

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2218

By: Morgan

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-1925.2 (Section 7, Chapter 428, O.S.L. 2001), which relates to direct-care staff to resident ratio; modifying certain ratios; authorizing twenty-four-hour staffing levels; 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dispute resolution; modifying definition; authorizing assessment of penalties; requiring notification; removing outdated language; defining terms; requiring criminal background checks for certain nontechnical employees of nursing facilities; providing process and procedures; prohibiting employment or contracts without a registry review or a criminal background check; providing exceptions; authorizing fees; providing for performance; providing for temporary employment; requiring reports; providing notification; prohibiting release of certain information; requiring termination of certain employees; providing certain performance; providing penalties; creating a nontechnical services worker registry; providing for establishment of registry; providing for contents; requiring certain information; providing for disclosure; providing for procedures; making certain actions unlawful; specifying certain penalties; providing for codification; 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

(Section 7, Chapter 428, O.S.L. 2001), 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~~ Except as otherwise provided by this section, from July 1, 2002, through August 31, 2002, all nursing facilities subject to the Nursing Home Care Act, and intermediate care facilities for the mentally retarded having seventeen beds or greater, 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~~
direct-care twenty-four-hour staffing levels based on an overall two and forty-one one-hundredths (2.41) hours per day per occupied bed,
- b. ~~from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents,~~ at all times, the direct-care staff for any nursing facility shall not be less than one direct-care staff person on duty to seventeen 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~~
all nursing facilities shall have at least two direct-care staff persons on duty and awake at all times.

~~3.~~ 2. Except as otherwise provided by this section, on and after September 1, 2002, all nursing facilities subject to the Nursing Home Care Act, and intermediate care facilities for the mentally retarded having seventeen beds or greater, 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~~ direct-care twenty-four-hour staffing levels based on an overall two and eight-tenths (2.8) hours per day per occupied bed,
- b. ~~from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents,~~ at all times, the direct-care staff for any nursing facility shall not be less than one direct-care staff person on duty to seventeen 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~~ all nursing facilities shall have at least two direct-care staff persons on duty and awake at all times.

C. 1. Those facilities that have consistently proven to be noncompliant with current staffing requirements as determined by the State Department of Health shall be required to maintain shift-based staff to resident ratios as follows:

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.

2. Facilities that have consistently proven to be noncompliant with current staffing requirements shall maintain compliance with the shift-based staff to resident ratios for a period of six (6) months prior to being allowed to utilize twenty-four-hour staffing ratios.

3. The State Department of Health shall promulgate rules regarding compliance for facilities failing to maintain proper staffing levels. The rules shall denote reasons for denial, alternative staffing levels and time frames for the denial. The rules shall take into account quality of care problems within the noncompliant facility.

4. Facilities shall have the right to appeal and informal dispute resolution process for penalties and sanctions imposed regarding staffing noncompliance.

D. For purposes of this subsection:

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

~~b. 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 registered nurses, licensed practical nurses, nurses aides, certified medication aides, qualified mental retardation professionals (ICF/MR's only), physical therapists, occupational therapists, respiratory therapists, speech therapists, therapy aide/assistant, social services director/social worker, other social services staff, activities director, other activities staff, and combined social services/activities staff.~~

~~C. E.~~ The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act 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 nursing facility has been notified, in writing, that the report was not submitted timely.

~~D. F.~~ 1. ~~On or before July 1, 2001, 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, 2001.~~

3. The Department of Human Services shall expand its statewide senior citizen information line 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. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1950.5 of Title 63, unless there is created a duplication in numbering, reads as follows:

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, adult companion home, residential care home, and specialized facility as such terms are defined by Section 1-1902 of Title 63 of the Oklahoma Statutes;
5. "Nontechnical services worker" means persons employed by or under contract with a nursing facility to provide, for compensation or as a volunteer, nontechnical services in or upon the premises of a nursing facility. "Nontechnical services worker" shall not include nurses' aides, or those persons exempted from criminal background checks by Section 1-1950.1 of Title 63 of the Oklahoma Statutes; and

