

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 84th General Assembly  
3 Regular Session, 2003

# A Bill

HOUSE BILL 2337

4  
5 By: Representatives Eason, Medley  
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## For An Act To Be Entitled

8  
9 AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 20,  
10 CHAPTER 10, SUBCHAPTER 14 OF THE ARKANSAS CODE TO  
11 CLARIFY THE LAWS RELATING TO NURSING FACILITY  
12 STAFFING REQUIREMENTS; AND FOR OTHER PURPOSES.  
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## Subtitle

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15 TO AMEND VARIOUS SECTIONS OF TITLE 20,  
16 CHAPTER 10, SUBCHAPTER 14 OF THE  
17 ARKANSAS CODE TO CLARIFY THE LAWS  
18 RELATING TO NURSING FACILITY STAFFING  
19 REQUIREMENTS.  
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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24 SECTION 1. Arkansas Code § 20-10-1401 is amended to read as follows:  
25 20-10-1401. Definitions.

26 For purposes of this subchapter:

27 (1) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.;

28 (2)(A) "Direct-care staff" means any licensed nurse, ~~or~~  
29 certified nursing staff nurse, aid, student nurse, certified or licensed  
30 therapist or therapy assistant, or nurse aid trainee as permitted by federal  
31 law, who provides direct, hands-on care to residents in a nursing facility.

32 (B) "Direct-care staff" shall not include therapy  
33 personnel or personnel listed in § 20-10-1404;

34 (3) "Evening shift" means the period of 3:00 p.m. to 11:00 p.m.;

35 (4)(A) "Flex time" means a method of staffing in which the  
36 beginning and ending hours of shifts deviate from the day shift, evening



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1 shift, and night shift as those terms are defined in this section.

2 (B) Flex time may use more or less than three (3) shifts  
3 per day and may be limited in application to certain of the nursing staff or  
4 apply to the nursing staff as a whole;

5 ~~(4)~~(5) "Midnight census" means the number of patients occupying  
6 ~~nursing home~~ beds in a nursing facility at midnight of each day;

7 ~~(5)~~(6) "Night shift" means the period of 11:00 p.m. to 7:00  
8 a.m.; and

9 ~~(6)~~(A)~~(7)~~(A) "Nursing facility ~~or nursing home~~" means any  
10 buildings, structure, agency, institution, or other place for the reception,  
11 accommodation, board, care, or treatment of more than three (3) unrelated  
12 individuals, who, because of physical or mental infirmity, are unable to  
13 sufficiently or properly care for themselves, and for which reception,  
14 accommodation, board, care, and treatment a charge is made.

15 (B) Provided, the term "nursing facility ~~or nursing home~~"  
16 shall not include the offices of private physicians and surgeons, boarding  
17 homes, residential care facilities, intermediate care facilities for the  
18 mentally retarded, hospitals, institutions operated by the federal government  
19 or licensed by the Division of Developmental Disabilities Services, or any  
20 facility which is conducted by and for those who rely exclusively upon  
21 treatment by prayer alone for healing in accordance with the tenets or  
22 practices of any recognized religious denomination.

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24 SECTION 2. Arkansas Code § 20-10-1402 is amended to read as follows:

25 20-10-1402. ~~Standard of care~~ Staffing levels.

26 (a) The Department of Human Services shall not issue or renew a  
27 license of a nursing facility ~~or nursing home~~ unless that facility:

28 (1) employs ~~employs~~ Employs the nursing personnel needed to provide  
29 continuous twenty-four-hour nursing care and service to meet the needs of  
30 each resident in the nursing facility ~~or nursing home and the standard of~~  
31 ~~care as required by all~~ within the staffing levels established by state and  
32 federal regulations; and

33 (2) Maintains nursing personnel staffing levels within the  
34 ratios established in § 20-10-1403.

