

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999

A Bill

SENATE BILL 842

4
5 By: Senator Bearden
6
7

For An Act To Be Entitled

8
9 "AN ACT TO PROVIDE FOR THE PROTECTION OF LONG-TERM
10 CARE FACILITY RESIDENTS; AND FOR OTHER PURPOSES."

Subtitle

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12
13 "TO PROVIDE FOR THE PROTECTION OF LONG-
14 TERM CARE FACILITY RESIDENTS."
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16

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
18

19 SECTION 1. Purpose.

20 The purpose of this act is to provide for the development,
21 establishment, and enforcement of basic standards for:

22 (1) The health, care and treatment of persons in long-term care
23 facilities; and

24 (2) The construction, maintenance, and operation of such facilities
25 which will ensure safe, adequate, and appropriate care, treatment, and health
26 of persons in such facilities.
27

28 SECTION 2. Definitions.

29 When used in this act unless the context otherwise requires, the term:

30 (1) "Administrator" means a person who administers, manages,
31 supervises, or is in general administrative charge of a long-term care
32 facility;

33 (2) "Bed reservation policy" means the number of consecutive days and
34 the number of days per year that a resident may leave the long-term care
35 facility for overnight therapeutic visits with the family or friends or for
36 hospitalization for an acute condition before the licensee may

1 discharge the resident due to his or her absence from the facility;

2 (3) "Board" means the Long Term Care Facility Advisory board created by
3 Arkansas Code 20-10-301;

4 (4) "Custodial service" means care for a person which entails
5 observation of diet and sleeping habits and maintenance of a watchfulness over
6 the general health, safety, and well-being of the person;

7 (5) "Department" means the Department of Human Services;

8 (6) "OLTC" means the Office of Long Term Care, created by Arkansas Code
9 20-10-202;

10 (7) "Ombudsman" means the Long-Term Care Ombudsman established pursuant
11 to Arkansas Code 20-10-601 through 20-10-603;

12 (8) "Long-term care facility" means a nursing home, residential care
13 facility, post-acute head injury retraining and residential care facility, or
14 any other facility which provides long-term medical or personal care;

15 (9) "Residential care plan" means a written plan developed, maintained,
16 and reviewed not less than quarterly by a registered nurse, with participation
17 from other facility staff and the resident or his or her designee or legal
18 representative, which includes a comprehensive assessment of the needs of an
19 individual resident, a listing of services provided within or outside the
20 facility to meet those needs, and an explanation of service goals; and

21 (10) "Resident designee" means a person, other than the owner,
22 administrator, or employee of the facility, designated in writing by a
23 resident or a resident's guardian, if the resident is adjudicated incompetent,
24 to be the resident's representative for a specific, limited purpose.

25
26 SECTION 3. Residents' rights.

27 (a) All long-term care facilities shall adopt and make public a
28 statement of the rights and responsibilities of the residents of such
29 facilities and shall treat such residents in accordance with the provisions of
30 that statement. The statement shall assure each resident of the following:

31 (1) The right to civil and religious liberties and assistance
32 from the staff of the facility in the fullest possible exercise of these
33 rights;

34 (2) The right to private and uncensored communication, including,
35 but not limited to, receiving and sending unopened correspondence, access to a
36 telephone, visiting with any person of the resident's choice during visiting

1 hours provided that such visitors are not disruptive or dangerous, and
2 overnight visitation outside the facility with family and friends in
3 accordance with facility policies, physician orders, and Title XVIII
4 (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations,
5 without the resident's losing his or her bed. Unless otherwise indicated in
6 the resident care plan, the licensee shall, with the consent of the resident
7 and in accordance with policies approved by the agency, permit recognized
8 volunteer groups, representatives of community-based legal, social, mental
9 health, and leisure programs, and members of the clergy access to the facility
10 during visiting hours for the purpose of visiting with and providing services
11 to any resident;

