

1 STATE OF OKLAHOMA

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

3 SENATE BILL 228

By: Thompson

4
5
6 AS INTRODUCED

7 An Act relating to long-term care; amending 56 O.S.
8 2011, Section 1011.5, which relates to nursing
9 facility incentive reimbursement rate plan; modifying
10 composition and focus of certain task force;
11 modifying reimbursement methodology; directing
12 certain redistribution of funds; establishing certain
13 advisory group; specifying certain quality measures;
14 requiring annual review of quality measures; listing
15 certain criteria; deleting certain requirement to
16 make refinements; amending 56 O.S. 2011, Section
17 2002, as last amended by Section 1, Chapter 183,
18 O.S.L. 2013 (56 O.S. Supp. 2018, Section 2002), which
19 relates to Nursing Facilities Quality of Care Fee;
20 adding and modifying certain allowable expenses;
21 updating term; updating statutory language; amending
22 63 O.S. 2011, Section 1-1925.2, which relates to
23 reimbursements from Nursing Facility Quality of Care
24 Fund; deleting certain provision related to
calculation; updating term; modifying certain
staffing and ratio procedures; deleting obsolete
language; modifying certain calculation criteria;
setting forth certain provisions related to rate and
methodology; directing the Oklahoma Health Care
Authority to provide certain access and revise
certain forms; providing an effective date; and
declaring an emergency.

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

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

1 Section 1011.5. A. 1. The Oklahoma Health Care Authority ~~in~~
2 ~~cooperation with the State Department of Health, a statewide~~
3 ~~organization of the elderly, representatives of the Health and Human~~
4 ~~Services Interagency Task Force on long-term care, and~~
5 ~~representatives of both statewide associations of nursing facility~~
6 ~~operators shall develop an incentive reimbursement rate plan for~~
7 ~~nursing facilities that shall include, but may not be limited to,~~
8 ~~the following:~~

9 1. ~~Quality of life indicators that relate to total management~~
10 ~~initiatives;~~

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

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

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

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

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

16 7. ~~Patient acuity level;~~

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

20 9. ~~Other incentives which include, without limitation,~~
21 ~~participation in quality initiative activities performed and/or~~
22 ~~recommended by the Oklahoma Foundation for Medical Quality in~~
23 ~~capital improvements, in-service education of direct staff, and~~
24

1 procurement of reasonable amounts of liability insurance focused on
2 improving resident outcomes and resident quality of life.

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

15 3. Pay-for-performance payments may be earned quarterly and
16 based on facility-specific performance achievement of four (4)
17 equally-weighted, Five-Star Long-Stay Quality Measures as defined by
18 the Centers for Medicare and Medicaid Services (CMS).

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

23 5. Pursuant to federal Medicaid approval, any funds that remain
24 as a result of providers failing to meet the quality assurance

1 metrics shall be pooled and redistributed to those who achieve the
2 quality assurance metrics each quarter. If federal approval is not
3 received, any remaining funds shall be deposited in the Quality of
4 Care fee fund authorized in Section 2002 of this title.

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

- 12 a. direct benefit to patient care outcomes,
- 13 b. applies to Medicaid, long-stay patients, and
- 14 c. need for quality improvement using the Centers for
15 Medicare and Medicaid Services (CMS) ranking for
16 Oklahoma as a guide.

17 7. The Authority shall begin the pay-for-performance program
18 focusing on improving the following CMS nursing home quality
19 measures:

- 20 a. Percentage of High Risk Long-Stay Residents with
21 Pressure Ulcers,
- 22 b. Percentage of Long-Stay Residents Who Lose Too Much
23 Weight,

1 c. Percentage of Long-Stay Residents with a Urinary Tract
2 Infection, and

3 d. Percentage of Long-Stay Residents who received an
4 Antipsychotic Medication.

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

9 ~~C. The Oklahoma Health Care Authority shall make refinements to~~
10 ~~the incentive reimbursement rate plan to ensure transparency and~~
11 ~~integrity. These refinements shall include, but may not be limited~~
12 ~~to, the following:~~

13 ~~1. Establishing minimum standard for incentive payments,~~
14 ~~through higher percentiles using evidence based criteria or~~
15 ~~introduction of absolute standards above the current benchmark;~~

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

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

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

23 ~~D.~~ The Oklahoma Health Care Authority shall provide an annual
24 report of the incentive reimbursement rate plan to the Governor, the

1 Speaker of the House of Representatives, and the President Pro
2 Tempore of the Senate by December 31 of each year. The report shall
3 include, but not be limited to, an analysis of the previous fiscal
4 year including incentive payments, ratings, and notable trends.

