

3 Senate Bill No. 1887  
4 As Amended

5 SENATE BILL NO. 1887 - By: CAPPS of the Senate and WALKER of the  
6 House.

7 [ public health and safety - staffing ratios - nursing  
8 facilities - effective date ]

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

10 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as  
11 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.  
12 2005, Section 1-1925.2), is amended to read as follows:

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

23 1. The recalculations provided for in this subsection shall be  
24 consistent for both nursing facilities and intermediate care

1 facilities for the mentally retarded (ICFs/MR), and shall be  
2 calculated in the same manner as has been mutually understood by the  
3 long-term care industry and the Oklahoma Health Care Authority.

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

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

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

17 2. From September 1, 2001, through August 31, 2003, nursing  
18 facilities subject to the Nursing Home Care Act and intermediate  
19 care facilities for the mentally retarded with seventeen or more  
20 beds shall maintain, in addition to other state and federal  
21 requirements related to the staffing of nursing facilities, the  
22 following minimum direct-care-staff-to-resident ratios:

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

7           3.  On and after September 1, 2003, subject to the availability  
8 of funds, nursing facilities subject to the Nursing Home Care Act  
9 and intermediate care facilities for the mentally retarded with  
10 seventeen or more beds shall maintain, in addition to other state  
11 and federal requirements related to the staffing of nursing  
12 facilities, the following minimum direct-care-staff-to-resident  
13 ratios:

- 14           a.    from 7:00 a.m. to 3:00 p.m., one direct-care staff to  
15                    every six residents, or major fraction thereof,  
16           b.    from 3:00 p.m. to 11:00 p.m., one direct-care staff to  
17                    every eight residents, or major fraction thereof, ~~and~~  
18           c.    from 11:00 p.m. to 7:00 a.m., one direct-care staff to  
19                    every fifteen residents, or major fraction thereof, and  
20                    and  
21           d.    at least two direct-care staff persons on duty and  
22                    awake at all times in an Alzheimer's, memory or

1                    dementia care unit, in addition to the ratios provided  
2                    in subparagraphs a through c of this paragraph.

3            4.    Effective immediately, facilities shall have the option of  
4    varying the starting times for the eight-hour shifts by one (1) hour  
5    before or one (1) hour after the times designated in this section  
6    without overlapping shifts.

7            5.    a.    On and after January 1, 2004, a facility that has been  
8                    determined by the State Department of Health to have  
9                    been in compliance with the provisions of paragraph 3  
10                   of this subsection since the implementation date of  
11                   this subsection, may implement flexible staff  
12                   scheduling; provided, however, such facility shall  
13                   continue to maintain a direct-care service rate of at  
14                   least two and eighty-six one-hundredths (2.86) hours  
15                   of direct-care service per resident per day.

16            b.    At no time shall direct-care staffing ratios in a  
17                    facility with flexible staff-scheduling privileges  
18                    fall below one direct-care staff to every sixteen  
19                    residents, and at least two direct-care staff shall be  
20                    on duty and awake at all times.

21            c.    As used in this paragraph, "flexible staff-scheduling"  
22                    means maintaining:

- 1 (1) a direct-care-staff-to-resident ratio based on  
2 overall hours of direct-care service per resident  
3 per day rate of not less than two and eighty-six  
4 one-hundredths (2.86) hours per day,  
5 (2) a direct-care-staff-to-resident ratio of at least  
6 one direct-care staff person on duty to every  
7 sixteen residents at all times, ~~and~~  
8 (3) at least two direct-care staff persons on duty  
9 and awake at all times, and  
10 (4) at least two direct-care staff persons on duty  
11 and awake at all times in an Alzheimer's, memory  
12 or dementia care unit, in addition to the ratios  
13 provided in divisions (1) through (3) of this  
14 subparagraph.

