

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 84th General Assembly  
3 Regular Session, 2003  
4

*As Engrossed: H4/16/03*

# A Bill

HOUSE BILL 2864

5 By: Representative Bright  
6 *By: Senator Steele*  
7

## For An Act To Be Entitled

8  
9  
10 AN ACT TO CLARIFY AND AMEND THE PERMIT OF  
11 APPROVAL METHODOLOGY PROCESS AND LICENSURE  
12 REQUIREMENTS FOR ASSISTED LIVING FACILITIES AND  
13 RESIDENTIAL CARE FACILITIES; AND FOR OTHER  
14 PURPOSES.  
15

## Subtitle

16  
17 AN ACT TO CLARIFY AND AMEND THE PERMIT  
18 OF APPROVAL PROCESS AND LICENSURE  
19 REQUIREMENTS FOR ASSISTED LIVING  
20 FACILITIES AND RESIDENTIAL CARE  
21 FACILITIES.  
22  
23

24 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
25

26 SECTION 1. Arkansas Code Title 20, Chapter 10 is amended to add an  
27 additional subchapter to read as follows:

28 20-10-1901. Title.

29 This act shall be known and may be cited as "The Unlicensed Long-Term  
30 Care Facilities Act".  
31

32 20-10-1902. Purpose and intent.

33 (a) The purpose of this subchapter is to protect the elderly and other  
34 vulnerable citizens of this state by ensuring that all facilities that offer  
35 assisted living or similar services are properly licensed and following the  
36 statutes and regulations for long-term care facilities.



1 (b) The General Assembly does not intend for the permit of approval  
2 process to be an obstacle to accomplishing this goal.

3 (c) This subchapter is intended to:

4 (1) Clarify which facilities must obtain a permit of approval  
5 and license; and

6 (2) Allow a limited time during which a permit of approval is  
7 not required for currently unlicensed facilities if they become licensed  
8 within the time provided under this subchapter.

9  
10 20-10-1903. Definitions.

11 For purposes of this subchapter:

12 (1) "Assisted living facility" means a long-term care facility as  
13 defined in § 20-10-1703;

14 (2) "Level I" assisted living facility means any assisted living  
15 facility that does not provide the more complex assisted living care  
16 involving limited nursing services provided in "Level II" assisted living  
17 facilities;

18 (3) "Level II" assisted living facility has the same meaning as in  
19 Department of Human Services regulations;

20 (4) "Congregate services" means provision of group meals or any  
21 activities of daily living and instrumental activities of daily living  
22 provided in a group setting;

23 (5) "Department" means the Department of Human Services and its  
24 divisions and offices;

25 (6) "Person" means an individual, partnership, association,  
26 corporation, or other entity; and

27 (7) "Residential care facility" means a long-term care facility as  
28 defined in § 20-10-101; and

29 (8) "Supervision" means that a facility monitors the condition or  
30 status of residents while in the facility.

31  
32 20-10-1904. Licensure Requirement.

33 (a) Any assisted living or residential care facility comprised of a  
34 building or buildings, section or distinct part of a building, whether  
35 operated for profit or not, shall be licensed as a long-term care facility by  
36 the Office of Long Term Care if the facility:

1           (1) Houses more than three (3) individuals for a period  
2 exceeding twenty-four (24) hours; and,

3           (2)(A) Provides meals or other congregate services; and

4           (B) Either:

5                   (i) Provides supervision of residents; or

6                   (ii) Offers or provides assistance with activities  
7 of daily living such as eating, bathing, dressing, grooming, ambulating,  
8 toileting, or with medications.

9           (b)(1) Facilities subject to the licensure requirement under  
10 subsection (a) of this section include both those that provide services  
11 either directly or through contractual arrangements and those that  
12 facilitate contracting in the name of the residents.

13           (1) Apartment house managers referring residents to home health  
14 or other service agencies shall not be construed as facilitating contracting  
15 within the meaning of this subchapter.

16           (c) No entity may use the terms "assisted living," "residential  
17 care," or similar terms to advertise or publicly represent that it provides  
18 assisted living or residential care unless the entity is licensed under  
19 Arkansas law as an assisted living facility or residential care facility.

20  
21           20-10-1905. Existing unlicensed facilities.

