

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 803

By: Morgan of the Senate

and

Bonny of the House

CONFERENCE COMMITTEE SUBSTITUTE

An Act relating to public health and safety; creating the Long-Term Care Reform and Accountability Act; citing act; stating purpose; providing procedure for accomplishment of purpose; amending Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter 291, O.S.L. 2000, and 21 O.S. 843.1, as last amended by Section 151, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Sections 13.1 and 843.1), which relate to sentencing requirements and caretakers; expanding offenses for which the minimum sentence of imprisonment shall be imposed; making it unlawful for a caretaker or other person to commit certain acts against a person in a nursing facility or other setting; subjecting punishment to specified provisions; creating the Long-Term Care Access to Quality Health Care Task Force; providing for composition, terms, vacancies, quorum, designation of offices; convening of the first meeting, method of determining meeting dates, and travel reimbursement; requiring appointment of personnel for specified purpose; providing for duties and responsibilities of the Task Force; requiring the Oklahoma Health Care Authority, pursuant to legislative directive, to establish and implement specified project and the Oklahoma Health Care Authority Board to promulgate certain rules; authorizing the Authority to perform certain functions; requiring assistance with regard to specified activities; requiring report; requiring inclusion of conclusions; amending 63 O.S. 1991, Section 1-851.1, as last amended by Section 12, Chapter 340, O.S.L. 2000, 1-852, as last amended by Section 4, Chapter 336, O.S.L. 1996, and 1-853, as last amended by Section 13, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Sections 1-851.1, 1-852 and 1-853), which relate to the Long-Term Care Certificate of Need Act; clarifying language; expanding definition; requiring certificate of need under specified conditions; providing exception to requirements for an investigation pursuant to an application for a certificate of need; stating exception to list of criteria for specified certificate of need application; providing for definition and description of a service area of a

certificate of need application; amending Section 1, Chapter 418, O.S.L. 1999, as amended by Section 7, Chapter 340, O.S.L. 2000, which relates to the Oklahoma Continuum of Care Task Force; extending life of Task Force and providing for convening of a Task Force meeting by specified date; including entity with which the Task Force shall work; amending Section 1, Chapter 340, O.S.L. 2000, as amended by Section 3 of Enrolled House Bill No. 1727 of the 1st Session of the 48th Oklahoma Legislature, which relates to the Oklahoma 2001 Healthcare Initiative; modifying eligibility for certain reimbursement; modifying implementation of certain reimbursement; amending Section 2, Chapter 340, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), as last amended by Section 4 of Enrolled House Bill No. 1727 of the 1st Session of the 48th Oklahoma Legislature, which relates to the Nursing Facilities Quality of Care Fee; clarifying calculation of rate; modifying authorized purposes for expenditure of certain funds; providing for codification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-1900.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Long-Term Care Reform and Accountability Act of 2001".

B. The purpose of the Long-Term Care Reform and Accountability Act of 2001 shall be to design, develop and implement policies and procedures that improve the quality of care provided in this state's long-care delivery system for the elderly and disabled. The purpose of the Long-Term Care Reform and Accountability Act of 2001 shall be accomplished through a series of initiatives that may include, but need not be limited to:

1. Creation of a Long-Term Care Access to Quality Health Care Task Force; and

2. A Long-Term care pilot project nursing facility.

SECTION 2. AMENDATORY Section 30, Chapter 4, 1st Extraordinary Session, O.S.L. 1999, as amended by Section 2, Chapter

291, O.S.L. 2000 (21 O.S. Supp. 2000, Section 13.1), is amended to read as follows:

Section 13.1 Persons convicted of ~~first~~:

1. First degree murder as defined in Section 701.9 of this title, ~~robbery~~;

2. Robbery with a dangerous weapon as defined in Section 801 of this title, ~~first~~;

3. First degree rape as defined in Section 1115 of this title, ~~first~~;

4. First degree arson as defined in Section 1401 of this title, ~~first~~;

5. First degree burglary as defined in Section 1436 of this title, ~~bombing~~;

6. Bombing as defined in Section 1767.1 of this title, ~~any~~;

7. Any crime against a child provided for in Section 7115 of Title 10 of the Oklahoma Statutes, ~~forcible~~;

8. Forcible sodomy as defined in Section 888 of this title, ~~child~~;

9. Child pornography as defined in Section 1021.2 or 1021.3 of this title, ~~child~~;

10. Child prostitution as defined in Section 1030 of this title, ~~lewd~~;

11. Lewd molestation of a child as defined in Section 1123 of this title; or

12. Abuse of a vulnerable adult as defined in Section 10-103 of Title 43A of the Oklahoma Statutes who is a resident of a nursing facility,

shall be required to serve not less than eighty-five percent (85%) of any sentence of imprisonment imposed by the judicial system prior to becoming eligible for consideration for parole. Persons convicted of these offenses shall not be eligible for earned credits or any other type of credits which have the effect of reducing the

length of the sentence to less than eighty-five percent (85%) of the sentence imposed.

SECTION 3. AMENDATORY 21 O.S. 1991, Section 843.1, as last amended by Section 151, Chapter 5, 1st Extraordinary Session, O.S.L. 1999 (21 O.S. Supp. 2000, Section 843.1), is amended to read as follows:

Section 843.1 A. 1. No caretaker or other person shall willfully abuse, neglect, commit sexual abuse, or exploit any person entrusted to the care of ~~the~~ such caretaker or other person in a nursing facility or other setting, or shall cause, secure, or permit any of these acts to be done.

