

ARKANSAS SENATE
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of Senate Bill No. 899

"AN ACT TO AMEND ARKANSAS CODE TITLE 20, CHAPTER 8, SUBCHAPTER 1."

Amendment No. 1 to Senate Bill No. 899.

Amend Senate Bill No. 899 as originally introduced:

Delete the Title and substitute the following:

"AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS CODE TO RENAME THE HEALTH SERVICES COMMISSION AND THE HEALTH SERVICES AGENCY; TO CLARIFY THE DUTIES OF THE HEALTH SERVICES COMMISSION AND THE DIRECTOR OF THE HEALTH SERVICES AGENCY; TO MODIFY THE COMPOSITION OF THE HEALTH SERVICES COMMISSION; TO REPEAL THE REQUIREMENT FOR A PERMIT OF APPROVAL FOR GEOGRAPHIC REGIONS WHICH ARE DETERMINED TO BE UNDERSERVED; AND FOR OTHER PURPOSES. "

AND

Delete the Subtitle and substitute the following:

"AN ACT TO RENAME AND CLARIFY THE DUTIES OF THE HEALTH SERVICES COMMISSION AND THE DIRECTOR OF THE HEALTH SERVICES AGENCY. "

AND

Delete everything after the Enacting clause in its entirety and substitute the following:

"SECTION 1. Arkansas Code 9-28-407(a), concerning licenses required and issued for child welfare agencies, is amended to read as follows:

(a)(1) It shall be unlawful for any person, partnership, group, corporation, association, or other entity or identifiable group of entities having a coordinated ownership of controlling interest, to operate or assist in the operation of a child welfare agency which has not been licensed by the Child Welfare Agency Review Board from licensing pursuant to this subchapter.

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

(3) Any child welfare agency licensed or permitted by the board as of 1999 is exempted from the requirements of law:

~~(1)(A)~~ To obtain a license or permit from the Office of Long-Term Care; and

~~(2)(B)~~ To obtain a permit from the Health Services Permit Agency and Health Services Permit Commission.

SECTION 2. Arkansas Code 19-4-906(a)(69) is amended to read as follows:

(069) Health Services Permit Agency

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SECTION 3. Arkansas Code 19-5-302(10)(A)(ii)(o) is amended to read as follows:

(o) Arkansas Health Services Permit Agency;

SECTION 4. Arkansas Code 20-7-117(b)(2), concerning hospices, is amended to read as follows:

(b)(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 ~~Finance~~ Financing Administration.

SECTION 5. Arkansas Code 20-7-117(c)(1), concerning hospices, is amended to read as follows:

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

SECTION 6. Arkansas Code 20-8-101 is amended to read as follows:
20-8-101. Definitions.

As used in this subchapter, unless the context otherwise requires:

(1) "Agency" means the Health Services Permit Agency as established in this subchapter;

(2) "Category of services" or "health services" means "home health care services" as defined by § 20-10-801;

(3) "Commission" means the Health Services Permit Commission as established in this subchapter;

(4) "Conversion of services" means an alteration of the category of services offered by a health facility;

(5) "Director" means the Director of the Health Services Permit Agency;

(6)(A) "Health facility" or "health facilities" means "long-term care facility" as defined by § 20-10-101~~(7)~~(8) or a "home health care services agency" as defined by § 20-10-801.

(B) The terms "health facility" or "health facilities" shall not mean, and nothing in this subchapter shall be deemed to require a

permit of approval for or to otherwise regulate the licensure of in any manner:

(i) A "hospital" as defined by and licensed pursuant to § 20-9-201(3), except when a hospital seeks to add long-term care beds or to convert acute beds to long-term care beds or to add home health services pursuant to a letter of intent filed with the Department of Health after February 15, 1993, or to expand home health services pursuant to a letter of intent filed with the department after February 15, 1993;

(ii) Offices of private physicians and surgeons;

(iii) Outpatient surgery or imaging centers;

(iv) Post-acute head injury retraining and residential care facilities or establishments operated by the federal government or any agency thereof;

(v) Free-standing radiation therapy centers;

(vi) Expansion, not to exceed fifteen (15) beds, of the twenty-five-bed nonprofit intermediate care facility for the mentally retarded that provides transitional rehabilitation for pediatric patients;

(vii) Residences for four (4) or fewer individuals with developmental disabilities who receive support and services from nonprofit providers currently licensed by the Division of Developmental Disabilities Services of the Department of Human Services; or

(viii) Any facility which is conducted by and for those who rely exclusively upon treatment by prayer for healing in accordance with the tenets or practices of any recognized religious denomination.

