

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.

1 State of Arkansas
2 83rd General Assembly
3 Regular Session, 2001
4

As Engrossed: H3/9/01 S4/10/01

A Bill

HOUSE BILL 2584

5 By: Representative Rodgers
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7

For An Act To Be Entitled

9 AN ACT TO AMEND ARKANSAS CODE 20-10-204, 20-10-
10 208, AND 20-10-303 TO COMBINE LONG-TERM CARE
11 FACILITY APPEAL PROCESSES; AND FOR OTHER
12 PURPOSES.
13

Subtitle

14 AN ACT TO COMBINE LONG-TERM CARE
15 FACILITY APPEAL PROCESSES.
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 *SECTION 1. Arkansas Code 20-10-204 is amended to read as*
22 *follows:*

23 *20-10-204. Notice of violation.*

24 *(a) If, upon inspection or investigation, the Office of Long-Term Care*
25 *determines that a licensed long-term care facility is in violation of any*
26 *federal or state law or regulation pertaining to Title XIX Medicaid*
27 *certification or licensure, the office shall promptly serve, by certified*
28 *mail or other means that gives actual notice, a notice of violation upon the*
29 *licensee when the violation is a classified violation as described in § 20-*
30 *10-205.*

31 *(b)(1) Each notice of violation shall be prepared in writing and shall*
32 *specify the exact nature of the classified violation, the statutory provision*
33 *or specific rule alleged to have been violated, the facts and grounds*
34 *constituting the elements of the classified violation, and the amount of*
35 *civil penalty, ~~if any,~~ or any other remedy, assessed by the Director of the*
36 *Department of Human Services, if any.*

1 (2) *The notice shall also inform the licensee of the right to*
2 *hearing under § 20-10-208 ~~when civil penalties are imposed~~ which shall be*
3 *conducted in accordance with the Arkansas Administrative Procedure Act which*
4 *begins at § 25-15-201, and regulations of the department consistent with that*
5 *act.*

6 ~~*(c) The Department of Human Services shall provide a fair and*~~
7 ~~*impartial hearing officer for appeals.*~~

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9 SECTION 2. Arkansas Code 20-10-208 is amended to read as follows:
10 20-10-208. Hearings.

11 (a)(1) *A licensee may contest ~~an assessment of a civil penalty~~*
12 *deficiencies, penalties, or other administrative remedies imposed by the*
13 *Office of Long-Term Care by sending a written request for hearing to the*
14 *Director of the Department of Human Services. ~~The director shall designate a~~*
15 *~~hearing examiner who shall preside over the case and make findings of fact~~*
16 *~~and conclusions of law in the form of a recommendation to the director, who~~*
17 *~~shall then review the case and make the final determination or remand the~~*
18 *~~case to the hearing examiner for further findings of law or fact.~~*

19 (2) *Requests for hearings must be received by the director*
20 *within ~~ten (10) working~~ thirty (30) days after receipt by the long-term care*
21 *facility of the notice of violation.*

22 **(b)(1) The director shall assign the appeal to the Chairman of the**
23 **Long-Term Care Facility Advisory Board for action in accordance with § 20-10-**
24 **303, or to a fair and impartial hearing officer who shall not be a full-time**
25 **employee of the Department of Human Services.**

26 **(2) The chairman or the hearing officer shall preside over the**
27 **case and make findings of fact and conclusions of law in the form of a**
28 **recommendation to the Director of the Department of Human Services.**

29 **(3) The Director of the Department of Human Services shall**
30 **review the case and make the final decision. The director may, for good**
31 **cause, approve, reject, or remand the decisions to the board or the hearing**
32 **officer for further proceedings. Any rejection of the decisions of the board**
33 **or hearing officer must state in writing the basis for the rejection, with**
34 **the statutory, regulatory, or factual grounds for the rejection, and must be**
35 **filed as the final decision of the agency, as provided by the Administrative**
36 **Procedure Act, which begins at § 25-15-201.**

1 ~~(3)(c)(1)~~ The Department of Human Services shall commence the hearing
2 within forty-five (45) days of receipt of the request for hearing, and the
3 director shall issue a final decision within ten (10) working days after the
4 close of the hearing and the chairman or the hearing officer shall notify the
5 Director of the Office of Long-Term Care of the date, time, and place of the
6 hearing. This notification shall be in writing and shall be sent at least
7 twenty (20) working days prior to the hearing date.

8 (2) The chairman or the hearing officer shall issue a
9 recommended decision within thirty (30) working days after the close of the
10 hearing, or receipt of the hearing transcript, whichever is later.

11 (3) The Director of the Department of Human Services must act on
12 the recommendation of the board or the hearing officer within thirty (30)
13 days of receipt.

