

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 85th General Assembly
3 Regular Session, 2005
4

As Engrossed: H3/11/05

A Bill

HOUSE BILL 2593

5 By: Representatives Verkamp, Abernathy, Berry, Blair, Bradford, Bright, Clemons, Davis, Dobbins,
6 Dunn, Everett, Glidewell, Hardy, J. Hutchinson, J. Johnson, Key, Kidd, Mack, Matayo, McDaniel,
7 Medley, Pyle, Ragland, Roebuck, Rogers, Scroggin, Walters, Willis
8 By: Senators Wilkinson, Altes, Baker, Bisbee, J. Bookout, Broadway, Brown, Bryles, Capps, Critcher,
9 Faris, Glover, Hendren, Higginbotham, Hill, Holt, Horn, G. Jeffress, J. Jeffress, B. Johnson, Laverty,
10 Luker, Madison, Malone, Miller, Salmon, T. Smith, Steele, J. Taylor, Trusty, Whitaker, Womack,
11 Wooldridge
12
13

For An Act To Be Entitled

15 AN ACT CONCERNING THE PROTECTION OF THE HEALTH
16 AND WELLBEING OF RESIDENTS IN LONG TERM CARE
17 FACILITIES; AND FOR OTHER PURPOSES.
18

Subtitle

19 LONG TERM CARE RESIDENT PROTECTION ACT
20 OF 2005.
21
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 20-10-2001. Title.

29 This act is known and may be cited as the "Long-Term Care Resident
30 Protection Act of 2005".
31

32 20-10-2002. Purpose.

33 The purpose of this subchapter is to provide for the protection of the
34 health, safety, and well-being of residents, including residents who are
35 Medicaid recipients, in long-term care facilities and to promote, assure, and
36 maintain the continuity of the health, safety, and well-being of the citizens



1 of the State of Arkansas by:

2 (1) Requiring disclosure of pertinent information relating to
3 changes in control of a long-term care facility;

4 (2) Providing standards governing review of any proposed change
5 in control of a long-term care facility by the Director of the Department of
6 Human Services or the director's designee; and

7 (3) Requiring the written approval of the director or the
8 director's designee prior to a change of control of certain long-term care
9 facility owners.

10
11 20-10-2003. Definitions.

12 As used in this subchapter:

13 (1) "Acquiring party" means a person by whom or on whose behalf
14 a merger or other acquisition of control of a long-term care facility owner
15 is to be effected;

16 (2) "Affiliate" or "person affiliated with" means any person,
17 who, directly or indirectly, through one (1) or more intermediaries,
18 controls, is controlled by, or is under common control with a specified
19 person;

20 (3) "Beneficial owner" or "beneficial ownership" means any
21 person, who, directly or indirectly, through any contract, arrangement,
22 understanding, relationship, or otherwise, has or shares:

23 (A) Voting power that includes the power to vote, or to
24 direct the voting of, a voting security; or

25 (B) Investment power that includes the power to dispose,
26 or to direct the disposition of, a voting security;

27 (4)(A) "Control", "controlling", "controlled by", or "under
28 common control with" means the direct or indirect possession of the power to
29 direct or cause the direction of the management and policies of a person,
30 whether through the ownership of voting securities, by control, or otherwise,
31 unless the power is the result of an official position with or corporate
32 office held by the person.

33 (B)(i) "Control" shall be presumed to exist if any person
34 together with all affiliates, directly or indirectly, beneficially owns,
35 controls, holds with the power to vote, or holds proxies representing ten
36 percent (10%) or more of the voting securities of any other person.

1 (ii) After furnishing all persons in interest with
2 notice and opportunity to be heard, the Director of the Department of Human
3 Services or the director's designee may determine that control exists in
4 fact, notwithstanding the absence of a presumption to that effect;

5 (5) "Long-term care facility" means a nursing home, residential
6 care facility, or any other facility located within the State of Arkansas
7 that provides long-term medical or personal care;

8 (6) "Long-term care facility owner" means a person who directly
9 or indirectly owns or controls more than one (1) long-term care facility and
10 that:

11 (A) Is a company whose shares are traded in the national
12 securities markets; and

13 (B) As of December 31, 2004, was licensed to operate a
14 minimum of two thousand (2,000) beds within the State of Arkansas;

15 (7) "Person" means an individual, corporation, limited liability
16 corporation, partnership, association, joint-stock company, business trust,
17 unincorporated organization, or any similar entity or any combination of the
18 foregoing acting in concert;

19 (8) "Resident" means an individual person residing in a long-
20 term care facility in the State of Arkansas; and

21 (9) "Voting security" means any security convertible into or
22 evidencing a right to acquire a voting security.

