

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

State of Arkansas

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83rd General Assembly

A Bill

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HOUSE BILL 1635

By: Representatives T. Steele, M. Steele, Altes, Bennett, Biggs, Bledsoe, Creekmore, Dees, Eason, Goss, Haak, Judy, Lendall, Minton, Pritchard, Rackley, Rodgers, Scrimshire, Trammell, Womack

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 ALLOW RESIDENTIAL CARE FACILITIES TO CONVERT TO ASSISTED LIVING FACILITIES; AND FOR OTHER PURPOSES.

Subtitle

TO CREATE WITHIN THE DEPARTMENT OF HUMAN SERVICES AN ASSISTED LIVING PROGRAM FOR THE STATE OF ARKANSAS; TO ALLOW RESIDENTIAL CARE FACILITIES TO CONVERT TO ASSISTED LIVING FACILITIES.

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

SECTION 1. Title.

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

SECTION 2. Purpose and intent.

(a) The purpose of this act is to:

(1) Promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment;

(2) Encourage the development of facilities that promote the

dignity, individuality, privacy, and decision-making ability of such persons;

(3) Provide for the health, safety, and welfare of residents of facilities offering assisted living services in the state;

(4) Promote continued improvement of such facilities;

(5) Include residential care facilities in the assisted living program;

(6) Encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes.

(b) The General Assembly recognizes that:

(1) Facilities offering assisted living services are a necessary part of the continuum of long-term care in the State of Arkansas; and

(2) Facilities offering assisted living services should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities;

(3) The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible; and

(4) Residential care facilities have been providing many assisted living services for years and should be allowed to participate in the new assisted living program.

SECTION 3. Definitions.

For purposes of this act:

(1)(A) "Assisted living facility" means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator;

(B) "Assisted living facility" includes those facilities which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents;

(2) "Assisted living program" means a program of assisted living services;

(3) "Assisted living services" means housing, meals, laundry,

1 socialization, transportation, one or more personal services, and limited
2 nursing services;

3 (4) "Department" means the Department of Human Services and its
4 divisions and offices;

5 (5)(A) "Limited nursing services" means acts that may be performed by
6 licensed personnel while carrying out their professional duties, but limited
7 to those acts that the department specifies by rule;

8 (B) Acts which may be specified by rule as allowable limited
9 nursing services shall be for persons who meet the admission criteria
10 established by the department for facilities offering assisted living
11 services, shall not be complex enough to require twenty-four (24) hour nursing
12 supervision and may include such services as the application and care of
13 routine dressings, and care of casts, braces, and splints;

14 (6) "Person" means an individual, partnership, association, corporation
15 or other entity;

16 (7)(A) "Personal services" means assistance with or supervision of the
17 activities of daily living and self-administration of medication and other
18 similar services as the department may define by rule; and

19 (B) "Personal services" shall not be construed to mean the
20 provision of medical, dental, alcohol and drug abuse treatment, or mental
21 health services; and

22 (8) "Twenty-four (24) hour nursing" means services that are ordered by
23 a physician for a resident whose condition requires the supervision of a
24 physician and continued monitoring of vital signs and physical status and
25 whose condition is medically complex enough to require on-site nursing
26 supervision on a twenty-four (24) hour per day basis.

27
28 SECTION 4. Assisted Living Program.

29 (a) The department is directed to establish an Assisted Living Program
30 for adults, including those who meet the medical necessity determination for
31 nursing facility care, provided, however, that such individuals cannot have
32 conditions that require twenty-four (24) hour nursing.

33 (b)(1) The department shall promulgate rules and regulations not
34 inconsistent with the provisions of this act as it shall deem necessary or
35 desirable to properly and efficiently carry out the purposes and intent of
36 this act.

1 (2) The regulations, including documentation, shall take into
2 account the congregate nature of assisted living as opposed to individual
3 settings, and the regulations shall include, but not be limited to:

4 (A) Fire, health, and life safety codes;

5 (B) Physical plant requirements, including space
6 requirements for housing, toilet facilities and related items;

7 (C) Staffing requirements; and

8 (D) Services requirements.

9 (c)(1) No resident shall be permitted to remain in an assisted living
10 facility if his condition requires twenty-four (24) hour nursing care or other
11 services that an assisted living facility is not authorized by law to provide.

12 (2) This prohibition shall apply even if the resident is willing
13 to enter into an agreement to relieve the facility of responsibility or
14 otherwise manage the risk.

15 (d) Residential care facilities licensed or holding a permit of
16 approval as of the effective date of this act and subsequent purchasers shall,
17 upon application, be licensed as assisted living facilities, provided:

18 (1) The facility shall provide a small refrigerator in each
19 resident's room, except as otherwise provided by regulation;

20 (2) The facility shall provide a microwave oven in each
21 resident's room, except as otherwise provided by regulation;

22 (3) The facility meets minimum space requirements for resident
23 rooms of one hundred fifty (150) square feet per person or two hundred thirty
24 (230) square feet for two (2) persons sharing a room, exclusive of entryway,
25 closet and bathroom, or one hundred (100) square feet per person or one
26 hundred eighty (180) square feet for two (2) persons if the room has a half or
27 full bath or if there is a shared bathroom between two (2) rooms;

28 (4) The application conforms to all other assisted living
29 regulations, except as provided in this act; and

30 (5) Before obtaining the assisted living license, the residential
31 care facility has no more than two (2) Class A or Class B violations pursuant
32 to Arkansas Code 20-10-205 within the previous six (6) months.