14 (4) Assessments shall be paid to the Office of Long-Term Care
15 within ~~ten (10)~~ thirty (30) working days of receipt of the notice of
16 violation or within ~~ten (10)~~ thirty (30) working days of receipt of the final
17 determination by the director in contested cases, unless the matter has been
18 appealed to circuit court.

19 (5) Facilities failing to pay assessed civil penalties shall be
20 subject to a corresponding reduction in the succeeding Medicaid vendor
21 payment in lieu of nonpayment.

22 (d) Except to the extent inconsistent with federal law, a written
23 request for appeal, until denied by the Director of the Department of Human
24 Services, shall stay the action of the appeal pending the hearing and the
25 final decision of the director.

26 (e) Any party subject to appear before the advisory board or the
27 hearing officer may appear and be heard at any proceeding prescribed herein
28 or may choose to be represented by an attorney at law or through other
29 designated representatives.

30 (f) Upon written request of a long-term care facility, the department
31 shall provide copies of all documents, papers, reports, and other information
32 gathered through inspection or survey, which relate to the basis for a
33 violation cited or sanction imposed by the department. Such disclosure shall
34 be made within three (3) days of the receipt of the request, and in no event
35 later than ten (10) working days prior to a scheduled hearing date.

36 ~~(b)(1)~~ (g)(1) Hearing examiners The chairman or the hearing officers

1 retained by the department shall have the authority at the request of either
2 party to subpoena witnesses and to require the production of documentary
3 evidence.

4 (2) Upon failure of a person without lawful excuse to obey a
5 subpoena or to give testimony, application may be made to the circuit court
6 in the county in which the hearing is to be held for a court order compelling
7 compliance.

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9 SECTION 3. Arkansas Code 20-10-303 is amended to read as follows:

10 20-10-303. Authority to hear appeals.

11 (a) The Long-Term Care Facility Advisory Board created in § 20-10-301
12 shall have the power and authority to hear all appeals ~~by~~ as requested by the
13 Director of the Department of Human Services pursuant to § 20-10-208, or the
14 licensed long-term care facilities, long-term care administrators, or other
15 parties regulated by the Office of Long-Term Care with regard to licensure
16 and certification.

17 ~~(b)(1) Any long-term care facility or party regulated by the office~~
18 ~~seeking a hearing before the board shall submit a request in writing to the~~
19 ~~chairman of the board. The written request, until denied by the chairman,~~
20 ~~shall stay the action of the appeal pending the hearing and final decision.~~

21 ~~(2)(b)~~ Upon receiving a written request for a hearing from the
22 Director of the Department of Human Services, or any party regulated by the
23 office, the chairman shall place the request on the agenda to be considered
24 in a hearing at the next scheduled or called meeting of the board and may
25 assign the appeal to an impartial hearing officer who shall not be a full-
26 time employee of the Department of Human Services, if requested by the
27 facility seeking review.

28 ~~(3) The chairman shall notify in writing the party making the~~
29 ~~request to the Director of the Office of Long-Term Care of the date, time,~~
30 ~~and place of the hearing. This notification by the chairman shall be in~~
31 ~~writing and shall be sent at least seven (7) working days prior to the~~
32 ~~hearing date.~~

33 ~~(c) The chairman and the hearing officer shall both have authority to~~
34 ~~issue subpoenas at the request of any party to an appeal.~~

35 ~~(d) The hearing officer may preside over the appeal, which shall be~~
36 ~~conducted in accordance with the Arkansas Administrative Procedure Act, § 25-~~

1 ~~15-201 et seq., and make specific findings of fact and conclusions of law in~~
2 ~~the form of recommendations to the board.~~

3 ~~(e) Any party subject to appear before the board may appear and be~~
4 ~~heard at any proceeding prescribed herein or may choose to be represented by~~
5 ~~an attorney at law or through other designated representatives.~~

6 ~~(f)(c)(1) All decisions rendered by the board or the independent~~
7 ~~hearing officer shall be submitted to the Deputy Director of the Division of~~
8 ~~Medical Services of the Department of Human Services, subject to his review~~
9 ~~and final determination. The deputy director may, for good cause, approve,~~
10 ~~reject, or remand the decisions to the board for further proceedings.~~

11 (2) Any rejection of the decisions of the board must clearly
12 state in writing the basis for the rejection, with the statutory and
13 regulatory grounds for the rejection, and must be filed as the final decision
14 of the agency.

15 ~~(g)(d) The deputy director must act on a decision of the board within~~
16 ~~thirty (30) days of its decision or else the decision of the board or the~~
17 ~~independent hearing officer shall be final.~~

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19 /s/ Rodgers
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