

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: H3/31/05 H4/4/05

A Bill

HOUSE BILL 2756

5 By: Representative J. Johnson
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7

For An Act To Be Entitled

9 AN ACT TO ESTABLISH THE SURVEY AGENCY TO CONDUCT
10 ALL RESTRAINT AND SECLUSION SURVEYS FOR THE
11 ARKANSAS INDIGENT MEDICAL CARE PROGRAM IN
12 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES IN
13 COMPLIANCE WITH § 9-28-407(a)(3); TO MAKE
14 TECHNICAL CORRECTIONS TO THE CHILD WELFARE AGENCY
15 LICENSING ACT; TO AUTHORIZE TRANSFERS OF CHILD
16 WELFARE AGENCY LICENSES; AND FOR OTHER PURPOSES.

Subtitle

17
18 AN ACT TO ESTABLISH THE SURVEY AGENCY
19 FOR RESTRAINT AND SECLUSION SURVEYS FOR
20 PSYCHIATRIC RESIDENTIAL TREATMENT
21 FACILITIES.
22
23
24

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

27 SECTION 1. Arkansas Code § 9-28-402(16), defining "psychiatric
28 residential treatment facility" for The Child Welfare Agency Licensing Act,
29 is amended to read as follows:

30 (16) "Psychiatric residential treatment facility" means a
31 residential child care facility in a nonhospital setting that provides a
32 structured, systematic, therapeutic program of treatment under the
33 supervision of a ~~psychiatrist~~ physician licensed by the Arkansas State
34 Medical Board who has experience in the practice of psychiatry, for children
35 who are emotionally disturbed and in need of daily nursing services,
36 ~~psychiatrist's~~ physician's supervision, and residential care, but who are not



1 in an acute phase of illness requiring the services of an inpatient
2 psychiatric hospital;

3
4 SECTION 2. Arkansas Code § 9-28-405(c), concerning rules for The Child
5 Welfare Agency Licensing Act, is amended to read as follows:

6 (c) The board shall have exclusive authority to promulgate rules and
7 regulations that:

8 (1) Promote the health, safety, and welfare of children in the
9 care of a child welfare agency;

10 (2) Promote safe and healthy physical facilities;

11 (3) Ensure adequate supervision of the children by capable,
12 qualified, and healthy individuals;

13 (4) Ensure appropriate educational programs and activities for
14 children in the care of a child welfare agency;

15 (5) Ensure adequate and healthy food service;

16 (6) Include procedures for the receipt, recordation, and
17 disposition of complaints regarding allegations of violations of this
18 subchapter, of the rules promulgated ~~thereunder~~ under this subchapter, or of
19 child maltreatment laws;

20 (7) Include procedures for the assessment of child and family
21 needs and for the delivery of services designed to enable each child to grow
22 and develop in a permanent family setting;

23 (8) Ensure that criminal record checks and central registry
24 checks are completed on owners, operators, and employees of a child welfare
25 agency as set forth in this subchapter; ~~and~~

26 (9) Require the compilation of reports and making those reports
27 available to the division when the board determines it is necessary for
28 compliance determination or data compilation; and

29 (10) Establish rules governing retention of licensing records
30 maintained by the division.

31
32 SECTION 3. Arkansas Code § 9-28-407(a)-(d), concerning licenses
33 required and issued under The Child Welfare Agency Licensing Act, is amended
34 to read as follows:

35 (a)(1) It shall be unlawful for any person, partnership, group,
36 corporation, association, or other entity or identifiable group of entities

1 having a coordinated ownership of controlling interest to operate or assist
2 in the operation of a child welfare agency that has not been licensed by the
3 Child Welfare Agency Review Board from licensing pursuant to this subchapter.

4 (2) This license shall be required in addition to any other
5 license required by law for all entities that fit the definition of a child
6 welfare agency and are not specifically exempted, except that no
7 nonpsychiatric residential treatment facility or agency licensed or exempted
8 pursuant to this subchapter shall be deemed to fall within the meaning of §
9 20-10-101(8) for any purpose.

10 (3) Any child welfare agency capacity licensed or permitted by
11 the board as of March 1, 2003, whether held by the original licensee or by a
12 successor in interest to the original licensee, is exempted from:

13 (A) Obtaining any license or permit from the Office of
14 Long-Term Care of the Division of Medical Services of the Department of Human
15 Services;

16 (B) Obtaining any permit from the Health Services Permit
17 Agency or the Health Services Permit Commission to operate at the capacity
18 licensed by the board as of March 1, 2003; and

19 (C) Obtaining any permit from the agency or the commission
20 to operate at any future expanded capacity serving only non-Arkansas
21 residents unless a permit is required by federal law or regulation.

