

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL 2218

By: Morgan of the House

and

Williams of the Senate

COMMITTEE SUBSTITUTE

[public health and safety - amending 63 O.S.,
Section 1-1925.2 - direct-care staff-to-resident
ratio - noncompliant facilities - criminal arrest
checks - termination - penalties - codification -
effective date -

emergency]

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

Section 1-1925.2 A. The Oklahoma Health Care Authority shall fully recalculate and reimburse nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR) from the Nursing Facility Quality Care Fund beginning October 1, 2000, the average actual, audited costs reflected in previously submitted cost reports for the cost-reporting period that began July 1, 1998, and ended June 30, 1999, inflated by the federally published inflationary factors for the two (2) years appropriate to reflect present-day costs at the midpoint of the July 1, 2000, through June 30, 2001, rate year.

1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and intermediate care facilities for the mentally retarded (ICFs/MR), and shall be

calculated in the same manner as has been mutually understood by the long-term care industry and the Oklahoma Health Care Authority.

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

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

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

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

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

3. On and after September 1, 2002, ~~all~~ nursing facilities subject to the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds shall maintain, in addition to other state and federal requirements

related to the staffing of nursing facilities, ~~shall maintain~~ the following minimum direct-care staff-to-resident ratios:

- a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every six residents, ~~or major fraction thereof,~~
 - b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents, ~~or major fraction thereof,~~ and
 - c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every fifteen residents, ~~or major fraction thereof.~~
4. a. On and after March 1, 2003, a facility that has been determined by the State Department of Health to be in compliance with the provisions of paragraph 3 of this subsection may implement flexible staff scheduling; provided, however, such facility shall continue to maintain a direct-care service rate of at least two and eighty-six one hundredths (2.86) hours of direct-care service per resident per day.
- b. At no time shall direct-care staffing ratios in a facility with flexible staff scheduling privileges fall below one direct-care staff to every fifteen residents at all times, and at least two direct-care staff on duty and awake at all times.
- c. As used in this paragraph, "flexible staff scheduling" means maintaining:
- (1) a direct-care staff-to-resident ratio based on an overall hours of direct care service per resident per day rate of two and eighty-six one hundredths (2.86) hours per day per occupied bed,
 - (2) a direct-care staff-to-resident ratio of one direct-care staff person on duty to every fifteen residents at all times, and
 - (3) at least two direct-care staff persons on duty and awake at all times.

5. a. On and after March 1, 2003, the Department shall require a facility that has been determined by the Department to be deficient with regard to:
- (1) the provisions of paragraph 3 of this subsection,
 - (2) monthly staffing reports,
 - (3) a complaint investigation, or
 - (4) an inspection,
- to maintain the shift-based staff-to-resident ratios provided in paragraph 3 of this subsection for a period of not less than six (6) months.
- b. Upon a subsequent determination by the Department that the facility has corrected the deficiency, the Department shall notify the facility of the reinstatement of the facility's flexible staff scheduling privileges.

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

2. The Department shall identify any quality of care problems related to insufficient staffing and shall issue a directed plan of correction to any facility found to be out of compliance with the provisions of subsection B of this section. Under such directed plan of correction, a facility shall be required to maintain, for a period of not less than six (6) months, the shift-based staff-to-resident ratios as outlined in paragraph 3 of subsection B of this section.

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

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

D. For purposes of this subsection:

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

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

~~b. prior~~

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

~~C.~~ E. The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act and intermediate care facilities for the mentally retarded with seventeen or more beds to submit a monthly report on staffing ratios on a form that the Authority shall develop. The report shall document the extent to which such ~~nursing~~ facilities are meeting or are failing to meet the minimum direct-care staff-to-resident ratios specified by this section. Such report shall be available to the public upon request. The Authority may assess administrative penalties for the failure of any ~~nursing~~ facility to submit the report as required by the Authority. Administrative penalties shall not accrue until the Authority notifies the facility in writing that the report was not submitted timely.

