

State of Arkansas

CALL ITEM 10

76th General Assembly

Fourth Extraordinary Session, 1988

SENATE BILL 3

By: Senators Kinard, Nelson, Benham and Bearden

AS ENGROSSED 7/11/88

"AN ACT TO AMEND ARKANSAS CODE OF 1987, TITLE 20, CHAPTER 10,
BY ADDING A NEW SUBCHAPTER TO ESTABLISH PROCEDURES FOR
TEMPORARY OPERATION OF A LONG-TERM CARE FACILITY TO PROTECT
THE RESIDENTS' HEALTH AND SAFETY; AND FOR OTHER PURPOSES."

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

SECTION 1. Title 20, Chapter 10 of the Arkansas Code of 1987 is hereby amended by adding a new subchapter to read as follows:

"SUBCHAPTER 9. RECEIVERSHIP

20-10-901. TITLE. This subchapter may be known as the 'Arkansas Long-Term Care Facility Receivership Law.'

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 Program of the Health Services Commission established in Title 20, Chapter 8, Subchapter 1 of the Arkansas Code of 1987. 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 Commission required by Title 20, Chapter 8, Subchapter 1 of the Arkansas Code of 1987.

20-10-903. DEFINITIONS: As used in this subchapter, unless the context indicates otherwise, the following terms have the following meanings:

(a) 'Administrator' means a long-term care facility administrator as defined in Ark. Code 20-10-101.

(b) 'Emergency' means a situation, physical condition or one or more

practices, methods or operations which threatens the health, security or welfare of residents.

(c) 'Facility' means a long-term care facility which is required to be licensed under Ark. Code 20-10-224.

(d) 'Habitual violation' means a violation of state or federal law which, due to its repetition, presents a reasonable likelihood of serious physical or mental harm to residents.

(e) 'Licensee' means any person or any other legal entity who is licensed or required to be licensed to operate a facility.

(f) 'Owner' means the holder of the title to the real estate in which the facility is maintained.

(g) 'Resident' means any person who lives in and receives services or care in a long-term care facility.

(h) 'Substantial violation' means a violation of state or federal law which presents a reasonable likelihood of serious physical or mental harm to residents.

20-10-904. GROUNDS FOR APPOINTMENT: The following circumstances shall be grounds for the appointment of a receiver to operate a long-term care facility:

(a) An emergency exists in a facility which threatens the health, security or welfare of residents.

(b) A facility is in substantial or habitual violation of the standards of health, safety or resident care established under state or federal regulations to the detriment of the welfare of the residents.

(c) A facility intends to close but has not arranged at least thirty (30) days prior to closure for the orderly transfer of its residents.

(d) The facility is insolvent.

(e) The Department has suspended, revoked or refused to renew the existing license of the facility.

20-10-905. PETITION FOR RECEIVERSHIP:

(a) The Department, Attorney General, or prosecuting attorney or duly appointed deputy prosecuting attorney of the district in which the facility is located may file in the chancery court of the county in which the facility is located a complaint requesting the appointment of a receiver.

(b) A complaint for appointment of a receiver pursuant to this subchapter shall have precedence and priority over any civil case pending in

the chancery court wherein the complaint is filed.

(c) The court shall hold a hearing on the complaint within five (5) days of the filing of the complaint.

(d) The complaint and notice of hearing shall be served on the owner and administrator or licensee of the facility. In cases when the department is not the plaintiff in the action, a copy of the complaint and notice shall be forwarded by mail to the Director of the Department of Human Services by the plaintiff.

20-10-906. HEARING ON RECEIVERSHIP: The court shall appoint a receiver if it finds that any one of the grounds for appointment set forth is satisfied.

20-10-907. EMERGENCY APPOINTMENT: (a) If the complaint filed under section 20-10-905 is filed by the department and alleges that grounds set out in subsection 20-10-904(a) or 20-10-904(b) exist within a facility, and is accompanied by a verified affidavit setting forth facts which would constitute such a ground, a temporary receiver shall be appointed with or without notice to the owner or licensee.