12 (3) Any entity or individual that provides health, social, legal,
13 or other services to a resident has the right to have reasonable access to the
14 resident. The resident has the right to deny or withdraw consent to access at
15 any time by any entity or individual. Notwithstanding the visiting policy of
16 the facility, the following individuals must be permitted immediate access to
17 the resident:

18 (A) Representatives of the Department of Human Services,
19 any law enforcement officer; any ombudsman; and the resident's individual
20 physician; and

21 (B) Subject to the resident's right to deny or withdraw
22 consent, immediate family or other relatives of the resident. The facility
23 must allow any ombudsman to examine a resident's clinical records with the
24 permission of the resident or the resident's legal representative and
25 consistent with state law;

26 (4) The right to present grievances on behalf of himself or
27 herself or others to the staff or administrator of the facility, to
28 governmental officials, or to any other person; to recommend changes in
29 policies and services to facility personnel; and to join with other residents
30 or individuals within or outside the facility to work for improvements in
31 resident care, freedom from restraint, interference, coercion, discrimination,
32 or reprisal. This right includes access to ombudsmen and advocates and the
33 right to be a member of, to be active in, and to associate with advocacy or
34 special interest groups. The right also includes the right to prompt efforts
35 by the facility to resolve resident grievances, including grievances with
36 respect to the behavior of other residents;

1 (5) The right to organize and participate in resident groups in
2 the facility and the right to have the resident's family meet in the facility
3 with the families of other residents;

4 (6) The right to participate in social, religious, and community
5 activities that do not interfere with the rights of other residents;

6 (7) The right to examine, at any time, the results which the
7 facility shall post of the most recent inspection of the facility conducted by
8 a federal or state agency and any plan of correction in effect with respect to
9 the facility;

10 (8) The right to manage his or her own financial affairs or to
11 delegate such responsibility to the licensee, but only to the extent of the
12 funds held in trust by the licensee for the resident. The facility may not
13 require a resident to deposit personal funds with the facility. However upon
14 written authorization of a resident, the facility must hold, safeguard,
15 manage, and account for the personal funds of the resident deposited with the
16 facility as follows:

17 (A) The accounting system established and maintained by the
18 facility must preclude any commingling of resident funds with facility funds
19 or with the funds of any person other than a resident, consistent with
20 regulations promulgated by the Office of Long Term Care; and

21 (B) The facility may not impose a charge against the
22 personal funds of a resident for any item or service for which payment is made
23 under Title XVIII or Title XIX of the Social Security Act;

24 (9) The right to be fully informed, in writing, prior to or at
25 the time of admission and during his or her stay, of services available in the
26 facility and of related charges for such services, including any charges for
27 services not covered under Title XVIII or Title XIX of the Social Security Act
28 or not covered by the basic per diem rates and of bed reservation and refund
29 policies of the facility;

30 (10) The right to be adequately informed of his or her medical
31 condition and proposed treatment, unless the resident is determined to be
32 unable to provide informed consent under Arkansas law, or the right to be
33 fully informed in advance of any nonemergency changes in care or treatment
34 that may affect the resident's well-being; and, except with respect to a
35 resident adjudged incompetent, the right to participate in the planning of all
36 medical treatment, including the right to refuse medication and treatment,

1 unless otherwise indicated by the resident's physician; and to know the
2 consequences of such actions;

3 (11) The right to refuse medication or treatment and to be
4 informed of the consequences of such decisions, unless determined unable to
5 provide informed consent under state law. When the resident refuses
6 medication or treatment, the long-term care facility must notify the resident
7 or the resident's legal representative of the consequences of such decision
8 and must document the resident's decision in his or her medical record. The
9 long-term care facility must continue to provide other services the resident
10 agrees to in accordance with the resident's care plan;

11 (12) The right to receive adequate and appropriate health care
12 and protective and support services, including social services; mental health
13 services, if available; planned recreational activities; and therapeutic and
14 rehabilitative services consistent with the resident care plan, with
15 established and recognized practice standards within the community, and with
16 rules as adopted by the agency;