35 (b) The ~~standard of care~~ staffing levels required by this subchapter  
36 shall be the minimum ~~standard of care~~ levels required by nursing facilities

1 ~~or nursing homes~~ and shall be adjusted upward to meet the care needs of  
 2 residents.

3 (c)(1) If a facility varies shift hours from the shift hours listed in  
 4 § 20-10-1401, the facility shall meet ~~the~~ staffing requirements ~~for the shift~~  
 5 comparable to the staff ratios listed in § 20-10-1403 and shall develop a  
 6 written plan for compliance with minimum staffing ratios based on its method  
 7 of flex time.

8 (2) The facility shall notify the Office of Long-Term Care in  
 9 writing of its intent to use flex time, either in whole or in part, and shall  
 10 submit a written minimum staffing compliance plan to the Office of Long-Term  
 11 Care. The Office of Long-Term Care shall review the plan and advise the  
 12 facility of its approval or disapproval of the plan within fourteen (14)  
 13 days.

14 (3) With required written approval, a facility may use, at its  
 15 option, a combination of flex time and traditional staffing based on day  
 16 shift, night shift, and evening shift.

17 (d) In no event shall the Office of Long-Term Care require minimum  
 18 staffing requirements for a facility that uses flex time, either in whole or  
 19 in part, to exceed the minimum staffing ratios listed in § 20-10-1403.

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 21 SECTION 3. Arkansas Code § 20-10-1403 is amended to read as follows:  
 22 20-10-1403. Ratio of staff to residents.

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

26 (1) One (1) direct-care staff to every seven (7) residents for  
 27 the day shift. Of this direct-care staff, there shall be one (1) licensed  
 28 nurse to every forty (40) residents;

29 (2) One (1) direct-care staff to every ten (10) residents for  
 30 the evening shift. Of this direct-care staff, there shall be one (1) licensed  
 31 nurse to every forty (40) residents; and

32 (3) One (1) direct-care staff to every sixteen (16) residents  
 33 for the night shift. Of this direct-care staff, there shall be one (1)  
 34 licensed nurse to every eighty (80) residents.

35 (b) Effective July 1, 2002, through June 20, 2003, all nursing  
 36 facilities shall maintain the following minimum direct-care staffing to

1 resident ratios:

2 (1) One (1) direct-care staff to every seven (7) residents for  
 3 the day shift. Of this direct-care staff, there shall be at least one (1)  
 4 licensed nurse to every forty (40) residents;

5 (2) One (1) direct-care staff to every nine (9) residents for  
 6 the evening shift. Of this direct-care staff, there shall be at least one (1)  
 7 licensed nurse to every forty (40) residents; and

8 (3) One (1) direct-care staff to every fourteen (14) residents  
 9 for the night shift. Of this direct-care staff, there shall be at least one  
 10 (1) licensed nurse to every eighty (80) residents.

11 (c) Effective July 1, 2003, all nursing facilities shall maintain the  
 12 following minimum direct-care staffing to resident ratios:

13 (1) One (1) direct-care staff to every six (6) residents for the  
 14 day shift. Of this direct-care staff, there shall be at least one (1)  
 15 licensed nurse to every forty (40) residents;

16 (2) One (1) direct-care staff to every nine (9) residents for  
 17 the evening shift. Of this direct-care staff, there shall be at least one (1)  
 18 licensed nurse to every forty (40) residents; and

19 (3) One (1) direct-care staff to every fourteen (14) residents  
 20 for the night shift. Of this direct-care staff, there shall be at least one  
 21 (1) licensed nurse to every eighty (80) residents.

22 (d) A member of the direct-care staff who is not present for the  
 23 entirety of a shift shall be included in the computation of the direct-care  
 24 staff to resident ratio for that shift as long as the full-time equivalent is  
 25 satisfied for the appropriate period of time.

