

HOUSE OF REPRESENTATIVES
Wednesday, April 5, 2006

**Committee Substitute for
ENGROSSED
Senate Bill No. 1887**

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 1887 — By CAPPS of the Senate and WALKER and HAMILTON of the House.

An Act relating to public health and safety; amending 63 O.S. 2001, Section 1-1925.2, as last amended by Section 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-1925.2), which relates to staffing ratios of nursing facilities and intermediate care facilities; creating additional staffing ratios for certain units; and providing an effective date.

1 SECTION 1. AMENDATORY 63 O.S. 2001, Section 1-1925.2, as last amended by Section
2 1, Chapter 216, O.S.L. 2005 (63 O.S. Supp. 2005, Section 1-1925.2), is amended to read as fol-
3 lows:

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

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

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

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

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

12 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve residents, or
13 major fraction thereof, and

14 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen resi-
15 dents, or major fraction thereof.

16 2. From September 1, 2001, through August 31, 2003, nursing facilities subject to the
17 Nursing Home Care Act and intermediate care facilities for the mentally retarded with sev-
18 enteen or more beds shall maintain, in addition to other state and federal requirements re-
19 lated to the staffing of nursing facilities, the following minimum direct-care-staff-to-resident
20 ratios:

21 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every seven residents, or
22 major fraction thereof,

1 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every ten residents, or
2 major fraction thereof, and

3 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to every seventeen resi-
4 dents, or major fraction thereof.

5 3. On and after September 1, 2003, subject to the availability of funds, nursing facilities
6 subject to the Nursing Home Care Act and intermediate care facilities for the mentally re-
7 tarded with seventeen or more beds shall maintain, in addition to other state and federal re-
8 quirements related to the staffing of nursing facilities, the following minimum direct-care-
9 staff-to-resident ratios:

10 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to every six residents, or ma-
11 jor fraction thereof,

12 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every eight residents, or
13 major fraction thereof, ~~and~~

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

16 d. at least two direct-care staff persons on duty and awake at all times in an
17 Alzheimer's, memory or dementia care unit, in addition to the ratios provid-
18 ed in subparagraphs a through c of this paragraph.

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

22 5. a. On and after January 1, 2004, a facility that has been determined by the State

1 Department of Health to have been in compliance with the provisions of
2 paragraph 3 of this subsection since the implementation date of this sub-
3 section, may implement flexible staff scheduling; provided, however, such
4 facility shall continue to maintain a direct-care service rate of at least two
5 and eighty-six one-hundredths (2.86) hours of direct-care service per resi-
6 dent per day.

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

11 c. As used in this paragraph, “flexible staff-scheduling” means maintaining:

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

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

17 (3) at least two direct-care staff persons on duty and awake at all times, ~~;~~
18 and

19 (4) at least two direct-care staff persons on duty and awake at all times in
20 an Alzheimer’s, memory or dementia care unit, in addition to the ratios
21 provided in divisions (1) through (3) of this subparagraph.

22 6. a. On and after January 1, 2004, the Department shall require a facility to

1 maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of
2 this subsection if the facility has been determined by the Department to be
3 deficient with regard to:

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

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

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

21 7. a. For facilities that have been granted flexible staff-scheduling privileges,
22 the Department shall monitor and evaluate facility compliance with the

1 flexible staff-scheduling staffing provisions of paragraph 5 of this subsec-
2 tion through reviews of monthly staffing reports, results of complaint inves-
3 tigation and inspections.

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

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

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

13 (2) the second determination within a two-year period shall require that
14 shift-based, staff-to-resident ratios be maintained for a minimum peri-
15 od of six (6) months, and

16 (3) the third determination within a two-year period shall require that
17 shift-based, staff-to-resident ratios be maintained for a minimum peri-
18 od of twelve (12) months.

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

22 D. The State Board of Health shall promulgate rules prescribing staffing requirements

1 for intermediate care facilities for the mentally retarded serving six or fewer clients and for
2 intermediate care facilities for the mentally retarded serving sixteen or fewer clients.

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

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

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

1 mediate care facilities for the mentally retarded with seventeen or more beds, in addition to
2 other state and federal requirements related to the staffing of nursing facilities, shall main-
3 tain direct-care, flexible staff-scheduling staffing levels based on an overall three and eight-
4 tenths (3.8) hours per day per occupied bed.

