

"AN ACT TO AMEND VARIOUS SECTIONS OF ACT 593 OF 1987, THE HEALTH SERVICES COMMISSION ACT, TO MAKE TECHNICAL CHANGES; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (B) of Section 1 of Act 593 of 1987 is hereby amended to read as follows:

"(B) 'Category of Services' includes emergency room care, rehabilitative care, residential care, including specialized psychiatric residential care, alcohol/drug treatment, ambulatory care (not to include out-patient surgery or imaging centers), home health care and such other specialized health services offered by a health facility."

SECTION 2. Subsection (F) of Section 1 of Act 593 of 1987 is hereby amended to read as follows:

"(F) 'Health Facility' or 'Health Facilities' means a place for the care, reception or accommodation of two or more persons, not related to the proprietor, suffering from illness, injury or deformity or where care of the aged, blind, disabled or mentally retarded is rendered over a period exceeding twenty-four (24) hours. The term 'health facility' includes but need not be limited to the following: hospitals; nursing homes, including intermediate care facilities for the mentally retarded (ICF/MRs); home health care agencies; alcohol/drug abuse residential treatment centers; recuperative care centers and residential care facilities. The term 'health facility' shall not include offices of private physicians and surgeons, out-patient surgery or imaging centers, or establishments operated by the Federal government or any agency thereof or free-standing radiation therapy centers 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 3. Section 2 of Act 593 of 1987 is hereby amended to read as follows:

"Section 2. (A) There is hereby established a Health Services Commission.

(B) The Health Services Commission shall be composed of the following membership to be appointed by the Governor within thirty (30) days of the effective date of this Act and confirmed by the Senate:

- (1) a practicing physician;
- (2) a representative of the Department of Human Services;
- (3) a member of the Arkansas Hospital Association;
- (4) a member of the Arkansas Nursing Home Association;
- (5) a member of the Arkansas Chapter of the American Association of Retired Persons;
- (6) a member of the Arkansas Association of Home Health Agencies;
- (7) a consumer knowledgeable in business health insurance.

(C) The Governor shall have the power to stagger the terms of the initial members so that two (2) members serve for one (1) year after appointment, three (3) members serve two (2) years after appointment and two (2) members serve for three (3) years after appointment. All subsequent appointments shall be for three (3) year terms.

(D) The Commission members shall serve without pay but those members not employed by the State of Arkansas shall receive reimbursement for actual

expenses incurred for attendance at meetings of the Commission.

(E) The Commission shall meet at least quarterly and at such other times as necessary to carry out its duties as set forth herein. The Commission shall elect one of its members as chairman. The Commission may by appropriate adoption of by-laws and rules, provide for time, place and manner of calling its meetings."

SECTION 4. Subsection (E) of Section 3 of Act 593 of 1987 is hereby amended to read as follows:

"(E) The Commission may define certain underserved locales or areas or categories of services within underserved locales or areas to be exempt for specified periods of time from the permit of approval requirement."

SECTION 5. Subsection (H) of Section 3 of Act 593 of 1987 is hereby amended to read as follows:

"(H) The Commission, upon appeal by the applicant, shall conduct hearings on permits of approval by the Agency within thirty (30) days of receipt of the notice of appeal. The Commission shall render its final decision within forty-five (45) days of the close of the hearing. Failure of the Commission to take final action within these time periods shall be considered a ratification of the agency decision on the permit of approval and shall constitute the final decision of the Commission from which an appeal to Circuit Court may be filed."

SECTION 6. Section 6 of Act 593 of 1987 is hereby amended to read as follows:

"Section 6. The Health Services Agency, at the direction of the Health Services Commission, shall implement the below described Health Services Program in this State:

(A) From the effective date hereof until June 1, 1989, there shall be no new hospitals, home health agencies, or nursing homes, with the exceptions of Intermediate Care Facilities for the mentally retarded with fifteen (15) or fewer beds and with the exception of nursing home applications under review by the Arkansas Health Services Agency on June 2, 1987, and except for nursing homes with 35 beds or less attached to or a part of hospitals located in cities or towns where no nursing home exists provided applicants for such nursing homes must obtain a permit of approval from the proper authority pursuant to the provisions of this Act, and a hospital in an incorporated municipality with a population of 5,000 or more which does not have a hospital and which is located in a county with a city of a population of 50,000 or more, constructed in this State nor shall there be any additional beds licensed for existing hospitals, nursing homes, or intermediate care facilities in this State. The Commission may remove any or all of the moratoria anytime after June 1, 1988, provided the Commission has duly adopted and promulgated standards for the review of the health facility for which the moratorium is removed. No permit shall be required for the construction, expansion or alteration of a post-acute head injury retraining and residential care facility. Nursing home applications under review by the Arkansas Health Services Agency on June 2, 1987 shall be considered under Act 593 of 1987 under updated standards on a county by county basis.

