

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 8 General Assembly
3 Regular Session, 2005

A Bill

SENATE BILL 426

4
5 By: Senator Malone
6
7

For An Act To Be Entitled

9 AN ACT TO STREAMLINE PROCESSES FOR LONG-TERM CARE
10 FACILITY ADMINISTRATIVE APPEALS; AND FOR OTHER
11 PURPOSES.
12

Subtitle

13 AN ACT TO STREAMLINE PROCESSES FOR LONG-
14 TERM CARE FACILITY ADMINISTRATIVE
15 APPEALS.
16
17
18

19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
20

21 SECTION 1. Arkansas Code § 20-10-204(b) and (c), concerning notice of
22 violations by long-term care facilities, are amended to read as follows:

23 (b)(1) Each notice of violation shall be prepared in writing and shall
24 specify the exact nature of the classified violation, the statutory provision
25 or specific rule alleged to have been violated, the facts and grounds
26 constituting the elements of the classified violation, and the amount of
27 civil penalty or other administrative remedy, if any, ~~assessed~~ imposed by the
28 Director of the Department of Human Services.

29 (2)(A) The notice shall also inform the licensee of the right to
30 hearing under § 20-10-208 when remedies or civil penalties are imposed.

31 (B) Any hearing conducted under this chapter shall conform
32 to the Arkansas Administrative Procedure Act, § 25-15-201 et seq., and rules
33 of the Department of Human Services promulgated under that act.

34 ~~(c) The Department of Human Services shall provide a fair and~~
35 ~~impartial hearing officer for appeals.~~
36



1 SECTION 2. Arkansas Code § 20-10-208 is amended to read as follows:
2 20-10-208. Hearings.

3 (a)(1) A licensee may contest an assessment of a civil penalty or any
4 administrative remedy imposed by the Office of Long-Term Care of the Division
5 of Medical Services of the Department of Human Services by sending a written
6 request for hearing to the Director of the Department of Human Services. ~~The~~
7 ~~director shall designate a hearing examiner who shall preside over the case~~
8 ~~and make findings of fact and conclusions of law in the form of a~~
9 ~~recommendation to the director, who shall then review the case and make the~~
10 ~~final determination or remand the case to the hearing examiner for further~~
11 ~~findings of law or fact.~~

12 (2) Requests for hearings ~~must~~ shall be received by the ~~director~~
13 Director of the Department of Human Services within ~~ten (10) working~~ sixty
14 (60) days after receipt by the long-term care facility of the notice of
15 violation and the assessment of any civil penalty or any administrative
16 remedy imposed by the office.

17 (b)(1) The Director of the Department of Human Services shall assign
18 the appeal to a fair and impartial hearing officer who shall not be a full-
19 time employee of the Department of Human Services.

20 (2) The hearing officer shall preside over the hearing and make
21 findings of fact and conclusions of law in the form of a recommendation to
22 the Director of the Department of Human Services.

23 (3)(A) The Director of the Department of Human Services shall
24 review any recommendation and make the final decision.

25 (B) The Director of the Department of Human Services may
26 approve the recommendations or may for good cause:

27 (i) Reject and modify the recommendation in whole or
28 in part; or

29 (ii)(a) Remand the recommendation for further
30 proceedings or obtaining additional evidence.

31 (b) If the recommendation is remanded, the
32 hearing officer shall conduct further proceedings or obtain additional
33 evidence as directed by the Director of the Department of Human Services and
34 shall submit to the Director of the Department of Human Services an amended
35 recommendation.

36 (4)(A) If the Director of the Department of Human Services

1 rejects or remands the recommendation in whole or in part, he or she shall
 2 state in writing in the final agency decision the rationale for the rejection
 3 or remand.

4 (B) The statement shall include statutory, regulatory, or
 5 factual grounds or any combination of statutory, regulatory, and factual
 6 grounds for the rejection or remand.

7 (5) The Director of the Department of Human Services' approval
 8 or modification of the recommendation of the hearing officer shall be the
 9 final agency action under the Arkansas Administrative Procedure Act, § 25-15-
 10 201 et seq.

11 ~~(3)(c)(1)(A)~~ The Department of Human Services department shall
 12 commence the hearing within forty-five (45) days of receipt of the request
 13 for hearing, and the director shall issue a final decision within ten (10)
 14 working days after the close of the hearing the hearing officer shall notify
 15 the Director of the Office of Long-Term Care of the date, time, and place of
 16 the hearing.

17 (B) The notification shall be in writing and shall be sent
 18 at least twenty (20) days before the hearing date.

19 (C)(i) The licensee may agree in writing to waive the
 20 requirement that the department commence the hearing within forty-five (45)
 21 days.

22 (ii) If the licensee waives the time limit under
 23 subdivision (c)(1)(C)(i) of this section, the hearing officer shall commence
 24 the hearing at the time agreed to by the parties.

25 (2) The hearing officer shall issue a recommended decision
 26 within ten (10) working days after the close of the hearing or receipt of the
 27 hearing transcript, whichever is later.

28 (3) Unless the Director of the Department of Human Services acts
 29 on the recommendation of the hearing officer within sixty (60) days of
 30 receipt of the recommendation, the recommendation of the hearing officer
 31 shall be final.

32 (4) Assessments shall be paid to the Office of Long-Term Care
 33 office within ten (10) thirty (30) working days of receipt of the notice of
 34 violation or within ten (10) thirty (30) working days of receipt of the final
 35 determination by the director agency action in contested cases, unless the
 36 matter has been appealed to circuit court.

