

1 STATE OF OKLAHOMA

2 1st Session of the 57th Legislature (2019)

3 HOUSE BILL 1013

By: Bush

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5
6 AS INTRODUCED

7 An Act relating to long-term care; amending 56 O.S.
8 2011, Section 2002, as last amended by Section 1,
Chapter 183, O.S.L. 2013 (56 O.S. Supp. 2018, Section
9 2002), which relates to nursing facility fees;
10 increasing ombudsmen staff employed by the Department
of Human Services; directing payment of accrued
11 monies to implement and maintain certain counseling
services; amending 56 O.S. 2011, Sections 3002.5 and
12 3002.7, which relate to the Oklahoma Options
Counseling for Long-term Care Program Act; modifying
13 short title; modifying terms; updating administration
for the Options Counseling for Long-term Care
14 Program; removing subject to available funding
provision; requiring consultation prior to patient
15 discharge; directing State Department of Health to
promulgate rules; and providing an effective date.

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

18 SECTION 1. AMENDATORY 56 O.S. 2011, Section 2002, as
19 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
20 2018, Section 2002), is amended to read as follows:

21 Section 2002. A. For the purpose of providing quality care
22 enhancements, the Oklahoma Health Care Authority is authorized to
23 and shall assess a Nursing Facilities Quality of Care Fee pursuant
24 to this section upon each nursing facility licensed in this state.

1 Facilities operated by the Oklahoma Department of Veterans Affairs
2 shall be exempt from this fee. Quality of care enhancements
3 include, but are not limited to, the purposes specified in this
4 section.

5 B. As a basis for determining the Nursing Facilities Quality of
6 Care Fee assessed upon each licensed nursing facility, the Authority
7 shall calculate a uniform per-patient day rate. The rate shall be
8 calculated by dividing six percent (6%) of the total annual patient
9 gross receipts of all licensed nursing facilities in this state by
10 the total number of patient days for all licensed nursing facilities
11 in this state. The result shall be the per-patient day rate.
12 Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee
13 shall not be increased unless specifically authorized by the
14 Legislature.

15 C. Pursuant to any approved Medicaid waiver and pursuant to
16 subsection N of this section, the Nursing Facilities Quality of Care
17 Fee shall not exceed the amount or rate allowed by federal law for
18 nursing home licensed bed days.

19 D. The Nursing Facilities Quality of Care Fee owed by a
20 licensed nursing facility shall be calculated by the Authority by
21 adding the daily patient census of a licensed nursing facility, as
22 reported by the facility for each day of the month, and by
23 multiplying the ensuing figure by the per-patient day rate
24

1 determined pursuant to the provisions of subsection B of this
2 section.

3 E. Each licensed nursing facility which is assessed the Nursing
4 Facilities Quality of Care Fee shall be required to file a report on
5 a monthly basis with the Authority detailing the daily patient
6 census and patient gross receipts at such time and in such manner as
7 required by the Authority.

8 F. 1. The Nursing Facilities Quality of Care Fee for a
9 licensed nursing facility for the period beginning October 1, 2000,
10 shall be determined using the daily patient census and annual
11 patient gross receipts figures reported to the Authority for the
12 calendar year 1999 upon forms supplied by the Authority.

13 2. Annually the Nursing Facilities Quality of Care Fee shall be
14 determined by:

15 a. using the daily patient census and patient gross
16 receipts reports received by the Authority for the
17 most recent available twelve (12) months, and

18 b. annualizing those figures.

19 Each year thereafter, the annualization of the Nursing
20 Facilities Quality of Care Fee specified in this paragraph shall be
21 subject to the limitation in subsection B of this section unless the
22 provision of subsection C of this section is met.

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1 G. The payment of the Nursing Facilities Quality of Care Fee by
2 licensed nursing facilities shall be an allowable cost for Medicaid
3 reimbursement purposes.

4 H. 1. There is hereby created in the State Treasury a
5 revolving fund to be designated the "Nursing Facility Quality of
6 Care Fund".

7 2. The fund shall be a continuing fund, not subject to fiscal
8 year limitations, and shall consist of:

- 9 a. all monies received by the Authority pursuant to this
10 section and otherwise specified or authorized by law,
- 11 b. monies received by the Authority due to federal
12 financial participation pursuant to Title XIX of the
13 Social Security Act, and
- 14 c. interest attributable to investment of money in the
15 fund.

