

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

State of Arkansas *As Engrossed: S1/28/99 S2/11/99 S2/12/99 S2/17/99 S2/25/99 S3/4/99 S3/11/99 S3/18/99 H3/29/99*

82nd General Assembly

# A Bill

Act 1181 of 1999

Regular Session, 1999

SENATE BILL 226

By: Senators Brown, *Bearden, Bisbee, Bradford, Hoofman, Ross, Scott, B. Walker, Wilson*

By: Representatives Magnus, T. Steele, Faris

## For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS; AND FOR OTHER PURPOSES."

### Subtitle

"TO PROVIDE FOR THE PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS."

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

#### SECTION 1. PURPOSE.

The purpose of this act is to provide for the development, establishment, and enforcement of basic standards for:

(1) The health, care and treatment of persons in long-term care facilities; and

(2) The construction, maintenance, and operation of such facilities which will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.

#### SECTION 2. DEFINITIONS.

When used in this act unless the context otherwise requires, the term:

(1) "Administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility;

(2) "Bed reservation policy" means the number of consecutive days and the number of days per year that a resident may leave the long-term care facility for overnight therapeutic visits with the family or friends or for

1 hospitalization for an acute condition before the licensee may  
2 discharge the resident due to his or her absence from the facility;

3 (3) "Board" means the Long Term Care Facility Advisory board created by  
4 Arkansas Code 20-10-301;

5 (4) "Custodial service" means care for a person which entails  
6 observation of diet and sleeping habits and maintenance of a watchfulness over  
7 the general health, safety, and well-being of the person;

8 (5) "Department" means the Department of Human Services;

9 (6) "OLTC" means the Office of Long Term Care, created by Arkansas Code  
10 20-10-202;

11 (7) "Ombudsman" means the Long-Term Care Ombudsman established pursuant  
12 to Arkansas Code 20-10-601 through 20-10-603;

13 (8) "Long-term care facility" means a nursing home, residential care  
14 facility, post-acute head injury retraining and residential care facility, or  
15 any other facility which provides long-term medical or personal care, but  
16 shall not include any facility which is conducted by and for those who rely  
17 exclusively upon treatment by prayer alone for healing in accordance with the  
18 tenets or practices of any recognized religious denomination;

19 (9) "Residential care plan" means a written plan developed, maintained,  
20 and reviewed not less than quarterly by a registered nurse, with participation  
21 from other facility staff and the resident or his or her designee or legal  
22 representative, which includes a comprehensive assessment of the needs of an  
23 individual resident, a listing of services provided within or outside the  
24 facility to meet those needs, and an explanation of service goals; and

25 (10) "Resident designee" means a person, other than the owner,  
26 administrator, or employee of the facility, designated in writing by a  
27 resident or a resident's guardian, if the resident is adjudicated incompetent,  
28 to be the resident's representative for a specific, limited purpose.

29  
30 SECTION 3. RESIDENTS' RIGHTS.

31 (a) All long-term care facilities shall adopt and make public a  
32 statement of the rights and responsibilities of the residents of such  
33 facilities and shall treat such residents in accordance with the provisions of  
34 that statement. The statement shall assure each resident of the following:

35 (1) The right to civil and religious liberties, including  
36 knowledge of available choices and the right to independent personal

1 decisions, which will not be infringed upon, and the right to encouragement  
2 and assistance from the staff of the facility in the exercise of these rights.

3 (2) The right to private and uncensored communication, including,  
4 but not limited to, receiving and sending unopened correspondence, access to a  
5 telephone, visiting with any person of the resident's choice during visiting  
6 hours provided that such visitors are not disruptive or dangerous, and  
7 overnight visitation outside the facility with family and friends in  
8 accordance with facility policies, physician orders, and Title XVIII  
9 (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations,  
10 without the resident's losing his or her bed. Facility visiting hours shall  
11 be flexible, taking into consideration special circumstances such as, but not  
12 limited to, out-of-town visitors and working relatives or friends. Unless  
13 otherwise indicated in the resident care plan, the licensee shall, with the  
14 consent of the resident and in accordance with policies approved by the  
15 agency, permit recognized volunteer groups, representatives of community-based  
16 legal, social, mental health, and leisure programs, and members of the clergy  
17 access to the facility during visiting hours for the purpose of visiting with  
18 and providing services to any resident.

