

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1902

By: McEntire

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8 COMMITTEE SUBSTITUTE

9 [long-term care - nursing facility incentive

10 reimbursement rate plan - reimbursement

11 methodology - quality measures - Nursing

12 Facilities Quality of Care Fee - Oklahoma Health

13 Care Authority - effective date -

14 emergency]

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

19 SECTION 1. AMENDATORY 56 O.S. 2011, Section 1011.5, is
20 amended to read as follows:

21 Section 1011.5 A. 1. The Oklahoma Health Care Authority ~~in~~
22 ~~cooperation with the State Department of Health, a statewide~~
23 ~~organization of the elderly, representatives of the Health and Human~~
24 ~~Services Interagency Task Force on long-term care, and~~

1 ~~representatives of both statewide associations of nursing facility~~
2 ~~operators shall develop an incentive reimbursement rate plan for~~
3 ~~nursing facilities that shall include, but may not be limited to,~~
4 ~~the following:~~

5 1. ~~Quality of life indicators that relate to total management~~
6 ~~initiatives;~~

7 2. ~~Quality of care indicators;~~

8 3. ~~Family and resident satisfaction survey results;~~

9 4. ~~State Department of Health survey results;~~

10 5. ~~Employee satisfaction survey results;~~

11 6. ~~CNA training and education requirements;~~

12 7. ~~Patient acuity level;~~

13 8. ~~Direct care expenditures pursuant to subparagraph e of~~
14 ~~paragraph 2 of subsection I of Section 1-1925.2 of Title 63 of the~~
15 ~~Oklahoma Statutes; and~~

16 9. ~~Other incentives which include, without limitation,~~
17 ~~participation in quality initiative activities performed and/or~~
18 ~~recommended by the Oklahoma Foundation for Medical Quality in~~
19 ~~capital improvements, in service education of direct staff, and~~
20 ~~procurement of reasonable amounts of liability insurance focused on~~
21 ~~improving resident outcomes and resident quality of life.~~

22 2. Under the current rate methodology, the Authority shall
23 reserve Five Dollars (\$5.00) per patient day designated for the
24 quality assurance component that nursing facilities can earn for

1 improvement or performance achievement of resident-centered outcomes
2 metrics. To fund the quality assurance component, Two Dollars
3 (\$2.00) shall be deducted from each nursing facility's per diem
4 rate, and matched with Three Dollars (\$3.00) per day funded by the
5 Authority. Payments to nursing facilities that achieve specific
6 metrics shall be treated as an "add back" to their net reimbursement
7 per diem. Dollar values assigned to each metric shall be determined
8 so that an average of the Five Dollars (\$5.00) quality incentive is
9 made to qualifying nursing facilities.

10 3. Pay-for-performance payments may be earned quarterly and
11 based on facility-specific performance achievement of four (4)
12 equally weighted, Long-Stay Quality Measures as defined by the
13 Centers for Medicare and Medicaid Services (CMS).

14 4. Contracted Medicaid long-term care providers may earn
15 payment by achieving either five percent (5%) relative improvement
16 each quarter from baseline or by achieving the National Average
17 Benchmark or better for each individual quality metric.

18 5. Pursuant to federal Medicaid approval, any funds that remain
19 as a result of providers failing to meet the quality assurance
20 metrics shall be pooled and redistributed to those who achieve the
21 quality assurance metrics each quarter. If federal approval is not
22 received, any remaining funds shall be deposited in the Quality of
23 Care fee fund authorized in Section 2002 of this title.

1 6. The Authority shall establish an advisory group with
2 consumer, provider and state agency representation to recommend
3 quality measures to be included in the pay-for-performance program
4 and to provide feedback on program performance and recommendations
5 for improvement. The quality measures shall be reviewed annually
6 and subject to change every four (4) years through the agency's
7 promulgation of rules. The Authority shall insure adherence to the
8 following criteria in determining the quality measures:

- 9 a. direct benefit to resident care outcomes,
- 10 b. applies to Medicaid, long-stay residents, and
- 11 c. need for quality improvement using the Centers for
12 Medicare and Medicaid Services (CMS) ranking for
13 Oklahoma.

