

State of Arkansas

CALL ITEM 9

76th General Assembly

Fourth Extraordinary Session, 1988

SENATE BILL 4

By: Senators Kinard, Nelson, Benham and Bearden

"AN ACT TO AMEND VARIOUS SECTIONS OF TITLE 20, CHAPTER 10, SUBCHAPTER 2 TO PROVIDE SANCTIONS AGAINST LONG TERM CARE FACILITIES IN VIOLATION OF CARE STANDARDS; AND FOR OTHER PURPOSES."

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

SECTION 1. Arkansas Code 20-10-204 is hereby amended to read as follows:

"20-10-204. Notice of Violation.

(a) If upon inspection or investigation the Office of Long-Term Care determines that a licensed long-term care facility is in violation of any federal or state law or regulation pertaining to Title XIX Medicaid certification or licensure, then it shall promptly serve by certified mail or other means that gives actual notice a notice of violation upon the licensee when the violation is a classified violation as described in 20-10-205.

(b) (1) Each notice of violation 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, the facts and grounds constituting the elements of the classified violation, and the amount of civil penalty assessed by the director, if any.

(2) The notice shall also inform the licensee of the right to hearing under 20-10-208 when civil penalties are imposed.

(c) The Department shall provide a fair and impartial hearing officer for appeals."

SECTION 2. Arkansas Code 20-10-205 is hereby amended to read as follows:

"20-10-205. Classification of violations.

(a) The Office of Long-Term Care shall promulgate rules and regulations specifying classified violations in accordance with the provisions set forth

below.

(b) The notice of violation issued to a long-term care facility by the Director of the Office of Long-Term Care shall be classified according to the nature of the violation and shall indicate the classification on the face thereof as follows:

(1) Class A violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility resulting in death or serious physical harm to a resident or creating a substantial probability that death or serious physical harm to a resident will result therefrom;

(2) Class B violations create a condition or occurrence relating to the operation and maintenance of a long-term care facility which directly threatens the health, safety, or welfare of a resident.

(3) Class C violations shall relate to administrative and reporting requirements that do not directly threaten the health, safety, or welfare of a resident.

(4) Class D violations shall relate to the timely submittal of statistical and financial reports to the Office of Long-Term Care. The failure to timely submit a statistical or financial report shall be considered a separate Class D classified violation during any month or part thereof of non-compliance. In addition to any civil penalty which may be imposed, the director is authorized after the first month of a Class D violation to withhold any further reimbursement to the long-term care facility until the statistical and financial report is received by the Office of Long-Term Care."

SECTION 3. Arkansas Code 20-10-206 is hereby amended to read as follows:

"20-10-206. Civil penalties.

(a) (1) In the case of a Class A violation, the following civil penalties shall be assessed by the Director against the long-term care facility. In class B, C or D violations, the Director in his discretion may assess the following civil penalties or may allow a specified period of time for correction of said violation.

(A) Class A violations are subject to a civil penalty of not to exceed two thousand five hundred dollars (\$2,500) for the first violation. A second Class A violation occurring within a six-month period shall be subject to a civil penalty of five thousand dollars (\$5,000). The third Class A violation occurring within a six-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 not to exceed one thousand dollars (\$1,000). A second Class B violation occurring within a six-month period shall be subject to a civil penalty of two thousand dollars (\$2,000). A third Class B violation occurring within a six-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 five hundred dollars (\$500) 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 two hundred fifty dollars (\$250) for each violation.

(2) Each subsequent Class C and D violation within a six-month period from the last violation shall subject the facility to a civil penalty double that of the preceding violation until a maximum of one thousand dollars (\$1,000) per violation is reached.

(3) In no event may the aggregate fines assessed for violations determined in any one (1) month exceed five thousand dollars (\$5,000).

(b) In determining whether a civil penalty is to be imposed and in fixing the amount of the penalty to be imposed or if a specified period of time shall be allowed for correction, the following factors shall be considered:

(1) The gravity of the violation, including the probability that death or serious physical harm to a resident will result or has resulted;

(2) The severity and scope of the actual or potential harm;

(3) The extent to which the provisions of the applicable statutes or regulations were violated;

(4) The 'good faith' exercised by the licensee. Indications of good faith include, but are not limited to:

(A) Awareness of the applicable statutes and regulations and reasonable diligence in securing compliance;

(B) Prior accomplishments manifesting the licensee's desire to comply with the requirements;

- (C) Efforts to correct; and
- (D) Any other mitigating factors in favor of the licensee;
- (5) Any relevant previous violations committed by the licensee;
- (6) The financial benefit to the licensee of committing or continuing the violation.

(c) Assessment of a civil penalty provided by this section 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 4. Arkansas Code 20-10-209 is hereby amended to read as follows:
"20-10-209. Disposition of funds.

There is hereby established on the books of the State Treasurer, State Auditor and the Chief Fiscal Officer of the State a Trust Fund to be known as the Long-Term Care Trust Fund, which shall consist of all moneys and interest 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 Federal or State law or regulations, there to be administered by the Director of the Department of Human Services, solely for the protection of the health or property of residents of Long-Term Care facilities, including but not limited to the payment for the costs of relocation of residents to other facilities, maintenance and operation of a facility pending correction of deficiencies or closure, and reimbursement of residents for personal funds lost."

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 during recent months, certain inadequacies in the continuum of health care for the older citizens of this State have been brought to the attention of the General Assembly; that this Act is necessary to assure each citizen of this State in need of long-term care that a high quality of care at affordable cost will be provided; that the older citizenry of this State deserve the best possible care; that the immediate passage of this Act is essential to the health, welfare and safety of the citizens of the State of Arkansas and to avoid irreparable harm upon the proper administration of an

essential government program. 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.