2. For purposes of this section, the terms "~~caretaker~~", "abuse", "neglect", "sexual abuse", and "exploit" shall have the same meaning as such terms are defined and clarified in Section 10-103 of Title 43A of the Oklahoma Statutes.

B. 1. Any person convicted of a violation of this section, except as provided in paragraph 2 of this subsection, shall be guilty of a felony and shall be subject to incarceration in the custody of the Department of Corrections for a period not to exceed ten (10) years. Such person's term shall further be subject to the provisions of Section 13.1 of this title.

2. Any person convicted of violating the provisions of this section by committing sexual abuse shall be guilty of a felony. Any person convicted of a violation of this paragraph shall be subject to incarceration in the custody of the Department of Corrections for a period not to exceed fifteen (15) years.

3. The fine for a violation of this section shall not be more than Ten Thousand Dollars (\$10,000.00).

C. Consent shall not be a defense for any violation of this section.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-850 of Title 63, unless there is created a duplication in numbering, reads as follows:

A. There is hereby created, until December 1, 2006, the Long-Term Care Access to Quality Health Care Task Force which shall be composed of nine (9) members as follows:

1. Three members to be appointed by the President Pro Tempore of the State Senate;

2. Three members to be appointed by the Speaker of the Oklahoma House of Representatives; and

3. Three members to be appointed by the Governor of the State of Oklahoma.

B. Members shall serve at the pleasure of their appointing authorities. A vacancy on the Task Force shall be filled by the original appointing authority.

1. A majority of the members appointed to the Task Force shall constitute a quorum. A majority of the members present at a meeting may act for the Task Force.

2. The President Pro Tempore of Senate, the Speaker of the House of Representatives and the Chair of the Task Force shall designate the vice-chair of the Task Force from among the members of the Task Force.

3. The Chair shall convene the first meeting of the Task Force on or before September 1, 2001.

4. The members of the Task Force shall determine meeting dates. Nonlegislative members shall not be compensated for their service but shall be reimbursed by their appointing authorities for necessary expenses incurred in the performance of their duties pursuant to the State Travel Reimbursement Act. Any legislators appointed shall be reimbursed pursuant to the provisions of Section 456 of Title 74 of the Oklahoma Statutes.

5. The Director, Administrator or Commissioner, as appropriate of each of the following state agencies shall each appoint one or more agency employees to attend the Task Force meetings and provide information, reports, records and other assistance as may be requested by the Task Force:

- a. the Oklahoma Health Care Authority, and
- b. the State Department of Health.

C. The Task Force shall have the following duties and responsibilities:

1. Develop and recommend to the Oklahoma Health Care Authority a pilot project for an existing nursing facility which shall be established within a contiguous county of a major metropolitan area through a waiver of the current certificate of need requirements;

2. Study and evaluate the feasibility of the elimination of the percentages of occupancy requirements in the Long-Term Care Certificate of Need Act and State Board of Health rules;

3. Review and make recommendations involving access to health care in Oklahoma nursing facilities;

4. Study the fiscal impact of changes to the Long-Term Care Certificate of Need Act and State Board of Health rules on all areas of Oklahoma; and

5. Develop and recommend, with the advice and assistance of the Oklahoma Health Care Authority and the State Department of Health, the Legislature and the Governor to the Oklahoma Health Care Authority criteria for the protection of existing facilities within the service area of the pilot project;

D. 1. The Oklahoma Health Care Authority shall, pursuant to legislative directive, establish and implement the pilot project developed by the Task Force;

2. The Oklahoma Health Care Authority Board shall promulgate any rules necessary to establish criteria for the protection of

existing facilities within the service area of any pilot project recommended by the Task Force;

3. The Authority shall:

- a. accept proposals from entities making application to build such a pilot project facility,
- b. select an entity to participate in the construction and operation of a pilot project facility by January 1, 2002, provided, however, such facility shall be in compliance with the provisions of the Nursing Home Care Act, and
- c. provide assistance to the Task Force regarding:
 - (1) creation and funding of additional reimbursement methodologies that protect existing facilities within the service area,
 - (2) fiscal impact studies related to the availability of financing for the purchase or construction of nursing facilities, and
 - (3) fiscal impact studies related to the use of state and federal funds and projected costs associated with new construction and elimination of the Long-Term Care Certificate of Need Act.

E. The State Department of Health shall provide assistance to the Task Force with regard to:

1. Establishing occupancy studies and trends;
2. Preparing quality of care assessments in the pilot project area; and
3. Preparing staffing studies that take into consideration:
 - a. recruitment and retention of staff,
 - b. the fiscal impact of competition for appropriate nursing facility staff, and
 - c. labor market trends.

F. 1. The Task Force shall, by December 31 of the years 2001 through 2005 submit an interim report to the Governor, the President Pro Tempore of the Senate and the Speaker of the Oklahoma House of Representatives regarding the progress and findings of the Task Force.

2. The Task Force shall submit a final report to the Governor, the President Pro Tempore of the State Senate and the Speaker of the Oklahoma House of Representatives on or before December 31, 2006, regarding the findings and recommendations of the Task Force.

3. The Task Force findings shall include pilot study information that will draw conclusions to the overall state fiscal impact and the effects of access to health care for all Oklahomans, in the event that there is repeal or changes in the Long-Term Care Certificate of Need Act and State Board of Health Rules rules.

4. Until the pilot study findings are final and changes are recommended by the Task Force, it is hereby requested that any future Oklahoma Legislature not and the State Department of Health shall not, unless specifically required by the Legislature, alter the Long-term Care Certificate of Need Act and rules.