26 (e)(1) With the exception of the one (1) licensed nurse specified  
 27 throughout subsections (a), (b), and (c) of this section, a nursing facility  
 28 may satisfy the direct-care staff to resident ratios for direct-care staff  
 29 through the use of any type of direct-care staff, including without  
 30 limitation, registered nurses, licensed practical nurses, certified nurse  
 31 aids, student nurses, or nurse aid trainees as permitted by federal law.

32 (2) Licensed direct-care staff may perform the job functions of  
 33 both licensed and certified direct-care staff at any time on an as needed  
 34 basis as long as such functions remain within the scope of their professional  
 35 licensure.

36 (3) Licensed direct-care staff shall not be excluded from the

1 computation of direct-care staff to resident ratios while performing the job  
 2 functions of a certified staff member.

3 ~~(d)~~(f) Nursing facilities shall provide in-services training to its  
 4 ~~licensed and certified~~ direct-care staff pursuant to regulations promulgated  
 5 by the Office of Long-Term Care.

6 ~~(e)~~(g) Upon any expansion of resident census by the facility, the  
 7 facility shall be exempt from any corresponding increase in staffing ratios  
 8 for a period of nine (9) consecutive shifts from the date of the expansion of  
 9 resident census.

10 ~~(f)~~(h)(1) The computation of the direct-care minimum staffing ratios  
 11 shall be carried to the hundredth place.

12 (2) If the application of the ratios listed in subsections (a),  
 13 (b), and (c) of this section results in other than a whole number of  
 14 personnel for a shift or shifts, the number of required personnel shall be  
 15 rounded to the next higher whole number when the resulting ratio, carried to  
 16 the hundredth place, is fifty-one hundredths (.51) or higher.

17 (3) In no event shall a facility have fewer than one (1)  
 18 licensed personnel per shift for direct-care staff.

19 ~~(g)~~(4) All computations shall be based on the midnight census for  
 20 the day in which the shift or shifts begin.

21  
 22 SECTION 4. Arkansas Code § 20-10-1406 is amended to read as follows:  
 23 20-10-1406. Posting of personnel numbers.

24 (a) Each nursing facility ~~or nursing home~~ shall post on each hall,  
 25 wing, or corridor the number of ~~licensed and unlicensed personnel~~ direct-care  
 26 staff on duty at each shift. The posting shall consist of a sign-in sheet to  
 27 be signed by each staff member as the staff member reports to work, and the  
 28 staff member shall indicate on the sheet the time of departure.

29 (b) The current number of residents on that unit shall be posted at  
 30 the same place as the staffing report and filed with the staffing report for  
 31 the same time period.

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

1 request.

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3 SECTION 5. Arkansas Code § 20-10-1407 is amended to read as follows:  
 4 20-10-1407. Report.

5 (a)(1) By the fifth day of each month, each nursing facility ~~or~~  
 6 ~~nursing home~~ shall submit a written report of all shifts which failed to meet  
 7 the minimum staffing requirements of this subchapter during the preceding  
 8 month to the Office of Long-Term Care. For purposes of determining staffing  
 9 compliance under this subchapter, the facility may submit the monthly written  
 10 report calculated with the use of full-time equivalents as defined by the  
 11 facility.

12 (2) Upon determination by the office that a pattern of failure  
 13 to comply with the ~~provisions of this subchapter~~ staff-resident ratios set  
 14 forth in § 20-10-1403 has occurred, the nursing facility ~~or nursing home~~, in  
 15 addition to the requirements set forth in subdivision (a)(1) of this section,  
 16 shall submit to the office on a monthly basis a report stating the nursing  
 17 staff-to-resident ratios for each shift.

18 (3) Each nursing facility shall also submit copies of all daily  
 19 staffing logs for the same months for any reports required under subdivision  
 20 (a)(1) or subsection (b) of this section.

21 (b) If the office has found the nursing facility ~~or nursing home~~ to be  
 22 out of compliance with § 20-10-1401 et seq., the office, in addition to any  
 23 other penalties or sanctions imposed, shall prohibit the facility from  
 24 admitting new residents until the facility is in compliance, pursuant to §  
 25 20-10-1408.

