

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: S3/27/01 S4/4/01

A Bill

SENATE BILL 899

5 By: Senator Brown
6
7

For An Act To Be Entitled

9 AN ACT TO AMEND VARIOUS SECTIONS OF THE ARKANSAS
10 CODE TO RENAME THE HEALTH SERVICES COMMISSION AND
11 THE HEALTH SERVICES AGENCY; TO CLARIFY THE DUTIES
12 OF THE HEALTH SERVICES COMMISSION AND THE
13 DIRECTOR OF THE HEALTH SERVICES AGENCY; TO MODIFY
14 THE COMPOSITION OF THE HEALTH SERVICES
15 COMMISSION; TO REPEAL THE REQUIREMENT FOR A
16 PERMIT OF APPROVAL FOR GEOGRAPHIC REGIONS WHICH
17 ARE DETERMINED TO BE UNDERSERVED; AND FOR OTHER
18 PURPOSES.

Subtitle

21 AN ACT TO RENAME AND CLARIFY THE DUTIES
22 OF THE HEALTH SERVICES COMMISSION AND
23 THE DIRECTOR OF THE HEALTH SERVICES
24 AGENCY

25
26
27 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
28

29 SECTION 1. Arkansas Code 9-28-407(a), concerning licenses required and
30 issued for child welfare agencies, is amended to read as follows:

31 (a)(1) It shall be unlawful for any person, partnership, group,
32 corporation, association, or other entity or identifiable group of entities
33 having a coordinated ownership of controlling interest, to operate or assist
34 in the operation of a child welfare agency which has not been licensed by the
35 Child Welfare Agency Review Board from licensing pursuant to this subchapter.
36

1 (2) This license shall be required in addition to any other
 2 license required by law for all entities that fit the definition of a child
 3 welfare agency and not specifically exempted, except that no nonpsychiatric
 4 residential treatment facility or agency licensed or exempted pursuant to this
 5 subchapter shall be deemed to fall within the meaning of § 20-10-101(7) for
 6 any purpose.

7 (3) Any child welfare agency licensed or permitted by the board
 8 as of 1999 is exempted from the requirements of law:

9 ~~(1)~~(A) To obtain a license or permit from the Office of
 10 Long-Term Care; and

11 ~~(2)~~(B) To obtain a permit from the Health Services Permit
 12 Agency and Health Services Permit Commission.

13

14 SECTION 2. Arkansas Code 19-4-906(a)(69) is amended to read as follows:

15 (069) Health Services Permit Agency

16

17

18 SECTION 3. Arkansas Code 19-5-302(10)(A)(ii)(o) is amended to read as
 19 follows:

20 (o) Arkansas Health Services Permit Agency;

21

22 SECTION 4. Arkansas Code 20-7-117(b)(2), concerning hospices, is
 23 amended to read as follows:

24 (b)(2) All functions and duties of the office shall be carried out in
 25 accordance with the laws of Arkansas and the regulations of the Health
 26 Services Permit Agency, the Health Services Permit Commission, and the federal
 27 Health Care ~~Finance~~ Financing Administration.

28

29 SECTION 5. Arkansas Code 20-7-117(c)(1), concerning hospices, is
 30 amended to read as follows:

31 (c)(1) The regulations and requirements of the Health Services Permit
 32 Agency and the Health Services Permit Commission shall be revised to include
 33 separate permit-of-approval categories of health care facilities entitled
 34 "hospice facilities" and "hospice agencies" and to develop criteria for
 35 granting the permits of approval for hospice facilities and for hospice
 36 agencies for which applications shall be filed in accordance with the criteria

1 after March 7, 1997, provided that those entities that have filed written
2 intent to build a hospice facility or to operate a hospice agency with both
3 the Health Services Permit Agency and the Department of Health prior to March
4 7, 1997, shall have thirty-six (36) months to complete the project and be
5 licensed.

6
7 SECTION 6. Arkansas Code 20-8-101 is amended to read as follows:
8 20-8-101. Definitions.