SECTION 5. AMENDATORY 63 O.S. 1991, Section 1-851.1, as last amended by Section 12, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-851.1), is amended to read as follows:

Section 1-851.1 For purposes of the Long-term Care Certificate of Need Act:

1. "Board" means the State Board of Health;
2. "Commissioner" means the State Commissioner of Health;
3. "Department" means the State Department of Health;
4. "Long-term care ~~service~~ facility" means ~~service provided by:~~
 - a. a nursing facility or a specialized facility, as such terms are defined by Section 1-1902 of this title ~~or,~~

- b. skilled nursing care provided in a distinct part of a hospital as such term is defined by Section 1-701 of this title, ~~or~~
- c. the nursing care component of a continuum of care facility, as such term is defined under the Continuum of Care and Assisted Living Act, or
- d. the nursing care component of a life care community as such term is defined by the Long-Term Care Insurance Act;

5. "Disclosure statement" means a written statement by the applicant which contains:

- a. the full name, business address, and social security number of the applicant, and all persons with controlling interest as defined by this act,
- b. the full name and address of any legal entity in which the applicant holds a debt or equity interest of at least five percent (5%), or which is a parent company or subsidiary of the applicant,
- c. a description of the experience and credentials of the applicant, including any past or present permits, licenses, certifications, or operational authorizations relating to long-term care facility regulation,
- d. a listing and explanation of any administrative, civil or criminal legal actions against the applicant or any person with a controlling interest which resulted in a final agency order or final judgment by a court of record including, but not limited to, final orders or judgments on appeal related to long-term care in the five (5) years immediately preceding the filing of the application. Such actions shall include, without limitation, any permit denial or any sanction imposed

by a state regulatory authority or the federal Health Care Financing Administration, and

- e. a listing of any federal long-term care agency and any state long-term care agency outside this state that has or has had regulatory responsibility over the applicant;

6. "Person" means any individual, corporation, industry, firm, partnership, association, venture, trust, institution, federal, state or local governmental instrumentality, agency or body or any other legal entity however organized; and

7. "Person with a controlling interest" means a person who meets any one or more of the following requirements:

- a. controls fifty percent (50%) or more of the common stock of the corporate entity involved or controls fifty percent (50%) or more of the interest in the partnership involved,
- b. controls a percentage of stock greater than any other stockholder or equal to the other single largest stockholder or controls a percentage of partnership interest greater than any other partner or equal to the other single largest partnership interest,
- c. serves on the board of the entity involved,
- d. serves as an officer of the entity involved, or
- e. actively participates in the management of the entity involved or actively participates in the management of the entity in the relevant time period.

SECTION 6. AMENDATORY 63 O.S. 1991, Section 1-852, as last amended by Section 4, Chapter 336, O.S.L. 1996 (63 O.S. Supp. 2000, Section 1-852), is amended to read as follows:

Section 1-852. A. Every entity desiring to establish a new long-term care ~~service~~ facility, to expand an existing ~~service~~ facility whether through construction or conversion of facilities,

or to acquire an existing long-term care ~~service~~ facility shall make application to the State Department of Health for a certificate of need. The application for a certificate of need shall be in such form as the State Commissioner of Health shall prescribe.

B. ~~Long-term care service shall include~~ A certificate of need shall be required for:

1. Any capital investment or lease of Five Hundred Thousand Dollars (\$500,000.00) or more, including predevelopment activities such as arrangements and commitments for financing, architectural designs, plans, working drawings, specifications, and site acquisition; provided, that this dollar limit shall not apply to a change in bed capacity; and

2. Acquisition of the ownership or operation of a facility by purchase, lease, donation, transfer of stock, corporate merger, assignment, or through foreclosure. Acquisition through management contract shall be subject to a certificate of need unless said management contract is part of a purchase or lease proceeding. In such case the management contract shall be exempt from the certificate of need for a single term of up to nine (9) months, with no more than one three-month extension. A copy of the purchase contract shall be included by the applicant in the request for the management contract certificate of need exemption.

Management contracts for a period of six (6) months or less shall not be subject to certificate of need review. Such management contracts cannot be renewed unless the applicant files for a certificate of need.

C. All applicants for the issuance of a certificate of need, at such time and in such manner as required by the Department, shall file:

1. A disclosure statement with their applications unless the applicant is a publicly held company required to file periodic reports under the Securities and Exchange Act of 1934, or a wholly

owned subsidiary of a publicly held company. In such case, the applicant shall not be required to submit a disclosure statement, but shall submit the most recent annual and quarterly reports required by the Securities and Exchange Commission, which provide information regarding legal proceedings in which the applicant has been involved;

2. Copies of residents council minutes and family council minutes, if any, and the facility's written response to the councils' requests or grievances, for the three (3) months prior to the date of application, for each of the applicant's current holdings in the State of Oklahoma; and

3. Such other relevant information required by the Department pursuant to the Long-term Care Certificate of Need Act that relates to the competency, reliability, or responsibility of the applicant and affiliated persons.

D. An application for a certificate of need thereof shall be signed under oath by the applicant.

E. Promptly upon receipt of any such application, the Department shall examine and transmit the application to reviewing bodies selected by the Department to assist the Department in determining whether the application is complete. Once the Department has determined that the application is complete, it shall notify the affected parties and other reviewing bodies and cause a thorough investigation to be made of the need for and appropriateness of the new or any long-term care service acquisition, expansion, or establishment of a new facility.

