

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the
82nd General Assembly.

State of Arkansas *As Engrossed: S3/10/99 S3/15/99 S3/25/99 S3/29/99*

82nd General Assembly

A Bill

Regular Session, 1999

SENATE BILL 840

By: Senators Hoofman, Webb, Hill

By: Representatives T. Smith, Ferrell

For An Act To Be Entitled

"AN ACT TO CREATE WITHIN THE DEPARTMENT OF HUMAN
SERVICES AN ASSISTED LIVING PROGRAM FOR THE STATE OF
ARKANSAS; TO AMEND ARKANSAS CODE § 20-10-101 TO CHANGE
THE DEFINITION OF RESIDENTIAL CARE FACILITY AND FOR
OTHER PURPOSES."

Subtitle

"TO CREATE WITHIN THE DEPARTMENT OF HUMAN
SERVICES AN ASSISTED LIVING PROGRAM FOR
THE STATE OF ARKANSAS."

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

SECTION 1. This act shall be known as "The Arkansas Assisted Living
Program Act."

SECTION 2. The purpose of this act is to promote the availability of
appropriate services for elderly persons and adults with physical disabilities
in the least restrictive and most homelike environment, to encourage the
development of facilities that promote the dignity, individuality, privacy,
and decision making ability of such persons, to provide for the health,
safety, and welfare of residents of facilities offering assisted living
services in the state, to promote continued improvement of such facilities, to
encourage the development of innovative and affordable facilities particularly
for persons with low to moderate incomes.

The General Assembly recognizes that facilities offering assisted living

1 services are a necessary part of the continuum of long-term care in the State
2 of Arkansas. In support of the goal of aging in place, the General Assembly
3 further recognizes that facilities offering assisted living services should be
4 operated and regulated as residential environments with supportive services,
5 and not as medical or nursing facilities. The services available in these
6 facilities, either directly or through contract or agreement, are intended to
7 help residents remain as independent as possible. Regulations governing these
8 facilities must be sufficiently flexible to allow facilities to adopt
9 practices that enable residents to age in place when resources are available
10 to meet their needs and accommodate their preferences.

11
12 SECTION 3. Definitions.

13 As used in this act, unless the context otherwise requires:

14 (1) "Assisted living facility" means any building or buildings,
15 section or distinct part of a building, private home, boarding home, home for
16 the aged, or other residential facility, whether operated for profit or not,
17 which undertakes through its ownership or management to provide assisted
18 living services, including limited nursing services, for a period exceeding 24
19 hours to three (3) or more adult residents of the facility who are not
20 relatives of the owner or administrator. The definition shall include those
21 facilities which provide assisted living services either directly or through
22 contractual arrangements or which facilitate contracting in the name of
23 residents.

24 (2) "Assisted living services" means housing, meals and one or more
25 personal services.

26 (3) "Limited nursing services" means acts that may be performed by
27 licensed personnel while carrying out their professional duties, but limited
28 to those acts that the department specifies by rule. Acts which may be
29 specified by rule as allowable limited nursing services shall be for persons
30 who meet the admission criteria established by the department for facilities
31 offering assisted living services and shall not be complex enough to require
32 24-hour nursing supervision and may include such services as the application
33 and care of routine dressings, and care of casts, braces, and splints.

34 (4) "Aging in place" or "age in place" means the process of providing
35 increased or adjusted services to a person to compensate for the physical or
36 mental decline that occurs with the aging process, in order to maximize the

1 person's dignity and independence and permit the person to remain in a
2 familiar, non-institutional, residential environment for as long as possible.
3 Such services may be provided by the facility staff, volunteers, family, or
4 friends, or through contractual arrangements with a third party.

5 (5) "Twenty-four hour nursing supervision" means services that are
6 ordered by a physician for a resident whose condition requires the supervision
7 of a physician and continued monitoring of vital signs and physical status.
8 Such services shall be:

9 (a) medically complex enough to require constant supervision,
10 assessment, planning or intervention by a nurse;

11 (b) required to be performed by or under the direct supervision
12 of licensed nursing personnel or other professional personnel for safe and
13 effective performance;

14 (c) required on a daily basis; and,

15 (d) are consistent with the nature and severity of the
16 resident's condition or the disease state or stage.

17 (6) "Personal services" means direct physical assistance with or
18 supervision of the activities of daily living and self-administration of
19 medication and other similar services as the department may define by rule.
20 "Personal" services shall not be construed to mean the provision of medical,
21 dental, alcohol and drug abuse treatment, or mental health services.

22 (7) "The department" means the Arkansas Department of Human Services,
23 its divisions and offices.

24 (8) "Assisted living program" means a program of assisted living
25 services, limited nursing services, and personal services to allow aging in
26 place, all provided at an assisted living facility, as defined in subdivisions
27 (1), (2), (3), (4), and (6) of this section.

