

**Hall of the House of Representatives**  
85th General Assembly - Regular Session, 2005  
**Amendment Form**

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**Subtitle of House Bill No. 2593**

"LONG TERM CARE RESIDENT PROTECTION ACT OF 2005."

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**Amendment No. 1 to House Bill No. 2593.**

Amend House Bill No. 2593 as originally introduced:

Add Representatives Abernathy, Berry, Blair, Bradford, Bright Clemons, Davis, Dobbins, Dunn, Everett, Glidewell, Hardy, J. Hutchinson, J. Johnson, Key, Kidd, Mack, Matayo, McDaniel, Medley, Pyle, Ragland, Roebuck, Rogers, Scroggin, Walters, and Willis as cosponsors

AND

Add Senators Wilkinson, Altes, Baker, Bisbee, Bookout, Broadway, Brown, Bryles, Capps, Critcher, Faris, Glover, Hendren, Higginbothom, Hill, Holt, Horn, G. Jeffress, J. Jeffress, Johnson, Laverty, Luker, Madison, Malone, Miller, Salmon, Smith, Steele, Taylor, Trusty, Whitaker, Womack, and Wooldridge as cosponsors

AND

Page 1, delete lines 20 through 24 and substitute the following:

“SECTION 1. Arkansas Code Title 20, Chapter 10, is amended to add an additional subchapter to read as follows:

20-10-2001. Title.

This act is known and may be cited as the “Long-Term Care Resident Protection Act of 2005”.

20-10-2002. Purpose.

The purpose of this subchapter is to provide for the protection of the health, safety, and well-being of residents, including residents who are Medicaid recipients, in long-term care facilities and to promote, assure, and maintain the continuity of the health, safety, and well-being of the citizens of the State of Arkansas by:

(1) Requiring disclosure of pertinent information relating to changes in control of a long-term care facility;

(2) Providing standards governing review of any proposed change in control of a long-term care facility by the Director of the Department of Human Services or the director’s designee; and

(3) Requiring the written approval of the director or the



director's designee prior to a change of control of certain long-term care facility owners.

20-10-2003. Definitions.

As used in this subchapter:

(1) "Acquiring party" means a person by whom or on whose behalf a merger or other acquisition of control of a long-term care facility owner is to be effected;

(2) "Affiliate" or "person affiliated with" means any person, who, directly or indirectly, through one (1) or more intermediaries, controls, is controlled by, or is under common control with a specified person;

(3) "Beneficial owner" or "beneficial ownership" means any person, who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares:

(A) Voting power that includes the power to vote, or to direct the voting of, a voting security; or

(B) Investment power that includes the power to dispose, or to direct the disposition of, a voting security;

(4)(A) "Control", "controlling", "controlled by", or "under common control with" means the direct or indirect possession of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by control, or otherwise, unless the power is the result of an official position with or corporate office held by the person.

(B)(i) "Control" shall be presumed to exist if any person together with all affiliates, directly or indirectly, beneficially owns, controls, holds with the power to vote, or holds proxies representing ten percent (10%) or more of the voting securities of any other person.

(ii) After furnishing all persons in interest with notice and opportunity to be heard, the Director of the Department of Human Services or the director's designee may determine that control exists in fact, notwithstanding the absence of a presumption to that effect;

(5) "Long-term care facility" means a nursing home, residential care facility, or any other facility located within the State of Arkansas that provides long-term medical or personal care;

(6) "Long-term care facility owner" means a person who directly or indirectly owns or controls more than one (1) long-term care facility and that:

(A) Is a company whose shares are traded in the national securities markets; and

(B) As of December 31, 2004, was licensed to operate a minimum of two thousand (2,000) beds within the State of Arkansas;

(7) "Person" means an individual, corporation, limited liability corporation, partnership, association, joint-stock company, business trust, unincorporated organization, or any similar entity or any combination of the foregoing acting in concert;

(8) "Resident" means an individual person residing in a long-term care facility in the State of Arkansas; and

(9) "Voting security" means any security convertible into or evidencing a right to acquire a voting security.

20-10-2004. Applicability.

(a) This subchapter applies only to the change of control of a long-term care facility owner that as of December 31, 2004:

(1) Had assets in excess of one billion dollars (\$1,000,000,000);

(2) Maintained at least seventy percent (70%) of its total resident census in the United States and greater than seventy percent (70%) of its Arkansas resident census as Medicaid-covered residents; and

(3) Employed in excess of two thousand (2,000) full-time employees in the State of Arkansas.

