

1 **State of Arkansas**
2 **79th General Assembly**
3 **Regular Session, 1993**
4 **By: Senator Malone**

A Bill

SENATE BILL

For An Act To Be Entitled

8 "AN ACT TO REQUIRE CONTINUING CARE PROVIDERS TO OBTAIN A
9 LICENSE; TO ESTABLISH REQUIREMENTS FOR APPLICATION; AND
10 FOR OTHER PURPOSES."

Subtitle

13 "AN ACT TO REQUIRE CONTINUING CARE PROVIDERS TO OBTAIN A
14 LICENSE."

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

18 SECTION 1. Arkansas Code 23-93-103 is amended to read as follows:

19 "23-93-103. Definitions. As used in this chapter, unless the context
20 otherwise requires:

21 (1) Commissioner means the Insurance Commissioner of this state;

22 (2) Continuing care means the furnishing of independent living units
23 to and either:

24 (A) Furnishing nursing care or personal care services pursuant to
25 an agreement, whether the nursing care or personal care services are provided
26 in the facility or in another setting designated by the agreement for
27 continuing care to; or

28 (B) Requiring the payment of an entrance fee by an individual not
29 related by consanguinity or affinity to the provider furnishing the living
30 unit. Payments may be made by an entrance fee alone, an entrance fee and
31 periodic payments, or by payment of fees for services. Agreements to provide
32 continuing care shall include agreements to provide care for any duration
33 including agreements that are terminable by either party;

34 (3) Department means the Insurance Department of this state;

35 (4) Entrance fee means an initial or deferred transfer to a provider

1 of a sum of money or other property made or promised to be made as full or
2 partial consideration for acceptance of a specified individual as a resident
3 in a facility which exceeds six (6) months' rental of the living unit. An
4 accommodation fee, admission fee, or other fee of similar form and application
5 shall be considered to be an entrance fee;

6 (5) Facility means a place which provides continuing care;

7 (6) Living unit means a room, apartment, cottage, or other area
8 within a facility set aside for the exclusive use or control of one (1) or
9 more identified individuals;

10 (7) Nursing care means those services pertaining to the curative,
11 restorative, and preventive aspects of nursing services that are performed by
12 or under the supervision of a registered or licensed nurse. Nursing care does
13 not include general health service such as nutritional counseling, exercise
14 programs, or other preventive medicine techniques;

15 (8) Personal care services means assistance with meals, dressing,
16 movement, bathing, or other personal needs of maintenance or other direct
17 supervision and oversight of the physical and mental well being of a person.
18 Personal care services does not include general health services such as
19 nutritional counseling, exercise programs, or other preventive medicine
20 techniques;

21 (9) Provider means the owner or operator, whether a natural person,
22 partnership, or other incorporated association, trust, or corporation whose
23 owner or operator undertakes to provide continuing care for a fee, whether
24 fixed or variable, for the period of care. The fee may be payable in lump sum,
25 or lump sum and monthly maintenance charges, or in installments;

26 (10) Refund reserve means the actuarially determined annual refund
27 amount required to be maintained by a continuing care provider for service of
28 its refund amounts during the next fiscal year of the facility;

29 (11) Resident means an individual entitled to receive continuing care
30 in a facility;

31 (12) Solicit means all actions of a provider in seeking to have
32 individuals residing in this state pay an application fee and enter into a
33 continuing care agreement by any means such as, but not limited to, personal,
34 telephone, or mail communication or any other communication directed to and
35 received by any individual in this state and any advertisements in any media

1 distributed or communicated by any means to individuals in this state.

2 (13) Hazardous financial condition means a provider is insolvent or
3 in eminent danger of becoming insolvent.

4

5 SECTION 2. Arkansas Code Title 23 Chapter 93 is amended by adding the
6 following sections:

7 "23-93-115. No continuing care provider shall be established, conducted
8 or maintained in this state without obtaining a license from the commissioner.

9

10 23-93-116. No license is transferable, and no license issued pursuant
11 to this act has value for sale or exchange as property. No provider or other
12 owning entity shall sell or transfer ownership of the facility, or enter into
13 a contract with a third party provider for management of the facility, unless
14 the department approves such transfer or contract.