F. ~~The~~ Except as provided by Section 8 of this act, the investigation made pursuant to an application for a certificate of need shall include the following:

1. The adequacy of long-term care ~~services~~ facilities in relation to an optimal target ratio of long-term care beds per

thousand persons seventy-five (75) years of age or older in the state;

2. The availability of ~~services~~ long-term care which may serve as alternatives or substitutes;

3. The adequacy of financial resources for the acquisition, expansion, or establishment of a new long-term care ~~service~~ facility and for the continued operation thereof;

4. The availability of sufficient staff to properly operate the proposed acquisition, expansion, or establishment of a new long-term care ~~service~~ facility;

5. The record of the applicant's current and prior ownership, operation and management of similar facilities in this state and in any other state. The investigation of such record shall include, but not be limited to, inquiry to the State Long-Term Care Ombudsman Office, the state Medicaid Fraud Control Unit, and the state licensure and certification agency;

6. Review of minutes of family councils and residents councils, and the facilities' responses, from each of the applicant's holdings in Oklahoma; and

7. Any other matter which the Department deems appropriate.

G. Before making a final determination on an acquisition application, the Commissioner shall cause paid public notices to be published in a newspaper of general circulation near the facility and in a newspaper of general circulation in the area where the application is available for public inspection. A notice in a form prescribed by the Department also shall be posted by the applicant in a public area in each facility operated by the applicant in Oklahoma, to inform residents and families of the applicant's proposed action. The public notices shall offer participating parties an opportunity to submit written comments.

H. The Commissioner's decision to approve or deny the proposed acquisition, expansion, or establishment of a new facility shall be

made within forty-five (45) days following the deadline for submitting written comments, or the proposed acquisition, expansion, or establishment shall be automatically approved, unless otherwise prohibited pursuant to the provisions of the Long-term Care Certificate of Need Act.

I. If the Commissioner finds that a proposed acquisition, expansion, or establishment of a new facility is consistent with the criteria and standards for review of such projects, and is otherwise in compliance with the provision of the Long-term Care Certificate of Need Act, then the Commissioner shall issue a certificate of need. If the Commissioner finds that the proposed acquisition, expansion, or establishment of a new facility is not consistent with the criteria and standards, or is otherwise not in compliance with the provisions of the Long-term Care Certificate of Need Act, the Commissioner shall deny the certificate of need.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-853, as last amended by Section 13, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-853), is amended to read as follows:

Section 1-853. A. Except as provided in subsections B, C, D and E of this section, no certificate of need shall be issued by the State Department of Health unless after investigation the State Commissioner of Health makes the following findings:

1. The action proposed in the application for such certificate of need is necessary and desirable in order to provide the services required in the locality to be served;

2. The proposed action can be economically accomplished and maintained;

3. The proposed action will contribute to the orderly development of long-term care services in the locality;

4. The applicant is or employs a licensed nursing home administrator; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

B. 1. An application for a certificate of need for a capital expenditure to eliminate or prevent imminent safety hazards as defined by federal, state or local fire, building or life safety codes or regulations, or to comply with state licensure standards, or to comply with accreditation standards, compliance with which is required to receive reimbursements under Title XVIII of the Social Security Act or payments under a state plan for medical assistance approved under Title XIX of such act, shall be approved unless the Department finds:

- a. that the facility or service is not needed, or
- b. that the applicant is found to be out of compliance with the provisions of subsection F of this section.

2. Approval under this subsection shall cover only the capital expenditure to eliminate or prevent the hazards or to comply with standards described herein.

C. No certificate of need shall be issued for the acquisition of an existing facility unless after investigation the Commissioner finds that the applicant:

1. Has financial resources necessary to complete the transaction and to maintain services and staffing; and
2. Is found to be in compliance with the provisions of subsection F of this section.

D. 1. Any application seeking a certificate of need for the construction of a long-term care facility to replace or relocate all or part of the licensed bed capacity of an existing facility shall be granted a certificate of need if the application meets the following criteria:

- a. the project involves no increase in licensed beds,
- b. except for a not-for-profit life care community, the facility shall be constructed no ~~farther~~ further than

three (3) miles from the facility it is replacing or relocating, and

- c. a plan for the use of the facility to be replaced or relocated is provided that ensures continuity of services.

2. The provisions of subsection F of this section shall not apply to replaced or relocated facilities.

E. Any application for a certificate of need for an increase in the number of licensed beds in an existing nursing or specialized facility currently licensed under Section 1-1906 of this title shall be approved by the Commissioner if the application meets the following criteria:

1. The increase in any calendar year is no more than ten percent (10%) of the applicant's total licensed beds in each facility or the increase is no more than ten beds, whichever is greater;

2. The total capital cost of the project is less than Five Hundred Thousand Dollars (\$500,000.00);

3. The rate of occupancy of the beds in the existing facility is an average of ninety-three percent (93%) or more during the twelve (12) months preceding the filing of the application;

4. If the facility previously has not increased beds pursuant to this subsection. The provisions of this paragraph shall apply only to a facility that was constructed to replace or relocate part of the facility pursuant to subsection D of this section; and

5. The applicant is found to be in compliance with the provisions of subsection F of this section.

F. 1. The Commissioner shall refuse to issue a certificate of need to any applicant who has had, in ten percent (10%) or more of the applicant's long-term care facility holdings in the preceding sixty (60) months, a facility license or certification revoked, rescinded, canceled, terminated, involuntarily suspended, or refused

renewal; or ~~if~~ who has voluntarily relinquished the license or certification ~~was relinquished voluntarily~~ in lieu of a penalty.

