

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

2ND CONFERENCE COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL 803

By: Easley, Shurden and Fisher
of the Senate

and

Bonny of the House

2ND 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; 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; amending Section 4, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1925.2), which relates to reimbursement rates; modifying direct-care-staff-to-resident ratios; requiring task force for specified purposes; stating beginning date; requiring report; requiring direction and assistance from the State Department of Health; 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.

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. 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

1. 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 5. 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,
- d. increase the Medicaid reimbursement rate to the Sooner Care Plus Program for:
 - (1) maternity level of care services
increase by \$271.00 per delivery
 - (2) emergency room services
increase emergency room visit rate
increase nonemergency room visit rate
 - (3) ambulatory surgical services 10% increase

- (4) inpatient hospital services 12% increase
- (5) neonatal inpatient hospital services 20% increase
- e. increase the Medicaid reimbursement rate to hospitals in the Fee-For-Service Program for:
 - (1) maternity level of care services,
 - Mother increase by \$55.50 per day
 - Child increase by \$55.50 per day
 - (2) emergency room services
 - increase emergency room visit rate
 - increase nonemergency room visit rate
 - (3) ambulatory surgical services 10% increase
 - (4) inpatient hospital services 12% increase
 - (5) neonatal inpatient hospital services 20% increase
 - (6) critical access hospital services 38% increase
- f. increase the Medicaid reimbursement rate sixty percent (60%) for dental services provided to eligible persons,
- g. increase the Medicaid reimbursement rate forty percent (40%) for ambulance services provided to eligible persons, and
- 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 6. 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 5 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 7. AMENDATORY Section 4, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1925.2), 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, 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 ~~sixteen~~ seventeen residents, or major fraction thereof.

3. On and after September 1, 2002, 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 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. 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.

C. 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.

D. 1. On or before July 1, 2001, 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 8. Section 1, Chapter 418, O.S.L. 1999, as last amended by Section 4 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 9. 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.

48-1-1744

BEP

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