

3 Senate Bill No. 642
4 As Amended

5 SENATE BILL NO. 642 - By: ADELSON of the Senate and BALKMAN of the
6 House.

7 [public health and safety - Nursing Facility Quality of
8 Care Fund - 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 294, O.S.L. 2004 (63 O.S. Supp.
12 2004, 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.

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

1 (3) at least two direct-care staff persons on duty
2 and awake at all times.

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

8 (1) the provisions of paragraph 3 of this subsection,

9 (2) fraudulent reporting of staffing on the Quality
10 of Care Report,

11 (3) a complaint and/or survey investigation that has
12 determined substandard quality of care, or

13 (4) a complaint and/or survey investigation that has
14 determined quality-of-care problems related to
15 insufficient staffing.

16 b. The Department shall require a facility described in
17 subparagraph a of this paragraph to achieve and
18 maintain the shift-based, staff-to-resident ratios
19 provided in paragraph 3 of this subsection for a
20 minimum of three (3) months before being considered
21 eligible to implement flexible staff scheduling as
22 defined in subparagraph c of paragraph 5 of this
23 subsection.

1 c. Upon a subsequent determination by the Department that
2 the facility has achieved and maintained for at least
3 three (3) months the shift-based, staff-to-resident
4 ratios described in paragraph 3 of this subsection,
5 and has corrected any deficiency described in
6 subparagraph a of this paragraph, the Department shall
7 notify the facility of its eligibility to implement
8 flexible staff-scheduling privileges.

9 7. a. For facilities that have been granted flexible staff-
10 scheduling privileges, the Department shall monitor
11 and evaluate facility compliance with the flexible
12 staff-scheduling staffing provisions of paragraph 5 of
13 this subsection through reviews of monthly staffing
14 reports, results of complaint investigations and
15 inspections.

16 b. If the Department identifies any quality-of-care
17 problems related to insufficient staffing in such
18 facility, the Department shall issue a directed plan
19 of correction to the facility found to be out of
20 compliance with the provisions of this subsection.

21 c. In a directed plan of correction, the Department shall
22 require a facility described in subparagraph b of this

1 paragraph to maintain shift-based, staff-to-resident
2 ratios for the following periods of time:

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

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

10 (3) the third determination within a two-year period
11 shall require that shift-based, staff-to-resident
12 ratios be maintained for a minimum period of
13 twelve (12) months.

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

17 D. The State Board of Health shall promulgate rules prescribing
18 staffing requirements for intermediate care facilities for the
19 mentally retarded serving six or fewer clients and for intermediate
20 care facilities for the mentally retarded serving sixteen or fewer
21 clients.

1 E. Facilities shall have the right to appeal and to the
2 informal dispute resolution process with regard to penalties and
3 sanctions imposed due to staffing noncompliance.

4 F. 1. When the state Medicaid program reimbursement rate
5 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
6 plus the increases in actual audited costs over and above the actual
7 audited costs reflected in the cost reports submitted for the most
8 current cost-reporting period and the costs estimated by the
9 Oklahoma Health Care Authority to increase the direct-care, flexible
10 staff-scheduling staffing level from two and eighty-six one-
11 hundredths (2.86) hours per day per occupied bed to three and two-
12 tenths (3.2) hours per day per occupied bed, all nursing facilities
13 subject to the provisions of the Nursing Home Care Act and
14 intermediate care facilities for the mentally retarded with
15 seventeen or more beds, in addition to other state and federal
16 requirements related to the staffing of nursing facilities, shall
17 maintain direct-care, flexible staff-scheduling staffing levels
18 based on an overall three and two-tenths (3.2) hours per day per
19 occupied bed.

20 2. When the state Medicaid program reimbursement rate reflects
21 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
22 increases in actual audited costs over and above the actual audited
23 costs reflected in the cost reports submitted for the most current

1 cost-reporting period and the costs estimated by the Oklahoma Health
2 Care Authority to increase the direct-care flexible staff-scheduling
3 staffing level from three and two-tenths (3.2) hours per day per
4 occupied bed to three and eight-tenths (3.8) hours per day per
5 occupied bed, all nursing facilities subject to the provisions of
6 the Nursing Home Care Act and intermediate care facilities for the
7 mentally retarded with seventeen or more beds, in addition to other
8 state and federal requirements related to the staffing of nursing
9 facilities, shall maintain direct-care, flexible staff-scheduling
10 staffing levels based on an overall three and eight-tenths (3.8)
11 hours per day per occupied bed.

12 3. When the state Medicaid program reimbursement rate reflects
13 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
14 increases in actual audited costs over and above the actual audited
15 costs reflected in the cost reports submitted for the most current
16 cost-reporting period and the costs estimated by the Oklahoma Health
17 Care Authority to increase the direct-care, flexible staff-
18 scheduling staffing level from three and eight-tenths (3.8) hours
19 per day per occupied bed to four and one-tenth (4.1) hours per day
20 per occupied bed, all nursing facilities subject to the provisions
21 of the Nursing Home Care Act and intermediate care facilities for
22 the mentally retarded with seventeen or more beds, in addition to
23 other state and federal requirements related to the staffing of

1 nursing facilities, shall maintain direct-care, flexible staff-
2 scheduling staffing levels based on an overall four and one-tenth
3 (4.1) hours per day per occupied bed.

