

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 H3/16/05

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 § 20-8-106 is amended to read as follows:

27 20-8-106. Health Services Program - Permits generally.

28 ~~(a)(1) From March 8, 1989, until June 1, 1989, there shall be no new~~
29 ~~home health care agencies or nursing homes, with the exception of~~
30 ~~intermediate care facilities for the mentally retarded with fifteen (15) or~~
31 ~~fewer beds and with the exception of nursing home applications under review~~
32 ~~by the Health Services Permit Agency on June 2, 1987, and except for nursing~~
33 ~~homes with thirty five (35) beds or fewer attached to or a part of hospitals~~
34 ~~located in cities or towns where no nursing home exists, provided applicants~~
35 ~~for such nursing homes must obtain a permit of approval from the proper~~
36 ~~authority pursuant to the provisions of this subchapter, nor shall there be~~



1 ~~any additional beds licensed for existing nursing homes or intermediate care~~
2 ~~facilities in this state. The Health Services Permit Commission may remove~~
3 ~~any or all of the moratoria anytime after June 1, 1988, provided the~~
4 ~~commission has duly adopted and promulgated standards for the review of the~~
5 ~~health facility for which the moratorium is removed.~~

6 ~~Nursing home applications under review by the agency on June 2, 1987, shall~~
7 ~~be considered under § 20-8-101 et seq. under updated standards on a county-~~
8 ~~by-county basis.~~

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

14 ~~(3) Nursing home applications under review by the agency on June~~
15 ~~2, 1987, shall be considered under the provisions of § 20-8-101 et seq. under~~
16 ~~updated standards on a county-by-county basis.~~

17 (1) No health facility shall operate unless all necessary
18 permits, licenses, and approvals for the facility have been obtained in
19 accordance with law.

20 (2) It is the responsibility of each applicant for a permit of
21 approval to establish the applicant's individual qualifications as well as
22 the qualifications of the facility to be permitted.

23 (b)(1) The alteration or renovation of a health facility having an
24 associated capital expenditure of less than five hundred thousand dollars
25 (\$500,000) for nursing homes and not resulting in additional bed capacity
26 shall not require a permit of approval; ~~however,~~.

27 (2)(A) However, the agency Health Services Permit Agency shall
28 not allow hospital acute care beds to be converted to or allow their license
29 classification to be changed to long-term care beds without going through the
30 permit of approval process. However, permits, legal title, and right of
31 ownership may be transferred to another entity with the approval of the
32 commission.

33 (B) The application for the permit of approval shall
34 include, but need not be limited to, such information as is necessary to
35 determine:

36 ~~(1)(i)~~ Whether the proposed project is needed or projected as

1 being necessary to meet the needs of the locale or area in terms of the
2 health care required for the population or geographic region;

3 ~~(2)(ii)~~ Whether the proposed project can be adequately staffed
4 and operated when completed;

5 ~~(3)(iii)~~ Whether the proposed project is economically feasible;
6 and

7 ~~(4)(iv)~~ Whether the project will foster cost containment through
8 improved efficiency and productivity.

9 (c)(1)(A) Approval of the Health Services Permit Agency to transfer a
10 health facility permit of approval is required.

11 (B)(i) The transfer, assignment, or other disposition of
12 the stock or voting rights of the owner of the health facility which results
13 in the ownership or control of more than ten (10%) percent of the stock or
14 voting rights of the health facility by a person, entity, or identified group
15 who did not own or control more than ten (10%) percent of the stock or voting
16 rights of the health facility prior to the transfer, assignment, or
17 disposition shall be deemed a transfer of a health facility permit of
18 approval.

19 (ii) The transferee of the stock or voting rights
20 shall submit an application for approval prior to the completion of the
21 transfer of stock or voting rights in accordance with this subsection (c).

22 (2) Prior to the transfer of a health facility permit of
23 approval or the deemed transfer of a permit as described in subdivision
24 (c)(1)(B) of this section, an application for approval shall be filed with
25 the agency by the transferee.

26 (3) The application for approval shall include, but not be
27 limited to, information needed by the agency to determine whether:

28 (A) Following the transfer of the permit of approval or
29 the transfer of stock or voting rights, the health facility will continue to
30 be able to meet the needs of the locale or area in terms of the health care
31 required for the population or geographic region;

32 (B) The health facility can be adequately staffed and
33 operated when the transfer of the permit of approval or transfer of stock or
34 voting rights is completed;

35 (C) The proposed transfer of the permit of approval or
36 transfer of stock or voting rights and operation of the health facility

1 following the transfer is economically feasible;

2 (D) The health facility will foster cost containment
3 through improved efficiency and productivity following the transfer of the
4 permit of approval or transfer of stock or voting rights; and