33 (e) Residential care facilities which choose to become assisted living
34 facilities under subsection (d) shall not be required to meet physical plant
35 or other physical amenities requirements beyond that required for residential
36 care facilities as of January 1, 2001, except as provided in subsection (d).

1 (f) Assisted living regulations promulgated by the department shall be
2 reasonable and shall not have the effect of excluding residential care
3 facilities from entering the program, provided they meet the requirements of
4 this act.

5 (g)(1) The department shall take all actions necessary to develop a
6 home and community-based care waiver application in accordance with Section
7 1915(c) of the Social Security Act.

8 (2) The waiver application shall seek federal financial
9 participation to increase access to services in assisted living facilities by
10 raising Medicaid income and resource limits to the maximum eligibility level
11 of other home and community-based waivers in effect.

12 (3) The waiver application shall seek permission to serve a
13 minimum of one thousand (1,000) persons at a time, and shall be submitted to
14 the Health Care Financing Administration by June 30, 2001.

15 (4) The department's implementation of the waiver shall be
16 reasonable and shall not have the effect of excluding residential care
17 facilities which have become assisted living facilities under the provisions
18 of this act.

19 (h)(1) Residential care facilities that choose not to become assisted
20 living facilities will be permitted to continue participating in the Medicaid
21 personal care program.

22 (2) If an assisted living facility has Medicaid residents who are
23 not in the waiver program but could qualify for non-waiver Medicaid services,
24 then the facility shall be permitted to provide Medicaid personal care for
25 those residents.

26 (i) Assisted living services may be provided directly or through
27 contractual arrangement.

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29 SECTION 5. Fees.

30 (a) The department is authorized to charge fees which shall be paid by
31 assisted living facilities to cover administrative costs associated with
32 licensing, inspection and the regulation of assisted living facilities.

33 (b) The department shall promulgate rules and regulations necessary for
34 charging administrative fees.

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36 SECTION 6. Reimbursement.

1 For Medicaid eligible clients, the department shall reimburse assisted
2 living facilities on a per diem basis in accordance with approval for per diem
3 reimbursement from the Health Care Financing Administration.

4
5 SECTION 7. Licensure.

6 (a)(1) Each assisted living facility in the State of Arkansas shall
7 first obtain a license to operate from the department.

8 (2) The department shall promulgate rules and regulations for the
9 licensure and operation of assisted living facilities.

10 (b) Any person establishing, conducting, managing, or operating an
11 assisted living facility within the meaning of this act, or using the term
12 "assisted living" to promote their services, without first obtaining an
13 assisted living license shall be guilty of a Class A misdemeanor and upon
14 conviction shall be subject to the penalties prescribed for a Class A
15 misdemeanor. Provided, however, that residential care facilities licensed or
16 holding a permit of approval as of the effective date of this act may use the
17 term "assisted living" to promote their services.

18 (c) Each day an assisted living facility shall operate after a first
19 conviction shall be considered a Class D felony and the person establishing,
20 conducting, managing, or operating an assisted living facility upon conviction
21 shall be subject to the penalties prescribed for a Class D felony.

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23 SECTION 8. Limited Licensure Option.

24 Facilities licensed as of the effective date of this act and subsequent
25 purchasers have the option of converting all or part of the facility to
26 assisted living under section 4(d) or choosing to remain licensed as
27 residential care facility.

28
29 SECTION 9. Permit of Approval.

30 (a) Facilities offering assisted living services must obtain a permit
31 of approval. Provided, however, that permits of approval held by residential
32 care facilities as of the effective date of this act, or held by subsequent
33 purchasers of those facilities, shall also be considered permits of approval
34 for assisted living without further action. However, residential care
35 facilities that choose to offer assisted living services are not exempted from
36 assisted living licensure requirements except as provided in Section 4.

(b) Provided, further, that in order to take advantage of a Robert Wood Johnson Foundation grant, one (1) new facility chosen by the department may serve as a pilot project without the necessity of a permit of approval. This facility shall be exempt from the permit of approval process provided that in 2001 it is awarded funding from the Coming Home Project and tax credits from the Arkansas Development Finance Authority. The facility shall have no more than sixty (60) beds and shall serve a population a majority of which is low-income as defined by the federal Department of Housing and Urban Development. The pilot project facility must still meet all other licensure requirements. The Coming Home Project means the Robert Wood Johnson Foundation/NCB Development Corporation grant.

SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-third General Assembly that because of eligibility rules in the state's Medicaid program many low to moderate income citizens are being prevented from accessing the most appropriate health care setting; that assisted living is being underutilized in Arkansas; that the current paperwork burden in the Medicaid personal care program discourages participation by Medicaid providers; and that until this situation is changed, the citizens will be deprived of access to appropriate health care. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto.

/s/ T. Steel e, et al.