

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2958

By: Thomsen

AS INTRODUCED

An Act relating to public health and safety; amending 63 O.S. 2011, Section 1-1925.2, which relates to certain reimbursements from the Nursing Facility Quality of Care Fund; removing requirement that Oklahoma Health Care Authority develop certain nursing facility cost system; and providing an effective date.

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

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

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

1 costs at the midpoint of the July 1, 2000, through June 30, 2001,
2 rate year.

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

8 2. The recalculated reimbursement rate shall be implemented
9 September 1, 2000.

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

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

21 2. From September 1, 2001, through August 31, 2003, nursing
22 facilities subject to the Nursing Home Care Act and intermediate
23 care facilities for the mentally retarded with seventeen or more
24 beds shall maintain, in addition to other state and federal

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

- 3 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
4 every seven residents, or major fraction thereof,
- 5 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
6 every ten residents, or major fraction thereof, and
- 7 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
8 every seventeen residents, or major fraction thereof.

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

- 16 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
17 every six residents, or major fraction thereof,
- 18 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
19 every eight residents, or major fraction thereof, and
- 20 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
21 every fifteen residents, or major fraction thereof.

22 4. Effective immediately, facilities shall have the option of
23 varying the starting times for the eight-hour shifts by one (1) hour
24

1 before or one (1) hour after the times designated in this section
2 without overlapping shifts.

3 5. a. On and after January 1, 2004, a facility that has been
4 determined by the State Department of Health to have
5 been in compliance with the provisions of paragraph 3
6 of this subsection since the implementation date of
7 this subsection, may implement flexible staff
8 scheduling; provided, however, such facility shall
9 continue to maintain a direct-care service rate of at
10 least two and eighty-six one-hundredths (2.86) hours
11 of direct-care service per resident per day.

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

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

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

- (2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every sixteen residents at all times, and
- (3) at least two direct-care staff persons on duty and awake at all times.

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

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

b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection for a minimum of three (3) months before being considered 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. Effective September 1, 2002, facilities shall post the names
15 and titles of direct-care staff on duty each day in a conspicuous
16 place, including the name and title of the supervising nurse.

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

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

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

10 G. 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 and social services
15 staff who are not providing direct, hands-on care to residents may
16 be included in the direct-care-staff-to-resident ratio in any shift.
17 On and after September 1, 2003, such persons shall not be included
18 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. 1. All entities regulated by this state that provide long-
20 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) to construct an array of facility per diem allowable expenditures on direct care, the Authority shall use the most recent data available. The limit on this array shall be no less than the ninetieth percentile,
- (2) each facility's direct care base-year component of the rate shall be the lesser of the facility's allowable expenditures on direct care or the limit,
- (3) other rate components shall be determined by the Oklahoma Nursing Facility Funding Advisory Committee in accordance with federal regulations and requirements, and
- (4) rate components in divisions (2) and (3) of this subparagraph shall be re-based and adjusted for inflation when additional funds are made available.

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

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

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

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

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

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

SECTION 2. This act shall become effective November 1, 2018.

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