5 SECTION 2. AMENDATORY 56 O.S. 2011, Section 2002, as
6 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.
7 2018, Section 2002), is amended to read as follows:

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

16 B. As a basis for determining the Nursing Facilities Quality of
17 Care Fee assessed upon each licensed nursing facility, the Authority
18 shall calculate a uniform per-patient day rate. The rate shall be
19 calculated by dividing six percent (6%) of the total annual patient
20 gross receipts of all licensed nursing facilities in this state by
21 the total number of patient days for all licensed nursing facilities
22 in this state. The result shall be the per-patient day rate.

23 Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee
24

1 shall not be increased unless specifically authorized by the
2 Legislature.

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

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

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

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

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

- 3 a. using the daily patient census and patient gross
4 receipts reports received by the Authority for the
5 most recent available twelve (12) months, and
- 6 b. annualizing those figures.

7 Each year thereafter, the annualization of the Nursing
8 Facilities Quality of Care Fee specified in this paragraph shall be
9 subject to the limitation in subsection B of this section unless the
10 provision of subsection C of this section is met.

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

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

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

- 19 a. all monies received by the Authority pursuant to this
20 section and otherwise specified or authorized by law,
- 21 b. monies received by the Authority due to federal
22 financial participation pursuant to Title XIX of the
23 Social Security Act, and

1 c. interest attributable to investment of money in the
2 fund.

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

6 a. reimbursement of the additional costs paid to
7 Medicaid-certified nursing facilities for purposes
8 specified by Sections 1-1925.2, 5022.1 and 5022.2 of
9 Title 63 of the Oklahoma Statutes,

10 b. reimbursement of the Medicaid rate increases for
11 ~~intermediate care facilities for the mentally retarded~~
12 ~~(ICFs/MR)~~ Intermediate Care Facilities for Individuals
13 with Intellectual Disabilities (ICFs/IID),

14 c. nonemergency transportation services for Medicaid-
15 eligible nursing home clients,

16 d. eyeglass and denture services for Medicaid-eligible
17 nursing home clients,

18 e. ~~ten additional~~ increasing to fifteen the ombudsmen
19 employed by the Department of Human Services,

20 f. ten additional nursing facility inspectors employed by
21 the State Department of Health,

22 g. pharmacy and other Medicaid services to qualified
23 Medicare beneficiaries whose incomes are at or below
24 one hundred percent (100%) of the federal poverty
25

1 level; provided however, pharmacy benefits authorized
2 for such qualified Medicare beneficiaries shall be
3 suspended if the federal government subsequently
4 extends pharmacy benefits to this population,

5 h. costs incurred by the Authority in the administration
6 of the provisions of this section and any programs
7 created pursuant to this section,

8 i. durable medical equipment and supplies services for
9 Medicaid-eligible elderly adults, ~~and~~

10 j. personal needs allowance increases for residents of
11 nursing homes and ~~Intermediate Care Facilities for the~~
12 ~~Mentally Retarded (ICFs/MR)~~ Intermediate Care
13 Facilities for Individuals with Intellectual
14 Disabilities (ICFs/IID) from Thirty Dollars (\$30.00)
15 to Fifty Dollars (\$50.00) per month per resident, and

16 k. funding the quality assurance component with Three
17 Dollars (\$3.00) per patient per day.

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

22 5. The fund and the programs specified in this section funded
23 by revenues collected from the Nursing Facilities Quality of Care
24

1 Fee pursuant to this section are exempt from budgetary cuts,
2 reductions, or eliminations.

3 6. The Medicaid rate increases for ~~intermediate care facilities~~
4 ~~for the mentally retarded (ICFs/MR)~~ Intermediate Care Facilities for
5 Individuals with Intellectual Disabilities (ICFs/IID) shall not
6 exceed the net Medicaid rate increase for nursing facilities
7 including, but not limited to, the Medicaid rate increase for which
8 Medicaid-certified nursing facilities are eligible due to the
9 Nursing Facilities Quality of Care Fee less the portion of that
10 increase attributable to treating the Nursing Facilities Quality of
11 Care Fee as an allowable cost.

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

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

19 I. 1. In the event that federal financial participation
20 pursuant to Title XIX of the Social Security Act is not available to
21 the Oklahoma Medicaid program, for purposes of matching expenditures
22 from the Nursing Facility Quality of Care Fund at the approved
23 federal medical assistance percentage for the applicable fiscal
24 year, the Nursing Facilities Quality of Care Fee shall be null and

1 void as of the date of the nonavailability of such federal funding,
2 through and during any period of nonavailability.

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

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

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

20 2. This subsection shall not apply to any judgment that affects
21 the rate of the Nursing Facilities Quality of Care Fee, its
22 applicability to all licensed nursing homes in the state, the usage
23 of the fee for the purposes prescribed in this section, and/or the
24

1 ability of the Authority to obtain full federal participation to
2 match its expenditures of the proceeds of the fee.