17 (13) The right to have privacy in treatment and in caring for
18 personal needs;

19 (14) The right to be treated courteously, fairly, and with the
20 fullest measure of dignity;

21 (15) The right to be free from mental and physical abuse,
22 corporal punishment, extended involuntary seclusion, and from physical and
23 chemical restraints, except those restraints authorized by a physician for a
24 specified and limited period of time or as are necessitated by an emergency.
25 In case of an emergency, restraint may be applied only by a qualified licensed
26 nurse who shall set forth in writing the circumstances requiring the use of
27 restraint. Restraints may not be used in lieu of staff supervision or merely
28 for staff convenience, for punishment, or for reasons other than resident
29 protection or safety;

30 (16) The right to be transferred or discharged only for medical
31 reasons or for the welfare of other residents, and the right to be given
32 reasonable advance notice of thirty (30) days of any involuntary transfer or
33 discharge, except in the case of an emergency as determined by a licensed
34 professional on the staff of the long-term care facility, or in the case of
35 conflicting rules and regulations which govern Title XVIII or Title XIX of the
36 Social Security Act. For nonpayment of a bill for care received, the resident

1 shall be given thirty (30) days advance notice. Admission to a long-term care
2 facility operated by a licensee may not be conditioned upon a waiver of such
3 right;

4 (17) The right to freedom of choice in selecting a personal
5 physician at the resident's own expense or through Title XIX of the Social
6 Security Act; and to obtain information about, and to participate in,
7 community-based activities programs, unless medically contraindicated as
8 documented by a physician in the resident's medical record;

9 (18) The right to retain and use personal clothing and
10 possessions as space permits, unless to do so would infringe upon the rights
11 of other residents or unless medically contraindicated as documented in the
12 resident's medical record by a physician;

13 (19) The right to an explanation of the responsibility of the
14 resident to obey all reasonable rules and regulations of the facility and to
15 respect the personal rights and private property of the other residents;

16 (20) The right to receive notice before the room of the resident
17 in the facility is changed;

18 (21) The right to be informed of the bed reservation policy for a
19 hospitalization. The long-term care facility shall inform a private-pay
20 resident and his or her responsible party that his or her bed will be reserved
21 for any single hospitalization for a period up to thirty (30) days provided
22 the long-term care facility receives reimbursement. Any resident who is a
23 recipient of assistance under Title XIX of the Social Security Act, or the
24 resident's designee or legal representative, shall be informed by the licensee
25 that his or her bed which Title XIX reimbursement is available, up to five (5)
26 days but that the bed will not be reserved if it is medically determined by
27 the agency that the resident will not need it or will not be able to return to
28 the long-term care facility, or if the agency determines that the long-term
29 care facility's occupancy rate ensures the availability of a bed for the
30 resident. Notice shall be provided within twenty-four (24) hours of
31 hospitalization; and

32 (22) For residents of Medicaid or Medicare certified facilities,
33 the right to challenge a decision by the facility to discharge or transfer the
34 resident, as required under Title 42 C.F.R. Part 483.12.

35 (b) The licensee for each long-term care facility shall orally inform
36 the resident of the resident's rights and provide a copy of the statement

1 required by subdivision (a)(1) to each resident or the resident's legal
2 representative at or before the resident's admission to a facility. The
3 licensee shall provide a copy of the residents' rights to each staff member of
4 the facility. Each such licensee shall prepare a written plan and provide
5 appropriate staff training to implement the provisions of this section. The
6 written statement of rights must include a statement that a resident may file
7 a complaint with the OLTC or ombudsman. The statement must be in boldfaced
8 type and shall include the name, address, and telephone numbers of the
9 ombudsman and adult abuse registry where complaints may be lodged.