9 As used in this subchapter, unless the context otherwise requires:

10 (1) "Agency" means the Health Services Permit Agency as
11 established in this subchapter;

12 (2) "Category of services" or "health services" means "home
13 health care services" as defined by § 20-10-801;

14 (3) "Commission" means the Health Services Permit Commission as
15 established in this subchapter;

16 (4) "Conversion of services" means an alteration of the category
17 of services offered by a health facility;

18 (5) "Director" means the Director of the Health Services Permit
19 Agency;

20 (6)(A) "Health facility" or "health facilities" means "long-term
21 care facility" as defined by § 20-10-101~~(7)~~(8) or a "home health care services
22 agency" as defined by § 20-10-801.

23 (B) The terms "health facility" or "health facilities"
24 shall not mean, and nothing in this subchapter shall be deemed to require a
25 permit of approval for or to otherwise regulate the licensure of in any
26 manner:

27 (i) A "hospital" as defined by and licensed pursuant
28 to § 20-9-201(3), except when a hospital seeks to add long-term care beds or
29 to convert acute beds to long-term care beds or to add home health services
30 pursuant to a letter of intent filed with the Department of Health after
31 February 15, 1993, or to expand home health services pursuant to a letter of
32 intent filed with the department after February 15, 1993;

33 (ii) Offices of private physicians and surgeons;

34 (iii) Outpatient surgery or imaging centers;

35 (iv) Post-acute head injury retraining and
36 residential care facilities or establishments operated by the federal

1 government or any agency thereof;

2 (v) Free-standing radiation therapy centers;

3 (vi) Expansion, not to exceed fifteen (15) beds, of
4 the twenty-five-bed nonprofit intermediate care facility for the mentally
5 retarded that provides transitional rehabilitation for pediatric patients;

6 (vii) Residences for four (4) or fewer individuals
7 with developmental disabilities who receive support and services from
8 nonprofit providers currently licensed by the Division of Developmental
9 Disabilities Services of the Department of Human Services; or

10 (viii) Any facility which is conducted by and for
11 those who rely exclusively upon treatment by prayer for healing in accordance
12 with the tenets or practices of any recognized religious denomination.

13 (C) The term "health facility" shall not include offices of
14 private physicians and surgeons, outpatient surgery or imaging centers,
15 establishments operated by the federal government or any of its agencies,
16 free-standing radiation therapy centers, or any facility which is conducted by
17 and for those who rely exclusively upon treatment by prayer alone for healing
18 in accordance with the tenets or practices of any recognized religious
19 denomination; and

20 (7) "Transitional rehabilitation" means rehabilitation that
21 typically results in discharge within twenty-four (24) months after the date
22 of admission.

23
24 SECTION 7. Arkansas Code 20-8-102 is amended to read as follows:

25 20-8-102. Health Services Permit Commission - Creation - Members -
26 Meetings.

27 (a) There is established a Health Services Permit Commission.

28 (b) The Health Services Permit Commission shall be composed of the
29 following membership to be appointed by the Governor and confirmed by the
30 Senate:

31 (1) A practicing physician;

32 (2) A representative of the Department of Human Services;

33 (3) A member of the Arkansas Hospital Association;

34 (4) A member of the Arkansas Health Care Association;

35 (5) A member of the Arkansas Chapter of the American Association
36 of Retired Persons;

1 (6) A member of the ~~Arkansas Association of Home Health Agencies~~
2 HomeCare Association of Arkansas;

3 (7) A consumer knowledgeable in business health insurance; ~~and~~

4 (8) A member of the ~~Arkansas Association of Residential Care~~
5 Facilities Residential Assisted Living Association-; and

6 (9) A member of the Arkansas State Hospice Association.

7 (c) (1) All appointments shall be for ~~three-year~~ four-year terms.

8 (2) No member of the commission shall be appointed to serve more
9 than two (2) consecutive full terms.

10 (d) The commission members shall serve without pay, but those members
11 not employed by the State of Arkansas may receive expense reimbursement in
12 accordance with § 25-16-901 et seq.

13 (e) The commission shall meet at least quarterly and at such other
14 times as necessary to carry out its duties as set forth in this subchapter.
15 The commission shall elect one (1) of its members as chairman and may, by
16 appropriate adoption of bylaws and rules, provide for the time, place, and
17 manner of calling its meetings.

18
19 SECTION 8. Arkansas Code 20-8-103 is amended to read as follows:

20 20-8-103. Health Services Permit Commission - Powers and duties.