15

16 23-93-117. (a) An application for a license shall consist of a
17 statement containing the items set forth in §23-93-118 together with a filing
18 fee in the amount of four hundred dollars (\$400) plus forty dollars (\$40.00)
19 per living unit made payable to the State Treasurer. In the event living
20 units are added during the application process, an additional fee of forty
21 dollars (\$40.00) per living unit shall be paid.

22 (b) Upon receipt of the complete application for a license, the
23 department shall within ten (10) business days, issue a notice of filing to
24 the applicant. Within ninety (90) days of the notice of filing, the
25 department shall enter an order issuing the license or rejecting the
26 application.

27 (c) If the commissioner determines that any of the application
28 requirements have not been met, the commissioner shall notify the applicant
29 that the application must be corrected within thirty (30) days in those
30 particulars designated by the commissioner. If the requirements are not met
31 within the time allowed, the commissioner may enter an order rejecting the
32 application, which order shall include the finding of fact upon which the
33 order is based and which shall not become effective until twenty (20) days
34 after the end of the thirty (30) day period. During the twenty (20) day
35 period the applicant may petition for reconsideration and is entitled to a

1 hearing.

2 (d) If a facility is accredited by a process approved by the
3 commissioner as substantially equivalent to the requirements of this chapter,
4 then the facility shall be deemed to have met the requirements of this chapter
5 and the commissioner shall issue a license to the facility.

6

7 23-93-118. (a) The application for a license shall contain the
8 following documents and information:

9 (1) An irrevocable appointment of the Department to receive
10 service of any lawful process in any proceeding arising under this chapter
11 against the provider or his agents;

12 (2) The states or other jurisdictions, including the federal
13 government, in which an application for certification or similar documents for
14 the subject facility have been or will be filed and any order, judgment or
15 decree entered in connection therewith by the regulatory authorities in each
16 of the jurisdictions or by any court or administrative body thereof;

17 (3) The names and business addresses of the officers, directors,
18 trustees, managing or general partners and any person having a ten percent
19 (10%) or greater equity or beneficial interest in the provider and a
20 description of that person's interest in or occupation with the provider;

21 (4) Copies of the articles of incorporation, with all amendments
22 thereto, if the provider is a corporation; copies of all instruments by which
23 the trust is created or declared, if the provider is a trust; copies of the
24 articles of partnership or association and all other organization papers, if
25 the provider is organized under another form. In the event the provider is
26 not the legal title holder to the property upon which the facility is or is to
27 be constructed, the above documents shall be submitted for both the provider
28 and the legal title holder;

29 (5) A legal description by metes and bounds or other acceptable
30 means of the lands to be certified, and the relationship of such lands to
31 existing streets, roads and other improvements, together with a map showing
32 the proposed or actual facility and showing the dimensions of the living units
33 as available, except for living units that are completed and available for
34 inspection. The map shall be drawn to scale, signed and sealed by a licensed
35 professional engineer or land surveyor;

1 (6) Copies of the deed or other instrument establishing title of
2 the provider and a title search, title report or title certificate or binder
3 or policy issued by a licensed title insurance company;

4 (7) A statement concerning any litigation, orders, judgments or
5 decrees which might affect the offering;

6 (8) A statement that the continuing care agreements will be
7 offered to the public and entered into without regard to marital status, sex,
8 race, creed or national origin or, if not, any legally permissible
9 restrictions on purchase that will apply;

10 (9) A statement of the present conditions of physical access to
11 the facility, and the existence of any material adverse conditions that affect
12 the facility, that are known, should be known or are readily ascertainable;

13 (10) Copies of all contracts and agreements which the resident may
14 be required to execute;

15 (11) In the event there is or will be a blanket encumbrance
16 affecting the facility or a portion thereof, a copy of the document creating
17 it and a statement of the consequences upon a resident of a failure of the
18 person bound to fulfill the obligations under which the instrument and the
19 manner in which the interest of the resident is to be protected in the event
20 of such eventuality;

21 (12) One (1) copy of the proposed disclosure statement;

22 (13) A current financial statement of the provider and any related
23 predecessor, parent or subsidiary company, including but not limited to a
24 current profit and loss statement and balance sheet audited by an independent
25 public accountant;

