

Hall of the House of Representatives
84th General Assembly - Regular Session, 2003
Amendment Form

Subtitle of House Bill No. 2864

"AN ACT TO CLARIFY THE PERMIT OF APPROVAL PROCESS FOR ASSISTED LIVING
FACILITIES AND RESIDENTIAL CARE FACILITIES."

Amendment No. 1 to House Bill No. 2864.

Amend House Bill No. 2864 as originally introduced:

Add Senator Steele as a cosponsor of the bill

AND

Delete the Title and substitute the following:

"AN ACT TO CLARIFY AND AMEND THE PERMIT OF APPROVAL METHODOLOGY PROCESS AND
LICENSURE REQUIREMENTS FOR ASSISTED LIVING FACILITIES AND RESIDENTIAL CARE
FACILITIES; AND FOR OTHER PURPOSES."

AND

Delete the Subtitle and substitute the following:

"AN ACT TO CLARIFY AND AMEND THE PERMIT OF APPROVAL PROCESS AND LICENSURE
REQUIREMENTS FOR ASSISTED LIVING FACILITIES AND RESIDENTIAL CARE FACILITIES."

AND

Delete everything after the Enacting clause and substitute the following:

"SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an
additional subchapter to read as follows:

20-10-1901. Title.

This act shall be known and may be cited as " The Unlicensed Long-Term
Care Facilities Act".

20-10-1902. Purpose and intent.

(a) The purpose of this subchapter is to protect the elderly and other
vulnerable citizens of this state by ensuring that all facilities that offer
assisted living or similar services are properly licensed and following the
statutes and regulations for long-term care facilities.

(b) The General Assembly does not intend for the permit of approval
process to be an obstacle to accomplishing this goal.

(c) This subchapter is intended to:



(1) Clarify which facilities must obtain a permit of approval and license; and

(2) Allow a limited time during which a permit of approval is not required for currently unlicensed facilities if they become licensed within the time provided under this subchapter.

20-10-1903. Definitions.

For purposes of this subchapter:

(1) "Assisted living facility" means a long-term care facility as defined in § 20-10-1703;

(2) "Level I" assisted living facility means any assisted living facility that does not provide the more complex assisted living care involving limited nursing services provided in "Level II" assisted living facilities;

(3) "Level II" assisted living facility has the same meaning as in Department of Human Services regulations;

(4) "Congregate services" means provision of group meals or any activities of daily living and instrumental activities of daily living provided in a group setting;

(5) "Department" means the Department of Human Services and its divisions and offices;

(6) "Person" means an individual, partnership, association, corporation, or other entity; and

(7) "Residential care facility" means a long-term care facility as defined in § 20-10-101; and

(8) "Supervision" means that a facility monitors the condition or status of residents while in the facility.

20-10-1904. Licensure Requirement.

(a) Any assisted living or residential care facility comprised of a building or buildings, section or distinct part of a building, whether operated for profit or not, shall be licensed as a long-term care facility by the Office of Long Term Care if the facility:

(1) Houses more than three (3) individuals for a period exceeding twenty-four (24) hours; and,

(2)(A) Provides meals or other congregate services; and

(B) Either:

(i) Provides supervision of residents; or

(ii) Offers or provides assistance with activities of daily living such as eating, bathing, dressing, grooming, ambulating, toileting, or with medications.

(b)(1) Facilities subject to the licensure requirement under subsection (a) of this section include both those that provide services either directly or through contractual arrangements and those that facilitate contracting in the name of the residents.

(1) Apartment house managers referring residents to home health or other service agencies shall not be construed as facilitating contracting within the meaning of this subchapter.

(c) No entity may use the terms "assisted living," "residential care," or similar terms to advertise or publicly represent that it provides assisted living or residential care unless the entity is licensed under Arkansas law as an assisted living facility or residential care facility.

20-10-1905. Existing unlicensed facilities.

(a) Existing unlicensed entities offering assisted living or residential care shall apply for an assisted living facility license or residential care facility license within one-hundred eighty (180) days after the effective date of this subchapter.

(b) The Office of Long Term Care of the Department of Human Services may waive building code requirements implemented after the unlicensed facility was constructed if, in the sole discretion of the office, the facility has or will implement alternative measures that will result in a level of resident safety that will meet or exceed the level that would have resulted had the building been constructed in conformity with building codes in effect at the time of licensure.

(c) Any facility that does not apply for a license within one-hundred eighty (180) days, or applies for a license within one-hundred eighty (180) days but fails to become licensed on or before July 1, 2004, shall be subject to the provisions in § 20-10-1907.

(d)(1) An assisted living or residential care facility shall be exempt from the permit of approval process for purposes of this section if the facility obtains a license within the time provided in subsection (c) of this section.

