

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 413

By: Senator Wilson As engrossed 3-31-87

As engrossed 2-25-87 As engrossed 3-5-87

"AN ACT TO REQUIRE THE LICENSURE OF AGENCIES PROVIDING HOME HEALTH CARE SERVICES; AND FOR OTHER PURPOSES."

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

SECTION 1. (A) "Home Health care services" means the providing or coordinating of acute, restorative, rehabilitative, maintenance, preventive or health promotion services through professional nursing or by other therapeutic services such as physical therapy, occupational therapy, speech therapy, home health aide or personal services in a client's residence.

(B) "Agency" means any person, partnership, association, corporation or other organization, whether public or private, proprietary or non-profit.

(C) "Home Health Care Services Agency" means an agency licensed to provide home health care services.

(D) "Subunit" means an organization of an agency that provides home health care services, which serves patients in a geographic area different from that of the Agency.

(E) "Division" means the Division of Health Care Facility Services of the Arkansas Department of Health.

(F) "Residence" means a place where a person resides, including a home, nursing home, or convalescent home for the disabled or aged.

(G) "Class A license" means the applicant is at the time of filing an application a Medicare certified home health agency. If the applicant is not at the time of filing its application a certified home health agency, it shall be in the process of receiving its certification from the Health Care Financing Administration.

(H) "Class B license" means the application shall show proof of the services provided and geographical territory in which such services have been provided as of the effective date of this Act and it shall have requested a

survey for the purpose of confirming the services provided and territory covered.

(I) "Place of Business" means any office of a home health agency including subunits.

SECTION 2. The following persons are not required to be licensed under Section 5 of this Act:

(1) a physician, dentist, registered nurse, or physical therapist who is currently licensed under the laws of this state who provides home health services only to a patient as a part of his or her private office practice and the services are incidental to such office practice;

(2) the following health care professionals providing home health services as a sole practitioner: a registered nurse, a licensed vocational nurse, a physical therapist, an occupational therapist, a speech therapist, a medical social worker, or any other health care professional as determined by the department;

(3) a non-profit registry operated by a national or state professional association or society of licensed health care practitioners, or a subdivision thereof, that operates solely as a clearinghouse to put consumers in contact with licensed health care practitioners who will give care in a patient's residence and that neither maintains the official patient records nor directs patient services;

(4) an individual whose permanent residence is in the patient's residence;

(5) an employee of a person holding a license under this Act who provides home health services only as an employee of the licensed person and who receives no benefit for providing home health services other than wages from the employer;

(6) a home, nursing home, convalescent home, or other institution for the disabled or aged that provides health services only to residents of the home or institution;

(7) a person who provides one health service through a contract with a person licensed;

(8) a durable medical equipment supply company;

(9) a pharmacy or wholesale medical supply company that furnishes those services to persons in their homes that relate to drugs and supplies;

(10) a hospital or other licensed health care facility serving only inpatient residents; and

(11) a visiting nurse service or home aide service constructed by and for the adherents of a religious denomination for the purpose of providing service for those who depend upon spiritual means through prayer alone for healing.

SECTION 3. (A) This Act shall be administered by the Division of Health Facility Services of the Arkansas Department of Health.

(1) An applicant for a license to provide a home health service shall:

(a) File a written application on a form prescribed by the Division;

(b) File with the application the name of the owner of the services or a list of names of persons who own an interest in the service and a list of any businesses with which the service business subcontracts and in which the owner or owners of the service business hold as much as five percent of the ownership;

(c) Establish a place of business within the State of Arkansas that maintains home health service records and directs patient services;

(d) Cooperate with any inspections the division may require for a license and comply with regulations and standards promulgated under this Act; and

(e) Pay to the division a license fee as prescribed by Section 7 of this Act.

(2) In addition to the above requirements for new and existing agencies providing Home Health services on the effective date of this Act such agencies shall furnish the following information for a Class A or B license:

(a) For a Class A license, if the applicant is at the time of filing an application a Medicare certified home health agency, it shall provide proof of its compliance with federal conditions of participation. If the applicant is not at the time of filing its application a certified home health agency, it shall be in the process of receiving its certification from the Health Care Financing Administration.

(b) For a Class B license, the applicant shall show proof of the services provided and geographical territory in which such services have been provided as of the effective date of this Act and it shall have requested a survey for the purposes of confirming the services provided and territory

covered.

rules, regulations and standards as may be necessary for the accomplishment of the purposes of this Act. The rules, regulations and standards shall be modified, amended or rescinded from time to time by the Arkansas Board of Health as may be in the public interest, after first complying with the Administrative Procedures Act, Act 434 of 1967, as amended.

