

Act 203 of the 1989 Regular Session.

Act 203

SB77

By: Senator Brandon

"AN ACT TO AMEND THE CONTINUING CARE PROVIDER REGULATION ACT; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 23-93-104 is hereby amended to read as follows:

"23-93-104. Violations. (a) Whenever it appears to the commissioner that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this chapter or any rule or order hereunder, the commissioner may:

(1) Issue an order directed at that person requiring that person to cease and desist from engaging in the act or practice; or

(2) Bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this chapter or any of its rules or orders; or

(3) Issue an order directed at that person to cease and desist from engaging in the act or practice and bring an action in any court which has appropriate jurisdiction to enjoin the acts or practices and to enforce compliance with this chapter or any of its rules and orders; or

(4) Issue an order assessing a monetary penalty of not more than \$1,000.00 for each violation against that person.

(b) Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted."

SECTION 2. Arkansas Code 23-93-106 is hereby amended to read as follows:

"23-93-106. Disclosure statement - Contents. (a) No later than sixty (60) days prior to the first solicitation of a contract to provide continuing care, the provider shall deliver an initial disclosure statement to the department. This statement shall contain all of the following information:

(1) The name and business address of the provider and a statement as to whether the provider is a partnership, corporation, or other type of legal entity;

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

(3) A statement as to whether the provider or any of its officers, directors, trustees, partners, managers, or affiliates, within ten (10) years prior to the date of application:

(A) Was convicted of a felony, a crime that if committed in Arkansas would be a felony, or any crime having to do with the provision of continuing care or providing of licensed nursing home care;

(B) Has been held liable or enjoined in a civil action by final judgment if the civil action involved fraud, embezzlement, fraudulent conversion, or misappropriation of property;

(C) Had a prior discharge in bankruptcy or was found insolvent in any court action; or

(D) Had any state or federal licenses or permits suspended or

revoked or had any state, federal, or industry self-regulatory agency commence an action against him and the result of the action;

(4) A statement as to:

(A) Whether the provider is or ever has been affiliated with a religious, charitable, or other nonprofit organization;

(B) The nature of the affiliation, if any;

(C) The extent to which the affiliate organization will be responsible for the financial and contract obligations of the provider;

(D) The provision of the Internal Revenue Code, if any, under which the provider or affiliate is exempt from the payment of income tax;

(5) The location and description of the physical property or properties of the facility, existing or proposed, and to the extent proposed, the estimated completion date or dates whether or not construction has begun, and the contingencies subject to which construction may be deferred;

(6) The services provided or proposed to be provided under contracts for continuing care at the facility, including the extent to which medical care is furnished. The disclosure statement shall clearly state which services are included in basic contracts for continuing care and which services are made available at or by the facility at extra charge;

(7) A description of all fees required of residents, including the entrance fee and periodic charges, if any. The description shall include the manner by which the provider may adjust periodic charges or other recurring fees and the limitations on the adjustments, if any;

(8) A balance sheet of the provider, audited by a certified public accountant, and certified to by the provider, as of the end of the two (2) most recent fiscal years;

(9) A calculation of the actuarially required refund reserve showing the alternative bases upon which the calculation is made;

(10) A copy of the standard form or forms of contract used by the provider which contain the minimum requirements of this chapter for continuing care contracts to be attached as an exhibit to each disclosure statement.

(b) The provider shall file with the department annually, within four (4) months following the end of the provider's fiscal year, an annual disclosure statement. This statement shall contain the information required by this chapter for the initial disclosure statement, in addition to a financial statement as of the end of the provider's fiscal year audited and certified by a certified public accountant."

SECTION 3. Arkansas Code 23-93-111 is hereby amended to read as follows:

"23-93-111. Liquid refund reserve requirement. (a)(1) Each provider shall establish and maintain liquid refund reserves in an amount determined in accordance with this section.

(2)(A) The refund reserve shall be equal to or shall exceed the actuarially determined annual refund amount as of the financial reporting date.

(B) The actuarially determined annual refund amount shall be calculated upon both the actual experience of the facility and published industry norms.

(C) The method which yields the greater sum shall determine the actuarially determined annual refund amount for the purposes of this section and 23-93-106(a)(8).

(b) The provider may satisfy the liquid reserve requirement by:

(1) Holding the reserve amount in an escrow account with a federally insured financial institution or institutions located and doing business in this state; or

(2) Purchasing a certificate of deposit from an Arkansas lending insti-

tution; or

(3) Investing in bonds, notes, warrants, and other evidences of indebtedness which are direct obligations of the United States of America held in the provider's name and held by the provider within the State of Arkansas; or

(4) Having the unqualified guaranty of an affiliated organization or individual, as evidenced by a written agreement, whose net worth as reported in its most recent financial statement audited by a certified public accountant and certified by the provider and filed with the department, which is equal to five (5) times the reserve amount or portion of the reserve amount to be satisfied by this method; or

(5) Any combination of the foregoing.

(c) When requested by the commissioner, the provider shall furnish all of the information relating to the amount of the reserve and the method used to maintain the reserve amount."

SECTION 4. Arkansas Code 23-93-114 is hereby amended to read as follows:

"23-93-114. Investigations and examinations. (a) The department may conduct any investigation or examination deemed necessary by the commissioner for the public health, safety and welfare of a resident or potential resident of a facility. In addition, the Department may conduct any investigation or examination deemed necessary by the Commissioner in response to a written complaint filed by a resident or prospective resident, or if it appears from the filings required by this chapter that the solvency of the facility is in question, or to determine whether any provision of this chapter or any rule or order has been violated.

(b) The commissioner may conduct any investigation in person or direct any department employee to act on his behalf. For any on-site investigation, the expenses incurred, including compensation of any department examiner, shall be paid by the facility being investigated. For the purposes of this section, the provisions of 23-61-206 shall apply.

(c) The commissioner may conduct a financial examination. The commissioner may utilize department examiners or he may retain independent certified public accountants to conduct the examination. Each facility being examined shall pay the department the expenses incurred pursuant to 23-61-206. The cost of any retained accountants shall not be in excess of the amount that could be charged for department examiners.

(d) When the services of an actuary are deemed necessary in any investigation or examination, the commissioner may retain an independent actuary with those expenses being paid by the facility.

(e) The commissioner or any officer designated by the commissioner may administer oaths and affirmations, issue subpoenas, hear testimony, and take evidence in reference to any investigation or examination conducted pursuant to this chapter."

SECTION 5. All provisions of this Act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 6. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 7. Emergency. It is hereby found and determined by the General Assembly that current laws of this State as to Continuing Care Providers fail to require such facilities to file audited financial statements with the Arkansas Insurance Department. It is hereby determined that current laws fail to require that provider investments be held in the provider's name and

within the State of Arkansas. It is determined that Arkansas law does not currently authorize the Insurance Commissioner to conduct a full financial examination of Continuing Care Providers until after a provider is determined to be insolvent or upon written complaint of a current or prospective resident of the facility. It is hereby determined that existing Arkansas laws as to Continuing Care Providers are inadequate to assure solvency of facilities holding funds of the citizens of this State. Therefore, an emergency is hereby declared to exist, and this Act being necessary for the public peace, health and safety shall be in full force and effect from and after its passage and approval.

APPROVED: February 24, 1989
