

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 2234 of the Regular Session

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

As Engrossed: H3/31/05 H4/4/05

A Bill

HOUSE BILL 2756

5 By: Representative J. Johnson
6
7

8 **For An Act To Be Entitled**

9 *AN ACT TO ESTABLISH THE SURVEY AGENCY TO CONDUCT*
10 *ALL RESTRAINT AND SECLUSION SURVEYS FOR THE*
11 *ARKANSAS INDIGENT MEDICAL CARE PROGRAM IN*
12 *PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES IN*
13 *COMPLIANCE WITH § 9-28-407(a)(3); TO MAKE*
14 *TECHNICAL CORRECTIONS TO THE CHILD WELFARE AGENCY*
15 *LICENSING ACT; TO AUTHORIZE TRANSFERS OF CHILD*
16 *WELFARE AGENCY LICENSES; AND FOR OTHER PURPOSES.*

17
18 **Subtitle**

19 *AN ACT TO ESTABLISH THE SURVEY AGENCY*
20 *FOR RESTRAINT AND SECLUSION SURVEYS FOR*
21 *PSYCHIATRIC RESIDENTIAL TREATMENT*
22 *FACILITIES.*

23
24
25 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

26
27 SECTION 1. Arkansas Code § 9-28-402(16), defining "psychiatric
28 residential treatment facility" for The Child Welfare Agency Licensing Act,
29 is amended to read as follows:

30 (16) "Psychiatric residential treatment facility" means a
31 residential child care facility in a nonhospital setting that provides a
32 structured, systematic, therapeutic program of treatment under the
33 supervision of a ~~psychiatrist~~ physician licensed by the Arkansas State
34 Medical Board who has experience in the practice of psychiatry, for children
35 who are emotionally disturbed and in need of daily nursing services,



1 ~~psychiatrist's~~ physician's supervision, and residential care, but who are not
2 in an acute phase of illness requiring the services of an inpatient
3 psychiatric hospital;

4
5 SECTION 2. Arkansas Code § 9-28-405(c), concerning rules for The Child
6 Welfare Agency Licensing Act, is amended to read as follows:

7 (c) The board shall have exclusive authority to promulgate rules and
8 regulations that:

9 (1) Promote the health, safety, and welfare of children in the
10 care of a child welfare agency;

11 (2) Promote safe and healthy physical facilities;

12 (3) Ensure adequate supervision of the children by capable,
13 qualified, and healthy individuals;

14 (4) Ensure appropriate educational programs and activities for
15 children in the care of a child welfare agency;

16 (5) Ensure adequate and healthy food service;

17 (6) Include procedures for the receipt, recordation, and
18 disposition of complaints regarding allegations of violations of this
19 subchapter, of the rules promulgated ~~thereunder~~ under this subchapter, or of
20 child maltreatment laws;

21 (7) Include procedures for the assessment of child and family
22 needs and for the delivery of services designed to enable each child to grow
23 and develop in a permanent family setting;

24 (8) Ensure that criminal record checks and central registry
25 checks are completed on owners, operators, and employees of a child welfare
26 agency as set forth in this subchapter; ~~and~~

27 (9) Require the compilation of reports and making those reports
28 available to the division when the board determines it is necessary for
29 compliance determination or data compilation; and

30 (10) Establish rules governing retention of licensing records
31 maintained by the division.

32
33 SECTION 3. Arkansas Code § 9-28-407(a)-(d), concerning licenses
34 required and issued under The Child Welfare Agency Licensing Act, is amended
35 to read as follows:

36 (a)(1) It shall be unlawful for any person, partnership, group,

1 corporation, association, or other entity or identifiable group of entities
2 having a coordinated ownership of controlling interest to operate or assist
3 in the operation of a child welfare agency that has not been licensed by the
4 Child Welfare Agency Review Board from licensing pursuant to this subchapter.

5 (2) This license shall be required in addition to any other
6 license required by law for all entities that fit the definition of a child
7 welfare agency and are not specifically exempted, except that no
8 nonpsychiatric residential treatment facility or agency licensed or exempted
9 pursuant to this subchapter shall be deemed to fall within the meaning of §
10 20-10-101~~(8)~~ for any purpose.

11 (3) Any child welfare agency capacity licensed or permitted by
12 the board as of March 1, 2003, whether held by the original licensee or by a
13 successor in interest to the original licensee, is exempted from:

14 (A) Obtaining any license or permit from the Office of
15 Long-Term Care of the Division of Medical Services of the Department of Human
16 Services;

17 (B) Obtaining any permit from the Health Services Permit
18 Agency or the Health Services Permit Commission to operate at the capacity
19 licensed by the board as of March 1, 2003; and

20 (C) Obtaining any permit from the agency or the commission
21 to operate at any future expanded capacity serving only non-Arkansas
22 residents unless a permit is required by federal law or regulation.

