

1 STATE OF OKLAHOMA

2 2nd Session of the 54th Legislature (2014)

3 HOUSE BILL 2901

By: Morrissette

4  
5  
6 AS INTRODUCED

7 An Act relating to public health and safety; amending  
8 63 O.S. 2011, Section 1-1922, which relates to a  
9 residents' advisory council; requiring facility to  
10 hire social worker under certain circumstance;  
11 requiring nursing facilities to establish a family  
12 council; requiring nursing facility to have emergency  
13 medical resuscitation equipment; requiring nursing  
14 facility to designate physician as medical director;  
15 requiring nursing facility to disclose certain  
16 information to State Department of Health; requiring  
17 Department to post certain information on its  
18 website; requiring Department to create section on  
19 website for veterans; amending 63 O.S. 2011, Section  
20 1-1925.2, which relates to the staffing ratios at  
21 nursing facilities; modifying certain staffing  
22 ratios; amending 63 O.S. 2011, Section 1-1939, which  
23 relates to nursing facility liability; requiring  
24 Department to investigate certain incidents; amending  
63 O.S. 2011, Section 1-1940, which relates to public  
nuisances; requiring certain collateral resources;  
amending Section 4, Chapter 204, O.S.L. 2013 (63 O.S.  
Supp. 2013, Section 1-1953.4), which relates to  
admissibility of evidence; creating rebuttable  
presumption; providing for codification; and  
providing an effective date.

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

23 SECTION 1. AMENDATORY 63 O.S. 2011, Section 1-1922, is  
24 amended to read as follows:

1 Section 1-1922. A. Each facility shall establish a residents'  
2 advisory council. The administrator shall designate a member of the  
3 facility staff to coordinate the establishment of, and render  
4 assistance to, said council.

5 B. The composition of the residents' advisory council shall be  
6 specified by Department regulation, but no employee or affiliate of  
7 a facility shall be a member of any such council.

8 C. The residents' advisory council shall meet at least once  
9 each month with the staff coordinator who shall provide assistance  
10 to said council in preparing and disseminating a report of each  
11 meeting as specified by the regulations to all residents, the  
12 administrator, and the staff.

13 D. Records of the residents' advisory council meetings shall be  
14 maintained in the office of the administrator.

15 E. The residents' advisory council shall communicate to the  
16 administrator the opinions and concerns of the residents. The  
17 council shall review procedures for implementing residents' rights,  
18 facility responsibilities and make recommendations for changes or  
19 additions which will strengthen the facility's policies and  
20 procedures as they affect residents' rights and facility  
21 responsibilities.

22 F. The residents' advisory council shall be forum for:

23 1. Obtaining and disseminating information;  
24

1        2. Soliciting and adopting recommendations for facility  
2 programming and improvements; and

3        3. Early identification and recommendation of orderly  
4 resolution of problems.

5        G. The residents' advisory council may present complaints as  
6 provided in Section 1-1924 of this title on behalf of a resident to  
7 the Department.

8        H. The State Long-Term Care Ombudsman shall be responsible for  
9 ensuring that each facility establishes a residents' advisory  
10 council. The State Long-Term Care Ombudsman shall provide notice to  
11 the Department if it is determined that the facility has failed to  
12 establish a residents' advisory council. The Department shall be  
13 required to notify the facility of such failure. If the facility  
14 fails to establish a residents' advisory council within thirty (30)  
15 days of such notice, then the facility must hire a social worker  
16 with the credentials MSW, LSW to assist with establishing a  
17 residents' advisory council for a period to last until the council  
18 is functioning as determined by the State Long-Term Care Ombudsman  
19 in order to retain its license to operate.

20        SECTION 2.        NEW LAW        A new section of law to be codified  
21 in the Oklahoma Statutes as Section 1-1922.1 of Title 63, unless  
22 there is created a duplication in numbering, reads as follows:

23        A. A nursing facility, subject to the Nursing Home Care Act,  
24 shall establish and maintain a family council.