22           (a) Existing unlicensed entities offering assisted living or  
23 residential care shall apply for an assisted living facility license or  
24 residential care facility license within one-hundred eighty (180) days after  
25 the effective date of this subchapter.

26           (b) The Office of Long Term Care of the Department of Human Services  
27 may waive building code requirements implemented after the unlicensed  
28 facility was constructed if, in the sole discretion of the office, the  
29 facility has or will implement alternative measures that will result in a  
30 level of resident safety that will meet or exceed the level that would have  
31 resulted had the building been constructed in conformity with building codes  
32 in effect at the time of licensure.

33           (c) Any facility that does not apply for a license within one-hundred  
34 eighty (180) days, or applies for a license within one-hundred eighty (180)  
35 days but fails to become licensed on or before July 1, 2004, shall be subject  
36 to the provisions in § 20-10-1907.

1       (d)(1) An assisted living or residential care facility shall be exempt  
2 from the permit of approval process for purposes of this section if the  
3 facility obtains a license within the time provided in subsection (c) of this  
4 section.

5       (2) Thereafter, the facility shall comply with the permit of  
6 approval process and methodology in all other respects, including expansion,  
7 relocation, or construction of new facilities.

8       (3) The Office of Long Term Care shall report to the Health  
9 Services Permit Agency if a facility has been licensed without a permit of  
10 approval under this section.

11       (e) The Health Services Permit Agency shall take account of the new  
12 beds authorized under this section in counting for need purposes under the  
13 permit of approval methodology.

14  
15       20-10-1906. Exemptions.

16       (a) This subchapter does not apply to situations in which persons in  
17 independent apartments receive home health services, "Meals on Wheels," or  
18 other services by agencies such as the Area Agencies on Aging, but in which  
19 congregate services are not offered and if the complex does not use the  
20 terms "assisted living" or "residential care" or any similar terms to  
21 advertise or publicly represent that it provides assisted living or  
22 residential care.

23       (b) Neither coordinating dining and social activities with a  
24 separately owned non-profit senior citizens' center nor any existing  
25 arrangements of other types between Area Agencies on Aging and government-  
26 subsidized housing projects shall be construed as providing congregate  
27 services for purposes of this subchapter.

28  
29       20-10-1907. Penalties and Enforcement.

30       (a) The Department of Human Services shall have the same powers to  
31 enforce this subchapter as under § 20-10-215.

32       (b)(1) The department may enter and inspect suspected unlicensed  
33 facilities, including any combination of separate entities working in concert  
34 under § 20-10-215.

35       (2) If a facility denies or refuses the department entry, or  
36 denies, refuses, or interferes with inspection by the department, the

1 department may apply to a court of competent jurisdiction for, and shall be  
 2 granted, an injunction in the name of the state to prohibit the facility from  
 3 operating until such time as the department is permitted to enter and inspect  
 4 the facility.

5  
 6 SECTION 2 . Arkansas Code § 5-28-306(f), concerning long-term  
 7 protective custody, is amended to read as follows:

8 (f) Placement may be in facilities such as nursing homes, ~~boarding~~  
 9 ~~homes,~~ assisted living facilities, medical institutions, foster care  
 10 services, or other facilities that provide either medical or personal  
 11 supervision.

12  
 13 SECTION 3. Arkansas Code § 20-10-101 is amended to read as follows:  
 14 20-10-101. Definitions.

15 As used in this chapter, unless the context otherwise requires:

16 (1) "Administrator-in-training program" means a program for gaining  
 17 supervised practical experience in long-term care administration;

18 (2) "Assisted living facility" has the same meaning as in § 20-10-  
 19 1703;

20 ~~(2)(3)~~ "Clock hour" means a period of contact experience comprising  
 21 the full sixty (60) minutes;

22 ~~(3)(4)~~ "Department" means the Department of Human Services;

23 ~~(4)(5)~~ "Director" means the Director of the Department of Human  
 24 Services;

25 ~~(5)(6)~~ "Division" means the appropriate division as determined by the  
 26 Director of the Department of Human Services;

27 ~~(6)(7)~~ "Head injury" means a noncongenital injury to the brain or a  
 28 neurological impairment caused by illness, accident, or nondegenerative  
 29 etiology;

