HOUSE OF REPRESENTATIVES - FLOOR VERSION

STATE OF OKLAHOMA

1st Session of the 59th Legislature (2023)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 1659 By: McEntire of the House

and

Rosino of the Senate

COMMITTEE SUBSTITUTE

An Act relating to public health and safety; amending 63 O.S. 2021, Section 1-1925.2, which relates to recalculation and reimbursement from the Nursing Facility Quality Care Fund; removing the advisory committee; removing the purpose of the committee; and providing an effective date.

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

SECTION 1. AMENDATORY 63 O.S. 2021, Section 1-1925.2, is amended to read as follows:

Section 1-1925.2 A. The Oklahoma Health Care Authority shall fully recalculate and reimburse nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) from the Nursing Facility Quality of Care Fund beginning October 1, 2000, the average actual, audited costs reflected in previously submitted cost reports for the cost-reporting period that began July 1, 1998, and ended June 30, 1999, inflated by the

federally published inflationary factors for the two (2) years appropriate to reflect present-day costs at the midpoint of the July 1, 2000, through June 30, 2001, rate year.

1. The recalculations provided for in this subsection shall be consistent for both nursing facilities and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID).

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

B. 1. From September 1, 2000, through August 31, 2001, all nursing facilities subject to the Nursing Home Care Act, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain 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 eight residents, or major fraction thereof,

b. from 3:00 p.m. to 11:00 p.m., one direct-care staff to every twelve 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.

2. From September 1, 2001, through August 31, 2003, nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) 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 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 October 1, 2019, nursing facilities subject to the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) 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.

5. a. On and after January 1, 2020, a facility may implement twenty-four-hour-based staff scheduling; provided, however, such facility shall continue to maintain a direct-care service rate of at least two and ~~nine tenths (2.9)~~ ninety one-hundredths (2.90) hours of direct-care service per resident per day, the same to be calculated based on average direct care staff maintained over a twenty-four-hour period.

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

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

(1) a direct-care-staff-to-resident ratio based on overall hours of direct-care service per resident per day rate of not less than two and ninety one-hundredths (2.90) hours per day,

(2) a direct-care-staff-to-resident ratio of at least one direct-care staff person on duty to every

fifteen residents or major fraction thereof at all times, and

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

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

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

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

(3) a complaint or survey investigation that has determined substandard quality of care as a result of insufficient staffing.

b. The Department shall require a facility described in subparagraph a of this paragraph to achieve and maintain the shift-based, staff-to-resident ratios provided in paragraph 3 of this subsection for a minimum of three (3) months before being considered eligible to implement twenty-four-hour-based staff scheduling as defined in subparagraph c of paragraph 5 of this subsection.

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

7. a. For facilities that utilize twenty-four-hour-based staff-scheduling privileges, the Department shall monitor and evaluate facility compliance with the twenty-four-hour-based staff-scheduling staffing provisions of paragraph 5 of this subsection through reviews of monthly staffing reports, results of complaint investigations and inspections.

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

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

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

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

(3) the third determination within a two-year period shall require that shift-based, staff-to-resident ratios be maintained. The facility may apply for permission to use twenty-four-hour staffing methodology after two (2) years.

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

D. The State Commissioner of Health shall promulgate rules prescribing staffing requirements for Intermediate Care Facilities for Individuals with Intellectual Disabilities serving six or fewer clients (ICFs/IID-6) and for Intermediate Care Facilities for Individuals with Intellectual Disabilities serving sixteen or fewer clients (ICFs/IID-16).

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

F. 1. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from two and eighty-six one-hundredths (2.86) hours per day per occupied bed to three and two-tenths (3.2) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and two-tenths (3.2) hours per day per occupied bed.

2. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care flexible staff-scheduling staffing level from three and two-tenths (3.2) hours per day per occupied bed to three and eight-tenths (3.8) hours per day per

occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall three and eight-tenths (3.8) hours per day per occupied bed.

3. When the state Medicaid program reimbursement rate reflects the sum of Ninety-four Dollars and eleven cents ($94.11), plus the increases in actual audited costs over and above the actual audited costs reflected in the cost reports submitted for the most current cost-reporting period and the costs estimated by the Oklahoma Health Care Authority to increase the direct-care, flexible staff-scheduling staffing level from three and eight-tenths (3.8) hours per day per occupied bed to four and one-tenth (4.1) hours per day per occupied bed, all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) with seventeen or more beds, in addition to other state and federal requirements related to the staffing of nursing facilities, shall maintain direct-care, flexible staff-scheduling staffing levels based on an overall four and one-tenth (4.1) hours per day per occupied bed.

