

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
4

As Engrossed: H3/20/03

A Bill

HOUSE BILL 2337

5 By: Representatives Eason, Medley
6
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For An Act To Be Entitled

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.
13

Subtitle

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.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

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 aide, student nurse, certified or licensed
30 therapist or therapy assistant, or nurse aide 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



03062003KLT1455.JMB261

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 (5) "Full time equivalent" means a circumstance that exists when
 6 two or more qualified individuals are sequentially assigned to a staff
 7 position in such a way as to assure that at least one qualified staff member
 8 is present and acting in the staff position at all times during a specified
 9 shift;

10 (6) "Staff position" means a staff requirement imposed under §
 11 20-10-1403;

12 ~~(4)(7)~~ "Midnight census" means the number of patients occupying
 13 nursing home beds in a nursing facility at midnight of each day;

14 ~~(5)(8)~~ "Night shift" means the period of 11:00 p.m. to 7:00
 15 a.m.; and

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

22 (B) Provided, the term "nursing facility ~~or nursing home~~"
 23 shall not include the offices of private physicians and surgeons, boarding
 24 homes, residential care facilities, assisted living facilities, intermediate
 25 care facilities for the mentally retarded, post-acute head injury retraining
 26 and residential care facilities, hospitals, institutions operated by the
 27 federal government or licensed by the Division of Developmental Disabilities
 28 Services, or any facility which is conducted by and for those who rely
 29 exclusively upon treatment by prayer alone for healing in accordance with the
 30 tenets or practices of any recognized religious denomination.

31
 32 SECTION 2. Arkansas Code § 20-10-1402 is amended to read as follows:

33 20-10-1402. ~~Standard of care~~ Staffing levels.

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

36 (1) employs Employs the nursing personnel needed to provide

1 continuous twenty-four-hour nursing care and service to meet the needs of
 2 each resident in the nursing facility ~~or nursing home and the standard of~~
 3 ~~care as required by all~~ within the staffing levels established by state and
 4 federal regulations; and

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

7 (b) The ~~standard of care~~ staffing levels required by this subchapter
 8 shall be the minimum ~~standard of care~~ levels required by nursing facilities
 9 ~~or nursing homes~~ and shall be adjusted upward to meet the care needs of
 10 residents.

11 (c) ~~If a facility varies shift hours from the shift hours listed in §~~
 12 ~~20-10-1401~~ implements flex time, the facility shall meet the staffing
 13 ~~requirements for the shift listed~~ established in § 20-10-1403.

14 (d) For staffing compliance, a full time equivalent has the same
 15 effect as having a direct care staff member present for the entirety of a
 16 shift.

17 (e) If the facility intends to adopt a flex time staffing plan, the
 18 facility shall notify the Office of Long Term Care in writing of its intent
 19 at least thirty (30) calendar days before implementing or altering flex time
 20 staffing.

21 (f) A facility may use, at its option, a combination of flex time
 22 staffing and traditional staffing based on day shift, night shift and evening
 23 shift.

24 (g) If a facility implements flex time, the beginning and ending times
 25 for the following shifts shall be modified to begin and end by an equal
 26 amount of time so as to provide continuous twenty-four (24) hour coverage
 27 that maintains the staffing ratios established in § 20-10-1403.

28
 29 SECTION 3. Arkansas Code § 20-10-1403 is amended to read as follows:
 30 20-10-1403. Ratio of staff to residents.

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

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

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

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

7 (b) Effective July 1, 2002, through June 20, 2003, all nursing
8 facilities shall maintain the following minimum direct-care staffing to
9 resident ratios:

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

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

16 (3) One (1) direct-care staff to every fourteen (14) residents
17 for the night shift. Of this direct-care staff, there shall be one (1)
18 licensed nurse to every eighty (80) residents.

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

21 (1) One (1) direct-care staff to every six (6) residents for the
22 day shift. Of this direct-care staff, there shall be one (1) licensed nurse
23 to every forty (40) residents;

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

27 (3) One (1) direct-care staff to every fourteen (14) residents
28 for the night shift. Of this direct-care staff, there shall be one (1)
29 licensed nurse to every eighty (80) residents.

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

34 (e)(1) With the exception of the one (1) licensed nurse specified
35 throughout subsections (a), (b), and (c) of this section, a nursing facility
36 may satisfy the direct-care staff to resident ratios for direct-care staff

1 through the use of any type of direct-care staff, including without
 2 limitation, registered nurses, licensed practical nurses, certified nurse
 3 aids, student nurses, or nurse aid trainees as permitted by federal law.