1 B. The purpose of the family council is to:

2 1. Protect the well-being and rights of the nursing facility's  
3 residents;

4 2. Provide support for the families and friends of the  
5 residents;

6 3. Inform members and other residents' families of statutes,  
7 regulations, policies, practices and other issues including care  
8 plans, signs and symptoms of abuse and neglect, etc.;

9 4. Improve the quality of life and happiness of all residents;

10 5. Communicate concerns to the nursing facility's  
11 administrator;

12 6. Submit unresolved concerns to the State Department of Health  
13 as complaints; and

14 7. Report any suspected case of abuse, neglect or exploitation  
15 to local law enforcement, then to the Department of Human Services.

16 C. Members of a family council can include family members or  
17 representatives of current residents, former residents and members  
18 of the community where the facility is located.

19 1. Nursing facility staff cannot participate in the family  
20 council unless that staff member has an immediate family member  
21 currently residing in the nursing facility.

22 2. Otherwise nursing home owners, administrators, other staff  
23 and/or family or friends of these owners, administrators and staff  
24 cannot participate as members of the family council.

1           3. Representatives of citizen advocacy groups and the State  
2 Long-Term Care Ombudsman can participate as family council members,  
3 with approval of those members as defined in paragraph 1 of this  
4 subsection.

5           D. The nursing facility is required to provide contact  
6 information for the officers of the family council to any person  
7 requesting this information within twenty-four (24) hours.

8           E. The State Long-Term Care Ombudsman shall be responsible for  
9 ensuring that each facility establishes a family council. The State  
10 Long-Term Care Ombudsman shall provide notice to the Department if  
11 it is determined that the facility has failed to establish a family  
12 council. The Department shall be required to notify the facility of  
13 such failure. If the facility fails to establish a family council  
14 within thirty (30) days of such notice, then the facility must hire  
15 a social worker with the credentials MSW, LSW to assist with  
16 establishing a family council for a period to last until the council  
17 is functioning as determined by the State Long-Term Care Ombudsman  
18 in order to retain its license to operate.

19           SECTION 3.       NEW LAW       A new section of law to be codified  
20 in the Oklahoma Statutes as Section 1-1922.2 of Title 63, unless  
21 there is created a duplication in numbering, reads as follows:

22           A. A nursing facility, subject to the Nursing Home Care Act,  
23 must have emergency medical resuscitation equipment, commonly  
24 referred to as a crash cart, in good working order and staff

1 certified in Advanced Cardiovascular Life Support as certified by  
2 the American Heart Association available at all times.

3 B. Emergency Medical Resuscitation Equipment shall be defined  
4 by the State Department of Health and must include:

- 5 1. Emergency portable oxygen;
- 6 2. Basic and advanced airways;
- 7 3. A defibrillator or Automated External Defibrillator (AED);
- 8 4. IVs; and
- 9 5. Emergency cardiac drugs.

10 C. A minimum of one direct care staff worker must be on duty at  
11 all times with certification and proficiency in Advanced  
12 Cardiovascular Life Support.

13 SECTION 4. NEW LAW A new section of law to be codified  
14 in the Oklahoma Statutes as Section 1-1922.3 of Title 63, unless  
15 there is created a duplication in numbering, reads as follows:

16 A. A nursing facility, subject to the Nursing Home Care Act,  
17 must designate a physician to serve as medical director.

18 B. The medical director is responsible for:

- 19 1. Implementation of resident care policies; and
- 20 2. The coordination of medical care in the facility.

21 C. The nursing facility shall report, in a manner prescribed by  
22 the State Department of Health, the following information for its  
23 medical director or medical directors:

- 24 1. Medical director's name;

- 1        2. MD or DO;
- 2        3. Business name;
- 3        4. Business address, city, state and zip code;
- 4        5. Business phone;
- 5        6. Business e-mail;
- 6        7. Nursing facility; and
- 7        8. Nursing facility address, city, state and zip code.

8        D. The nursing facility shall report any changes of medical  
9 director(s) and/or changes in the business name, address, phone or  
10 e-mail within thirty (30) days to the Department.

11       E. The State Department of Health shall create and post the  
12 names of medical directors for each nursing home on its Internet  
13 website. Updates to the website must be made within thirty (30)  
14 days after receipt from the nursing facility.