26 (14) A statement concerning any adjudication of bankruptcy during
27 the last five (5) years against the provider, its predecessor, parent or
28 subsidiary company and any principal owning more than ten percent (10%) of the
29 interests in the facility at the time of the filing of the application for
30 certification. This requirement shall not extend to limited partners or those
31 whose interests are solely those of investors;

32 (15) Copies of all easements and restrictions, whether of record
33 or not;

34 (16) A statement as to the status of compliance with all the
35 requirements of all laws, ordinances and regulations of governmental agencies

1 having jurisdiction over the construction, permitting and licensing of the
2 facility together with copies of all necessary federal, state, county and
3 municipal approvals;

4 (17) A statement that neither the provider nor any of its officers
5 or principals have ever been convicted of a crime in this state or a foreign
6 jurisdiction, and that the provider has never been subject to any permanent
7 injunction or final administrative order restraining a false or misleading
8 promotional plan involving continuing care facility disposition or if so,
9 copies of all pleadings and orders in regard thereto;

10 (18) A projected annual budget for the facility for the next five
11 (5) years or such lesser time as the department allows;

12 (19) Copies of market studies, if any, prepared on the behalf of
13 the provider, concerning the feasibility of the project;

14 (20) An affidavit, signed by the provider, that the contents of
15 the application are true and accurate and made in good faith; and

16 (21) Such other additional information as the department may
17 require in individual cases after review of an application for certification
18 to assure full and fair disclosure.

19

20 23-93-119. The department shall issue a license upon its affirmative
21 determination that all of the following requirements have been met:

22 (1) The provider can fulfill its obligation under the continuing care
23 contract if the resident complies with the terms of the offer;

24 (2) There is reasonable assurance that all proposed improvements can be
25 completed as represented;

26 (3) The provider, its officers and/or principals have not been
27 convicted of a crime in the state, the United States or any other state or
28 foreign country within the past ten (10) years, the seriousness of which in
29 the opinion of the department warrants the denial of a permit;

30 (4) The provider, its officers and/or principals have not been subject
31 to any permanent injunction or final administrative order restraining a false
32 or misleading plan involving a facility disposition, the seriousness of which
33 in the opinion of the department warrants the denial of a permit; and

34 (5) The disclosure statement requirements have been satisfied.

35

1 23-93-120. (a) The license of a provider shall remain in effect until
2 revoked after notice and hearing, upon written finding of fact by the
3 department, that the provider has:

4 (1) Willfully violated any provision of this chapter, or any
5 regulation promulgated thereunder;

6 (2) Failed to file an annual disclosure statement or standard
7 form of contract as required by this chapter;

8 (3) Delivered to a prospective resident a disclosure statement
9 that makes an untrue statement or omits a material fact and the provider, at
10 the time of the delivery of the disclosure statement, had actual knowledge of
11 the misstatement or omission;

12 (4) Failed to comply with the terms of a cease and desist order;

13 (5) Has been determined by the department to be in a hazardous
14 financial condition.

15 (b) Findings of fact in support of revocation shall be accompanied by
16 an explicit statement of the underlying facts supporting the finding.

17

18 23-93-121. Any person who wilfully and knowingly violates any provision
19 of this chapter is guilty of a misdemeanor and shall be punished by fine of
20 not more than ten thousand dollars (\$10,000) or by imprisonment for not more
21 than one year or both.

22

23 23-93-122. There shall be a nine (9) member Continuing Care Advisory
24 Committee appointed by the Commissioner. The Committee shall consist of at
25 least two (2) residents of continuing care communities, a representative of
26 the Health Services Agency, a representative of the Department of Human
27 Services, Office of Long Term Care, a certified public accountant who is
28 licensed to practice in Arkansas, a person who is skilled in the field of
29 architecture or engineering, and a person who is a health care professional."

30

31 SECTION 3. All provisions of this act of a general and permanent nature
32 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
33 Revision Commission shall incorporate the same in the Code.

34

35 SECTION 4. If any provision of this act or the application thereof to

1 any person or circumstance is held invalid, such invalidity shall not affect
2 other provisions or applications of the act which can be given effect without
3 the invalid provision or application, and to this end the provisions of this
4 act are declared to be severable.

5

6 SECTION 5. All laws and parts of laws in conflict with this act are
7 hereby repealed.