5 (E) Following the transfer of the permit of approval or
6 transfer of stock or voting rights the applicant can be expected to provide a
7 substantially consistent high level of care at the health facility based on:

8 (i) The facility's past operation and violation
9 history;

10 (ii) The Health Services Permit Commission's
11 assessment of the applicant's character and competence to operate the
12 facility, including a review of the applicant's experience, past performance
13 in operating a health care service, if any, and compliance with applicable
14 laws and practices pertinent to the applicant's professional experience;

15 (F) The acquiring party has terminated general liability
16 insurance or professional liability insurance, or both, covering any long-
17 term care facility that the acquiring party has previously acquired and, if
18 more than one (1) long-term care facility was previously acquired, which
19 long-term care facilities had general liability insurance or professional
20 liability insurance coverage in effect at the time of the acquisition; and

21 (G) Following the transfer of the permit of approval, the
22 acquiring party will obtain and maintain general liability insurance coverage
23 and professional liability insurance coverage in an amount not less than that
24 maintained by the current long-term care facility owner.

25 (d)(1) The agency by rule or order may exempt from the application
26 requirements in subsection (c) of this section the transfer of one (1) or
27 more permits of approval if:

28 (A) The permits of approval to be transferred in the
29 aggregate cover three hundred ninety-nine (399) or fewer beds in one (1) or
30 more health facilities;

31 (B) The transfer of the permits of approval is to occur in
32 a single transaction; and

33 (C) The agency determines that the application for
34 approval to transfer a permit of approval is not necessary or appropriate in
35 the public interest.

36 (2) Before any transfer of a permit of approval may be executed

1 as an exempt transfer under this subsection (d), the proposed transferee
2 shall file a proof of exemption with the agency containing the following:

3 (A) A statement of the grounds upon which the exemption is
4 claimed;

5 (B) The identity of and contact information for the current
6 permit holder;

7 (C) The location of the proposed facility or facilities to
8 be transferred;

9 (D) The number of beds authorized under the current
10 permit;

11 (E) If the time frames on the current permit need to be
12 extended;

13 (F) If the location of the health facility will be
14 transferred out of the city limits of the town or city where it is currently
15 located and whether the mayor and county judge have been notified of the
16 proposed move; and

17 (G) Information regarding the applicant, including the
18 applicant's contact information, organization and corporate structure, and
19 its ownership interest in or management of any other health facility in
20 Arkansas.

21 (3) Within ten (10) business days after the proof of exemption
22 is filed, the agency shall review the proof of exemption and notify the
23 applicant whether the proof of exemption is approved, denied, or deficient.
24 The proof of exemption shall be deemed approved if the agency does not notify
25 the applicant that it denied the proof of exemption or determined that the
26 proof of exemption was deficient.

27 (4) If the proof of exemption is deficient, the applicant shall
28 have a reasonable opportunity to correct the deficiencies.

29 (5) A deficient proof of exemption which has not been corrected
30 within a period of one hundred eighty (180) days after the initial filing
31 with the agency shall be deemed abandoned and considered withdrawn by the
32 applicant.

33 ~~(e)(e)(1) If the application is granted, the~~ The agency shall issue a
34 permit of approval, if it finds that the proposed project meets the criteria
35 for approval as set by the commission.

36 (2) If the application is denied, the:

1 (A) The agency shall send written notice of the denial to
2 the applicant which sets forth the criteria that the ~~proposed project~~
3 application failed to meet; and

4 (B) The applicant shall not perform any of the actions
5 that were denied.

6 ~~(d)~~(f) Any applicant or interested party seeking review of a final
7 agency decision regarding permits of approval, movement of beds, or transfer
8 of permits of approval shall file a written appeal for hearing before the
9 commission on an approved form within thirty (30) days of the receipt of the
10 agency decision.

11 ~~(e)~~(g) Appeals to the commission shall be conducted in accordance with
12 the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

13 (h) This section only applies to long-term care facilities located in
14 Arkansas.

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16 SECTION 2. EMERGENCY CLAUSE. It is found and determined by the
17 General Assembly of the State of Arkansas that the transfer of health
18 facility permits of approval without oversight and review may endanger the
19 health and safety of elderly or disabled Arkansans residing in long-term care
20 facilities; that requiring an approval process before a permit of approval is
21 transferred will ensure that the new operators of long-term care facilities
22 are best able to provide appropriate care to residents; and that this act is
23 necessary to enable the review process to begin immediately to prevent
24 unreviewed transfers from occurring. Therefore, an emergency is declared to
25 exist and this act being immediately necessary for the preservation of the
26 public peace, health, and safety shall become effective on:

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

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

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

33
34 /s/ Verkamp, et al