

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 83rd General Assembly
3 Regular Session, 2001

A Bill

SENATE BILL 340

4
5 By: Senator Brown
6
7

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; AND FOR OTHER PURPOSES.
12

Subtitle

13 AN ACT TO SET MINIMUM STAFFING
14 REQUIREMENTS AND PROCEDURES IN ARKANSAS
15 NURSING HOMES AND NURSING FACILITIES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. Arkansas Code 20-10-1401 is amended to read as follows:
22 20-10-1401. Definitions.

23 For purposes of this subchapter:

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

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

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

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

5 (5) "Flex staffing" means the act of moving personnel from one
6 designated shift to another to prevent staff shortages on a shift or shifts.

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

9 20-10-1402. Standard of care.

10 (a) The Department of Human Services shall not issue or renew a license
11 of a nursing facility or nursing home unless that facility employs the nursing
12 personnel needed to provide continuous twenty-four-hour nursing care and
13 service to meet the needs of each resident in the nursing facility or nursing
14 home and the standard of care as required by all state and federal
15 regulations.

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

19 (c) Flex staffing is prohibited for purposes of complying with minimum
20 staffing requirements in this subchapter or requirements subsequently set by
21 the Office of Long-Term Care by regulation.

22 (d) If a nursing facility or nursing home varies shift hours from the
23 shift hours listed in 20-10-1401, the facility shall meet the staffing
24 requirements for the shift hours as listed in 20-10-1401.

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

27 20-10-1403. Ratio of staff to residents - ~~June 30, 2000~~ October 1, 2001,
28 requirement.

29 (a) By ~~June 30, 2000~~ October 1, 2001, a nursing facility or nursing
30 home shall maintain a ratio of unlicensed nursing personnel to nursing
31 facility or nursing home residents of no fewer than:

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

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

36 (3) One (1) certified nursing assistant to eighteen (18)

1 residents during the night shift.

2 (b) By ~~June 30, 2000~~ October 1, 2001, a nursing facility or nursing
3 home shall maintain a ratio of licensed personnel of no fewer than:

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

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

8 (A) One (1) nurse to ~~thirty (30)~~ forty (40) residents
9 during the day shift;

10 (B) One (1) nurse to ~~thirty (30)~~ forty (40) residents
11 during the evening shift; and

12 (C) One (1) nurse to ~~fifty (50)~~ eighty (80) residents
13 during the night shift.

14 (c) By ~~June 30, 2000~~ October 1, 2001 in facilities containing seventy
15 (70) or more beds, the nursing facility or nursing home shall employ a
16 registered nurse supervisor during the day and evening shifts in addition to
17 the requirements of subsection (b) of this section.

18 (d) By ~~June 30, 2000~~ October 1, 2001, in facilities containing one
19 hundred (100) or more beds, the nursing facility or nursing home shall, in
20 addition to the requirements of subsections (b) and (c) of this section:

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

22 and

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

24 ~~(3)~~(2) Employ a full-time registered nurse director of in-service
25 education.

26 (e)(1) If the resident census of a facility expands, the facility shall
27 be exempt from any corresponding increase in staffing ratios for a period of
28 nine (9) consecutive shifts from the date of the expansion of resident census.

29 (2) Thereafter, if the application of the ratios listed in this section
30 results in other than a whole number of personnel for a shift or shifts, the
31 number of required personnel shall be rounded to the next higher whole number.

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

34 20-10-1404. Ratio of staff to residents - ~~September 30, 2000~~ October 1,
35 2002, requirement.

36 (a) By ~~September 30, 2000~~ October 1, 2002, a nursing facility or

1 nursing home shall maintain a ratio of unlicensed nursing personnel to nursing
 2 facility or nursing home residents of no fewer than:

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

5 (2) One (1) certified nursing assistant to ~~twelve (12)~~ ten (10)
 6 residents during an evening shift; and

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

9 (b) By ~~September 30, 2000~~ October 1, 2002, a nursing facility or
 10 nursing home shall maintain a ratio of licensed personnel of no fewer than:

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

12 (2) Licensed nurses, including, but not limited to, registered
 13 nurses who are not the facility's director of nursing, licensed practical
 14 nurses, or licensed vocational nurses in a ratio of no fewer than:

15 (A) One (1) nurse to ~~fifteen (15)~~ forty (40) residents
 16 during the day shift;

17 (B) One (1) nurse to ~~fifteen (15)~~ forty (40) residents
 18 during the evening shift; and

19 (C) One (1) nurse to ~~thirty five (35)~~ eighty (80) residents
 20 during the night shift.

