

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE
4 FOR

5 SENATE BILL 741

6 By: Jolley

7 COMMITTEE SUBSTITUTE

8 An Act relating to public health and safety; amending
9 63 O.S. 2001, Section 1-1925.2, as last amended by
10 Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.
11 2008, Section 1-1925.2), which relates to the Nursing
12 Home Care Act; deleting obsolete dates for
13 reimbursement from the Nursing Facility Quality of
14 Care Fund; deleting certain required nurse staffing
15 ratios; deleting certain definition; modifying
16 requirements for certain plans; deleting requirements
17 for directed plan of correction; eliminating monthly
18 report on staff ratios; eliminating certain
19 administrative penalties; and providing an effective
20 date.

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

22 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as
23 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.
24 2008, 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 of Care Fund beginning October 1, 2000, the average

1 actual, audited costs reflected in previously submitted cost reports
2 for the cost-reporting period that began July 1, 1998, and ended June
3 30, 1999, inflated by the federally published inflationary factors
4 for the two (2) years appropriate to reflect present-day costs at the
5 midpoint of the July 1, 2000, through June 30, 2001, rate year.

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

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

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

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

24

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

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

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

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

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

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

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

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

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 and
13 eighty-six one-hundredths (2.86) hours of direct-care
14 service per resident per day.

15 b. At no time shall direct-care staffing ratios in a
16 facility with flexible staff-scheduling privileges fall
17 below one direct-care staff to every sixteen residents,
18 and at least two direct-care staff shall be on duty and
19 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 and~~
7 ~~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 been
13 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 of
17 Care Report,

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

21 ~~(4)~~ (3) a complaint and/or survey investigation that has
22 determined quality-of-care problems related to
23 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, and~~
13 ~~has corrected any deficiency described in subparagraph~~
14 ~~a of this paragraph, the Department shall notify the~~
15 ~~facility of its eligibility to implement flexible~~
16 ~~staff scheduling privileges.~~

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

23 ~~b. If the Department identifies any quality of care~~
24 ~~problems related to insufficient staffing in such~~

1 ~~facility, the Department shall issue a directed plan of~~
2 ~~correction to the facility found to be out of~~
3 ~~compliance with the provisions of this subsection.~~

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

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

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

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

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

23 ~~D.~~ C. The State Board of Health shall promulgate rules
24 prescribing staffing requirements for intermediate care facilities

1 for the mentally retarded serving six or fewer clients and for
2 intermediate care facilities for the mentally retarded serving
3 sixteen or fewer clients.

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

7 ~~F.~~ E. 1. When the state Medicaid program reimbursement rate
8 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),
9 plus the increases in actual audited costs over and above the actual
10 audited costs reflected in the cost reports submitted for the most
11 current cost-reporting period and the costs estimated by the Oklahoma
12 Health Care Authority to increase the direct-care, flexible staff-
13 scheduling staffing level from two and eighty-six one-hundredths
14 (2.86) hours per day per occupied bed to three and two-tenths (3.2)
15 hours per day per occupied bed, all nursing facilities subject to the
16 provisions of the Nursing Home Care Act and intermediate care
17 facilities for the mentally retarded with seventeen or more beds, in
18 addition to other state and federal requirements related to the
19 staffing of nursing facilities, shall maintain direct-care, flexible
20 staff-scheduling staffing levels based on an overall three and two-
21 tenths (3.2) hours per day per 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 the
7 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-scheduling
19 staffing level from three and eight-tenths (3.8) hours per day per
20 occupied bed to four and one-tenth (4.1) hours per day per occupied
21 bed, all nursing facilities subject to the provisions of the Nursing
22 Home Care Act and intermediate care facilities for the mentally
23 retarded with seventeen or more beds, in addition to other state and
24 federal requirements related to the staffing of nursing facilities,

1 shall maintain direct-care, flexible staff-scheduling staffing levels
2 based on an overall four and one-tenth (4.1) hours per day per
3 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~~ by the Board.

15 ~~G. F.~~ F. 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~~ Activity and social
20 services staff who are not providing direct, hands-on care to
21 residents ~~may be included in the direct care staff to resident ratio~~
22 ~~in any shift. On and after September 1, 2003, such persons~~ shall not
23 be included 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 Care~~
3 ~~Act and intermediate care facilities for the mentally retarded with~~
4 ~~seventeen or more beds to submit a monthly report on staffing ratios~~
5 ~~on a form that the Authority shall develop.~~

6 ~~2. The report shall document the extent to which such facilities~~
7 ~~are meeting or are failing to meet the minimum direct care staff to~~
8 ~~resident ratios specified by this section. Such report shall be~~
9 ~~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 all~~
17 ~~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 Act.~~

23 ~~I. G. 1. All entities regulated by this state that provide~~
24 ~~long-term care services shall utilize a single assessment tool to~~

1 determine client services needs. The tool shall be developed by the
2 Oklahoma Health Care Authority in consultation with the State
3 Department of Health.

4 2. a. The Oklahoma Nursing Facility Funding Advisory
5 Committee is hereby created and shall consist of the
6 following:

- 7 (1) four members selected by the Oklahoma Association
8 of Health Care Providers,
9 (2) three members selected by the Oklahoma Association
10 of Homes and Services for the Aging, and
11 (3) two members selected by the State Council on Aging.

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

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

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

24

1 d. The new methodology will be submitted for approval to
2 the Board of the Oklahoma Health Care Authority by
3 January 15, 2005, and shall be finalized by July 1,
4 2005. The new methodology will apply only to new funds
5 that become available for Medicaid nursing facility
6 reimbursement after the methodology of this paragraph
7 has been finalized. Existing funds paid to nursing
8 homes will not be subject to the methodology of this
9 paragraph. The methodology as outlined in this
10 paragraph will only be applied to any new funding for
11 nursing facilities appropriated above and beyond the
12 funding amounts effective on January 15, 2005.

13 e. The new methodology shall divide the payment into two
14 components:

15 (1) direct care which includes allowable costs for
16 registered nurses, licensed practical nurses,
17 certified medication aides and certified nurse
18 aides. The direct care component of the rate
19 shall be a facility-specific rate, directly
20 related to each facility's actual expenditures on
21 direct care, and

22 (2) other costs.

1 f. The Oklahoma Health Care Authority, in calculating the
2 base year prospective direct care rate component, shall
3 use the following criteria:

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

9 (2) each facility's direct care base-year component of
10 the rate shall be the lesser of the facility's
11 allowable expenditures on direct care or the limit,

12 (3) other rate components shall be determined by the
13 Oklahoma Nursing Facility Funding Advisory
14 Committee in accordance with federal regulations
15 and requirements, and

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

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

23 4. The Oklahoma Health Care Authority shall develop a nursing
24 facility cost-reporting system that reflects the most current costs

1 experienced by nursing and specialized facilities. The Oklahoma
2 Health Care Authority shall utilize the most current cost report data
3 to estimate costs in determining daily per diem rates.

4 ~~J.~~ H. 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 direct-care, flexible staff-
9 scheduling staffing level has been prospectively funding at four and
10 one-tenth (4.1) hours per day per occupied bed, the Authority may
11 apportion funds for the implementation of the provisions of this
12 section.

13 2. The Authority shall make application to the United States
14 Centers for Medicare and Medicaid Service for a waiver of the uniform
15 requirement on health-care-related taxes as permitted by Section
16 433.72 of 42 C.F.R.

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

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

21

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