

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 1382

"AN ACT TO MAKE LONG-TERM CARE AFFORDABLE AND AVAILABLE FOR
FACILITY RESIDENTS."

Amendment No. 3 to House Bill No. 1382.

Amend House Bill No. 1382 as engrossed, H2/2/01:

Delete Sections 4, 5, and 6 and substitute the following:

"SECTION 4. Arkansas Code 20-10-1401 is amended to read as follows:
20-10-1401. Definition. For purposes of this subchapter:

(1) 'Direct-care staff' means any nursing or therapy staff who provides direct, hands-on care to residents in a nursing facility and set forth as a cost component of direct-care expenses within the Arkansas Medical Assistant's Program Manual of Cost Reimbursement Rules for Long Term Care Facilities, as amended and effective January 12, 2001;

(2) 'Flexible staffing' means the assignment of direct-care staff on any shift by scheduling the direct-care staff person to begin work early or late, depending on the needs of the resident or by working more hours on one shift to accommodate the needs of the resident;

(3) 'Midnight census' means the count of each patient occupying a nursing facility bed at midnight of each day;

(4) 'nursing Nursing facility or nursing home' means any buildings, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of two (2) or more unrelated individuals, who, because of physical or mental infirmity, are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made. Provided, the term 'nursing facility or nursing home shall not include the offices of private physicians and surgeons, boarding homes, residential care facilities, intermediate care facilities for the mentally retarded, hospitals, institutions operated by the federal government or licensed by the Division of Developmental Disabilities Services, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination; and

(5) 'Shift' means a scheduled period of work defined by the facility by policy and assigned to each direct-care employee to provide services to the residents. The facility may establish by policy shifts in hourly increments.

SECTION 5. Arkansas Code 20-10-1403 is amended to read as follows:

20-10-1403. Ratio of staff to residents —~~June 30, 2000, requirement.~~

~~(a) By June 30, 2000, a nursing facility or nursing home shall maintain a ratio of unlicensed nursing personnel to nursing facility or nursing home residents of no fewer than:—~~

~~(1) One (1) certified nursing assistant to eight (8) residents during the day shift;—~~

~~(2) One (1) certified nursing assistant to twelve (12) residents during an evening shift; and—~~

~~(3) One (1) certified nursing assistant to eighteen (18) residents during the night shift.—~~

~~(b) By June 30, 2000, a nursing facility or nursing home shall maintain a ratio of licensed personnel of no fewer than:—~~

~~(1) A full time registered nurse director of nursing; and—~~

~~(2) Licensed nurses, including, but not limited to, registered nurses, licensed practical nurses, or licensed vocational nurses in a ratio of no fewer than:—~~

~~(A) One (1) nurse to thirty (30) residents during the day shift;—~~

~~(B) One (1) nurse to thirty (30) residents during the evening shift; and—~~

~~(C) One (1) nurse to fifty (50) residents during the night shift.—~~

~~(c) By June 30, 2000, in facilities containing seventy (70) or more beds, the nursing facility or nursing home shall employ a registered nurse supervisor during the day and evening shifts in addition to the requirements of subsection (b) of this section.—~~

~~(d) By June 30, 2000, in facilities containing one hundred (100) or more beds, the nursing facility or nursing home shall, in addition to the requirements of subsections (b) and (c) of this section:—~~

~~(1) Employ a registered nurse supervisor during the night shifts;—~~

~~(2) Employ a full time assistant director of nursing; and—~~

~~(3) Employ a full time registered nurse director of in service education.—~~

(a) Effective July 1, 2001 through June 30, 2002, all nursing facilities shall maintain the following minimum direct-care staff to resident ratios:

(1) From 7:00 a.m. to 3:00 p.m., one (1) direct-care staff to every seven (7) residents, of which one (1) licensed nurse will be present for every forty (40) residents;

(2) From 3:00 p.m. to 11:00 p.m., one (1) direct-care staff to every ten (10) residents, of which one (1) licensed nurse will be present for every forty (40) residents; and

(3) From 11:00 p.m. to 7:00 a.m., one (1) direct-care staff to every sixteen (16) residents, of which one (1) licensed nurse will be present for every eighty (80) residents.

