

State of Arkansas
76th General Assembly
Regular Session, 1987

SENATE BILL 322

By: Senator Kinard

As engrossed 2-16-87 As engrossed 3-2-87
As engrossed 4-1-87

"AN ACT TO AMEND SUBSECTIONS (f) AND (g) OF SECTION 4 OF ACT 28 OF 1979, AS AMENDED [ARK. STAT. 82-2219(f) AND 82-2219 (g)], TO INCREASE THE AMOUNT OF CIVIL PENALTIES THAT THE OFFICE OF LONG TERM CARE MAY IMPOSE IN THE FORM OF SANCTIONS AGAINST LICENSED LONG TERM CARE FACILITIES; AND FOR OTHER PURPOSES."

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

SECTION 1. Subsection (f) of Section 4 of Act 28 of 1979, the same being Arkansas Statutes 82-2219(f), is hereby amended to read as follows:

"(f) CIVIL PENALTIES. The following listed civil penalties pertaining to Classified Violations may be assessed by the Director of the Office of Long Term Care against long term care facilities.

A. Class 'A' violations are subject to a civil penalty of \$2,500.00 for the first violation. A second Class 'A' violation occurring within a six (6) month period shall be subject to a civil penalty of \$5,000.00. The third Class 'A' violation occurring within a six (6) month period from the first violation, shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of licensure of the facility.

B. Class 'B' violations are subject to a civil penalty of \$1,000.00 for the second violation. A third Class 'B' violation occurring within a six (6) month period from the first violation, shall result in proceedings being commenced for termination of the facility's Medicaid agreement and may result in proceedings being commenced for revocation of the licensure of the facility.

C. Class 'C' violations are subject to a civil penalty to be set by the Director of the Office of Long Term Care in an amount not to exceed \$500.00 for each violation.

D. Class 'D' violations are subject to a civil penalty to be set by the Director of the Office of Long Term Care in an amount not to exceed \$250.00 for each violation.

Each subsequent Class 'C' and 'D' violation within a six (6) month period from the last violation shall subject the facility to a civil penalty double that of the preceding violation until a maximum of \$1,000.00 per violation is reached. In no event may the aggregate fines assessed for violations determined in any one month exceed \$5,000.00."

SECTION 2. Subsection (g) of Section 4 of Act 28 of 1979, the same being Arkansas Statute 82-2219 (g), is hereby amended to read as follows:

"(g) FACTORS IN ASSESSMENT OF CIVIL PENALTIES. In determining whether a civil penalty is to be imposed and in fixing the amount of the penalty to be imposed, the following factors shall be considered:

A. The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted; the severity and scope of the actual or potential harm; and the extent to which the provisions of the applicable statutes or regulations were violated.

B. The 'good faith' exercised by the licensee. Indications of good faith include, but are not limited to: awareness of the applicable statutes and regulations and reasonable diligence in securing compliance; prior accomplishments manifesting the licensee's desire to comply with the requirements; efforts to correct; and any other mitigating factors in favor of the licensee.

C. Any relevant previous violations committed by the licensee.

D. The financial benefit to the licensee of committing or continuing the violation.

E. Assessment of a civil penalty provided by this Act shall not affect the right of the Office of Long Term Care to take such other action as may be authorized by law or regulation."

SECTION 3. Subsection (d) of Section 4 of Act 28 of 1979, the same being Ark. Stat. Ann. 82-2219(d), is hereby amended to read as follows:

"(d) Notice of Violation. If upon inspection, or during an investigation, a deficiency or violation as prescribed by regulation of the Office of Long Term Care is discovered, the Office of Long Term Care shall prepare a

written notice of the violation to the facility by certified mail and specifically describe the violation and the proposed penalty for failure to correct. Each notice of violation from the Office of Long Term Care shall be prepared in writing and shall specify the exact nature of the classified violation, the statutory provision or specific rule alleged to have been violated, and the facts and grounds constituting the elements of the classified violation. The long term care facility shall be given twenty (20) days after receipt of the written notification to correct the deficiency or to give written good faith plans for the correction by said facility to the Office of Long Term Care. After the period for correction, if the Director of the Office of Long Term Care determines that the long term care facility has failed to correct a particular classified violation as set forth in the regulations, for the first violation only, he shall forward a second notice to the facility informing them of his intent to assess a civil money penalty against the long term care facility for failure to correct and the amount of the assessment and all information pertaining to the violation. The second notice shall inform the facility of the right to a hearing as provided by statute and include a copy of the rules of procedure. The Department shall provide a fair and impartial hearing officer for appeals."

SECTION 4. All laws and parts of laws in conflict with this Act are hereby repealed.

SECTION 5. It is hereby found and determined by the General Assembly that, in order to meet the State's responsibility in assuring that residents of long term care facilities are afforded a high quality of patient care and to further enhance the effective and coordinated regulation of long term care facilities through the functions of the Office of Long Term Care, the immediate passage of this Act is necessary. Therefore, an emergency is hereby declared to exist and this Act, being immediately necessary for the preservation of the public peace, health, and safety, shall be in full force and effect from and after its passage and approval.

/s/ Kinard

