

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

HOUSE BILL 1991

4
5 By: Representative Magnus
6
7

For An Act To Be Entitled

8
9 "AN ACT TO PROVIDE FOR THE PROTECTION OF LONG-TERM
10 CARE FACILITY RESIDENTS; AND FOR OTHER PURPOSES."

Subtitle

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12
13 "TO PROVIDE FOR THE PROTECTION OF LONG-
14 TERM CARE FACILITY RESIDENTS."
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. PURPOSE.

20 The purpose of this act is to provide for the development,
21 establishment, and enforcement of basic standards for:

22 (1) The health, care and treatment of persons in long-term care
23 facilities; and

24 (2) The construction, maintenance, and operation of such facilities
25 which will ensure safe, adequate, and appropriate care, treatment, and health
26 of persons in such facilities.
27

28 SECTION 2. DEFINITIONS.

29 When used in this act unless the context otherwise requires, the term:

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

33 (2) "Bed reservation policy" means the number of consecutive days and
34 the number of days per year that a resident may leave the long-term care
35 facility for overnight therapeutic visits with the family or friends or for
36 hospitalization for an acute condition before the licensee may

1 discharge the resident due to his or her absence from the facility;

2 (3) "Board" means the Long Term Care Facility Advisory board created by
 3 Arkansas Code 20-10-301;

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

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

8 (6) "OLTC" means the Office of Long Term Care, created by Arkansas Code
 9 20-10-202;

10 (7) "Ombudsman" means the Long-Term Care Ombudsman established pursuant
 11 to Arkansas Code 20-10-601 through 20-10-603;

12 (8) "Long-term care facility" means a nursing home, residential care
 13 facility, post-acute head injury retraining and residential care facility, or
 14 any other facility which provides long-term medical or personal care, but
 15 shall not include any facility which is conducted by and for those who rely
 16 exclusively upon treatment by prayer alone for healing in accordance with the
 17 tenets or practices of any recognized religious denomination;

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

24 (10) "Resident designee" means a person, other than the owner,
 25 administrator, or employee of the facility, designated in writing by a
 26 resident or a resident's guardian, if the resident is adjudicated incompetent,
 27 to be the resident's representative for a specific, limited purpose.

28
 29 SECTION 3. RESIDENTS' RIGHTS.

30 (a) All long-term care facilities shall adopt and make public a
 31 statement of the rights and responsibilities of the residents of such
 32 facilities and shall treat such residents in accordance with the provisions of
 33 that statement. The statement shall assure each resident of the following:

34 (1) The right to civil and religious liberties, including
 35 knowledge of available choices and the right to independent personal
 36 decisions, which will not be infringed upon, and the right to encouragement

1 and assistance from the staff of the facility in the fullest possible exercise
2 of these rights.

3 (2) The right to private and uncensored communication, including,
4 but not limited to, receiving and sending unopened correspondence, access to a
5 telephone, visiting with any person of the resident's choice during visiting
6 hours provided that such visitors are not disruptive or dangerous, and
7 overnight visitation outside the facility with family and friends in
8 accordance with facility policies, physician orders, and Title XVIII
9 (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations,
10 without the resident's losing his or her bed. Facility visiting hours shall
11 be flexible, taking into consideration special circumstances such as, but not
12 limited to, out-of-town visitors and working relatives or friends. Unless
13 otherwise indicated in the resident care plan, the licensee shall, with the
14 consent of the resident and in accordance with policies approved by the
15 agency, permit recognized volunteer groups, representatives of community-based
16 legal, social, mental health, and leisure programs, and members of the clergy
17 access to the facility during visiting hours for the purpose of visiting with
18 and providing services to any resident.

19 (3) Any entity or individual that provides health, social, legal,
20 or other services to a resident has the right to have reasonable access to the
21 resident. The resident has the right to deny or withdraw consent to access at
22 any time by any entity or individual. Notwithstanding the visiting policy of
23 the facility, the following individuals must be permitted immediate access to
24 the resident.

25 (A) Any representative of the federal or state government,
26 including, but not limited to, representatives of the Department of Human
27 Services, any law enforcement officer; any ombudsman; and the resident's
28 individual physician.

29 (B) Subject to the resident's right to deny or withdraw
30 consent, immediate family or other relatives of the resident. The facility
31 must allow any ombudsman to examine a resident's clinical records with the
32 permission of the resident or the resident's legal representative and
33 consistent with state law.

34 (4) The right to present grievances on behalf of himself or
35 herself or others to the staff or administrator of the facility, to
36 governmental officials, or to any other person; to recommend changes in

1 policies and services to facility personnel; and to join with other residents
 2 or individuals within or outside the facility to work for improvements in
 3 resident care, freedom from restraint, interference, coercion, discrimination,
 4 or reprisal. This right includes access to ombudsmen and advocates and the
 5 right to be a member of, to be active in, and to associate with advocacy or
 6 special interest groups. The right also includes the right to prompt efforts
 7 by the facility to resolve resident grievances, including grievances with
 8 respect to the behavior of other residents.

9 (5) The right to organize and participate in resident groups in
 10 the facility and the right to have the resident's family meet in the facility
 11 with the families of other residents.

12 (6) The right to participate in social, religious, and community
 13 activities that do not interfere with the rights of other residents.

14 (7) The right to examine, at any time, the results which the
 15 facility shall post of the most recent inspection of the facility conducted by
 16 a federal or state agency and any plan of correction in effect with respect to
 17 the facility.