14 7. The Authority shall begin the pay-for-performance program
15 focusing on improving the following CMS nursing home quality
16 measures:

- 17 a. percentage of high-risk long-stay residents with
18 pressure ulcers,
- 19 b. percentage of long-stay residents who lose too much
20 weight,
- 21 c. percentage of long-stay residents with a urinary tract
22 infection, and
- 23 d. percentage of long-stay residents who received an
24 antipsychotic medication.

1 B. The Oklahoma Health Care Authority shall negotiate with the
2 Centers for Medicare and Medicaid Services to include the authority
3 to base provider reimbursement rates for nursing facilities on the
4 criteria specified in subsection A of this section.

5 C. The Oklahoma Health Care Authority shall ~~make refinements to~~
6 ~~the incentive reimbursement rate plan~~ audit the program to ensure
7 transparency and integrity. ~~These refinements shall include, but~~
8 ~~may not be limited to, the following:~~

9 1. ~~Establishing minimum standard for incentive payments,~~
10 ~~through higher percentiles using evidence-based criteria or~~
11 ~~introduction of absolute standards above the current benchmark;~~

12 2. ~~Using state survey results as a threshold metric for~~
13 ~~determining if facilities should receive incentive payment and~~
14 ~~suspend facilities falling below the threshold;~~

15 3. ~~Taking steps to strengthen data collection process; and~~

16 4. ~~Establishing an advisory group with consumer, provider and~~
17 ~~state agency representation to provide feedback on program~~
18 ~~performance and recommendations for improvements.~~

19 D. The Oklahoma Health Care Authority shall provide an annual
20 report of the incentive reimbursement rate plan to the Governor, the
21 Speaker of the House of Representatives, and the President Pro
22 Tempore of the Senate by December 31 of each year. The report shall
23 include, but not be limited to, an analysis of the previous fiscal
24 year including incentive payments, ratings, and notable trends.

1 SECTION 2. AMENDATORY 56 O.S. 2011, Section 2002, as
2 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
3 2018, Section 2002), is amended to read as follows:

4 Section 2002. A. For the purpose of providing quality care
5 enhancements, the Oklahoma Health Care Authority is authorized to
6 and shall assess a Nursing Facilities Quality of Care Fee pursuant
7 to this section upon each nursing facility licensed in this state.
8 Facilities operated by the Oklahoma Department of Veterans Affairs
9 shall be exempt from this fee. Quality of care enhancements
10 include, but are not limited to, the purposes specified in this
11 section.

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

22 C. Pursuant to any approved Medicaid waiver and pursuant to
23 subsection N of this section, the Nursing Facilities Quality of Care
24

1 Fee shall not exceed the amount or rate allowed by federal law for
2 nursing home licensed bed days.

3 D. The Nursing Facilities Quality of Care Fee owed by a
4 licensed nursing facility shall be calculated by the Authority by
5 adding the daily patient census of a licensed nursing facility, as
6 reported by the facility for each day of the month, and by
7 multiplying the ensuing figure by the per-patient day rate
8 determined pursuant to the provisions of subsection B of this
9 section.

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

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

20 2. Annually the Nursing Facilities Quality of Care Fee shall be
21 determined by:

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

1 b. annualizing those figures.

2 Each year thereafter, the annualization of the Nursing
3 Facilities Quality of Care Fee specified in this paragraph shall be
4 subject to the limitation in subsection B of this section unless the
5 provision of subsection C of this section is met.

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

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

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

14 a. all monies received by the Authority pursuant to this
15 section and otherwise specified or authorized by law,

16 b. monies received by the Authority due to federal
17 financial participation pursuant to Title XIX of the
18 Social Security Act, and

19 c. interest attributable to investment of money in the
20 fund.