(b) If, as of the effective date of this subchapter, any person has initiated any activity that would have required a filing under this subchapter if the subchapter was in effect when the activity began, the person is prohibited from proceeding further without complying with all the provisions of this subchapter as though the subchapter was in effect at the time the activity began.

20-10-2005. Control of long-term care facility owner – Filing requirements.

(a) No person shall enter into or attempt to consummate an agreement to merge with or otherwise to acquire control of a long-term care facility owner unless, at the time any offer, request, or invitation is made or any agreement is entered into, and prior to the acquisition of any voting securities involved, the person has:

(1) Filed with the Director of the Department of Human Services or the director's designee and has sent to the long-term care facility owner a statement containing the information required by § 20-10-2006; and

(2) The offer, request, invitation, agreement, or acquisition has been approved by the director or the director's designee in the manner prescribed in § 20-10-2007.

(b) The provisions of this subchapter shall not apply if, prior to the change of control described under subsection (a) of this section, the board of directors of the long-term care facility owner files with the director a written statement signed by all members of the board of directors representing that the criteria prescribed in § 20-10-2007(c)(1) – (7) have been considered in connection with the proposed change of control.

20-10-2006. Control of long-term care facility owner – Content of statement.

(a) The statement to be filed with the Director of the Department of Human Services or the director's designee under this section shall be made under oath or affirmation and shall contain the following information for each acquiring party:

(1)(A) The name and address of the acquiring party.

(B) If the acquiring party is an individual, the statement shall contain information regarding his or her principal occupation and all offices and positions held during the past five (5) years and any conviction of crimes other than minor traffic violations during the past ten (10) years.

(C) If the acquiring party is not an individual, the statement shall contain:

(i) A report of the nature of the acquiring party's business operations during the past five (5) years or for such lesser period

as the acquiring party and any predecessors of the acquiring party have been in existence;

(ii) An informative description of the business intended to be conducted by the acquiring party and the acquiring party's subsidiaries; and

(iii)(a) A list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party, or who perform or will perform functions appropriate to the positions.

(b) The list prepared under subdivision (a)(1)(C)(iii)(a) of this section shall include for each individual the information required by subdivision (a)(1)(B) of this section;

(2)(A) The source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a description of any transaction wherein funds were or are to be obtained for the merger or other acquisition of control, and the identity of persons furnishing the consideration.

(B) When a source of the consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential if the person filing the statement so requests;

(3) Fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five (5) fiscal years of each acquiring party, or for such lesser period as the acquiring party and any predecessors of the acquiring party have been in existence, and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement;

(4)(A) A statement describing any plans or proposals that each acquiring party may have to liquidate the long-term care facility owner, to sell its assets or merge or consolidate the long-term care facility owner with any person, or to make any other material change in the long-term care facility owner's business or corporate structure or management.

(B) The statement shall include information necessary to determine whether:

(i) Following the change of control, the long-term care facility will continue to be able to meet the long-term care needs of the locale or area;

(ii) The long-term care facility can be adequately staffed and operated when the change of control is completed;

(iii) The proposed operation of the long-term care facility following the change of control is economically feasible;

(iv) Following the change of control, the acquiring party can be expected to provide a substantially consistent high level of care at the long-term care facility based on:

(a) The acquiring party's past history;

(b) Whether the acquiring party intends to effectuate any change in the board of directors of the long-term care facility owner;

(c) Whether the acquiring party intends to terminate, lay off, or otherwise discharge, during the twenty-four-month period immediately following the acquisition, in excess of fifteen percent (15%) of the employees of the long-term care facility owner as of the date of the acquisition;

(d) Whether the acquiring party has terminated

general liability insurance or professional liability insurance, or both, covering any long-term care facility that the acquiring party has previously acquired and, if more than one (1) long-term care facility was previously acquired, which long-term care facilities had general liability insurance or professional liability insurance coverage in effect at the time of the acquisition; and

(e) The assessment of the director or the director's designee regarding the acquiring party's character and competence to operate the long-term care facility, which shall include a review of the acquiring party's experience, past performance in operating a long-term care facility, if any, and compliance with applicable laws and practices pertinent to the acquiring party's professional experience; and

(v) Following change of control, the acquiring party shall obtain and maintain general liability insurance coverage and professional liability insurance coverage in an amount not less than that maintained by the current long-term care facility owner at the time the statement required by § 20-10-2005 is filed;

(5)(A) A full description of any contracts, arrangements, or understandings with respect to any matter referred to in § 20-10-2005 in which any acquiring party is involved, including, without limitation, transfer of any of the voting securities, joint ventures, loans or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies.

