

State of Arkansas

76th General Assembly

Regular Session, 1987

SENATE BILL 474

By: Senator Nelson As engrossed 3-25-87

As engrossed 2-27-87 As engrossed 2-27-87

"AN ACT TO ESTABLISH A HEALTH SERVICES COMMISSION; TO CREATE A HEALTH SERVICES AGENCY TO SERVE THE COMMISSION; TO ABOLISH THE STATE HEALTH PLANNING AND DEVELOPMENT AGENCY, THE STATEWIDE HEALTH COORDINATING COUNCIL AND THE CERTIFICATE OF NEED PROGRAM; AND FOR OTHER PURPOSES."

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

SECTION 1. The following terms shall have the following meanings herein:

(A) "Agency" means the Health Services Agency as established herein.

(B) "Category of Services" includes emergency room care, rehabilitative care, residential care, including specialized psychiatric residential care, alcohol/drug treatment, ambulatory care, home health care and such other specialized health services offered by a health facility.

(C) "Commission" means the Health Services Commission as established herein.

(D) "Conversion of Services" means an alteration of the category of services offered by a health facility.

(E) "Director" means the director of the Health Services Agency.

(F) "Health Facility" or "Health Facilities" means a place for the care, reception or accommodation of two or more persons, not related to the proprietor, suffering from illness, injury or deformity or care of the aged, blind, disabled or mentally retarded is rendered over a period exceeding twenty-four (24) hours. The term "health facility" includes but need not be limited to the following: hospitals, nursing homes, intermediate care facilities for the mentally retarded (ICF/MRs), home health care agencies, alcohol/drug abuse residential treatment centers, recuperative care centers and residential care facilities. The term "health facility" shall not include offices of private physicians and surgeons or establishments operated by the

Federal government or any agency thereof or free-standing radiation therapy centers or any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination.

(G) "Health Services" means any services included in the furnishing to any individual of any rehabilitative care, or hospitalization, or incident to the furnishing of such care or hospitalization. Health services includes care of the aged, blind or disabled who, due to their condition, are unable to care for themselves.

SECTION 2. (A) There is hereby established a Health Services Commission.

(B) The Health Services Commission shall be composed of the following membership to be appointed by the Governor (except for the legislative members or their designee) within thirty (30) days of the effective date of this Act and confirmed by the Senate:

- (1) a practicing physician;
- (2) a representative of the Office of Medical Services of the Economic and Medical Services Division of the Department of Human Services;
- (3) a member of the Arkansas Hospital Association;
- (4) a member of the Arkansas Nursing Home Association;
- (5) a member of the Arkansas Chapter of the American Association of Retired Persons;
- (6) a member of the Arkansas Association of Home Health Agencies;
- (7) a consumer knowledgeable in business health insurance.

(C) The Governor shall have the power to stagger the terms of the initial members so that two (2) members serve for one (1) year after appointment, three (3) members serve for two (2) years after appointment and two (2) members serve for three (3) years after appointment. All subsequent appointments shall be for three (3) year terms.

(D) The Commission members shall serve without pay but those members not employed by the State of Arkansas shall receive reimbursement for actual expenses incurred for attendance at meetings of the Commission.

(E) The Commission shall meet at least quarterly and at such other times as necessary to carry out its duties as set forth herein. The Commission shall elect one of its members as chairman and may by appropriate adoption of by-laws and rules, provide for time, place and manner of calling its meetings.

SECTION 3. (A) The Health Services Commission shall evaluate the availability and adequacy of health services in this State.

(B) The Commission shall designate those locales or areas of the State in which due to the requirements of the population or the geography of the area, the health service needs of the population are underserved.

(C) The Commission may specify within locales or areas categories of health services which are underserved and overserved due to the composition or requirements of the population or the geography of the area.

(D) The Commission shall develop policy and adopt criteria including time limitations for every review of an application to be followed by the agency in issuing a permit of approval as provided in Section 6 hereof.

(E) The Commission may define certain underserved locales or areas or categories of services within underserved locales or areas to be exempt for specified periods of time from the permit of approved requirement or the moratorium on new facilities or expansion of existing facilities imposed herein.

(F) The Commission shall review the recommendations of the Agency concerning action on applications for permits of approval and endorse or reject same.

(G) The Commission may set application fees for permit of approval applications to be charged and collected by the Agency.

(H) The Commission, upon appeal by the applicant, shall conduct hearings on permits of approval by the Agency within thirty (30) days of receipt of the notice to appeal and shall render their final decision from which an appeal may be taken to Circuit Court within forty-five (45) days. Failure of the Commission to take final action within these time periods shall be considered a ratification of the agency decision on the permit of approval and shall constitute the final decision of the Commission from which an appeal to Circuit Court may be filed.

SECTION 4. (A) There is hereby created and established the Health Services Agency which shall be an independent agency under the supervision and control of the Governor.

(B) The Health Services Agency shall possess and exercise such duties and powers as necessary to implement the policy and procedures adopted by the Commission.

(C) The Health Services Agency is hereby designated the agency of this State to accept, receive, retain and administer State and Federal funds for construction of health facilities.

(D) The Health Services Agency shall review all applications for permits of approval and submit their recommendation for action to the Commission within ninety (90) days of receipt of the application for permit of approval, without which such application shall be deemed approved.

