

1 ENGROSSED HOUSE AMENDMENT  
TO  
2 ENGROSSED SENATE BILL NO. 1373

By: Crain and Johnson  
(Constance) of the Senate

3  
4 and

Schwartz of the House

5  
6  
7  
8 ( public health and safety - creating the Oklahoma

9 Plan for Comprehensive Treatment of Chronic

10 Obstructive Pulmonary Disease Act - create a COPD

11 state plan - codification -

12 effective date )

13  
14  
15 AMENDMENT NO. 1. Strike the stricken title, enacting clause and  
entire bill and insert

16  
17 "( public health and safety - creating the Oklahoma

18 Plan for Comprehensive Treatment of Chronic

19 Obstructive Pulmonary Disease Act - create a COPD

20 state plan - codification -

21 effective date )

22  
23  
24 ~~BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:~~

1 SECTION 1. NEW LAW A new section of law to be codified  
2 in the Oklahoma Statutes as Section 1-450 of Title 63, unless there  
3 is created a duplication in numbering, reads as follows:

4 A. This act shall be known and may be cited as the "Oklahoma  
5 Plan for Comprehensive Treatment of Chronic Obstructive Pulmonary  
6 Disease Act".

7 B. The State Department of Health shall create a comprehensive  
8 chronic obstructive pulmonary disease (COPD) state plan that  
9 outlines sustainable solutions for reducing the burden of COPD in  
10 Oklahoma through the coordinated implementation of multiple  
11 strategies. The Department may utilize existing plans developed by  
12 advocacy organizations as a cost-saving means of developing such  
13 strategies. These strategies shall include, without limitation,  
14 recommendations for:

15 1. The prevention and early detection of COPD to reduce the  
16 incidence of disease;

17 2. The treatment and management of COPD to ensure that health  
18 care providers offer state-of-the-art care;

19 3. Increasing public awareness, patient education and proper  
20 medical management of COPD among the general public and those living  
21 with COPD; and

22 4. Improving COPD outcomes in Oklahoma through increases in  
23 COPD funding and resources as well as ongoing effective advocacy by  
24 government leaders and people with COPD.

1 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as  
2 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.  
3 2009, Section 1-1925.2), is amended to read as follows:

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

14 1. The recalculations provided for in this subsection shall be  
15 consistent for both nursing facilities and intermediate care  
16 facilities for the mentally retarded (ICFs/MR), and shall be  
17 calculated in the same manner as has been mutually understood by the  
18 long-term care industry and the Oklahoma Health Care Authority.

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

21 B. 1. From September 1, 2000, through August 31, 2001, all  
22 nursing facilities subject to the Nursing Home Care Act, in addition  
23 to other state and federal requirements related to the staffing of  
24

1 nursing facilities, shall maintain the following minimum direct-  
2 care-staff-to-resident ratios:

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

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

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

21 3. On and after September 1, 2003, subject to the availability  
22 of funds, nursing facilities subject to the Nursing Home Care Act  
23 and intermediate care facilities for the mentally retarded with  
24 seventeen or more beds shall maintain, in addition to other state

1 and federal requirements related to the staffing of nursing  
2 facilities, the following minimum direct-care-staff-to-resident  
3 ratios:

- 4 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to  
5 every six residents, or major fraction thereof,
- 6 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to  
7 every eight residents, or major fraction thereof, and
- 8 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to  
9 every fifteen residents, or major fraction thereof.

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

14 5. In the event that the state Medicaid program reimbursement  
15 rate for facilities subject to the Nursing Home Care Act, and  
16 intermediate care facilities for the mentally retarded having  
17 seventeen or more beds, is reduced below the rate as of July 1,  
18 2009, the requirements for staffing ratio levels shall be adjusted  
19 as follows:

- 20 a. if the reimbursement rate is reduced by at least three  
21 percent (3%) but less than ten percent (10%), nursing  
22 facilities shall maintain minimum direct-care-staff-  
23 to-resident ratios as provided in paragraph 2 of this  
24 subsection,

1        b. if the reimbursement rate is reduced by ten percent  
2                    (10%) or more, nursing facilities shall maintain  
3                    minimum direct-care-staff-to-resident ratios as  
4                    provided in paragraph 1 of this subsection, and

5        c. when the reimbursement rate returns to the level of  
6                    July 1, 2009, facilities shall immediately maintain  
7                    the direct-care-staff-to-resident ratios as provided  
8                    in paragraph 3 of this subsection.

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

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

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

- (1) a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident per day rate of not less than two and eighty-six one-hundredths (2.86) hours per day,
- (2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every sixteen residents at all times, and
- (3) at least two direct-care staff persons on duty and awake at all times.

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

- (1) the provisions of paragraph 3 of this subsection,
- (2) fraudulent reporting of staffing on the Quality of Care Report,
- (3) a complaint and/or survey investigation that has determined substandard quality of care, or
- (4) a complaint and/or survey investigation that has determined quality-of-care problems related to insufficient staffing.

b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and

1 maintain the shift-based, staff-to-resident ratios  
2 provided in paragraph 3 of this subsection for a  
3 minimum of three (3) months before being considered  
4 eligible to implement flexible staff\_scheduling as  
5 defined in subparagraph c of paragraph ~~5~~ 6 of this  
6 subsection.

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

15 ~~7.~~ 8. a. For facilities that have been granted flexible staff-  
16 scheduling privileges, the Department shall monitor  
17 and evaluate facility compliance with the flexible  
18 staff-scheduling staffing provisions of paragraph ~~5~~ 6  
19 of this subsection through reviews of monthly staffing  
20 reports, results of complaint investigations and  
21 inspections.

22 b. If the Department identifies any quality-of-care  
23 problems related to insufficient staffing in such  
24 facility, the Department shall issue a directed plan

1 of correction to the facility found to be out of  
2 compliance with the provisions of this subsection.

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

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

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

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

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

21 D. The State Board of Health shall promulgate rules prescribing  
22 staffing requirements for intermediate care facilities for the  
23 mentally retarded serving six or fewer clients and for intermediate  
24

1 care facilities for the mentally retarded serving sixteen or fewer  
2 clients.

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

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

22 2. When the state Medicaid program reimbursement rate reflects  
23 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the  
24 increases in actual audited costs over and above the actual audited

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

13 3. When the state Medicaid program reimbursement rate reflects  
14 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the  
15 increases in actual audited costs over and above the actual audited  
16 costs reflected in the cost reports submitted for the most current  
17 cost-reporting period and the costs estimated by the Oklahoma Health  
18 Care Authority to increase the direct-care, flexible staff-  
19 scheduling staffing level from three and eight-tenths (3.8) hours  
20 per day per occupied bed to four and one-tenth (4.1) hours per day  
21 per occupied bed, all nursing facilities subject to the provisions  
22 of the Nursing Home Care Act and intermediate care facilities for  
23 the mentally retarded with seventeen or more beds, in addition to  
24 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.

24

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.

24

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 Chair shall be elected by the committee. No state  
17 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  
24

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  
24

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.

24

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. The Oklahoma  
8 Health Care Authority shall utilize the most current cost report  
9 data to estimate costs in determining daily per diem rates.

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

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

23  
24