30 ~~(7)(8)~~ "Head injury retraining and rehabilitation" means an  
 31 individualized program of instruction designed to assist an individual  
 32 suffering disability as a result of head injury to reduce the adverse effects  
 33 of the disability and improve functioning in activities of daily living and  
 34 work-related activities, but which does not include inpatient diagnostic  
 35 care, and which may be offered in a residential or day program;

36 ~~(8)(9)~~ "Long-term care facility" means a nursing home, residential

1 care facility, assisted living facility, post-acute head injury retraining  
2 and residential care facility, or any other facility which provides long-term  
3 medical or personal care;

4 ~~(9)~~(10) "Long-term care facility administrator" means a person who  
5 administers, manages, supervises, or is in general administrative charge of a  
6 long-term care facility whether the individual has an ownership interest in  
7 the home and whether his functions and duties are shared with one (1) or more  
8 individuals;

9 ~~(10)~~(11) "Post-acute head injury residential care" means a  
10 residential program offering assistance in activities of daily living for  
11 individuals who are disabled because of head injury and are therefore unable  
12 to live independently;

13 ~~(11)~~(12) "Post-acute head injury residential care facility" means a  
14 residential care facility which is not a nursing home and which provides head  
15 injury retraining and rehabilitation for individuals who are disabled because  
16 of head injury and are not in present need of inpatient diagnostic care in a  
17 hospital or related institution;

18 ~~(12)~~(13) "Reciprocity licensing" means a method by which an  
19 individual licensed in good standing in one state may apply for licensure  
20 status in another state, provided the state from which the individual wishes  
21 to transfer has standards comparable to the state to which the individual  
22 wishes to transfer;

23 ~~(13)~~(14) "Residential care facility" means a building or structure  
24 which is used or maintained to provide, for pay on a twenty-four-hour basis,  
25 a place of residence and board for three (3) or more individuals whose  
26 functional capabilities may have been impaired but who do not require  
27 hospital or nursing home care on a daily basis but could require other  
28 assistance in activities of daily living; and

29 ~~(14)~~(15) "Sponsor" means legal guardian.  
30

31 SECTION 4. Arkansas Code § 20-10-213(4), defining terms for §§ 20-10-  
32 213 - 20-10-228, is amended to read as follows:

33 (4)(A) "Long-term care facility" means and shall be construed to  
34 include any building, structure, agency, institution, or other place for the  
35 reception, accommodation, board, care, or treatment of more than three (3)  
36 unrelated individuals who, because of age, illness, blindness, disease, or

1 physical or mental infirmity, are unable to sufficiently or properly care for  
 2 themselves and where a charge is made for that reception, accommodation,  
 3 board, care, or treatment.

4 (B) However, the term "long-term care facility" shall not  
 5 include:

6 (i) The offices of private physicians and surgeons;

7 ~~(ii) Boarding homes provided that fifty percent~~  
 8 ~~(50%) or more of the residents of the boarding home at any given time are not~~  
 9 ~~receiving personal care as defined by Arkansas Medicaid regulations. If this~~  
 10 ~~threshold is met, the boarding home shall be classified as a residential care~~  
 11 ~~facility. This provision does not change the prohibition on boarding homes~~  
 12 ~~providing direct care to residents;~~

13 ~~(iii)~~(ii) Hospitals;

14 ~~(iv)~~(iii) Recuperation centers;

15 ~~(v)~~(iv) Supervised or supported living apartments,  
 16 group homes, family homes, or developmental day treatment clinics for  
 17 individuals with developmental disabilities operated by providers licensed by  
 18 the Division of Developmental Disabilities Services of the Department of  
 19 Human Services;

20 ~~(vi)~~(v) Institutions operated by the federal  
 21 government;

22 ~~(vii)~~(vi) Separate living arrangements that do not  
 23 involve monitoring the activities of the residents while on the premises of  
 24 the institution or facility to ensure the residents' health, safety, or well-  
 25 being and that do not involve the institution or facility's being aware of  
 26 the residents' general whereabouts; or

27 ~~(viii)~~(vii) Hospices.

28  
 29 SECTION 5 . Arkansas Code § 20-10-105 is amended to read as follows:

30 20-10-105. Residential care facility - Ineligibility for reimbursement  
 31 - Exclusions.