(E) The State of Arkansas shall not participate in the capital expenditures review program (otherwise known as the 1122 Program), unless and until it becomes mandatory for continuation in federal programs authorized under Titles V, XVII, and XIV of the Social Security Act for all states.

(F) The Health Services Agency shall assist the Commission in the performance of its duties as set forth herein.

SECTION 5. There shall be a director of the Health Services Agency which shall be the executive head of the agency. The Director shall be appointed by the Governor within ten (10) days of the effective date of this Act subject to confirmation by the Senate and shall serve at the pleasure of the Governor.

SECTION 6. (A) The Health Service Agency, at the direction of the Health Services Commission, shall implement a health services program in this State to determine the conditions required for the construction, expansion or alteration of any health facility, except nursing homes, having an associated capital expenditure in excess of two million dollars (\$2,000,000), and any nursing home having an associated capital expenditure in excess of five hundred thousand dollars (\$500,000) or such greater amount as the Commission may establish through rules and regulations, and prior to the said construction, expansion or alteration, a permit of approval shall be obtained from the Health Services Agency. No permit shall be required, however, to construct a hospital in any municipality which has no hospital and where the municipality is located in a county with a population of 200,000 or more people. No permit shall be required for the construction, expansion or alteration of a post acute head injury retaining and residential care facility. A conversion of services or the addition of new services offered in an existing health facility shall not require a permit of approval provided that the requirements of Act 414 of 1961, as amended, the Hospital and Health

Facilities Licensure Act, have been met and a copy of the conversion plan or a statement setting forth the new services to be added is filed with the Agency, provided it shall not allow one classification of licensure to another classification of licensure and licenses are not transferable from one entity to another. The acquisition of medical equipment and services incidental thereto shall not require a permit of approval. The application for the permit of approval shall be submitted to the Agency on the forms provided for that purpose.

(B) The Agency, after the endorsement of the Commission, shall issue a permit of approval if it finds that the proposed project meets the criteria for approval as set by the Commission. If the Agency denies the application, then the criteria that the proposed project failed to meet shall be set forth in the notice to the applicant of the denial.

(C) Any applicant seeking review of the agency denial of a permit of approval shall file a written appeal for hearing before the Commission on the form provided with the Commission within thirty (30) days of the date of the notice of denial.

(D) Appeals to the Commission shall be conducted in accordance with the Administrative Procedures Act, Act 434 of 1967, as amended, except that any appeal from a final decision of the Commission shall be de novo to the Circuit Court of Pulaski County, Arkansas.

SECTION 7. The Commission may authorize the Agency to enjoin construction or expansion of existing facilities of any project commenced in violation of this Act through an action filed in the Chancery Court of the judicial district in which the project is located.

SECTION 8. All fees and fines collected hereunder shall be deposited into the State General Service Fund Account to be used exclusively for the maintenance and operation of the Health Services Agency.

SECTION 9. All projects, except free-standing radiation therapy centers, requiring approval under the Certificate of Need Program as established by Section 5 of Act 558 of 1975, as amended, shall not be instituted or commenced after the effective date of this Act except upon application for and receipt of approval from the Health Services Agency utilizing the same criteria and

procedures in existence prior to the effective date of this Act.

All projects, except free-standing radiation therapy centers, which have obtained a Certificate of Need prior to the effective date of this Act must commence construction prior to the two hundred and eleventh (211) day following the effective date of this Act or said Certificate of Need shall be considered null and void. For purposes of this section, "commence construction" means the approval of project financing or the actual movement on the site of building materials and equipment by the principal contractor. Two hundred and ten (210) days after the effective date of this Act, Section 5 of Act 558 of 1975, as amended, is hereby repealed. On and after the two hundred and eleventh (211) day following the effective date of this Act, all projects requiring approval under Section 6(B) hereof shall not be instituted or commenced except upon application for and receipt of a permit of approval as set forth herein, and, during this period of time, all duties and responsibilities of the State Health Planning and Development Agency and the Statewide Health Coordinating Council are hereby transferred to the Health Services Agency established under this Act. Any project not requiring approval under this Act, even though covered under Section 5 of Act 558 of 1975, as amended, may be commenced after the effective date of this Act.

SECTION 10. Act 305 of 1969, as amended, the same being Arkansas Statutes 82-2301 et seq., Sections 1, 2, 3, 6 and 7 of Act 558 of 1975, as amended, the same being Arkansas Statutes 82-2307, 2308, 2309, 2312 and 2313, and Act 831 of 1977, the same being Arkansas Statutes 82-2314 et seq., and Section 3 of Act 980 of 1985, the same being Arkansas Statutes 82-345.1, are hereby repealed.

SECTION 11. All laws or parts of laws in conflict herewith are hereby repealed.

SECTION 12. The General Assembly hereby declares each of the sections and provisions of this Act is severable, and in the event that any one or more of such sections are subsequently declared unconstitutional or invalid, the remaining sections and provisions shall be valid, it being the intent of the General Assembly that such remaining valid sections and provisions shall remain in full force and effect.

SECTION 13. EMERGENCY. It is hereby found and determined by the General Assembly that there is an immediate and urgent need to effect revisions in the health planning system of the State, health planning has a direct impact on the public health, welfare and safety; that an emergency is hereby declared to exist, and this Act is declared to be necessary for the preservation for the public peace, health and safety and shall become effective from and after its passage and approval.

/s/ Nelson