18 (8) The right to manage his or her own financial affairs or to
 19 delegate such responsibility to the licensee, but only to the extent of the
 20 funds held in trust by the licensee for the resident. A quarterly accounting
 21 of any transactions made on behalf of the resident shall be furnished to the
 22 resident or the person responsible for the resident. The facility may not
 23 require a resident to deposit personal funds with the facility. However, upon
 24 written authorization of a resident, the facility must hold, safeguard,
 25 manage, and account for the personal funds of the resident deposited with the
 26 facility as follows:

27 (A) The facility must establish and maintain a system that
 28 ensures a full, complete, and separate accounting, according to generally
 29 accepted accounting principles or regulations established by OLTC of each
 30 resident's personal funds entrusted to the facility on the resident's behalf;

31 (B) The accounting system established and maintained by the
 32 facility must preclude any commingling of resident funds with facility funds
 33 or with the funds of any person other than a resident;

34 (C) A quarterly accounting of any transaction made on
 35 behalf of the resident shall be furnished to the resident or the person
 36 responsible for the resident; and

1 (D) The facility may not impose a charge against the
2 personal funds of a resident for any item or service for which payment is made
3 under Title XVIII or Title XIX of the Social Security Act.

4 (9) The right to be fully informed, in writing and orally, prior
5 to or at the time of admission and during his or her stay, of services
6 available in the facility and of related charges for such services, including
7 any charges for services not covered under Title XVIII or Title XIX of the
8 Social Security Act or not covered by the basic per diem rates and of bed
9 reservation and refund policies of the facility.

10 (10) The right to be adequately informed of his or her medical
11 condition and proposed treatment, unless the resident is determined to be
12 unable to provide informed consent under Arkansas law, or the right to be
13 fully informed in advance of any nonemergency changes in care or treatment
14 that may affect the resident's well-being; and, except with respect to a
15 resident adjudged incompetent, the right to participate in the planning of all
16 medical treatment, including the right to refuse medication and treatment,
17 unless otherwise indicated by the resident's physician; and to know the
18 consequences of such actions.

19 (11) The right to refuse medication or treatment and to be
20 informed of the consequences of such decisions, unless determined unable to
21 provide informed consent under state law. When the resident refuses
22 medication or treatment, the long-term care facility must notify the resident
23 or the resident's legal representative of the consequences of such decision
24 and must document the resident's decision in his or her medical record. The
25 long-term care facility must continue to provide other services the resident
26 agrees to in accordance with the resident's care plan.

27 (12) The right to receive adequate and appropriate health care
28 and protective and support services, including social services; mental health
29 services, if available; planned recreational activities; and therapeutic and
30 rehabilitative services consistent with the resident care plan, with
31 established and recognized practice standards within the community, and with
32 rules as adopted by the agency.

33 (13) The right to have privacy in treatment and in caring for
34 personal needs; to close room doors and to have facility personnel knock
35 before entering the room, except in the case of an emergency or unless
36 medically contraindicated; and to security in storing and using personal

1 possessions. Privacy of the resident's body shall be maintained during, but
2 not limited to, toileting, bathing, and other activities of personal hygiene,
3 except as needed for resident safety or assistance.

4 (14) The right to be treated courteously, fairly, and with the
5 fullest measure of dignity and to receive a written statement and an oral
6 explanation of the services provided by the licensee, including those required
7 to be offered on an as-needed basis.

8 (15) The right to be free from mental and physical abuse,
9 corporal punishment, extended involuntary seclusion, and from physical and
10 chemical restraints, except those restraints authorized in writing by a
11 physician for a specified and limited period of time or as are necessitated by
12 an emergency. In case of an emergency, restraint may be applied only by a
13 qualified licensed nurse who shall set forth in writing the circumstances
14 requiring the use of restraint, and, in the case of use of a chemical
15 restraint, a physician shall be consulted immediately thereafter. Restraints
16 may not be used in lieu of staff supervision or merely for staff convenience,
17 for punishment, or for reasons other than resident protection or safety.

18 (16) The right to be transferred or discharged only for medical
19 reasons or for the welfare of other residents, and the right to be given
20 reasonable advance notice of no less than thirty (30) days of any involuntary
21 transfer or discharge, except in the case of an emergency as determined by a
22 licensed professional on the staff of the long-term care facility, or in the
23 case of conflicting rules and regulations which govern Title XVIII or Title
24 XIX of the Social Security Act. For nonpayment of a bill for care received,
25 the resident shall be given thirty (30) days advance notice. A licensee
26 certified to provide services under Title XIX of the Social Security Act may
27 not transfer or discharge a resident solely because the source of payment for
28 care changes. Admission to a long-term care facility operated by a licensee
29 may not be conditioned upon a waiver of such right, and any document or
30 provision in a document which purports to waive or preclude such right is void
31 and unenforceable. Any licensee certified to provide services under Title XIX
32 of the Social Security Act that obtains or attempts to obtain such a waiver of
33 a resident's rights as established herein is subject to disciplinary action as
34 provided in subdivision (a)(3). The resident and the family or representative
35 of the resident shall be consulted in choosing another facility.

36 (17) The right to freedom of choice in selecting a personal

1 physician; to obtain pharmaceutical supplies and services from a pharmacy of
2 the resident's choice, at the resident's own expense or through Title XIX of
3 the Social Security Act; and to obtain information about, and to participate
4 in, community-based activities programs, unless medically contraindicated as
5 documented by a physician in the resident's medical record. If a resident
6 chooses to use a community pharmacy and the facility in which the resident
7 resides uses a unit-dose system, the pharmacy selected by the resident shall
8 be one that provides a compatible unit-dose system, provides service delivery,
9 and stocks the drugs normally used by long term care residents. If a resident
10 chooses to use a community unit-dose system, and the facility in which the
11 resident resides does not use a unit-dose system, the pharmacy selected by the
12 resident shall be one that provides service delivery and stocks the drugs
13 normally used by the long-term care residents.

14 (18) The right to retain and use personal clothing and
15 possessions as space permits, unless to do so would infringe upon the rights
16 of other residents or unless medically contraindicated as documented in the
17 resident's medical record by a physician. If clothing is provided to the
18 resident by the licensee, it shall be of reasonable fit.

19 (19) The right to have copies of the rules and regulations of the
20 facility and an explanation of the responsibility of the resident to obey all
21 reasonable rules and regulations of the facility and to respect the personal
22 rights and private property of the other residents.

23 (20) The right to receive notice before the room of the resident
24 in the facility is changed.

