

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
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As Engrossed: H4/21/21
A Bill

SENATE BILL 595

By: Senator D. Wallace
By: Representative Ladyman

For An Act To Be Entitled

AN ACT TO CLARIFY THAT THE DEPARTMENT OF HUMAN SERVICES IS THE AGENCY THAT REGULATES LONG-TERM CARE FACILITIES; TO REMOVE REFERENCES TO THE OFFICE OF LONG-TERM CARE; AND FOR OTHER PURPOSES.

Subtitle

TO CLARIFY THAT THE DEPARTMENT OF HUMAN SERVICES IS THE AGENCY THAT REGULATES LONG-TERM CARE FACILITIES; AND TO REMOVE REFERENCES TO THE OFFICE OF LONG-TERM CARE.

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

SECTION 1. Arkansas Code § 20-10-105(a), concerning exclusions and ineligibility for reimbursement of residential care facilities, is amended to read as follows:

(a) Any facility that meets the definition of a residential care facility as defined by the ~~Office of Long-Term Care~~ Department of Human Services that has not been licensed or certified by the appropriate state agency or has not received a permit of approval from the Health Services Permit Agency shall not be eligible for any reimbursement from state revenues for any services that ~~it~~ the facility offers.

SECTION 2. Arkansas Code § 20-10-112(a)(4), concerning the prohibition on the use of the results of a survey, inspection, or investigation in an



advertisement, is amended to read as follows:

(4) A statement that the advertisement is not authorized or endorsed by ~~the Office of Long Term Care~~ of the Department of Human Services or any other government agency.

SECTION 3. Arkansas Code § 20-10-407(a), concerning denial, revocation, or suspension of the license of a long-term care facility administrator, is amended to read as follows:

(a) The ~~Office of Long Term Care~~ Department of Human Services may refuse to issue or renew a long-term care facility administrator's license or may revoke or suspend the license of a long-term care facility administrator if the ~~office~~ department finds that the applicant or licensee does not qualify for licensure or has violated § 20-10-101(1)-(6), § 20-10-203(b), § 20-10-212, ~~§§ 20-10-301—20-10-303 [repealed]~~, § 20-10-402, § 20-10-403, § 20-10-405(b), § 20-10-406, and this section or rules of the ~~office~~ department relating to the proper administration and management of a long-term care facility.

SECTION 4. Arkansas Code § 20-10-704 is amended to read as follows:
20-10-704. Training program.

The ~~Office of Long Term Care~~ Department of Human Services shall establish a training program to be completed by all aides in long-term care facilities who provide personal care to residents.

SECTION 5. Arkansas Code § 20-10-705(a), concerning rules under the Long-Term Care Aide Training Act, is amended to read as follows:

(a) The ~~Office of Long Term Care~~ Department of Human Services shall promulgate rules necessary to implement an aide training program for all long-term care facilities in this state, to prescribe in-service training programs, and to enforce compliance with those programs.

SECTION 6. Arkansas Code § 20-10-1003(b) and (c), concerning residents' rights under the Omnibus Long-Term Care Reform Act of 1988, are amended to read as follows:

(b) The ~~Office of Long Term Care~~ Department of Human Services shall promulgate through rules a residents' bill of rights, which shall include

provisions addressing each of the following as a minimum statement of residents' rights. The ~~office~~ department may place restrictions or limitations on any right listed in this subsection when ~~that~~ the restriction or limitation is necessary to protect the health, welfare, or safety of the resident or other residents:

- (1) The right to exercise all constitutional and legal rights;
- (2) The right to a safe and clean environment;
- (3) The right to dignity and respect;
- (4) The right to nursing and medical care;
- (5) The right to personal cleanliness;
- (6) The right to choose at ~~their~~ the resident's own expense a personal physician and pharmacist;
- (7) The right to have knowledge of and input into medical treatment, records, and plan of care;
- (8) The right to refuse experimental treatment;
- (9) The right to confidentiality of medical records;
- (10)(A) The right to be free from physical or mental abuse, corporal punishment, involuntary seclusion, and any physical or chemical restraints imposed for purposes of discipline or convenience and not required to treat the resident's medical symptoms.
 - (B) Restraints may be imposed only to ensure the physical safety of the resident or of other residents and only upon the written order of a physician that specifies the duration for which and circumstances under which the restraints are to be used, except for emergency conditions until such an order could reasonably be obtained;
- (11) The right to exercise civil liberties, including the right to vote;
- (12) The right to the free exercise of religion, including the right to rely on spiritual means for treatment;
- (13) The right to privacy, including the right to refuse being photographed by persons other than those licensed under the Arkansas Medical Practices Act, § 17-95-201 et seq., § 17-95-301 et seq., and § 17-95-401 et seq.;
- (14) The right to personal clothing and belongings;
- (15) The right to personal financial information; and
- (16) The right to direct whether to receive nutrition or

hydration.