10 (c) Any violation of the residents' rights set forth in this section
11 may constitute grounds for action by the OLTC. In order to determine whether
12 the licensee is adequately protecting residents' rights, the annual inspection
13 of the facility shall include private informal conversations with a sample of
14 residents to discuss residents' experiences within the facility with respect
15 to rights specified in this section and general compliance with standards, and
16 consultation with the ombudsman in the area in which the long-term care
17 facility is located.

18 (d) Any person who submits or reports a complaint concerning a
19 suspected violation of the residents' rights or concerning services or
20 conditions in a facility or who testifies in any administrative or judicial
21 proceeding arising from such complaint shall have immunity from civil
22 liability thereof, unless that person has acted in bad faith, with malicious
23 purpose, or if the court finds that there was a complete absence of a
24 justifiable issue of either law or fact.

25
26 SECTION 4. Civil enforcement.

27 (a) A civil action may be brought by the resident or the resident's
28 legal guardian to recover damages for injuries sustained by a violation of the
29 resident's rights set forth by this act. The civil action may be brought in
30 the circuit court of the county in which the long-term care facility is
31 located.

32 (b) The resident may seek to recover actual damages when there is a
33 finding that an employee of the long-term care facility failed to do something
34 which a reasonably careful person would do, or did something which a
35 reasonably careful person would not do, under circumstances similar to those
36 shown by the evidence in this case, which caused an injury due to a violation

1 of the resident's rights.

2 (c) Any award of actual damages must consider the nature, extent and
3 duration of any physical or financial injury to the resident.

4 (d) If the claim of violation of resident rights is the subject of an
5 administrative sanction or remedy imposed by the OLTC, the civil action cannot
6 proceed until all administrative appeals have been exhausted.

7
8 SECTION 5. Patient records – penalties for alteration.

9 (a) Any person who fraudulently alters or falsifies any medical or
10 other long-term care facility record, or causes or procures any of these
11 offenses to be committed, commits a Class A misdemeanor.

12 (b) A conviction under section is also grounds for restriction,
13 suspension, or termination of license privileges for individuals or
14 facilities.

15
16 SECTION 6. Administration and management of long-term care facilities.

17 Every licensed facility shall comply with all applicable standards and
18 rules of the OLTC and shall:

19 (1) Be under the administrative direction and charge of a licensed
20 administrator;

21 (2) Have available the regular, consultative, and emergency services
22 of physicians licensed by the state;

23 (3) Provide for the access of the facility residents to dental and
24 other health-related services, recreational services, rehabilitative services,
25 and social work services appropriate to their needs and conditions and not
26 directly furnished by the licensee;

27 (4) If the facility was not cited for any deficiencies in the past
28 twelve (12) months, be encouraged by OLTC to provide services, including, but
29 not limited to, respite and adult day services, which enable individuals to
30 move in and out of the facility. A facility is not subject to any additional
31 licensure requirements for providing these services. Respite care may be
32 offered to persons in need of short-term or temporary long-term care services.
33 Respite care must be provided in accordance with this act and rules adopted by
34 the OLTC. However, the OLTC shall, by rule, adopt modified requirements for
35 resident assessment, resident care plans, resident contracts, physician
36 orders, and other provisions, as appropriate, for short-term or temporary

1 long-term care services. The OLTC shall allow for shared programming and
2 staff in a facility which meets minimum standards and offers services pursuant
3 to this subsection, but, if the facility is cited for deficiencies in patient
4 care, may require additional staff and programs appropriate to the needs of
5 service recipients. A person who receives respite care may not be counted as
6 a resident of the facility for purposes of the facility's licensed capacity
7 unless that person receives twenty-four (24) hour respite care. A person
8 receiving either respite care for 24 hours or longer or adult day services
9 must be included when calculating minimum staffing for the facility. Any
10 costs and revenues generated by a long-term care facility from nonresidential
11 programs or services shall be excluded from the calculations of Medicaid per
12 diems for long-term care institutional care reimbursement;