15       SECTION 5.        NEW LAW        A new section of law to be codified  
16 in the Oklahoma Statutes as Section 1-1922.4 of Title 63, unless  
17 there is created a duplication in numbering, reads as follows:

18       A. A nursing facility, subject to the Nursing Home Care Act,  
19 must disclose ownership information to the State Department of  
20 Health in a manner prescribed by the Department:

- 21       1. When an owner, stockholder, partner, etc. owns two percent  
22 (2%) or more of the licensed nursing facility;

1        2. When an owner, stockholder, partner, etc. who holds any  
2 stake in the nursing facility is an elected official or is a  
3 government employee; or

4        3. When an owner, stockholder, partner, etc. who holds any  
5 stake in the nursing facility is a former elected official or is a  
6 former government employee.

7        B. The nursing facility shall report any changes of owners  
8 and/or changes in the business name, address, phone or e-mail within  
9 thirty (30) days to the Department.

10       C. The Department shall create and post the names of owners for  
11 each nursing home on its Internet website. Updates to the website  
12 must be made within thirty (30) days after receipt from the nursing  
13 facility.

14       D. A nursing facility, subject to the Nursing Home Care Act,  
15 must disclose any common ownership interests of any owner,  
16 stockholder, partner, etc. of an entity licensed to operate a  
17 nursing facility with any real estate, administrative or management,  
18 physical therapy, food services, pharmacy services, hospice and any  
19 other related companies. Disclosure must include the:

20       1. Names of the common owners; and

21       2. The entities of common ownership:

22           a. type of services provided, i.e. real estate,  
23           management, etc.,

24           b. business name,

- 1 c. business address,
- 2 d. business phone,
- 3 e. names of common owners, and
- 4 f. common owners equity in the business.

5 E. The nursing facility shall report any changes of common  
6 owners and/or changes in the business name, address, phone or e-mail  
7 within thirty (30) days to the Department.

8 F. The Department shall create and post the names of common  
9 owners for each nursing home on its Internet website. Updates to  
10 the website must be made within thirty (30) days after receipt from  
11 the nursing facility.

12 SECTION 6. NEW LAW A new section of law to be codified  
13 in the Oklahoma Statutes as Section 1-1922.5 of Title 63, unless  
14 there is created a duplication in numbering, reads as follows:

15 The State Department of Health shall be responsible for creating  
16 a section on its website whereby family members of veterans or  
17 veteran residents of nursing facilities and VA medical centers in  
18 the state and family members of civilians or civilians in licensed  
19 Oklahoma nursing facilities may receive information regarding  
20 quality of care standards. The website shall also provide an option  
21 for both veterans and civilians as well as family members to post  
22 confidential information regarding any abuse occurring to themselves  
23 or to other residents while in care or any abuse observed by such  
24 residents or family members.

1 SECTION 7. AMENDATORY 63 O.S. 2011, Section 1-1925.2, is  
2 amended to read as follows:

3 Section 1-1925.2 A. The Oklahoma Health Care Authority shall  
4 fully recalculate and reimburse nursing facilities and intermediate  
5 care facilities for the mentally retarded (ICFs/MR) from the Nursing  
6 Facility Quality of Care Fund beginning October 1, 2000, the average  
7 actual, audited costs reflected in previously submitted cost reports  
8 for the cost-reporting period that began July 1, 1998, and ended  
9 June 30, 1999, inflated by the federally published inflationary  
10 factors for the two (2) years appropriate to reflect present-day  
11 costs at the midpoint of the July 1, 2000, through June 30, 2001,  
12 rate year.

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

18 2. The recalculated reimbursement rate shall be implemented  
19 September 1, 2000.

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

- 1 a. ~~from 7:00 a.m. to 3:00 p.m., one direct care staff to~~  
2 ~~every eight residents, or major fraction thereof,~~  
3 b. ~~from 3:00 p.m. to 11:00 p.m., one direct care staff to~~  
4 ~~every twelve 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 ~~2. From September 1, 2001, through August 31, 2003, nursing~~  
8 ~~facilities subject to the Nursing Home Care Act and intermediate~~  
9 ~~care facilities for the mentally retarded with seventeen or more~~  
10 ~~beds shall maintain, in addition to other state and federal~~  
11 ~~requirements related to the staffing of nursing facilities, the~~  
12 ~~following minimum direct care staff to resident ratios:~~

