

State of Arkansas

CALL ITEM 12

76th General Assembly

Fourth Extraordinary Session, 1988

HOUSE BILL 1007

By: Representatives Lipton and McGinnis

"AN ACT TO AMEND ARKANSAS CODE OF 1987, TITLE 20, CHAPTER 10, TO PROVIDE PROTECTIONIST PROCEDURES TO ASSURE ALL CITIZENS WHO ARE RESIDENTS OF LONG-TERM CARE FACILITIES A HIGH QUALITY OF LIFE; AND FOR OTHER PURPOSES."

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

SECTION 1. Title 20, Chapter 10, Arkansas Code of 1987 is hereby amended by adding a new subchapter to read as follows:

"SUBCHAPTER 10.

20-10-1001. TITLE. The subchapter may be known as the 'Omnibus Long-Term Care Reform Act of 1988.'

20-10-1002. INTENT. It is the intent of the General Assembly to provide protection for those citizens residing in Long-Term Care Facilities to assure the residents the highest quality of life while protecting their health and welfare.

20-10-1003. RESIDENTS' RIGHTS. (a) A long-term care facility must protect and promote the rights, benefits, or privileges guaranteed by law, the Constitution of the United States and the Constitution of the State of Arkansas for all residents.

(b) The Office of Long-Term Care shall promulgate through rules and regulations a Residents' Bill of Rights which must include provisions addressing each of the following as a minimum statement of residents' rights. The Office of Long-Term Care may place restrictions or limitations on any right listed below when such is necessary to protect the health, welfare or safety of the resident or other residents:

- (1) The right to exercise all constitutional and legal rights.
- (2) The right to a safe and clean environment.
- (3) The right to dignity and respect.

- (4) The right to nursing and medical care.
  - (5) The right to personal cleanliness.
  - (6) The right to choose a personal physician and pharmacist.
  - (7) The right to have knowledge and input into medical treatment, records and plan of care.
  - (8) The right to refuse experimental treatment.
  - (9) The right to confidentiality of medical records.
  - (10) The right to freedom from restraints not required to treat the resident's medical symptoms or to ensure the physical safety of the resident or other residents.
  - (11) The right to exercise civil liberties including the right to vote.
  - (12) The right to consume a reasonable amount of alcoholic beverages or use tobacco unless not medically advisable or against written admissions policies of the facility.
  - (13) The right to privacy.
  - (14) The right to personal clothing and belongings.
  - (15) The right to financial information.
- (c) The Office of Long-Term Care shall prescribe a procedure to be followed by all long-term care facilities for prompt reporting of violations of resident's rights and resolution of grievances.
- (d) The long-term care facility shall furnish a copy of the Residents' Bill of Rights to each resident or resident representative prior to admission and to each employee of the facility. A written acknowledgement of receipt shall be included by the facility in the resident's file and personnel file of each employee.
- (e) Failure to comply with the provisions of this section or verified violations of residents' rights shall be considered a Class B violation under Ark. Code 20-10-205 for which civil penalties set forth in Ark. Code 20-10-206 may be imposed. Any appeal shall be under the procedure set forth in Arkansas Code 20-10-208.
- (f) A second or subsequent offense for purposes of determining a penalty amount means a violation of the same right previously violated although it need not have been committed by the same employee of the facility or against the same resident.
- (g) The Office of Long-Term Care shall prescribe through rules and regu-

lations a synopsis of the Residents' Bill of Rights which shall be posted at all times in a conspicuous location accessible to residents and the public in the facility.

20-10-1004. (a) The Director of the Office of Long-Term Care may prohibit new admissions to a long-term care facility not in compliance due to a Class A or Class B violation until the Office of Long-Term Care determines such facility is in substantial compliance.

(b) The Director of the Office of Long-Term Care shall notify the administrator of the facility in writing, by certified mail or other means which gives actual notice that the facility is prohibited from admitting any new residents due to a Class A or a Class B violation and that such prohibition shall continue until the Office of Long-Term Care makes a determination that the facility has corrected the deficiency and is in substantial compliance.

(c) The facility may request an immediate hearing by written request to the Director of the Department of Human Services. The Department shall provide a fair and impartial hearing officer within ten (10) days of receipt of the request. Unless in conflict with this subsection, the procedure for hearings and appeals set forth in Ark. Code 20-10-208 shall be followed.