13 (5) If the facility was not cited for any deficiencies in the last
14 twelve (12) months, exceeds minimum staffing standards, and is part of a
15 retirement community that offers other services pursuant to part III, part IV,
16 or part V, be allowed to share programming and staff;

17 (6) Maintain the facility premises and equipment and conduct its
18 operations in a safe and sanitary manner;

19 (7) If the licensee furnishes food service, provide a wholesome and
20 nourishing diet sufficient to meet generally accepted standards of proper
21 nutrition for its residents and provide such therapeutic diets as may be
22 prescribed by attending physicians. In making rules to implement this
23 subsection, the OLTC shall be guided by standards recommended by nationally
24 recognized professional groups and associations with knowledge of dietetics;

25 (8) Keep full records of resident admissions and discharges, medical
26 and general health status, including medical records, personal and social
27 history, and identity and address of next of kin, or other persons who may
28 have responsibility for the affairs of the residents; and individual resident
29 care plans including, but not limited to, prescribed services, service
30 frequency and duration, and service goals. The records shall be open to
31 inspection by the OLTC;

32 (9) Keep such fiscal records of its operations and conditions as may be
33 necessary to provide information pursuant to this act; and

34 (10) Furnish copies of personnel records for employees affiliated with
35 such facility, to any other facility licensed by this state requesting this
36 information pursuant to this act. Such information contained in the records

1 may include, but is not limited to, disciplinary matters and any reason for
2 termination. Any facility releasing such records pursuant to this act shall
3 be considered to be acting in good faith and may not be held liable for
4 information contained in such records, absent a showing that the facility
5 maliciously falsified such records.

6
7 SECTION 7. Property and personal affairs of residents.

8 (a) The admission of a resident to a facility and his or her presence
9 in the facility shall not confer on the facility or its owner, administrator,
10 employees, or representatives any authority to manage, use, or dispose of any
11 property of the resident; nor shall such admission or presence confer on any
12 of the aforementioned persons any authority or responsibility for the personal
13 affairs of the resident, except that which may be necessary for the safety of
14 the residents and orderly management of the facility.

15 (b) No licensee, owner, administrator, employee, or representative
16 thereof shall act as guardian, trustee, or conservator for any resident of the
17 facility or any such resident's property unless the person is the resident's
18 spouse or blood relative within the third degree of consanguinity.

19 (c) A licensee shall provide for the safekeeping of personal effects,
20 funds, and other property of the resident in the facility. Whenever necessary
21 for the protection of valuables, or in order to avoid unreasonable
22 responsibility thereof, the licensee may require that such valuables be
23 excluded or removed from the facility and kept at some place not subject to
24 the control of the licensee.

25 (d) A licensee shall keep complete and accurate records of all funds
26 and other effects and property of its residents received by it for
27 safekeeping.

28 (e) Any funds or other property belonging to a resident which are
29 received by a licensee shall be held in trust. Funds held in trust shall be
30 kept separate from the funds and property of the facility and shall be used or
31 otherwise expended only for the account of the resident.

32
33 SECTION 8. Right of entry and inspection.

34 The department and any duly designated officer or employee thereof or an
35 Ombudsman shall have the right to enter upon and into the premises of any
36 long-term care facility, at any time in order to determine the state of

1 compliance with the provisions of this act and rules in force pursuant
2 thereto. The right of entry and inspection shall also extend to any premises
3 which the agency has reason to believe is being operated or maintained as a
4 facility without a license, but no such entry or inspection of any premises
5 shall be made without the permission of the owner or person in charge thereof,
6 unless an inspection order is first obtained from a circuit court upon a
7 showing of reasonable cause to inspect that certain premises are being
8 maintained and operated in violation of this act.

9
10 SECTION 9. Availability, distribution, and posting of reports and
11 records.

12 (a) The OLTC shall, within ten (10) days after the date of an annual
13 inspection visit or the date of any interim visit, forward the results of all
14 inspections of long-term care facilities to:

15 (1) The ombudsman in whose county the inspected facility is
16 located; and

17 (2) At least one public library or, in the absence of a public
18 library, the county seat in the county in which the inspected facility is
19 located.

