

1 STATE OF OKLAHOMA

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

3 HOUSE BILL 1729

By: Cox

4  
5 AS INTRODUCED

6  
7 An Act relating to public health and safety; amending  
8 Section 4, Chapter 347, O.S.L. 2007 (63 O.S. Supp.  
9 2008, Section 1-1914.12), which relates to an  
10 alternative informal dispute resolution pilot  
11 program; modifying pilot program to be dispute  
12 resolution panel; eliminating procedural requirements  
13 for pilot program; amending 63 O.S. 2001, Section 1-  
14 1925.2, as last amended by Section 1, Chapter 216,  
15 O.S.L. 2005 (63 O.S. Supp. 2008, Section 1-1925.2),  
16 which relates to the Nursing Home Care Act; deleting  
17 obsolete dates for reimbursement from the Nursing  
18 Facility Quality of Care Fund; deleting certain  
19 required nurse staffing ratios; deleting certain  
20 definition; deleting requirements for directed plan  
21 of correction; eliminating monthly report on staff  
22 ratios; eliminating certain administrative penalties;  
23 and providing an effective date.  
24

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

SECTION 1. AMENDATORY Section 4, Chapter 347, O.S.L.  
2007 (63 O.S. Supp. 2008, Section 1-1914.12), is amended to read as  
follows:

Section 1-1914.12 ~~A.~~ Upon written request, a long-term care  
facility may choose to participate in ~~a pilot program~~ an informal  
dispute resolution panel to be offered by the State Department of

1 Health as an alternative to the informal dispute resolution process  
2 outlined in Sections 1-1914.3 through 1-1914.10 of this title.

3 ~~B. The State Department of Health shall establish the pilot  
4 program as described in Sections 3 through 8 of this act on or  
5 before the effective date of this act and shall maintain the pilot  
6 program until November 1, 2008.~~

7 ~~C. The State Department of Health shall submit a preliminary  
8 report to the Legislature detailing the initial findings of the  
9 pilot program by March 1, 2008. A final report summarizing the main  
10 findings of the pilot program shall be submitted to the Legislature  
11 by November 1, 2008.~~

12 SECTION 2. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as  
13 last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp.  
14 2008, Section 1-1925.2), is amended to read as follows:

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

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

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

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

10          ~~(2)~~ fraudulent reporting of staffing on the Quality  
11           of Care Report,

12          ~~(3)~~ (2) a complaint and/or survey investigation that has  
13           determined substandard quality of care, or

14          ~~(4)~~ (3) a complaint and/or survey investigation that has  
15           determined quality-of-care problems related to  
16           insufficient staffing.

17       b. The Department shall require a facility described in  
18           subparagraph a of this paragraph to achieve and  
19           maintain the shift-based, staff-to-resident ratios  
20           ~~provided in paragraph 3 of this subsection~~ for a  
21           minimum of three (3) months before being considered  
22           eligible to implement flexible staff scheduling ~~as~~  
23           ~~defined in subparagraph c of paragraph 5 of this~~  
24           ~~subsection.~~

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

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

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

21           ~~c. In a directed plan of correction, the Department shall~~  
22           ~~require a facility described in subparagraph b of this~~  
23           ~~paragraph to maintain shift-based, staff-to-resident~~  
24           ~~ratios for the following periods of time:~~

- 1           ~~(1) the first determination shall require that shift-~~  
2           ~~based, staff to resident ratios be maintained~~  
3           ~~until full compliance is achieved,~~  
4           ~~(2) the second determination within a two year period~~  
5           ~~shall require that shift-based, staff to resident~~  
6           ~~ratios be maintained for a minimum period of six~~  
7           ~~(6) months, and~~  
8           ~~(3) the third determination within a two year period~~  
9           ~~shall require that shift-based, staff to resident~~  
10           ~~ratios be maintained for a minimum period of~~  
11           ~~twelve (12) months.~~

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

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

21       ~~E.~~ D. Facilities shall have the right to appeal and to the  
22 informal dispute resolution process with regard to penalties and  
23 sanctions imposed due to staffing noncompliance.  
24

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

17       ~~2. When the state Medicaid program reimbursement rate reflects~~  
18 ~~the sum of Ninety four Dollars and eleven cents (\$94.11), plus the~~  
19 ~~increases in actual audited costs over and above the actual audited~~  
20 ~~costs reflected in the cost reports submitted for the most current~~  
21 ~~cost reporting period and the costs estimated by the Oklahoma Health~~  
22 ~~Care Authority to increase the direct care flexible staff scheduling~~  
23 ~~staffing level from three and two tenths (3.2) hours per day per~~  
24 ~~occupied bed to three and eight tenths (3.8) hours per day per~~

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

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

23       ~~4. The Board shall promulgate rules for shift-based, staff-to-~~  
24 ~~resident ratios for noncompliant facilities denoting the incremental~~

1 ~~increases reflected in direct care, flexible staff scheduling~~  
2 ~~staffing levels.~~

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

10 ~~6. F.~~ For purposes of this subsection:

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

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

19 ~~H. 1. The Oklahoma Health Care Authority shall require all~~  
20 ~~nursing facilities subject to the provisions of the Nursing Home~~  
21 ~~Care Act and intermediate care facilities for the mentally retarded~~  
22 ~~with seventeen or more beds to submit a monthly report on staffing~~  
23 ~~ratios on a form that the Authority shall develop.~~

24

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

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

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

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

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

19       ~~I. G.~~ 1. All entities regulated by this state that provide  
20 long-term care services shall utilize a single assessment tool to  
21 determine client services needs. The tool shall be developed by the  
22 Oklahoma Health Care Authority in consultation with the State  
23 Department of Health.

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

4                    (1)   four members selected by the Oklahoma Association  
5                    of Health Care Providers,

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

9                    (3)   two members selected by the State Council on  
10                   Aging.

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

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

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

23           d.    The new methodology will be submitted for approval to  
24                   the Board of the Oklahoma Health Care Authority by

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

11 e. The new methodology shall divide the payment into two  
12 components:

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

20 (2) other costs.

21 f. The Oklahoma Health Care Authority, in calculating the  
22 base year prospective direct care rate component,  
23 shall use the following criteria:  
24

- 1 (1) to construct an array of facility per diem  
2 allowable expenditures on direct care, the  
3 Authority shall use the most recent data  
4 available. The limit on this array shall be no  
5 less than the ninetieth percentile,
- 6 (2) each facility's direct care base-year component  
7 of the rate shall be the lesser of the facility's  
8 allowable expenditures on direct care or the  
9 limit,
- 10 (3) other rate components shall be determined by the  
11 Oklahoma Nursing Facility Funding Advisory  
12 Committee in accordance with federal regulations  
13 and requirements, and
- 14 (4) rate components in divisions (2) and (3) of this  
15 subparagraph shall be re-based and adjusted for  
16 inflation when additional funds are made  
17 available.

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

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

1 Health Care Authority shall utilize the most current cost report  
2 data to estimate costs in determining daily per diem rates.

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

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

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

19 SECTION 3. This act shall become effective November 1, 2009.

20  
21 52-1-6582 SAB 01/14/09

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