19 (3) Any entity or individual that provides health, social, legal,  
20 or other services to a resident has the right to have reasonable access to the  
21 resident. The resident has the right to deny or withdraw consent to access at  
22 any time by any entity or individual. Notwithstanding the visiting policy of  
23 the facility, the following individuals must be permitted immediate access to  
24 the resident.

25 (A) Any representative of the federal or state government,  
26 including, but not limited to, representatives of the Department of Human  
27 Services, any law enforcement officer; any ombudsman; and the resident's  
28 individual physician.

29 (B) Subject to the resident's right to deny or withdraw  
30 consent, immediate family or other relatives of the resident. The facility  
31 must allow any ombudsman to examine a resident's clinical records with the  
32 permission of the resident or the resident's legal representative and  
33 consistent with state law.

34 (4) The right to present grievances on behalf of himself or  
35 herself or others to the staff or administrator of the facility, to  
36 governmental officials, or to any other person; to recommend changes in

1 policies and services to facility personnel; and to join with other residents  
2 or individuals within or outside the facility to work for improvements in  
3 resident care, freedom from restraint, interference, coercion, discrimination,  
4 or reprisal. This right includes access to ombudsmen and advocates and the  
5 right to be a member of, to be active in, and to associate with advocacy or  
6 special interest groups. The right also includes the right to prompt efforts  
7 by the facility to resolve resident grievances, including grievances with  
8 respect to the behavior of other residents.

9 (5) The right to organize and participate in resident groups in  
10 the facility and the right to have the resident's family meet in the facility  
11 with the families of other residents.

12 (6) The right to participate in social, religious, and community  
13 activities that do not interfere with the rights of other residents.

14 (7) The right to examine, at any time, the results which the  
15 facility shall post of the most recent inspection of the facility conducted by  
16 a federal or state agency and any plan of correction in effect with respect to  
17 the facility.

18 (8) The right to manage his or her own financial affairs or to  
19 delegate such responsibility to the licensee, but only to the extent of the  
20 funds held in trust by the licensee for the resident. An annual accounting of  
21 any transactions made on behalf of the resident shall be furnished to the  
22 resident or the person responsible for the resident. The facility may not  
23 require a resident to deposit personal funds with the facility. However, upon  
24 written authorization of a resident, the facility must hold, safeguard,  
25 manage, and account for the personal funds of the resident deposited with the  
26 facility as follows:

27 (A) The facility must establish and maintain a system that  
28 ensures a full, complete, and separate accounting, according to generally  
29 accepted accounting principles or regulations established by OLTC of each  
30 resident's personal funds entrusted to the facility on the resident's behalf;

31 (B) The accounting system established and maintained by the  
32 facility must preclude any commingling of resident funds with facility funds  
33 or with the funds of any person other than a resident;

34 (C) An annual accounting of any transaction made on behalf  
35 of the resident shall be furnished to the resident or the person responsible  
36 for the resident; and

1                   (D) The facility may not impose a charge against the  
2 personal funds of a resident for any item or service for which payment is made  
3 under Title XVIII or Title XIX of the Social Security Act.

4                   (9) The right to be fully informed, in writing and orally, prior  
5 to or at the time of admission and during his or her stay, of services  
6 available in the facility and of related charges for such services, including  
7 any charges for services not covered under Title XVIII or Title XIX of the  
8 Social Security Act or not covered by the basic per diem rates and of bed  
9 reservation and refund policies of the facility.

