

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.

Act 2191 of the Regular Session

1 State of Arkansas
2 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/28/05

A Bill

HOUSE BILL 1785

5 By: Representative Bright
6
7

8 **For An Act To Be Entitled**

9 AN ACT TO PROHIBIT THE OPERATION OF UNLICENSED
10 ASSISTED LIVING OR RESIDENTIAL CARE FACILITIES IN
11 THIS STATE; TO PROVIDE THAT CERTAIN FACILITIES
12 CURRENTLY IN OPERATION MUST OBTAIN LICENSES BY A
13 DATE CERTAIN; AND FOR OTHER PURPOSES.
14

15 **Subtitle**

16 AN ACT TO PROHIBIT THE OPERATION OF
17 UNLICENSED ASSISTED LIVING FACILITIES OR
18 RESIDENTIAL CARE FACILITIES IN THIS
19 STATE.
20
21

22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 5-28-306(f), concerning long-term
25 protective custody, is amended to read as follows:

26 (f) Placement may be in facilities such as nursing homes, ~~boarding~~
27 ~~homes,~~ assisted living facilities, medical institutions, foster care
28 services, or other facilities that provide either medical or personal
29 supervision.
30

31 SECTION 2. Arkansas Code § 20-10-101 is amended to read as follows:
32 20-10-101. Definitions.

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

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



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

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

5 ~~(3)~~(4) "Department" means the Department of Human Services;

6 ~~(4)~~(5) "Director" means the Director of the Department of Human
7 Services;

8 ~~(5)~~(6) "Division" means the appropriate division as determined
9 by the Director of the Department of Human Services;

10 ~~(6)~~(7) "Head injury" means a noncongenital injury to the brain
11 or a neurological impairment caused by illness, accident, or nondegenerative
12 etiology;

13 ~~(7)~~(8) "Head injury retraining and rehabilitation" means an
14 individualized program of instruction designed to assist an individual
15 suffering disability as a result of head injury to reduce the adverse effects
16 of the disability and improve functioning in activities of daily living and
17 work-related activities, but which does not include inpatient diagnostic
18 care, and which may be offered in a residential or day program;

19 ~~(8)~~(9) "Long-term care facility" means a nursing home,
20 residential care facility, assisted living facility, post-acute head injury
21 retraining and residential care facility, or any other facility which
22 provides long-term medical or personal care;

23 ~~(9)~~(10) "Long-term care facility administrator" means a person
24 who administers, manages, supervises, or is in general administrative charge
25 of a long-term care facility whether the individual has an ownership interest
26 in the home and whether his functions and duties are shared with one (1) or
27 more individuals;

28 ~~(10)~~(11) "Post-acute head injury residential care" means a
29 residential program offering assistance in activities of daily living for
30 individuals who are disabled because of head injury and are therefore unable
31 to live independently;

32 ~~(11)~~(12) "Post-acute head injury residential care facility"
33 means a residential care facility which is not a nursing home and which
34 provides head injury retraining and rehabilitation for individuals who are
35 disabled because of head injury and are not in present need of inpatient
36 diagnostic care in a hospital or related institution;

1 ~~(12)~~(13) "Reciprocity licensing" means a method by which an
2 individual licensed in good standing in one state may apply for licensure
3 status in another state, provided the state from which the individual wishes
4 to transfer has standards comparable to the state to which the individual
5 wishes to transfer;

6 ~~(13)~~(14) "Residential care facility" means a building or
7 structure which is used or maintained to provide, for pay on a twenty-four-
8 hour basis, a place of residence and board for three (3) or more individuals
9 whose functional capabilities may have been impaired but who do not require
10 hospital or nursing home care on a daily basis but could require other
11 assistance in activities of daily living; and

12 ~~(14)~~(15) "Sponsor" means legal guardian.
13

14 SECTION 3. Arkansas Code § 20-10-105 is amended to read as follows:

15 20-10-105. Residential care facility - Ineligibility for reimbursement
16 - Exclusions.

17 (a) Any facility that meets the definition of a residential care
18 facility as defined by the Office of Long-Term Care that has not been
19 licensed or certified by the appropriate state agency or has not received a
20 permit of approval from the Health Services Permit Agency ~~prior to January~~
21 ~~15, 1991~~, shall not be eligible for any reimbursement from state revenues for
22 any services that it offers.