21 3. All monies accruing to the credit of the fund are hereby
22 appropriated and shall be budgeted and expended by the Authority
23 for:

- 1 a. reimbursement of the additional costs paid to
2 Medicaid-certified nursing facilities for purposes
3 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
4 Title 63 of the Oklahoma Statutes,
- 5 b. reimbursement of the Medicaid rate increases for
6 ~~intermediate care facilities for the mentally retarded~~
7 ~~(ICFs/MR)~~ Intermediate Care Facilities for Individuals
8 with Intellectual Disabilities (ICFs/IID),
- 9 c. nonemergency transportation services for Medicaid-
10 eligible nursing home clients,
- 11 d. eyeglass and denture services for Medicaid-eligible
12 nursing home clients,
- 13 e. ~~ten additional~~ fifteen ombudsmen employed by the
14 Department of Human Services,
- 15 f. ten additional nursing facility inspectors employed by
16 the State Department of Health,
- 17 g. pharmacy and other Medicaid services to qualified
18 Medicare beneficiaries whose incomes are at or below
19 one hundred percent (100%) of the federal poverty
20 level; provided however, pharmacy benefits authorized
21 for such qualified Medicare beneficiaries shall be
22 suspended if the federal government subsequently
23 extends pharmacy benefits to this population,
- 24

- 1 h. costs incurred by the Authority in the administration
2 of the provisions of this section and any programs
3 created pursuant to this section,
4 i. durable medical equipment and supplies services for
5 Medicaid-eligible elderly adults, and
6 j. personal needs allowance increases for residents of
7 nursing homes and Intermediate Care Facilities for ~~the~~
8 ~~Mentally Retarded (ICFs/MR)~~ Individuals with
9 Intellectual Disabilities (ICFs/IID) from Thirty
10 Dollars (\$30.00) to Fifty Dollars (\$50.00) per month
11 per resident.

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

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

20 6. The Medicaid rate increases for ~~intermediate care facilities~~
21 ~~for the mentally retarded (ICFs/MR)~~ Intermediate Care Facilities for
22 Individuals with Intellectual Disabilities (ICFs/IID) shall not
23 exceed the net Medicaid rate increase for nursing facilities
24 including, but not limited to, the Medicaid rate increase for which

1 Medicaid-certified nursing facilities are eligible due to the
2 Nursing Facilities Quality of Care Fee less the portion of that
3 increase attributable to treating the Nursing Facilities Quality of
4 Care Fee as an allowable cost.

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

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

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

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

24

1 3. In the event that the Nursing Facilities Quality of Care Fee
2 is determined to be null and void for any of the reasons enumerated
3 in this subsection, any Nursing Facilities Quality of Care Fee
4 assessed and collected for any periods after such invalidation shall
5 be returned in full within sixty (60) days by the Authority to the
6 nursing facility from which it was collected.

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

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

20 K. The Authority shall promulgate rules for the implementation
21 and enforcement of the Nursing Facilities Quality of Care Fee
22 established by this section.

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

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

5 M. As used in this section:

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

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

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

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

1 effect immediately prior to the inception of the Nursing Facilities
2 Quality of Care Fee.

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

8 2. Any facilities that made application to the State Department
9 of Health to become a licensed continuum of care facility no later
10 than January 1, 2012, shall be assessed at the same rate as those
11 facilities assessed pursuant to paragraph 1 of this subsection;
12 provided, that any facility making ~~said~~ the application shall
13 receive the license on or before September 1, 2012. Any facility
14 that fails to receive such license from the State Department of
15 Health by September 1, 2012, shall be assessed at the rate
16 established by subsection C of this section subsequent to September
17 1, 2012.

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

3 SECTION 3. AMENDATORY 63 O.S. 2011, Section 1-1925.2, is
4 amended to read as follows:

5 Section 1-1925.2 A. The Oklahoma Health Care Authority shall
6 fully recalculate and reimburse nursing facilities and ~~intermediate~~
7 ~~care facilities for the mentally retarded (ICFs/MR)~~ Intermediate
8 Care Facilities for Individuals with Intellectual Disabilities
9 (ICFs/IID) from the Nursing Facility Quality of Care Fund beginning
10 October 1, 2000, the average actual, audited costs reflected in
11 previously submitted cost reports for the cost-reporting period that
12 began July 1, 1998, and ended June 30, 1999, inflated by the
13 federally published inflationary factors for the two (2) years
14 appropriate to reflect present-day costs at the midpoint of the July
15 1, 2000, through June 30, 2001, rate year.