10                   (10) The right to be adequately informed of his or her medical  
11 condition and proposed treatment, unless the resident is determined to be  
12 unable to provide informed consent under Arkansas law, or the right to be  
13 fully informed in advance of any nonemergency changes in care or treatment  
14 that may affect the resident's well-being; and, except with respect to a  
15 resident adjudged incompetent, the right to participate in the planning of all  
16 medical treatment, including the right to refuse medication and treatment,  
17 unless otherwise indicated by the resident's physician; and to know the  
18 consequences of such actions.

19                   (11) The right to refuse medication or treatment and to be  
20 informed of the consequences of such decisions, unless determined unable to  
21 provide informed consent under state law. When the resident refuses  
22 medication or treatment, the long-term care facility must notify the resident  
23 or the resident's legal representative of the consequences of such decision  
24 and must document the resident's decision in his or her medical record. The  
25 long-term care facility must continue to provide other services the resident  
26 agrees to in accordance with the resident's care plan.

27                   (12) The right to receive adequate and appropriate health care  
28 and protective and support services, including social services; mental health  
29 services, if available; planned recreational activities; and therapeutic and  
30 rehabilitative services consistent with the resident care plan, with  
31 established and recognized practice standards within the community, and with  
32 rules as adopted by the agency.

33                   (13) The right to have privacy in treatment and in caring for  
34 personal needs; to close room doors and to have facility personnel knock  
35 before entering the room, except in the case of an emergency or unless  
36 medically contraindicated; and to security in storing and using personal

1 possessions. Privacy of the resident's body shall be maintained during, but  
2 not limited to, toileting, bathing, and other activities of personal hygiene,  
3 except as needed for resident safety or assistance.

4 (14) The right to be treated courteously, fairly, and with the  
5 fullest measure of dignity and to receive a written statement and an oral  
6 explanation of the services provided by the licensee, including those required  
7 to be offered on an as-needed basis.

8 (15) The right to be free from mental and physical abuse,  
9 corporal punishment, extended involuntary seclusion, and from physical and  
10 chemical restraints, except those restraints authorized in writing by a  
11 physician for a specified and limited period of time or as are necessitated by  
12 an emergency. In case of an emergency, restraint may be applied only by a  
13 qualified licensed nurse who shall set forth in writing the circumstances  
14 requiring the use of restraint, and, in the case of use of a chemical  
15 restraint, a physician shall be consulted immediately thereafter. Restraints  
16 may not be used in lieu of staff supervision or merely for staff convenience,  
17 for punishment, or for reasons other than resident protection or safety.

18 (16) The right to be transferred or discharged only for medical  
19 reasons or for the welfare of other residents, and the right to be given  
20 reasonable advance notice of no less than thirty (30) days of any involuntary  
21 transfer or discharge, except in the case of an emergency as determined by a  
22 licensed professional on the staff of the long-term care facility, or in the  
23 case of conflicting rules and regulations which govern Title XVIII or Title  
24 XIX of the Social Security Act. For nonpayment of a bill for care received,  
25 the resident shall be given thirty (30) days advance notice. A licensee  
26 certified to provide services under Title XIX of the Social Security Act may  
27 not transfer or discharge a resident solely because the source of payment for  
28 care changes. Admission to a long-term care facility operated by a licensee  
29 may not be conditioned upon a waiver of such right, and any document or  
30 provision in a document which purports to waive or preclude such right is void  
31 and unenforceable. Any licensee certified to provide services under Title XIX  
32 of the Social Security Act that obtains or attempts to obtain such a waiver of  
33 a resident's rights as established herein is subject to disciplinary action as  
34 provided in subdivision (a)(3). The resident and the family or representative  
35 of the resident shall be consulted in choosing another facility.