15 6. a. On and after January 1, 2004, the Department shall  
16 require a facility to maintain the shift-based, staff-  
17 to-resident ratios provided in paragraph 3 of this  
18 subsection if the facility has been determined by the  
19 Department to be deficient with regard to:

- 20 (1) the provisions of paragraph 3 of this subsection,  
21 (2) fraudulent reporting of staffing on the Quality  
22 of Care Report,

- 1 (3) a complaint and/or survey investigation that has  
2 determined substandard quality of care, or  
3 (4) a complaint and/or survey investigation that has  
4 determined quality-of-care problems related to  
5 insufficient staffing.

6 b. The Department shall require a facility described in  
7 subparagraph a of this paragraph to achieve and  
8 maintain the shift-based, staff-to-resident ratios  
9 provided in paragraph 3 of this subsection for a  
10 minimum of three (3) months before being considered  
11 eligible to implement flexible staff scheduling as  
12 defined in subparagraph c of paragraph 5 of this  
13 subsection.

14 c. Upon a subsequent determination by the Department that  
15 the facility has achieved and maintained for at least  
16 three (3) months the shift-based, staff-to-resident  
17 ratios described in paragraph 3 of this subsection,  
18 and has corrected any deficiency described in  
19 subparagraph a of this paragraph, the Department shall  
20 notify the facility of its eligibility to implement  
21 flexible staff-scheduling privileges.

22 7. a. For facilities that have been granted flexible staff-  
23 scheduling privileges, the Department shall monitor

1 and evaluate facility compliance with the flexible  
2 staff-scheduling staffing provisions of paragraph 5 of  
3 this subsection through reviews of monthly staffing  
4 reports, results of complaint investigations and  
5 inspections.

6 b. If the Department identifies any quality-of-care  
7 problems related to insufficient staffing in such  
8 facility, the Department shall issue a directed plan  
9 of correction to the facility found to be out of  
10 compliance with the provisions of this subsection.

11 c. In a directed plan of correction, the Department shall  
12 require a facility described in subparagraph b of this  
13 paragraph to maintain shift-based, staff-to-resident  
14 ratios for the following periods of time:

15 (1) the first determination shall require that shift-  
16 based, staff-to-resident ratios be maintained  
17 until full compliance is achieved,

18 (2) the second determination within a two-year period  
19 shall require that shift-based, staff-to-resident  
20 ratios be maintained for a minimum period of six  
21 (6) months, and

22 (3) the third determination within a two-year period  
23 shall require that shift-based, staff-to-resident

1 ratios be maintained for a minimum period of  
2 twelve (12) months.

3 C. Effective September 1, 2002, facilities shall post the names  
4 and titles of direct-care staff on duty each day in a conspicuous  
5 place, including the name and title of the supervising nurse.

6 D. The State Board of Health shall promulgate rules prescribing  
7 staffing requirements for intermediate care facilities for the  
8 mentally retarded serving six or fewer clients and for intermediate  
9 care facilities for the mentally retarded serving sixteen or fewer  
10 clients.

11 E. Facilities shall have the right to appeal and to the  
12 informal dispute resolution process with regard to penalties and  
13 sanctions imposed due to staffing noncompliance.

14 F. 1. When the state Medicaid program reimbursement rate  
15 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),  
16 plus the increases in actual audited costs over and above the actual  
17 audited costs reflected in the cost reports submitted for the most  
18 current cost-reporting period and the costs estimated by the  
19 Oklahoma Health Care Authority to increase the direct-care, flexible  
20 staff-scheduling staffing level from two and eighty-six one-  
21 hundredths (2.86) hours per day per occupied bed to three and two-  
22 tenths (3.2) hours per day per occupied bed, all nursing facilities  
23 subject to the provisions of the Nursing Home Care Act and

1 intermediate care facilities for the mentally retarded with  
2 seventeen or more beds, in addition to other state and federal  
3 requirements related to the staffing of nursing facilities, shall  
4 maintain direct-care, flexible staff-scheduling staffing levels  
5 based on an overall three and two-tenths (3.2) hours per day per  
6 occupied bed.