28
29 SECTION 4. (a) The department is authorized to establish an Assisted
30 Living program for individuals twenty-one (21) years of age and older who meet
31 the medical necessity determination for nursing facility care, including Pre-
32 Admission Screening and Annual resident review (PASARR); provided, however,
33 that such individuals cannot have conditions that require 24 hour nursing, and
34 to promulgate rules and regulations not inconsistent with the provisions of
35 this chapter as it shall deem necessary or desirable to properly and
36 efficiently carry out the purposes and intent of this chapter. Such rules and

1 regulations shall include, but not be limited to:

2 (1) Fire, health, and safety code;

3 (2) Physical plant requirements, including space requirements
4 for housing, toilet facilities and related items;

5 (3) Staffing requirements; and,

6 (4) Services requirements.

7 (b) In the event that the department imposes any physical plant
8 requirements above the level required for residential care facilities as of
9 January 1, 1999, residential care facilities licensed as of the effective date
10 of this act and subsequent purchasers shall be exempt if:

11 (1) The facility offers the use of a small refrigerator in each
12 resident's room; and,

13 (2) The facility offers the use of a microwave oven in each
14 resident's room; and,

15 (3) The facility meets minimum space requirements of 100 square
16 feet per person or 180 square feet for two persons sharing a room, exclusive
17 of entryway, closet and bathroom.

18 (c) The Department of Human Services shall take all actions necessary
19 to develop a home and community-based care waiver as authorized in Section
20 1915(c) of the Social Security Act. The waiver application shall seek federal
21 financial participation to increase access to services in assisted living
22 facilities by raising Medicaid income and resource limits to the maximum
23 extent permitted by federal law. The waiver application shall seek permission
24 to serve 1,000 persons each year, and shall be submitted to the health Care
25 Financing Administration by June 30, 1999.

26
27 SECTION 5. Fees.

28 The department is authorized to charge fees which shall be paid by
29 assisted living facilities to cover administrative costs associated with
30 licensing, inspection and the regulation of assisted living facilities. The
31 department shall promulgate rules and regulations necessary for charging
32 administrative fees.

33
34 SECTION 6. Reimbursement.

35 For Medicaid eligible clients, the department shall reimburse assisted
36 living facilities on a per diem basis provided prior approval for per diem

1 reimbursement is received from the Health Care Financing Administration. Each
2 Medicaid client shall be subject to prior authorization by the department or
3 its designated agent.

4 The department shall reimburse residential care facilities that provide
5 personal care services on a per diem basis provided prior approval for per
6 diem reimbursement is received from the Health Care Financing Administration.
7 Each Medicaid client shall be subject to prior authorization by the department
8 or its designated agent.

9
10 SECTION 7. Licensure.

11 (a) Each assisted living facility in the State of Arkansas shall first
12 obtain a license to operate from the department. The department shall
13 promulgate rules and regulations for the license of assisted living
14 facilities.

15 (b) Any person, partnership, association, or corporation establishing,
16 conducting, managing, or operating an assisted living facility within the
17 meaning of this act without first obtaining a license shall be guilty of a
18 Class A misdemeanor and upon conviction shall be liable for a fine imposed
19 pursuant to a Class A misdemeanor.

20 (c) Each day an assisted living facility shall operate after a first
21 conviction shall be considered a Class D felony and the person, partnership,
22 association, or corporation establishing, conducting, managing, or operating
23 an assisted living facility upon conviction shall be liable for a fine imposed
24 pursuant to a Class D felony.

25
26 SECTION 8. Permit of Approval.

27 Facilities offering assisted living services are exempt from the permit of
28 approval process; provided, however, that such facilities shall not be exempt
29 from the permit of approval process requirements if the facility requires a
30 permit of approval to construct or operate as a type of facility other than an
31 assisted living facility.

32
33 SECTION 9. *Arkansas Code § 20-10-101(14), regarding the definition of*
34 *"residential care facilities", is amended to read as follows:*

35 *"(14) 'Residential care facility' means a building or structure*
36 *which is used or maintained to provide, for pay on a twenty-four-hour basis, a*

1 place of residence and board for three (3) or more individuals whose
2 functional capabilities may have been impaired but who do not require ~~hospital~~
3 ~~or nursing home care on a daily basis~~ 24-hour nursing care but could require
4 limited nursing services or other assistance in activities of daily living.
5 The department shall revise its regulations as are necessary to allow
6 residential care facilities to qualify for licensure as assisted living
7 facilities under the Arkansas Assisted Living Program Act."

8
9 SECTION 10. All provisions of this Act of a general and permanent
10 nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas
11 Code Revision Commission shall incorporate the same in the Code.

12
13 SECTION 11. If any provision of this Act or the application thereof to
14 any person or circumstance is held invalid, such invalidity shall not affect
15 other provisions or applications of the Act which can be given effect without
16 the invalid provision or application, and to this end the provisions of this
17 Act are declared to be severable.

18
19 SECTION 12. All laws and parts of laws in conflict with this Act are
20 hereby repealed.

21 /s/ Hoofman
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36