25 (21) The right to be informed of the bed reservation policy for a
26 hospitalization. The long-term care facility shall inform a private-pay
27 resident and his or her responsible party that his or her bed will be reserved
28 for any single hospitalization for a period up to thirty (30) days provided
29 the long-term care facility receives reimbursement. Any resident who is a
30 recipient of assistance under Title XIX of the Social Security Act, or the
31 resident's designee or legal representative, shall be informed by the licensee
32 that his or her bed which Title XIX reimbursement is available, up to five (5)
33 days but that the bed will not be reserved if it is medically determined by
34 the agency that the resident will not need it or will not be able to return to
35 the long-term care facility, or if the agency determines that the long-term
36 care facility's occupancy rate ensures the availability of a bed for the

1 resident. Notice shall be provided within twenty-four (24) hours of
 2 hospitalization.

3 (22) For residents of Medicaid or Medicare certified facilities,
 4 the right to challenge a decision by the facility to discharge or transfer the
 5 resident, as required under Title 42 C.F.R. Part 483.13.

6 (b) The licensee for each long-term care facility shall orally inform
 7 the resident of the resident's rights and provide a copy of the statement
 8 required by subdivision (a)(1) to each resident or the resident's legal
 9 representative at or before the resident's admission to a facility. The
 10 licensee shall provide a copy of the residents' rights to each staff member of
 11 the facility. Each such licensee shall prepare a written plan and provide
 12 appropriate staff training to implement the provisions of this section. The
 13 written statement of rights must include a statement that a resident may file
 14 a complaint with the OLTC or ombudsman. The statement must be in boldfaced
 15 type and shall include the name, address, and telephone numbers of the
 16 ombudsman and adult abuse registry where complaints may be lodged.

17 (c) Any violation of the residents' rights set forth in this section
 18 shall constitute grounds for action by the OLTC. In order to determine
 19 whether the licensee is adequately protecting residents' rights, the annual
 20 inspection of the facility shall include private informal conversations with a
 21 sample of residents to discuss residents' experiences within the facility with
 22 respect to rights specified in this section and general compliance with
 23 standards, and consultation with the ombudsman in the area in which the long-
 24 term care facility is located.

25 (d) Any person who submits or reports a complaint concerning a
 26 suspected violation of the residents' rights or concerning services or
 27 conditions in a facility or who testifies in any administrative or judicial
 28 proceeding arising from such complaint shall have immunity from any criminal
 29 or civil liability thereof, unless that person has acted in bad faith, with
 30 malicious purpose, or if the court finds that there was a complete absence of
 31 a justiciable issue of either law or fact raised by the losing party.

32
 33 SECTION 4. CIVIL ENFORCEMENT.

34 (a) Any resident whose rights as specified in this act are deprived or
 35 infringed upon shall have a cause of action against any licensee responsible
 36 for the violation. The action may be brought by the resident or his or her

1 guardian, by a person or organization acting on behalf of a resident with the
 2 consent of the resident or his or her guardian, or by the personal
 3 representative of the estate of a deceased resident when the cause of death
 4 resulted from the deprivation or infringement of the decedent's rights. The
 5 action may be brought in any court of competent jurisdiction to enforce such
 6 rights and to recover actual and punitive damages for any deprivation or
 7 infringement on the rights of a resident. The remedies provided in this
 8 section are in addition to and cumulative with other legal and administrative
 9 remedies available to a resident and to the OLTC. The court may, in its
 10 discretion, award reasonable attorney's fees to the prevailing party. If the
 11 court deems an award of attorney's fees to be appropriate, the court shall use
 12 the following criteria:

- 13 (1) The time and labor required;
- 14 (2) The novelty and difficulty of the questions;
- 15 (3) The skill requisite to perform the legal service properly;
- 16 (4) The preclusion of other employment by the attorney due to the
 17 acceptance of the case;
- 18 (5) The customary fee;
- 19 (6) Whether the fee is fixed or contingent;
- 20 (7) The amount involved or the results obtained;
- 21 (8) The experience, reputation, and ability of the attorneys;
- 22 (9) The costs expended to prosecute the claim;
- 23 (10) The type of fee arrangement between the attorney and the
 24 client;
- 25 (11) Whether the relevant market requires a contingency fee
 26 multiplier to obtain competent counsel; and
- 27 (12) Whether the attorney was able to mitigate the risk of
 28 nonpayment in any way.

29 (b) A licensee shall not be liable for the medical negligence of any
 30 physician rendering care or treatment to the resident except for the services
 31 of a medical director as required in this act. Nothing in this subsection
 32 shall be construed to protect a licensee from liability for failure to provide
 33 a resident with appropriate observation, assessment, nursing diagnosis,
 34 planning, intervention, and evaluation of care by nursing staff.

35 (c) For the purpose of this section, punitive damages may be awarded
 36 for conduct which is willful, wanton, gross or flagrant, reckless, or

1 consciously indifferent to the rights of the resident.

2
3 SECTION 5. PATIENT RECORDS - PENALTIES FOR ALTERATION.

4 (a) Any person who fraudulently alters, defaces, or falsifies any
5 medical or other long-term care facility record, or causes or procures any of
6 these offenses to be committed, commits a Class A misdemeanor.

7 (b) A conviction under section is also grounds for restriction,
8 suspension, or termination of license privileges for individuals or
9 facilities.

10
11 SECTION 6. ADMINISTRATION AND MANAGEMENT OF LONG-TERM CARE FACILITIES.

12 Every licensed facility shall comply with all applicable standards and
13 rules of the OLTC and shall:

14 (1) Be under the administrative direction and charge of a licensed
15 administrator.

16 (2) Have available the regular, consultative, and emergency services
17 of physicians licensed by the state.

18 (3) Provide for the access of the facility residents to dental and
19 other health-related services, recreational services, rehabilitative services,
20 and social work services appropriate to their needs and conditions and not
21 directly furnished by the licensee.