23
24 20-10-2004. Applicability.

25 (a) This subchapter applies only to the change of control of a long-
26 term care facility owner that as of December 31, 2004:

27 (1) Had assets in excess of one billion dollars
28 (\$1,000,000,000);

29 (2) Maintained at least seventy percent (70%) of its total
30 resident census in the United States and greater than seventy percent (70%)
31 of its Arkansas resident census as Medicaid-covered residents; and

32 (3) Employed in excess of two thousand (2,000) full-time
33 employees in the State of Arkansas.

34 (b) If, as of the effective date of this subchapter, any person has
35 initiated any activity that would have required a filing under this
36 subchapter if the subchapter was in effect when the activity began, the

1 person is prohibited from proceeding further without complying with all the
2 provisions of this subchapter as though the subchapter was in effect at the
3 time the activity began.

4
5 20-10-2005. Control of long-term care facility owner – Filing
6 requirements.

7 (a) No person shall enter into or attempt to consummate an agreement
8 to merge with or otherwise to acquire control of a long-term care facility
9 owner unless, at the time any offer, request, or invitation is made or any
10 agreement is entered into, and prior to the acquisition of any voting
11 securities involved, the person has:

12 (1) Filed with the Director of the Department of Human Services
13 or the director's designee and has sent to the long-term care facility owner
14 a statement containing the information required by § 20-10-2006; and

15 (2) The offer, request, invitation, agreement, or acquisition
16 has been approved by the director or the director's designee in the manner
17 prescribed in § 20-10-2007.

18 (b) The provisions of this subchapter shall not apply if, prior to the
19 change of control described under subsection (a) of this section, the board
20 of directors of the long-term care facility owner files with the director a
21 written statement signed by all members of the board of directors
22 representing that the criteria prescribed in § 20-10-2007(c)(1) – (7) have
23 been considered in connection with the proposed change of control.

24
25 20-10-2006. Control of long-term care facility owner – Content of
26 statement.

27 (a) The statement to be filed with the Director of the Department of
28 Human Services or the director's designee under this section shall be made
29 under oath or affirmation and shall contain the following information for
30 each acquiring party:

31 (1)(A) The name and address of the acquiring party.

32 (B) If the acquiring party is an individual, the statement
33 shall contain information regarding his or her principal occupation and all
34 offices and positions held during the past five (5) years and any conviction
35 of crimes other than minor traffic violations during the past ten (10) years.

36 (C) If the acquiring party is not an individual, the

1 statement shall contain:

2 (i) A report of the nature of the acquiring party's
3 business operations during the past five (5) years or for such lesser period
4 as the acquiring party and any predecessors of the acquiring party have been
5 in existence;

6 (ii) An informative description of the business
7 intended to be conducted by the acquiring party and the acquiring party's
8 subsidiaries; and

9 (iii)(a) A list of all individuals who are or who
10 have been selected to become directors or executive officers of the acquiring
11 party, or who perform or will perform functions appropriate to the positions.

12 (b) The list prepared under subdivision
13 (a)(1)(C)(iii)(a) of this section shall include for each individual the
14 information required by subdivision (a)(1)(B) of this section;

15 (2)(A) The source, nature, and amount of the consideration used
16 or to be used in effecting the merger or other acquisition of control, a
17 description of any transaction wherein funds were or are to be obtained for
18 the merger or other acquisition of control, and the identity of persons
19 furnishing the consideration.

20 (B) When a source of the consideration is a loan made in
21 the lender's ordinary course of business, the identity of the lender shall
22 remain confidential if the person filing the statement so requests;

23 (3) Fully audited financial information as to the earnings and
24 financial condition of each acquiring party for the preceding five (5) fiscal
25 years of each acquiring party, or for such lesser period as the acquiring
26 party and any predecessors of the acquiring party have been in existence, and
27 similar unaudited information as of a date not earlier than ninety (90) days
28 prior to the filing of the statement;

29 (4)(A) A statement describing any plans or proposals that each
30 acquiring party may have to liquidate the long-term care facility owner, to
31 sell its assets or merge or consolidate the long-term care facility owner
32 with any person, or to make any other material change in the long-term care
33 facility owner's business or corporate structure or management.