(b) The temporary appointment of a receiver without notice to the owner, licensee, or administrator may be made only if the court is satisfied that the Department has made a diligent attempt to provide reasonable notice under the circumstances. The delivery of a copy of the complaint to the facility upon filing shall constitute reasonable notice for issuance of a temporary receivership order by the court.

(c) Upon appointment of a temporary receiver, the department shall proceed forthwith to obtain service as provided in 20-10-905(d).

(d) If the department does not proceed with the complaint, the court shall dissolve the temporary receivership after ten (10) days.

20-10-908. QUALIFICATIONS OF RECEIVER: The court may appoint any licensed nursing home administrator or any qualified person as a receiver who does not have a conflict of interest. The Department shall maintain a list of qualified persons to be furnished to the court. Preference shall be given to persons with experience in delivery of health care services and operation of long-term care facilities. No person may be considered to be qualified to be a receiver who:

- (a) Is the owner, licensee, or administrator of the facility;
- (b) Is affiliated with the facility;

(c) Has a financial interest in the facility; or

(d) Has owned or operated a facility that has been ordered into receivership.

20-10-909. DUTIES OF RECEIVER: The receiver appointed pursuant to this subchapter:

(a) Shall operate the facility in such a manner as to assure safety and adequate health care for the residents.

(b) Shall receive and expend in a reasonable and prudent manner the revenues of the facility.

(c) Shall have authority to hire, direct, manage and discharge any employees, including the administrator of the facility.

(d) Shall be entitled to, and shall take, possession of all property or assets of residents which are in the possession of the licensee or operator of the facility. The receiver shall preserve all property, assets, and records of residents of which the receiver takes possession.

(e) Shall have authority to contract for such outside services as may be needed for the operation of the facility. Any contract for outside services in excess of three thousand dollars (\$3,000) shall be approved by the court.

(f) Shall pay commercial creditors of the facility determined by the receiver to be valid.

(g) Shall be authorized to do all things necessary and proper to maintain and operate the facility in accordance with sound fiscal policies. The receiver shall take such action as is reasonably necessary to protect or conserve the assets or property of which the receiver takes possession and may use such assets or property only in the performance of the powers and duties set out in this section.

(h) Shall conduct the day to day business operations of the facility.

(i) Shall correct or eliminate any deficiency in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility, provided the total cost of correction does not exceed three thousand dollars (\$3,000). The court may order expenditures for this purpose in excess of three thousand dollars (\$3,000) on application from the receiver after notice to the owner and hearing.

(j) Shall collect incoming payments from all sources and apply them to the costs incurred in the performance of his functions as receiver including the compensation of the receiver.

(k) Shall honor existing leases, mortgages, chattel mortgages and security interests determined by the receiver to be valid.

(l) Shall remedy violations of federal and state regulations governing the operation of the facility.

(m) May close the facility or negotiate with the owners for the sale of the facility upon approval of the court.

(n) Shall give each resident of the facility and the family representative of each resident notice of the receivership.

(o) Shall be authorized to hire consultants or to undertake any studies of the facility he deems appropriate. Any expenditure under this subsection in excess of three thousand dollars (\$3,000) shall be approved by the court. Consultants shall exclude the owner, licensee, administrator, persons affiliated with the facility, persons with a financial interest in the facility and persons who have owned or operated a facility that has been ordered into receivership unless approved by the court.

(p) Shall file reports concerning the receivership and expenditures with the court in such frequency as the court deems appropriate and shall forward a copy of each report to the owner and administrator or licensee of the facility.

20-10-910. COMPENSATION OF RECEIVER:

(a) The court shall set a reasonable compensation to include salary and reasonable expenses for the receiver to be paid as a necessary expense of the facility under the receivership. Reasonable expenses may include charges for a liability insurance policy covering negligence of the receiver and employees of the facility for the duration of the receivership.

