

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 *As Enrolled: S2/20/01 S2/22/01 S3/01/01 H3/28/01*

2 83rd General Assembly

A Bill

3 Regular Session, 2001

SENATE BILL 494

4

5 By: Senator Brown

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For An Act To Be Entitled

9 AN ACT TO AMEND MINIMUM STAFFING REQUIREMENTS AND
10 PROCEDURES IN ARKANSAS NURSING HOMES AND NURSING
11 FACILITIES; TO SET MINIMUM STAFFING REQUIREMENTS
12 AND PROCEDURES IN ARKANSAS NURSING HOMES AND
13 NURSING FACILITIES; AND FOR OTHER PURPOSES.

14

15

Subtitle

16

TO SET MINIMUM STAFFING REQUIREMENTS AND
17 PROCEDURES IN ARKANSAS NURSING HOMES AND
18 NURSING FACILITIES.

19

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21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

22

23 SECTION 1. Arkansas Code 20-10-1401 is amended to read as follows:

24 20-10-1401. ~~Definition~~ Definitions.

25 For purposes of this subchapter:

26 (1) "~~nursing~~ Nursing facility or nursing home" means any buildings,
27 structure, agency, institution, or other place for the reception,
28 *accommodation, board, care, or treatment of ~~two (2) or more~~ than three (3)*
29 *unrelated* individuals, who, because of physical or mental infirmity, are
30 unable to sufficiently or properly care for themselves, and for which
31 reception, accommodation, board, care, and treatment, a charge is made.

32 Provided, the term "nursing facility or nursing home" shall not include the
33 offices of private physicians and surgeons, boarding homes, residential care
34 facilities, intermediate care facilities for the mentally retarded, hospitals,
35 institutions operated by the federal government or licensed by the Division of
36 Developmental Disabilities Services, or any facility which is conducted by and

1 for those who rely exclusively upon treatment by prayer alone for healing in
2 accordance with the tenets or practices of any recognized religious
3 denomination.

4 (2) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.

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

6 (4) "Night shift" means the period of 11:00 p.m. to 7:00 a.m.

7 (5)(A) "Direct-care staff" means any licensed or certified nursing staff
8 who provides direct, hands-on care to residents in a nursing facility.

9 (B) "Direct-care staff" shall not include therapy
10 personnel, or personnel listed in § 20-10-1404.

11 (6) "Midnight census" means the number of patients occupying
12 nursing home beds in a nursing facility at midnight of each day.

13
14 SECTION 2. Arkansas Code 20-10-1402 is amended to read as follows:

15 20-10-1402. Standard of care.

16 (a) The Department of Human Services shall not issue or renew a license
17 of a nursing facility or nursing home unless that facility employs the nursing
18 personnel needed to provide continuous twenty-four-hour nursing care and
19 service to meet the needs of each resident in the nursing facility or nursing
20 home and the standard of care as required by all state and federal
21 regulations.

22 (b) The standard of care required by this subchapter shall be the
23 minimum standard of care required by nursing facilities or nursing homes and
24 shall be adjusted upward to meet the care needs of residents.

25 (c) If a facility varies shift hours from the shift hours listed in §
26 20-10-1401, the facility shall meet the staffing requirements for the shift
27 listed in § 20-10-1401.

28
29 SECTION 3. Arkansas Code 20-10-1403 is amended to read as follows:

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

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

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

36 ~~(2) One (1) certified nursing assistant to twelve (12) residents~~

1 during an evening shift; and

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (2) One (1) direct-care staff to every nine (9) residents for the
35 evening shift. Of this direct-care staff, there shall be one (1) licensed
36 nurse to every forty (40) residents.

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

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

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

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

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

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

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

26 (d) Nursing facilities shall provide in-services training to its
27 licensed and certified staff pursuant to regulations promulgated by the Office
28 of Long Term Care.

29 (e) Upon any expansion of resident census by the facility, the facility
30 shall be exempt from any corresponding increase in staffing ratios for a
31 period of nine (9) consecutive shifts from the date of the expansion of
32 resident census.

