

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 84th General Assembly
3 Regular Session, 2003
4

A Bill

HOUSE BILL 1156

5 By: Representatives Borhauer, Bledsoe, Bond, Clemons, Edwards, Hardwick, Judy, Ledbetter, Schulte
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For An Act To Be Entitled

9 AN ACT TO ABOLISH THE REQUIREMENT FOR A PERMIT OF
10 APPROVAL FOR LONG-TERM CARE FACILITIES WHOSE
11 CONSTRUCTION COSTS ARE NOT FUNDED BY MEDICAID;
12 AND FOR OTHER PURPOSES.
13

Subtitle

14 AN ACT TO ABOLISH THE REQUIREMENT FOR A
15 PERMIT OF APPROVAL FOR NON-MEDICAID
16 FUNDED LONG-TERM CARE FACILITIES.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. The General Assembly finds that:

23 (1) The requirement for a permit of approval for assisted living
24 facilities, residential care facilities, lifecare facilities and hospice
25 facilities whose construction costs are not funded by Medicaid;

26 (A) Has the effect of limiting competition based on quality of
27 care and range of service options within Arkansas, causing certain areas of
28 the state to be underserved for necessary health care needs;

29 (B) Contravenes the goal of the decision of the United States
30 Supreme Court in Olmstead v. L.C. to reduce the institutional bias in
31 services for the elderly and people with disabilities by maintaining a range
32 of facilities offering real choices;

33 (C) Contravenes the goal of the "Integration Mandate" of the
34 Americans with Disabilities Act, which maintains that states must administer
35 their services, programs and activities in the most integrated setting
36 appropriate to the needs of qualified individuals with disabilities; and



1 (D) Impedes the state’s efforts to implement a comprehensive and
 2 effective Olmstead plan, including components to address the needs of
 3 Arkansas’ aging population, persons with mental illness, persons with
 4 developmental disabilities and other populations of persons with
 5 disabilities;

6 (2)(A) The state has an obligation to provide public services in the
 7 least restrictive setting consistent with the choice of and appropriate to
 8 the needs of the person being served;

9 (B) Lack of sufficient long-term care options in Arkansas has
 10 resulted in unjustified isolation or segregation of qualified individuals
 11 with disabilities through institutionalization, a form of disability-based
 12 discrimination prohibited by Title II of the Americans With Disabilities Act;

13 (C) Confinement in an institution severely diminishes the
 14 everyday life activities of individuals, including family relations, social
 15 contacts, work options, economic independence, educational advancement, and
 16 cultural enrichment; and

17 (D) Assisted living facilities, residential care facilities,
 18 lifecare facilities, and hospice facilities are necessary components of the
 19 continuum of care in Arkansas; and

20 (E) It is in the best interests of Arkansas and its citizens
 21 that the requirement for a permit of approval for long-term care facilities
 22 whose construction costs are not funded by Medicaid be abolished.

23
 24 SECTION 2. Purpose and intent.

25 (a) The purpose of this act is to:

26 (1) Encourage the availability of a full spectrum of health and
 27 human service options;

28 (2) Enable the elderly and people with disabilities to choose
 29 where they live and receive support and services;

30 (3) Promote the availability of a range of long-term care
 31 facilities to allow the elderly and people with disabilities to live in the
 32 least restrictive and most homelike environment, utilizing more integrated
 33 housing designs that are not large or institutional in nature; and

34 (4) Encourage the development of resident-centered long-term
 35 care facilities that promote the dignity, individuality, privacy, and
 36 decision-making ability of such persons.

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SECTION 3. Arkansas Code 20-7-117 is amended to read as follows:

20-7-117. Hospices.

(a) There is created within the Department of Health a State Hospice Office to be administered in a division of the department to be designated by the Director of the Department of Health.

(b)(1) The State Hospice Office created within the department shall:

(A) Coordinate the care of terminally ill persons with all existing agencies, programs, and facilities;

(B) Implement rules, regulations, and standards for hospice care in general agreement with guidelines of the National Hospice Organization and the Arkansas State Hospice Association and in compliance with the Health Care Finance Administration;

(C) Provide technical assistance and information to developing hospices;

(D) Maintain a central storehouse of information and reference materials relating to the hospice concept and disseminate this to programs and individuals on request in an equitable manner and accept and respond to inquiries relating to hospice; and

(E) Assist the Arkansas State Hospice Association in developing the hospice concept in our state and networking hospice programs with existing medical communities and human service facilities.

(2) All functions and duties of the office shall be carried out in accordance with the laws of Arkansas and the regulations of ~~the Health Services Permit Agency, the Health Services Permit Commission, and the federal Health Care Financing Administration~~ Centers for Medicare and Medicaid Services.

~~(c)(1) The regulations and requirements of the Health Services Permit Agency and the Health Services Permit Commission shall be revised to include separate permit of approval categories of health care facilities entitled "hospice facilities" and "hospice agencies" and to develop criteria for granting the permits of approval for hospice facilities and for hospice agencies for which applications shall be filed in accordance with the criteria after March 7, 1997, provided that those entities that have filed written intent to build a hospice facility or to operate a hospice agency with both the Health Services Permit Agency and the Department of Health~~

1 ~~prior to March 7, 1997, shall have thirty-six (36) months to complete the~~
2 ~~project and be licensed.~~

3 (2) A hospice facility or hospice agency shall not convert its
4 licensure to any other license.