21 (a) The Health Services Permit Commission shall evaluate the
22 availability and adequacy of health facilities and health services as they
23 relate to long-term care facilities and home health care service agencies in
24 this state.

25 (b) The commission shall designate those locales or areas of the state
26 in which, due to the requirements of the population or the geography of the
27 area, the health service needs of the population are underserved.

28 (c) The commission may specify, within locales or areas, categories of
29 health services which are underserved and overserved due to the composition or
30 requirements of the population or the geography of the area.

31 (d) The commission shall develop policies and adopt criteria, including
32 time limitations, to be utilized by the agency in the review of applications
33 and the issuing of permits of approval for a long-term care facility or a home
34 health care service agency as provided herein.

35 (e) The commission may define certain underserved locales or areas or
36 categories of services within underserved locales or areas to be exempt for

1 specified periods of time from the permit of approval requirement.

2 ~~(f) The commission shall review the recommendations of the agency~~
3 ~~concerning action on applications by long term care facilities or home health~~
4 ~~care service agencies for permits of approval and endorse or reject the same.~~

5 ~~(g)(f)~~ The commission may set application fees for permit of approval
6 applications to be charged and collected by the agency.

7 ~~(h)(g)(1)~~ The commission, upon appeal by the applicant or an interested
8 party, shall conduct hearings on ~~permits of approval~~ decisions by the agency
9 within ~~thirty (30)~~ ninety (90) days of receipt of the notice of appeal the
10 agency decision. The commission shall render its final decision within ~~forty-~~
11 ~~five (45)~~ fifteen (15) days of the close of the hearing. Failure of the
12 commission to take final action within these time periods shall be considered
13 a ratification of the agency decision ~~on the permit of approval~~ and shall
14 constitute the final decision of the commission from which an appeal to
15 circuit court may be filed.

16 (2) Neither a competitor of a successful applicant for a permit
17 of approval, nor any other party, shall have the right to appeal the
18 commission's decision to grant a permit of approval.

19
20 SECTION 9. Arkansas Code 20-8-104 is amended to read as follows:

21 20-8-104. Health Services Permit Agency - Powers and duties.

22 (a) There is created and established the Health Services Permit Agency,
23 which shall be an independent agency under the supervision and control of the
24 Governor.

25 (b) The agency shall possess and exercise such duties and powers as
26 necessary to implement the policy and procedures adopted by the Health
27 Services Permit Commission.

28 ~~(c) The agency is designated the agency of this state to accept,~~
29 ~~receive, retain, and administer state and federal funds for construction of~~
30 ~~health facilities.~~

31 ~~(d)(c)~~ The agency shall review all applications for permits of approval
32 and ~~submit its recommendation for action to the commission~~ approve or deny the
33 application within ninety (90) days of receipt of the application for permit
34 of approval, without which the application shall be deemed approved from the
35 date the application is deemed complete and submitted for review.

36 ~~(e)(d)~~ The State of Arkansas shall not participate in the capital

1 expenditures review program, otherwise known as the 1122 Program, unless and
2 until it becomes mandatory for continuation in federal programs authorized
3 under Titles V, XVII, and XIV of the Social Security Act for all states.

4 ~~(f)~~(e) The agency shall assist the commission in the performance of its
5 duties as set forth in this subchapter.

6
7 SECTION 10. Arkansas Code 20-8-105 is amended to read as follows:

8 20-8-105. Director.

9 There shall be a Director of the Health Services Permit Agency, who
10 shall be the executive head of the agency. The director shall be appointed by
11 the Governor, subject to confirmation by the Senate, and shall serve at the
12 pleasure of the Governor.

13
14 SECTION 11. Arkansas Code 20-8-106 is amended to read as follows:

15 20-8-106. Health Services Program - Permits generally.