- 13 a. ~~from 7:00 a.m. to 3:00 p.m., one direct care staff to~~  
14 ~~every seven residents, or major fraction thereof,~~  
15 b. ~~from 3:00 p.m. to 11:00 p.m., one direct care staff to~~  
16 ~~every ten 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 ~~3. On and after September 1, 2003~~ November 1, 2014, subject to  
20 the availability of funds, nursing facilities subject to the Nursing  
21 Home Care Act and intermediate care facilities for the mentally  
22 retarded with seventeen or more beds shall maintain, in addition to  
23 other state and federal requirements related to the staffing of  
24

1 nursing facilities, the following minimum direct-care-staff-to-  
2 resident ratios:

3 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to  
4 every six residents at a nonskilled care residence, or  
5 major fraction thereof, and one direct-care staff to  
6 every three residents at a skilled care residence, or  
7 major fraction thereof,

8 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to  
9 every eight residents at a nonskilled care residence,  
10 or major fraction thereof, and one direct-care staff  
11 to every four residents at a skilled care residence,  
12 or major fraction thereof, and

13 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to  
14 every fifteen residents at a nonskilled care  
15 residence, or major fraction thereof, and one skilled  
16 care residence to every five residents at a skilled  
17 care residence, or major fraction thereof.

18 4. 2. Effective immediately, facilities shall have the option  
19 of varying the starting times for the eight-hour shifts by one (1)  
20 hour before or one (1) hour after the times designated in this  
21 section without overlapping shifts.

22 5. a. ~~On and after January 1, 2004, a facility that has been~~  
23 ~~determined by the State Department of Health to have~~  
24 ~~been in compliance with the provisions of paragraph 3~~

1 ~~of this subsection since the implementation date of~~  
2 ~~this subsection, may implement flexible staff~~  
3 ~~scheduling; provided, however, such facility shall~~  
4 ~~continue to maintain a direct-care service rate of at~~  
5 ~~least two and eighty-six one-hundredths (2.86) hours~~  
6 ~~of direct-care service per resident per day.~~

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

12 ~~e. As used in this paragraph, "flexible staff-scheduling"~~  
13 ~~means maintaining:~~

14 ~~(1) a direct-care-staff-to-resident ratio based on~~  
15 ~~overall hours of direct-care service per resident~~  
16 ~~per day rate of not less than two and eighty-six~~  
17 ~~one-hundredths (2.86) hours per day,~~

18 ~~(2) a direct-care-staff-to-resident ratio of at least~~  
19 ~~one direct-care staff person on duty to every~~  
20 ~~sixteen residents at all times, and~~

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

23 ~~6. a. On and after January 1, 2004, the Department shall~~  
24 ~~require a facility to maintain the shift-based, staff-~~

1 ~~to resident ratios provided in paragraph 3 of this~~  
2 ~~subsection if the facility has been determined by the~~  
3 ~~Department to be deficient with regard to:~~

- 4 ~~(1) the provisions of paragraph 3 of this subsection,~~  
5 ~~(2) fraudulent reporting of staffing on the Quality~~  
6 ~~of Care Report,~~  
7 ~~(3) a complaint and/or survey investigation that has~~  
8 ~~determined substandard quality of care, or~~  
9 ~~(4) a complaint and/or survey investigation that has~~  
10 ~~determined quality-of-care problems related to~~  
11 ~~insufficient staffing.~~

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

20 ~~e. Upon a subsequent determination by the Department that~~  
21 ~~the facility has achieved and maintained for at least~~  
22 ~~three (3) months the shift-based, staff-to-resident~~  
23 ~~ratios described in paragraph 3 of this subsection,~~  
24 ~~and has corrected any deficiency described in~~

1 ~~subparagraph a of this paragraph, the Department shall~~  
2 ~~notify the facility of its eligibility to implement~~  
3 ~~flexible staff-scheduling privileges.~~

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

11 b. ~~If the Department identifies any quality of care~~  
12 ~~problems related to insufficient staffing in such~~  
13 ~~facility, the Department shall issue a directed plan~~  
14 ~~of correction to the facility found to be out of~~  
15 ~~compliance with the provisions of this subsection.~~

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

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

23 ~~(2) the second determination within a two-year period~~  
24 ~~shall require that shift-based, staff-to-resident~~

1 ~~ratios be maintained for a minimum period of six~~  
2 ~~(6) months, and~~

3 ~~(3) the third determination within a two-year period~~  
4 ~~shall require that shift-based, staff-to-resident~~  
5 ~~ratios be maintained for a minimum period of~~  
6 ~~twelve (12) months.~~

7 C. Effective September 1, 2002, facilities shall post the names  
8 and titles of direct-care staff on duty each day in a conspicuous  
9 place, including the name and title of the supervising nurse.

