

Synopsis of Act 1529 (previously SB426) An Act to Impose Minimum Staffing Requirements for Nursing Homes

This Act stipulates that the Department of Human Services shall not issue or renew a license of a nursing facility\nursing home unless that facility employs the nursing personnel needed to provide continuous 24-hour nursing care and service to meet the needs of each resident and the standard of care required by state and federal regulations. It mandates the staff-to-resident ratio that must be maintained for certified nursing assistants (CNAs), registered, and licensed nurses for day, evening, and night shifts. Depending on the size of the facility, the number of supervisory personnel is also specified. Two dates for compliance with stepped-up staffing requirements are provided - June 30th, 2000 and September 30th, 2000. This gives the nursing facility more than adequate time to acquire sufficient staff.

The act further stipulates that sign-in sheets for all staff be posted in a conspicuous place on each hall, wing or corridor, along with the current number of residents on that unit. It must be visible and accessible to all residents, their families, caregivers, and visitors. Failure to meet the requirement regarding posting of current staff-resident ratios is a Class C violation in accordance with Arkansas Code 20-10-206. Lastly, every 3 months, each nursing facility\nursing home shall submit a report of all shifts which failed to meet the minimum staffing requirements of this Act to the Office of Long Term Care. A pattern of failure to comply with the provisions of this Act is a Class B violation in accordance with Arkansas Code 20-10-206. Civil monetary penalties will accrue until the situation is corrected and the facility will be required to make monthly staffing reports. If the facility is still out of compliance at the end of 3 months, the OLTC shall prohibit the facility from admitting new residents until it is in compliance.

According to Nancy Johnson, president of Arkansas Advocates for Nursing Home Residents (AANHR), the previous acuity-based staffing regulations were too confusing to be enforceable and staffing levels were too low to ensure proper care. Stormy Smith, Director of the Complaint Division of the Office of Long Term Care (OLTC), says "Ninety-nine percent of complaints in some form or fashion deal with not having enough trained staff." Because good care is impossible without enough hands-on caregivers, the intent of this bill was to increase the number of unlicensed staff (CNAs). However, in the prolonged negotiations between legislators, officials of the Department of Human Services (DHS), and representatives of the Arkansas Health Care Association (AHCA), the ratios of CNAs to residents suffered while the numbers of licensed staff remained the same. The table below shows the proposed and final staffing ratios and dates for compliance (final figures are bolded and given in parentheses).

Staff	Staffing Ratios by 6/30/2000		
Shift	Day Shift	Evening Shift	Night Shift
CNAs	1:7 (8)	1:10 (12)	1:15 (18)
Licensed personnel	1:30	1:30	1:50
Staff	Staffing Ratios by 6/30/2001 (9/30/2000)		
CNAs	1:5 (7)	1:8 (12)	1:10 (18)
Licensed personnel	1:15	1:15	1:35

Considering that one CNA on any shift can make a major difference in quality of life for residents, you would have to look beyond these numbers to understand why AANHR members and bill sponsors are so pleased. First, the time line for compliance by the nursing facilities was shortened from June 30th, 2001 to

September 30th, 2000. Next, basic staffing expectations are now clear and can be monitored by family members and the public, with the conspicuous posting of current staff-to-resident ratios and staff sign-in sheets beginning in July, 1999. Failure to post this information is a Class C violation in accordance with Arkansas Code 20-10-206. Moreover, civil monetary penalties and a Class B violation will be imposed by the OLTC if a facility demonstrates a pattern of noncompliance with the minimum-staffing requirements. The facility may also be prohibited from admitting new residents until it is in compliance.

At present, Arkansas Medicaid reimbursement rates are set by negotiation between the state and AHCA and have no relationship to actual costs incurred by the nursing homes. Breck Hopkins (Office of Chief Counsel, DHS) has repeatedly recommended that Arkansas implement a Medicaid reimbursement rate methodology based on necessary costs to provide services that conform to federal law. Senator Brown sees this bill as the first step toward such a cost-based rate methodology. The Department of Medical Services of DHS (DHS-DMS) must implement this methodology no later than July 1, 2001, according to the appropriations bill approved by the 82nd General Assembly (Act 1537, Section 127 Nursing Home Rate Methodologies). Senator Brown is quick to point out that the bill contains a novel but basic principle that "payment for resident care must segregate direct-care nursing costs." He says, "For the first time, Medicaid reimbursement rates are tied to a requirement that the nursing home achieve minimum direct-care staffing levels. The new funds for the 1999-2001 biennium will be targeted to result in an estimated increase of 1000 to 1200 CNAs, plus wage and benefit enhancements for existing nursing staff."