7       2. When the state Medicaid program reimbursement rate reflects  
8 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the  
9 increases in actual audited costs over and above the actual audited  
10 costs reflected in the cost reports submitted for the most current  
11 cost-reporting period and the costs estimated by the Oklahoma Health  
12 Care Authority to increase the direct-care flexible staff-scheduling  
13 staffing level from three and two-tenths (3.2) hours per day per  
14 occupied bed to three and eight-tenths (3.8) hours per day per  
15 occupied bed, all nursing facilities subject to the provisions of  
16 the Nursing Home Care Act and intermediate care facilities for the  
17 mentally retarded with seventeen or more beds, in addition to other  
18 state and federal requirements related to the staffing of nursing  
19 facilities, shall maintain direct-care, flexible staff-scheduling  
20 staffing levels based on an overall three and eight-tenths (3.8)  
21 hours per day per occupied bed.

22       3. When the state Medicaid program reimbursement rate reflects  
23 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the

1 increases in actual audited costs over and above the actual audited  
2 costs reflected in the cost reports submitted for the most current  
3 cost-reporting period and the costs estimated by the Oklahoma Health  
4 Care Authority to increase the direct-care, flexible staff-  
5 scheduling staffing level from three and eight-tenths (3.8) hours  
6 per day per occupied bed to four and one-tenth (4.1) hours per day  
7 per occupied bed, all nursing facilities subject to the provisions  
8 of the Nursing Home Care Act and intermediate care facilities for  
9 the mentally retarded with seventeen or more beds, in addition to  
10 other state and federal requirements related to the staffing of  
11 nursing facilities, shall maintain direct-care, flexible staff-  
12 scheduling staffing levels based on an overall four and one-tenth  
13 (4.1) hours per day per occupied bed.

14 4. The Board shall promulgate rules for shift-based, staff-to-  
15 resident ratios for noncompliant facilities denoting the incremental  
16 increases reflected in direct-care, flexible staff-scheduling  
17 staffing levels.

18 5. In the event that the state Medicaid program reimbursement  
19 rate for facilities subject to the Nursing Home Care Act, and  
20 intermediate care facilities for the mentally retarded having  
21 seventeen or more beds is reduced below actual audited costs, the  
22 requirements for staffing ratio levels shall be adjusted to the

1 appropriate levels provided in paragraphs 1 through 4 of this  
2 subsection.

3 G. For purposes of this subsection:

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

7 2. Prior to September 1, 2003, activity and social services  
8 staff who are not providing direct, hands-on care to residents may  
9 be included in the direct-care-staff-to-resident ratio in any shift.  
10 On and after September 1, 2003, such persons shall not be included  
11 in the direct-care-staff-to-resident ratio.

12 H. 1. The Oklahoma Health Care Authority shall require all  
13 nursing facilities subject to the provisions of the Nursing Home  
14 Care Act and intermediate care facilities for the mentally retarded  
15 with seventeen or more beds to submit a monthly report on staffing  
16 ratios on a form that the Authority shall develop.

17 2. The report shall document the extent to which such  
18 facilities are meeting or are failing to meet the minimum direct-  
19 care-staff-to-resident ratios specified by this section. Such  
20 report shall be available to the public upon request.

21 3. The Authority may assess administrative penalties for the  
22 failure of any facility to submit the report as required by the  
23 Authority. Provided, however:

1           a.    administrative penalties shall not accrue until the  
2                    Authority notifies the facility in writing that the  
3                    report was not timely submitted as required, and  
4           b.    a minimum of a one-day penalty shall be assessed in  
5                    all instances.

6           4.    Administrative penalties shall not be assessed for  
7   computational errors made in preparing the report.

8           5.    Monies collected from administrative penalties shall be  
9   deposited in the Nursing Facility Quality of Care Fund and utilized  
10   for the purposes specified in the Oklahoma Healthcare Initiative  
11   Act.

12          I.    1.   All entities regulated by this state that provide long-  
13   term care services shall utilize a single assessment tool to  
14   determine client services needs. The tool shall be developed by the  
15   Oklahoma Health Care Authority in consultation with the State  
16   Department of Health.