10 D. The State Board of Health shall promulgate rules prescribing  
11 staffing requirements for intermediate care facilities for the  
12 mentally retarded serving six or fewer clients and for intermediate  
13 care facilities for the mentally retarded serving sixteen or fewer  
14 clients.

15 E. Facilities shall have the right to appeal and to the  
16 informal dispute resolution process with regard to penalties and  
17 sanctions imposed due to staffing noncompliance.

18 F. 1. When the state Medicaid program reimbursement rate  
19 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),  
20 plus the increases in actual audited costs over and above the actual  
21 audited costs reflected in the cost reports submitted for the most  
22 current cost-reporting period and the costs estimated by the  
23 Oklahoma Health Care Authority to increase the direct-care, flexible  
24 staff-scheduling staffing level from two and eighty-six one-

1 hundredths (2.86) hours per day per occupied bed to three and two-  
2 tenths (3.2) hours per day per occupied bed, all nursing facilities  
3 subject to the provisions of the Nursing Home Care Act and  
4 intermediate care facilities for the mentally retarded with  
5 seventeen or more beds, in addition to other state and federal  
6 requirements related to the staffing of nursing facilities, shall  
7 maintain direct-care, flexible staff-scheduling staffing levels  
8 based on an overall three and two-tenths (3.2) hours per day per  
9 occupied bed.

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

1           3. 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-  
7 scheduling staffing level from three and eight-tenths (3.8) hours  
8 per day per occupied bed to four and one-tenth (4.1) hours per day  
9 per occupied bed, all nursing facilities subject to the provisions  
10 of the Nursing Home Care Act and intermediate care facilities for  
11 the mentally retarded with seventeen or more beds, in addition to  
12 other state and federal requirements related to the staffing of  
13 nursing facilities, shall maintain direct-care, flexible staff-  
14 scheduling staffing levels based on an overall four and one-tenth  
15 (4.1) hours per day per occupied bed.

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

20           5. In the event that the state Medicaid program reimbursement  
21 rate for facilities subject to the Nursing Home Care Act, and  
22 intermediate care facilities for the mentally retarded having  
23 seventeen or more beds is reduced below actual audited costs, the  
24 requirements for staffing ratio levels shall be adjusted to the

1 appropriate levels provided in paragraphs 1 through 4 of this  
2 subsection.

3 G. For purposes of this subsection:

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

7 2. Prior to September 1, 2003, activity and social services  
8 staff who are not providing direct, hands-on care to residents may  
9 be included in the direct-care-staff-to-resident ratio in any shift.  
10 On and after September 1, 2003, such persons shall not be included  
11 in the direct-care-staff-to-resident ratio.

12 H. 1. The Oklahoma Health Care Authority shall require all  
13 nursing facilities subject to the provisions of the Nursing Home  
14 Care Act and intermediate care facilities for the mentally retarded  
15 with seventeen or more beds to submit a monthly report on staffing  
16 ratios on a form that the Authority shall develop.

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

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

24

- 1           a.    administrative penalties shall not accrue until the  
2                    Authority notifies the facility in writing that the  
3                    report was not timely submitted as required, and  
4           b.    a minimum of a one-day penalty shall be assessed in  
5                    all instances.

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

8           5.    Monies collected from administrative penalties shall be  
9                    deposited in the Nursing Facility Quality of Care Fund and utilized  
10                   for the purposes specified in the Oklahoma Healthcare Initiative  
11                   Act.

12           I.   1.   All entities regulated by this state that provide long-  
13                   term care services shall utilize a single assessment tool to  
14                   determine client services needs. The tool shall be developed by the  
15                   Oklahoma Health Care Authority in consultation with the State  
16                   Department of Health.

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

20                   (1)   four members selected by the Oklahoma Association  
21                    of Health Care Providers,

22                   (2)   three members selected by the Oklahoma  
23                    Association of Homes and Services for the Aging,  
24                    and

1 (3) two members selected by the State Council on  
2 Aging.

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

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

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

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

1 for nursing facilities appropriated above and beyond  
2 the funding amounts effective on January 15, 2005.

