regard to:

(1) the provisions of paragraph 3 of this subsection,

(2) monthly staffing reports,

(3) a complaint investigation, or

(4) an inspection,

to maintain the shift-based staff-to-resident ratios  
provided in paragraph 3 of this subsection for a  
period of not less than six (6) months.

b. Upon a subsequent determination by the Department that  
the facility has corrected the deficiency, the  
Department shall notify the facility of the  
reinstatement of the facility's flexible staff  
scheduling privileges.

C. 1. The Department shall monitor and evaluate facility  
compliance with the flexible staff scheduling provisions of  
paragraph 4 of subsection B of this section through reviews of  
monthly staffing reports and results of complaint investigations and  
inspections.

2. The Department shall identify any quality of care problems  
related to insufficient staffing and shall issue a directed plan of  
correction to any facility found to be out of compliance with the  
provisions of subsection B of this section. Under such directed  
plan of correction, a facility shall be required to maintain, for a

period of not less than six (6) months, the shift-based staff-to-resident ratios as outlined in paragraph 3 of subsection B of this section.

3. The State Board of Health shall promulgate rules for rescinding a facility's flexible staff scheduling privileges based on state and federal regulatory violations. The rules shall:

- a. denote reasons for rescinding a facility's flexible staff scheduling privileges,
- b. specify time frames related to the rescinding, and
- c. take into account quality of care problems within the noncompliant facility.

D. 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, 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, such persons shall not be included in the direct-care staff-to-resident ratio.

~~E.~~ E. 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. 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. The Authority may assess administrative penalties for the failure of any ~~nursing~~ facility to submit the

report as required by the Authority. Administrative penalties shall not accrue until the Authority notifies the facility in writing that the report was not submitted timely.

~~D. F.~~ 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.

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.~~

SECTION 2. This act shall become effective July 1, 2002.

SECTION 3. 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.