(b) Effective July 1, 2002 through June 30, 2003, all nursing facilities shall maintain the following minimum direct-care staff to resident ratios:

(1) From 7:00 a.m. to 3:00 p.m., one (1) direct-care staff to

every seven (7) residents, of which one (1) licensed nurse will be present for every forty (40) residents;

(2) From 3:00 p.m. to 11:00 p.m., one (1) direct-care staff to every nine (9) residents, of which one (1) licensed nurse will be present for every forty (40) residents; and

(3) From 11:00 p.m. to 7:00 a.m., one (1) direct-care staff to every fourteen (14) residents, of which one (1) licensed nurse will be present for every eighty (80) residents.

(c) Effective July 1, 2003, all nursing facilities shall maintain the following:

(1) From 7:00 a.m. to 3:00 p.m., one (1) direct-care staff to every six (6) residents;

(2) From 3:00 p.m. to 11:00 p.m., one (1) direct-care staff to every nine (9) residents; and

(3) From 11:00 p.m. to 7:00 a.m., one (1) direct-care staff to every fourteen (14) residents.

(d) The facility shall designate an LPN, LVN or RN as a Director of In-Service Education. This licensed nurse shall be responsible for assuring the facilities provide the licensed nurse staff clinical in-service education and nurse administration in-service education. The Director of In-Service Education position is not in addition to the direct-care staffing requirements, but is supplementary to the duties and responsibilities of a licensed nurse.

SECTION 6. Arkansas Code 20-10-1404 is amended to read as follows:
20-10-1404. Ratio of staff to residents - September 30, 2000, requirement.

~~(a) By September 30, 2000, a nursing facility or nursing home shall maintain a ratio of unlicensed nursing personnel to nursing facility or nursing home residents of no fewer than:~~

~~(1) One (1) certified nursing assistant to seven (7) residents during the day shift;~~

~~(2) One (1) certified nursing assistant to twelve (12) residents during an evening shift; and~~

~~(3) One (1) certified nursing assistant to eighteen (18) residents during the night shift.~~

~~(b) By September 30, 2000, a nursing facility or nursing home shall maintain a ratio of licensed personnel of no fewer than:~~

~~(1) A full time registered nurse director of nursing; and~~

~~(2) Licensed nurses, including, but not limited to, registered nurses, licensed practical nurses, or licensed vocational nurses in a ratio of no fewer than:~~

~~(A) One (1) nurse to fifteen (15) residents during the day shift;~~

~~(B) One (1) nurse to fifteen (15) residents during the evening shift; and~~

~~(C) One (1) nurse to thirty five (35) residents during the night shift.~~

~~(c) By September 30, 2000, in facilities containing seventy (70) or more beds, the nursing facility or nursing home shall employ a registered nurse supervisor during the day and evening shifts in addition to the requirements of subsection (b) of this section.~~

~~(d) By September 30, 2000, in facilities containing one hundred (100) or more beds, the nursing facility or nursing home shall, in addition to the requirements of subsections (b) and (c) of this section:—~~

- ~~(1) Employ a registered nurse supervisor during the night shifts;~~
- ~~(2) Employ a full time assistant director of nursing; and~~
- ~~(3) Employ a full time registered nurse director of in service~~

~~education.—~~

~~—20-10-1404.— Staffing schedules.—~~

(a) For purposes of this section, flexible staffing will be permitted for the assignment of direct-care staff as long as it is scheduled on a weekly time schedule and posted within the facility. The nursing facility's daily staffing must equal the twenty-four (24) hour total of direct-care staff as required for minimum staffing.

