

State of Arkansas
85th General Assembly
Regular Session, 2005

A Bill

HOUSE BILL 2577

By: Representative Bradford

For An Act To Be Entitled

AN ACT TO AMEND THE MINIMUM STAFFING STANDARDS
FOR NURSING FACILITIES; TO ENSURE RESIDENTS CARE
NEEDS; TO CLARIFY PENALTIES; AND FOR OTHER
PURPOSES.

Subtitle

TO AMEND THE MINIMUM STAFFING
REQUIREMENTS FOR LONG-TERM CARE
FACILITIES.

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

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

For purposes of this subchapter:

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

(2)(A) "Direct-care staff" means any ~~licensed or certified~~
~~nursing staff~~ nurse aide or licensed nurse who provides direct, hands-on care
to nursing facility residents ~~in a nursing facility~~.

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

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

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

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

(6) "Nurse aide" means any person who meets the requirements



1 according to regulations adopted pursuant to (42 C.F.R. § 483.75(e)), as it
 2 existed on January 1, 2005; and

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

9 (B) ~~Provided, the term~~ However, "nursing facility ~~or~~
 10 ~~nursing home~~" shall not include:

11 (i) the ~~The~~ offices of private physicians and
 12 surgeons;i

13 (ii) boarding ~~Boarding~~ homes;i

14 (iii) residential ~~Residential~~ care facilities;i

15 (iv) intermediate ~~Intermediate~~ care facilities for
 16 the mentally retarded;i

17 (v) hospitals ~~Hospitals~~;i

18 (v) institutions ~~Institutions~~ operated by the
 19 federal government or licensed by the Division of Developmental Disabilities
 20 Services;i or

21 (v) any ~~Any~~ facility ~~which~~ that is conducted by and
 22 for those who rely exclusively upon treatment by prayer alone for healing in
 23 accordance with the tenets or practices of any recognized religious
 24 denomination.

25
 26 SECTION 2. Arkansas Code § 20-10-1402 is amended to read as follows:

27 20-10-1402. ~~Standard of care~~ Staffing standards.

28 (a) The Department of Human Services shall not issue or renew a
 29 license of a nursing facility ~~or nursing home~~ unless that facility employs
 30 the ~~nursing personnel~~ direct-care staff needed to provide continuous twenty-
 31 four-hour nursing care and service to meet the needs of each resident ~~in~~ of
 32 the nursing facility or nursing home and the ~~standard of care as~~ staffing
 33 standards required by all state and federal regulations.

34 (b) The staffing ~~standard of care~~ required by this subchapter shall be
 35 the minimum ~~standard of care~~ number of direct-care staff required by nursing
 36 facilities ~~or nursing homes~~ and shall be adjusted upward to meet the care

needs of residents.

(c) If a facility varies shift hours from the shift hours listed in § 20-10-1401, the facility shall meet the staffing requirements for the shift listed in § 20-10-1403.

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

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

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

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

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

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

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

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

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

~~(e)(a)~~ Effective July 1 October 1, 2003, all nursing facilities shall maintain the following minimum direct-care staffing to resident ratios:

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

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

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

(b)(1) Licensed direct-care staff shall not be excluded from the computation of direct-care staff to resident ratios while serving in a staffing capacity that requires less education and training than is commensurate with their professional licensure.

(2) Licensed direct-care staff who serve in a staffing capacity that requires less education and training than is commensurate with their professional licensure shall not be restricted from providing direct-care services within the scope of their professional licensure in order to be included in the computation of direct-care staff to resident ratios.

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

~~(e)(d)~~ Upon any expansion of resident census by the facility, the facility shall be exempt from any ~~corresponding~~ increase in staffing ratios for a period of nine (9) consecutive shifts from the date of the next day of business after the expansion of resident census.

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

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

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

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

(f)(1) Facilities may vary the starting hour and the ending hour for up to twenty-five percent (25%) of the minimum direct-care staff of the day

1 shift, the evening shift, or both, to meet resident care needs.

2 (2) Before varying the starting hour and the ending hour of
3 direct-care staff of the day shift or the evening shift, the facility shall
4 inform the office in writing of:

5 (A) The resident care needs to be met by the change in
6 starting and ending times of the shift;

7 (B) The number of direct-care staff to whom the changes
8 will apply;

9 (C) The starting hour and ending hour of the shift for the
10 direct-care staff to whom the change will apply; and

11 (D) The length of time the variations will be used if
12 known.

13 (3)(A) The facility shall receive written approval from the
14 office before the facility may vary the starting hour and ending hour of a
15 shift for selected direct-care staff.

16 (B) The office may deny approval upon determination that:

17 (i) The reason for the request to vary the starting
18 and ending time of a shift for selected direct-care staff does not meet
19 resident care needs;

20 (ii) The facility was in a pattern of failure for
21 any month in the three (3) months immediately preceding the request; or

22 (iii) The variation will result in a period of more
23 than two (2) hours in which there is less than the minimum required number of
24 direct-care staff under § 20-10-1403(a).

25 (C) The office may revoke approval to vary the starting
26 and ending time of a shift for selected direct-care staff if the office
27 determines that:

28 (i) The approval has resulted in resident care needs
29 being unmet; or

30 (ii) The facility is in a pattern of failure.