2. The Commissioner shall refuse to issue a certificate of need to any applicant except where the applicant overcomes a presumption against approval with clear and convincing evidence that one of the following circumstances was not due to the action or inaction of the applicant or any person with a controlling interest:

- a. the applicant has had, in any of the applicant's long-term care holdings in the preceding sixty (60) months, a facility's license or certificate revoked, rescinded, canceled, terminated, involuntarily suspended or refused renewal,
- b. the applicant has a history of noncompliance, as defined by rule, with the standards for licensure of long-term care facilities of any state in which the applicant has or has had long-term care facilities, or with federal standards for certification of long-term care facilities,
- c. the applicant, in all current and prior ownership, operation and management of long-term care facilities, has not complied with all lawful orders of suspension, receivership, temporary management, or administrative penalty issued by the Department or by other authorities with similar responsibilities in other states or by the federal Health Care Financing Administration, or
- d. the applicant has been convicted of a felony criminal offense related to the operation or management of a long-term care facility.

3. The Commissioner may refuse to issue a certificate of need to any applicant who has had, in the preceding sixty (60) months, an administrative penalty above the level of a deficiency, other than

any of those listed in paragraph 1 or 2 of this subsection, against any of the applicant's long-term care facility holdings or against any long-term care facility operated by a person with a controlling interest.

G. Noncompliance with a final agency order or final order or judgment of a court of record which has been set aside by a court on appeal of such final order or judgment shall not be considered a final order or judgment for the purposes of this section.

H. When the Commissioner makes a determination to issue or deny a certificate of need, the Commissioner shall provide written findings to the applicant, other reviewers and to other persons upon their request. The certificate of need shall establish the maximum capital expenditure for the project. The State Board of Health shall ~~adopt~~ promulgate rules concerning the time in which a decision must be made on an application.

I. Any person may request a reconsideration of the Commissioner's determination for good cause shown, the grounds for which shall be established by the Board by rule. A request for reconsideration shall be filed within ten (10) days of the ~~Department~~ Department's determination. The hearing thereupon shall be conducted within thirty (30) days following the receipt of request. Written findings shall be issued within forty-five (45) days of such hearing.

J. The Commissioner shall refuse to issue a certificate of need for an increase in licensed bed capacity of any facility that was replaced or relocated in part pursuant to subsection D of this section unless all of that facility is subsequently replaced or relocated. The applicability of this subsection shall not be affected by any change in ownership, operation or management of the facility.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 1-853.1 of Title 63, unless there is created a duplication in numbering, reads as follows:

An applicant for a certificate of need may define and describe a service area by showing through a clear and convincing demonstration one or more of the following:

1. The facility is providing or will provide services exclusively to religious groups in which membership is restricted;

2. The facility is responding or will respond to a regional, statewide or national population with special health service needs;

3. The facility is or will be a qualified continuing care facility as such term is defined under the Internal Revenue Code Section 7872(g) (4) (A) and is serving or will serve individuals who are residing or will reside in a separate independent living unit owned by the applicant; or

4. The facility is serving or will serve a rural area where residents must drive more than thirty (30) minutes to reach adequate nursing facility services.

SECTION 9. AMENDATORY Section 1, Chapter 418, O.S.L. 1999, as amended by Section 7, Chapter 340, O.S.L. 2000, is amended to read as follows:

Section 7. A. There is hereby established until June 1, ~~2001~~ 2002, the Oklahoma Continuum of Care Task Force. The Task Force shall be composed of twenty-seven (27) members, nine of whom shall be appointed each by the Governor, the President Pro Tempore of the Senate, and the Speaker of the House of Representatives. Members serving on the Task Force prior to the effective date of this act may continue to serve on the Task Force at the pleasure of their appointing authorities. Of the six new members appointed pursuant to the provisions of this act, the Governor, the President Pro Tempore of the Senate and the Speaker of the House of

Representatives shall each appoint two members. Such members shall be appointed from lists of names submitted to them by:

1. The Oklahoma Alliance on Aging;
2. The American Association of Retired Persons;
3. The Oklahoma State Council on Aging;
4. The Oklahoma Silver-Haired Legislature Alumni Association;

and

5. Any other statewide organization of advocates for senior citizens.

B. 1. Members shall serve at the pleasure of their appointing authorities. A vacancy on the Task Force shall be filled by the original appointing authority.

2. A majority of the members appointed to the Task Force shall constitute a quorum. A majority of the members present at a meeting may act for the Task Force.

3. The President Pro Tempore shall designate the chair and the Speaker shall designate the vice-chair of the Task Force from among the members of the Task Force.

4. The chair of the Task Force shall convene a meeting of the Task Force on or ~~before September 1, 2000~~ after July 1, 2001.

5. The members of the Task Force shall determine meeting dates.

6. a. nonlegislative members shall not be compensated for their service but shall be reimbursed by their appointing authorities for necessary expenses incurred in the performance of their duties, pursuant to the provisions of the State Travel Reimbursement Act, and
- b. legislative members shall be reimbursed for their necessary travel expenses incurred in the performance of their duties in accordance with the provisions of Section 456 of Title 74 of the Oklahoma Statutes.