SECTION 4. It shall be unlawful for any agency to provide home health care services unless licensed pursuant to this Act. The Director of Division of Health Facility Services of the Department of Health shall issue licenses for the operation of Home Health Care Services Agencies which are found to comply with this Act and the regulations of the Arkansas Board of Health. The Director shall also issue licenses for the operation of subunits of a Home Health Care Services Agency. Licenses shall be issued to the entity and persons listed in the application for licensure and shall not be transferable. The Director is empowered to deny, suspend, or revoke licensure on any of the following grounds:

(1) Violation of the provision of this Act or the rules and regulations lawfully promulgated hereunder.

(2) Permitting, aiding or abetting the commission of any unlawful act in connection with the operation of the Home Health Service.

SECTION 5. Any person who violates any provision of this Act or regulations lawfully promulgated hereunder shall be guilty of a misdemeanor, and upon conviction thereof shall be liable to a fine of not less than twenty-five dollars (\$25.00) nor more than one hundred dollars (\$100.00) for the first offense and not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) for each subsequent offense, and each day such Home Health Services shall operate after a first conviction shall be considered a subsequent offense.

SECTION 6. Information received by the Division through inspection or otherwise, authorized under this Act shall not be disclosed publicly in such manner as to identify individuals or Home Health Agency except in a proceeding involving the question of licensing or revocation of a license.

SECTION 7. (A) The Division is hereby authorized to levy and collect a fee for the issuance of a permanent license to a Home Health Care Services Agency or a subunit of a Home Health Care Services Agency. The license fee for a Home Health Care Services Agency shall be an annual fee of five hundred dollars (\$500.00) and the fee for a subunit shall be fifty dollars (\$50.00) annually.

(B) All fees levied and collected under this Act shall be "special revenues" and shall be deposited in the State Treasury and credited to the Public Health Fund.

(C) Subject to such rules and regulations as may be implemented by the Chief Fiscal Officer of the State, the Disbursing Officer for the Department of Health is hereby authorized to transfer all unexpected funds relative to this Act that pertains to fees collected, as certified by the Chief Fiscal Officer of the State, to be carried forward and made available for expenditures for the same purpose for any following fiscal year.

SECTION 8. (A) There is hereby established a Home Health Care Service Agency Advisory Council composed of seven (7) members. Five (5) members shall consist of one (1) representative each from the following types of Home Health Care Services: Freestanding non-profit; freestanding proprietary; hospital based; area agencies on aging; and Arkansas Department of Home Health. The five (5) members shall be recommended by the Arkansas Association of Home Health Agencies. One (1) consumer member shall be recommended by the Arkansas Chapter of the American Association of Retired Persons and one (1) member shall be recommended by the Arkansas State Hospice Association. The members shall serve for three (3) year terms. The terms of the members shall be staggered by lot so that the terms of no more than three (3) members will expire in any one (1) year.

(B) The Director of the Division of Health Facility Services shall serve as Chairman Ex Officio of the Council. The Council shall meet as frequently as the Chairman may deem necessary to carry out the duties of the Council. Upon request of a majority of the Council members, the Chairman shall call a meeting of the Council immediately.

(C) It shall be the duty and responsibility of the Home Health Care Service Agency Advisory Council to advise and assist the Director of the Division of Health Facility Services and the Arkansas Board of Health in

carrying out the provisions of this Act, and the rules and regulations promulgated pursuant thereto.

The Council shall request, receive, review, and consider all proposed rules and regulations which may be recommended by the Director of the Division of Health Facility Services. The Council shall review these recommendations with reference to the practicability of proposed rules and regulations for operation of Home Health Services.

(D) The Council's authority shall be limited to the advisory function and it shall advise the Chairman of the Council as to agreement or disagreement with any recommended rule, regulation, or standard affecting Home Health Care Services. If a majority of the members of the Council disagree with a proposed rule, regulation or standard the Council may file a report of its objections with the Arkansas Board of Health.

SECTION 9. (A) Any agency providing home health care services on the effective date of this Act may continue to provide the services without a license until three (3) months after the date that the regulations of the Arkansas Board of Health become effective.

(B) The Director may issue a temporary license to an applicant for a period not to exceed six (6) months.

SECTION 10. All laws and parts of laws in conflict with this Act are hereby repealed.

/s/ Wilson