16 1. The recalculations provided for in this subsection shall be
17 consistent for both nursing facilities and ~~intermediate care~~
18 ~~facilities for the mentally retarded (ICFs/MR)~~, and shall be
19 ~~calculated in the same manner as has been mutually understood by the~~
20 ~~long-term care industry and the Oklahoma Health Care Authority~~
21 Intermediate Care Facilities for Individuals with Intellectual
22 Disabilities (ICFs/IID).

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

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

- 6 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
7 every eight residents, or major fraction thereof,
- 8 b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to
9 every twelve residents, or major fraction thereof, and
- 10 c. from 11:00 p.m. to 7:00 a.m., one direct-care staff to
11 every seventeen residents, or major fraction thereof.

12 2. From September 1, 2001, through August 31, 2003, nursing
13 facilities subject to the Nursing Home Care Act and intermediate
14 care facilities for the mentally retarded with seventeen or more
15 beds shall maintain, in addition to other state and federal
16 requirements related to the staffing of nursing facilities, the
17 following minimum direct-care-staff-to-resident ratios:

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

24

1 3. On and after ~~September 1, 2003~~, subject to the availability
2 ~~of funds~~ October 1, 2019, nursing facilities subject to the Nursing
3 Home Care Act and intermediate care facilities for the mentally
4 retarded with seventeen or more beds shall maintain, in addition to
5 other state and federal requirements related to the staffing of
6 nursing facilities, the following minimum direct-care-staff-to-
7 resident ratios:

8 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to
9 every six residents, or major fraction thereof,

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

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

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

18 5. a. On and after January 1, ~~2004~~ 2020, a facility ~~that has~~
19 ~~been determined by the State Department of Health to~~
20 ~~have been in compliance with the provisions of~~
21 ~~paragraph 3 of this subsection since the~~
22 ~~implementation date of this subsection,~~ may implement
23 flexible twenty-four-hour-based staff_scheduling;
24 provided, however, such facility shall continue to

1 maintain a direct-care service rate of at least ~~two~~
2 ~~and eighty-six one-hundredths (2.86)~~ two and nine-
3 tenths (2.9) hours of direct-care service per resident
4 per day, the same to be calculated based on average
5 direct care staff maintained over a twenty-four-hour
6 period.

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

13 c. As used in this paragraph, "~~flexible~~ twenty-four-hour-
14 based staff-scheduling" means maintaining:

15 (1) a direct-care-staff-to-resident ratio based on
16 overall hours of direct-care service per resident
17 per day rate of not less than ~~two and eighty-six~~
18 ~~one-hundredths (2.86)~~ two and ninety one-
19 hundredths (2.90) hours per day,

20 (2) a direct-care-staff-to-resident ratio of at least
21 one direct-care staff person on duty to every
22 ~~sixteen~~ fifteen residents at all times or major
23 fraction thereof, and
24

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

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

8 (1) the provisions of paragraph 3 of this subsection,

9 (2) fraudulent reporting of staffing on the Quality
10 of Care Report, or

11 (3) a complaint and/or survey investigation that has
12 determined substandard quality of care, ~~or~~

13 ~~(4) a complaint and/or survey investigation that has~~
14 ~~determined quality-of-care problems related to~~ as
15 a result of insufficient staffing.

16 b. The Department shall require a facility described in
17 subparagraph a of this paragraph to achieve and
18 maintain the shift-based, staff-to-resident ratios
19 provided in paragraph 3 of this subsection for a
20 minimum of three (3) months before being considered
21 eligible to implement ~~flexible~~ twenty-four-hour-based
22 staff_scheduling as defined in subparagraph c of
23 paragraph 5 of this subsection.
24

1 c. Upon a subsequent determination by the Department that
2 the facility has achieved and maintained for at least
3 three (3) months the shift-based, staff-to-resident
4 ratios described in paragraph 3 of this subsection,
5 and has corrected any deficiency described in
6 subparagraph a of this paragraph, the Department shall
7 notify the facility of its eligibility to implement
8 ~~flexible~~ twenty-four-hour-based staff-scheduling
9 privileges.