C. 1. The Task Force:

- a. shall study the various long-term care programs currently being provided in this state and shall make recommendations concerning comprehensive state policy regarding long-term care,
- b. may divide into subcommittees in furtherance of its purpose,
- c. shall examine staffing patterns in long-term care facilities and may recommend staffing changes,
- d. shall study the feasibility of granting city-county health departments jurisdiction or authority to regulate or assist in the regulation of long-term care facilities within their city-county areas and the extent to which such jurisdiction or authority, if feasible, should be granted,
- e. shall compare the state Medicaid program funding system for long-term care facilities with systems used in other states and may recommend changes to such system,
- f. shall study the feasibility of requiring nurse aides and other designated employees at long-term care facilities to obtain national criminal history records searches based upon submission of fingerprints,
- g. shall examine and make final recommendations regarding the feasibility of establishing an acuity-based reimbursement system, utilizing a Minimum Data Set (MDS) Assessment, for long-term care residents, and shall report its findings and recommendations to the Senate and the House of Representatives on or before February 1, 2001. As used in this subparagraph:
 - (1) "Acuity-based reimbursement system" means a system of funding that mandates the implementation of a per diem payment for long-

term care facilities. The system shall cover all routine, ancillary and capital costs related to services furnished to long-term care residents and shall be based on a resident classification system that includes, but is not limited to, data from resident assessments and relative weights developed from staff time data, and

(2) "Minimum Data Set (MDS)" means a core set of screening, clinical and functional status elements, including common definitions and coding categories, that forms the foundation of a comprehensive assessment for all residents of Medicare- or Medicaid-certified long-term care facilities,

- h. shall develop criteria for demonstration projects that may be used to test various innovations in nursing home care. The demonstration project may further be used to estimate the cost of implementing the innovations on a statewide basis,
- i. shall work with the Office of the State Long-Term Care Ombudsman, the State Department of Health, the Oklahoma Health Care Authority, the Department of Human Services, Oklahoma Department of Career and Technology Education and all other related agencies and long-term care providers in developing a proposed policy for the state,
- j. shall actively seek and consider input from the public, the business community, long-term care organizations, organizations for elderly or retired persons, public interest organizations, professional organizations, or any other groups or persons with an

interest in the long-term care programs of this state and the work of the Task Force,

- k. shall solicit and accept written comments, recommendations and proposals, and shall hold public hearings to obtain comments from the public, and
- l. shall monitor the implementation of the Oklahoma 2001 Healthcare Initiative.
- 2. a. The Task Force shall be staffed by the staff of the Oklahoma House of Representatives and the Oklahoma State Senate.
- b. The Department of Human Services, the State Department of Health, the Oklahoma Health Care Authority, the Oklahoma Department of Career and Technology Education and any other department, officer, agency and employee of the state shall cooperate with the Task Force in carrying out its duties and responsibilities, including, but not limited to, providing any information, records and reports as may be requested by the Task Force.

D. The Task Force shall submit a final report to the Governor, the President Pro Tempore of the Senate and the Speaker of the House of Representatives on or before February 1, 2001 April 1, 2002, regarding the findings and recommendations of the Task Force at which time the Task Force shall cease to exist.

SECTION 10. AMENDATORY Section 1, Chapter 340, O.S.L. 2000, as amended by Section 3 of Enrolled House Bill No. 1727 of the 1st Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 1. A. This act shall be known and may be cited as the "Oklahoma 2001 Healthcare Initiative".

B. 1. The purpose of the Oklahoma 2001 Healthcare Initiative is to improve the public health care system of Oklahoma through increased health care services and benefits.

2. In order to upgrade Oklahoma's health care system, the Oklahoma Legislature through the Oklahoma 2001 Healthcare Initiative hereby provides funding for the most critical needs of the vulnerable citizens and residents of this state.

C. To this end, the Oklahoma Legislature hereby requires:

1. The Oklahoma Health Care Authority to:

a. increase by eighteen percent (18%), provided the increase does not exceed federal limits, the Medicaid reimbursement rate to the following persons or entities providing Medicaid-authorized services to eligible persons:

- (1) physicians including, but not limited to, psychiatrists and osteopathic physicians,
- (2) home health care providers,
- (3) laboratory and clinic services providers,
- (4) ambulatory clinic providers, and
- (5) other Medicaid-authorized medical services providers including, but not limited to: chiropractors, optometrists, opticians, psychologists, speech pathologists, and occupational therapists,

b. increase by ten percent (10%) the Medicaid reimbursement rate to persons providing Medicaid behavioral health counseling services to eligible persons,

c. increase the hospital inpatient day limit for Medicaid services from twelve (12) days to twenty-four (24) days per year,

h. subject to the provisions of subsection D of this section, reimburse licensed nursing facilities that are not Medicaid certified for purposes specified by ~~Sections~~ Section 1-1925.2, ~~5022.1 and 5022.2~~ of Title 63 of the Oklahoma Statutes;

2. The State Department of Health, with the cooperation of the Oklahoma Health Care Authority and the Department of Human Services to:

a. develop and implement a comprehensive, evidence-based tobacco prevention and cessation program from state-appropriated funds, available Medicaid funds, available grant funds, and available Temporary Assistance for Needy Families block grant monies. The program shall:

(1) consist of the following four cornerstones:

(a) community-based initiatives,

(b) voluntary classroom programs in public schools,

(c) cessation assistance, and

(d) public education media programs, and

(2) utilize strategies including, but not limited to, involving school nurses in youth tobacco prevention efforts, and utilizing other efforts that have been demonstrated to be effective by the United States Centers for Disease Control and Prevention in an effort to:

(a) lower smoking rates among Oklahoma youths,

(b) reduce tobacco consumption by Oklahomans, and

(c) reduce exposure related to secondhand tobacco smoke.

