

COMMITTEE AMENDMENT
HOUSE OF REPRESENTATIVES
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1659 _____
Of the printed Bill
Page _____ Section _____ Lines _____
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: Marcus McEntire

Adopted: _____

Reading Clerk

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

PROPOSED COMMITTEE
SUBSTITUTE
FOR
HOUSE BILL NO. 1659

By: McEntire

PROPOSED COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending
63 O.S. 2021, Section 1-1925.2, which relates to
recalculation and reimbursement from the Nursing
Facility Quality Care Fund; removing the advisory
committee; removing the purpose of the committee; and
providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, 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 Individuals with Intellectual Disabilities
(ICFs/IID) 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

1 appropriate to reflect present-day costs at the midpoint of the July
2 1, 2000, through June 30, 2001, 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 Individuals with Intellectual Disabilities
6 (ICFs/IID).

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

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

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

20 2. From September 1, 2001, through August 31, 2003, nursing
21 facilities subject to the Nursing Home Care Act and Intermediate
22 Care Facilities for Individuals with Intellectual Disabilities
23 (ICFs/IID) with seventeen or more beds shall maintain, in addition
24 to other state and federal requirements related to the staffing of

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

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

3. On and after October 1, 2019, nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) with seventeen or more beds shall maintain, in addition to other state and federal requirements related to the staffing of nursing facilities, the following minimum direct-care-staff-to-resident ratios:

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

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

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

6. a. On and after January 1, 2004, the State Department of
Health 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, or
- (3) a complaint or survey investigation that has
determined substandard quality of care as a
result of 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 twenty-four-hour-based staff
scheduling as defined in subparagraph c of paragraph 5
of this subsection.

c. Upon a subsequent determination by the Department that
the facility has achieved and maintained for at least

1 three (3) months the shift-based, staff-to-resident
2 ratios described in paragraph 3 of this subsection,
3 and has corrected any deficiency described in
4 subparagraph a of this paragraph, the Department shall
5 notify the facility of its eligibility to implement
6 twenty-four-hour-based staff-scheduling privileges.

7 7. a. For facilities that utilize twenty-four-hour-based
8 staff-scheduling privileges, the Department shall
9 monitor and evaluate facility compliance with the
10 twenty-four-hour-based staff-scheduling staffing
11 provisions of paragraph 5 of this subsection through
12 reviews of monthly staffing reports, results of
13 complaint investigations and inspections.

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

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

- (1) the first determination shall require that shift-based, staff-to-resident ratios be maintained until full compliance is achieved,
- (2) the second determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained for a minimum period of twelve (12) months, and
- (3) the third determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained. The facility may apply for permission to use twenty-four-hour staffing methodology after two (2) years.

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

D. The State Commissioner of Health shall promulgate rules prescribing staffing requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities serving six or fewer clients (ICFs/IID-6) and for Intermediate Care Facilities for Individuals with Intellectual Disabilities serving sixteen or fewer clients (ICFs/IID-16).

E. Facilities shall have the right to appeal and to the informal dispute resolution process with regard to penalties and 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 Individuals with Intellectual
12 Disabilities (ICFs/IID) with seventeen or more beds, in addition to
13 other state and federal requirements related to the staffing of
14 nursing facilities, shall maintain direct-care, flexible staff-
15 scheduling staffing levels based on an overall three and two-tenths
16 (3.2) hours per day per 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
3 Individuals with Intellectual Disabilities (ICFs/IID) with seventeen
4 or more beds, in addition to other state and federal requirements
5 related to the staffing of nursing facilities, shall maintain
6 direct-care, flexible staff-scheduling staffing levels based on an
7 overall three and eight-tenths (3.8) 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 Individuals with Intellectual Disabilities (ICFs/IID) with seventeen
19 or more beds, in addition to other state and federal requirements
20 related to the staffing of nursing facilities, shall maintain
21 direct-care, flexible staff-scheduling staffing levels based on an
22 overall four and one-tenth (4.1) hours per day per occupied bed.

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

1 incremental increases reflected in direct-care, flexible staff-
2 scheduling 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 Individuals with Intellectual
6 Disabilities (ICFs/IID) ~~having~~ with seventeen or more beds is
7 reduced below actual audited costs, the requirements for staffing
8 ratio levels shall be adjusted to the appropriate levels provided in
9 paragraphs 1 through 4 of this 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 2. Prior to September 1, 2003, activity and social services
14 staff who are not providing direct, hands-on care to residents may
15 be included in the direct-care-staff-to-resident ratio in any shift.
16 On and after September 1, 2003, such persons shall not be included
17 in the direct-care-staff-to-resident ratio, regardless of their
18 licensure or certification status; and

19 3. The administrator shall not be counted in the direct-care-
20 staff-to-resident ratio regardless of the administrator's licensure
21 or certification status.