36 (17) The right to freedom of choice in selecting a personal

1 physician; to obtain pharmaceutical supplies and services from a pharmacy of  
2 the resident's choice, at the resident's own expense or through Title XIX of  
3 the Social Security Act; and to obtain information about, and to participate  
4 in, community-based activities programs, unless medically contraindicated as  
5 documented by a physician in the resident's medical record. If a resident  
6 chooses to use a community pharmacy and the facility in which the resident  
7 resides uses a unit-dose system, the pharmacy selected by the resident shall  
8 be one that provides a compatible unit-dose system, provides service delivery,  
9 and stocks the drugs normally used by long term care residents. If a resident  
10 chooses to use a community unit-dose system, and the facility in which the  
11 resident resides does not use a unit-dose system, the pharmacy selected by the  
12 resident shall be one that provides service delivery and stocks the drugs  
13 normally used by the long-term care residents.

14 (18) The right to retain and use personal clothing and  
15 possessions as space permits, unless to do so would infringe upon the rights  
16 of other residents or unless medically contraindicated as documented in the  
17 resident's medical record by a physician. If clothing is provided to the  
18 resident by the licensee, it shall be of reasonable fit.

19 (19) The right to have copies of the rules and regulations of the  
20 facility and an explanation of the responsibility of the resident to obey all  
21 reasonable rules and regulations of the facility and to respect the personal  
22 rights and private property of the other residents.

23 (20) The right to receive notice before the room of the resident  
24 in the facility is changed.

25 (21) The right to be informed of the bed reservation policy for a  
26 hospitalization. The long-term care facility shall inform a private-pay  
27 resident and his or her responsible party that his or her bed will be reserved  
28 for any single hospitalization for a period up to thirty (30) days provided  
29 the long-term care facility receives reimbursement. Any resident who is a  
30 recipient of assistance under Title XIX of the Social Security Act, or the  
31 resident's designee or legal representative, shall be informed by the licensee  
32 that his or her bed, for which there is Title XIX reimbursement available,  
33 will be reserved up to five (5) days but that the bed will not be reserved if  
34 it is medically determined by a physician that the resident will not need it  
35 or will not be able to return to the long-term care facility, or if the agency  
36 determines that the long-term care facility's occupancy rate ensures the

1 availability of a bed for the resident. Notice shall be provided within  
2 twenty-four (24) hours of hospitalization.

3 (22) For residents of Medicaid or Medicare certified facilities,  
4 the right to challenge a decision by the facility to discharge or transfer the  
5 resident, as required under Title 42 C.F.R. Part 488.12.

6 (b) The licensee for each long-term care facility shall orally inform  
7 the resident of the resident's rights and provide a copy of the statement  
8 required by subdivision (a)(1) to each resident or the resident's legal  
9 representative at or before the resident's admission to a facility. The  
10 licensee shall provide a copy of the residents' rights to each staff member of  
11 the facility. Each such licensee shall prepare a written plan and provide  
12 appropriate staff training to implement the provisions of this section. The  
13 written statement of rights must include a statement that a resident may file  
14 a complaint with the OLTC or ombudsman. The statement must be in boldfaced  
15 type and shall include the name, address, and telephone numbers of the  
16 ombudsman and adult abuse registry where complaints may be lodged.

17 (c) Any violation of the residents' rights set forth in this section  
18 may constitute grounds for action by the OLTC. In order to determine whether  
19 the licensee is adequately protecting residents' rights, the annual inspection  
20 of the facility shall include private informal conversations with a sample of  
21 residents to discuss residents' experiences within the facility with respect  
22 to rights specified in this section and general compliance with standards, and  
23 consultation with the ombudsman in the area in which the long-term care  
24 facility is located.

25 (d) Any person who submits or reports a complaint concerning a  
26 suspected violation of the residents' rights or concerning services or  
27 conditions in a facility or who testifies in any administrative or judicial  
28 proceeding arising from such complaint shall have immunity from civil  
29 liability thereof, unless that person has acted in bad faith, with malicious  
30 purpose, or if the court finds that there was a complete absence of a  
31 justiciable issue of either law or fact.