(B) Prior to the purchase of major medical equipment and services incidental thereto which does not replace equipment already available and in use in the facility having an associated capital expenditure in excess of one million two hundred fifty thousand dollars (\$1,250,000) or such greater amount as the Commission may establish through rules and regulations, a permit of approval shall be obtained from the Health Services Agency. A conversion of services offered in an existing health facility or alteration

or renovation of an existing health facility having an associated capital expenditure of less than two million dollars (\$2,000,000) for hospitals or less than five hundred thousand dollars (\$500,000) for nursing homes and not resulting in additional bed capacity shall not require a permit of approval provided that the requirements of Act 414 of 1961, as amended, the Hospital and Health Facilities Licensure Act, have been met and a copy of the conversion plan is filed with the Agency, provided it shall not allow one classification of licensure to be changed to a different classification of licensure, and licenses are not transferable from one entity to another. The acquisition of major medical equipment to replace equipment already available and in use in the facility or a post-acute head injury retraining residential care facility shall not require a permit of approval. The application for the permit of approval shall be submitted to the Agency on the forms provided for that purpose. The application for the permit of approval shall include but need not be limited to such information as necessary to determine:

(1) whether the proposed project is needed or projected as necessary to meet the needs of the locale or area in terms of the health care required for the population or geographic region;

(2) whether the proposed project can be adequately staffed and operated when completed;

(3) whether the proposed project is economically feasible; and

(4) whether the project will foster cost containment through improved efficiency and productivity.

(C) If the application is granted, the Agency shall issue a permit of approval if it finds the proposed project meets the criteria for approval as set by the Commission. If the application is denied, the Agency shall send written notice of the denial to the applicant which sets forth the criteria that the proposed project failed to meet.

(D) Any applicant seeking review of the Agency denial of a permit of approval shall file a written appeal for hearing before the Commission on the form provided with the Commission within thirty (30) days of the date of the notice of appeal.

(E) Appeals to the Commission shall be conducted in accordance with the Administrative Procedures Act, Act 434 of 1967, as amended."

SECTION 7. Section 7 of Act 593 of 1987 is hereby amended to read as follows:

"Section 7. Unless otherwise provided herein, all health facilities, as defined by this Act, seeking to add new beds or home health services or expand existing bed capacity or home health services shall apply for a permit approving additional beds or services or expanded bed capacity or services pursuant to procedures and criteria as promulgated by the Health Services Commission. The Commission may authorize the Agency to enjoin construction or expansion of existing facilities of any project commenced in violation of this Act through an action filed in the Chancery Court of the judicial district in which the project is located."

SECTION 8. Any hospital licensed by the Arkansas State Department of Health that applied to operate a home health agency under the provisions of Act 593 of 1987 before June 1, 1987, shall be exempt from the permit of approval requirement. Any agency, firm, corporation or organization that applied to operate a home health agency under the provisions of Act 593 of 1987 before June 1, 1987 must reapply to the Health Services Agency no later than June 30, 1987 to be reviewed and exempt from the moratorium contained in Section 6 of Act 593 of 1987 as amended herein.

SECTION 9. Any hospital desiring to operate a home health agency which is located in a municipality with a population of more than 10,000 but less than 11,000 in a county with a population of 26,000 or more according to the 1980 Federal decennial census, shall be exempt from the permit of approval requirement and the moratorium contained in Section 6 of Act 593 of 1987 as amended herein.

SECTION 10. Section 8 of Act 593 of 1987 is hereby amended to read as follows:

"Section 8. All fees and fines collected hereunder shall be deposited into the State General Services Fund Account to be used exclusively for the maintenance and operation of the Health Services Agency."

SECTION 11. Section 9 of Act 593 of 1987 is hereby amended to read as follows:

"Section 9. All projects, except free-standing radiation therapy centers, which have obtained a Certificate of Need prior to the effective date of this Act must commence construction prior to the two hundred and eleventh (211th) day following the effective date of this Act or said Certificate of Need shall be considered null and void. For purposes of this section, 'commence construction' means the approval of project financing or the actual movement on the site of building materials and equipment by the principal contractor. Two hundred and ten (210) days after the effective date of this Act, Section 5 of Act 558 of 1975, as amended, is hereby repealed. On and after the two hundred and eleventh (211th) day following the effective date of this Act, all projects requiring approval under Section 7 hereof shall not be instituted or commenced except upon application for and receipt of a permit of approval as set forth herein, and, during this period of time, all duties and responsibilities of the State Health Planning and Development Agency and the Statewide Health Coordinating Council are hereby transferred to the Health Services Agency established under this Act. Any project not requiring approval under this Act, even though covered under Section 5 of Act 558 of 1975, as amended, may be commenced after the effective date of this Act. The Health Services Agency shall process all applications or Certificates of Need for intermediate care facilities for the mentally retarded with fifteen (15) or fewer beds which were pending on the effective date of Act 593 of 1987 and shall for a period of thirty (30) days after the effective date of this Act accept additional applications for such facilities. The applications shall be processed utilizing the criteria and procedures in existence prior to the effective date of Act 593 of 1987, and in addition the agency shall consider as a primary factor the experience of each applicant in serving the developmentally disabled population.

SECTION 12. All Health Services Commission members appointed prior to the effective date of this Act under Act 593 of 1987 shall continue to serve their full terms. It is not the intent of the General Assembly in the passage of this Act to reconstitute the existing Health Services Commission.

SECTION 13. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 14. The General Assembly hereby declares each of the sections and provisions of this Act is severable, and in the event that any one or more of such sections are subsequently declared unconstitutional or invalid, the remaining sections and provisions shall be valid, it being the intent of the General Assembly that such remaining valid sections and provisions shall remain in full force and effect.

SECTION 15. EMERGENCY. It is hereby found and determined by the General Assembly that Act 593 of 1987 contained technical errors and omissions which, if uncorrected, will result in the loss of federal dollars in assisting the elderly and needy population of this state with their health care needs; that an effective health planning system is needed in this state; that health planning has a direct impact on the public health, welfare and safety; that an emergency is hereby declared to exist, and this Act is declared to be necessary for the preservation for the public peace, health and safety and shall become effective from and after its passage and approval.

APPROVED: June 19, 1987