21 (3) One (1) full-time registered nurse supervisor each during the
 22 evening and night shifts.

23 (c) By ~~September 30, 2000~~ October 1, 2002, in facilities containing
 24 seventy (70) or more beds, the nursing facility or nursing home shall employ a
 25 registered nurse supervisor during the day ~~and evening~~ shifts in addition to
 26 the requirements of subsection (b) of this section.

27 (d) By ~~September 30, 2000~~ October 1, 2002, in facilities containing one
 28 hundred (100) or more beds, the nursing facility or nursing home shall, in
 29 addition to the requirements of subsections (b) and (c) of this section:

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

32 ~~(3)~~(2) Employ a full-time registered nurse director of in-service
 33 education.

34 (e)(1) If the resident census of a facility expands, the facility shall
 35 be exempt from any corresponding increase in staffing ratios for a period of
 36 nine (9) consecutive shifts from the date of the expansion of resident census.

1 (2) Thereafter, if the application of the ratios listed in this section
 2 results in other than a whole number of personnel for a shift or shifts, the
 3 number of required personnel shall be rounded to the next higher whole number.
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5 SECTION 5. Arkansas Code 20-10-1407 is amended to read as follows:

6 20-10-1407. Report.

7 (a) Every three (3) months, each nursing facility or nursing home shall
 8 submit a written or computer generated report within thirty (30) days of the
 9 end of the three (3) month reporting period of all shifts which fail to meet
 10 the minimum staffing requirements of this subchapter to the Office of Long-
 11 Term Care. A pattern of failure to comply with the provisions of this
 12 subchapter is a Class B violation in accordance with § 20-10-206. Upon
 13 determination by the office that a pattern of failure to comply with the
 14 provisions of this subchapter has occurred, the nursing facility or nursing
 15 home shall submit to the office on a monthly basis a report stating the
 16 nursing staff-to-resident ratios for each shift.

17 (b) If at the end of three (3) months after the office has found the
 18 nursing facility or nursing home to be out of compliance, the office, in
 19 addition to ~~the civil monetary penalties which have accrued~~ any other
 20 penalties or sanctions imposed, shall, pursuant to § 20-10-1408, prohibit the
 21 facility from admitting new residents until the facility is in compliance.

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

27 (d) "Pattern of failure" means that a facility did not meet the minimum
 28 staffing requirements of this subchapter for more than twenty percent (20%) of
 29 the total number of shifts for any one month in the three month reporting
 30 period.

31 (e) A facility shall be considered to be in compliance after a pattern
 32 of failure when the facility does not have any month in a three (3) month
 33 reporting period in which the facility had more than twenty percent (20%) of
 34 the shifts for the month that failed to meet the minimum staffing requirements
 35 of this subchapter.

36 (f)(1) The Division of Medical Services is authorized to perform

1 audits, including random audits, of nursing facilities or nursing homes to
 2 determine and ensure compliance with the requirements of this subchapter.

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

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

7 20-10-1408. ~~Regulations~~ Penalties.

8 ~~The Office of Long Term Care shall determine the definition of day~~
 9 ~~shift, evening shift, night shift, and pattern of failure by regulation. Upon~~
 10 a determination of a pattern of failure of a nursing facility or nursing home
 11 by the Office of Long Term Care, the following penalties shall be applied to
 12 the facility:

13 (a) If the pattern of failure is more than twenty percent (20%) but less
 14 than twenty-five percent (25%) of the total number of shifts for any one month
 15 in a three (3) month reporting period, the facility shall be assessed a fine
 16 of \$2,500.00.