34 (B) The statement shall include information necessary to
35 determine whether:

36 (i) Following the change of control, the long-term

1 care facility will continue to be able to meet the long-term care needs of
2 the locale or area;

3 (ii) The long-term care facility can be adequately
4 staffed and operated when the change of control is completed;

5 (iii) The proposed operation of the long-term care
6 facility following the change of control is economically feasible;

7 (iv) Following the change of control, the acquiring
8 party can be expected to provide a substantially consistent high level of
9 care at the long-term care facility based on:

10 (a) The acquiring party's past history;

11 (b) Whether the acquiring party intends to
12 effectuate any change in the board of directors of the long-term care
13 facility owner;

14 (c) Whether the acquiring party intends to
15 terminate, lay off, or otherwise discharge, during the twenty-four-month
16 period immediately following the acquisition, in excess of fifteen percent
17 (15%) of the employees of the long-term care facility owner as of the date of
18 the acquisition;

19 (d) Whether the acquiring party has terminated
20 general liability insurance or professional liability insurance, or both,
21 covering any long-term care facility that the acquiring party has previously
22 acquired and, if more than one (1) long-term care facility was previously
23 acquired, which long-term care facilities had general liability insurance or
24 professional liability insurance coverage in effect at the time of the
25 acquisition; and

26 (e) The assessment of the director or the
27 director's designee regarding the acquiring party's character and competence
28 to operate the long-term care facility, which shall include a review of the
29 acquiring party's experience, past performance in operating a long-term care
30 facility, if any, and compliance with applicable laws and practices pertinent
31 to the acquiring party's professional experience; and

32 (v) Following change of control, the acquiring party
33 shall obtain and maintain general liability insurance coverage and
34 professional liability insurance coverage in an amount not less than that
35 maintained by the current long-term care facility owner at the time the
36 statement required by § 20-10-2005 is filed;

1 (5)(A) A full description of any contracts, arrangements, or
2 understandings with respect to any matter referred to in § 20-10-2005 in
3 which any acquiring party is involved, including, without limitation,
4 transfer of any of the voting securities, joint ventures, loans or option
5 arrangements, puts or calls, guarantees of loans, guarantees against loss or
6 guarantees of profits, division of losses or profits, or the giving or
7 withholding of proxies.

8 (B) The description shall identify the persons with whom
9 the contracts, arrangements, or understandings described under subdivision
10 (a)(5)(A) of this section have been entered;

11 (6) A description of the purchase of any voting security
12 referred to in § 20-10-2005 during the twelve (12) calendar months preceding
13 the filing of the statement by any acquiring party, including the dates of
14 purchase, names of the purchasers, and consideration paid or agreed to be
15 paid for the purchase;

16 (7) Copies of all tender offers for, requests or invitations for
17 tenders of, exchange offers for, and agreements to acquire or exchange any
18 voting securities referred to in § 20-10-2005 and, if distributed, any
19 additional soliciting material relating to any tender offers for, requests or
20 invitations for tenders of, exchange offers for, or agreements to acquire or
21 exchange any voting securities referred to in § 20-10-2005;

22 (8) The terms of any agreement, contract, or understanding made
23 with any broker-dealer or other person as to solicitation of voting
24 securities referred to in § 20-10-2005, and the amount of any fees,
25 commissions, or other compensation to be paid to broker-dealers or other
26 persons with regard to any agreement, contract, or understanding made with
27 any broker-dealer or other person as to solicitation of voting securities
28 referred to in § 20-10-2005; and

29 (9) Any additional information that the director or the
30 director's designee may request as necessary or appropriate for the
31 protection of residents of the long-term care facility or the best interests
32 of the public, or both.

33 (b) If any material change occurs in the facts set forth in the
34 statement filed with the director and sent to the long-term care facility
35 owner under § 20-10-2005, an amendment setting forth the change, together
36 with copies of all documents and other material relevant to the change, shall

1 be filed with the director and sent to the long-term care facility owner
2 within two (2) business days after the person learns of the change.

3
4 20-10-2007. Control of long-term care facility owner – Approval by
5 director.