3 K. The Authority shall promulgate rules for the implementation
4 and enforcement of the Nursing Facilities Quality of Care Fee
5 established by this section.

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

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

12 M. As used in this section:

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

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

20 3. "Patient gross revenues" means gross revenues received in
21 compensation for services provided to residents of nursing
22 facilities including, but not limited to, client participation. The
23 term "patient gross revenues" shall not include amounts received by
24 nursing facilities as charitable contributions; and

1 4. "Additional costs paid to Medicaid-certified nursing
2 facilities under Oklahoma's Medicaid reimbursement methodology"
3 means both state and federal Medicaid expenditures including, but
4 not limited to, funds in excess of the aggregate amounts that would
5 otherwise have been paid to Medicaid-certified nursing facilities
6 under the Medicaid reimbursement methodology which have been updated
7 for inflationary, economic, and regulatory trends and which are in
8 effect immediately prior to the inception of the Nursing Facilities
9 Quality of Care Fee.

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

15 2. Any facilities that made application to the State Department
16 of Health to become a licensed continuum of care facility no later
17 than January 1, 2012, shall be assessed at the same rate as those
18 facilities assessed pursuant to paragraph 1 of this subsection;
19 provided, that any facility making ~~said~~ the application shall
20 receive the license on or before September 1, 2012. Any facility
21 that fails to receive such license from the State Department of
22 Health by September 1, 2012, shall be assessed at the rate
23 established by subsection C of this section subsequent to September
24 1, 2012.

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

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

11 Section 1-1925.2. A. The Oklahoma Health Care Authority shall
12 fully recalculate and reimburse nursing facilities and ~~intermediate~~
13 ~~care facilities for the mentally retarded (ICFs/MR)~~ Intermediate
14 Care Facilities for Individuals with Intellectual Disabilities
15 (ICFs/IID) from the Nursing Facility Quality of Care Fund beginning
16 October 1, 2000, the average actual, audited costs reflected in
17 previously submitted cost reports for the cost-reporting period that
18 began July 1, 1998, and ended June 30, 1999, inflated by the
19 federally published inflationary factors for the two (2) years
20 appropriate to reflect present-day costs at the midpoint of the July
21 1, 2000, through June 30, 2001, rate year.

22 1. The recalculations provided for in this subsection shall be
23 consistent for both nursing facilities and ~~intermediate care~~
24 ~~facilities for the mentally retarded (ICFs/MR)~~, and shall be

1 ~~calculated in the same manner as has been mutually understood by the~~
2 ~~long-term care industry and the Oklahoma Health Care Authority~~
3 Intermediate Care Facilities for Individuals with Intellectual
4 Disabilities (ICFs/IID).

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

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

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

18 2. From September 1, 2001, through August 31, 2003, nursing
19 facilities subject to the Nursing Home Care Act and intermediate
20 care facilities for the mentally retarded with seventeen or more
21 beds shall maintain, in addition to other state and federal
22 requirements related to the staffing of nursing facilities, the
23 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 ~~September 1, 2003~~ October 1, 2019, subject to the availability of funds, nursing facilities subject to the Nursing Home Care Act and intermediate care facilities for the mentally retarded 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.

1 5. a. On and after January 1, ~~2004~~ 2020, a facility ~~that has~~
2 ~~been determined by the State Department of Health to~~
3 ~~have been in compliance with the provisions of~~
4 ~~paragraph 3 of this subsection since the~~
5 ~~implementation date of this subsection,~~ may implement
6 ~~flexible~~ twenty-four (24) hour based staff scheduling;
7 provided, however, such facility shall continue to
8 maintain a direct-care service rate of at least ~~two~~
9 ~~and eighty-six one-hundredths (2.86)~~ two and nine
10 tenths (2.9) hours of direct-care service per resident
11 per day, the same to be calculated based on average
12 direct care staff maintained over a twenty-four (24)
13 hour period.

14 b. At no time shall direct-care staffing ratios in a
15 facility with ~~flexible~~ twenty-four (24) hour based
16 staff-scheduling privileges fall below one direct-care
17 staff to every ~~sixteen~~ fifteen residents, and at least
18 two direct-care staff shall be on duty and awake at
19 all times.