17 (b)(1) If the pattern of failure is twenty-five percent (25%) or
 18 higher, but less than thirty percent (30%), of the total number of shifts for
 19 any one month in a three (3) month reporting period, the facility shall be
 20 assessed a fine of \$5,000.00.

21 (2) In addition, the facility shall be prohibited from admitting new
 22 residents until the facility is in compliance.

23 (c)(1) If the pattern of failure is thirty percent (30%) or higher of
 24 the total number of shifts for any one month in a three (3) month reporting
 25 period, the facility shall be assessed a fine of \$7,500.00.

26 (2) In addition, the facility shall be prohibited from admitting new
 27 residents until the facility is in compliance.

28 (d) If a facility admits new residents during a period in which the
 29 facility is prohibited from admitting new residents, the facility shall be
 30 assessed a fine of \$25,000.00 per new resident admitted.

31 (e) The office shall impose the appropriate penalty or penalties for
 32 each month in which a pattern of failure is determined.

33 (f) The penalties stated in this subchapter are supplemental to the
 34 provisions of §§ 20-10-205 and 20-10-206.

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

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

3 (i)(1) If a facility closes, either voluntarily or involuntarily, and
 4 the State of Arkansas relocates the residents of the closed facility to
 5 another facility or facilities, the Department of Human Services may waive
 6 some or all of the provisions of §§ 20-10-1403 and 20-10-1404 for the
 7 facility or facilities to which the residents are relocated.

8 (2) Any waiver shall be limited to no more than three (3) months
 9 from the date of closing of the facility from which the residents were
 10 transferred.

11
 12 SECTION 7. Arkansas Code 20-10-1409 is amended to read as follows:
 13 20-10-1409. Staffing standards.

14 (a) The staffing standards as set forth in §§ ~~20-10-1403 and~~ 20-10-1404
 15 are to be construed as nursing facility staffing ~~goals~~ standards above the
 16 current 1989 standards as established by the Office of Long-Term Care and
 17 enhancement programs established and funded by the General Assembly in the
 18 Medicaid Program's wage enhancement program as established by special language
 19 in the Department of Human Services appropriation approved by the Eighty-
 20 Second General Assembly.

21 (b)(1) By June 30, 1999, and June 30, 2000, the Chief Fiscal Officer of
 22 the State shall determine for the upcoming fiscal year the amount of state
 23 general revenues available to the Department of Human Services for the
 24 implementation of this subchapter. If the Director of the Division of Medical
 25 Services determines that the reimbursement methodology or available funding is
 26 insufficient or that the nursing facility or nursing home is unable to pay for
 27 the minimum staffing standards under § 20-10-1404, the office may, by
 28 regulation, modify the requirements of § 20-10-1404 to ensure minimum staffing
 29 standards that can be funded by the reimbursement methodology or available
 30 funds.

31 (2) Upon the completion of that determination, the Chief Fiscal
 32 Officer of the State shall certify the amount of determined available funding
 33 to the department and to the Senate and House Committees on Public Health,
 34 Welfare, and Labor. (i) If the office determines that the penalties under §
 35 20-10-1408 are insufficient to compel compliance with this subchapter, the
 36 office may, by regulation, modify the penalties under § 20-10-1408 to ensure

1 or compel compliance.

2 (ii) For purposes of this subsection "modify" includes
3 creation of additional penalties or sanctions.

4 ~~(3) Upon receiving the certification of funding, the department~~
5 ~~may waive some or all of the requirements of §§ 20-10-1403 and 20-10-1404 and~~
6 ~~may adjust the requirements and the penalties for noncompliance accordingly~~
7 ~~and shall notify the Senate and House Committees on Public Health, Welfare,~~
8 ~~and Labor of its actions~~ If the office determines that the minimum staffing
9 standards under § 20-10-1404 have at any time become insufficient to ensure
10 the health, safety or welfare of nursing facility or nursing home residents,
11 the office may, by regulations, increase minimum staffing standards or
12 otherwise promulgate regulations to ensure the health, safety or welfare of
13 nursing facility or nursing home residents.

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

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