33 (f)(1) The computation of the direct-care minimum staffing ratios shall
34 be carried to the hundredth place.

35 (2) If the application of the ratios listed in § 20-10-1403
36 results in other than a whole number of personnel for a shift or shifts, the

1 number of required personnel shall be rounded to the next higher whole number
2 when the resulting ratio, carried to the hundredth place, is fifty-one
3 hundredths (.51) or higher.

4 (3) In no event shall a facility have less than one (1) licensed
5 personnel per shift for direct-care staff.

6 (g) All computations shall be based on the midnight census for the day
7 in which the shift or shifts begin.

8

9 SECTION 4. Arkansas Code 20-10-1404 is amended to read as follows:

10 20-10-1404. ~~Ratio of staff to residents—September 30, 2000,~~
11 ~~requirement—~~ Director of Nurses.

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

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

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

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

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

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

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

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

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

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

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

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

4 ~~(1) Employ a registered nurse supervisor during the night shifts;~~
5 ~~(2) Employ a full time assistant director of nursing; and~~
6 ~~(3) Employ a full time registered nurse director of in service~~
7 ~~education.~~

8 (a) In addition to the minimum direct-care staffing ratios in § 20-10-
9 1403, effective July 1, 2001, each nursing facility shall employ a registered
10 nurse to serve as director of nurses.

11 (b) The Director of Nurses shall be a full-time employee, and shall be
12 employed for no less than forty (40) hours per week, and an additional
13 registered nurse shall be employed for a minimum of sixteen (16) hours per
14 week to ensure seven (7) day a week coverage.

15
16 SECTION 5. Arkansas Code 20-10-1407 is amended to read as follows:
17 20-10-1407. Report.

18 (a)(1) Every three (3) months By the fifth (5th) day of each month,
19 each nursing facility or nursing home shall submit a written report of all
20 shifts which fail to meet the minimum staffing requirements of this subchapter
21 during the preceding month to the Office of Long-Term Care. A pattern of
22 failure to comply with the provisions of this subchapter is a Class B
23 violation in accordance with § 20-10-206.

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

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

32 (b) If at the end of three (3) months after the office has found the
33 nursing facility or nursing home to be out of compliance with §§ 20-10-1401
34 through 20-10-1409, the office, in addition to the civil monetary penalties
35 which have accrued any other penalties or sanctions imposed, shall, pursuant
36 to § 20-10-1408, prohibit the facility from admitting new residents until the

1 facility is in compliance.

2 (c) The failure to meet the requirement regarding the posting of
3 current staff-resident ratios set forth in § 20-10-1406, or the failure to
4 provide staffing reports, logs or documentation to the Office of Long-Term
5 Care or the Division of Medical Services, is a Class C violation in accordance
6 with § 20-10-206.

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

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

14 (f)(1) The Division of Medical Services is authorized to perform
15 audits, including random audits, of nursing facilities or nursing homes to
16 determine and ensure compliance with the requirements of this subchapter.

17 (2) Facilities shall provide staffing reports, logs or other
18 documentation upon request of the Division of Medical Services.

19

20 SECTION 6. Arkansas Code 20-10-1408 is amended to read as follows:

21 20-10-1408. ~~Regulations~~ Penalties.

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

24 Upon a determination of a pattern of failure of a facility by the Office
25 of Long Term Care, the following penalties shall be applied to the facility:

26 (1) When the pattern of failure is more than twenty percent (20%)
27 but less than twenty-five percent (25%) of the total number of shifts for any
28 one month, the facility shall be assessed a fine of two thousand five hundred
29 dollars (\$2,500).

30 (2) When the pattern of failure is twenty-five percent (25%) or
31 higher, but less than thirty percent (30%), of the total number of shifts for
32 any one (1) month, the facility:

33 (A) Shall be assessed a fine of five thousand dollars
34 (\$5,000); and

35 (B) Shall be prohibited from admitting new residents
36 beginning the first day of the month following identification of the pattern

1 of failure by the Office of Long Term Care and continuing until the first day
 2 of the month after the Office of Long Term Care determines that the facility
 3 has regained compliance.