16 3. All monies accruing to the credit of the fund are hereby
17 appropriated and shall be budgeted and expended by the Authority
18 for:

- 19 a. reimbursement of the additional costs paid to
20 Medicaid-certified nursing facilities for purposes
21 specified by Sections 1-1925.2, ~~5022.1~~ and 5022.2 of
22 Title 63 of the Oklahoma Statutes,

- 1 b. reimbursement of the Medicaid rate increases for
2 intermediate care facilities for the mentally retarded
3 (ICFs/MR),
- 4 c. nonemergency transportation services for Medicaid-
5 eligible nursing home clients,
- 6 d. eyeglass and denture services for Medicaid-eligible
7 nursing home clients,
- 8 e. ~~ten~~ twenty-five additional ombudsmen employed by the
9 Department of Human Services,
- 10 f. ten additional nursing facility inspectors employed by
11 the State Department of Health,
- 12 g. pharmacy and other Medicaid services to qualified
13 Medicare beneficiaries whose incomes are at or below
14 one hundred percent (100%) of the federal poverty
15 level; provided however, pharmacy benefits authorized
16 for such qualified Medicare beneficiaries shall be
17 suspended if the federal government subsequently
18 extends pharmacy benefits to this population,
- 19 h. costs incurred by the Authority in the administration
20 of the provisions of this section and any programs
21 created pursuant to this section,
- 22 i. durable medical equipment and supplies services for
23 Medicaid-eligible elderly adults, and
- 24

1 j. personal needs allowance increases for residents of
2 nursing homes and Intermediate Care Facilities for the
3 Mentally Retarded (ICFs/MR) from Thirty Dollars
4 (\$30.00) to Fifty Dollars (\$50.00) per month per
5 resident, and

6 k. actual costs incurred by the Department of Human
7 Services' Office of the State Long-Term Care Ombudsman
8 to implement and maintain the Oklahoma Person-centered
9 Options Counseling for Long-term Care Program created
10 in Section 3002.7 of this title.

11 4. Expenditures from the fund shall be made upon warrants
12 issued by the State Treasurer against claims filed as prescribed by
13 law with the Director of the Office of Management and Enterprise
14 Services for approval and payment.

15 5. The fund and the programs specified in this section funded
16 by revenues collected from the Nursing Facilities Quality of Care
17 Fee pursuant to this section are exempt from budgetary cuts,
18 reductions, or eliminations.

19 6. The Medicaid rate increases for intermediate care facilities
20 for the mentally retarded (ICFs/MR) shall not exceed the net
21 Medicaid rate increase for nursing facilities including, but not
22 limited to, the Medicaid rate increase for which Medicaid-certified
23 nursing facilities are eligible due to the Nursing Facilities
24 Quality of Care Fee less the portion of that increase attributable

1 to treating the Nursing Facilities Quality of Care Fee as an
2 allowable cost.

3 7. The reimbursement rate for nursing facilities shall be made
4 in accordance with Oklahoma's Medicaid reimbursement rate
5 methodology and the provisions of this section.

6 8. No nursing facility shall be guaranteed, expressly or
7 otherwise, that any additional costs reimbursed to the facility will
8 equal or exceed the amount of the Nursing Facilities Quality of Care
9 Fee paid by the nursing facility.

10 I. 1. In the event that federal financial participation
11 pursuant to Title XIX of the Social Security Act is not available to
12 the Oklahoma Medicaid program, for purposes of matching expenditures
13 from the Nursing Facility Quality of Care Fund at the approved
14 federal medical assistance percentage for the applicable fiscal
15 year, the Nursing Facilities Quality of Care Fee shall be null and
16 void as of the date of the nonavailability of such federal funding,
17 through and during any period of nonavailability.

18 2. In the event of an invalidation of this section by any court
19 of last resort under circumstances not covered in subsection J of
20 this section, the Nursing Facilities Quality of Care Fee shall be
21 null and void as of the effective date of that invalidation.

22 3. In the event that the Nursing Facilities Quality of Care Fee
23 is determined to be null and void for any of the reasons enumerated
24 in this subsection, any Nursing Facilities Quality of Care Fee

1 assessed and collected for any periods after such invalidation shall
2 be returned in full within sixty (60) days by the Authority to the
3 nursing facility from which it was collected.

4 J. 1. If any provision of this section or the application
5 thereof shall be adjudged to be invalid by any court of last resort,
6 such judgment shall not affect, impair or invalidate the provisions
7 of the section, but shall be confined in its operation to the
8 provision thereof directly involved in the controversy in which such
9 judgment was rendered. The applicability of such provision to other
10 persons or circumstances shall not be affected thereby.

11 2. This subsection shall not apply to any judgment that affects
12 the rate of the Nursing Facilities Quality of Care Fee, its
13 applicability to all licensed nursing homes in the state, the usage
14 of the fee for the purposes prescribed in this section, and/or the
15 ability of the Authority to obtain full federal participation to
16 match its expenditures of the proceeds of the fee.

17 K. The Authority shall promulgate rules for the implementation
18 and enforcement of the Nursing Facilities Quality of Care Fee
19 established by this section.

20 L. The Authority shall provide for administrative penalties in
21 the event nursing facilities fail to:

- 22 1. Submit the Quality of Care Fee;
- 23 2. Submit the fee in a timely manner;
- 24 3. Submit reports as required by this section; or

1 4. Submit reports timely.