3 e. The new methodology shall divide the payment into two  
4 components:

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

12 (2) other costs.

13 f. The Oklahoma Health Care Authority, in calculating the  
14 base year prospective direct care rate component,  
15 shall use the following criteria:

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

21 (2) each facility's direct care base-year component  
22 of the rate shall be the lesser of the facility's  
23 allowable expenditures on direct care or the  
24 limit,

1 (3) other rate components shall be determined by the  
2 Oklahoma Nursing Facility Funding Advisory  
3 Committee in accordance with federal regulations  
4 and requirements, and

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

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

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

18 J. 1. When the state Medicaid program reimbursement rate  
19 reflects the sum of Ninety-four Dollars and eleven cents (\$94.11),  
20 plus the increases in actual audited costs, over and above the  
21 actual audited costs reflected in the cost reports submitted for the  
22 most current cost-reporting period, and the direct-care, flexible  
23 staff-scheduling staffing level has been prospectively funding at  
24 four and one-tenth (4.1) hours per day per occupied bed, the

1 Authority may apportion funds for the implementation of the  
2 provisions of this section.

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

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

10 SECTION 8. AMENDATORY 63 O.S. 2011, Section 1-1939, is  
11 amended to read as follows:

12 Section 1-1939. A. The owner and licensee are liable to a  
13 resident for any intentional or negligent act or omission of their  
14 agents or employees which injures the resident. In addition, any  
15 state employee that aids, abets, assists, or conspires with an owner  
16 or licensee to perform an act that causes injury to a resident shall  
17 be individually liable.

18 B. A resident may maintain an action under the Nursing Home  
19 Care Act for any other type of relief, including injunctive and  
20 declaratory relief, permitted by law.

21 C. Any damages recoverable under this section, including  
22 minimum damages as provided by this section, may be recovered in any  
23 action which a court may authorize to be brought as a class action.  
24 The remedies provided in this section, are in addition to and

1 cumulative with any other legal remedies available to a resident.  
2 Exhaustion of any available administrative remedies shall not be  
3 required prior to commencement of suit hereunder.

4 D. Any waiver by a resident or the legal representative of the  
5 resident of the right to commence an action under this section,  
6 whether oral or in writing, shall be null and void, and without  
7 legal force or effect.

8 E. Any party to an action brought under this section shall be  
9 entitled to a trial by jury and any waiver of the right to a trial  
10 by a jury, whether oral or in writing, prior to the commencement of  
11 an action, shall be null and void, and without legal force or  
12 effect.

13 F. A licensee or its agents or employees shall not transfer,  
14 discharge, evict, harass, dismiss or retaliate against a resident, a  
15 resident's guardian or an employee or agent who makes a report,  
16 brings, or testifies in, an action under this section, or files a  
17 complaint because of a report, testimony or complaint.

18 G. Any person, institution or agency, under the Nursing Home  
19 Care Act, participating in good faith in the making of a report, or  
20 in the investigation of such a report shall not be deemed to have  
21 violated any privileged communication and shall have immunity from  
22 any liability, civil or criminal, or any other proceedings, civil or  
23 criminal, as a consequence of making such report. The good faith of  
24

1 any persons required, or permitted to report cases of suspected  
2 resident abuse or neglect under this act shall be presumed.

3 H. A facility employee or agent who becomes aware of abuse,  
4 neglect or exploitation of a resident prohibited by the Nursing Home  
5 Care Act shall immediately report the matter to the facility  
6 administrator. A facility administrator who becomes aware of abuse,  
7 neglect, or exploitation of a resident shall immediately act to  
8 rectify the problem and shall make a report of the incident and its  
9 correction to the Department.

10 I. 1. The facility shall be responsible for reporting the  
11 following serious incidents to the Department within twenty-four  
12 (24) hours:

- 13 a. communicable diseases,
- 14 b. deaths by unusual occurrence, including accidental  
15 deaths or deaths other than by natural causes, and  
16 deaths that may be attributed to a medical device,
- 17 c. missing residents. In addition, the facility shall  
18 make a report to local law enforcement agencies within  
19 two (2) hours if the resident is still missing,
- 20 d. situations arising where a rape or a criminal act is  
21 suspected. Such situations shall also be reported to  
22 local law enforcement immediately. The facility shall  
23 make every effort to preserve the scene of the  
24

1           suspected rape or crime until local law enforcement  
2           has arrived, and

3           e.   resident abuse, neglect and misappropriation of the  
4           property of a resident.