6 (a) Prior to holding the public hearing described in subsection (b) of
7 this section, the Director of the Department of Human Services or the
8 director's designee may appoint a special master whose fees and other costs
9 shall be paid by the acquiring party and who shall perform the following
10 tasks on behalf of the director or the director's designee:

11 (1) Review quality of care provided to residents by the long-
12 term care facility owner as established by records of surveys conducted by
13 Office of Long-Term Care of the Division of Medical Services of the
14 Department of Human Services and any related enforcement actions over the
15 past five (5) years;

16 (2) Review the quality of care provided by the acquiring party
17 as evidenced by records of surveys by state survey agencies in any
18 jurisdiction and any related enforcement actions over the past five (5)
19 years; and

20 (3)(A) Prepare a written report based on the reviews performed
21 under subdivisions (a)(1) and (2) of this section regarding whether the
22 proposed merger or acquisition of control provides adequate protection for
23 the health, safety, and well-being of residents, including residents who are
24 Medicaid recipients, who may be affected by a proposed merger or acquisition
25 of control, and will promote, assure, and maintain the continuity of the
26 health, safety, and well being of the citizens of the State of Arkansas.

27 (B) The written report shall include specific findings of
28 fact and conclusions.

29 (b)(1)(A) The director or the director's designee shall hold a public
30 hearing on any merger or other acquisition of control described in § 20-10-
31 2005 unless the public hearing is waived by the director or the director's
32 designee. The public hearing may be waived only at the sole discretion of
33 the director or the director's designee.

34 (B) The director or the director's designee shall give at
35 least twenty (20) days' notice of the hearing to the person filing the
36 statement, the long-term care facility owner, any person to whom notice of

1 hearing was sent, and any other person whose interests may be affected by the
2 proposed merger or acquisition of control.

3 (C) The acquiring party shall pay the costs of the public
4 hearing.

5 (2)(A) In connection with the public hearing, the person filing
6 the statement, the long-term care facility owner, any person to whom notice
7 of hearing was sent, and any other person whose interests may be affected by
8 the proposed merger or acquisition of control shall be entitled to conduct
9 discovery proceedings in the same manner as is presently allowed in the
10 courts of this state.

11 (B) All discovery proceedings shall be concluded not later
12 than three (3) days prior to the date scheduled for the commencement of the
13 public hearing.

14 (3) At the public hearing, the person filing the statement, the
15 long-term care facility owner, any person to whom notice of hearing was sent,
16 and any other person whose interests may be affected by the proposed merger
17 or acquisition of control shall have the right to present evidence, examine
18 and cross-examine witnesses, and offer oral and written arguments.

19 (4) The acquiring party or the long-term care facility owner may
20 appeal any final decision of the director under this subchapter in accordance
21 with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

22 (5) The consummation of an agreement to merge or otherwise
23 acquire control of a long-term care facility owner shall be stayed until all
24 appeal rights under this section have been exhausted.

25 (c) After the conclusion of the public hearing and in order to approve
26 any merger or other acquisition of control described in § 20-10-2005, the
27 director must find that:

28 (1) After change of control, the long-term care facility owned
29 by the acquiring party would be able to continue to satisfy the requirements
30 for the issuance of the license it presently holds in this state;

31 (2) The financial condition of any acquiring party is not such
32 as might jeopardize the financial stability of the long-term care facility
33 owner or prejudice the interest of residents of the long-term care facility;

34 (3) The terms of the offer, request, invitation, agreement, or
35 acquisition described in § 20-10-2005 are fair and reasonable to the
36 residents of the long-term care facility;

1 (4) The plans or proposals which the acquiring party has to
2 liquidate the long-term care facility owner, sell its assets, or consolidate
3 or merge it with any person or to make any other material change in its
4 business or corporate structure or management are fair and reasonable to
5 residents and protect the public health, safety, and wellbeing of the
6 citizens of the State of Arkansas;

7 (5) The competence, experience, and integrity of those persons
8 who would control the operation of the long-term care facility owner and its
9 long-term care facilities are such that it would be in the best interest of
10 residents and of the public to permit the merger or other acquisition of
11 control;

12 (6) Following change of control, the acquiring party shall
13 obtain and maintain for as long as the acquiring party is in control general
14 liability insurance coverage and professional liability insurance coverage in
15 an amount not less than that maintained by the current long-term care
16 facility owner at the time the statement required by § 20-10-2005 is filed;

17 (7) The proposed merger or acquisition of control provides
18 adequate protection for the health, safety, and well-being of residents,
19 including residents who are Medicaid recipients, who may be affected by the
20 proposed merger or acquisition of control and will promote, assure and
21 maintain the continuity of the health, safety, and well-being of the citizens
22 of the State of Arkansas.