32  
33 SECTION 4. CIVIL ENFORCEMENT.

34 (a) Any resident who is injured by a deprivation or infringement of his  
35 or her rights as specified in this act may bring a cause of action against any  
36 licensee responsible for the deprivation or infringement. The action may be



1 brought by the resident or his or her guardian or by the personal  
2 representative of the estate of a deceased resident. The action may be brought  
3 in any court of competent jurisdiction in the county in which the injury  
4 occurred or where the licensee is located to enforce such rights and to  
5 recover actual and punitive damages. No separate award of attorney's fees may  
6 be made by the court. The resident may seek to recover actual damages when  
7 there is a finding that an employee of the long term care facility failed to  
8 do something which a reasonably careful person would do, or did something  
9 which a reasonable person would not do, under circumstances similar to those  
10 shown by the evidence in the case, which caused an injury due to an  
11 infringement or a deprivation of the resident's rights.

12 (b) A licensee shall not be liable for the medical negligence of any  
13 physician rendering care or treatment to the resident except for the services  
14 of a medical director as required in this act. Nothing in this subsection  
15 shall be construed to protect a licensee from liability for failure to provide  
16 a resident with appropriate observation, assessment, nursing diagnosis,  
17 planning, intervention, and evaluation of care by nursing staff.

18 (c) For the purpose of this section, punitive damages may be awarded  
19 for conduct which is willful, wanton, gross or flagrant, reckless, or  
20 consciously indifferent to the rights of the resident.

21  
22 SECTION 5. PATIENT RECORDS - PENALTIES FOR ALTERATION.

23 (a) Any person who fraudulently alters, defaces, or falsifies any  
24 medical or other long-term care facility record, or causes or procures any of  
25 these offenses to be committed, commits a Class A misdemeanor.

26 (b) A conviction under this section is also grounds for restriction,  
27 suspension, or termination of license privileges for the person.

28  
29 SECTION 6. ADMINISTRATION AND MANAGEMENT OF LONG-TERM CARE FACILITIES.

30 Every licensed facility shall comply with all applicable standards and  
31 rules of the OLTC and shall:

32 (1) Be under the administrative direction and charge of a licensed  
33 administrator.

34 (2) Have available the regular, consultative, and emergency services  
35 of physicians licensed by the state and required by state and federal  
36 regulations.

1           (3) Provide for the access of the facility residents to dental and  
2 other health-related services, recreational services, rehabilitative services,  
3 and social work services appropriate to their needs and conditions and not  
4 directly furnished by the licensee.

5           (4) If the facility was not cited for any deficiencies in the past  
6 twelve (12) months, be encouraged by OLTC to provide services, including, but  
7 not limited to, respite and adult day services, which enable individuals to  
8 move in and out of the facility. A facility is not subject to any additional  
9 licensure requirements for providing these services. Respite care may be  
10 offered to persons in need of short-term or temporary long-term care services.  
11 Respite care must be provided in accordance with this act and rules adopted by  
12 the OLTC. However, the OLTC shall, by rule, adopt modified requirements for  
13 resident assessment, resident care plans, resident contracts, physician  
14 orders, and other provisions, as appropriate, for short-term or temporary  
15 long-term care services. The OLTC shall allow for shared programming and  
16 staff in a facility which meets minimum standards and offers services pursuant  
17 to this subsection, but, if the facility is cited for deficiencies in *quality*  
18 *of care, categories or tags,* may require additional staff and programs  
19 appropriate to the needs of service recipients. A person who receives respite  
20 care may not be counted as a resident of the facility for purposes of the  
21 facility's licensed capacity unless that person receives twenty-four (24) hour  
22 respite care. A person receiving either respite care for 24 hours or longer  
23 or adult day services must be included when calculating minimum staffing for  
24 the facility. Any costs and revenues generated by a long-term care facility  
25 from nonresidential programs or services shall be excluded from the  
26 calculations of Medicaid per diems for long-term care institutional care  
27 reimbursement.