17          2.    a.    The Oklahoma Nursing Facility Funding Advisory  
18                    Committee is hereby created and shall consist of the  
19                    following:  
20                    (1)   four members selected by the Oklahoma Association  
21                    of Health Care Providers,

1 (2) three members selected by the Oklahoma  
2 Association of Homes and Services for the Aging,  
3 and

4 (3) two members selected by the State Council on  
5 Aging.

6 The Chair shall be elected by the committee. No state  
7 employees may be appointed to serve.

8 b. The purpose of the advisory committee will be to  
9 develop a new methodology for calculating state  
10 Medicaid program reimbursements to nursing facilities  
11 by implementing facility-specific rates based on  
12 expenditures relating to direct care staffing. No  
13 nursing home will receive less than the current rate  
14 at the time of implementation of facility-specific  
15 rates pursuant to this subparagraph.

16 c. The advisory committee shall be staffed and advised by  
17 the Oklahoma Health Care Authority.

18 d. The new methodology will be submitted for approval to  
19 the Board of the Oklahoma Health Care Authority by  
20 January 15, 2005, and shall be finalized by July 1,  
21 2005. The new methodology will apply only to new  
22 funds that become available for Medicaid nursing  
23 facility reimbursement after the methodology of this

1 paragraph has been finalized. Existing funds paid to  
2 nursing homes will not be subject to the methodology  
3 of this paragraph. The methodology as outlined in  
4 this paragraph will only be applied to any new funding  
5 for nursing facilities appropriated above and beyond  
6 the funding amounts effective on January 15, 2005.

7 e. The new methodology shall divide the payment into two  
8 components:

9 (1) direct care which includes allowable costs for  
10 registered nurses, licensed practical nurses,  
11 certified medication aides and certified nurse  
12 aides. The direct care component of the rate  
13 shall be a facility-specific rate, directly  
14 related to each facility's actual expenditures on  
15 direct care, and

16 (2) other costs.

17 f. The Oklahoma Health Care Authority, in calculating the  
18 base year prospective direct care rate component,  
19 shall use the following criteria:

20 (1) to construct an array of facility per diem  
21 allowable expenditures on direct care, the  
22 Authority shall use the most recent data

1 available. The limit on this array shall be no  
2 less than the ninetieth percentile,

3 (2) each facility's direct care base-year component  
4 of the rate shall be the lesser of the facility's  
5 allowable expenditures on direct care or the  
6 limit,

7 (3) other rate components shall be determined by the  
8 Oklahoma Nursing Facility Funding Advisory  
9 Committee in accordance with federal regulations  
10 and requirements, and

11 (4) rate components in divisions (2) and (3) of this  
12 subparagraph shall be re-based and adjusted for  
13 inflation when additional funds are made  
14 available.

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

19 4. The Oklahoma Health Care Authority shall develop a nursing  
20 facility cost-reporting system that reflects the most current costs  
21 experienced by nursing and specialized facilities. The Oklahoma  
22 Health Care Authority shall utilize the most current cost report  
23 data to estimate costs in determining daily per diem rates.

1 J. 1. When the state Medicaid program reimbursement rate  
2 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),  
3 plus the increases in actual audited costs, over and above the  
4 actual audited costs reflected in the cost reports submitted for the  
5 most current cost-reporting period, and the direct-care, flexible  
6 staff-scheduling staffing level has been prospectively funding at  
7 four and one-tenth (4.1) hours per day per occupied bed, the  
8 Authority may apportion funds for the implementation of the  
9 provisions of this section.

10 2. The Authority shall make application to the United States  
11 Centers for Medicare and Medicaid Service for a waiver of the  
12 uniform requirement on health-care-related taxes as permitted by  
13 Section 433.72 of 42 C.F.R.

14 3. Upon approval of the waiver, the Authority shall develop a  
15 program to implement the provisions of the waiver as it relates to  
16 all nursing facilities.

17 SECTION 2. This act shall become effective November 1, 2006.

18 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-15-06 - DO  
19 PASS, As Amended and Coauthored.