(2) Thereafter, the facility shall comply with the permit of approval process and methodology in all other respects, including expansion, relocation, or construction of new facilities.

(3) The Office of Long Term Care shall report to the Health Services Permit Agency if a facility has been licensed without a permit of approval under this section.

(e) The Health Services Permit Agency shall take account of the new beds authorized under this section in counting for need purposes under the permit of approval methodology.

20-10-1906. Exemptions.

(a) This subchapter does not apply to situations in which persons in independent apartments receive home health services, "Meals on Wheels," or other services by agencies such as the Area Agencies on Aging, but in which congregate services are not offered and if the complex does not use the terms "assisted living" or "residential care" or any similar terms to advertise or publicly represent that it provides assisted living or residential care.

(b) Neither coordinating dining and social activities with a separately owned non-profit senior citizens' center nor any existing arrangements of other types between Area Agencies on Aging and government-subsidized housing projects shall be construed as providing congregate services for purposes of this subchapter.

20-10-1907. Penalties and Enforcement.

(a) The Department of Human Services shall have the same powers to enforce this subchapter as under § 20-10-215.

(b)(1) The department may enter and inspect suspected unlicensed facilities, including any combination of separate entities working in concert under § 20-10-215.

(2) If a facility denies or refuses the department entry, or

denies, refuses, or interferes with inspection by the department, the department may apply to a court of competent jurisdiction for, and shall be granted, an injunction in the name of the state to prohibit the facility from operating until such time as the department is permitted to enter and inspect the facility.

SECTION 2 . Arkansas Code § 5-28-306(f), concerning long-term protective custody, is amended to read as follows:

(f) Placement may be in facilities such as nursing homes, ~~boarding homes,~~ assisted living facilities, medical institutions, foster care services, or other facilities that provide either medical or personal supervision.

SECTION 3. Arkansas Code § 20-10-101 is amended to read as follows:
20-10-101. Definitions.

As used in this chapter, unless the context otherwise requires:

(1) "Administrator-in-training program" means a program for gaining supervised practical experience in long-term care administration;

(2) "Assisted living facility" has the same meaning as in § 20-10-1703;

~~(2)(3)~~ "Clock hour" means a period of contact experience comprising the full sixty (60) minutes;

~~(3)(4)~~ "Department" means the Department of Human Services;

~~(4)(5)~~ "Director" means the Director of the Department of Human Services;

~~(5)(6)~~ "Division" means the appropriate division as determined by the Director of the Department of Human Services;

~~(6)(7)~~ "Head injury" means a noncongenital injury to the brain or a neurological impairment caused by illness, accident, or nondegenerative etiology;

~~(7)(8)~~ "Head injury retraining and rehabilitation" means an individualized program of instruction designed to assist an individual suffering disability as a result of head injury to reduce the adverse effects of the disability and improve functioning in activities of daily living and work-related activities, but which does not include inpatient diagnostic care, and which may be offered in a residential or day program;

~~(8)(9)~~ "Long-term care facility" means a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care;

~~(9)(10)~~ "Long-term care facility administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility whether the individual has an ownership interest in the home and whether his functions and duties are shared with one (1) or more individuals;

~~(10)(11)~~ "Post-acute head injury residential care" means a residential program offering assistance in activities of daily living for individuals who are disabled because of head injury and are therefore unable to live independently;

~~(11)(12)~~ "Post-acute head injury residential care facility" means a residential care facility which is not a nursing home and which provides head injury retraining and rehabilitation for individuals who are disabled because

of head injury and are not in present need of inpatient diagnostic care in a hospital or related institution;

~~(12)~~(13) "Reciprocity licensing" means a method by which an individual licensed in good standing in one state may apply for licensure status in another state, provided the state from which the individual wishes to transfer has standards comparable to the state to which the individual wishes to transfer;

~~(13)~~(14) "Residential care facility" means a building or structure which is used or maintained to provide, for pay on a twenty-four-hour basis, a place of residence and board for three (3) or more individuals whose functional capabilities may have been impaired but who do not require hospital or nursing home care on a daily basis but could require other assistance in activities of daily living; and

~~(14)~~(15) "Sponsor" means legal guardian.

SECTION 4. Arkansas Code § 20-10-213(4), defining terms for §§ 20-10-213 - 20-10-228, is amended to read as follows:

(4)(A) "Long-term care facility" means and shall be construed to include any building, structure, agency, institution, or other place for the reception, accommodation, board, care, or treatment of more than three (3) unrelated individuals who, because of age, illness, blindness, disease, or physical or mental infirmity, are unable to sufficiently or properly care for themselves and where a charge is made for that reception, accommodation, board, care, or treatment.