(B) The description shall identify the persons with whom the contracts, arrangements, or understandings described under subdivision (a)(5)(A) of this section have been entered;

(6) A description of the purchase of any voting security referred to in § 20-10-2005 during the twelve (12) calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid for the purchase;

(7) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any voting securities referred to in § 20-10-2005 and, if distributed, any additional soliciting material relating to any tender offers for, requests or invitations for tenders of, exchange offers for, or agreements to acquire or exchange any voting securities referred to in § 20-10-2005;

(8) The terms of any agreement, contract, or understanding made with any broker-dealer or other person as to solicitation of voting securities referred to in § 20-10-2005, and the amount of any fees, commissions, or other compensation to be paid to broker-dealers or other persons with regard to any agreement, contract, or understanding made with any broker-dealer or other person as to solicitation of voting securities referred to in § 20-10-2005; and

(9) Any additional information that the director or the director's designee may request as necessary or appropriate for the protection of residents of the long-term care facility or the best interests of the public, or both.

(b) If any material change occurs in the facts set forth in the statement filed with the director and sent to the long-term care facility owner under § 20-10-2005, an amendment setting forth the change, together

with copies of all documents and other material relevant to the change, shall be filed with the director and sent to the long-term care facility owner within two (2) business days after the person learns of the change.

20-10-2007. Control of long-term care facility owner – Approval by director.

(a) Prior to holding the public hearing described in subsection (b) of this section, the Director of the Department of Human Services or the director's designee may appoint a special master whose fees and other costs shall be paid by the acquiring party and who shall perform the following tasks on behalf of the director or the director's designee:

(1) Review quality of care provided to residents by the long-term care facility owner as established by records of surveys conducted by Office of Long-Term Care of the Division of Medical Services of the Department of Human Services and any related enforcement actions over the past five (5) years;

(2) Review the quality of care provided by the acquiring party as evidenced by records of surveys by state survey agencies in any jurisdiction and any related enforcement actions over the past five (5) years; and

(3)(A) Prepare a written report based on the reviews performed under subdivisions (a)(1) and (2) of this section regarding whether the proposed merger or acquisition of control provides adequate protection for the health, safety, and well-being of residents, including residents who are Medicaid recipients, who may be affected by a proposed merger or acquisition of control, and will promote, assure, and maintain the continuity of the health, safety, and well being of the citizens of the State of Arkansas.

(B) The written report shall include specific findings of fact and conclusions.

(b)(1)(A) The director or the director's designee shall hold a public hearing on any merger or other acquisition of control described in § 20-10-2005 unless the public hearing is waived by the director or the director's designee. The public hearing may be waived only at the sole discretion of the director or the director's designee.

(B) The director or the director's designee shall give at least twenty (20) days' notice of the hearing to the person filing the statement, the long-term care facility owner, any person to whom notice of hearing was sent, and any other person whose interests may be affected by the proposed merger or acquisition of control.

(C) The acquiring party shall pay the costs of the public hearing.

(2)(A) In connection with the public hearing, the person filing the statement, the long-term care facility owner, any person to whom notice of hearing was sent, and any other person whose interests may be affected by the proposed merger or acquisition of control shall be entitled to conduct discovery proceedings in the same manner as is presently allowed in the courts of this state.

(B) All discovery proceedings shall be concluded not later than three (3) days prior to the date scheduled for the commencement of the public hearing.

(3) At the public hearing, the person filing the statement, the long-term care facility owner, any person to whom notice of hearing was sent,

and any other person whose interests may be affected by the proposed merger or acquisition of control shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments.

(4) The acquiring party or the long-term care facility owner may appeal any final decision of the director under this subchapter in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(5) The consummation of an agreement to merge or otherwise acquire control of a long-term care facility owner shall be stayed until all appeal rights under this section have been exhausted.