(b) In the event that the receiver does not have sufficient funds to pay the salary from the revenues of the facility, the receiver may petition the court for permission to file a claim with the department for payment from the fund as established in this subchapter.

20-10-911. DURATION OF RECEIVERSHIP: The receiver shall be appointed for an initial period of not more than six (6) months. The initial six-month period may be extended for an additional period of ninety days with approval of the court upon a showing of good cause.

20-10-912. BOND OF RECEIVER: The court may require a receiver to post a bond which may include provision for costs and attorney's fees upon breach of fiduciary duty.

20-10-913. AUTOMATIC STAY: (a) No person or court of this state shall impede the operation of a receivership created under this subchapter.

(b) There shall be an automatic stay for a sixty-day period subsequent to the appointment of a receiver, of any action that would interfere with the functioning of the facility, including but not limited to cancellation of insurance policies executed by the licensee, termination of utility services, executions, attachments or set-offs, and repossession of equipment used in the facility.

20-10-914. ACCOUNTING FOR FUNDS: Within thirty (30) days after termination, the receiver shall file with the court a complete accounting of all property of which the receiver has taken possession, of all funds collected, and of the expenses of the receivership.

20-10-915. ALTERNATIVE PROCEDURE: (a) The department may, in its sole discretion, in lieu of bringing an action hereunder, place a designated employee from the Department to act as monitor in the facility when any of the grounds for receivership exists in a facility.

(b) The monitor shall observe operation of the facility, assist the facility by advising it on how to comply with the state and federal regulations and report periodically to the Department on the operation of the facility.

(c) A monitor shall remain in a facility not to exceed sixty (60) days.

(d) At the end of the monitoring period, if the department determines that insufficient progress has been made by the facility for elimination of the grounds for appointment of a receivership, the department may proceed for appointment of a receivership upon the grounds which existed at the time of placement of the monitor in the facility.

(e) The department may promulgate any rules and regulations as necessary to implement this section.

20-10-916. LONG-TERM CARE FACILITY RECEIVERSHIP FUND ACCOUNT. (a) There is hereby established on the books of the State Treasurer, State Auditor and the Chief Fiscal Officer of the State, a Fund Account to be known as the 'Long Term Care Facility Receivership Fund Account' of the Department of Human Services Fund. Such fund account shall consist of General Revenues and such other funds as may be provided by law.

(b) The fund account established herein shall be administered and disbursed under the direction of the Director of the Department of Human Services

for the purpose of paying the expenses of receivers appointed under this subchapter.

(c) No money shall be expended from this fund account for any purpose except when the funds generated by a long-term care facility in this State are found to be insufficient by a court of law to pay the reasonable expenses of a receiver after all other operating expenses of the facility have been paid from the facility's revenue.

(d) On the effective date of this Act, the State Treasurer shall transfer from the General Revenue Fund Account of the State Apportionment Fund the sum of one hundred thousand dollars (\$100,000) to the Long Term Care Facility Receivership Fund Account. Any balance remaining in such fund account at the close of each fiscal year shall be retained in such fund account to be available for the same purposes.

(e) Beginning July 1, 1991 and each July 1 of an odd-numbered year thereafter, the State Treasurer shall transfer from the General Revenue Fund Account of the State Apportionment Fund to the Long Term Care Facility Receivership Fund Account an amount sufficient to maintain a one hundred thousand dollar (\$100,000) fund balance."

SECTION 2. If any part of this subchapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this subchapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this subchapter.

SECTION 3. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 4. EMERGENCY. It is hereby found and determined by the General Assembly that during recent months, certain inadequacies in the continuum of health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is

essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an essential government program. Therefore, an emergency is hereby declared to exist and this act being necessary for the preservation of the public peace, health and safety shall be in full force and effect from and after its passage and approval.

/s/ Sen. Kinard