(b) In addition to the direct-care staff, the nursing facility shall employ a registered nurse to serve as director of nurses for a minimum shift assignment of forty (40) hours per week, with registered nurse or licensed practical nurse staff supervision relief for a sixteen (16) hour minimum to provide seven (7) day per week nursing coverage.

SECTION 7. Arkansas Code 20-10-1405 is amended to read as follows:
20-10-1405. Services provided.

An employee designated as a member of the nursing direct-care staff shall not be required to provide services such as food preparation, housekeeping, laundry, or maintenance services except as necessary to maintain a safe and sanitary environment. Persons employed to provide the additional services shall not be counted in determining the staffing ratios required by this subchapter.

SECTION 8. Arkansas Code 20-10-1406 is amended to read as follows:
20-10-1406. Posting of personnel and resident numbers.

~~(a) Each nursing facility or nursing home shall post on each hall, wing, or corridor the number of licensed and unlicensed personnel on duty at each shift. The posting shall consist of a sign in sheet to be signed by each staff member as the staff member reports to work, and the staff member shall indicate on the sheet the time of departure~~ Each nursing facility shall post in full view the number of direct-care staff on duty at each shift. This staffing report as posted shall consist of a sign-in sheet to be signed by each direct-care staff person upon reporting for duty.

~~(b) The current number of residents on that unit shall be posted at the same place as the staffing report and filed with the staffing report for the same time period~~ The current number of residents in the facility as defined by the midnight census shall be posted at the same place as the staffing report and filed with the staffing report for the same time period.

(c) This information shall be posted in a conspicuous place and in a manner which is visible and accessible to all residents, their families, caregivers, and visitors. These records shall be filed and saved by the nursing facility ~~or nursing home~~ until the next Office of Long Term Care survey, and these records shall be available for review by any interested person upon a written request.

SECTION 9. Arkansas Code 20-10-1407 is amended to read as follows:
20-10-1407. Report.

~~(a) Every three (3) months, each nursing facility or nursing home shall submit a report of all shifts which fail to meet the minimum staffing requirements of this subchapter to the Office of Long Term Care. A pattern of failure to comply with the provisions of this subchapter is a Class B violation in accordance with § 20-10-206. Upon determination by the office that a pattern of failure to comply with the provisions of this subchapter has occurred, the nursing facility or nursing home shall submit to the office on a monthly basis a report stating the nursing staff to resident ratios for each shift. All nursing facilities shall be required to submit a quarterly report on staffing ratios on a form developed by the Office of Long-Term Care, Division of Medical Services. The report shall document the extent to which the nursing facility has met or has failed to meet the minimum direct-care staff to resident ratios as specified by § 20-10-1403. Such reports shall be available to the public upon request.~~

~~(b) If at the end of three (3) months after the office has found the nursing facility or nursing home to be out of compliance, the office, in addition to the civil monetary penalties which have accrued, shall prohibit the facility from admitting new residents until the facility is in compliance. For purposes of determining if the nursing facility has met or has failed to meet the minimum direct-care staff to resident ratios, the nursing facility shall report the total number of days, as defined as a twenty-four (24) hour period, which the nursing facility failed to meet the minimum direct-care staff to resident ratios above the compliance standard of twenty percent (20%) of the total number of days in the three (3) month reporting period.~~

~~(c) The failure to meet the requirement regarding the posting of current staff resident ratios set forth in § 20-10-1406 is a Class C violation in accordance with § 20-10-206. A nursing facility shall be considered to be in compliance if the nursing facility does not report any days it failed to meet the minimum direct-care staff to resident ratios below the compliance standard of twenty percent (20%) of the total number of days for the quarterly reporting period.~~

SECTION 10. Arkansas Code 20-10-1408 is amended to read as follows:
20-10-1408. Regulations Penalties.