32 (a) Any facility that meets the definition of a residential care  
 33 facility as defined by the Office of Long-Term Care that has not been  
 34 licensed or certified by the appropriate state agency or has not received a  
 35 permit of approval from the Health Services Permit Agency ~~prior to January~~  
 36 ~~15, 1991,~~ shall not be eligible for any reimbursement from state revenues for

1 any services that it offers.

2 (b) ~~This provision does not apply to:~~

3 ~~(1) Those facilities that are renewing their license after~~  
4 ~~January 15, 1991;~~

5 ~~(2) Those facilities that have been receiving reimbursement~~  
6 ~~prior to January 15, 1991; or~~

7 ~~(3) Those facilities that have been exempted from review by the~~  
8 ~~agency prior to January 15, 1991. This section does not apply to those~~  
9 ~~residential care facilities that have been exempted by law from the permit of~~  
10 ~~approval process.~~

11  
12 SECTION 6 . Arkansas Code § 20-10-216(a), concerning the powers and  
13 duties of the Department of Human Services, is amended to read as follows:

14 (a) In carrying out the purposes of §§ 20-10-213 - 20-10-228 the  
15 Department of Human Services is empowered and directed to:

16 (1) Require such reports, make such inspections and  
17 investigations, and prescribe and enforce such reasonable rules and  
18 regulations as it finds necessary to effectuate the purposes of §§ 20-10-213  
19 - 20-10-228;

20 (2) Provide methods of administration and appoint a director and  
21 other personnel of the division;

22 (3) Procure and pay for the temporary services of experts or  
23 consultants on a fee-for-service basis;

24 (4) Enter into agreements for the utilization of the facilities  
25 and services of other departments, agencies, and institutions, public and  
26 private;

27 (5) Accept on behalf of the state, and to deposit with the  
28 Treasurer of State, any grant, gift, or contribution of funds made to assist  
29 in meeting the cost of carrying out the purposes of §§ 20-10-213 - 20-10-228  
30 and to expend such funds accordingly;

31 (6) Make an annual report to the Governor on activities and  
32 expenditures made pursuant to §§ 20-10-213 - 20-10-228;

33 (7) Procure the services of an attorney to assist the department  
34 in any legal work involved in carrying out the duties of the department and  
35 to pay for the services on a fee-for-service or retainer basis;

36 (8) Accept a certificate made by an individual's physician that

1 the individual is in need of nursing home care or that he or she can provide  
2 for himself or herself ~~in a boarding home~~.

3  
4 SECTION 7 . Arkansas Code § 20-10-702 is amended to read as follows:  
5 20-10-702. Definition.

6 As used in this subchapter, unless the context otherwise requires,  
7 "long-term care facility" means a nursing home, residential care facility,  
8 assisted living facility, an adult day-care facility, or any other facility  
9 which provides long-term medical or personal care.

10  
11 SECTION 8 . Arkansas Code § 20-10-1202(6), defining terms for long-  
12 term care facilities, is amended to read as follows:

13 (6) "Long-term care facility" means a nursing home, residential care  
14 facility, assisted living facility, post-acute head injury retraining and  
15 residential care facility, or any other facility which provides long-term  
16 medical or personal care but shall not include any facility which is  
17 conducted by and for those who rely exclusively upon treatment by prayer  
18 alone for healing in accordance with the tenets or practices of any  
19 recognized religious denomination;

20  
21 SECTION 9 . Arkansas Code § 20-10-1401(6)(B), defining terms for  
22 long-term care facilities, is amended to read as follows:

23 (B) ~~Provided~~ However, the term "nursing facility or nursing  
24 home" shall not include the offices of private physicians and surgeons,  
25 ~~boarding homes~~, residential care facilities, assisted living facilities,  
26 intermediate care facilities for the mentally retarded, hospitals,  
27 institutions operated by the federal government or licensed by the Division  
28 of Developmental Disabilities Services, or any facility which is conducted by  
29 and for those who rely exclusively upon treatment by prayer alone for healing  
30 in accordance with the tenets or practices of any recognized religious  
31 denomination.

32  
33 SECTION 10 . Arkansas Code § 20-10-1601(7)(B), defining terms for  
34 long-term care facilities, is amended to read as follows:

35 (B) "Nursing facilities" does not mean offices of private  
36 physicians and surgeons, ~~boarding homes~~, residential care facilities,