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

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

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

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

32
33 SECTION 4. Arkansas Code § 20-10-213 is amended to read as follows:

34 20-10-213. Definitions for §§ 20-10-213 - 20-10-228.

35 As used in §§ 20-10-213 - 20-10-228, unless the context otherwise
36 requires:

1 (1) "Federal act" means the Hospital Survey and Construction
2 Act, Public Law 79-725, as amended;

3 (2) "Surgeon General" means the Surgeon General of the United
4 States Public Health Service;

5 (3)(A)(i) "Institution" means a place for the diagnosis,
6 treatment, or care of two (2) or more persons not related to the proprietor
7 suffering from illness, injury, or deformity or where obstetrical care or
8 care of the aged, blind, or disabled is rendered over a period exceeding
9 twenty-four (24) hours.

10 (ii) The term "institution" also includes an
11 outpatient surgery center and an alcohol and drug abuse treatment center.

12 (B) No establishment operated by the federal government or
13 an agency thereof is within this definition;

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

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

23 (i) The offices of private physicians and surgeons;

24 ~~(ii) Boarding homes provided that fifty percent~~
25 ~~(50%) or more of the residents of the boarding home at any given time are not~~
26 ~~receiving personal care as defined by Arkansas Medicaid regulations. If this~~
27 ~~threshold is met, the boarding home shall be classified as a residential care~~
28 ~~facility. This provision does not change the prohibition on boarding homes~~
29 ~~providing direct care to residents;~~

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

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

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

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

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

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

9 (5) "Medical facility" means a diagnostic or diagnostic and
10 treatment center, a rehabilitation facility, or a nursing home as these terms
11 are defined in the federal act, and any other medical facility for which
12 federal aid may be authorized under federal law;

13 (6) "Advisory board" means the Long-Term Care Advisory Board;

14 (7) "Director" means the Director of the Office of Long-Term
15 Care;

16 (8) "Department" means the Department of Human Services; and

17 (9) "Office" means the Office of Long-Term Care.

18

19 SECTION 5. Arkansas Code § 20-10-216(a), concerning the powers and
20 duties of the Department of Human Services for regulating long-term care
21 facilities, is amended to read as follows:

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

24 (1) Require such reports, make such inspections and
25 investigations, and prescribe and enforce such reasonable rules and
26 regulations as it finds necessary to effectuate the purposes of §§ 20-10-213
27 - 20-10-228;

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

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

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

35 (5) Accept on behalf of the state, and to deposit with the
36 Treasurer of State, any grant, gift, or contribution of funds made to assist

1 in meeting the cost of carrying out the purposes of §§ 20-10-213 - 20-10-228
2 and to expend such funds accordingly;

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

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

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

11
12 SECTION 6. Arkansas Code § 20-10-702 is amended to read as follows:
13 20-10-702. Definition.

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

18
19 SECTION 7. Arkansas Code § 20-10-1202 is amended to read as follows:
20 20-10-1202. Definitions.

21 When used in this subchapter, unless the context otherwise requires,
22 the term:

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

26 (2) "Bed reservation policy" means the number of consecutive
27 days and the number of days per year that a resident may leave the long-term
28 care facility for overnight therapeutic visits with family or friends or for
29 hospitalization for an acute condition before the licensee may discharge the
30 resident due to his or her absence from the facility;

31 (3) "Board" means the Long-Term Care Facility Advisory Board
32 created by § 20-10-301;

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

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

1 (6) "Long-term care facility" means a nursing home, residential
2 care facility, assisted living facility, post-acute head injury retraining
3 and residential care facility, or any other facility which provides long-term
4 medical or personal care but shall not include any facility which is
5 conducted by and for those who rely exclusively upon treatment by prayer
6 alone for healing in accordance with the tenets or practices of any
7 recognized religious denomination;

8 (7) "OLTC" means the Office of Long-Term Care created by § 20-
9 10-202;

10 (8) "Ombudsman" means the Long-Term Care Ombudsman established
11 pursuant to § 20-10-601 et seq.;

12 (9) "Resident designee" means a person other than the owner,
13 administrator, or employee of the facility designated in writing by a
14 resident or a resident's guardian, if the resident is adjudicated
15 incompetent, to be the resident's representative for a specific, limited
16 purpose; and

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

24
25 SECTION 8. Arkansas Code § 20-10-1401 is amended to read as follows:
26 20-10-1401. Definitions.