16 (a)(1) From March 8, 1989, until June 1, 1989, there shall be no new
17 home health care agencies or nursing homes, with the exception of intermediate
18 care facilities for the mentally retarded with fifteen (15) or fewer beds and
19 with the exception of nursing home applications under review by the Health
20 Services Permit Agency on June 2, 1987, and except for nursing homes with
21 thirty-five (35) beds or fewer attached to or a part of hospitals located in
22 cities or towns where no nursing home exists, provided applicants for such
23 nursing homes must obtain a permit of approval from the proper authority
24 pursuant to the provisions of this subchapter, nor shall there be any
25 additional beds licensed for existing nursing homes or intermediate care
26 facilities in this state. The Health Services Permit Commission may remove any
27 or all of the moratoria anytime after June 1, 1988, provided the commission
28 has duly adopted and promulgated standards for the review of the health
29 facility for which the moratorium is removed. Nursing home applications under
30 review by the agency on June 2, 1987, shall be considered under § 20-8-101 et
31 seq. under updated standards on a county-by-county basis.

32 (2) No permit of approval shall be required by the agency or the
33 commission for any applicant to qualify for a Class "B" license, as provided
34 for in § 20-10-801 et seq., to operate a home health care services agency if
35 the agency was serving patients on or before June 30, 1988, and if the agency
36 serves the residents of the county where the principal office is located.

1 (3) Nursing home applications under review by the agency on June
2 2, 1987, shall be considered under the provisions of § 20-8-101 et seq. under
3 updated standards on a county-by-county basis.

4 (b) The alteration or renovation of a health facility having an
5 associated capital expenditure of less than five hundred thousand dollars
6 (\$500,000) for nursing homes and not resulting in additional bed capacity
7 shall not require a permit of approval; however, the ~~commission~~ agency shall
8 not allow hospital acute care beds to be converted to or allow their license
9 classification to be changed to long-term care beds without going through the
10 permit of approval process, ~~and licenses are not transferable from one (1)~~
11 ~~entity to another.~~ However, permits, legal title, and right of ownership may
12 be transferred to another entity with the approval of the commission. The
13 application for the permit of approval shall include, but need not be limited
14 to, such information as is necessary to determine:

15 (1) Whether the proposed project is needed or projected as being
16 necessary to meet the needs of the locale or area in terms of the health care
17 required for the population or geographic region;

18 (2) Whether the proposed project can be adequately staffed and
19 operated when completed;

20 (3) Whether the proposed project is economically feasible; and

21 (4) Whether the project will foster cost containment through
22 improved efficiency and productivity.

23 (c) If the application is granted, the agency shall issue a permit of
24 approval if it finds that the proposed project meets the criteria for approval
25 as set by the commission. If the application is denied, the agency shall send
26 written notice of the denial to the applicant which sets forth the criteria
27 that the proposed project failed to meet.

28 (d) Any applicant or interested party seeking review of ~~the agency~~
29 ~~denial of a permit of approval~~ a final agency decision regarding permits of
30 approval, or movement of beds, or transfer of permits of approval shall file a
31 written appeal for hearing before the commission on ~~the form provided with the~~
32 ~~commission~~ an approved form within thirty (30) days of the ~~date of the notice~~
33 ~~of appeal~~ receipt of the agency decision.

34 (e) Appeals to the commission shall be conducted in accordance with the
35 Administrative Procedure Act, § 25-15-201 et seq.

36

1 SECTION 12. Arkansas Code 20-8-108 is amended to read as follows:

2 20-8-108. Fees and fines.

3 All fees and fines collected hereunder shall be deposited into the State
4 General Services Fund Account to be used exclusively for the maintenance and
5 operation of the Health Services Permit Agency.

6
7 SECTION 13. Arkansas Code 20-8-109 is amended to read as follows:

8 20-8-109. Approval of new projects - Repeal of Acts 1975, No. 558, § 5 -
9 Transfer of duties.

10 (a) All projects requiring approval under the Certificate of Need
11 Program as established by Acts 1975, No. 558, § 5 [repealed], except free-
12 standing radiation therapy centers, shall not be instituted or commenced after
13 April 4, 1987, except upon application for and receipt of approval from the
14 Health Services Permit Agency utilizing the same criteria and procedures in
15 existence prior to April 4, 1987.

16 (b) For purposes of this section, "commence construction" means the
17 approval of project financing or the actual movement onto the site of building
18 materials and equipment by the principal contractor.