22 (4) If the facility was not cited for any deficiencies in the past
23 twelve (12) months, be encouraged by OLTC to provide services, including, but
24 not limited to, respite and adult day services, which enable individuals to
25 move in and out of the facility. A facility is not subject to any additional
26 licensure requirements for providing these services. Respite care may be
27 offered to persons in need of short-term or temporary long-term care services.
28 Respite care must be provided in accordance with this act and rules adopted by
29 the OLTC. However, the OLTC shall, by rule, adopt modified requirements for
30 resident assessment, resident care plans, resident contracts, physician
31 orders, and other provisions, as appropriate, for short-term or temporary
32 long-term care services. The OLTC shall allow for shared programming and
33 staff in a facility which meets minimum standards and offers services pursuant
34 to this subsection, but, if the facility is cited for deficiencies in patient
35 care, may require additional staff and programs appropriate to the needs of
36 service recipients. A person who receives respite care may not be counted as

1 a resident of the facility for purposes of the facility's licensed capacity
2 unless that person receives twenty-four (24) hour respite care. A person
3 receiving either respite care for 24 hours or longer or adult day services
4 must be included when calculating minimum staffing for the facility. Any
5 costs and revenues generated by a long-term care facility from nonresidential
6 programs or services shall be excluded from the calculations of Medicaid per
7 diems for long-term care institutional care reimbursement.

8 (e) If the facility was not cited for any deficiencies in the last
9 twelve (12) months, exceeds minimum staffing standards, and is part of a
10 retirement community that offers other services pursuant to part III, part IV,
11 or part V, be allowed to share programming and staff.

12 (f) Maintain the facility premises and equipment and conduct its
13 operations in a safe and sanitary manner.

14 (g) If the licensee furnishes food service, provide a wholesome and
15 nourishing diet sufficient to meet generally accepted standards of proper
16 nutrition for its residents and provide such therapeutic diets as may be
17 prescribed by attending physicians. In making rules to implement this
18 subsection, the OLTC shall be guided by standards recommended by nationally
19 recognized professional groups and associations with knowledge of dietetics.

20 (h) Keep full records of resident admissions and discharges, medical
21 and general health status, including medical records, personal and social
22 history, and identity and address of next of kin, or other persons who may
23 have responsibility for the affairs of the residents; and individual resident
24 care plans including, but not limited to, prescribed services, service
25 frequency and duration, and service goals. The records shall be open to
26 inspection by the OLTC.

27 (i) Keep such fiscal records of its operations and conditions as may be
28 necessary to provide information pursuant to this act.

29 (j) Furnish copies of personnel records for employees affiliated with
30 such facility, to any other facility licensed by this state requesting this
31 information pursuant to this act. Such information contained in the records
32 may include, but is not limited to, disciplinary matters and any reason for
33 termination. Any facility releasing such records pursuant to this act shall
34 be considered to be acting in good faith and may not be held liable for
35 information contained in such records, absent a showing that the facility
36 maliciously falsified such records.

SECTION 7. Bribes, Kickbacks, Certain Solicitations Prohibited.

(a) As used in this section, the term:

(1) "Bribe" means any consideration corruptly given, received, promised, solicited, or offered to any individual with intent or purpose to influence the performance of any act or omission.

(2) "Kickback" means that part of the payment for items or services which is returned to the payer by the provider of such items or services with the intent or purpose to induce the payer to purchase the items or services from the provider.

(b) It is a Class A misdemeanor to furnish items or services directly or indirectly to a long-term care resident and solicit, offer, or receive:

(1) Any kickback or bribe in connection with the furnishing of such items or services or the making or receipt of such payment; or

(2) The return of part of an amount given in payment for referring any such individual to another person for the furnishing of such items or services.

(c) No person shall, in connection with the solicitation of contributions to long-term care facilities, willfully misrepresent or mislead anyone, by any manner, means, practice, or device whatsoever, to believe that the receipts of such solicitation will be used for charitable purposes, if such is not the fact.

(d) Solicitation of contributions of any kind in a threatening, coercive, or unduly forceful manner by or on behalf of a long-term care facility by any agent, employee, owner, or representative of a long-term care facility shall be grounds for denial, suspension, or revocation of the license for any long-term care facility on behalf of which such contributions were solicited.

(e) The admission, maintenance, or treatment of a long-term care resident whose care is supported in whole or in part by state funds may not be made conditional upon the receipt of any manner of contribution or donation from any person. However, this may not be construed to prohibit the offer or receipt of contributions or donations to a long-term care facility which are not related to the care of a specific resident. Contributions solicited or received in violation of this subsection shall be grounds for denial, suspension, or revocation of a license for any long-term care facility on

1 behalf of which such contributions were solicited.

2
3 SECTION 8. PROPERTY AND PERSONAL AFFAIRS OF RESIDENTS.

4 (a) The admission of a resident to a facility and his or her presence
5 in the facility shall not confer on the facility or its owner, administrator,
6 employees, or representatives any authority to manage, use, or dispose of any
7 property of the resident; nor shall such admission or presence confer on any
8 of the aforementioned persons any authority or responsibility for the personal
9 affairs of the resident, except that which may be necessary for the safety of
10 the residents and orderly management of the facility.

11 (b) No licensee, owner, administrator, employee, or representative
12 thereof shall act as guardian, trustee, or conservator for any resident of the
13 facility or any such resident's property unless the person is the resident's
14 spouse or blood relative within the third degree of consanguinity.

15 (c) A licensee shall provide for the safekeeping of personal effects,
16 funds, and other property of the resident in the facility. Whenever necessary
17 for the protection of valuables, or in order to avoid unreasonable
18 responsibility thereof, the licensee may require that such valuables be
19 excluded or removed from the facility and kept at some place not subject to
20 the control of the licensee.

21 (d) A licensee shall keep complete and accurate records of all funds
22 and other effects and property of its residents received by it for
23 safekeeping.

24 (e)(1) Any funds or other property belonging to a resident which are
25 received by a licensee shall be held in trust. Funds held in trust shall be
26 kept separate from the funds and property of the facility; shall be deposited
27 in a bank, savings and loan association, trust company, or credit union
28 located in this state and, if possible, located in the same county in which
29 the facility is located; shall not be represented as part of the assets of the
30 facility on a financial statement; and shall be used or otherwise expended
31 only for the account of the resident.