The wage enhancement program, which will be funded with additional general revenue of \$7 million for 1999-2000 and \$9.6 million for 2000-2001, is supplemental to nursing facility reimbursement per diem rates in existence as of June 30, 1999. The DHS-DMS will establish the per patient day wage enhancement rate by July 1, 1999. Should a nursing facility fail to meet the minimum staffing requirements for any quarter, wage enhancement payments must be refunded. Senator Brown hopes that more money can be allocated into future resident per diem rates under Medicaid (which are low compared to other states), "but only if it is in conjunction with a new rate methodology which assures that dollars allocated for nursing care can only be spent, and **WILL** be spent, in that category."

During the negotiation process for this bill and the Residents' Rights bill, Senator Brown sensed a change in the attitude of AHCA representatives, which he attributes both to the massive turnover in the State Legislature caused by restrictions on term limits and to recent unfavorable publicity regarding nursing homes violations. "I think they are actively working to improve the bottom-line quality required for licensure, and not just to improve the owner's bottom line. Better resident care is a win-win for all parties, and they know it."

Mark Hemingway (Director, OLTC) perceives Act 1529 as "a win-win for residents, providers and taxpayers." The quality of care for residents will be improved by increasing direct-care staff, providers will be compensated for hiring additional staff, and taxpayers are assured accountability for the use of Medicaid funds. "It is an important first step toward real improvement in quality care and is a culmination of effort by advocates, the nursing home industry, DHS and the Legislature."

Text of Bill:

Act 1529 of 1999, APPROVED: 4/15/1999

Regular Session, 82nd General Assembly, 1999 **SENATE BILL 426**

By: Senators Brown, Bradford, *Webb*

By: Representatives Magnus, Madison, Faris, *T. Thomas, Ferrell, Agee*

For An Act To Be Entitled

"AN ACT TO IMPOSE MINIMUM STAFFING REQUIREMENTS IN ARKANSAS NURSING FACILITIES/NURSING HOMES; AND FOR OTHER PURPOSES."

Subtitle

"TO IMPOSE MINIMUM STAFFING REQUIREMENTS IN ARKANSAS NURSING FACILITIES\NURSING HOMES."

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

SECTION 1. For purposes of this Act "nursing facility\nursing home" means any buildings, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of two (2) or more unrelated individuals, who, because of physical or mental infirmity are unable to sufficiently or properly care for themselves, and for which reception, accommodation, board, care, and treatment, a charge is made, provided the term "nursing facility\nursing home" shall not include the offices of private physicians and surgeons, boarding homes, *residential care facilities*, *intermediate care facilities for the mentally retarded*, or hospitals, or institutions operated by the federal government or licensed by the *Division of Developmental Disabilities Services* or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

SECTION 2

(a) The Department of Human Services shall not issue or renew a license of a nursing facility\nursing home unless that facility employs the nursing personnel needed to provide continuous twenty-four (24) hour nursing care and service to meet the needs of each resident in the nursing facility\nursing home and the standard of care as required by all state and federal regulations.

(b) The standard of care required by this Act shall be the minimum standard of care required by nursing facilities\nursing homes and shall be adjusted upwards to meet the care needs of residents.

SECTION 3

(a) By June 30, 2000, a nursing facility\nursing home shall maintain a ratio of unlicensed nursing personnel to nursing facility\nursing home residents of no fewer than:

- (1) One (1) certified nursing assistant to *eight (8)* residents during the day shift;
- (2) One (1) certified nursing assistant to *twelve (12)* residents during an evening shift; and
- (3) One (1) certified nursing assistant to *eighteen (18)* residents during the night shift.

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

- (1) A full-time registered nurse director of nursing; and
- (2) Licensed nurses including, but not limited to, registered nurses, licensed practical nurses or licensed vocational nurses in a ratio of no fewer than:

- (A) One (1) nurse to thirty (30) residents during the day shift;
- (B) One (1) nurse to thirty (30) residents during the evening shift; and
- (C) One (1) nurse to fifty (50) residents during the nightshift.

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

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

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

SECTION 4

(a) By *September 30, 2000*, a nursing facility\nursing home shall maintain a ratio of unlicensed nursing personnel to nursing facility\nursing home residents of no fewer than:

- (1) One (1) certified nursing assistant to *seven (7)* residents during the day shift;
- (2) One (1) certified nursing assistant to *twelve (12)* residents during an evening shift; and
- (3) One (1) certified nursing assistant to *eighteen (18)* residents during the night shift.

