

**COMMITTEE AMENDMENT**  
HOUSE OF REPRESENTATIVES  
State of Oklahoma

SPEAKER:

CHAIR:

I move to amend HB1902 \_\_\_\_\_  
Of the printed Bill  
Page \_\_\_\_\_ Section \_\_\_\_\_ Lines \_\_\_\_\_  
Of the Engrossed Bill

By striking the Title, the Enacting Clause, the entire bill, and by inserting in lieu thereof the following language:

**AMEND TITLE TO CONFORM TO AMENDMENTS**

Adopted: \_\_\_\_\_

Amendment submitted by: Marcus McEntire \_\_\_\_\_

\_\_\_\_\_  
Reading Clerk

1 STATE OF OKLAHOMA

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

3 PROPOSED COMMITTEE  
4 SUBSTITUTE  
5 FOR  
6 HOUSE BILL NO. 1902

By: McEntire

7  
8 PROPOSED COMMITTEE SUBSTITUTE

9 An Act relating to long-term care; amending 56 O.S.  
10 2011, Section 1011.5, which relates to nursing  
11 facility incentive reimbursement rate plan; modifying  
12 composition and focus of certain task force;  
13 modifying reimbursement methodology; directing  
14 certain redistribution of funds; establishing certain  
15 advisory group; specifying certain quality measures;  
16 requiring annual review of quality measures; listing  
17 certain criteria; deleting certain requirement to  
18 make refinements; amending 56 O.S. 2011, Section  
19 2002, as last amended by Section 1, Chapter 183,  
20 O.S.L. 2013 (56 O.S. Supp. 2018, Section 2002), which  
21 relates to Nursing Facilities Quality of Care Fee;  
22 adding and modifying certain allowable expenses;  
23 updating term; updating statutory language; amending  
24 63 O.S. 2011, Section 1-1925.2, which relates to  
reimbursements from Nursing Facility Quality of Care  
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.

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

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

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

11 ~~1. Quality of life indicators that relate to total management~~  
12 ~~initiatives;~~

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

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

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

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

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

18 ~~7. Patient acuity level;~~

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

22 ~~9. Other incentives which include, without limitation,~~  
23 ~~participation in quality initiative activities performed and/or~~  
24 ~~recommended by the Oklahoma Foundation for Medical Quality in~~

1 ~~capital improvements, in-service education of direct staff, and~~  
2 ~~procurement of reasonable amounts of liability insurance~~ focused on  
3 improving resident outcomes and resident quality of life.

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

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

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

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

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

- 15       a. direct benefit to resident care outcomes,
- 16       b. applies to Medicaid, long-stay residents, and
- 17       c. need for quality improvement using the Centers for  
18       Medicare and Medicaid Services (CMS) ranking for  
19       Oklahoma.

20       7. The Authority shall begin the pay-for-performance program  
21 focusing on improving the following CMS nursing home quality  
22 measures:

- 23       a. percentage of high-risk long-stay residents with  
24       pressure ulcers,

- b. percentage of long-stay residents who lose too much weight,
- c. percentage of long-stay residents with a urinary tract infection, and
- d. percentage of long-stay residents who received an antipsychotic medication.

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

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

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

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

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

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

1 D. The Oklahoma Health Care Authority shall provide an annual  
2 report of the incentive reimbursement rate plan to the Governor, the  
3 Speaker of the House of Representatives, and the President Pro  
4 Tempore of the Senate by December 31 of each year. The report shall  
5 include, but not be limited to, an analysis of the previous fiscal  
6 year including incentive payments, ratings, and notable trends.

7 SECTION 2. AMENDATORY 56 O.S. 2011, Section 2002, as  
8 last amended by Section 1, Chapter 183, O.S.L. 2013 (56 O.S. Supp.  
9 2018, Section 2002), is amended to read as follows:

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

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

1 Beginning July 15, 2004, the Nursing Facilities Quality of Care Fee  
2 shall not be increased unless specifically authorized by the  
3 Legislature.

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

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

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

20 F. 1. The Nursing Facilities Quality of Care Fee for a  
21 licensed nursing facility for the period beginning October 1, 2000,  
22 shall be determined using the daily patient census and annual  
23 patient gross receipts figures reported to the Authority for the  
24 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~~ fifteen ombudsmen employed by the  
19 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

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)~~ Individuals with  
13 Intellectual Disabilities (ICFs/IID) from Thirty  
14 Dollars (\$30.00) to Fifty Dollars (\$50.00) per month  
15 per resident.

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

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

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

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

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

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

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

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

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

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

24

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

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

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

10 M. As used in this section:

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

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

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

23 4. "Additional costs paid to Medicaid-certified nursing  
24 facilities under Oklahoma's Medicaid reimbursement methodology"

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

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

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

23 O. If any provision of this section, or the application  
24 thereof, is determined by any controlling federal agency, or any

1 court of last resort to prevent the state from obtaining federal  
2 financial participation in the state's Medicaid program, such  
3 provision shall be deemed null and void as of the date of the  
4 nonavailability of such federal funding and through and during any  
5 period of nonavailability. All other provisions of the bill shall  
6 remain valid and enforceable.