22 (4) Any further expansion of capacity by a licensee of the board
23 shall require a license or permit from the office and the agency unless the
24 bed expansion is exempted under subdivisions (a)(3)(A)-(C) of this section.

25 (b)(1) It shall be unlawful for any person to falsify an application
26 for licensure, to knowingly circumvent the authority of this subchapter, to
27 knowingly violate the orders issued by the board, or to advertise the
28 provision of child care or child placement when not licensed under this
29 subchapter to provide those services, unless determined by the board to be
30 exempt ~~therefrom~~ from licensure under this subchapter.

31 (2) Any violation of this section shall constitute a Class D
32 felony.

33 (c)(1) Any person, partnership, group, corporation, organization,
34 association, or other entity or identifiable group of entities having a
35 coordinated ownership of controlling interest, desiring to operate a child
36 welfare agency shall first make application for a license or a church-

1 operated exemption for the facility to the board on the application forms
2 furnished for this purpose by the board.

3 (2) The ~~Division of Medical Services~~ division shall also furnish
4 the applicant with a copy of this subchapter and the policies and procedures
5 of the board at the time the person requests an application form. The child
6 welfare agency shall submit a separate application for license for each
7 separate physical location of a child welfare agency.

8 (d)(1) The ~~Division of Medical Services~~ division shall review,
9 inspect, and investigate each applicant to operate a child welfare agency and
10 shall present a recommendation to the board whether the board should issue a
11 license and what the terms and conditions of the license should be.

12 (2) The ~~Division of Medical Services~~ division shall
13 complete its recommendation within ninety (90) days after receiving a
14 complete application from the applicant. A complete application shall consist
15 of:

16 ~~(1)~~(A) A completed application form prepared and furnished
17 by the board;

18 ~~(2)~~(B) A copy of the articles of incorporation, bylaws,
19 and current board roster, if applicable, including names and addresses of the
20 officers;

21 ~~(3)~~(C) A complete personnel list with verifications of
22 qualifications and experience;

23 ~~(4)~~(D) Substantiation of the financial soundness of the
24 agency's operation; and

25 ~~(5)~~(E) A written description of the agency's program of
26 care, including intake policies, types of services offered, and a written
27 plan for providing health care services to children in care.

28

29 SECTION 4. Arkansas Code § 9-28-407(f), concerning application of
30 licenses under The Child Welfare Agency Licensing Act, is amended to read as
31 follows:

32 (f)(1) A license to operate a child welfare agency shall apply only to
33 the address and location stated on the application and license issued, and it
34 shall ~~not~~ be transferable from one (1) holder of the license to another or
35 from one (1) place to another.

36 (2) Whenever ownership of a controlling interest in the

1 operation of a child welfare agency is sold, the following procedures must be
2 followed:

3 ~~(1)(A)~~ The seller shall notify the division of the sale at
4 least thirty (30) days prior to the completed sale;

5 ~~(2)~~ ~~The buyer shall apply to the Division of Medical Services~~
6 ~~for a license to operate the child welfare agency at least thirty (30) days~~
7 ~~prior to the completed sale;~~

8 ~~(3)(B)~~ The seller shall remain responsible for the
9 operation of the child welfare agency until such time as the agency is closed
10 or a license is issued to the buyer;

11 ~~(4)(C)~~ The seller shall remain liable for all penalties
12 assessed against the child welfare agency which are imposed for violations or
13 deficiencies occurring ~~prior to the issuance~~ before the transfer of a license
14 to the buyer; ~~and~~

15 ~~(5)(D)~~ The buyer shall be subject to any corrective action
16 notices to which the seller was subject-; and

17 (E) The provisions of subsection (a) of this section,
18 including those provisions regarding obtaining licenses or permits from the
19 Office of Long-Term Care of the Division of Medical Services of the
20 Department of Human Services and regarding obtaining any permits from the
21 Health Services Permit Agency or the Health Services Permit Commission shall
22 apply in their entirety to the new owner of the Child Welfare Agency.

23

24 *SECTION 5. Arkansas Code Title 20, Chapter 77, Subchapter 1 is amended*
25 *to read as follows:*

26 20-77-121. Survey agency for psychiatric residential treatment
27 facilities of children.

28 (a) To the extent required by federal law, the Division of Medical
29 Services of the Department of Human Services shall designate a survey agency
30 to conduct restraint and seclusion surveys in psychiatric residential
31 treatment facilities for children as defined in § 9-28-402.

32 (b) No designation by the division shall act as a waiver of the
33 provisions of § 9-28-407(a)(3) or any other applicable law governing child
34 welfare agencies.

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36 /s/ J. Johnson