

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 COMMITTEE SUBSTITUTE  
4 FOR ENGROSSED  
5 SENATE BILL NO. 741

By: Jolley of the Senate

and

Trebilcock of the House

6  
7  
8  
9 COMMITTEE SUBSTITUTE

10 ( public health and safety - Nursing Home Care Act -  
11 effective date )  
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15 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

16 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as  
17 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.  
18 2008, Section 1-1925.2), is amended to read as follows:

19 Section 1-1925.2 A. The Oklahoma Health Care Authority shall  
20 fully recalculate and reimburse nursing facilities and intermediate  
21 care facilities for the mentally retarded (ICFs/MR) from the Nursing  
22 Facility Quality of Care Fund beginning October 1, 2000, the average  
23 actual, audited costs reflected in previously submitted cost reports  
24 for the cost-reporting period that began July 1, 1998, and ended

1 June 30, 1999, inflated by the federally published inflationary  
2 factors for the two (2) years appropriate to reflect present-day  
3 costs at the midpoint of the July 1, 2000, through June 30, 2001,  
4 rate year.

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

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

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

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

23 ~~2. From September 1, 2001, through August 31, 2003, nursing~~  
24 ~~facilities subject to the Nursing Home Care Act and intermediate~~

1 ~~care facilities for the mentally retarded with seventeen or more~~  
2 ~~beds shall maintain, in addition to other state and federal~~  
3 ~~requirements related to the staffing of nursing facilities, the~~  
4 ~~following minimum direct care staff to resident ratios:~~

5       a. ~~from 7:00 a.m. to 3:00 p.m., one direct care staff to~~  
6           ~~every seven residents, or major fraction thereof,~~

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

9       c. ~~from 11:00 p.m. to 7:00 a.m., one direct care staff to~~  
10           ~~every seventeen residents, or major fraction thereof.~~

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

18       a. ~~from 7:00 a.m. to 3:00 p.m., one direct care staff to~~  
19           ~~every six residents, or major fraction thereof,~~

20       b. ~~from 3:00 p.m. to 11:00 p.m., one direct care staff to~~  
21           ~~every eight residents, or major fraction thereof, and~~

22       c. ~~from 11:00 p.m. to 7:00 a.m., one direct care staff to~~  
23           ~~every fifteen residents, or major fraction thereof.~~

24

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

5       ~~5. a. On and after January 1, 2004, a facility that has been~~  
6 ~~determined by the State Department of Health to have~~  
7 ~~been in compliance with the provisions of paragraph 3~~  
8 ~~of this subsection since the implementation date of~~  
9 ~~this subsection,~~

10       a. A facility may implement flexible staff scheduling;  
11 provided, however, such facility shall continue to  
12 maintain a direct-care service rate of at least two  
13 and eighty-six one-hundredths (2.86) hours of direct-  
14 care service per resident per day.

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

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

22       ~~(1) a direct care staff to resident ratio based on~~  
23 ~~overall hours of direct care service per resident~~

1                   ~~per day rate of not less than two and eighty-six~~  
2                   ~~one hundredths (2.86) hours per day,~~

3                   ~~(2) a direct care staff to resident ratio of at least~~  
4                   ~~one direct care staff person on duty to every~~  
5                   ~~sixteen residents at all times, and~~

6                   ~~(3) at least two direct care staff persons on duty~~  
7                   ~~and awake at all times.~~

8                   ~~6.~~

9                   3.    a.    ~~On and after January 1, 2004, the~~ The Department shall  
10                   may require a facility to maintain ~~the~~ a directed plan  
11                   of shift-based, staff-to-resident ratios ~~provided in~~  
12                   ~~paragraph 3 of this subsection~~ if the facility has  
13                   been determined by the Department to be deficient with  
14                   regard to:

15                   (1)   ~~the provisions of paragraph 3 of this subsection,~~  
16                   ~~(2)~~ fraudulent reporting of staffing on the Quality  
17                   of Care Report,

18                   ~~(3)~~ (2) a complaint and/or survey investigation that has  
19                   determined substandard quality of care without  
20                   compliance as certified by the Department by a  
21                   date certain, or

22                   ~~(4)~~ (3) a complaint and/or survey investigation that has  
23                   determined quality-of-care problems related to  
24                   insufficient staffing.

