

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

Subtitle of House Bill No. 2593

"LONG TERM CARE RESIDENT PROTECTION ACT OF 2005."

Amendment No. 2 to House Bill No. 2593.

Amend House Bill No. 2593 as engrossed, H3/11/05 (version: 03-11-2005 11:21):

Delete everything after the Enacting Clause and substitute the following:

"SECTION 1. Arkansas Code § 20-8-106 is amended to read as follows:
20-8-106. Health Services Program - Permits generally.

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

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

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

(1) No health facility shall operate unless all necessary permits, licenses, and approvals for the facility have been obtained in accordance with law.

(2) It is the responsibility of each applicant for a permit of approval to establish the applicant's individual qualifications as well as



the qualifications of the facility to be permitted.

(b)(1) The alteration or renovation of a health facility having an associated capital expenditure of less than five hundred thousand dollars (\$500,000) for nursing homes and not resulting in additional bed capacity shall not require a permit of approval; ~~however,.~~

~~(2)(A) However, the agency Health Services Permit Agency shall not allow hospital acute care beds to be converted to or allow their license classification to be changed to long-term care beds without going through the permit of approval process. However, permits, legal title, and right of ownership may be transferred to another entity with the approval of the commission.~~

(B) The application for the permit of approval shall include, but need not be limited to, such information as is necessary to determine:

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

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

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

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

(c)(1)(A) Approval of the Health Services Permit Agency to transfer a health facility permit of approval is required.

(B)(i) The transfer, assignment, or other disposition of the stock or voting rights of the owner of the health facility which results in the ownership or control of more than ten (10%) percent of the stock or voting rights of the health facility by a person, entity, or identified group who did not own or control more than ten (10%) percent of the stock or voting rights of the health facility prior to the transfer, assignment, or disposition shall be deemed a transfer of a health facility permit of approval.

(ii) The transferee of the stock or voting rights shall submit an application for approval prior to the completion of the transfer of stock or voting rights in accordance with this subsection (c).

(2) Prior to the transfer of a health facility permit of approval or the deemed transfer of a permit as described in subdivision (c)(1)(B) of this section, an application for approval shall be filed with the agency by the transferee.

(3) The application for approval shall include, but not be limited to, information needed by the agency to determine whether:

(A) Following the transfer of the permit of approval or the transfer of stock or voting rights, the health facility will continue to be able to meet the needs of the locale or area in terms of the health care required for the population or geographic region;

(B) The health facility can be adequately staffed and operated when the transfer of the permit of approval or transfer of stock or voting rights is completed;

(C) The proposed transfer of the permit of approval or transfer of stock or voting rights and operation of the health facility following the transfer is economically feasible;

(D) The health facility will foster cost containment through improved efficiency and productivity following the transfer of the permit of approval or transfer of stock or voting rights; and

(E) Following the transfer of the permit of approval or transfer of stock or voting rights the applicant can be expected to provide a substantially consistent high level of care at the health facility based on:

(i) The facility's past operation and violation history;

(ii) The Health Services Permit Commission's assessment of the applicant's character and competence to operate the facility, including a review of the applicant's experience, past performance in operating a health care service, if any, and compliance with applicable laws and practices pertinent to the applicant's professional experience;

(F) 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

(G) Following the transfer of the permit of approval, the acquiring party will 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.

(d)(1) The agency by rule or order may exempt from the application requirements in subsection (c) of this section the transfer of one (1) or more permits of approval if:

(A) The permits of approval to be transferred in the aggregate cover three hundred ninety-nine (399) or fewer beds in one (1) or more health facilities;

(B) The transfer of the permits of approval is to occur in a single transaction; and

(C) The agency determines that the application for approval to transfer a permit of approval is not necessary or appropriate in the public interest.

(2) Before any transfer of a permit of approval may be executed as an exempt transfer under this subsection (d), the proposed transferee shall file a proof of exemption with the agency containing the following:

(A) A statement of the grounds upon which the exemption is claimed;

(B) The identity of and contact information for the current permit holder;

(C) The location of the proposed facility or facilities to be transferred;

(D) The number of beds authorized under the current permit;

(E) If the time frames on the current permit need to be extended;

(F) If the location of the health facility will be transferred out of the city limits of the town or city where it is currently located and whether the mayor and county judge have been notified of the proposed move; and

(G) Information regarding the applicant, including the

applicant's contact information, organization and corporate structure, and its ownership interest in or management of any other health facility in Arkansas.

(3) Within ten (10) business days after the proof of exemption is filed, the agency shall review the proof of exemption and notify the applicant whether the proof of exemption is approved, denied, or deficient. The proof of exemption shall be deemed approved if the agency does not notify the applicant that it denied the proof of exemption or determined that the proof of exemption was deficient.

(4) If the proof of exemption is deficient, the applicant shall have a reasonable opportunity to correct the deficiencies.

(5) A deficient proof of exemption which has not been corrected within a period of one hundred eighty (180) days after the initial filing with the agency shall be deemed abandoned and considered withdrawn by the applicant.

~~(e)~~(e)(1) ~~If the application is granted, the~~ The agency shall issue a permit of approval, if it finds that the proposed project meets the criteria for approval as set by the commission.

(2) If the application is denied, the:

(A) The agency shall send written notice of the denial to the applicant which sets forth the criteria that the ~~proposed project~~ application failed to meet; and

(B) The applicant shall not perform any of the actions that were denied.

~~(d)~~(f) Any applicant or interested party seeking review of a final agency decision regarding permits of approval, movement of beds, or transfer of permits of approval shall file a written appeal for hearing before the commission on an approved form within thirty (30) days of the receipt of the agency decision.

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

(h) This section only applies to long-term care facilities located in Arkansas.

SECTION 2. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the transfer of health facility permits of approval without oversight and review may endanger the health and safety of elderly or disabled Arkansans residing in long-term care facilities; that requiring an approval process before a permit of approval is transferred will ensure that the new operators of long-term care facilities are best able to provide appropriate care to residents; and that this act is necessary to enable the review process to begin immediately to prevent unreviewed transfers from occurring. 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
JDF/JDF - 03-15-2005 08:50
JDF364 _____ Chief Clerk