20 ~~c. As used in this paragraph, "flexible staff-scheduling"~~
21 ~~means maintaining:~~

22 ~~(1) a direct care staff-to-resident ratio based on~~
23 ~~overall hours of direct care service per resident~~

1 ~~per day rate of not less than two and eighty-six~~
2 ~~one hundredths (2.86) hours per day,~~

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

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

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

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

14 (2) fraudulent reporting of staffing on the Quality
15 of Care Report, or

16 (3) a complaint and/or survey investigation that has
17 determined substandard quality of care, ~~or~~ as a
18 result of insufficient staffing

19 ~~(4) a complaint and/or survey investigation that has~~
20 ~~determined quality of care problems related to~~
21 ~~insufficient staffing.~~

22 b. The Department shall require a facility described in
23 subparagraph a of this paragraph to achieve and
24 maintain the shift-based, staff-to-resident ratios

1 provided in paragraph 3 of this subsection for a
2 minimum of three (3) months before being considered
3 eligible to implement ~~flexible~~ twenty-hour (24) based
4 staff scheduling as defined in subparagraph c of
5 paragraph 5 of this subsection.

6 c. Upon a subsequent determination by the Department that
7 the facility has achieved and maintained for at least
8 three (3) months the shift-based, staff-to-resident
9 ratios described in paragraph 3 of this subsection,
10 and has corrected any deficiency described in
11 subparagraph a of this paragraph, the Department shall
12 notify the facility of its eligibility to implement
13 ~~flexible~~ twenty-four (24) hour based staff-scheduling
14 privileges.

15 7. a. For facilities that ~~have been granted flexible~~ utilize
16 twenty-four (24) hour based staff-scheduling
17 privileges, the Department shall monitor and evaluate
18 facility compliance with the ~~flexible~~ twenty-four (24)
19 hour based staff-scheduling staffing provisions of
20 paragraph 5 of this subsection through reviews of
21 monthly staffing reports, results of complaint
22 investigations and inspections.

23 b. If the Department identifies any quality-of-care
24 problems related to insufficient staffing in such
25

1 facility, the Department shall issue a directed plan
2 of correction to the facility found to be out of
3 compliance with the provisions of this subsection.

4 c. In a directed plan of correction, the Department shall
5 require a facility described in subparagraph b of this
6 paragraph to maintain shift-based, staff-to-resident
7 ratios for the following periods of time:

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

11 (2) the second determination within a two-year period
12 shall require that shift-based, staff-to-resident
13 ratios be maintained for a minimum period of ~~six~~
14 ~~(6)~~ twelve (12) months, and

15 (3) the third determination within a two-year period
16 shall require that shift-based, staff-to-resident
17 ratios be maintained for a minimum period of
18 ~~twelve (12)~~ twenty-four (24) months.

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

22 D. The State ~~Board~~ Commissioner of Health shall promulgate
23 rules prescribing staffing requirements for intermediate care
24 facilities for the mentally retarded serving six or fewer clients
25

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

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

6 F. 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 actual
9 audited costs reflected in the cost reports submitted for the most
10 current cost-reporting period and the costs estimated by the
11 Oklahoma Health Care Authority to increase the direct-care, flexible
12 staff-scheduling staffing level from two and eighty-six one-
13 hundredths (2.86) hours per day per occupied bed to three and two-
14 tenths (3.2) hours per day per occupied bed, all nursing facilities
15 subject to the provisions of the Nursing Home Care Act and
16 intermediate care facilities for the mentally retarded with
17 seventeen or more beds, in addition to other state and federal
18 requirements related to the staffing of nursing facilities, shall
19 maintain direct-care, flexible staff-scheduling staffing levels
20 based on an overall three and two-tenths (3.2) hours per day per
21 occupied bed.

22 2. When the state Medicaid program reimbursement rate reflects
23 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the
24 increases in actual audited costs over and above the actual audited

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

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

1 nursing facilities, shall maintain direct-care, flexible staff-
2 scheduling staffing levels based on an overall four and one-tenth
3 (4.1) hours per day per occupied bed.

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

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

15 G. For purposes of this subsection:

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

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

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
25

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).

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, a new average rate for
5 nursing facilities shall be established. The
6 rate shall be equal to the statewide average cost
7 as derived from audited cost reports for SFY
8 2018, ending June 30, 2018, after adjustment for
9 inflation. After such new average rate has been
10 established, the facility specific reimbursement
11 rate shall be as follows:

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

16 (b) to the extent the new rate exceeds the rate
17 effective before the effective date of this
18 act, fifty percent (50%) of the resulting
19 increase on July 1, 2019, shall be allocated
20 toward an increase of the existing base
21 reimbursement rate and distributed
22 accordingly. The remaining fifty percent
23 (50%) of the increase shall be allocated in
24 accordance with the currently approved 70/30

1 reimbursement rate methodology as outlined
2 in the existing State Plan.

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

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

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

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

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

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

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

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

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

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

1 Additionally, the Oklahoma Health Care Authority shall make
2 sufficient revisions to the nursing facility cost reporting forms
3 and electronic data input system so as to clarify what expenses are
4 allowable and appropriate for inclusion in cost 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 funding 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 for a waiver of the
16 uniform requirement on health-care-related taxes as permitted by
17 Section 433.72 of 42 C.F.R.

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

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

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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