(c) The ~~office~~ department shall prescribe a procedure to be followed by all long-term care facilities for prompt reporting of violations of residents' rights and resolution of grievances.

SECTION 7. Arkansas Code § 20-10-1003(g), concerning residents' rights under the Omnibus Long-Term Care Reform Act of 1988, is amended to read as follows:

(g) The ~~office~~ department shall prescribe through rules a synopsis of the residents' bill of rights which shall be posted at all times in a conspicuous location accessible to residents and the public in the facility.

SECTION 8. Arkansas Code § 20-10-1004(a) and (b), concerning prohibiting new admissions under the Omnibus Long-Term Care Reform Act of 1988, are amended to read as follows:

(a) The ~~Director of the Office of Long-Term Care~~ Department of Human Services may prohibit new admissions to a long-term care facility not in compliance due to a Class A violation until the ~~Office of Long-Term Care~~ department determines the facility is in substantial compliance.

(b) If the ~~director~~ department determines to prohibit admissions to a facility, ~~he or she~~ the department shall notify the administrator of the facility in writing, by certified mail or other means ~~which~~ that gives actual notice, that the facility is prohibited from admitting any new residents due to a Class A violation and that the prohibition shall continue until the ~~office~~ the department makes a determination that the facility has corrected the deficiency and is in substantial compliance.

SECTION 9. Arkansas Code § 20-10-1005(a), concerning the procedure for transfer or discharge of residents under the Omnibus Long-Term Care Reform Act of 1988, is amended to read as follows:

(a) The ~~Office of Long-Term Care~~ Department of Human Services shall prescribe through rule the procedure for transfer or discharge of residents to be followed by long-term care facilities. The procedure shall include:

(1) Provisions for a written notice to be furnished to the resident, sponsor, and other appropriate parties thirty (30) days before any involuntary transfer or discharge and for rules setting forth the following

circumstances for which the written notice need not be furnished:

(A) The transfer or discharge is necessary to meet the resident's welfare, and the resident's welfare cannot be met in the facility;

(B) The transfer or discharge is appropriate because the resident's health has improved sufficiently so that the resident no longer needs the services provided by the facility;

(C) The safety of individuals in the facility is endangered;

(D) The health of individuals in the facility would otherwise be endangered;

(E) The resident has failed, after reasonable and appropriate notice, to pay or to have paid under state-administered programs on the resident's behalf an allowable charge imposed by the facility for an item or service requested by the resident and for which a charge may be imposed consistent with federal and state laws, rules, and regulations; or

(F) The facility ceases to operate;

(2)(A) An appeals process for residents objecting to an involuntary transfer or discharge ~~which~~ that places the burden of proof for justification of the transfer or discharge on the facility.

(B) The appeals process for objections to transfer or discharge shall include provisions for the resident or sponsor, within seven (7) days upon receipt of the written notice of transfer or discharge, to file a written objection to the transfer.

(C) Unless otherwise agreed to by the parties:

(i) A hearing shall be scheduled within fourteen (14) days following the filing of the objection; and

(ii) A final determination shall be rendered within seven (7) days following the hearing; and

(3) The contents of the written notice, including a statement in clear and concise language of the ~~appeal~~ appeals process to be followed by the resident and the time periods in which:

(A) The resident must request an appeal;

(B) The appeal must be heard; and

(C) The earliest date a transfer would be allowed if the decision is against the resident.

SECTION 10. Arkansas Code § 20-10-1005(e), concerning the procedure for transfer or discharge of residents under the Omnibus Long-Term Care Reform Act of 1988, is amended to read as follows:

(e) Failure to comply with the transfer or discharge procedures as prescribed by the ~~office~~ department shall be considered a Class B violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

SECTION 11. Arkansas Code § 20-10-1006(a), concerning residents' councils, staff coordinators, and family councils under the Omnibus Long-Term Care Reform Act of 1988, is amended to read as follows:

(a) The ~~Office of Long-Term Care~~ Department of Human Services shall prescribe through rule the establishment of a residents' council within each long-term care facility. The residents' council's duties shall include, ~~but~~ need not be limited to without limitation:

(1) Review of procedures of the facility for implementation of residents' rights;

(2) Making recommendations for changes or additions ~~in~~ to the facility's policies and procedures, including programming;

(3) Representing residents in their complaints to the ~~office~~ department or any other person or agency; and

(4) Assisting in early identification of problems and orderly resolution of problems.