(B) However, the term "long-term care facility" shall not include:

(i) The offices of private physicians and surgeons;

~~(ii) Boarding homes provided that fifty percent (50%) or more of the residents of the boarding home at any given time are not receiving personal care as defined by Arkansas Medicaid regulations. If this threshold is met, the boarding home shall be classified as a residential care facility. This provision does not change the prohibition on boarding homes providing direct care to residents;~~

~~(iii)~~(ii) Hospitals;

~~(iv)~~(iii) Recuperation centers;

~~(v)~~(iv) Supervised or supported living apartments, group homes, family homes, or developmental day treatment clinics for individuals with developmental disabilities operated by providers licensed by the Division of Developmental Disabilities Services of the Department of Human Services;

~~(vi)~~(v) Institutions operated by the federal government;

~~(vii)~~(vi) Separate living arrangements that do not involve monitoring the activities of the residents while on the premises of the institution or facility to ensure the residents' health, safety, or well-being and that do not involve the institution or facility's being aware of the residents' general whereabouts; or

~~(viii)~~(vii) Hospices.

SECTION 5 . Arkansas Code § 20-10-105 is amended to read as follows:

20-10-105. Residential care facility - Ineligibility for reimbursement - Exclusions.

(a) Any facility that meets the definition of a residential care facility as defined by the Office of Long-Term Care that has not been licensed or certified by the appropriate state agency or has not received a permit of approval from the Health Services Permit Agency ~~prior to January 15, 1991~~, shall not be eligible for any reimbursement from state revenues for any services that it offers.

(b) ~~This provision does not apply to:~~

~~(1) Those facilities that are renewing their license after January 15, 1991;~~

~~(2) Those facilities that have been receiving reimbursement prior to January 15, 1991; or~~

~~(3) Those facilities that have been exempted from review by the agency prior to January 15, 1991. This section does not apply to those residential care facilities that have been exempted by law from the permit of approval process.~~

SECTION 6 . Arkansas Code § 20-10-216(a), concerning the powers and duties of the Department of Human Services, is amended to read as follows:

(a) In carrying out the purposes of §§ 20-10-213 - 20-10-228 the Department of Human Services is empowered and directed to:

(1) Require such reports, make such inspections and investigations, and prescribe and enforce such reasonable rules and regulations as it finds necessary to effectuate the purposes of §§ 20-10-213 - 20-10-228;

(2) Provide methods of administration and appoint a director and other personnel of the division;

(3) Procure and pay for the temporary services of experts or consultants on a fee-for-service basis;

(4) Enter into agreements for the utilization of the facilities and services of other departments, agencies, and institutions, public and private;

(5) Accept on behalf of the state, and to deposit with the Treasurer of State, any grant, gift, or contribution of funds made to assist in meeting the cost of carrying out the purposes of §§ 20-10-213 - 20-10-228 and to expend such funds accordingly;

(6) Make an annual report to the Governor on activities and expenditures made pursuant to §§ 20-10-213 - 20-10-228;

(7) Procure the services of an attorney to assist the department in any legal work involved in carrying out the duties of the department and to pay for the services on a fee-for-service or retainer basis;

(8) Accept a certificate made by an individual's physician that the individual is in need of nursing home care or that he or she can provide for himself or herself ~~in a boarding home~~.

SECTION 7 . Arkansas Code § 20-10-702 is amended to read as follows:
20-10-702. Definition.

As used in this subchapter, unless the context otherwise requires, "long-term care facility" means a nursing home, residential care facility, assisted living facility, an adult day-care facility, or any other facility which provides long-term medical or personal care.

SECTION 8 . Arkansas Code § 20-10-1202(6), defining terms for long-

term care facilities, is amended to read as follows:

(6) "Long-term care facility" means a nursing home, residential care facility, assisted living facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care but shall not include 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 9 . Arkansas Code § 20-10-1401(6)(B), defining terms for long-term care facilities, is amended to read as follows:

(B) ~~Provided~~ However, the term "nursing facility or nursing home" shall not include the offices of private physicians and surgeons, ~~boarding homes~~, residential care facilities, assisted living facilities, intermediate care facilities for the mentally retarded, hospitals, 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 10 . Arkansas Code § 20-10-1601(7)(B), defining terms for long-term care facilities, is amended to read as follows:

(B) "Nursing facilities" does not mean offices of private physicians and surgeons, ~~boarding homes~~, residential care facilities, assisted living facilities, intermediate care facilities for the mentally retarded, hospitals, institutions operated by the federal government or licensed by the Division of Developmental Disability Services of the Department of Human Services, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with tenets or practices of any recognized religious denomination; and

SECTION 11 . EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that various long-term care facilities are operating in this state without having obtained a license, that there is no state oversight or protection for the vulnerable residents in these facilities, and no way of ensuring that the facilities properly treat and protect these residents under state long-term care laws.. 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:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto. "

The Amendment was read _____

By: Representative Bright

MGF/CDW - 032720031420

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Chief Clerk