(c) After the conclusion of the public hearing and in order to approve any merger or other acquisition of control described in § 20-10-2005, the director must find that:

(1) After change of control, the long-term care facility owned by the acquiring party would be able to continue to satisfy the requirements for the issuance of the license it presently holds in this state;

(2) The financial condition of any acquiring party is not such as might jeopardize the financial stability of the long-term care facility owner or prejudice the interest of residents of the long-term care facility;

(3) The terms of the offer, request, invitation, agreement, or acquisition described in § 20-10-2005 are fair and reasonable to the residents of the long-term care facility;

(4) The plans or proposals which the acquiring party has to liquidate the long-term care facility owner, sell its assets, or consolidate or merge it with any person or to make any other material change in its business or corporate structure or management are fair and reasonable to residents and protect the public health, safety, and wellbeing of the citizens of the State of Arkansas;

(5) The competence, experience, and integrity of those persons who would control the operation of the long-term care facility owner and its long-term care facilities are such that it would be in the best interest of residents and of the public to permit the merger or other acquisition of control;

(6) Following change of control, the acquiring party shall obtain and maintain for as long as the acquiring party is in control general liability insurance coverage and professional liability insurance coverage in an amount not less than that maintained by the current long-term care facility owner at the time the statement required by § 20-10-2005 is filed;

(7) The proposed merger or acquisition of control provides adequate protection for the health, safety, and well-being of residents, including residents who are Medicaid recipients, who may be affected by the proposed merger or acquisition of control and will promote, assure and maintain the continuity of the health, safety, and well-being of the citizens of the State of Arkansas.

(d) The director or the director's designee shall not approve any merger or other acquisition of control described in § 20-10-2005 unless he or she makes the findings described in subsection (c) of this section.

20-10-2008. Control of long-term care facility owner – Jurisdiction of courts – Service of process.

(a) The courts of this state are vested with jurisdiction over every person not a resident, domiciled, or authorized to do business in this state who files a statement with the Director of the Department of Human Services

or the director's designee under § 20-10-2005 and § 20-20-2006 and over all actions involving that person arising out of violations of § 20-10-2005 -- § 20-20-2007.

(b)(1) Each person shall be deemed to have performed acts equivalent to and constituting an appointment by the person of the Secretary of State to be his or her true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of § 20-10-2005 -- § 20-20-2007.

(2) Copies of all lawful process shall be served on the Secretary of State and transmitted by registered or certified mail by the Secretary of State to the person at the person's last known address.

20-10-2009. Control of long-term care facility owner – Violations.

(a) The following shall be violations of § 20-10-2005 and § 20-20-2006:

(1) The failure to file any statement, amendment, or other materials required to be filed under § 20-10-2005 and § 20-20-2006; or

(2) The effectuation or any attempt to effectuate an acquisition of control of, or merger with, a long-term care facility owner unless the director has given his or her approval under § 20-10-2007.

(b) Nothing in this subchapter is intended to, and shall not, create any private cause of action.

20-10-2010. Enforcement.

(a) If a long-term care facility owner or the Director of the Department of Human Services or the director's designee has reason to believe that any voting security of the long-term care facility owner has been or is about to be acquired in contravention of this subchapter or that any order has been or is about to be issued by the director or the director's designee in contravention of this subchapter, the long-term care facility owner or the director, as applicable, may apply to the Pulaski County Circuit Court to enjoin any offer, request, invitation, agreement, or acquisition made in contravention of this subchapter, or any related order issued by the director or the director's designee, to enjoin the voting of any voting security so acquired, to void any vote of a voting security already cast at any meeting of shareholders, and for such other equitable relief as the nature of the case and the interests of residents or the public health, safety, and welfare may require.

(b) No lawsuit may be brought or maintained against the Department of Human Services or any employee of the department in connection with or related to the transfer of any long-term care facility.

20-10-2011. Reports.

At the time of any filing made under § 20-10-2005, and every thirty (30) days after each filing made under § 20-10-2005, the Director of the Department of Human Services shall provide to the Governor and to the Attorney General a written report summarizing the status of the pending application.

SECTION 2. Emergency Clause.

It is found and determined by the General Assembly of the State of Arkansas that the change in ownership of long-term care facilities which



represent a significant number of long-term care Medicaid facility beds in Arkansas should be subject to prior review and approval by the Director of the Department of Human Services as it could directly affect the health, safety, and welfare of long-term care facility residents and the public and that no law of this state presently provides for such review and approval. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto.”

The Amendment was read \_\_\_\_\_

By: Representative Verkamp

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Chief Clerk