31 (4) If a facility varies the starting and ending times for
32 direct-care staff of the day shift or the evening shift, or both, the
33 facility shall be deemed to have met minimum staffing requirements for that
34 shift if the number of direct-care staff whose starting and ending times are
35 varied and the numbers of direct-care staff whose starting and ending times
36 are not varied together equal the number of direct-care staff required for

1 the shift.

2
3 SECTION 4. Arkansas Code § 20-10-1405 is amended to read as follows:

4 20-10-1405. Services provided.

5 (a) An employee designated as a member of the nursing staff shall not
6 be required to provide services such as food preparation, housekeeping,
7 laundry, or maintenance services except as necessary to maintain a safe and
8 sanitary environment.

9 (b) Persons employed to provide ~~the~~ additional services, such as food
10 preparation, housekeeping, laundry, or maintenance services, shall not be
11 counted in determining the staffing ratios required by this subchapter unless
12 the persons are qualified to serve as and specifically scheduled in a direct-
13 care capacity.

14 (c) A person employed to provide additional services shall count
15 toward the direct-care staffing ratios only for the time in which the
16 facility can document that the person provides direct-care services.

17
18 SECTION 5. Arkansas Code § 20-10-1406 is amended to read as follows:

19 20-10-1406. Posting of personnel numbers.

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

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

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

34
35 SECTION 6. Arkansas Code § 20-10-1407 is amended to read as follows:

36 20-10-1407. Report.

1 (a)(1) By the fifth day of each month, each nursing facility ~~or~~
 2 ~~nursing home~~ shall submit a written report of all shifts which failed to meet
 3 the minimum staffing requirements of this subchapter during the preceding
 4 month to the Office of Long-Term Care.

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

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

13 ~~(b) If the office has found the nursing facility or nursing home to be~~
 14 ~~out of compliance with § 20-10-1401 et seq., the office, in addition to any~~
 15 ~~other penalties or sanctions imposed, shall prohibit the facility from~~
 16 ~~admitting new residents until the facility is in compliance, pursuant to §~~
 17 ~~20-10-1408~~ The failure of a direct-care staff member or members to sign the
 18 posted sign-in sheet in accordance with § 20-10-1406 shall not be considered
 19 a violation of the staff-resident ratios set forth in § 20-10-1403 if the
 20 facility has other documentation that the staff member or members provided
 21 direct-care services for the dates and times stated by the facility.

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 other documentation directly related to
 25 minimum staffing standards to the office or the Division of Medical Services
 26 is a Class C violation in accordance with § 20-10-206.

27 (d) "Pattern of failure" means that a facility did not meet the
 28 minimum staffing requirements of this subchapter for more than twenty percent
 29 (20%) of the total number of shifts for any one (1) month.

30 ~~(e) A facility may regain compliance after a pattern of failure by~~
 31 ~~establishing that the facility met the minimum staffing requirements of this~~
 32 ~~subchapter for at least eighty percent (80%) of the shifts during the~~
 33 ~~preceding month.~~

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

(2) Facilities shall provide staffing reports, logs, or other documentation directly related to minimum staffing standards upon request of the division.

SECTION 7. Arkansas Code § 20-10-1408(a), concerning penalties for a pattern of failure of a nursing facility is amended to read as follows:

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

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

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

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

(B)(i) ~~Shall be prohibited from admitting new residents beginning the first day of the month following identification of the pattern of failure by the office and continuing until the first day of the month after the office determines that the facility has regained compliance for at least a period of two (2) weeks beginning the next business day after notification by the Office of Long-Term Care to the facility of the pattern of failure and continuing until the next business day after the facility submits a report establishing that the facility was not in a pattern of failure for the time during which the facility was prohibited from admitting new residents.~~

(ii) If the office subsequently determines that the facility did not meet the minimum staffing standards requirements as alleged in the report from the facility, the office shall prohibit the facility from admitting new residents for a period of at least two (2) weeks, and continuing until the next business day after the facility submits a new report establishing that the facility was not in a pattern of failure for the time in which the facility was prohibited from admitting new residents;

(3) When the pattern of failure is thirty percent (30%) or

higher of the total number of shifts for any one (1) month in a three (3) month reporting period, the facility:

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

(B)(i) Shall be prohibited from admitting new residents ~~beginning the first day of the month following identification of the pattern of failure by the office and continuing until the first day of the month after the office determines that the facility has regained compliance for at least a period of two (2) weeks beginning the next business day after notification by the Office of Long-Term Care to the facility of the pattern of failure and continuing until the next business day after the facility submits a report establishing that the facility was not in a pattern of failure for the time during which the facility was prohibited from admitting new residents.~~

(ii) If the office subsequently determines that the facility did not meet the minimum staffing standards requirements as alleged in the report from the facility, the office shall prohibit the facility from admitting new residents for a period of at least two (2) weeks, and continuing until the next business day after the facility submits a new report establishing that the facility was not in a pattern of failure for the time in which the facility was prohibited from admitting new residents; and

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

SECTION 8. Arkansas Code § 20-10-1409(b)(2), concerning staffing standards in nursing facilities, is amended to read as follows:

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