~~The Office of Long Term Care shall determine the definition of day shift, evening shift, night shift, and pattern of failure by regulation.~~

~~(a) A determination of a pattern of staffing failure of a facility by the Office of Long-Term Care, shall subject the nursing facility to a Class B violation in accordance with § 20-10-206. Upon determination by the Office of Long-Term Care that a pattern of failure to comply with the provisions of this Act has occurred, the nursing facility shall submit to the Office of Long-Term Care on a monthly basis a report stating the direct-care staff to resident ratio for each day of the month.~~

~~(b) If, at the end of three (3) months of monthly reporting, the nursing facility has not achieved compliance, as defined by § 20-10-1407, the Office of Long-Term Care, shall prohibit the facility from admitting new residents until the facility demonstrates it is in staffing compliance.~~

~~(c) The failure of the nursing facility to meet the requirement of posting of direct-care staff and resident numbers as set forth in § 16-46-105 may be imposed as a Class C violation in accordance with Arkansas Code § 20-10-1406.~~

~~(d) The nursing facility may appeal the imposition of any civil money~~

penalty, denial of new admissions or a determination of any class violation imposed pursuant to § 20-10-206 as provided for in § 20-10-208.

SECTION 11. Arkansas Code 20-10-1409 is amended to read as follows:

20-10-1409. Staffing standards and reimbursement methodology.

~~(a) The staffing standards as set forth in §§ 20-10-1403 and 20-10-1404 are to be construed as nursing facility staffing goals above the current standards as established by the Office of Long Term Care and enhancement programs established and funded by the General Assembly in the Medicaid Program's wage enhancement program as established by special language in the Department of Human Services appropriation approved by the Eighty Second General Assembly. The minimum direct-care staff to resident ratios shall remain in effect so long as the certified Medicaid nursing facilities are reimbursed in a cost-based program with the direct-care expense being reimbursed at the facility's actual allowable Medicaid direct-care cost per diem or one hundred five percent (105%) of the allowable Medicaid direct-care cost per diem incurred by the facility at the ninetieth (90th) percentile of the arranged Medicaid direct-care facility costs per diems, whichever is less.~~

~~(b)(1) By June 30, 1999, and June 30, 2000, the Chief Fiscal Officer of the State shall determine for the upcoming fiscal year the amount of state general revenues available to the Department of Human Services for the implementation of this subchapter.—~~

~~(2) Upon the completion of that determination, the Chief Fiscal Officer of the State shall certify the amount of determined available funding to the department and to the Senate and House Committees on Public Health, Welfare, and Labor.—~~

~~(3) Upon receiving the certification of funding, the department may waive some or all of the requirements of §§ 20-10-1403 and 20-10-1404 and may adjust the requirements and the penalties for noncompliance accordingly and shall notify the Senate and House Committees on Public Health, Welfare, and Labor of its actions.—~~

~~(c) The department shall promulgate all necessary rules and regulations to effectuate the provisions of this subchapter, and these rules and regulations shall be subject to the review of the Administrative Rules and Regulations Subcommittee of the Legislative Council.—~~

(b) The Office of Long-Term Care shall repeal or replace all staffing regulations in conflict and promulgate all rules and regulations to then implement the provisions of this Act, and the Division of Medical Services Medicaid Program shall replace or repeal all rules or posting and reporting regulations in conflict and promulgate all rules and regulations necessary to then implement the provisions of this Act, and all of these rules and regulations shall be subject to the review of the Administrative Rules and Regulations Subcommittee of the Legislative Council, as provided by the Arkansas Administrative Procedure Act. "

AND

Page 6, line 7, delete "two hundred fifty thousand dollars (\$250,000)" and substitute "one million dollars (\$1,000,000)"

AND

Page 6, delete lines 9 and 10 and substitute "parties not to exceed five hundred thousand dollars (\$500,000)"

AND

Page 6 delete lines 16 through 19 and substitute "the consequences."

AND

Appropriately renumber the sections of the bill.

The Amendment was read _____

By: Representative R. Smith

LH/MHF

MHF766

Chief Clerk