28           (5) If the facility was not cited for any deficiencies in the last  
29 twelve (12) months, exceeds minimum staffing standards, and is part of a  
30 retirement community that offers other services pursuant to part III, part IV,  
31 or part V, be allowed to share programming and staff.

32           (6) Maintain the facility premises and equipment and conduct its  
33 operations in a safe and sanitary manner.

34           (7) If the licensee furnishes food service, provide a wholesome and  
35 nourishing diet sufficient to meet generally accepted standards of proper  
36 nutrition for its residents and provide such therapeutic diets as may be

1 prescribed by attending physicians. In making rules to implement this  
2 subsection, the OLTC shall be guided by standards recommended by nationally  
3 recognized professional groups and associations with knowledge of dietetics.

4 (8) Keep full records of resident admissions and discharges, medical  
5 and general health status, including medical records, personal and social  
6 history, and identity and address of next of kin, or other persons who may  
7 have responsibility for the affairs of the residents; and individual resident  
8 care plans including, but not limited to, prescribed services, service  
9 frequency and duration, and service goals. The records shall be open to  
10 inspection by the OLTC.

11 (9) Keep such fiscal records of its operations and conditions as may be  
12 necessary to provide information pursuant to this act.

13 (10) Furnish copies of personnel records for employees affiliated with  
14 such facility, to any other facility licensed by this state requesting this  
15 information pursuant to this act. Such information contained in the records  
16 may include, but is not limited to, disciplinary matters and any reason for  
17 termination. Any facility releasing such records pursuant to this act shall  
18 be considered to be acting in good faith and may not be held liable for  
19 information contained in such records, absent a showing that the facility  
20 maliciously falsified such records.

21  
22 SECTION 7. PROPERTY AND PERSONAL AFFAIRS OF RESIDENTS.

23 (a) The admission of a resident to a facility and his or her presence  
24 in the facility shall not confer on the facility or its owner, administrator,  
25 employees, or representatives any authority to manage, use, or dispose of any  
26 property of the resident; nor shall such admission or presence confer on any  
27 of the aforementioned persons any authority or responsibility for the personal  
28 affairs of the resident, except that which may be necessary for the safety of  
29 the residents and orderly management of the facility.

30 (b) No licensee, owner, administrator, employee, or representative  
31 thereof shall act as guardian, trustee, or conservator for any resident of the  
32 facility or any such resident's property unless the person is the resident's  
33 spouse or blood relative within the third degree of consanguinity or if  
34 ordered by a court before the effective date of this act.

35 (c) A licensee shall provide for the safekeeping of personal effects,  
36 funds, and other property of the resident in the facility. Whenever necessary

1 for the protection of valuables, or in order to avoid unreasonable  
2 responsibility thereof, the licensee may require that such valuables be  
3 excluded or removed from the facility and kept at some place not subject to  
4 the control of the licensee.

5 (d) A licensee shall keep complete and accurate records of all funds  
6 and other effects and property of its residents received by it for  
7 safekeeping.

8 (e)(1) Any funds or other property belonging to a resident which are  
9 received by a licensee shall be held in trust. Funds held in trust shall be  
10 kept separate from the funds and property of the facility; shall be deposited  
11 in a bank, savings and loan association, trust company, or credit union  
12 located in this state and, if possible, located in the same county in which  
13 the facility is located; shall not be represented as part of the assets of the  
14 facility on a financial statement; and shall be used or otherwise expended  
15 only for the account of the resident.

16 (2) The licensee may enter into a self-insurance agreement as  
17 specified in rules adopted by the OLTC. Funds contained in the pool shall run  
18 to any resident suffering financial loss as a result of the violation by the  
19 licensee of the provisions of this section. Such funds shall be awarded to  
20 any resident in an amount equal to the amount that the resident can establish,  
21 by affidavit or other adequate evidence, was deposited in trust with the  
22 licensee and which could not be paid to the resident within thirty (30) days  
23 of the resident's request. The OLTC shall promulgate rules with regard to the  
24 establishment, organization, and operation of such self-insurance pools. Such  
25 rules shall include, but shall not be limited to, requirements for monetary  
26 reserves to be maintained by such self-insurers to assure their financial  
27 solvency.