4 (3) When the pattern of failure is thirty percent (30%) or higher
 5 of the total number of shifts for any one (1) month in a three (3) month
 6 reporting period, the facility:

7 (A) Shall be assessed a fine of seven thousand five hundred
 8 dollars (\$7,500); and

9 (B) Shall be prohibited from admitting new residents
 10 beginning the first day of the month following identification of the pattern
 11 of failure by the Office of Long Term Care and continuing until the first day
 12 of the month after the Office of Long Term Care determines that the facility
 13 has regained compliance.

14 (4) If, after five (5) days notice from the Office of Long Term
 15 Care of the imposition of a denial of new admissions, a facility admits new
 16 residents during a period in which the facility is prohibited from admitting
 17 new residents, the facility shall be assessed a fine of twenty-five thousand
 18 dollars (\$25,000) per new resident admitted.

19 (5) The penalties stated in this subchapter are supplemental to
 20 any provisions in state or federal laws or regulations.

21 (6) Appeals from the imposition of any monetary penalty under
 22 this subchapter shall be made pursuant to § 20-10-208.

23 (7) Appeals from the imposition of a denial of new admissions
 24 under this subchapter shall be made pursuant to § 20-10-303.

25 (8)(A) When residents are relocated from facilities due to
 26 natural disaster or as a result of state or federal action, the Department of
 27 Human Services may waive some or all of the provisions of §§ 20-10-1403 and
 28 20-10-1404 for facilities to which the residents are relocated.

29 (B) Any waiver shall be limited to no more than three (3)
 30 months from the date of transfer.

31
 32 SECTION 7. Arkansas Code 20-10-1409 is amended to read as follows:

33 20-10-1409. Staffing standards.

34 (a) ~~The staffing standards as set forth in §§ § 20-10-1403 and 20-10-~~
 35 ~~1404~~ are to be construed as nursing facility staffing ~~goals~~ standards above
 36 the ~~current~~ 1989 standards as established by the Office of Long-Term Care ~~and~~

1 ~~enhancement programs established and funded by the General Assembly in the~~
2 ~~Medicaid Program's wage enhancement program as established by special language~~
3 ~~in the Department of Human Services appropriation approved by the Eighty-~~
4 ~~Second General Assembly.~~

5 ~~(b)(1) By June 30, 1999, and June 30, 2000, the Chief Fiscal Officer of~~
6 ~~the State shall determine for the upcoming fiscal year the amount of state~~
7 ~~general revenues available to the Department of Human Services for the~~
8 ~~implementation of this subchapter If the Director of the Department of Human~~
9 ~~Services determines that the reimbursement methodology or available funding is~~
10 ~~insufficient or unable to pay for the minimum staffing standards under § 20-~~
11 ~~10-1403, the Office of Long Term Care may, by regulation, modify the~~
12 ~~requirements of § 20-10-1403 to ensure minimum staffing funds.~~

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

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

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

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

33 ~~(c)(1) In the event that the Director of the Office of Long-Term Care~~
34 ~~determines that minimum staffing standards should be increased pursuant to §~~
35 ~~20-10-1409(b)(2), the Director of the Office of Long-Term Care shall certify~~
36 ~~the determination and any proposed regulatory increases to minimum staffing~~

1 standards to the Director of the Division of Medical Services, who shall
2 notify the Director of the Department of Human Services and the Legislative
3 Council of the determination, and whether sufficient appropriated funds exist
4 to fund the costs, as defined as direct-care costs by the Long Term Care Cost
5 Reimbursement Methodology of the Long Term Care Provider Reimbursement Manual
6 as in effect January 12, 2001, to be incurred by the proposed changes to the
7 minimum staffing standards.

8 (2) In no event shall minimum staffing standards be increased
9 unless sufficient appropriated funds exist to fund the costs to be incurred by
10 the proposed increases to minimum staffing standards.

11 /s/ Brown

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