(b) By *September 30, 2000*, a nursing facility\nursing home shall maintain a ratio of licensed personnel of

no fewer than:

- (1) A full-time registered nurse director of nursing; and
- (2) Licensed nurses including, but not limited to, registered nurses, licensed practical nurses or licensed vocational nurses in a ratio of no fewer than:
 - (A) One (1) nurse to fifteen (15) residents during the day shift;
 - (B) One (1) nurse to fifteen (15) residents during the evening shift; and
 - (C) One (1) nurse to thirty-five (35) residents during the nightshift.
- (c) By *September 30, 2000*, in facilities containing seventy (70) or more beds, the nursing facility\nursing home shall employ a registered nurse supervisor during the day and evening shifts in addition to the requirements of subsection (b) of this section.
- (d) By *September 30, 2000*, in facilities containing one hundred (100) or more beds, the nursing facility\nursing home shall, in addition to the requirements of subsection (b) and (c) of this section:
 - (1) Employ a registered nurse supervisor during the night shifts;
 - (2) Employ a full-time assistant director of nursing; and
 - (3) Employ a full-time registered nurse director of in-service education.

SECTION 5. An employee designated as a member of the nursing staff shall not be required to provide services such as food preparation, housekeeping, laundry or maintenance services except as necessary to maintain a safe and sanitary environment. Persons employed to provide the additional services shall not be counted in determining the staffing ratios required by this Act.

SECTION 6

- (a) Each nursing facility\nursing home shall post on each hall, wing or corridor, the number of licensed and unlicensed personnel on duty at each shift. The posting shall consist of a sign-in sheet to be signed by each staff member as the staff member reports to work and the staff member shall indicate on the sheet the time of departure.
- (b) The current number of residents on that unit shall be posted at the same place as the staffing report and filed with the staffing report for the same time period.
- (c) This information shall be posted in a conspicuous place and in a manner which is visible and accessible to all residents, their families, caregivers, and visitors. These records shall be filed and saved by the nursing facility\nursing home until the next survey and these records shall be available for review by any interested person upon a written request.

SECTION 7

- (a) Every three (3) months, each nursing facility\nursing home shall submit a report of all shifts which fail to meet the minimum staffing requirements of this Act to the Office of Long-Term Care. A pattern of failure to comply with the provisions of this Act is a Class B violation in *accordance with Arkansas Code 20-10-206*. Upon determination by the Office of Long-Term Care that a pattern of failure to comply with the provisions of this Act has occurred, the nursing facility\nursing home shall submit to the Office of Long-Term Care, on a monthly basis, a report stating the nursing staff-to-resident ratios for each shift.
- (b) If, at the end of three (3) months after the Office of Long-Term Care has found the nursing facility\nursing home to be out of compliance, Office of Long-Term Care, in addition to the civil monetary penalties which have accrued, shall prohibit the facility from admitting new residents until the facility is in compliance.
- (c) The failure to meet the requirement regarding posting of current staff-resident ratios set forth in Section 6 of this Act is a Class C violation in accordance with Arkansas Code 20-10-206.

SECTION 8. The Office of Long-Term Care shall determine the definition of day shift, evening shift, night shift and pattern of failure by regulation.

SECTION 9. *The staffing standards as set forth in Sections 3 and 4 of this Act are to be construed as nursing facility staffing goals above the current standards as established by the Office of Long-Term Care, and enhancement programs established and funded by the General Assembly in the Medicaid Program, Wage Enhancement Program as established by special language in the Department of Human Services appropriation approved by the Eighty-second General Assembly. By June 30, 1999 and June*

30, 2000, the Chief Fiscal Officer of the State shall determine for the upcoming fiscal year, the amount of state general revenues available to the Department of Human Services for the implementation of this Act. Upon the completion of that determination, the Chief Fiscal Officer shall certify the amount of determined available funding to the Department of Human Services and to the Senate and House Public Health, Welfare and Labor Committees. Upon receiving the certification of funding, the Department of Human Services may waive some or all of the requirements of Section 3 and Section 4 of this Act and may adjust the requirements and the penalties for non-compliance accordingly, and shall notify the Senate and House Public Health, Welfare and Labor committees of its actions. The Department of Human Services shall promulgate all necessary rules and regulations to effectuate the provisions of this act, and these rules and regulations shall be subject to the review of the Administrative Rules and Regulations Subcommittee of the Legislative Council.