32 (2) The licensee may enter into a self-insurance agreement as
33 specified in rules adopted by the OLTC. Funds contained in the pool shall run
34 to any resident suffering financial loss as a result of the violation by the
35 licensee of the provisions of this section. Such funds shall be awarded to
36 any resident in an amount equal to the amount that the resident can establish,

1 by affidavit or other adequate evidence, was deposited in trust with the
2 licensee and which could not be paid to the resident within thirty (30) days
3 of the resident's request. The OLTC shall promulgate rules with regard to the
4 establishment, organization, and operation of such self-insurance pools. Such
5 rules shall include, but shall not be limited to, requirements for monetary
6 reserves to be maintained by such self-insurers to assure their financial
7 solvency.

8 (3) If, at any time during the period for which a license is
9 issued, a licensee that has not entered into a self-insurance agreement, as
10 provided in subsection (b), is requested to provide safekeeping for the
11 personal funds of a resident, the licensee shall notify the agency of the
12 request and make application for a surety bond or for participation in a self-
13 insurance agreement within seven (7) days of the request, exclusive of
14 weekends and holidays. Copies of the application, along with written
15 documentation of related correspondence with an insurance agency or group,
16 shall be maintained by the licensee for review by the OLTC and the Obudsman.

17 (4) Moneys or securities received as advance payment for care may
18 not at any time exceed the cost of care for a six (6) month period.

19 (5) At least every three (3) months, the licensee shall furnish
20 the resident and the guardian, trustee, or conservator, if any, for the
21 resident a complete and verified statement of all funds and other property to
22 which this subsection applies, detailing the amounts and items received,
23 together with their sources and disposition. In any event, the licensee shall
24 furnish such a statement annually and upon the discharge or transfer of a
25 resident.

26 (f) In the event of the death of a resident, a licensee shall return
27 all refunds and funds held in trust to the resident's personal representative,
28 if one has been appointed at the time the long-term care facility disburses
29 such funds, and if not, to the resident's spouse or adult next of kin named in
30 a beneficiary designation form provided by the long-term care facility to the
31 resident. In the event the resident has no spouse or adult next of kin or
32 such person cannot be located, funds due to the resident shall be placed in an
33 interest-bearing account in a bank, savings and loan association, trust
34 company, or credit union located in this state and, if possible, located
35 within the same county in which the facility is located, which funds shall not
36 be represented as part of the assets of the facility on a financial statement,

1 and the licensee shall maintain such account until such time as the trust
 2 funds are disbursed pursuant to the provisions of Arkansas' Probate Code. All
 3 other property of a deceased resident being held in trust by the licensee
 4 shall be returned to the resident's personal representative, if one has been
 5 appointed at the time the long-term care facility disburses such property, and
 6 if not, to the resident's spouse or adult next of kin named in a beneficiary
 7 designation form provided by the long-term care facility to the resident. In
 8 the event the resident has no spouse or adult next of kin or such person
 9 cannot be located, property being held is disbursed pursuant to the provisions
 10 of Arkansas' Probate Code. The trust funds and property of deceased residents
 11 shall be kept separate from the funds and the property of the licensee and
 12 from the funds and property of the residents of the facility. The long-term
 13 care facility needs to maintain only one account in which the trust funds
 14 amounting to less than one hundred dollars (\$100) of deceased residents are
 15 placed. However, it shall be the obligation of the long-term care facility to
 16 maintain adequate records to permit compilation of interest due each
 17 individual resident's account. Separate accounts shall be maintained with
 18 respect to trust funds of deceased residents equal to or in excess of \$100.
 19 Any other property of a deceased resident held in trust by a licensee which is
 20 not disbursed in accordance with the provisions of Arkansas' Probate Code
 21 shall escheat to the state as provided by law.

22
 23 SECTION 9. SALE OR TRANSFER OF OWNERSHIP OF A LONG-TERM CARE FACILITY -
 24 LIABILITY FOR MEDICAID UNDERPAYMENTS AND OVERPAYMENTS.

25 (a) It is the intent of the General Assembly to protect the rights of
 26 long-term care residents and the security of public funds when a long-term
 27 care facility is sold or the ownership is transferred.

28 (b) Whenever a long-term care facility is sold or the ownership is
 29 transferred, including leasing, the transferee shall make application to the
 30 OLTC for a new license at least ninety (90) days prior to the date of transfer
 31 of ownership.

32 (c) The transferor shall notify the OLTC in writing at least ninety
 33 (90) days prior to the date of transfer of ownership. The transferor shall be
 34 responsible and liable for the lawful operation of the long-term care facility
 35 and the welfare of the residents domiciled in the facility until the date the
 36 transferee is licensed by the OLTC. The transferor shall be liable for any

1 and all penalties imposed against the facility for violations occurring prior
 2 to the date of transfer of ownership.

3 (d) The transferor shall, prior to transfer of ownership, repay or make
 4 arrangements to repay to the agency or the Department of Human Services any
 5 amounts owed to the OLTC or the department. Should the transferor fail to
 6 repay or make arrangements to repay the amounts owed to the OLTC or the
 7 department prior to the transfer of ownership, the issuance of a license to
 8 the transferee shall be delayed until repayment or until arrangements for
 9 repayment are made.

10 (e) Because any transfer of a long-term care facility may expose the
 11 fact that Medicaid may have underpaid or overpaid the transferor, and because
 12 in most instances, any such underpayment or overpayment can only be determined
 13 following a formal field audit, the liabilities for any such underpayments or
 14 overpayments shall be as follows:

15 (1) Without regard to whether the transferor had leased or owned
 16 the long-term facility, the transferor shall remain liable to the Medicaid
 17 program for all Medicaid overpayments received during the transferor's period
 18 of operation of the facility, regardless of when determined.