~~D.~~ F. 1. ~~On or before July 1, 2002, all~~ All entities regulated by this state that provide long-term care services shall utilize a

single assessment tool to determine client services needs. The tool shall be developed by the Oklahoma Health Care Authority.

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

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

~~E. The State Department of Health, Oklahoma Health Care Authority, State Ombudsman Office and the Nursing Home Industry shall comprise a task force to study staffing, recruitment and retention of staff in Nursing and Specialized Facilities. This task force shall commence on September 1, 2001, and provide a written report of its findings to the Governor, the Senate and the House of Representatives by February 1, 2002. The State Department of Health shall direct and assist the task force in the performance of its duties.~~

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

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

1. "Board" means the State Board of Health;
2. "Bureau" means the Oklahoma State Bureau of Investigation;
3. "Department" means the State Department of Health;
4. "Nursing facility" means a nursing facility, adult companion home, residential care home, and specialized facility as such terms are defined in Section 1-1902 of Title 63 of the Oklahoma Statutes;
5. "Nontechnical services worker" means a person employed by or under contract with a nursing facility to provide, for compensation or as a volunteer, nontechnical services in or upon the premises of a nursing facility. The term "Nontechnical services worker" shall

not include a nurse aide, or any person who is exempt from the criminal arrest check provisions of Section 1-1950.1 of Title 63 of the Oklahoma Statutes; and

6. "Nontechnical services" means services that:

- a. are performed in or on the premises of a nursing facility and that are predominantly physical or manual in nature, and
- b. involve or may involve patient contact including, but not limited to, housekeeping, janitorial or maintenance services, food preparation and administrative services.

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

A. 1. Except as otherwise provided in subsection C of this section, before any nursing facility makes an offer to employ or to contract with a nontechnical services worker applicant to provide nontechnical services the nursing facility shall:

- a. provide for, prior to a check with the State Department of Health, a criminal history records search to be conducted upon the nontechnical services worker applicant or contractor pursuant to the provisions of this section, and
- b. check with the Department to determine whether the name of the applicant seeking employment or contract appears on the nontechnical services worker registry created pursuant to the provisions of Section 4 of this act. Prior to a decision by the Department to enter the name of a nontechnical services worker on such registry, the Department shall allow for notice and opportunity for due process for such nontechnical services worker against whom a final investigative

finding by the Department or a finding by an Administrative Law Judge of abuse, neglect, or exploitation of an individual has been made. The Department is authorized to charge a nursing facility a reasonable fee for access to the registry. If the name of the applicant seeking employment or a contract with the nursing facility is listed on the registry as having a final Department investigative finding or a finding by an Administrative Law Judge pursuant to the requirements of Section 4 of this act, and the Department has allowed for notice and opportunity for due process for such applicant, the nursing facility shall not hire the applicant.

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

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

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

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

D. Within five (5) days of the receipt of a request to conduct a criminal history records search, the Bureau shall complete the criminal history records search and report the results of the search to the requesting nursing facility.

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

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

1. Assault, battery, or assault and battery with a dangerous weapon;
2. Aggravated assault and battery;
3. Murder or attempted murder;
4. Manslaughter, except involuntary manslaughter;
5. Rape, incest or sodomy;

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

7. Burglary in the first or second degree;

8. Robbery in the first or second degree;

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

10. Arson in the first or second degree;

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

12. Grand larceny; or

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

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

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

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

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

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

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

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

3. Disclosure requirements for information in the registry.

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

1. The individual's full name;

2. Information necessary to identify each individual;

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

and

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

C. A nontechnical services worker or applicant who is adversely affected by an Administrative Law Judge finding of abuse, neglect, verbal abuse or exploitation of an individual may seek judicial review pursuant to the provisions of Article II of the Administrative Procedures Act. The finding of the Administrative Law Judge may be appealed to the district court in which the

nontechnical services worker or applicant resides within thirty (30) days of the date of the decision. A copy of the petition shall be served by mail upon the general counsel of the Department.

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

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

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

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

48-2-3227

CJ

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