

1 ENGROSSED SENATE
2 BILL NO. 741

By: Jolley of the Senate

3 and

4 Trebilcock of the House

5
6
7 [public health and safety - Nursing Home Care Act -
8 effective date]
9

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

11 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as
12 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.
13 2008, Section 1-1925.2), is amended to read as follows:

14 Section 1-1925.2 A. The Oklahoma Health Care Authority shall
15 fully recalculate and reimburse nursing facilities and intermediate
16 care facilities for the mentally retarded (ICFs/MR) from the Nursing
17 Facility Quality of Care Fund beginning October 1, 2000, the average
18 actual, audited costs reflected in previously submitted cost reports
19 for the cost-reporting period that began July 1, 1998, and ended
20 June 30, 1999, inflated by the federally published inflationary
21 factors for the two (2) years appropriate to reflect present-day
22 costs at the midpoint of the July 1, 2000, through June 30, 2001,
23 rate year.
24

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

6 2. The recalculated reimbursement rate shall be implemented
7 September 1, 2000.

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

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

19 ~~2. From September 1, 2001, through August 31, 2003, nursing
20 facilities subject to the Nursing Home Care Act and intermediate
21 care facilities for the mentally retarded with seventeen or more
22 beds shall maintain, in addition to other state and federal
23 requirements related to the staffing of nursing facilities, the
24 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 ~~5. a. On and after January 1, 2004, a facility that has been~~
2 ~~determined by the State Department of Health to have~~
3 ~~been in compliance with the provisions of paragraph 3~~
4 ~~of this subsection since the implementation date of~~
5 ~~this subsection,~~

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

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

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

18 ~~(1) a direct care staff to resident ratio based on~~
19 ~~overall hours of direct care service per resident~~
20 ~~per day rate of not less than two and eighty six~~
21 ~~one hundredths (2.86) hours per day,~~

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

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

3 ~~6.~~

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

10 (1) ~~the provisions of paragraph 3 of this subsection,~~
11 ~~(2)~~ fraudulent reporting of staffing on the Quality
12 of Care Report,

13 ~~(3)~~ (2) a complaint and/or survey investigation that has
14 determined substandard quality of care without
15 compliance by date-certain, or

16 ~~(4)~~ (3) a complaint and/or survey investigation that has
17 determined quality-of-care problems related to
18 insufficient staffing.

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

1 ~~defined in subparagraph c of paragraph 5 of this~~
2 ~~subsection.~~

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

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

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

23 ~~c. In a directed plan of correction, the Department shall~~
24 ~~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.~~ B. Effective September 1, 2002, facilities shall post the
15 names and titles of direct-care staff on duty each day in a
16 conspicuous place, including the name and title of the supervising
17 nurse.

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

1 ~~E.~~ D. 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.~~ E. 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
24 cost-reporting period and the costs estimated by the Oklahoma Health

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

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

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1 scheduling staffing levels based on an overall four and one-tenth
2 (4.1) hours per day per occupied bed.

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

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

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

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

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

23 ~~H. 1. The Oklahoma Health Care Authority shall require all~~
24 ~~nursing facilities subject to the provisions of the Nursing Home~~

1 ~~Care Act and intermediate care facilities for the mentally retarded~~
2 ~~with seventeen or more beds to submit a monthly report on staffing~~
3 ~~ratios on a form that the Authority shall develop.~~

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

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

- 11 ~~a. administrative penalties shall not accrue until the~~
12 ~~Authority notifies the facility in writing that the~~
13 ~~report was not timely submitted as required, and~~
14 ~~b. a minimum of a one day penalty shall be assessed in~~
15 ~~all instances.~~

16 ~~4. Administrative penalties shall not be assessed for~~
17 ~~computational errors made in preparing the report.~~

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

22 ~~F. G.~~ 1. All entities regulated by this state that provide
23 long-term care services shall utilize a single assessment tool to
24 determine client services needs. The tool shall be developed by the

1 Oklahoma Health Care Authority in consultation with the State
2 Department of Health.

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

6 (1) four members selected by the Oklahoma Association
7 of Health Care Providers,

8 (2) three members selected by the Oklahoma
9 Association of Homes and Services for the Aging,
10 and

11 (3) two members selected by the State Council on
12 Aging.

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

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

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

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
5 funds that become available for Medicaid nursing
6 facility reimbursement after the methodology of this
7 paragraph has been finalized. Existing funds paid to
8 nursing homes will not be subject to the methodology
9 of this paragraph. The methodology as outlined in
10 this paragraph will only be applied to any new funding
11 for nursing facilities appropriated above and beyond
12 the 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,
3 shall 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
7 available. The limit on this array shall be no
8 less than the ninetieth percentile,

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

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

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

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

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

6 ~~J.~~ H. 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
9 actual audited costs reflected in the cost reports submitted for the
10 most current cost-reporting period, and the direct-care, flexible
11 staff-scheduling staffing level has been prospectively funding at
12 four and one-tenth (4.1) hours per day per occupied bed, the
13 Authority may apportion funds for the implementation of the
14 provisions of this section.

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

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

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

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