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

8 5. In the event that the state Medicaid program reimbursement
9 rate for facilities subject to the Nursing Home Care Act, and
10 intermediate care facilities for the mentally retarded having
11 seventeen or more beds is reduced below actual audited costs, the
12 requirements for staffing ratio levels shall be adjusted to the
13 appropriate levels provided in paragraphs 1 through 4 of this
14 subsection.

15 G. For purposes of this subsection:

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

19 2. Prior to September 1, 2003, activity and social services
20 staff who are not providing direct, hands-on care to residents may
21 be included in the direct-care-staff-to-resident ratio in any shift.
22 On and after September 1, 2003, such persons shall not be included
23 in the direct-care-staff-to-resident ratio.

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

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

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

13 a. administrative penalties shall not accrue until the
14 Authority notifies the facility in writing that the
15 report was not timely submitted as required, and

16 b. a minimum of a one-day penalty shall be assessed in
17 all instances.

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

20 5. Monies collected from administrative penalties shall be
21 deposited in the Nursing Facility Quality of Care Fund and utilized
22 for the purposes specified in the Oklahoma Healthcare Initiative
23 Act.

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

6 2. a. The Oklahoma Nursing Facility Funding Advisory
7 Committee is hereby created and shall consist of the
8 following:
9 (1) four members selected by the Oklahoma Association
10 of Health Care Providers,
11 (2) three members selected by the Oklahoma
12 Association of Homes and Services for the Aging,
13 and
14 (3) two members selected by the State Council on
15 Aging.

16 The ~~Chairman~~ Chair shall be elected by the committee. No
17 state employees may be appointed to serve.

18 b. The purpose of the advisory committee will be to
19 develop a new methodology for calculating state
20 Medicaid program reimbursements to nursing facilities
21 by implementing facility-specific rates based on
22 expenditures relating to direct care staffing. No
23 nursing home will receive less than the current rate

1 at the time of implementation of facility-specific
2 rates pursuant to this subparagraph.

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

5 d. The new methodology will be submitted for approval to
6 the Board of the Oklahoma Health Care Authority by
7 January 15, 2005, and shall be finalized by July 1,
8 2005. The new methodology will apply only to new
9 funds that become available for Medicaid nursing
10 facility reimbursement after the methodology of this
11 paragraph has been finalized. Existing funds paid to
12 nursing homes will not be subject to the methodology
13 of this paragraph. The methodology as outlined in
14 this paragraph will only be applied to any new funding
15 for nursing facilities appropriated above and beyond
16 the funding amounts effective on January 15, 2005.

17 e. The new methodology shall divide the payment into two
18 components:

19 (1) direct care which includes allowable costs for
20 registered nurses, licensed practical nurses,
21 certified medication aides and certified nurse
22 aides. The direct care component of the rate
23 shall be a facility-specific rate, directly

1 related to each facility's actual expenditures on
2 direct care, and
3 (2) other costs.

4 f. The Oklahoma Health Care Authority, in calculating the
5 base year prospective direct care rate component,
6 shall use the following criteria:

7 (1) to construct an array of facility per diem
8 allowable expenditures on direct care, the
9 Authority shall use the most recent data
10 available. The limit on this array shall be no
11 less than the ninetieth percentile,

12 (2) each facility's direct care base-year component
13 of the rate shall be the lesser of the facility's
14 allowable expenditures on direct care or the
15 limit,

16 (3) other rate components shall be determined by the
17 Oklahoma Nursing Facility Funding Advisory
18 Committee in accordance with federal regulations
19 and requirements, and

20 (4) rate components in divisions (2) and (3) of this
21 subparagraph shall be re-based and adjusted for
22 inflation when additional funds are made
23 available.

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

5 4. The Oklahoma Health Care Authority shall develop a nursing
6 facility cost-reporting system that reflects the most current costs
7 experienced by nursing and specialized facilities. ~~This reporting~~
8 ~~system shall require that facilities submit cost report data~~
9 ~~electronically on a quarterly basis.~~ The Oklahoma Health Care
10 Authority shall utilize the most current cost report data to
11 estimate costs in determining daily per diem rates.

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

21 2. The Authority shall make application to the United States
22 Centers for Medicare and Medicaid Service for a waiver of the

1 uniform requirement on health-care-related taxes as permitted by
2 Section 433.72 of 42 C.F.R.

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

6 SECTION 2. This act shall become effective November 1, 2005.

7 COMMITTEE REPORT BY: COMMITTEE ON APPROPRIATIONS, dated 2-23-05 - DO
8 PASS, As Amended and Coauthored.