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

8 (3) Licensed direct-care staff shall not be excluded from the
 9 computation of direct-care staff to resident ratios while performing the job
 10 functions of a certified staff member; provided that no staff member or full
 11 time equivalent may be included in the computation of required staff to
 12 resident ratios simultaneously in more than one category.

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

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

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

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

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

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

31
 32 SECTION 4. Arkansas Code § 20-10-1406 is amended to read as follows:
 33 20-10-1406. Posting of personnel numbers.

34 (a) Each nursing facility ~~or nursing home~~ shall post on each hall,
 35 wing, or corridor the number of ~~licensed and unlicensed personnel~~ direct-care
 36 staff on duty at each shift. The posting shall consist of a sign-in sheet to

1 be signed by each staff member as the staff member reports to work, and the
2 staff member shall indicate on the sheet the time of departure.

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

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

12
13 SECTION 5. Arkansas Code § 20-10-1407 is amended to read as follows:

14 20-10-1407. Report.

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

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

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

31 (b) If the office has found the nursing facility ~~or nursing home~~ to be
32 out of compliance with § 20-10-1401 et seq., the office, in addition to any
33 other penalties or sanctions imposed, shall prohibit the facility from
34 admitting new residents until the facility is in compliance, pursuant to §
35 20-10-1408.

36 (c)(1) The failure to meet the requirement regarding the posting of

1 current staff-resident ratios set forth in § 20-10-1406 or the failure to
2 provide staffing reports, logs, or other documentation directly related to
3 minimum staffing levels to the office or the Division of Medical Services is
4 a Class C violation in accordance with § 20-10-206.

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

9 (d) "Pattern of failure" means that a facility did not meet the
10 minimum staffing requirements of this subchapter for more than twenty percent
11 (20%) of the total number of shifts for any one (1) month.

12 (e) In determining whether a pattern of failure exists:

13 (1) Up to twenty-five percent (25%) of the minimum required
14 direct care personnel for a shift may begin the shift up to fifteen (15)
15 minutes after the beginning time of the shift;

16 (2) In computing the twenty-five percent (25%) in subsection
17 (e)(1), all rounding shall be down to the nearest whole number; and

18 (3) For a maximum of fifteen (15) shifts in a month, those
19 individuals who meet the provisions of subsection (e)(1) shall not be
20 considered in violation of minimum staffing requirements, and shall not be
21 considered when determining a pattern of failure. Provided:

22 (i) Thereafter, and beginning with the sixteenth (16th)
23 shift in a month in which staff do not appear at the beginning of the shift,
24 the failure of staff to appear at the beginning time of a shift shall be
25 considered in determining or calculating whether a pattern of failure exists;

26 (ii) Any shift in which more than twenty-five percent
27 (25%) of the minimum required direct care personnel for a shift begins the
28 shift up to fifteen (15) minutes after the beginning time of the shift shall
29 be considered when determining or calculating a pattern of failure; or,

30 (iii) Any shift in which one (1) or more of the total
31 number of minimum required direct care staff begins the shift more than
32 fifteen (15) minutes after the beginning time of the shift shall be
33 considered in determining or calculating whether a pattern of failure exists.

34 ~~(e)(f)~~ A facility may regain compliance after a pattern of failure by
35 establishing that the facility met the minimum staffing requirements of this
36 subchapter for at least eighty percent (80%) of the shifts during the

1 preceding month.

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

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

8

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

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

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

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

26 (c)(1) In the event that the Director of the Office of Long-Term Care
27 determines that minimum staffing ~~standards~~ levels should be increased
28 pursuant to § 20-10-1409(b)(2), the Director of the Office of Long-Term Care
29 shall certify the determination and any proposed regulatory increases to
30 minimum staffing ~~standards~~ levels to the Director of the Division of Medical
31 Services, who shall notify the Director of the Department of Human Services
32 and the Legislative Council of the determination and whether sufficient
33 appropriated funds exist to fund the costs, as defined as direct-care costs
34 by the Long-Term Care Cost Reimbursement Methodology of the Long-Term Care
35 Provider Reimbursement Manual as in effect January 12, 2001, to be incurred
36 by the proposed changes to the minimum staffing ~~standards~~ levels.