SECTION 10. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

SECTION 12. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 13. EMERGENCY CLAUSE. *It is hereby found and determined by the Eighty-second General Assembly that the provisions of this Act are of critical importance to preserve the efficient operation of programs that deliver services to the elderly citizens of the State of Arkansas. It is vital that we ensure that those persons in nursing facilities and nursing homes enjoy a high quality of life. The Department of Finance and Administration shall be required to make a determination on June 30, 1999 as to the funds available to administer the provisions of this Act. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.*

Appropriations Bill That Funds ACT 1529:

ACT 1537, SECTION 127, SPECIAL LANGUAGE. NOT TO BE INCORPORATED INTO THE ARKANSAS CODE NOR PUBLISHED SEPARATELY AS SPECIAL, LOCAL AND TEMPORARY LAW. NURSING HOME RATE METHODOLOGIES.

(a) Due to the need for enhanced staffing, improved recruitment and retention, and improved quality of direct care personnel, the DHS-DMS shall implement a facility specific wage enhancement program for nursing facilities effective July 1, 1999. The wage enhancement program's top priority shall be to increase the number of direct care staff, specifically Certified Nurse Assistants (CNAs), serving nursing facility residents, and shall be utilized to meet the minimum staffing requirements which are in effect by rule and are recorded in the Medicaid Long Term Care Provider Manual for the last day of each previous quarter.

Implementation of the wage enhancement program, and implementation of increased staffing standards is contingent upon the receipt of additional federal financial participation received to match the general revenue allocations provided for the wage enhancement program. The DHS-DMS shall develop additional contingencies for the purpose of achieving the objectives of the wage enhancement program if HCFA does not approve the initial wage enhancement program submission.

The DHS-DMS shall be responsible for making all necessary submissions to the Health Care Financing Administration and for the promulgation of rules and regulations for the implementation of the wage enhancement program. An auditing procedure will be developed concurrent with the development of the state plan amendment to insure compliance with minimum staffing guidelines in effect at the beginning of each quarter. By July 1, 1999, the DHS-DMS shall establish the per patient day wage enhancement rate which shall be available to Medicaid certified nursing facilities based on the amount of general revenue allocated for the implementation of the wage enhancement program. Beginning with the first completed quarter of SFY 1999-2000, the DHS-DMS shall provide the per patient day wage enhancement to each Medicaid certified nursing facility. The DHS-DMS shall determine on a quarterly basis the extent to which each nursing facility meets the staffing requirements established by enactments of the 82nd General Assembly or by rules promulgated by the DHS-DMS to enhance staffing rates. The DHS-DMS shall recoup the entire wage enhancement payments made to a nursing facility for a particular quarter during which the nursing facility failed to meet the minimum staffing requirements.

The wage enhancement program shall be funded with the \$7 million in additional general revenue allocated for private nursing facilities for SFY 1999-00 and the \$9.6 million in additional general revenue allocated for private nursing facilities for SFY 2000-01.

(b) Prior to the implementation of rules and regulations and prior to the final determination of per patient day enhancement payments, DHS-DMS shall submit their proposed rules, regulations and funding determinations to the Senate and House Public Health, Welfare and Labor Committees, the Administrative Rules and Regulations Subcommittee of the Legislative Council, and the Arkansas Health Care Association for prior review and comments.

(c) Any unexpended balances of the general revenue allocated for the implementation of the wage enhancement program shall be transferred to the Arkansas Medicaid Program Trust Fund, to be held pending the development of a new cost-based, facility specific nursing home rate methodology. Upon completion and approval of a new methodology the held revenues shall be used to implement the new methodology.

(d) In an effort to transition from the current class rate nursing facility methodology to one that is cost-based and one that also places the greatest emphasis on enhancing the direct care provided to nursing facility residents, the DHS-DMS shall in cooperation with the Arkansas Health Care Association and other interested parties, develop a new cost-based nursing facility rate methodology. The state plan amendment necessary to implement a new rate methodology shall be prepared and submitted to HCFA prior to January 1, 2001 so that the new methodology may be implemented no later than July 1, 2001. In addition, DHS-DMS shall determine the fiscal impact of the implementation of the proposed state plan amendment, and shall explore all possible funding mechanisms prior to the convening of the regular session of the 83rd General Assembly.

The DHS-DMS shall provide, for the purpose of prior review, to the Senate and House Public Health, Welfare and Labor Committees and the Legislative Council any proposed state plan amendment submitted for the purpose of implementing a new rate methodology for nursing facilities and the proposed funding mechanisms prior to submission to HCFA.

(e) This program is supplemental to, and shall not result in reductions to, nursing facilities reimbursement per diem rates in existence as of June 30, 1999.