28 (3) If, at any time during the period for which a license is  
29 issued, a licensee that has not entered into a self-insurance agreement, as  
30 provided in subsection (b), is requested to provide safekeeping for the  
31 personal funds of a resident, the licensee shall notify the agency of the  
32 request and make application for a surety bond or for participation in a self-  
33 insurance agreement within seven (7) days of the request, exclusive of  
34 weekends and holidays. Copies of the application, along with written  
35 documentation of related correspondence with an insurance agency or group,  
36 shall be maintained by the licensee for review by the OLTC and the Ombudsman.

1           (4) Moneys or securities received as advance payment for care may  
2 not at any time exceed the cost of care for a six (6) month period.

3           (5) At least annually, the licensee shall furnish the resident  
4 and the guardian, trustee, or conservator, if any, for the resident a complete  
5 and verified statement of all funds and other property to which this  
6 subsection applies, detailing the amounts and items received, together with  
7 their sources and disposition. In any event, the licensee shall furnish such  
8 a statement annually and upon the discharge or transfer of a resident.

9           (f) In the event of the death of a resident, a licensee shall within  
10 thirty (30) days of the resident's death provide an accounting and shall  
11 return all refunds and funds held in trust to the resident's personal  
12 representative, if one has been appointed at the time the long-term care  
13 facility disburses such funds, and if not, to the resident's spouse or adult  
14 next of kin named in a beneficiary designation form provided by the long-term  
15 care facility to the resident. In the event the resident has no spouse or  
16 adult next of kin or such person cannot be located, funds due to the resident  
17 shall be placed in an interest-bearing account in a bank, savings and loan  
18 association, trust company, or credit union located in this state and, if  
19 possible, located within the same county in which the facility is located,  
20 which funds shall not be represented as part of the assets of the facility on  
21 a financial statement, and the licensee shall maintain such account until such  
22 time as the trust funds are disbursed pursuant to the provisions of Arkansas'  
23 Probate Code. All other property of a deceased resident being held in trust  
24 by the licensee shall be returned to the resident's personal representative,  
25 if one has been appointed at the time the long-term care facility disburses  
26 such property, and if not, to the resident's spouse or adult next of kin named  
27 in a beneficiary designation form provided by the long-term care facility to  
28 the resident. In the event the resident has no spouse or adult next of kin or  
29 such person cannot be located, property being held is disbursed pursuant to  
30 the provisions of Arkansas' Probate Code. The trust funds and property of  
31 deceased residents shall be kept separate from the funds and the property of  
32 the licensee and from the funds and property of the residents of the facility.  
33 The long-term care facility needs to maintain only one account in which the  
34 trust funds amounting to less than one hundred dollars (\$100) of deceased  
35 residents are placed. However, it shall be the obligation of the long-term  
36 care facility to maintain adequate records to permit compilation of interest

1 due each individual resident's account. Separate accounts shall be maintained  
2 with respect to trust funds of deceased residents equal to or in excess of  
3 \$100. Any other property of a deceased resident held in trust by a licensee  
4 which is not disbursed in accordance with the provisions of Arkansas' Probate  
5 Code shall escheat to the state as provided by law.

6  
7 SECTION 8. RIGHT OF ENTRY AND INSPECTION

8 The department and any duly designated officer or employee thereof or an  
9 Ombudsman shall have the right to enter upon and into the premises of any  
10 long-term care facility, at any time in order to determine the state of  
11 compliance with the provisions of this act and rules in force pursuant  
12 thereto. The right of entry and inspection shall also extend to any premises  
13 which the agency has reason to believe is being operated or maintained as a  
14 facility without a license, but no such entry or inspection of any premises  
15 shall be made without the permission of the owner or person in charge thereof,  
16 unless an inspection order is first obtained from a circuit court upon a  
17 showing of reasonable cause to inspect that certain premises are being  
18 maintained and operated in violation of this act and statutory licensure  
19 requirements.