10 7. a. For facilities that ~~have been granted flexible~~ utilize
11 twenty-four-hour-based staff-scheduling privileges,
12 the Department shall monitor and evaluate facility
13 compliance with the ~~flexible~~ twenty-four-hour-based
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)~~ twelve (12) 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~~. The facility may apply for
14 permission to use twenty-four-hour-based staffing
15 methodology after two (2) years.

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

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

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

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

20 2. When the state Medicaid program reimbursement rate reflects
21 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
22 increases in actual audited costs over and above the actual audited
23 costs reflected in the cost reports submitted for the most current
24 cost-reporting period and the costs estimated by the Oklahoma Health

1 Care Authority to increase the direct-care flexible staff-scheduling
2 staffing level from three and two-tenths (3.2) hours per day per
3 occupied bed to three and eight-tenths (3.8) hours per day per
4 occupied bed, all nursing facilities subject to the provisions of
5 the Nursing Home Care Act and intermediate care facilities for the
6 mentally retarded with seventeen or more beds, in addition to other
7 state and federal requirements related to the staffing of nursing
8 facilities, shall maintain direct-care, flexible staff-scheduling
9 staffing levels based on an overall three and eight-tenths (3.8)
10 hours per day per occupied bed.

11 3. When the state Medicaid program reimbursement rate reflects
12 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
13 increases in actual audited costs over and above the actual audited
14 costs reflected in the cost reports submitted for the most current
15 cost-reporting period and the costs estimated by the Oklahoma Health
16 Care Authority to increase the direct-care, flexible staff-
17 scheduling staffing level from three and eight-tenths (3.8) hours
18 per day per occupied bed to four and one-tenth (4.1) hours per day
19 per occupied bed, all nursing facilities subject to the provisions
20 of the Nursing Home Care Act and intermediate care facilities for
21 the mentally retarded with seventeen or more beds, in addition to
22 other state and federal requirements related to the staffing of
23 nursing facilities, shall maintain direct-care, flexible staff-

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1 scheduling staffing levels based on an overall four and one-tenth
2 (4.1) hours per day per occupied bed.

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

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

14 G. For purposes of this subsection:

15 1. "Direct-care staff" means any nursing or therapy staff who
16 provides direct, hands-on care to residents in a nursing facility;
17 ~~and~~

18 2. Prior to September 1, 2003, activity and social services
19 staff who are not providing direct, hands-on care to residents may
20 be included in the direct-care-staff-to-resident ratio in any shift.
21 On and after September 1, 2003, such persons shall not be included
22 in the direct-care-staff-to-resident ratio, regardless of their
23 licensure or certification status; and

24

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

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

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

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

- 16 a. administrative penalties shall not accrue until the
17 Authority notifies the facility in writing that the
18 report was not timely submitted as required, and
19 b. a minimum of a one-day penalty shall be assessed in
20 all instances.

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

23 5. Monies collected from administrative penalties shall be
24 deposited in the Nursing Facility Quality of Care Fund and utilized

1 for the purposes specified in the Oklahoma Healthcare Initiative
2 Act.

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

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

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

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

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

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

20 b. The purpose of the advisory committee will be to
21 develop a new methodology for calculating state
22 Medicaid program reimbursements to nursing facilities
23 by implementing facility-specific rates based on
24 expenditures relating to direct care staffing. No

1 nursing home will receive less than the current rate
2 at the time of implementation of facility-specific
3 rates pursuant to this subparagraph.

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

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

18 e. The new methodology shall divide the payment into two
19 components:

20 (1) direct care which includes allowable costs for
21 registered nurses, licensed practical nurses,
22 certified medication aides and certified nurse
23 aides. The direct care component of the rate
24 shall be a facility-specific rate, directly

1 related to each facility's actual expenditures on
2 direct care, and

3 (2) other costs.