19 (2) Where the facility transfer takes any form of a sale of
 20 assets, in addition to the transferor's continuing liability for any such
 21 overpayments, if the transferor fails to meet these obligations, the
 22 transferee shall be liable for all liabilities that can be readily
 23 identifiable ninety (90) days in advance of the transfer. It shall be the
 24 burden of the transferee to determine the amount of all such readily
 25 identifiable overpayments from the Department of Human Services, and the
 26 department shall cooperate in every way with the identification of such
 27 amounts. Readily identifiable overpayments shall include overpayments that
 28 will result from, but not limited to:

- 29 (A) Medicaid rate changes or adjustments;
- 30 (B) Any depreciation recapture;
- 31 (C) Any recapture of fair rental value system indexing; and
- 32 (D) Audits completed by the department.

33 (3) The transferor shall remain liable for any such Medicaid
 34 overpayment that was not readily identifiable ninety (90) days in advance of
 35 the long-term care facility transfer.

36 (4) Where the transfer involves a facility that has been leased

1 by the transferor:

2 (A) The transferee shall, as a condition to being issued a
 3 license by the agency, acquire, maintain, and provide proof to the agency of a
 4 bond with a term of thirty (30) months, renewable annually, in an amount not
 5 less than the total of three (3) months Medicaid payments to the facility
 6 computed on the basis of the preceding twelve (12) month average Medicaid
 7 payments to the facility.

8 (B) The leasehold operator may meet the bond requirement
 9 through other arrangements acceptable to the department.

10 (C) All existing long-term care facility licensees,
 11 operating the facility as a leasehold, shall acquire, maintain, and provide
 12 proof to the OLTC of the thirty (30) month bond required in subdivision
 13 (e)(4)(A), above, on and after July 1, 1999, for each license renewal.

14 (D) It shall be the responsibility of all long-term care
 15 facility operators, operating the facility as a leasehold, to renew the 30-
 16 month bond and to provide proof of such renewal to the agency annually at the
 17 time of application for license renewal.

18 (E) Any failure of the long-term care facility operator to
 19 acquire, maintain, renew annually, or provide proof to the agency shall be
 20 grounds for the agency to deny, cancel, revoke, or suspend the facility
 21 license to operate such facility and to take any further action, including,
 22 but not limited to, enjoining the facility, asserting a moratorium, or
 23 applying for a receiver, deemed necessary to ensure compliance with this
 24 section and to safeguard and protect the health, safety, and welfare of the
 25 facility's residents.

26
 27 SECTION 10. RIGHT OF ENTRY AND INSPECTION

28 The department and any duly designated officer or employee thereof or an
 29 Ombudsman shall have the right to enter upon and into the premises of any
 30 long-term care facility, at any time in order to determine the state of
 31 compliance with the provisions of this act and rules in force pursuant
 32 thereto. The right of entry and inspection shall also extend to any premises
 33 which the agency has reason to believe is being operated or maintained as a
 34 facility without a license, but no such entry or inspection of any premises
 35 shall be made without the permission of the owner or person in charge thereof,
 36 unless an inspection order is first obtained from a circuit court upon a

1 showing of reasonable cause to inspect that certain premises are being
 2 maintained and operated in violation of this act.

3
 4 SECTION 11. AVAILABILITY, DISTRIBUTION, AND POSTING OF REPORTS AND
 5 RECORDS.

6 (a) The OLTC shall, within sixty (60) days after the date of an annual
 7 inspection visit or within thirty (30) days after the date of any interim
 8 visit, forward the results of all inspections of long-term care facilities to:

9 (1) The ombudsman in whose county the inspected facility is
 10 located; and

11 (2) At least one public library or, in the absence of a public
 12 library, the county seat in the county in which the inspected facility is
 13 located.

14 (b) Each long-term care facility licensee shall maintain as public
 15 information, available upon request, records of all cost and inspection
 16 reports pertaining to that facility that have been filed with, or issued by,
 17 any governmental agency. Copies of such reports shall be retained in such
 18 records for not less than five (5) years after the date the reports are filed
 19 or issued.

20 (c) Any records of a long-term care facility determined by the OLTC to
 21 be necessary and essential to establish lawful compliance with any rules or
 22 standards shall be made available to the OLTC on the premises of the facility.

23 (d) Every long-term care facility licensee shall:

24 (1) Post, in a sufficient number of prominent positions in the
 25 long-term care facility so as to be accessible to all residents and to the
 26 general public, the last inspection report or survey pertaining to the long-
 27 term care facility and issued by the OLTC, with references to the page numbers
 28 of the full reports, noting any deficiencies found by the OLTC and the actions
 29 taken by the licensee to rectify such deficiencies.

30 (2) Upon request, provide to any person who has completed a
 31 written application with an intent to be admitted to, or to any resident of,
 32 such long-term care facility, or to any relative, spouse, or guardian of such
 33 person, a copy of the last inspection report pertaining to the long-term care
 34 facility and issued by the agency, provided the person requesting the report
 35 agrees to pay a reasonable charge to cover copying costs.

36

1 SECTION 12. LONG-TERM CARE FACILITY RULES - EVALUATION AND RATING
2 SYSTEM; FEE FOR REVIEW OF PLANS.

3 (a) The Department of Human Services must, within one hundred eighty
4 (180) days of the effective date of this act, adopt rules for minimum
5 standards of care for persons under twenty-one (21) years of age who reside in
6 long-term care facilities. The rules must include a methodology for reviewing
7 a long-term care facility which serves only persons under twenty-one (21)
8 years of age.

9 (b) Prior to conducting a survey of the facility, the survey team shall
10 obtain a copy of any long-term care ombudsman report on the facility.
11 Problems noted in the report shall be incorporated into and followed up
12 through the department's inspection process. This procedure does not preclude
13 the ombudsman from requesting the agency to conduct a follow-up visit to the
14 facility.