27 For purposes of this subchapter:

28 (1) "Day shift" means the period of 7:00 a.m. to 3:00 p.m.;

29 (2)(A) "Direct-care staff" means any licensed or certified
30 nursing staff who provides direct, hands-on care to residents in a nursing
31 facility.

32 (B) "Direct-care staff" shall not include therapy
33 personnel or personnel listed in § 20-10-1404;

34 (3) "Evening shift" means the period of 3:00 p.m. to 11:00 p.m.;

35 (4) "Midnight census" means the number of patients occupying
36 nursing home beds in a nursing facility at midnight of each day;

1 (5) "Night shift" means the period of 11:00 p.m. to 7:00 a.m.;
2 and

3 (6)(A) "Nursing facility or nursing home" means any buildings,
4 structure, agency, institution, or other place for the reception,
5 accommodation, board, care, or treatment of more than three (3) unrelated
6 individuals, who, because of physical or mental infirmity, are unable to
7 sufficiently or properly care for themselves, and for which reception,
8 accommodation, board, care, and treatment a charge is made.

9 (B) Provided, the term "nursing facility or nursing home"
10 shall not include the offices of private physicians and surgeons, ~~boarding~~
11 ~~homes~~, residential care facilities, assisted living facilities, intermediate
12 care facilities for the mentally retarded, hospitals, institutions operated
13 by the federal government or licensed by the Division of Developmental
14 Disabilities Services, or any facility which is conducted by and for those
15 who rely exclusively upon treatment by prayer alone for healing in accordance
16 with the tenets or practices of any recognized religious denomination.

17
18 SECTION 9. Arkansas Code § 20-10-1601 is amended to read as follows:
19 20-10-1601. Definitions.

20 For purposes of this subchapter:

21 (1) "Director" means the director of the division;

22 (2) "Division" means the Division of Medical Services of the
23 Department of Human Services;

24 (3)(A) "Gross receipts" means gross receipts paid as
25 compensation for services provided to residents of nursing facilities,
26 including, but not limited to, client participation.

27 (B) "Gross receipts" does not mean charitable
28 contributions;

29 (4) "Medicaid" means the medical assistance program established
30 by Title XIX of the Social Security Act, as it existed on January 1, 2001,
31 and administered by the division;

32 (5) "Midnight census" means the count of:

33 (A) Each patient occupying a nursing facility bed at
34 midnight of each day;

35 (B) Those beds placed on hold during a period of time not
36 to exceed five (5) consecutive calendar days during which a patient is in a

1 hospital bed; and

2 (C) Those beds placed on hold during a period of time not
3 to exceed fourteen (14) consecutive calendar days during which a patient is
4 on therapeutic home leave;

5 (6) "Multiplier" means the fixed dollar amount used to calculate
6 the quality assurance fee;

7 (7)(A) "Nursing facilities" means any buildings, structures,
8 agencies, institutions, or other places which require payment for the
9 reception, accommodation, board, care, or treatment of more than three (3)
10 unrelated individuals who, due to a physical or mental infirmity, are unable
11 to care for themselves+.

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

20 (8) "Patient days" means the number of patients in a nursing
21 facility as determined by the midnight census.

22

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

25 20-10-2001 Title.

26 This subchapter shall be known and may be cited as the "Unlicensed
27 Long-Term Care Facilities Act".

28

29 20-10-2002. Purpose.

30 The purpose of this subchapter is to protect the elderly and other
31 vulnerable citizens of the State of Arkansas by ensuring that all facilities
32 that offer assisted living or similar services are properly licensed and
33 following the statutes and rules for long-term care facilities.

34

35 20-10-2003. Definitions.

36 As used in this subchapter:

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

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

6 (3) "Department" means the Department of Human Services and its
7 divisions and offices;

8 (4) "Person" means an individual, partnership, association,
9 corporation, or other entity;

10 (5) "Residential care facility" means the same as in § 20-10-
11 101; and

12 (6) "Supervision" means that an assisted living facility or a
13 residential care facility monitors the condition or status of the resident as
14 related to medical or personal care while in the facility.