6. "Nontechnical services" means those services which are predominantly physical or manual in character performed in or on the premises of a nursing facility which 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 1-1950.6 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. 1. Except as otherwise provided by subsection C of this section, before any nursing facility makes an offer to employ or to contract with a nontechnical services worker applicant to provide nontechnical services to the nursing facility, 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 or contractor pursuant to the provisions of this section, and
- b. check with the State Department of Health to determine if the name of the applicant seeking employment or contract has been entered on the nontechnical services worker registry created pursuant to Section 4 of this act. Prior to a decision by the Department to enter the name of a nontechnical services worker on such registry, the Department shall allow for notice and opportunity for due process for such nontechnical services worker against whom a final investigative finding by the State Department of Health or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual has been made. The State Department of Health is authorized to charge a nursing facility a reasonable fee for access to the

registry. If the name of the applicant seeking employment or a contract with the nursing facility is listed on the registry as having a final State Department of Health investigative finding or a finding by an Administrative Law Judge pursuant to the requirements of Section 4 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 or a contract 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, such fee to be determined by the Oklahoma State Bureau of Investigation.

B. At the request of the nursing facility, the Bureau shall conduct a criminal history records search on any applicant desiring employment or a contract pursuant to 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 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. Temporary employment shall not exceed thirty (30) days. The nursing facility shall not hire or contract with an applicant as a nontechnical services worker on a permanent basis until the results of the criminal history records search and the registry review are received.

D. Within five (5) days of 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, or each prospective contract worker, as applicable, that the nursing facility is required to obtain a criminal history records search and a registry review before making an offer of permanent employment or a contract with the nontechnical services worker applicant described in subsection A of this section.

F. 1. If the results of any criminal history records search from any jurisdiction reveals that the subject worker or applicant has been convicted, or pled guilty or nolo contendere to a felony or misdemeanor assault and battery, the employer shall not hire or contract with the applicant, but shall immediately terminate the nontechnical services worker's employment, contract, or volunteer arrangement, subject to the provisions of paragraph 2 of this subsection.

2. The nursing facility may request, in writing, a waiver of the provisions of paragraph 1 of this subsection from the Commissioner of the State Department of Health, or a designee of the Commissioner, and such provisions may be waived in writing by the Commissioner of the State Department of Health or a designee of the Commissioner. The Commissioner or a designee of the Commissioner

may waive the provisions based upon standards promulgated by the State Board of Health. No waiver shall be granted for offenses resulting in a felony conviction or plea of guilty or nolo contendere to a felony that occurred less than five (5) calendar years prior to the date of request. In no case shall a waiver be granted for employment of a nontechnical services worker who has been convicted of, or pled guilty or nolo contendere to, a felony count of aggravated assault and battery, homicide, murder, attempted murder, rape, incest, sodomy, or abuse, neglect, or financial exploitation of any person entrusted to the worker's care.

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 which requested the information. Except as otherwise provided by 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 State Department of Health shall review the employment files of the nursing facility required to conduct a criminal history records search to ensure such nursing facility is in compliance with the provisions of this section.

SECTION 4. 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 Board of Health shall promulgate rules to establish and maintain a nontechnical services worker registry. Such rules may include, but need not be limited to:

1. A procedure for notation in such registry of a final State Department of Health investigative finding or a finding by an Administrative Law Judge of abuse, neglect, 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 registry as having a final State Department of Health investigative finding or Administrative Law Judge finding of abuse, neglect, verbal abuse, or exploitation of an individual;

3. Disclosure requirements for information in the registry; and

4. Procedures for granting a waiver of the provisions of paragraph 1 of subsection F of Section 3 of this act by the Commissioner of the State Department of Health.

B. The nontechnical services worker 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 registry;

and

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

C. A nontechnical services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, neglect, verbal abuse or exploitation of an individual may seek judicial review pursuant to 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 5. 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:

Any violation of the provisions of Sections 2 through 4 of this act shall be 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 to exceed 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 such 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.

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