15 (c) The OLTC shall evaluate all long-term care facilities and make a
16 determination as to the degree of compliance by each licensee with the
17 established rules adopted under this act as a basis for assigning a rating to
18 that facility. The frequency of the evaluations shall be no less than the
19 frequency of Medicaid surveys, but the evaluation of any long-term care
20 facility need not be concurrent with that facility's Medicaid survey. The
21 OLTC shall base its evaluation on the most recent inspection report, taking
22 into consideration findings from other official reports, surveys, interviews,
23 investigations, and inspections. The OLTC shall assign one of the following
24 ratings to each long-term care facility: standard, substantial, or superior.

25 (1) A standard rating means that a facility has no level 3 or
26 level 4 deficiencies, has corrected all level 1 or 2 deficiencies within the
27 time established by the department, and is in substantial compliance at the
28 time of the survey with criteria established under this act, with rules
29 adopted by the agency and with rules adopted under the Omnibus Budget
30 Reconciliation Act of 1993, Title IV (Medicare, Medicaid, and Other Health-
31 Related Programs), Subtitle C (Nursing Home Reform), as amended.

32 (2) A substandard rating means that a facility, due to the
33 presence of one or more level 3 or level 4 deficiencies, or level 1 or level 2
34 deficiencies not corrected within the time established by the OLTC, is not in
35 substantial compliance at the time of the survey with criteria established
36 under this act, with rules adopted by the department, or with rules adopted

1 under the Omnibus Budget Reconciliation Act of 1993, Title IV (Medicare,
 2 Medicaid, and Other Health-Related Programs), Subtitle C (Nursing Home
 3 Reform), as amended. If the facility comes into substantial compliance at the
 4 time of the follow-up survey, a standard rating may be issued. A facility
 5 assigned a substantial rating at the time of the follow-up survey may not
 6 qualify for consideration for a superior rating for at least one year or until
 7 the time of the next subsequent annual survey, whichever is longer.

8 (3) A superior rating means that a facility has no level 3 or
 9 level 4 deficiencies and has corrected all level 1 or 2 deficiencies within
 10 the time established by the department and is in substantial compliance with
 11 the criteria established under this act and the rules adopted by the
 12 department and, if applicable, with the rules adopted pursuant to the Omnibus
 13 Budget Reconciliation Act of 1993, Title IV (Medicare, Medicaid, and Other
 14 Health-Related Programs), Subtitle C (Nursing Home Reform), as amended; and
 15 the facility exceeds the criteria for a standard rating through enhanced
 16 programs and services in the following areas:

- 17 (A) Nursing service;
- 18 (B) Dietary or nutritional services;
- 19 (C) Physical environment;
- 20 (D) Housekeeping and maintenance;
- 21 (E) Restorative therapies and self-help activities;
- 22 (F) Social services; and
- 23 (G) Activities and recreational therapy.

24 (4) In order to facilitate the development of special programs or
 25 facility-wide initiatives and promote creativity based on the needs and
 26 preferences of residents, the areas listed in subsection (c) may be grouped or
 27 addressed individually by the licensee. However, a facility may not qualify
 28 for a superior rating if fewer than three programs or initiatives are
 29 developed to encompass the required areas.

30 (5) In determining the rating and evaluating the overall quality
 31 of care and services, the department shall consider the needs and limitations
 32 of residents in the facility, ombudsman reports, and the results of interviews
 33 and surveys of a representative sampling of residents, families of residents,
 34 guardians of residents, and staff of the long-term care facility.

35 (6) The current rating of each facility must be indicated in bold
 36 print on the face of the license. A list of the deficiencies of the facility

1 shall be posted in a prominent place that is in clear and unobstructed public
2 view at or near the place where residents are being admitted to that facility.
3 Licenses receiving a substantial rating for a facility shall prepare, within
4 ten (10) working days after receiving notice of deficiencies, a plan for
5 correction of all deficiencies and shall submit the plan to the department for
6 approval. Correction of all deficiencies, within the period approved by the
7 OLTC, shall result in termination of the substantial rating. Failure to
8 correct the deficiencies within a reasonable period approved by the OLTC shall
9 be grounds for the imposition of state or federal sanctions, or both.

10 (7) Each licensee shall post its license in a prominent place
11 that is in clear and unobstructed public view at or near the place where
12 residents are being admitted to the facility. A licensee with a superior
13 rating may advertise its rating in any nonpermanent medium and in accordance
14 with rules adopted by the agency. A list of the facilities receiving a
15 superior rating shall be maintained by OLTC and available to the public.

16 (8) Within one hundred eighty (180) days of the effective date of
17 this act, the department shall adopt rules that:

18 (A) Establish uniform procedures for the evaluation of
19 facilities;

20 (B) Provide criteria in the areas referenced in subsection
21 (c)(3); and

22 (C) Address other areas necessary for carrying out the
23 intent of this section.

24 (9) A licensee rated superior shall continue until it is replaced
25 by a rating based on a later survey, inspection, investigation, or visit. A
26 superior rating may be revoked at any time for failure to maintain substantial
27 compliance with criteria establishing under this act, with rules adopted by
28 the department or under the Omnibus Budget Reconciliation Act of 1993, Title
29 IV (Medicare, Medicaid, and Other Health-Related Programs), Subtitle C
30 (Nursing Home Reform), as amended, or for failure to exceed the criteria
31 specified for any area as listed in subsection (c).

32 (10) A superior rating is not transferable to another licensee or
33 location.

34 (d) The department shall adopt rules to provide that, when the criteria
35 established under subdivision (c)(2) are not met, such deficiencies shall be
36 classified according to the nature of the deficiency. The department shall

1 indicate the classification on the face of the notice of deficiencies as
2 follows in accordance with the U.S. Department of Health and Human Services
3 State Operations Manual for Medicaid Provider Certification.

4 (e) The department shall approve or disapprove long-term care facility
5 plans and specifications within sixty (60) days after receipt of the final
6 plans and specifications. The department may be granted one fifteen (15) day
7 extension for the review period, if the director of the department so
8 approves. If the department fails to act within the specified time, it shall
9 be deemed to have approved the plans and specifications. When the OLTC
10 disapproves plans and specifications, it shall set forth in writing the
11 reasons for disapproval. Conferences and consultations may be provided as
12 necessary.