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

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

20 1. The recalculations provided for in this subsection shall be  
21 consistent for both nursing facilities and ~~intermediate care~~  
22 ~~facilities for the mentally retarded (ICFs/MR)~~, and shall be  
23 ~~calculated in the same manner as has been mutually understood by the~~  
24 ~~long-term care industry and the Oklahoma Health Care Authority~~

1 Intermediate Care Facilities for Individuals with Intellectual  
2 Disabilities (ICFs/IID).

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

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

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

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

- 22 a. from 7:00 a.m. to 3:00 p.m., one direct-care staff to  
23 every seven residents, or major fraction thereof,  
24

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

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

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

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

- 22           5.    a.    On and after January 1, ~~2004~~ 2020, a facility ~~that has~~  
23                    ~~been determined by the State Department of Health to~~  
24                    ~~have been in compliance with the provisions of~~

1 paragraph 3 of this subsection since the  
2 implementation date of this subsection, may implement  
3 ~~flexible~~ twenty-four-hour-based staff-scheduling;  
4 provided, however, such facility shall continue to  
5 maintain a direct-care service rate of at least ~~two~~  
6 ~~and eighty-six one-hundredths (2.86)~~ two and nine-  
7 tenths (2.9) hours of direct-care service per resident  
8 per day, the same to be calculated based on average  
9 direct care staff maintained over a twenty-four-hour  
10 period.

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

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

19 (1) a direct-care-staff-to-resident ratio based on  
20 overall hours of direct-care service per resident  
21 per day rate of not less than ~~two and eighty-six~~  
22 ~~one-hundredths (2.86)~~ two and ninety one-  
23 hundredths (2.90) hours per day,  
24

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

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

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

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

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

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

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

20 b. The Department shall require a facility described in  
21 subparagraph a of this paragraph to achieve and  
22 maintain the shift-based, staff-to-resident ratios  
23 provided in paragraph 3 of this subsection for a  
24 minimum of three (3) months before being considered

1 eligible to implement ~~flexible~~ twenty-four-hour-based  
2 staff-scheduling as defined in subparagraph c of  
3 paragraph 5 of this subsection.

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

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

21 b. If the Department identifies any quality-of-care  
22 problems related to insufficient staffing in such  
23 facility, the Department shall issue a directed plan  
24

1 of correction to the facility found to be out of  
2 compliance with the provisions of this subsection.

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

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

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

14 (3) the third determination within a two-year period  
15 shall require that shift-based, staff-to-resident  
16 ratios be maintained ~~for a minimum period of~~  
17 ~~twelve (12) months~~. The facility may apply for  
18 permission to use twenty-four-hour-based staffing  
19 methodology after two (2) years.

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

23 D. The State ~~Board~~ Commissioner of Health shall promulgate  
24 rules prescribing staffing requirements for intermediate care

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

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

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

23 2. When the state Medicaid program reimbursement rate reflects  
24 the sum of Ninety-four Dollars and eleven cents (\$94.11), plus the

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

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

1 other state and federal requirements related to the staffing of  
2 nursing facilities, shall maintain direct-care, flexible staff-  
3 scheduling staffing levels based on an overall four and one-tenth  
4 (4.1) hours per day per occupied bed.

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

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

16 G. For purposes of this subsection:

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

20 2. Prior to September 1, 2003, activity and social services  
21 staff who are not providing direct, hands-on care to residents may  
22 be included in the direct-care-staff-to-resident ratio in any shift.  
23 On and after September 1, 2003, such persons shall not be included  
24

1 in the direct-care-staff-to-resident ratio, regardless of their  
2 licensure or certification status; and

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

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

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

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

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

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

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

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

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

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

13 (1) four members selected by the Oklahoma Association  
14 of Health Care Providers,

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

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

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

22 b. The purpose of the advisory committee will be to  
23 develop a new methodology for calculating state  
24 Medicaid program reimbursements to nursing facilities

1 by implementing facility-specific rates based on  
2 expenditures relating to direct care staffing. No  
3 nursing home will receive less than the current rate  
4 at the time of implementation of facility-specific  
5 rates pursuant to this subparagraph.

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

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

20 e. The new methodology shall divide the payment into two  
21 components:

22 (1) direct care which includes allowable costs for  
23 registered nurses, licensed practical nurses,  
24 certified medication aides and certified nurse

1 aides. The direct care component of the rate  
2 shall be a facility-specific rate, directly  
3 related to each facility's actual expenditures on  
4 direct care, and

5 (2) other costs.

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

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

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

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

22 ~~(4) rate components in divisions (2) and (3) of this~~  
23 ~~subparagraph shall be re-based and adjusted for~~  
24

1 ~~inflation when additional funds are made~~  
2 ~~available~~

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

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

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

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

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

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

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

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

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

21 j. Effective July 1, 2019, in coordination with the rate  
22 adjustments identified in the preceding section, a  
23 portion of the funds shall be utilized as follows:  
24

1           (1) effective July 1, 2019, The Oklahoma Health Care  
2           Authority shall increase the personal needs  
3           allowance for residents of nursing homes and  
4           Intermediate Care Facilities for Individuals with  
5           Intellectual Disabilities (ICFs/IID) from Fifty  
6           Dollars (\$50.00) per month to Seventy-five  
7           Dollars (\$75.00) per month per resident. The  
8           increase shall be funded by Medicaid nursing home  
9           providers, by way of a reduction of eighty-two  
10           cents (\$0.82) per day deducted from the base  
11           rate, and

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

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

21           4. The Oklahoma Health Care Authority shall develop a nursing  
22 facility cost-reporting system that reflects the most current costs  
23 experienced by nursing and specialized facilities. The Oklahoma  
24

1 Health Care Authority shall utilize the most current cost report  
2 data to estimate costs in determining daily per diem rates.

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

6 Additionally, the Oklahoma Health Care Authority shall make  
7 sufficient revisions to the nursing facility cost- reporting forms  
8 and electronic data input system so as to clarify what expenses are  
9 allowable and appropriate for inclusion in cost calculations.

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

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

23  
24

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

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

5       SECTION 5. It being immediately necessary for the preservation  
6 of the public peace, health or safety, an emergency is hereby  
7 declared to exist, by reason whereof this act shall take effect and  
8 be in full force from and after its passage and approval.

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