

ENROLLED HOUSE  
BILL NO. 1523

By: Mass and Bonny of the House

and

Haney and Hobson of the  
Senate

An Act relating to health services; amending Section 2, Chapter 340, O.S.L. 2000, as amended by Section 31, Chapter 418, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), which relates to the Oklahoma Health Care Authority; modifying basis for determining certain rates; modifying certain purposes; specifying basis for assessing administrative penalties; amending Section 4, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 1-1925.2), which relates to reimbursements for certain nursing facilities; authorizing administrative penalties; amending Section 5, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 5022.1), which relates to certain wage and salary adjustments; modifying certain review and reporting requirements; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY Section 2, Chapter 340, O.S.L. 2000, as amended by Section 31, Chapter 418, O.S.L. 2000 (56 O.S. Supp. 2000, Section 2002), 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 six percent (6%) of the total annual patient gross ~~revenue~~ receipts of all licensed nursing facilities in this state.

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 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~~ receipts 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. reimbursement of the additional costs paid to Medicaid-certified nursing facilities for purposes specified by Sections 4, 5 and 6 of this act,
- b. reimbursement of the Medicaid rate increases for intermediate care facilities for the mentally retarded (ICFs/MR),
- c. nonemergency transportation services for Medicaid-eligible nursing home clients,

- d. eyeglass and denture services for Medicaid-eligible 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 Medicaid-eligible 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~~ shall provide for administrative penalties, ~~and shall promulgate rules which provide for the assessment of administrative penalties, upon~~ in the event nursing facilities ~~which fail to submit:~~

1. Submit the fee required by this section in a timely manner  
Quality of Care Fee;

2. Submit the fee in a timely manner;

3. Submit reports as required by this section; or

4. Submit reports timely.

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.

SECTION 2. 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,
- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen residents.

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,
- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every sixteen residents.

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,
- b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents, and
- c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every fifteen residents.

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. The Authority may assess administrative penalties for the failure of any nursing facility to submit the report as required by the Authority.

D. 1. On or before July 1, ~~2001~~ 2002, 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~~ 2003.

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.

SECTION 3. AMENDATORY Section 5, Chapter 340, O.S.L. 2000 (63 O.S. Supp. 2000, Section 5022.1), is amended to read as follows:

Section 5022.1 A. 1. Effective November 1, 2000, the Oklahoma Health Care Authority shall grant a wage and salary adjustment including, but not limited to, employee benefits to be paid to the facility for employees specified in subsection B of this section in nursing facilities serving adults (NFs) and intermediate care facilities for the mentally retarded (ICFs/MR).

2. The adjustment shall be based upon a new minimum wage for specified employees of nursing facilities, standard private intermediate care facilities for the mentally retarded (ICFs/MR) and specialized private intermediate care facilities for the mentally retarded (ICFs/MR) in the amount of Six Dollars and Sixty-five Cents (\$6.65) per hour.

B. The provisions of this section shall only apply to the following specified employees:

1. Registered nurses;
2. Licensed practical nurses;
3. ~~Nurse~~ Nurses aides;
4. Certified medication aides;
5. Dietician staff;
6. Housekeeping staff;
7. Maintenance staff;
8. Laundry staff;
9. Social service staff; and
10. Other activities staff.

C. ~~The Oklahoma Health Care Authority shall review any reports or records retained by the nursing facilities during the regular cost-reporting process and normal auditing procedures of the Authority to ensure compliance with this section may require reporting by facilities of compliance with this section and may penalize facilities for noncompliance with the payment of the adjustment. Such penalties may include paying the facility employee for adjustments not paid by the nursing facility.~~

SECTION 4. This act shall become effective July 1, 2001.

SECTION 5. 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.

Passed the House of Representatives the 23rd day of May, 2001.

---

Presiding Officer of the House of  
Representatives

Passed the Senate the 23rd day of May, 2001.

---

Presiding Officer of the Senate