15 20-10-2004. Licensure.

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

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

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

23 (3) Either:

24 (A) Provides supervision of residents; or

25 (B) Offers or provides assistance with activities of daily
26 living, including, but not limited to:

27 (i) Eating;

28 (ii) Bathing;

29 (iii) Dressing;

30 (iv) Grooming;

31 (v) Ambulating;

32 (vi) Toileting; or

33 (vii) Taking medications.

34 (b) Facilities subject to the licensure requirement in subsection (a)
35 of this section include those which:

36 (1) Provide services either directly or through contractual

1 arrangements; or

2 (2)(A) Facilitate contracting in the name of the residents.

3 (B) Apartment house managers referring residents to home
4 health or other service agencies are not facilitating contracting within the
5 meaning of this subdivision (b)(2).

6 (c) No facility may advertise or publicly represent that it provides
7 assisted living or residential care or use other similar terms unless it is
8 licensed under Arkansas law as an assisted living facility or residential
9 care facility.

10 20-10-2005. Existing unlicensed facilities.

11 (a) Assisted living facilities and residential care facilities that
12 are unlicensed on the effective date of this subchapter shall have until
13 March 15, 2006, in which to apply for an assisted living facility license or
14 residential care facility license.

15 (b) Any assisted living facility or residential care facility that
16 fails to become licensed on or before October 15, 2007, shall be subject to
17 the provisions of § 20-10-2007.

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

22 (2) After the time provided in subsection (b) of this section,
23 the facility shall comply with the permit of approval process and methodology
24 in all other respects.

25 (d) The Office of Long Term Care shall report to the Health Services
26 Permit Agency when a facility has been licensed without a state permit of
27 approval under this section.

28 (e) The Health Services Permit Agency shall take account of the new
29 beds in its counting for need purposes under the permit of approval
30 methodology.

31
32 20-10-2006. Application.

33 (a) This subchapter shall not apply to situations in which persons in
34 independent apartments receive home health services as with the "Meals on
35 Wheels" program or other services by agencies such as the Area Agencies on
36 Aging, but in which:

1 (1) Congregate services are not offered; and

2 (2) The situation is not advertised or publicly represented as
3 assisted living, residential care, or a similar type of facility.

4 (b) As used in this section, congregate services does not include:

5 (1) Coordinating dining and social activities with a separately
6 owned non-profit senior citizen's center; or

7 (2) Arrangements of other types between Area Agencies on Aging
8 and government-subsidized housing projects existing on the effective date of
9 this subchapter.

10
11 20-10-2007. Penalties and enforcement.

12 (a) Each person establishing, conducting, managing, constructing, or
13 operating an assisted living facility or residential care facility without a
14 license in violation of this subchapter or using the terms "assisted living",
15 "residential care", or similar term to promote the facility's services
16 without first having obtained a license is subject to penalties under this
17 chapter for operating an unlicensed long-term care facility.

18 (b) The Department of Human Services shall have the same powers to
19 enforce this act as are authorized in § 20-10-215.

20 (c)(1) The department may enter and inspect suspected unlicensed
21 assisted living or residential care facilities, including any combination of
22 separate entities working in concert within the meaning of § 20-10-215
23 without first having secured a warrant.

24 (2) If a facility denies or refuses the department entry or
25 denies, refuses, or interferes with inspection by the department, the
26 department may apply for and shall be granted an injunction in the name of
27 the state to prohibit the facility from operating until the department is
28 permitted to enter and inspect the facility.

29
30 SECTION 11. EMERGENCY CLAUSE. It is found and determined by the
31 General Assembly of the State of Arkansas that various long-term care
32 facilities are operating in this state without having obtained a license;
33 that there is no state oversight or protection for the vulnerable residents
34 in these facilities; and that there is no way of ensuring that the facilities
35 properly treat and protect these residents under state long-term care laws.
36 Therefore, an emergency is declared to exist and this act being immediately

1 necessary for the preservation of the public peace, health, and safety shall
2 become effective on:

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

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

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

9

10 */s/ Bright*

11

12

13

APPROVED: 4/13/2005

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

1