The program shall comply with the provisions of Section 19, Chapter 340, O.S.L. 2000,

- b. expend monies made available from the Legislature and other sources for such programs authorized by this section with a goal of encouraging additional matching direct and indirect funds for tobacco prevention and cessation efforts in Oklahoma, and
- c. report by January 1st of each year to the Legislature on the implementation of the comprehensive, evidence-based tobacco prevention and cessation program specified by this section;

3. The Department of Human Services to:

- a. increase Medicaid reimbursement rates to:
 - (1) direct care staff who provide personal care and ADvantage waiver services to Medicaid-eligible adults including, but not limited to, the reimbursement rate for respite care, meal preparation and housekeeping, and
 - (2) habilitation training specialists who serve developmentally disabled persons including, but not limited to, the reimbursement rate for assisting and training in self-care, and daily living and prevocational skills,
- b. increase contract amount by thirteen percent (13%) for salaries of Older Americans Act nutrition site employees who provide meals and nutrition services including, but not limited to, reimbursement rates for home-delivered meals, congregate meals and nutrition education,
- c. purchase services up to Ten Thousand Dollars (\$10,000.00) per child for developmentally disabled children who are on the waiting list to receive

services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services,

- d. purchase services up to Fifteen Thousand Dollars (\$15,000.00) per adult for developmentally disabled adults who are on the waiting list to receive services including, but not limited to, habilitation treatment specialist services, medical supplies, home health care, therapy and respite care services, and
- e. purchase ADvantage waiver services for developmentally disabled persons without cognitive impairment.

~~D. If any provision of this section, or the application thereof, is determined by any controlling federal agency, or any court of last resort to prevent the state from obtaining federal financial participation in the state's Medicaid program, such provision shall be deemed null and void as of the date of the non-availability of such federal funding and through and during any period of non-availability. All other provisions of the bill shall remain valid and enforceable~~ The Oklahoma Health Care Authority is directed to, prior to June 30, 2001, prepare and file an amendment to the State Medicaid Plan with the Health Care Financing Administration which will implement the provisions of subparagraph h of paragraph 1 of subsection C of this section. Upon either:

1. An approval of such amendment which indicates that the Nursing Facilities Quality of Care Fee will not be disqualified as an eligible expense for purposes of the State Medicaid Plan; or

2. Receipt of a written statement from an appropriate federal official as determined by the Oklahoma Health Care Authority that implementation of the amendment will not cause or result in the disqualification of the Nursing Facilities Quality of Care Fee as an eligible expense for purposes of the State Medicaid Plan;

the Oklahoma Health Care Authority shall make the reimbursements provided for in paragraph 1 of subsection C of this section. Such payments shall be retroactive to the effective date of this act.

SECTION 11. AMENDATORY Section 2, Chapter 340, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), as last amended by Section 4 of Enrolled House Bill No. 1727 of the 1st Session of the 48th Oklahoma Legislature, is amended to read as follows:

Section 2002. A. For the purpose of providing quality care enhancements, the Oklahoma Health Care Authority is authorized to and shall assess a Nursing Facilities Quality of Care Fee pursuant to this section upon each nursing facility licensed in this state. Quality of care enhancements include, but are not limited to, the purposes specified in this section.

B. As a basis for determining the maximum Nursing Facilities Quality of Care Fee assessed upon each licensed nursing facility, the Oklahoma Health Care Authority shall calculate a uniform per-patient day rate. The rate shall be ~~set at~~ calculated by dividing six percent (6%) of the total annual patient gross ~~revenue receipts~~ of all licensed nursing facilities in this state ~~or six percent (6%) of the total annual patient gross revenues of the individual licensed nursing facility, whichever is less~~ by the total number of patient days for all licensed nursing facilities in this state. The result shall be the per-patient day rate.

C. The Nursing Facilities Quality of Care Fee owed by a licensed nursing facility shall be calculated by the Oklahoma Health Care Authority by adding the daily patient census of a licensed nursing facility, as reported by the facility for each day of the month, and by multiplying the ensuing figure by ~~a uniform~~ the per-patient day rate determined pursuant to the provisions of subsection B of this section.

D. Each licensed nursing facility which is assessed the Nursing Facilities Quality of Care Fee shall be required to file a report on

a monthly basis with the Oklahoma Health Care Authority detailing the daily patient census and patient gross ~~revenues~~ receipts at such time and in such manner as required by the Oklahoma Health Care Authority.

E. 1. The Nursing Facilities Quality of Care Fee for a licensed nursing facility for the period beginning October 1, 2000, shall be determined using the daily patient census and annual patient gross revenues figures reported to the Oklahoma Health Care Authority for the calendar year 1999 upon forms supplied by the Authority.

2. The Nursing Facilities Quality of Care Fee for the fiscal year beginning July 1, 2001, and each fiscal year thereafter shall be determined by:

- a. using the daily patient census and patient gross ~~revenues~~ receipts reports received by the Authority covering the six-month period October 1 through March 31 of the prior fiscal year, and
- b. annualizing those figures.

F. The payment of the Nursing Facilities Quality of Care Fee by licensed nursing facilities shall be an allowable cost for Medicaid reimbursement purposes.

G. 1. There is hereby created in the State Treasury a revolving fund to be designated the "Nursing Facility Quality of Care Fund".

2. The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of:

- a. all monies received by the Authority pursuant to this section and otherwise specified or authorized by law,
- b. monies received by the Authority due to federal financial participation pursuant to Title XIX of the Social Security Act, and

- c. interest attributable to investment of money in the fund.