(C) The term "health facility" shall not include offices of private physicians and surgeons, outpatient surgery or imaging centers, establishments operated by the federal government or any of its agencies, free-standing radiation therapy centers, or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination; and

(7) "Transitional rehabilitation" means rehabilitation that typically results in discharge within twenty-four (24) months after the date of admission.

SECTION 7. Arkansas Code 20-8-102 is amended to read as follows:

20-8-102. Health Services Permit Commission - Creation - Members - Meetings.

(a) There is established a Health Services Permit Commission.

(b) The Health Services Permit Commission shall be composed of the following membership to be appointed by the Governor and confirmed by the Senate:

(1) A practicing physician who has no economic interest in a long-term care facility or a home health care service agency governed by the provisions of this subchapter;

(2) A representative of the Department of Human Services;

(3) A member of the Arkansas Hospital Association;

(4) A member of the Arkansas Health Care Association;

(5) A member of the Arkansas Chapter of the American Association of Retired Persons who has no economic interest in a long-term care facility or a home health care service agency governed by the provisions of this subchapter;

(6) A member of the ~~Arkansas Association of Home Health Agencies~~ HomeCare Association of Arkansas;

(7) A consumer knowledgeable in business health insurance who has no economic interest in a long-term care facility or a home health care service agency governed by the provisions of this subchapter; ~~and~~

(8) A member of the ~~Arkansas Association of Residential Care Facilities~~ Residential Assisted Living Association-;

(9) A member of the Arkansas State Hospice Association; and

(10) Two (2) consumers who have no economic interest in a long-term care facility or a home health care service agency governed by the provisions of this subchapter;

(c)(1) All appointments shall be for ~~three-year~~ four-year terms.

(2) No member of the commission shall be appointed to serve more than two (2) consecutive full terms.

(d) The commission members shall serve without pay, but those members not employed by the State of Arkansas may receive expense reimbursement in accordance with § 25-16-901 et seq.

(e) The commission shall meet at least quarterly and at such other times as necessary to carry out its duties as set forth in this subchapter. The commission shall elect one (1) of its members as chairman and may, by appropriate adoption of bylaws and rules, provide for the time, place, and manner of calling its meetings.

SECTION 8. Arkansas Code 20-8-103 is amended to read as follows:

20-8-103. Health Services Permit Commission - Powers and duties.

(a) The Health Services Permit Commission shall evaluate the availability and adequacy of health facilities and health services as they relate to long-term care facilities and home health care service agencies in this state.

(b) The commission shall designate those locales or areas of the state in which, due to the requirements of the population or the geography of the area, the health service needs of the population are underserved.

(c) The commission may specify, within locales or areas, categories of health services which are underserved and overserved due to the composition or requirements of the population or the geography of the area.

(d) The commission shall develop policies and adopt criteria, including time limitations, to be utilized by the agency in the review of applications and the issuing of permits of approval for a long-term care facility or a home health care service agency as provided herein.

(e) The commission may define certain underserved locales or areas or categories of services within underserved locales or areas to be exempt for specified periods of time from the permit of approval requirement.

~~(f) The commission shall review the recommendations of the agency concerning action on applications by long term care facilities or home health care service agencies for permits of approval and endorse or reject the same.~~

~~(g)~~(f) The commission may set application fees for permit of approval applications to be charged and collected by the agency.

~~(h)~~(g)(1) The commission, upon appeal by the applicant or an interested party, shall conduct hearings on ~~permits of approval~~ decisions by the agency within ~~thirty (30)~~ ninety (90) days of ~~receipt of the notice of appeal~~ the agency decision. The commission shall render its final decision within ~~forty five (45)~~ fifteen (15) days of the close of the hearing. Failure

of the commission to take final action within these time periods shall be considered a ratification of the agency decision ~~on the permit of approval~~ and shall constitute the final decision of the commission from which an appeal to circuit court may be filed.