20  
21 SECTION 9. AVAILABILITY, DISTRIBUTION, AND POSTING OF REPORTS AND  
22 RECORDS.

23 (a) The OLTC shall, within ten (10) days after the date of an annual  
24 inspection visit or within thirty (30) days after the date of any interim  
25 visit, forward the results of all inspections of long-term care facilities to:

26 (1) The ombudsman in whose county the inspected facility is  
27 located; and

28 (2) At least one public library or, in the absence of a public  
29 library, the county clerk in the county in which the inspected facility is  
30 located.

31 (b) Each long-term care facility licensee shall maintain as public  
32 information, available upon request, records of inspection reports pertaining  
33 to that facility that have been filed with, or issued by, any governmental  
34 agency. Copies of such reports shall be retained in such records for not less  
35 than five (5) years after the date the reports are filed or issued.

36 (c) Any records of a long-term care facility determined by the OLTC to

1 be necessary and essential to establish lawful compliance with any rules or  
 2 standards shall be made available to the OLTC on the premises of the facility,  
 3 with the exception of quality assurance committee records.

4 (d) Every long-term care facility licensee shall:

5 (1) Post, in a sufficient number of prominent positions in the  
 6 long-term care facility so as to be accessible to all residents and to the  
 7 general public, the last inspection report or survey pertaining to the long-  
 8 term care facility and issued by the OLTC, with references to the page numbers  
 9 of the full reports, noting any deficiencies found by the OLTC and the actions  
 10 taken by the licensee to rectify such deficiencies.

11 (2) Upon request, provide to any person who has completed a  
 12 written application with an intent to be admitted to, or to any resident of,  
 13 such long-term care facility, or to any relative, spouse, or guardian of such  
 14 person, a copy of the last inspection report pertaining to the long-term care  
 15 facility and issued by the agency, provided the person requesting the report  
 16 agrees to pay a reasonable charge to cover copying costs.

17  
 18 SECTION 10. Arkansas Code 20-10-224, as amended by Act 485 of 1989, is  
 19 repealed.

20 ~~20-10-224. License required - Administration by Department of Human~~  
 21 ~~Services. [As amended by Acts 1989, No. 485, § 1.]~~

22 ~~(a) No long-term care facility or related institution shall be~~  
 23 ~~established, conducted, or maintained in this state without obtaining a~~  
 24 ~~license.~~

25 ~~(b) The department shall, by properly promulgating rules and regulations,~~  
 26 ~~provide for the issuance of appropriate types of long-term care facility~~  
 27 ~~licenses, including the licensure of facilities with specialized wings, units,~~  
 28 ~~or rooms for dementia residents, those suffering from Alzheimer's disease, and~~  
 29 ~~other related conditions.~~

30 ~~(c) The department may provide, by properly promulgating rules and~~  
 31 ~~regulations, for the issuance of permanent type licenses, subject to~~  
 32 ~~revocation.~~

33 ~~(d) This section shall not apply to hospital swing beds.~~

34  
 35 SECTION 11. All provisions of this act of a general and permanent  
 36 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas

1 Code Revision Commission shall incorporate the same in the Code.

2

3 SECTION 12. If any provision of this act or the application thereof to  
4 any person or circumstance is held invalid, such invalidity shall not affect  
5 other provisions or applications of the act which can be given effect without  
6 the invalid provision or application, and to this end the provisions of this  
7 act are declared to be severable.

8 SECTION 13. All laws and parts of laws in conflict with this act are  
9 hereby repealed.

10

*/s/ Brown, et al*

11

12

13

APPROVED: 4/7/1999

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36