3. All monies accruing to the credit of the fund are hereby appropriated and shall be budgeted and expended by the Authority for:

- a. (1) reimbursement of the additional costs paid to ~~licensed~~ Medicaid-certified nursing facilities for purposes specified by Sections 1-1925.2, 5022.1 and 5022.2 of Title 63 of the Oklahoma Statutes, and
(2) subject to the provisions of subsection D of Section 1, Chapter 340, O.S.L. 2000, as amended by Section 1 of this act, reimbursement of additional costs paid to other licensed nursing facilities for purposes specified by Section 1-1925.2 of Title 63 of the Oklahoma Statutes,
- b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),
- c. nonemergency transportation services for nursing home clients,
- d. eyeglass and denture services for nursing home clients,
- e. ten additional ombudsmen employed by the Department of Human Services,
- f. ten additional nursing facility inspectors employed by the State Department of Health,
- g. pharmacy and other Medicaid services to qualified Medicare beneficiaries whose incomes are at or below one hundred percent (100%) of the federal poverty level; provided however, pharmacy benefits authorized for such qualified Medicare beneficiaries shall be

suspended if the federal government subsequently extends pharmacy benefits to this population,

- h. funds to conduct a study of nursing facility reimbursement methodology,
- i. costs incurred by the Oklahoma Health Care Authority in the administration of the provisions of this section and any programs created pursuant to this section,
- j. durable medical equipment and supplies services for elderly adults, and
- k. personal needs allowance increases for residents of nursing homes and Intermediate Care Facilities for the Mentally Retarded (ICFs/MR) from Thirty Dollars (\$30.00) to Fifty Dollars (\$50.00) per month per resident.

4. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

5. The fund and the programs specified in this section are exempt from budgetary cuts, reductions, or eliminations caused by the lack of general revenue funds.

6. The Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR) shall not exceed the net Medicaid rate increase for nursing facilities including, but not limited to, the Medicaid rate increase for which Medicaid-certified nursing facilities are eligible due to the Nursing Facilities Quality of Care Fee less the portion of that increase attributable to treating the Nursing Facilities Quality of Care Fee as an allowable cost.

7. The reimbursement rate for nursing facilities shall be made in accordance with Oklahoma's Medicaid reimbursement rate methodology and the provisions of this section.

8. No nursing facility shall be guaranteed, expressly or otherwise, that any additional costs reimbursed to the facility will equal or exceed the amount of the Nursing Facilities Quality of Care Fee paid by the nursing facility.

H. 1. In the event that federal financial participation pursuant to Title XIX of the Social Security Act is not available to the Oklahoma Medicaid program, for purposes of matching expenditures from the Nursing Facility Quality of Care Fund at the approved federal medical assistance percentage for the applicable fiscal year, the Nursing Facilities Quality of Care Fee shall be null and void as of the date of the nonavailability of such federal funding, through and during any period of nonavailability.

2. In the event of an invalidation of this section by any court of last resort under circumstances not covered in subsection I of this section, the Nursing Facilities Quality of Care Fee shall be null and void as of the effective date of that invalidation.

3. In the event that the Nursing Facilities Quality of Care Fee is determined to be null and void for any of the reasons enumerated in this subsection, any Nursing Facilities Quality of Care Fee assessed and collected for any periods after such invalidation shall be returned in full within sixty (60) days by the Oklahoma Health Care Authority to the nursing facility from which it was collected.

I. 1. If any provision of this section or the application thereof shall be adjudged to be invalid by any court of last resort, such judgment shall not affect, impair or invalidate the provisions of the section, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment was rendered. The applicability of such provision to other persons or circumstances shall not be affected thereby.

2. This subsection shall not apply to any judgment that affects the rate of the Nursing Facilities Quality of Care Fee, its applicability to all licensed nursing homes in the state, the usage

of the fee for the purposes prescribed in this section, and/or the ability of the Oklahoma Health Care Authority to obtain full federal participation to match its expenditures of the proceeds of the fee.

J. The Oklahoma Health Care Authority shall promulgate rules for the implementation and enforcement of the Nursing Facilities Quality of Care Fee established by this section.

K. The Authority may assess administrative penalties, and shall promulgate rules which provide for the assessment of administrative penalties, upon nursing facilities which fail to submit the fee required by this section in a timely manner.

L. As used in this section:

1. "Nursing facility" means any home, establishment or institution, or any portion thereof, licensed by the State Department of Health as defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;

2. "Medicaid" means the medical assistance program established in Title XIX of the federal Social Security Act and administered in this state by the Oklahoma Health Care Authority;

3. "Patient gross revenues" means gross revenues received in compensation for services provided to residents of nursing facilities including, but not limited to, client participation. The term "patient gross revenues" shall not include amounts received by nursing facilities as charitable contributions; and

4. "Additional costs paid to Medicaid-certified nursing facilities under Oklahoma's Medicaid reimbursement methodology" means both state and federal Medicaid expenditures including, but not limited to, funds in excess of the aggregate amounts that would otherwise have been paid to Medicaid-certified nursing facilities under the Medicaid reimbursement methodology which have been updated for inflationary, economic, and regulatory trends and which are in effect immediately prior to the inception of the Nursing Facilities Quality of Care Fee.

M. If any provision of this section, or the application thereof, is determined by any controlling federal agency, or any court of last resort to prevent the state from obtaining federal financial participation in the state's Medicaid program, such provision shall be deemed null and void as of the date of the non-availability of such federal funding and through and during any period of non-availability. All other provisions of the bill shall remain valid and enforceable.

SECTION 12. Section 1, Chapter 418, O.S.L. 1999, as last amended by Section 9 of this act, shall be codified in the Oklahoma Statutes as Section 1-899.1 of Title 63, unless there is created a duplication in numbering.

SECTION 13. 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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