

FLOOR AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend SB741
Page _____ Section _____ Lines _____
Of the printed Bill
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

AMEND TITLE TO CONFORM TO AMENDMENTS

Amendment submitted by: Richard

Morrissette
Adopted: _____

Reading Clerk

1 STATE OF OKLAHOMA

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

3 FLOOR SUBSTITUTE
4 FOR ENGROSSED

5 SENATE BILL NO. 741

By: Jolley of the Senate

and

Trebilcock of the House

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

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

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

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

1 implementing a flexible staff scheduling program
2 shall permit a resident or the resident's
3 guardian or legal representative to monitor the
4 room of the resident through the use of
5 electronic monitoring devices pursuant to this
6 subparagraph. The facility may also install an
7 electronic monitoring device as a means of
8 providing additional supervision to a resident,
9 if the resident or resident's guardian or legal
10 representative is informed and authorizes such an
11 arrangement.

12 (2) ~~a direct care staff to resident ratio of at least~~
13 ~~one direct care staff person on duty to every~~
14 ~~sixteen residents at all times, and~~ The facility
15 shall post and maintain a conspicuous notice at
16 the entrance to the room of any resident being
17 monitored. The notice shall state that the room
18 is being monitored by an electronic monitoring
19 device.

20 (3) ~~at least two direct care staff persons on duty~~
21 ~~and awake at all times~~ The facility, resident or
22 the resident's guardian or legal representative
23 shall pay for all costs associated with
24 conducting electronic monitoring. Provided,

1 however, that the state shall not pay for any
2 monitoring-related costs. The facility, resident
3 or the resident's guardian or legal
4 representative is responsible for:

5 (a) all costs associated with installation of
6 equipment, and

7 (b) maintaining the equipment.

8 (4) A facility shall require an electronic monitoring
9 device to be installed in a manner that is safe
10 for residents, employees, or visitors who may be
11 moving about the room.

12 d. The State Board of Health shall promulgate rules
13 regarding:

14 (1) privacy of the resident, other residents of the
15 room or other residents of the facility,

16 (2) the safe placement of an electronic monitoring
17 device,

18 (3) the format and precise content of any notice
19 required pursuant to this section, and

20 (4) such other information or content deemed
21 necessary by the Board.

22 e. As used in this section, "electronic monitoring
23 device":

24 (1) shall include:

1 (a) video surveillance cameras installed in the
2 room of a resident, and

3 (b) audio devices installed in the room of a
4 resident designed to acquire communications
5 or other sounds occurring in the room, and

6 (2) shall not include an electronic, mechanical, or
7 other device that is specifically used for the
8 nonconsensual interception of wire or electronic
9 communications.

10 6. 3. a. ~~On and after January 1, 2004, the~~ The Department shall
11 may require a facility to maintain ~~the~~ a directed plan
12 of shift-based, staff-to-resident ratios ~~provided in~~
13 ~~paragraph 3 of this subsection~~ if the facility has
14 been determined by the Department to be deficient with
15 regard to:

16 ~~(1) the provisions of paragraph 3 of this subsection,~~

17 ~~(2)~~ fraudulent reporting of staffing on the Quality
18 of Care Report,

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

1 (4) (3) a complaint and/or survey investigation that has
2 determined quality-of-care problems related to
3 insufficient staffing.

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

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

20 7. a. ~~For facilities that have been granted flexible staff~~
21 ~~scheduling privileges, the Department shall monitor~~
22 ~~and evaluate facility compliance with the flexible~~
23 ~~staff scheduling staffing provisions of paragraph 5 of~~
24 ~~this subsection through reviews of monthly staffing~~

1 ~~reports, results of complaint investigations and~~
2 ~~inspections.~~

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

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

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

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

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

23 ~~C. B.~~ Effective September 1, 2002, facilities shall post the
24 names and titles of direct-care staff on duty each day in a

1 conspicuous place, including the name and title of the supervising
2 nurse.

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

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

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

1 based on an overall three and two-tenths (3.2) hours per day per
2 occupied bed.

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

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

1 per day per occupied bed to four and one-tenth (4.1) hours per day
2 per occupied bed, all nursing facilities subject to the provisions
3 of the Nursing Home Care Act and intermediate care facilities for
4 the mentally retarded with seventeen or more beds, in addition to
5 other state and federal requirements related to the staffing of
6 nursing facilities, shall maintain direct-care, flexible staff-
7 scheduling staffing levels based on an overall four and one-tenth
8 (4.1) hours per day per occupied bed.

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

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

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

21 1. "Direct-care staff" means any nursing or therapy staff who
22 provides direct, hands-on care to residents in a nursing facility;
23 and
24

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

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

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

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

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

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

3 5. Monies collected from administrative penalties shall be
4 deposited in the Nursing Facility Quality of Care Fund and utilized
5 for the purposes specified in the Oklahoma Healthcare Initiative
6 Act.

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

- 12 2. a. The Oklahoma Nursing Facility Funding Advisory
13 Committee is hereby created and shall consist of the
14 following:
- 15 (1) four members selected by the Oklahoma Association
16 of Health Care Providers,
 - 17 (2) three members selected by the Oklahoma
18 Association of Homes and Services for the Aging,
19 and
 - 20 (3) two members selected by the State Council on
21 Aging.

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

24

1 b. The purpose of the advisory committee will be to
2 develop a new methodology for calculating state
3 Medicaid program reimbursements to nursing facilities
4 by implementing facility-specific rates based on
5 expenditures relating to direct care staffing. No
6 nursing home will receive less than the current rate
7 at the time of implementation of facility-specific
8 rates pursuant to this subparagraph.

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

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

23 e. The new methodology shall divide the payment into two
24 components:

1 (1) direct care which includes allowable costs for
2 registered nurses, licensed practical nurses,
3 certified medication aides and certified nurse
4 aides. The direct care component of the rate
5 shall be a facility-specific rate, directly
6 related to each facility's actual expenditures on
7 direct care, and

8 (2) other costs.

9 f. The Oklahoma Health Care Authority, in calculating the
10 base year prospective direct care rate component,
11 shall use the following criteria:

12 (1) to construct an array of facility per diem
13 allowable expenditures on direct care, the
14 Authority shall use the most recent data
15 available. The limit on this array shall be no
16 less than the ninetieth percentile,

17 (2) each facility's direct care base-year component
18 of the rate shall be the lesser of the facility's
19 allowable expenditures on direct care or the
20 limit,

21 (3) other rate components shall be determined by the
22 Oklahoma Nursing Facility Funding Advisory
23 Committee in accordance with federal regulations
24 and requirements, and

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

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

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

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

23 2. The Authority shall make application to the United States
24 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, 2009.

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8 52-1-7826 SDR 04/17/09

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