4 f. The Oklahoma Health Care Authority, in calculating the
5 base year prospective direct care rate component,
6 shall use the following criteria:

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

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

16 (3) other rate components shall be determined by the
17 Oklahoma Nursing Facility Funding Advisory
18 Committee in accordance with federal regulations
19 and requirements, and

20 ~~(4) rate components in divisions (2) and (3) of this~~
21 ~~subparagraph shall be re-based and adjusted for~~
22 ~~inflation when additional funds are made~~
23 ~~available~~

1 (a) if, at any time, reimbursement rates are
2 determined to be below ninety-five percent
3 (95%) of statewide average cost as
4 determined by the most recently available
5 audited cost reports, after adjustment for
6 inflation, the Authority shall restore rates
7 to a level in excess of such amount. The
8 required incremental increase shall be no
9 less than the Consumer Price Index - Medical
10 for the relevant year; provided, at no time
11 shall the reimbursement rate be increased to
12 a level which would exceed one hundred
13 percent (100%) of the upper payment limit
14 established by the Medicare rate equivalent
15 established by the federal Centers for
16 Medicare and Medicaid Services (CMS), and
17 (b) effective July 1, 2019, the Authority shall
18 calculate the upper payment limit under the
19 authority of CMS utilizing the Medicare
20 equivalent payment rate, and

21 (5) if Medicaid payment rates to providers are
22 adjusted, nursing home rates and Intermediate
23 Care Facilities for Individuals with Intellectual
24 Disabilities (ICFs/IID) rates shall not be

1 adjusted less favorably than the average
2 percentage-rate reduction or increase applicable
3 to the majority of other provider groups.

4 g. (1) Effective July 1, 2019, if new funding is
5 appropriated for a rate increase, a new average
6 rate for nursing facilities shall be established.
7 The rate shall be equal to the statewide average
8 cost as derived from audited cost reports for SFY
9 2018, ending June 30, 2018, after adjustment for
10 inflation. After such new average rate has been
11 established, the facility specific reimbursement
12 rate shall be as follows:

13 (a) amounts up to the existing base rate amount
14 shall continue to be distributed as a part
15 of the base rate in accordance with the
16 existing State Plan, and

17 (b) to the extent the new rate exceeds the rate
18 effective before the effective date of this
19 act, fifty percent (50%) of the resulting
20 increase on July 1, 2019, shall be allocated
21 toward an increase of the existing base
22 reimbursement rate and distributed
23 accordingly. The remaining fifty percent
24 (50%) of the increase shall be allocated in

1 accordance with the currently approved 70/30
2 reimbursement rate methodology as outlined
3 in the existing State Plan.

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

11 h. Effective January 1, 2021, and annually thereafter,
12 under the currently approved methodology, a new rate
13 shall be established based on the audited cost reports
14 for SFY 2020, ending June 30, 2020.

15 i. Subsequent rate changes shall occur each January 1
16 utilizing the most currently filed audited cost
17 reports from the preceding fiscal year, adjusted for
18 inflation.

19 j. Effective July 1, 2019, in coordination with the rate
20 adjustments identified in the preceding section, a
21 portion of the funds shall be utilized as follows:

22 (1) effective July 1, 2019, the Oklahoma Health Care
23 Authority shall increase the personal needs
24 allowance for residents of nursing homes and

1 Intermediate Care Facilities for Individuals with
2 Intellectual Disabilities (ICFs/IID) from Fifty
3 Dollars (\$50.00) per month to Seventy-five
4 Dollars (\$75.00) per month per resident. The
5 increase shall be funded by Medicaid nursing home
6 providers, by way of a reduction of eighty-two
7 cents (\$0.82) per day deducted from the base
8 rate, and

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

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

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

23 5. The Oklahoma Health Care Authority shall provide access to
24 the detailed Medicaid payment audit adjustments and implement an

1 appeal process for disputed payment audit adjustments.
2 Additionally, the Oklahoma Health Care Authority shall make
3 sufficient revisions to the nursing facility cost-reporting forms
4 and electronic data input system so as to clarify what expenses are
5 allowable and appropriate for inclusion in cost calculations.

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

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

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

22 SECTION 4. This act shall become effective July 1, 2019.

23 SECTION 5. It being immediately necessary for the preservation
24 of the public peace, health or safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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