5 (d) When used in this section, the term "hospice" or "hospice program"
6 means an autonomous, centrally administered, medically directed, coordinated
7 program providing a continuum of home, outpatient, and homelike inpatient
8 care for the terminally ill patient and the patient's family, and which
9 employs an interdisciplinary team to assist in providing palliative and
10 supportive care to meet the special needs arising out of the physical,
11 emotional, spiritual, social, and economic stresses which are experienced
12 during the final stages of illness and during dying and bereavement. The
13 care shall be available twenty-four (24) hours a day, seven (7) days a week,
14 and provided on the basis of need, regardless of ability to pay.

15 (e) The licensure fee for a hospice shall be an annual fee of five
16 hundred dollars (\$500).

17 (f) No permit of approval may be required for a hospice facility after
18 the effective date of this act.

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20 SECTION 4. Arkansas Code 20-8-103(a), concerning powers and duties of
21 the Health Services Permit Commission, is amended to read as follows:

22 (a) The Health Services Permit Commission shall evaluate the
23 availability and adequacy of health facilities and health services as they
24 relate to those long-term care facilities and home health care service
25 agencies in this state for which construction costs are defrayed in whole or
26 in part by Medicaid funds.

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28 SECTION 5. Arkansas Code § 20-8-103(d), concerning powers and duties
29 of the Health Services Permit Commission, is amended to read as follows:

30 (d) The commission shall develop policies and adopt criteria,
31 including time limitations, to be utilized by the Health Services Permit
32 Agency in the review of applications and the issuing of permits of approval
33 for a long-term care facility or a home health care service agency for which
34 construction costs are defrayed in whole or in part by Medicaid funds as
35 provided herein.

1 SECTION 6. Arkansas Code § 20-8-106(a), concerning the health services
 2 permit of approval program is amended to read as follows:

3 (a)(1) From March 8, 1989, until June 1, 1989, there shall be no new
 4 home health care agencies or nursing homes, with the exception of
 5 intermediate care facilities for the mentally retarded with fifteen (15) or
 6 fewer beds and with the exception of nursing home applications under review
 7 by the Health Services Permit Agency on June 2, 1987, and except for nursing
 8 homes with thirty-five (35) beds or fewer attached to or a part of hospitals
 9 located in cities or towns where no nursing home exists, provided applicants
 10 for such nursing homes must obtain a permit of approval from the proper
 11 authority pursuant to the provisions of this subchapter, nor shall there be
 12 any additional beds licensed for existing nursing homes or intermediate care
 13 facilities in this state. The Health Services Permit Commission may remove
 14 any or all of the moratoria anytime after June 1, 1988, provided the
 15 commission has duly adopted and promulgated standards for the review of the
 16 health facility for which the moratorium is removed. Nursing home
 17 applications under review by the agency on June 2, 1987, shall be considered
 18 under § 20-8-101 et seq. under updated standards on a county-by-county basis.

19 (2) No permit of approval shall be required by the agency or the
 20 commission for any applicant to qualify for a Class "B" license, as provided
 21 for in § 20-10-801 et seq., to operate a home health care services agency, if
 22 the agency was serving patients on or before June 30, 1988, and if the agency
 23 serves the residents of the county where the principal office is located.

24 (3) Nursing home applications under review by the agency on June
 25 2, 1987, shall be considered under the provisions of § 20-8-101 et seq. under
 26 updated standards on a county-by-county basis.

27 (4) No permit of approval may be required by the agency or the
 28 commission for long-term care facilities whose construction costs are
 29 defrayed in whole or in part by no Medicaid funds.

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 31 SECTION 7. Arkansas Code § 20-10-1709 is amended to read as follows:
 32 20-10-1709. Permit of approval.

33 No permit of approval may be required for Facilities ~~facilities~~ offering
 34 assisted living services. ~~must obtain a permit of approval. Provided,~~
 35 ~~however, that permits of approval held by residential care facilities as of~~
 36 ~~April 2, 2001, or held by subsequent purchasers of those facilities, shall~~

1 also be considered permits of approval for assisted living without further
2 action. However, residential care facilities that choose to offer assisted
3 living services are not exempted from assisted living licensure requirements
4 except as provided in § 20-10-1704.

5 (b)(1)(A) Provided, further, that in order to take advantage of a
6 Robert Wood Johnson Foundation grant, one (1) new facility chosen by the
7 Department of Human Services may serve as a pilot project without the
8 necessity of a permit of approval. This facility shall be exempt from the
9 permit of approval process provided that in 2001 it is awarded funding from
10 the Coming Home Project and tax credits from the Arkansas Development Finance
11 Authority.

12 (B) The Coming Home Project means the Robert Wood Johnson
13 Foundation/NCB Development Corporation grant.

14 (2) The facility shall have no more than sixty (60) beds and
15 shall serve a population a majority of which is low income as defined by the
16 Department of Housing and Urban Development.

17 (3) The pilot project facility must still meet all other
18 licensure requirements.

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