(2) Neither a competitor of a successful applicant for a permit of approval, nor any other party, shall have the right to appeal the commission's decision to grant a permit of approval.

SECTION 9. Arkansas Code 20-8-104 is amended to read as follows:
20-8-104. Health Services Permit Agency - Powers and duties.

(a) There is created and established the Health Services Permit Agency, which shall be an independent agency under the supervision and control of the Governor.

(b) The agency shall possess and exercise such duties and powers as necessary to implement the policy and procedures adopted by the Health Services Permit Commission.

~~(c) The agency is designated the agency of this state to accept, receive, retain, and administer state and federal funds for construction of health facilities.~~

~~(d)~~(c) The agency shall review all applications for permits of approval and ~~submit its recommendation for action to the commission~~ approve or deny the application within ninety (90) days ~~of receipt of the application for permit of approval, without which the application shall be deemed approved~~ from the date the application is deemed complete and submitted for review.

~~(e)~~(d) The State of Arkansas shall not participate in the capital expenditures review program, otherwise known as the 1122 Program, unless and until it becomes mandatory for continuation in federal programs authorized under Titles V, XVII, and XIV of the Social Security Act for all states.

~~(f)~~(e) The agency shall assist the commission in the performance of its duties as set forth in this subchapter.

(f)(1) The commission shall have the authority to designate those locales or areas of the state in which the health services needs of the population are underserved.

(2) The agency shall develop policy and adopt criteria, including time limitations, to be utilized by the agency in the review of applications for a long-term care facility as provided in this subsection.

(3)(A) No permit of approval shall be required for the construction of a new facility or for the addition to an existing facility where the facility or addition has been approved by the agency and is located in a geographic region that the agency has determined to be underserved.

(B) Neither a competitor of a successful applicant for a permit of approval, nor any other party, shall have the right to appeal the agency's decision.

SECTION 10. Arkansas Code 20-8-105 is amended to read as follows:
20-8-105. Director.

There shall be a Director of the Health Services Permit Agency, who shall be the executive head of the agency. The director shall be appointed by the Governor, subject to confirmation by the Senate, and shall serve at the pleasure of the Governor.

SECTION 11. Arkansas Code 20-8-106 is amended to read as follows:
20-8-106. Health Services Program - Permits generally.

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

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

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

(b) The alteration or renovation of a health facility having an associated capital expenditure of less than five hundred thousand dollars (\$500,000) for nursing homes and not resulting in additional bed capacity shall not require a permit of approval; however, the ~~commission~~ agency shall not allow hospital acute care beds to be converted to or allow their license classification to be changed to long-term care beds without going through the permit of approval process, ~~and licenses are not transferable from one (1) entity to another.~~ However, permits of approval for long-term care facilities may be transferred to another entity with the approval of the commission. The application for the permit of approval shall include, but need not be limited to, such information as is necessary to determine:

(1) Whether the proposed project is needed or projected as being necessary to meet the needs of the locale or area in terms of the health care required for the population or geographic region;

(2) Whether the proposed project can be adequately staffed and operated when completed;

(3) Whether the proposed project is economically feasible; and

(4) Whether the project will foster cost containment through improved efficiency and productivity.

(c) If the application is granted, the agency shall issue a permit of approval if it finds that the proposed project meets the criteria for approval as set by the commission. If the application is denied, the agency shall send written notice of the denial to the applicant which sets forth the criteria that the proposed project failed to meet.

(d) Any applicant or interested party seeking review of ~~the agency denial of a permit of approval~~ a final agency decision regarding permits of

approval, or movement of beds, or transfer of permits of approval shall file a written appeal for hearing before the commission on ~~the form provided with the commission on an approved form~~ within thirty (30) days of the ~~date of the notice of appeal~~ receipt of the agency decision.

(e) Appeals to the commission shall be conducted in accordance with the Administrative Procedure Act, § 25-15-201 et seq.