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

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

19 5. In the event that the state Medicaid program reimbursement rate for facilities sub-
20 ject to the Nursing Home Care Act, and intermediate care facilities for the mentally retard-
21 ed having seventeen or more beds is reduced below actual audited costs, the requirements
22 for staffing ratio levels shall be adjusted to the appropriate levels provided in paragraphs 1

1 through 4 of this subsection.

2 G. For purposes of this subsection:

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

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

9 H. 1. The Oklahoma Health Care Authority shall require all nursing facilities subject
10 to the provisions of the Nursing Home Care Act and intermediate care facilities for the men-
11 tally retarded with seventeen or more beds to submit a monthly report on staffing ratios on
12 a form that the Authority shall develop.

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

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

18 a. administrative penalties shall not accrue until the Authority notifies the fa-
19 cility in writing that the report was not timely submitted as required, and

20 b. a minimum of a one-day penalty shall be assessed in all instances.

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

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

4 I. 1. All entities regulated by this state that provide long-term care services shall uti-
5 lize a single assessment tool to determine client services needs. The tool shall be developed
6 by the Oklahoma Health Care Authority in consultation with the State Department of
7 Health.

8 2. a. The Oklahoma Nursing Facility Funding Advisory Committee is hereby cre-
9 ated and shall consist of the following:

10 (1) four members selected by the Oklahoma Association of Health Care
11 Providers,

12 (2) three members selected by the Oklahoma Association of Homes and
13 Services for the Aging, and

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

15 The Chair shall be elected by the committee. No state employees may be ap-
16 pointed to serve.

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

- c. The advisory committee shall be staffed and advised by the Oklahoma Health Care Authority.
- d. The new methodology will be submitted for approval to the Board of the Oklahoma Health Care Authority by January 15, 2005, and shall be finalized by July 1, 2005. The new methodology will apply only to new funds that become available for Medicaid nursing facility reimbursement after the methodology of this paragraph has been finalized. Existing funds paid to nursing homes will not be subject to the methodology of this paragraph. The methodology as outlined in this paragraph will only be applied to any new funding for nursing facilities appropriated above and beyond the funding amounts effective on January 15, 2005.
- e. The new methodology shall divide the payment into two components:
 - (1) direct care which includes allowable costs for registered nurses, licensed practical nurses, certified medication aides and certified nurse aides. The direct care component of the rate shall be a facility-specific rate, directly related to each facility's actual expenditures on direct care, and
 - (2) other costs.
- f. The Oklahoma Health Care Authority, in calculating the base year prospective direct care rate component, shall use the following criteria:
 - (1) to construct an array of facility per diem allowable expenditures on direct care, the Authority shall use the most recent data available. The

- 1 limit on this array shall be no less than the ninetieth percentile,
- 2 (2) each facility's direct care base-year component of the rate shall be the
- 3 lesser of the facility's allowable expenditures on direct care or the lim-
- 4 it,
- 5 (3) other rate components shall be determined by the Oklahoma Nursing
- 6 Facility Funding Advisory Committee in accordance with federal reg-
- 7 ulations and requirements, and
- 8 (4) rate components in divisions (2) and (3) of this subparagraph shall be
- 9 re-based and adjusted for inflation when additional funds are made
- 10 available.

11 3. The Department of Human Services shall expand its statewide toll-free, Senior-Info

12 Line for senior citizen services to include assistance with or information on long-term care

13 services in this state.

14 4. The Oklahoma Health Care Authority shall develop a nursing facility cost-reporting

15 system that reflects the most current costs experienced by nursing and specialized facili-

16 ties. The Oklahoma Health Care Authority shall utilize the most current cost report data to

17 estimate costs in determining daily per diem rates.

18 J. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-

19 four Dollars and eleven cents (\$94.11), plus the increases in actual audited costs, over and

20 above the actual audited costs reflected in the cost reports submitted for the most current

21 cost-reporting period, and the direct-care, flexible staff-scheduling staffing level has been

22 prospectively funding at four and one-tenth (4.1) hours per day per occupied bed, the Au-

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

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

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

7 SECTION 2. This act shall become effective November 1, 2006.
8 COMMITTEE REPORT BY: COMMITTEE ON HEALTH AND HUMAN SERVICES, dated
4-4-06 — DO PASS, As Amended and Coauthored.

9

10

11

12

13

14

15

16

17

18

19

20

21 UNDERLINED language denotes Amendments to present Statutes.

BOLD FACE CAPITALIZED language denotes Committee Amendments.

22 ~~Strike thru~~ language denotes deletion from present Statutes.