4. The Commissioner shall promulgate rules for shift-based, staff-to-resident ratios for noncompliant facilities denoting the

incremental increases reflected in direct-care, flexible staff-scheduling staffing levels.

5. In the event that the state Medicaid program reimbursement rate for facilities subject to the Nursing Home Care Act, and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) ~~having~~ with seventeen or more beds is reduced below actual audited costs, the requirements for staffing ratio levels shall be adjusted to the appropriate levels provided in paragraphs 1 through 4 of this subsection.

G. For purposes of this subsection:

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

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

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

H. 1. The Oklahoma Health Care Authority shall require all nursing facilities subject to the provisions of the Nursing Home Care Act and Intermediate Care Facilities for Individuals with

Intellectual Disabilities (ICFs/IID) with seventeen or more beds to submit a monthly report on staffing ratios on a form that the Authority shall develop.

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

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

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

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

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

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

I. 1. All entities regulated by this state that provide long-term care services shall utilize a single assessment tool to determine client services needs. The tool shall be developed by the

Oklahoma Health Care Authority in consultation with the State Department of Health.

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

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

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

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

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

~~b. The purpose of the advisory committee will be to develop a new methodology for calculating state Medicaid program reimbursements to nursing facilities by implementing facility-specific rates based on expenditures relating to direct care staffing. No nursing home will receive less than the current rate at the time of implementation of facility-specific rates pursuant to this subparagraph.~~

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

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

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

~~(1) direct care which includes allowable costs for registered nurses, licensed practical nurses, certified medication aides and certified nurse aides. The direct care component of the rate shall be a facility-specific rate, directly related to each facility's actual expenditures on direct care, and~~

~~(2) other costs.~~

~~f.~~

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

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

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

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

~~(4)~~ prior to July 1, 2020, the Authority shall seek federal approval to calculate the upper payment limit under the authority of Centers for Medicare and Medicaid Services (CMS) utilizing the Medicare equivalent payment rate, and

~~(5)~~

(4) if Medicaid payment rates to providers are adjusted, nursing home rates and Intermediate

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

~~g.~~

b. (1) Effective October 1, 2019, if sufficient funding is appropriated for a rate increase, a new average rate for nursing facilities shall be established. The rate shall be equal to the statewide average cost as derived from audited cost reports for SFY 2018, ending June 30, 2018, after adjustment for inflation. After such new average rate has been established, the facility specific reimbursement rate shall be as follows:

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

(b) to the extent the new rate exceeds the rate effective before the effective date of this act, fifty percent (50%) of the resulting increase on October 1, 2019, shall be allocated toward an increase of the existing

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

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

~~h.~~

c. Effective October 1, 2019, in coordination with the rate adjustments identified in the preceding section, a portion of the funds shall be utilized as follows:

(1) effective October 1, 2019, the Oklahoma Health Care Authority shall increase the personal needs allowance for residents of nursing homes and Intermediate Care Facilities for Individuals with Intellectual Disabilities (ICFs/IID) from Fifty Dollars ($50.00) per month to Seventy-five Dollars ($75.00) per month per resident. The

increase shall be funded by Medicaid nursing home providers, by way of a reduction of eighty-two cents ($0.82) per day deducted from the base rate. Any additional cost shall be funded by the Nursing Facility Quality of Care Fund, and

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

~~3.~~ 2. The Department of Human Services shall expand its statewide, toll-free, Senior-Info Line for senior citizen services to include assistance with or information on long-term care services in this state.

~~4.~~ 3. The Oklahoma Health Care Authority shall develop a nursing facility cost-reporting system that reflects the most current costs experienced by nursing and specialized facilities. The Oklahoma Health Care Authority shall utilize the most current cost report data to estimate costs in determining daily per diem rates.

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

make sufficient revisions to the nursing facility cost reporting forms and electronic data input system so as to clarify what expenses are allowable and appropriate for inclusion in cost calculations.

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

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

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

SECTION 2. This act shall become effective November 1, 2023.

COMMITTEE REPORT BY: COMMITTEE ON ADMINISTRATIVE RULES, dated 03/02/2023 - DO PASS, As Amended and Coauthored.