SECTION 12. Arkansas Code 20-8-108 is amended to read as follows:
20-8-108. Fees and fines.

All fees and fines collected hereunder shall be deposited into the State General Services Fund Account to be used exclusively for the maintenance and operation of the Health Services Permit Agency.

SECTION 13. Arkansas Code 20-8-109 is amended to read as follows:

20-8-109. Approval of new projects - Repeal of Acts 1975, No. 558, § 5 - Transfer of duties.

(a) All projects requiring approval under the Certificate of Need Program as established by Acts 1975, No. 558, § 5 [repealed], except free-standing radiation therapy centers, shall not be instituted or commenced after April 4, 1987, except upon application for and receipt of approval from the Health Services Permit Agency utilizing the same criteria and procedures in existence prior to April 4, 1987.

(b) For purposes of this section, "commence construction" means the approval of project financing or the actual movement onto the site of building materials and equipment by the principal contractor.

(c) Two hundred ten (210) days after April 4, 1987, Acts 1975, No. 558, § 5, as amended, is repealed. On and after the two hundred eleventh day following April 4, 1987, all projects requiring approval under § 20-8-107 shall not be instituted or commenced except upon application for and receipt of a permit of approval as set forth in this subchapter, and, during this period of time, all duties and responsibilities of the State Health Planning and Development Agency and the Statewide Health Coordinating Council are transferred to the Health Services Permit Agency established under this subchapter. Any project not requiring approval under this subchapter, even though covered under Acts 1975, No. 558, § 5 [repealed], may be commenced after April 4, 1987.

(d) The agency shall process all applications or certificates of need for intermediate care facilities for the mentally retarded with fifteen (15) or fewer beds which were pending on April 4, 1987, and shall for a period of thirty (30) days after April 4, 1987, accept additional applications for such facilities. The applications shall be processed utilizing the criteria and procedures in existence prior to April 4, 1987, and in addition the agency shall consider as a primary factor the experience of each applicant in serving the developmentally disabled population.

SECTION 14. Arkansas Code 20-8-110(a) and (b), concerning collection and dissemination of health data, are amended to read as follows:

(a) The Health Services Permit Agency created by § 20-8-104 shall act as a statewide health data clearinghouse for the acquisition and dissemination of data from health care providers, the State Medicaid program, third-party payors, state agencies, and other appropriate sources in furtherance of this section.

(b) All state agencies having information with regard to health matters shall make available to the agency such health data as is necessary for the Health Services Permit Commission to carry out its responsibilities.

SECTION 15. Arkansas Code 20-10-105 is amended to read as follows:

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

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

(b) This provision does not apply to:

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

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

(3) Those facilities that have been exempted from review by the Health Services Permit Agency prior to January 15, 1991.

SECTION 16. Arkansas Code 20-10-813 is amended to read as follows:

20-10-813. Transfer of licenses and permits upon dissolution.

Upon the dissolution of any corporation which on April 14, 1995, is licensed to provide home health care services, the Department of Health, the Health Services Permit Agency, the Health Services Permit Commission, and any other agency involved may transfer the dissolved corporation's licenses and permits of approval to a stockholder of the dissolved corporation, and that stockholder may continue to perform home health care services under the transferred license and permit of approval.

SECTION 17. Arkansas Code 20-10-902 is amended to read as follows:

20-10-902. Purpose.

It is the purpose of this subchapter to develop a mechanism whereby the concept of receivership can be utilized for the protection of residents in long-term care facilities. It is the intent of the General Assembly that receivership shall be a remedy of last resort when all other methods of remedy have failed or when the implementation of other remedies would be futile. It is not the intent of this subchapter to circumvent the Health Services Permit Program of the Health Services Permit Commission established in § 20-8-101 et seq. No court or administrative agency shall interpret the contents of this subchapter to allow the transfer of beds or the license of a facility under receivership without approval of the Health Services Permit Commission as required by § 20-8-101 et seq.

SECTION 18. Arkansas Code 25-1-105(e)(17), concerning annual reports of state government agencies, is amended to read as follows:

(17) Health Services Permit Commission, § 20-8-102; "

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Brown

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Secretary