26 (c)(1) The failure to meet the requirement regarding the posting of  
 27 current staff-resident ratios set forth in § 20-10-1406 or the failure to  
 28 provide staffing reports, logs, or other documentation directly related to  
 29 minimum staffing levels to the office or the Division of Medical Services is  
 30 a Class C violation in accordance with § 20-10-206.

31 (2) The failure of a staff member or members to sign the posted  
 32 sign-in sheet in accordance with § 20-10-1406 shall not be considered a  
 33 violation of the staff-resident ratios set forth in § 20-10-1403 if the  
 34 facility has other documentation to verify that the staff member was on duty.

35 (d) "Pattern of failure" means that a facility did not meet the  
 36 minimum staffing requirements of this subchapter for more than twenty percent

1 (20%) of the total number of shifts for any one (1) month.

2 (e) A facility may regain compliance after a pattern of failure by  
 3 establishing that the facility met the minimum staffing requirements of this  
 4 subchapter for at least eighty percent (80%) of the shifts during the  
 5 preceding month.

6 (f)(1) The division is authorized to perform staffing audits,  
 7 including random staffing audits, of nursing facilities ~~or nursing homes~~ to  
 8 determine and ensure compliance with the requirements of this subchapter.

9 (2) Facilities shall provide staffing reports, logs, or other  
 10 documentation directly related to minimum staffing levels upon request of the  
 11 division to assist with a staffing audit.

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13 SECTION 6. Arkansas Code § 20-10-1409 is amended to read as follows:  
 14 20-10-1409. Staffing ~~standards~~ levels.

15 (a) The staffing ~~standards~~ levels as set forth in § 20-10-1403 are to  
 16 be construed as nursing facility staffing ~~standards~~ levels above the 1989  
 17 ~~standards~~ levels established by the Office of Long-Term Care.

18 (b)(1) If the Director of the Department of Human Services determines  
 19 that the reimbursement methodology or available funding is insufficient or  
 20 unable to pay for the minimum staffing ~~standards~~ levels under § 20-10-1403,  
 21 the office, by regulation, may modify the requirements of § 20-10-1403 to  
 22 ensure minimum staffing funds.

23 (2) If the Director of the Office of Long-Term Care determines  
 24 that the minimum staffing ~~standards~~ levels under §§ 20-10-1403 or 20-10-1404  
 25 have at any time become insufficient to ensure the health, safety, or welfare  
 26 of nursing facility ~~or nursing home~~ residents, the office, by regulation, may  
 27 increase minimum staffing ~~standards~~ levels or otherwise promulgate  
 28 regulations to ensure the health, safety, or welfare of the nursing facility  
 29 ~~or nursing home~~ residents.

30 (c)(1) In the event that the Director of the Office of Long-Term Care  
 31 determines that minimum staffing ~~standards~~ levels should be increased  
 32 pursuant to § 20-10-1409(b)(2), the Director of the Office of Long-Term Care  
 33 shall certify the determination and any proposed regulatory increases to  
 34 minimum staffing ~~standards~~ levels to the Director of the Division of Medical  
 35 Services, who shall notify the Director of the Department of Human Services  
 36 and the Legislative Council of the determination and whether sufficient

1 appropriated funds exist to fund the costs, as defined as direct-care costs  
2 by the Long-Term Care Cost Reimbursement Methodology of the Long-Term Care  
3 Provider Reimbursement Manual as in effect January 12, 2001, to be incurred  
4 by the proposed changes to the minimum staffing ~~standards~~ levels.

5 (2) In no event shall minimum staffing ~~standards~~ levels be  
6 increased unless sufficient appropriated funds exist to fund the costs to be  
7 incurred by the proposed increases to minimum staffing ~~standards~~ levels.

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