5           2. All other incident reports shall be made in accordance with  
6 federal law.

7           3. All initial written reports of incidents or situations shall  
8 be mailed to the Department within five (5) working days after the  
9 incident or situation. The final report shall be filed with the  
10 Department when the full investigation is complete.

11           J. The Department shall be required to investigate all  
12 incidents related to deaths, missing residents, rapes, sexual  
13 assaults, physical assaults, other criminal acts, resident abuse,  
14 neglect and misappropriation. Such investigations shall meet the  
15 standards for a complaint investigation.

16           SECTION 9.        AMENDATORY        63 O.S. 2011, Section 1-1940, is  
17 amended to read as follows:

18           Section 1-1940. A. The operation or maintenance of a facility  
19 in violation of the Nursing Home Care Act or rules promulgated by  
20 the State Board of Health, pursuant thereto, is hereby declared a  
21 public nuisance, inimical to the public welfare.

22           B. The State Commissioner of Health or the Department of Human  
23 Services, in the name of the people of the state, through the  
24 Attorney General, or the district attorney of the county in which

1 the facility is located, may, in addition to other remedies herein  
2 provided, bring action for an injunction to restrain such violation  
3 or to enjoin the future operation or maintenance of any such  
4 facility.

5 C. 1. Any person with personal knowledge or substantial  
6 specific information who believes that the Nursing Home Care Act, a  
7 rule promulgated thereto, or a federal certification rule applying  
8 to a facility may have been violated may file a complaint.

9 2. The complaint may be submitted to the State Department of  
10 Health, in writing, by telephone, or personally. An oral complaint  
11 shall be reduced to writing by the Department.

12 3. Any person who willfully or recklessly makes a false  
13 complaint or a report without a reasonable basis in fact for such a  
14 complaint, under the provisions of the Nursing Home Care Act, shall  
15 be liable in a civil suit for any actual damages suffered by a  
16 facility for any punitive damages set by the court or jury which may  
17 be allowed in the discretion of the court or jury when deemed proper  
18 by the court or jury.

19 4. The substance of the complaint shall be provided to the  
20 licensee, owner or administrator no earlier than at the commencement  
21 of the on-site inspection of the facility which takes place pursuant  
22 to the complaint.

23 5. Upon receipt of a complaint pursuant to this subsection, the  
24 Department shall determine whether the Nursing Home Care Act, a rule

1 promulgated pursuant thereto, or a federal certification rule for  
2 facilities has been or is being violated and whether the Department  
3 has jurisdiction over the complaint area. If the Department does  
4 not have jurisdiction over the complaint area, the complaint shall  
5 not be investigated by the Department and notice of the decision not  
6 to investigate shall be given to the complainant. The complaint  
7 shall be immediately referred to the appropriate agency having  
8 jurisdiction over the complaint area. A report summarizing the  
9 complaint investigation shall be made in writing. The Department  
10 shall give priority to investigations of complaints which allege  
11 continuing violations or which threaten the health and safety of  
12 residents.

13 6. In all cases, the Department shall inform the complainant of  
14 its findings within ten (10) working days of its determination  
15 unless otherwise indicated by the complainant. The complainant may  
16 direct the Department to send a copy of such findings to one other  
17 person. The notice of such findings shall include a copy of the  
18 written determination, the remedial action taken, if any, and the  
19 state licensure or federal certification, or both, on which the  
20 violation is listed.

21 D. 1. Upon receipt of a complaint submitted to the State  
22 Department of Health by the Department of Human Services or the  
23 Attorney General which alleges a violation of the Nursing Home Care  
24 Act, any rule promulgated thereto, or federal certification rules,

1 and which also alleges that such violation is a serious threat to  
2 the health, safety and welfare of a resident of a nursing facility,  
3 the State Department of Health shall take immediate action to remedy  
4 the violation based upon the complaint of the Department of Human  
5 Services.