19 (c) Two hundred ten (210) days after April 4, 1987, Acts 1975, No. 558,
20 § 5, as amended, is repealed. On and after the two hundred eleventh day
21 following April 4, 1987, all projects requiring approval under § 20-8-107
22 shall not be instituted or commenced except upon application for and receipt
23 of a permit of approval as set forth in this subchapter, and, during this
24 period of time, all duties and responsibilities of the State Health Planning
25 and Development Agency and the Statewide Health Coordinating Council are
26 transferred to the Health Services Permit Agency established under this
27 subchapter. Any project not requiring approval under this subchapter, even
28 though covered under Acts 1975, No. 558, § 5 [repealed], may be commenced
29 after April 4, 1987.

30 (d) The agency shall process all applications or certificates of need
31 for intermediate care facilities for the mentally retarded with fifteen (15)
32 or fewer beds which were pending on April 4, 1987, and shall for a period of
33 thirty (30) days after April 4, 1987, accept additional applications for such
34 facilities. The applications shall be processed utilizing the criteria and
35 procedures in existence prior to April 4, 1987, and in addition the agency
36 shall consider as a primary factor the experience of each applicant in serving

1 the developmentally disabled population.

2

3 SECTION 14. Arkansas Code 20-8-110(a) and (b), concerning collection and
4 dissemination of health data, are amended to read as follows:

5 (a) The Health Services Permit Agency created by § 20-8-104 shall act
6 as a statewide health data clearinghouse for the acquisition and dissemination
7 of data from health care providers, the State Medicaid program, third-party
8 payors, state agencies, and other appropriate sources in furtherance of this
9 section.

10 (b) All state agencies having information with regard to health matters
11 shall make available to the agency such health data as is necessary for the
12 Health Services Permit Commission to carry out its responsibilities.

13

14 SECTION 15. Arkansas Code 20-10-105 is amended to read as follows:

15 20-10-105. Residential care facility - Ineligibility for reimbursement -
16 Exclusions.

17 (a) Any facility that meets the definition of a residential care
18 facility as defined by the Office of Long-Term Care that has not been licensed
19 or certified by the appropriate state agency or has not received a permit of
20 approval from the Health Services Permit Agency prior to January 15, 1991,
21 shall not be eligible for any reimbursement from state revenues for any
22 services that it offers.

23 (b) This provision does not apply to:

24 (1) Those facilities that are renewing their license after
25 January 15, 1991;

26 (2) Those facilities that have been receiving reimbursement prior
27 to January 15, 1991; or

28 (3) Those facilities that have been exempted from review by the
29 Health Services Permit Agency prior to January 15, 1991.

30

31 SECTION 16. Arkansas Code 20-10-813 is amended to read as follows:

32 20-10-813. Transfer of licenses and permits upon dissolution.

33 Upon the dissolution of any corporation which on April 14, 1995, is
34 licensed to provide home health care services, the Department of Health, the
35 Health Services Permit Agency, the Health Services Permit Commission, and any
36 other agency involved may transfer the dissolved corporation's licenses and

1 *permits of approval to a stockholder of the dissolved corporation, and that*
2 *stockholder may continue to perform home health care services under the*
3 *transferred license and permit of approval.*

4
5 *SECTION 17. Arkansas Code 20-10-902 is amended to read as follows:*
6 *20-10-902. Purpose.*

7 *It is the purpose of this subchapter to develop a mechanism whereby the*
8 *concept of receivership can be utilized for the protection of residents in*
9 *long-term care facilities. It is the intent of the General Assembly that*
10 *receivership shall be a remedy of last resort when all other methods of remedy*
11 *have failed or when the implementation of other remedies would be futile. It*
12 *is not the intent of this subchapter to circumvent the Health Services Permit*
13 *Program of the Health Services Permit Commission established in § 20-8-101 et*
14 *seq. No court or administrative agency shall interpret the contents of this*
15 *subchapter to allow the transfer of beds or the license of a facility under*
16 *receivership without approval of the Health Services Permit Commission as*
17 *required by § 20-8-101 et seq.*

18
19 *SECTION 18. Arkansas Code 25-1-105(e)(17), concerning annual reports of*
20 *state government agencies, is amended to read as follows:*

21 *(17) Health Services Permit Commission, § 20-8-102;*

22 */s/ Brown*