13 (f) The department is authorized to charge an initial fee of two
14 thousand dollars (\$2,000) for review of plans and construction on all
15 projects, no part of which is refundable. The OLTC may also collect a fee,
16 not to exceed one percent (1%) of the estimated construction cost or the
17 actual cost of review, whichever is less, for the portion of the review which
18 encompasses initial review through the initial revised construction document
19 review. The OLTC is further authorized to collect its actual costs on all
20 subsequent portions of the review and construction inspections. Initial fee
21 payment shall accompany the initial submission of plans and specifications.
22 Any subsequent payment that is due is payable upon receipt of the invoice from
23 the OLTC. Notwithstanding any other provisions of law to the contrary, all
24 money received by the OLTC pursuant to the provisions of this section shall be
25 deemed to be trust funds, to be held and applied solely for the operations
26 required under this section

27 (g) This act may not be used to increase the total Medicaid funding
28 paid as incentives for facilities receiving a superior or standard rating.
29

30 SECTION 13. CONFIDENTIALITY OF REPORTS AND RECORDS.

31 (a) The disclosure of information regarding reports of abuse, neglect,
32 or exploitation of a disabled or elderly person, including reports made to the
33 central abuse registry and tracking system, and all records generated as a
34 result of those reports is subject to other laws specifically governing the
35 creation, storage, or dissemination of those records. Except as provided
36 below, those laws are not amended or impliedly repealed hereby. In addition

1 to disclosure permitted by other laws, access to those records, excluding the
 2 name of the reporter which shall be released only as provided in subsection
 3 (c), shall be granted to the following person, officials, and agencies:

4 (1) Employees or agents of the department who are responsible for
 5 carrying out adult protective investigations, ongoing adult protective
 6 services, or licensure or approval of long-term care facilities;

7 (2) A criminal justice agency investigating a report of known or
 8 suspected abuse, neglect, or exploitation of a disabled adult or an elderly
 9 person;

10 (3) The prosecuting attorney of the judicial district in which
 11 the disabled adult or elderly person resides or in which the alleged abuse,
 12 neglect, or exploitation occurred;

13 (4) Any person who is the subject of a report or the subject's
 14 guardian, caregiver, or legal counsel;

15 (5) A court, by subpoena, upon its finding that access to such
 16 records may be necessary for the determination of an issue before the court;
 17 however, such access must be limited to inspection in camera, unless the court
 18 determines that public disclosure of the information contained in such records
 19 is necessary for the resolution of an issue then pending before it;

20 (6) A grand jury, by subpoena, upon its determination that access
 21 to such records is necessary in the conduct of its official business;

22 (7) Any long-term care ombudsman investigating a report of known
 23 or suspected abuse, neglect, or exploitation of a disabled adult or an elderly
 24 person;

25 (8) Any appropriate official of the department who is responsible
 26 for:

27 (A) Administration or supervision of the programs for the
 28 prevention, investigation, or treatment of adult abuse, neglect, or
 29 exploitation when carrying out an official function; or

30 (B) Taking appropriate administrative action concerning an
 31 employee alleged to have perpetrated institutional abuse, neglect, or
 32 exploitation of a disabled adult or an elderly person;

33 (9) Any person engaged in bona fide research or auditing.
 34 However, information identifying the subjects of the report must not be made
 35 available to the researcher; and

36 (10) Employees or agents of an agency of another state that has

1 jurisdiction comparable to the jurisdiction described in subsection (a).

2 (b) The department may release to any professional person such
 3 information as is necessary for the diagnosis and treatment of, and service
 4 delivery to, a disabled adult or an elderly person or the person perpetrating
 5 the abuse, neglect, or exploitation.

6 (c) The identity of any person reporting adult abuse, neglect, or
 7 exploitation may not be released, without that person's written consent, to
 8 any person other than employees of the department responsible for adult
 9 protective services, the central abuse registry and tracking system, or the
 10 appropriate prosecuting attorney. This subsection grants protection only for
 11 the person who reported the adult abuse, neglect, or exploitation and protects
 12 only the fact that the person is a reporter. This subsection does not
 13 prohibit the subpoena of a person reporting adult abuse, neglect, or
 14 exploitation when deemed necessary by the prosecuting attorney or the
 15 department to protect a disabled adult or an elderly person who is the subject
 16 of a report, if the fact that the person made the report is not disclosed.

17 (d) For the purposes of this section, the term "access" means a visual
 18 inspection or copy of the hard-copy record maintained by the OLTC.

19
 20 SECTION 14. Arkansas Code 20-10-224, as amended by Act 485 of 1989, is
 21 repealed.

22 ~~20-10-224. License required - Administration by Department of Human~~
 23 ~~Services. [As amended by Acts 1989, No. 485, § 1.]~~

24 ~~(a) No long-term care facility or related institution shall be~~
 25 ~~established, conducted, or maintained in this state without obtaining a~~
 26 ~~license.~~

27 ~~(b) The department shall, by properly promulgating rules and~~
 28 ~~regulations, provide for the issuance of appropriate types of long-term care~~
 29 ~~facility licenses, including the licensure of facilities with specialized~~
 30 ~~wings, units, or rooms for dementia residents, those suffering from~~
 31 ~~Alzheimer's disease, and other related conditions.~~

32 ~~(c) The department may provide, by properly promulgating rules and~~
 33 ~~regulations, for the issuance of permanent type licenses, subject to~~
 34 ~~revocation.~~

35 ~~(d) This section shall not apply to hospital swing beds.~~

36

1 SECTION 15. All provisions of this act of a general and permanent
2 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
3 Code Revision Commission shall incorporate the same in the Code.

4
5 SECTION 16. If any provision of this act or the application thereof to
6 any person or circumstance is held invalid, such invalidity shall not affect
7 other provisions or applications of the act which can be given effect without
8 the invalid provision or application, and to this end the provisions of this
9 act are declared to be severable.

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11 SECTION 17. All laws and parts of laws in conflict with this act are
12 hereby repealed.

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