22 H. 1. The Oklahoma Health Care Authority shall require all
23 nursing facilities subject to the provisions of the Nursing Home
24 Care Act and Intermediate Care Facilities for Individuals with

1 Intellectual Disabilities (ICFs/IID) with seventeen or more beds to
2 submit a monthly report on staffing ratios on a form that the
3 Authority shall develop.

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

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

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

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

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

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

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

3 ~~2. a. The Oklahoma Nursing Facility Funding Advisory~~

4 ~~Committee is hereby created and shall consist of the~~
5 ~~following:~~

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

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

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

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

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

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

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

13 ~~e. The new methodology shall divide the payment into two~~
14 ~~components:~~

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

22 ~~(2) other costs.~~

23 ~~f.~~

1 a. The Oklahoma Health Care Authority, in calculating the
2 base year prospective direct care rate component,
3 shall use the following criteria:

4 (1) to construct an array of facility per diem
5 allowable expenditures on direct care, the
6 Authority shall use the most recent data
7 available. The limit on this array shall be no
8 less than the ninetieth percentile,

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

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

17 ~~(4)~~ prior to July 1, 2020, the Authority shall seek
18 federal approval to calculate the upper payment
19 limit under the authority of Centers for Medicare
20 and Medicaid Services (CMS) utilizing the
21 Medicare equivalent payment rate, and

22 ~~(5)~~

23 (4) if Medicaid payment rates to providers are
24 adjusted, nursing home rates and Intermediate

Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) rates shall not be adjusted less favorably than the average percentage-rate reduction or increase applicable to the majority of other provider groups.

~~g.~~

- b. (1) Effective October 1, 2019, if sufficient funding is appropriated for a rate increase, a new average rate for nursing facilities shall be established. The rate shall be equal to the statewide average cost as derived from audited cost reports for SFY 2018, ending June 30, 2018, after adjustment for inflation. After such new average rate has been established, the facility specific reimbursement rate shall be as follows:
- (a) amounts up to the existing base rate amount shall continue to be distributed as a part of the base rate in accordance with the existing State Plan, and
 - (b) to the extent the new rate exceeds the rate effective before the effective date of this act, fifty percent (50%) of the resulting increase on October 1, 2019, shall be allocated toward an increase of the existing

1 base reimbursement rate and distributed
2 accordingly. The remaining fifty percent
3 (50%) of the increase shall be allocated in
4 accordance with the currently approved 70/30
5 reimbursement rate methodology as outlined
6 in the existing State Plan.

- 7 (2) Any subsequent rate increases, as determined
8 based on the provisions set forth in this
9 subparagraph, shall be allocated in accordance
10 with the currently approved 70/30 reimbursement
11 rate methodology. The rate shall not exceed the
12 upper payment limit established by the Medicare
13 rate equivalent established by the ~~federal~~ CMS.

14 ~~h.~~

15 c. Effective October 1, 2019, in coordination with the
16 rate adjustments identified in the preceding section,
17 a portion of the funds shall be utilized as follows:

- 18 (1) effective October 1, 2019, the Oklahoma Health
19 Care Authority shall increase the personal needs
20 allowance for residents of nursing homes and
21 Intermediate Care Facilities for Individuals with
22 Intellectual Disabilities (ICFs/IID) from Fifty
23 Dollars (\$50.00) per month to Seventy-five
24 Dollars (\$75.00) per month per resident. The

1 increase shall be funded by Medicaid nursing home
2 providers, by way of a reduction of eighty-two
3 cents (\$0.82) per day deducted from the base
4 rate. Any additional cost shall be funded by the
5 Nursing Facility Quality of Care Fund, and

6 (2) effective January 1, 2020, all clinical employees
7 working in a licensed nursing facility shall be
8 required to receive at least four (4) hours
9 annually of Alzheimer's or dementia training, to
10 be provided and paid for by the facilities.

11 ~~3.~~ 2. The Department of Human Services shall expand its
12 statewide, toll-free, Senior-Info Line for senior citizen services
13 to include assistance with or information on long-term care services
14 in this state.

15 ~~4.~~ 3. The Oklahoma Health Care Authority shall develop a
16 nursing facility cost-reporting system that reflects the most
17 current costs experienced by nursing and specialized facilities.
18 The Oklahoma Health Care Authority shall utilize the most current
19 cost report data to estimate costs in determining daily per diem
20 rates.

21 ~~5.~~ 4. The Oklahoma Health Care Authority shall provide access
22 to the detailed Medicaid payment audit adjustments and implement an
23 appeal process for disputed payment audit adjustments to the
24 provider. Additionally, the Oklahoma Health Care Authority shall

1 make sufficient revisions to the nursing facility cost reporting
2 forms and electronic data input system so as to clarify what
3 expenses are allowable and appropriate for inclusion in cost
4 calculations.

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

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

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

21 SECTION 2. This act shall become effective November 1, 2023.

22
23 59-1-7338 TJ 02/13/23

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