23 (4) Any further expansion of capacity by a licensee of the board
24 shall require a license or permit from the office and the agency unless the
25 bed expansion is exempted under subdivisions (a)(3)(A)-(C) of this section.

26 (b)(1) It shall be unlawful for any person to falsify an application
27 for licensure, to knowingly circumvent the authority of this subchapter, to
28 knowingly violate the orders issued by the board, or to advertise the
29 provision of child care or child placement when not licensed under this
30 subchapter to provide those services, unless determined by the board to be
31 exempt ~~therefrom~~ from licensure under this subchapter.

32 (2) Any violation of this section shall constitute a Class D
33 felony.

34 (c)(1) Any person, partnership, group, corporation, organization,
35 association, or other entity or identifiable group of entities having a
36 coordinated ownership of controlling interest, desiring to operate a child

1 welfare agency shall first make application for a license or a church-
 2 operated exemption for the facility to the board on the application forms
 3 furnished for this purpose by the board.

4 (2) The ~~Division of Medical Services~~ division shall also furnish
 5 the applicant with a copy of this subchapter and the policies and procedures
 6 of the board at the time the person requests an application form. The child
 7 welfare agency shall submit a separate application for license for each
 8 separate physical location of a child welfare agency.

9 (d)(1) The ~~Division of Medical Services~~ division shall review,
 10 inspect, and investigate each applicant to operate a child welfare agency and
 11 shall present a recommendation to the board whether the board should issue a
 12 license and what the terms and conditions of the license should be.

13 (2) The ~~Division of Medical Services~~ division shall
 14 complete its recommendation within ninety (90) days after receiving a
 15 complete application from the applicant. A complete application shall consist
 16 of:

17 ~~(1)~~(A) A completed application form prepared and furnished
 18 by the board;

19 ~~(2)~~(B) A copy of the articles of incorporation, bylaws,
 20 and current board roster, if applicable, including names and addresses of the
 21 officers;

22 ~~(3)~~(C) A complete personnel list with verifications of
 23 qualifications and experience;

24 ~~(4)~~(D) Substantiation of the financial soundness of the
 25 agency's operation; and

26 ~~(5)~~(E) A written description of the agency's program of
 27 care, including intake policies, types of services offered, and a written
 28 plan for providing health care services to children in care.

29

30 SECTION 4. Arkansas Code § 9-28-407(f), concerning application of
 31 licenses under The Child Welfare Agency Licensing Act, is amended to read as
 32 follows:

33 (f)(1) A license to operate a child welfare agency shall apply only to
 34 the address and location stated on the application and license issued, and it
 35 shall ~~not~~ be transferable from one (1) holder of the license to another or
 36 from one (1) place to another.

1 (2) Whenever ownership of a controlling interest in the
2 operation of a child welfare agency is sold, the following procedures must be
3 followed:

4 ~~(1)(A)~~ The seller shall notify the division of the sale at
5 least thirty (30) days prior to the completed sale;

6 ~~(2)~~ ~~The buyer shall apply to the Division of Medical Services~~
7 ~~for a license to operate the child welfare agency at least thirty (30) days~~
8 ~~prior to the completed sale;~~

9 ~~(3)(B)~~ The seller shall remain responsible for the
10 operation of the child welfare agency until such time as the agency is closed
11 or a license is issued to the buyer;

12 ~~(4)(C)~~ The seller shall remain liable for all penalties
13 assessed against the child welfare agency which are imposed for violations or
14 deficiencies occurring ~~prior to the issuance~~ before the transfer of a license
15 to the buyer; ~~and~~

16 ~~(5)(D)~~ The buyer shall be subject to any corrective action
17 notices to which the seller was subject; ~~and~~

18 (E) The provisions of subsection (a) of this section,
19 including those provisions regarding obtaining licenses or permits from the
20 Office of Long-Term Care of the Division of Medical Services of the
21 Department of Human Services and regarding obtaining any permits from the
22 Health Services Permit Agency or the Health Services Permit Commission shall
23 apply in their entirety to the new owner of the Child Welfare Agency.

24
25 SECTION 5. Arkansas Code Title 20, Chapter 77, Subchapter 1 is amended
26 to read as follows:

27 20-77-121. Survey agency for psychiatric residential treatment
28 facilities of children.

29 (a) To the extent required by federal law, the Division of Medical
30 Services of the Department of Human Services shall designate a survey agency
31 to conduct restraint and seclusion surveys in psychiatric residential
32 treatment facilities for children as defined in § 9-28-402.

33 (b) No designation by the division shall act as a waiver of the
34 provisions of § 9-28-407(a)(3) or any other applicable law governing child
35 welfare agencies.

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/s/ J. Johnson

APPROVED: 4/13/2005