20 (b) Each long-term care facility licensee shall maintain as public
21 information, available upon request, records of all cost and inspection
22 reports pertaining to that facility that have been filed with, or issued by,
23 any governmental agency. Copies of such reports shall be retained in such
24 records for not less than five (5) years after the date the reports are filed
25 or issued.

26 (c) Any records of a long-term care facility determined by the OLTC to
27 be necessary and essential to establish lawful compliance with any rules or
28 standards shall be made available to the OLTC on the premises of the facility,
29 with the exception of quality assurance committee records.

30 (d) Every long-term care facility licensee shall post, in a sufficient
31 number of prominent positions in the long-term care facility so as to be
32 accessible to all residents and to the general public, the last inspection
33 report or survey pertaining to the long-
34 term care facility and issued by the OLTC.

35
36 SECTION 10. Arkansas Code 20-10-224, as amended by Act 485 of 1989, is

1 repealed.

2 ~~20-10-224. License required – Administration by Department of Human~~
 3 ~~Services. [As amended by Acts 1989, No. 485, § 1.]~~

4 ~~(a) No long-term care facility or related institution shall be~~
 5 ~~established, conducted, or maintained in this state without obtaining a~~
 6 ~~license.~~

7 ~~(b) The department shall, by properly promulgating rules and regulations,~~
 8 ~~provide for the issuance of appropriate types of long-term care facility~~
 9 ~~licenses, including the licensure of facilities with specialized wings, units,~~
 10 ~~or rooms for dementia residents, those suffering from Alzheimer's disease, and~~
 11 ~~other related conditions.~~

12 ~~(c) The department may provide, by properly promulgating rules and~~
 13 ~~regulations, for the issuance of permanent type licenses, subject to~~
 14 ~~revocation.~~

15 ~~(d) This section shall not apply to hospital swing beds.~~

16

17 SECTION 11. Arkansas Code 20-10-225 is repealed.

18 ~~20-10-225. Alterations, additions, and new construction of facilities.~~

19 ~~_____ (a) The department shall prescribe by regulation that any licensee or~~
 20 ~~applicant desiring to make specified types of alterations or additions to its~~
 21 ~~facilities or to construct new facilities shall, before commencing such~~
 22 ~~alterations, additions, or new construction, submit plans and specifications~~
 23 ~~for them to the department for preliminary inspection and approval or~~
 24 ~~recommendations with respect to compliance with the regulations and standards.~~

25 ~~_____ (b) From time to time, the Director of the Department of Health or his~~
 26 ~~agent shall inspect each construction project approved by the Surgeon General.~~
 27 ~~If the inspection so warrants, the Director of the Department of Health or his~~
 28 ~~agent shall certify to the Surgeon General that work has been performed upon~~
 29 ~~the project, or purchases have been made, in accordance with the approved~~
 30 ~~plans and specifications, and that payment of an installment of federal funds~~
 31 ~~is due to the applicant.~~

32

33 SECTION 12. Arkansas Code 20-10-232 is repealed.

34 ~~20-10-232. Regulations, client rights and sanctions.~~

35 ~~_____ (a) The Office of Long Term Care (OLTC) shall promulgate and maintain,~~
 36 ~~pursuant to the requirements of the Arkansas Administrative Procedure Act, §~~

~~25-15-201 et seq., separate regulations, client rights, and sanctions for intermediate care facility for the mentally retarded operations and for other long-term care facilities regulated by the Office of Long Term Care.~~

~~(b) Regulations which cover all facilities regulated by the Office of Long Term Care shall be included in each separate set of regulations. Changes and updates to each set of regulations shall specify which type of regulations are being updated or changed.~~

SECTION 13. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

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

SECTION 15. All laws and parts of laws in conflict with this act are hereby repealed.

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