6 2. The Department of Human Services or the Attorney General as  
7 applicable shall be deemed a party pursuant to the Administrative  
8 Procedures Act for purposes of any complaint made by the Department  
9 of Human Services or the Attorney General as applicable to the State  
10 Department of Health for violations of the Nursing Home Care Act,  
11 rules promulgated thereto or federal certification rules.

12 a. Within thirty (30) days of receipt of a final  
13 investigative report submitted by the Department of  
14 Human Services or the Attorney General as applicable  
15 pursuant to this section, the State Department of  
16 Health shall provide the Department of Human Services  
17 with a written summary of any action taken pertaining  
18 to the complaint including, but not limited to, any  
19 inspection or actions which may be taken by the State  
20 Department of Health.

21 b. Whenever the Department of Human Services or the  
22 Attorney General as applicable believes that the  
23 conditions giving rise to a complaint alleging a  
24 serious threat to the health, safety and welfare of a

1 resident of a nursing facility have not been  
2 adequately addressed, the Department of Human Services  
3 may request a hearing on the complaint as provided by  
4 Section 309 of Title 75 of the Oklahoma Statutes.

5 E. A written determination, notice of violation and remedial  
6 action taken concerning a complaint shall be available for public  
7 inspection at the facility.

8 F. The Department shall seek any remedial action provided under  
9 the Nursing Home Care Act for violations documented during complaint  
10 investigations.

11 G. The State Board of Health shall promulgate rules governing  
12 the receipt, investigation and resolution of complaints and reports  
13 of violations. The rules promulgated by the Board shall provide for  
14 the expeditious investigation and resolution of a complaint or  
15 report including, but not limited to:

16 1. An easily understood and readily accessible method of  
17 submitting complaints and reports regarding complaints;

18 2. Actions to be taken upon the receipt of a complaint or  
19 report of a complaint;

20 3. Establishing a priority for investigations of complaints.

21 Specifically, the Department shall give higher priority to  
22 investigations of complaints which allege continuing violations or  
23 which threaten the health, safety or welfare of residents;

1 4. The timely investigation of the complaint or report of a  
2 complaint;

3 5. Written reports to the complainants or persons filing the  
4 complaint report;

5 6. Any necessary or appropriate remedial action as determined  
6 by the findings of the investigation;

7 7. The protection of the identity of the complainant, provided  
8 that the person is a current or past resident or resident's  
9 representative or designated guardian or a current or past employee  
10 of a facility;

11 8. Specific information to be included in investigative  
12 protocols which must include at a minimum an interview in person  
13 with:

14 a. the complainant,

15 b. the resident, ~~if possible,~~ if the resident is alive  
16 and able to communicate by any means and if the  
17 resident is outside of the facility, the interview  
18 shall be conducted where the former resident is  
19 located, and

20 c. any potential witness, collateral resource or affected  
21 resident; ~~and.~~ Collateral resources shall include,  
22 but are not limited to:

23 (1) photos provided by the resident, family members,  
24 complainant or other parties,

- 1           (2) videos provided by a resident, family members,  
2           complainant or other parties, and  
3           (3) records provided by a resident, family members,  
4           complainant or other parties.

5           If the authenticity of any photo, video or record  
6           provided by a resident, the resident's representative  
7           or family member, or the complaint is challenged for  
8           its authenticity, the party challenging that  
9           authenticity is responsible for securing a recognized  
10           forensic expert to make such determination. The  
11           challenging party shall be responsible for any and all  
12           costs associated with such forensic evaluation.

13           9. Any additional rules necessary for the timely and thorough  
14 investigation and resolution of complaints.

15           H. The Department is authorized to employ hearing officers, and  
16 hire attorneys to represent the Department and Commissioner to  
17 ensure that this and other laws pertaining to the Department are  
18 properly executed.

19           SECTION 10. AMENDATORY           Section 4, Chapter 204, O.S.L. 2013  
20 (63 O.S. Supp. 2013, Section 1-1953.4), is amended to read as  
21 follows:

22           Section 1-1953.4 Subject to the provisions of law, a tape or  
23 recording created through the use of authorized electronic  
24 monitoring pursuant to this act may be admitted into evidence in a

1 civil or criminal court action or administrative proceeding. In a  
2 criminal action, it shall be a rebuttable presumption that the tape  
3 or recording is authentic and the state shall bear the cost to prove  
4 its invalidity.

5 SECTION 11. This act shall become effective November 1, 2014.

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