1 (5) Facilities failing to pay assessed civil penalties shall be
 2 subject to a corresponding reduction in the succeeding Medicaid vendor
 3 payment in lieu of nonpayment.

4 (d) Except to the extent that it is inconsistent with federal law or
 5 regulation, a written request for a hearing shall stay, until denied by the
 6 Director of the Department of Human Services, any enforcement action imposed
 7 by the office pending the hearing and the final decision of the Director of
 8 the Department of Human Services.

9 (e) Any party subject to appear before a hearing officer may appear
 10 and be heard at any proceeding prescribed in this section or may be
 11 represented by an attorney or other designated representative, or both.

12 (f)(1) Upon written request of a licensee, the department shall
 13 provide copies of all documents, papers, reports, and other information
 14 gathered through inspection or survey that relate to the matter being
 15 appealed.

16 (2) The disclosure shall be made no later than ten (10) working
 17 days before a scheduled hearing date or by the date specified by the hearing
 18 officer.

19 ~~(b)(1)(g)(1) Hearing examiners~~ The hearing officer retained by the
 20 department shall have the authority at the request of either party to
 21 subpoena witnesses and to require the production of documentary evidence.

22 (2) Upon failure of a person without lawful excuse to obey a
 23 subpoena or to give testimony, application may be made to the circuit court
 24 in the county in which the hearing is to be held for a court order compelling
 25 compliance.

26
 27 SECTION 3. Arkansas Code § 20-10-303 is repealed:

28 ~~20-10-303. Authority to hear appeals.~~

29 ~~(a) The Long Term Care Facility Advisory Board created in § 20-10-301~~
 30 ~~shall have the power and authority to hear all appeals by licensed long term~~
 31 ~~care facilities, long term care administrators, or other parties regulated by~~
 32 ~~the Office of Long Term Care with regard to licensure and certification.~~

33 ~~(b)(1) Any long term care facility or party regulated by the office~~
 34 ~~seeking a hearing before the board shall submit a request in writing to the~~
 35 ~~chairman of the board. The written request, until denied by the chairman,~~
 36 ~~shall stay the action of the appeal pending the hearing and final decision.~~

1 ~~(2) Upon receiving a written request for a hearing from any~~
2 ~~party regulated by the office, the chairman shall place the request on the~~
3 ~~agenda to be considered in a hearing at the next scheduled or called meeting~~
4 ~~of the board and may assign the appeal to an impartial hearing officer who~~
5 ~~shall not be a full-time employee of the Department of Human Services.~~

6 ~~(3) The chairman shall notify in writing the party making the~~
7 ~~request to the Director of the Office of Long-Term Care of the date, time,~~
8 ~~and place of the hearing. This notification by the chairman shall be in~~
9 ~~writing and shall be sent at least seven (7) working days prior to the~~
10 ~~hearing date.~~

11 ~~(c) The chairman and the hearing officer shall both have authority to~~
12 ~~issue subpoenas at the request of any party to an appeal.~~

13 ~~(d) The hearing officer may preside over the appeal, which shall be~~
14 ~~conducted in accordance with the Arkansas Administrative Procedure Act, § 25-~~
15 ~~15-201 et seq., and make specific findings of fact and conclusions of law in~~
16 ~~the form of recommendations to the board.~~

17 ~~(e) Any party subject to appear before the board may appear and be~~
18 ~~heard at any proceeding prescribed herein or may choose to be represented by~~
19 ~~an attorney at law or through other designated representatives.~~

20 ~~(f)(1) All decisions rendered by the board shall be submitted to the~~
21 ~~Deputy Director of the Division of Medical Services of the Department of~~
22 ~~Human Services, subject to his review and final determination. The deputy~~
23 ~~director may, for good cause, approve, reject, or remand the decisions to the~~
24 ~~board for further proceedings.~~

25 ~~(2) Any rejection of the decisions of the board must clearly~~
26 ~~state in writing the basis for the rejection, with the statutory and~~
27 ~~regulatory grounds for the rejection, and must be filed as the final decision~~
28 ~~of the agency.~~

29 ~~(g) The deputy director must act on a decision of the board within~~
30 ~~thirty (30) days of its decision or else the decision of the board shall be~~
31 ~~final.~~

32
33 SECTION 4. Arkansas Code § 20-10-407(b), concerning denial,
34 revocation, and suspension of licenses by the Office of Long-Term Care, is
35 amended to read as follows:

36 (b) Any denial of the issuance or renewal of a long-term care facility

1 license or a long-term care facility administrator's license or the
2 revocation or suspension of the license shall be after notice and hearing
3 before ~~the Long Term Care Facility Advisory Board as provided in § 20-10-303~~
4 an impartial hearing officer as provided in § 20-10-208 and shall be subject
5 to judicial review as provided in § 20-10-212.

6
7 SECTION 5. Arkansas Code § 20-10-1408(c), concerning penalties for
8 nursing facilities that miss the required staffing quotas, is amended to read
9 as follows:

10 (c)~~(1)~~ Appeals from the imposition of any ~~monetary penalty~~ remedy
11 imposed under this subchapter shall be made pursuant to § 20-10-208.

12 ~~(2) Appeals from the imposition of a denial of new admissions~~
13 ~~under this subchapter shall be made pursuant to § 20-10-303.~~

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36