2 M. As used in this section:

3 1. "Nursing facility" means any home, establishment or
4 institution, or any portion thereof, licensed by the State
5 Department of Health as defined in Section 1-1902 of Title 63 of the
6 Oklahoma Statutes;

7 2. "Medicaid" means the medical assistance program established
8 in Title XIX of the federal Social Security Act and administered in
9 this state by the Authority;

10 3. "Patient gross revenues" means gross revenues received in
11 compensation for services provided to residents of nursing
12 facilities including, but not limited to, client participation. The
13 term "patient gross revenues" shall not include amounts received by
14 nursing facilities as charitable contributions; and

15 4. "Additional costs paid to Medicaid-certified nursing
16 facilities under Oklahoma's Medicaid reimbursement methodology"
17 means both state and federal Medicaid expenditures including, but
18 not limited to, funds in excess of the aggregate amounts that would
19 otherwise have been paid to Medicaid-certified nursing facilities
20 under the Medicaid reimbursement methodology which have been updated
21 for inflationary, economic, and regulatory trends and which are in
22 effect immediately prior to the inception of the Nursing Facilities
23 Quality of Care Fee.

1 N. 1. As per any approved federal Medicaid waiver, the
2 assessment rate subject to the provision of subsection C of this
3 section is to remain the same as those rates that were in effect
4 prior to January 1, 2012, for all state-licensed continuum of care
5 facilities.

6 2. Any facilities that made application to the State Department
7 of Health to become a licensed continuum of care facility no later
8 than January 1, 2012, shall be assessed at the same rate as those
9 facilities assessed pursuant to paragraph 1 of this subsection;
10 provided, that any facility making said application shall receive
11 the license on or before September 1, 2012. Any facility that fails
12 to receive such license from the State Department of Health by
13 September 1, 2012, shall be assessed at the rate established by
14 subsection C of this section subsequent to September 1, 2012.

15 O. If any provision of this section, or the application
16 thereof, is determined by any controlling federal agency, or any
17 court of last resort to prevent the state from obtaining federal
18 financial participation in the state's Medicaid program, such
19 provision shall be deemed null and void as of the date of the
20 nonavailability of such federal funding and through and during any
21 period of nonavailability. All other provisions of the bill shall
22 remain valid and enforceable.

23 SECTION 2. AMENDATORY 56 O.S. 2011, Section 3002.5, is
24 amended to read as follows:

1 Section 3002.5 This act shall be known and may be cited as the
2 "Oklahoma Person-centered Options Counseling for Long-term Care
3 Program Act".

4 SECTION 3. AMENDATORY 56 O.S. 2011, Section 3002.7, is
5 amended to read as follows:

6 Section 3002.7 A. As used in the Oklahoma Person-centered
7 Options Counseling for Long-term Care Program Act:

8 1. "Long-term care facility" means a nursing facility ~~or~~
9 ~~assisted living facility;~~

10 2. "~~Options~~ Person-centered options counseling for long-term
11 care" means the process of providing services pursuant to the
12 Oklahoma Person-centered Options Counseling for Long-term Care
13 Program within the ~~Aging and Disability Resource Consortium (ADRC)~~
14 Department of Human Services Aging Services Division's No Wrong Door
15 Initiative; and

16 3. "Representative" means a family member, attorney, ~~hospital~~
17 ~~social worker,~~ legal guardian or ~~any other person~~ designated lay
18 caregiver chosen by an individual to act on behalf of the
19 individual:

- 20 a. seeking a long-term care consultation, or
21 b. ~~admitted~~ seeking admission to a long-term care program
22 or facility.

23 B. The Oklahoma Person-centered Options Counseling for Long-
24 term Care Program is hereby created within the Department of Human

1 Services Aging Services Division and administered within the Aging
2 Services ~~Division Aging and Disability Resource Consortium~~
3 Division's No Wrong Door Initiative and Office of the State Long-
4 Term Care Ombudsman.

5 C. ~~Subject to available funding, the~~ The Oklahoma Person-
6 centered Options Counseling for Long-term Care Program, ~~through its~~
7 ~~partner community agencies,~~ shall provide individuals or their
8 representatives, or both, prior to the individual's discharge from a
9 hospital, rehabilitation center or similar health care facility and
10 prior to admission to a long-term care facility, with long-term care
11 options consultation by phone or in person, which shall include at a
12 minimum the following:

- 13 1. A basic review of an individual's need for information;
- 14 2. A review of appropriate long-term care options and costs, if
15 available;
- 16 3. A review of providers who accept either public or private
17 payment or both public and private payment for long-term care
18 services;
- 19 4. A summary of factors to consider when choosing among the
20 available programs, services, and benefits; and
- 21 5. A summary of opportunities and methods for maximizing the
22 independence and self-reliance of the individual, including support
23 services provided by the family and friends of the individual.

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1 D. ~~Options~~ Person-centered options counseling for long-term
2 care ~~under,~~ in addition to the components of this section, may be
3 provided at any time, whether before or after the individual who is
4 the subject of a long-term care consultation has been admitted to a
5 long-term facility.

6 E. Nothing in the Oklahoma Person-centered Options Counseling
7 for Long-term Care Program Act shall be used to implement any
8 provisions of the federal Patient Protection and Affordable Care
9 Act.

10 F. The State Department of Health shall promulgate rules
11 necessary to verify long-term care facility compliance with the
12 provisions of this section.

13 SECTION 4. This act shall become effective November 1, 2019.

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