20-10-1005. (a) The Office of Long-Term Care shall prescribe through rule or regulation the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor and other appropriate parties thirty (30) days prior to any involuntary transfer or discharge and regulations setting forth all circumstances in which the written notice need not be furnished.

(2) An appeals process for residents objecting to an involuntary transfer or discharge which places the burden of proof for justification of the transfer or discharge on the facility.

(3) The contents of the written notice including a statement in clear and concise language of the appeal process to be followed by the resident and the time periods in which the resident must request an appeal, the appeal must be heard and the earliest date a transfer would be allowed if the decision is against the resident.

(4) A request for hearing shall stay a transfer pending a final determination.

(5) The facility shall provide preparation and orientation to residents to ensure a safe and orderly transfer or discharge.

(b) Failure to comply with the transfer or discharge procedures as prescribed by the Office of Long-Term Care shall be considered a Class B violation under Ark. Code 20-10-205 for which civil penalties set forth in Ark. Code 20-10-206 may be imposed.

20-10-1006. (a) The Office of Long-Term Care shall prescribe through rule or regulation the establishment of a residents' council within each long-term care facility. The residents' council's duties shall include but need not be limited to:

(1) Review procedures of the facility for implementation of resident's rights.

(2) Make recommendations for changes or additions in the facility's policies and procedures, including programming.

(3) Represent residents in their complaints to the Office of Long-Term Care or any other person or agency.

(4) Assist in early identification of problems and orderly resolution of same.

(b) The facility administrator shall provide a staff coordinator and space within the facility for the residents' council. The staff coordinator shall assist the council in scheduling regular meetings and preparing written reports of meetings for dissemination to all residents of the facility. The staff coordinator may be excluded from any meeting of the council.

(c) The Office of Long-Term Care shall prescribe rules or regulations which encourage the establishment of Family Councils for resident's families to meet in the facility with the families of other residents. The Office of Long-Term Care shall require each facility to inform residents' families of their right to establish a family council within the facility.

(d) Failure to comply with the requirement of establishment and operation of a residents' council as prescribed by the Office of Long-Term Care shall be considered a Class B violation under Ark. Code 20-10-205 for which civil penalties set forth in Ark. Code 20-10-206 may be imposed. Any appeal shall be under the procedure set forth in Arkansas Code 20-10-208.

20-10-1007. (a) No long-term care facility owner, administrator, employee or other representative shall discriminate, retaliate, or seek reprisal in any manner against a resident or employee of a long-term care facility

who has initiated or participated in any proceeding provided in this subchapter.

(b) Any adverse action taken against a resident or employee of a long-term care facility within one hundred and twenty (120) days of the filing of a complaint or initiation of any action shall give rise to a rebuttable presumption that such action was taken by the owner, administrator, employee or other representative in violation of subsection (a) above.

(c) Failure to comply with the provisions of this section by any facility owner, administrator, employee, or other representative shall be considered a Class B violation under Arkansas Code 20-10-205 for which civil penalties set forth in Ark. Code 20-10-206 may be imposed. Any appeal shall be under the procedure set forth in Arkansas Code 20-10-208.

20-10-1008. All moneys received from the imposition of civil penalties levied by the State on long-term care facilities found to be out of compliance with the requirements of this subchapter shall be deposited in the Long-Term Care Trust Fund for uses as prescribed in Ark. Code 20-10-209."

SECTION 2. Ark. Code 20-10-101 is hereby amended by adding a new subsection to read as follows:

"(13) 'Sponsor' means legal guardian."

SECTION 3. The Office of Long-Term Care shall promulgate any rules or regulations required by section 1 within sixty days of the effective date hereof.

SECTION 4. Any information or materials required by section 1 to be provided to a resident of a long-term care facility upon admission to the facility, shall be provided to each resident of a long-term care facility within forty-five days of publication of final rules or regulations under this subchapter.

SECTION 5. All laws and parts of laws in conflict with this act are hereby repealed.

SECTION 6. EMERGENCY. It is hereby found and determined by the General Assembly that the state lacks procedures to adequately protect the infirmed

and frail elderly who reside in long-term care facilities within this state; That this act should go into effect immediately upon passage to shorten the amount of time required for necessary rules and regulations to be promulgated for implementation of this act and to provide at the earliest possible date some assurance to the residents of long-term care facilities that a high quality of life and the protection of their welfare and health is necessary and important to the entire citizenry of the State of Arkansas. Therefore, an emergency is hereby declared to exist and this act being 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.