23 (d) The director or the director's designee shall not approve any
24 merger or other acquisition of control described in § 20-10-2005 unless he or
25 she makes the findings described in subsection (c) of this section.

26
27 20-10-2008. Control of long-term care facility owner – Jurisdiction of
28 courts – Service of process.

29 (a) The courts of this state are vested with jurisdiction over every
30 person not a resident, domiciled, or authorized to do business in this state
31 who files a statement with the Director of the Department of Human Services
32 or the director's designee under § 20-10-2005 and § 20-20-2006 and over all
33 actions involving that person arising out of violations of § 20-10-2005 -- §
34 20-20-2007.

35 (b)(1) Each person shall be deemed to have performed acts equivalent
36 to and constituting an appointment by the person of the Secretary of State to

1 be his or her true and lawful attorney upon whom may be served all lawful
2 process in any action, suit, or proceeding arising out of violations of § 20-
3 10-2005 -- § 20-20-2007.

4 (2) Copies of all lawful process shall be served on the
5 Secretary of State and transmitted by registered or certified mail by the
6 Secretary of State to the person at the person's last known address.

7
8 20-10-2009. Control of long-term care facility owner -
9 Violations.

10 (a) The following shall be violations of § 20-10-2005 and § 20-
11 20-2006:

12 (1) The failure to file any statement, amendment, or other
13 materials required to be filed under § 20-10-2005 and § 20-20-2006; or

14 (2) The effectuation or any attempt to effectuate an
15 acquisition of control of, or merger with, a long-term care facility owner
16 unless the director has given his or her approval under § 201-20-2007.

17 (b) Nothing in this subchapter is intended to, and shall not,
18 create any private cause of action.

19
20 20-10-2010. Enforcement.

21 (a) If a long-term care facility owner or the Director of the
22 Department of Human Services or the director's designee has reason to believe
23 that any voting security of the long-term care facility owner has been or is
24 about to be acquired in contravention of this subchapter or that any order
25 has been or is about to be issued by the director or the director's designee
26 in contravention of this subchapter, the long-term care facility owner or the
27 director, as applicable, may apply to the Pulaski County Circuit Court to
28 enjoin any offer, request, invitation, agreement, or acquisition made in
29 contravention of this subchapter, or any related order issued by the director
30 or the director's designee, to enjoin the voting of any voting security so
31 acquired, to void any vote of a voting security already cast at any meeting
32 of shareholders, and for such other equitable relief as the nature of the
33 case and the interests of residents or the public health, safety, and welfare
34 may require.

35 (b) No lawsuit may be brought or maintained against the
36 Department of Human Services or any employee of the department in connection

1 with or related to the transfer of any long-term care facility.

2
3 20-10-2011. Reports.

4 At the time of any filing made under § 20-10-2005, and every
5 thirty (30) days after each filing made under § 20-10-2005, the Director of
6 the Department of Human Services shall provide to the Governor and to the
7 Attorney General a written report summarizing the status of the pending
8 application.

9
10 SECTION 2. Emergency Clause.

11 It is found and determined by the General Assembly of the State
12 of Arkansas that the change in ownership of long-term care facilities which
13 represent a significant number of long-term care Medicaid facility beds in
14 Arkansas should be subject to prior review and approval by the Director of
15 the Department of Human Services as it could directly affect the health,
16 safety, and welfare of long-term care facility residents and the public and
17 that no law of this state presently provides for such review and approval.
18 Therefore, an emergency is declared to exist and this act being immediately
19 necessary for the preservation of the public peace, health, and safety shall
20 become effective on:

21 (1) The date of its approval by the Governor;

22 (2) If the bill is neither approved nor vetoed by the
23 Governor, the expiration of the period of time during which the Governor may
24 veto the bill; or

25 (3) If the bill is vetoed by the Governor and the veto is
26 overridden, the date the last house overrides the veto.

27
28 /s/ Verkamp, et al
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