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

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

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

1           ~~b. If the Department identifies any quality of care~~  
2           ~~problems related to insufficient staffing in such~~  
3           ~~facility, the Department shall issue a directed plan~~  
4           ~~of correction to the facility found to be out of~~  
5           ~~compliance with the provisions of this subsection.~~

6           ~~e. In a directed plan of correction, the Department shall~~  
7           ~~require a facility described in subparagraph b of this~~  
8           ~~paragraph to maintain shift based, staff to resident~~  
9           ~~ratios for the following periods of time:~~

10           ~~(1) the first determination shall require that shift-~~  
11           ~~based, staff to resident ratios be maintained~~  
12           ~~until full compliance is achieved,~~

13           ~~(2) the second determination within a two year period~~  
14           ~~shall require that shift based, staff to resident~~  
15           ~~ratios be maintained for a minimum period of six~~  
16           ~~(6) months, and~~

17           ~~(3) the third determination within a two year period~~  
18           ~~shall require that shift based, staff to resident~~  
19           ~~ratios be maintained for a minimum period of~~  
20           ~~twelve (12) months.~~

21           ~~C. B.~~ Effective September 1, 2002, facilities shall post the  
22 names and titles of direct-care staff on duty each day in a  
23 conspicuous place, including the name and title of the supervising  
24 nurse.

1       ~~D.~~ C. The State Board of Health shall promulgate rules  
2 prescribing staffing requirements for intermediate care facilities  
3 for the mentally retarded serving six or fewer clients and for  
4 intermediate care facilities for the mentally retarded serving  
5 sixteen or fewer clients.

6       ~~E.~~ D. Facilities shall have the right to appeal and to the  
7 informal dispute resolution process with regard to penalties and  
8 sanctions imposed due to staffing noncompliance.

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

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

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

1 of the Nursing Home Care Act and intermediate care facilities for  
2 the mentally retarded with seventeen or more beds, in addition to  
3 other state and federal requirements related to the staffing of  
4 nursing facilities, shall maintain direct-care, flexible staff-  
5 scheduling staffing levels based on an overall four and one-tenth  
6 (4.1) hours per day per occupied bed.

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

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

18 ~~G. F.~~ F. For purposes of this subsection:

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

22 2. ~~Prior to September 1, 2003, activity~~ Activity and social  
23 services staff ~~who are not providing direct, hands-on care to~~  
24 ~~residents may be included in the direct care staff to resident ratio~~

1 ~~in any shift. On and after September 1, 2003, such persons shall~~  
2 not be included in the direct-care-staff-to-resident ratio.

3 H. G. 1. The Oklahoma Health Care Authority shall require all  
4 nursing facilities subject to the provisions of the Nursing Home  
5 Care Act and intermediate care facilities for the mentally retarded  
6 with seventeen or more beds to submit a monthly report on staffing  
7 ratios on a form that the Authority shall develop beginning after  
8 November 1, 2009.

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

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

- 16 a. administrative penalties shall not accrue until the  
17 Authority notifies the facility in writing that the  
18 report was not timely submitted as required, and  
19 b. a minimum of a one-day penalty shall be assessed in  
20 all instances.

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

23 5. Monies collected from administrative penalties shall be  
24 deposited in the Nursing Facility Quality of Care Fund and utilized

1 for the purposes specified in the Oklahoma Healthcare Initiative  
2 Act.

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

8 2. a. The Oklahoma Nursing Facility Funding Advisory  
9 Committee is hereby created and shall consist of the  
10 following:

11 (1) four members selected by the Oklahoma Association  
12 of Health Care Providers,

13 (2) three members selected by the Oklahoma  
14 Association of Homes and Services for the Aging,  
15 and

16 (3) two members selected by the State Council on  
17 Aging.

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

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

1 nursing home will receive less than the current rate  
2 at the time of implementation of facility-specific  
3 rates pursuant to this subparagraph.

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

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

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

20 (1) direct care which includes allowable costs for  
21 registered nurses, licensed practical nurses,  
22 certified medication aides and certified nurse  
23 aides. The direct care component of the rate  
24 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.

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.~~ I. 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

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

4        SECTION 2. This act shall become effective November 1, 2009.

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6        52-1-7581        SAB        03/31/09

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