SECTION 12. Arkansas Code § 20-10-1006(c), concerning residents' councils, staff coordinators, and family councils under the Omnibus Long-Term Care Reform Act of 1988, is amended to read as follows:

(c)(1) The ~~office~~ department shall prescribe rules ~~which~~ that encourage the establishment of family councils for residents' families to meet in the facility with the families of other residents.

(2) The ~~office~~ department shall require each facility to inform residents' families of their right to establish a family council within the facility.

SECTION 13. Arkansas Code § 20-10-1006(d)(1), concerning residents' councils, staff coordinators, and family councils under the Omnibus Long-Term

Care Reform Act of 1988, is amended to read as follows:

(d)(1) Failure to comply with the requirement of establishment and operation of a residents' council as prescribed by the ~~office~~ department shall be considered a Class C violation under § 20-10-205 for which civil penalties set forth in § 20-10-206 may be imposed.

SECTION 14. Arkansas Code § 20-10-1304(a)(1)(B), concerning implementation of the Nursing Home Resident and Employee Immunization Act of 1999, is amended to read as follows:

(B) The ~~Office of Long Term Care~~ Department of Human Services shall be granted authority to enforce the rules.

SECTION 15. Arkansas Code § 20-10-1505 is amended to read as follows:
20-10-1505. Standards of care.

The ~~Office of Long Term Care~~ Department of Human Services shall establish and promulgate minimum standards for the care and treatment of persons with Alzheimer's disease and other dementia in Alzheimer's special care units.

SECTION 16. Arkansas Code § 20-10-1803 is amended to read as follows:
20-10-1803. Requirements.

(a)(1) ~~No later than six (6) months from April 13, 2001, each~~ Each nursing facility or nursing home shall submit for approval to the ~~Office of Long Term Care~~ Department of Human Services plans prepared by a licensed architect, engineer, electrician, or individual deemed qualified by the manufacturer of the generator for the installation of an emergency generator sufficient to provide:

(A)(i) For existing facilities, power to critical systems for a period of no less than forty-eight (48) continuous hours in the event of interruption of normal power supplies.

(ii) However, nursing facilities are not required to provide heating or cooling to areas not designated and approved as areas of refuge; and

(B)(i) For facilities constructed after April 13, 2001, power to all systems in the entire nursing facility that require electric power for operation for a period of no less than forty-eight (48) continuous

hours in the event of interruption of normal power supplies+.

~~(i)~~(ii) Facilities constructed after April 13, 2001, are not required to provide power to air conditioning systems to residents' rooms+~~and~~.

~~(ii)~~(iii) Facilities constructed after April 13, 2001, are required to provide power to air conditioning systems for areas of refuge.

(2) ~~By November 1, 2002, each~~ Each facility shall either:

(A) Have the emergency generator installed and functioning; or

(B)(i) Have appropriate access for an emergency generator to be installed and functioning and have signed a lease agreement ensuring that the facility will have an approved emergency generator installed and functioning within eight (8) hours of an emergency electrical outage.

(ii) However, facilities shall provide emergency power to life-sustaining equipment and life-support equipment and to exit lighting immediately upon loss of normal or regular power supplies.

(3) If the ~~office~~ department determines that a plan does not meet the requirements of this subchapter:

(A) The ~~office~~ department shall notify the facility in writing that the plan is unacceptable and shall state the specific deficiencies in the plan; and

(B)(i) The facility shall submit a revised plan to the ~~office~~ department within sixty (60) days of the date of the written notice.

(ii) The revised plan shall correct the deficiencies listed in the written notice to the ~~office~~ department.

(4)(A) If a facility does not agree with the determination by the ~~office~~ department that a plan is unacceptable, the facility may appeal the determination pursuant to § 20-10-303 [repealed].

(B) However, the filing of an appeal shall not stay the requirements under subdivision (a)(2) of this section.

(b)(1) At least one (1) time a year, the facility shall have the system tested by a licensed engineer or other individual deemed qualified by the manufacturer of the generator to ensure that the system will operate as required in the event of loss of normal power.

(2) The facility shall retain a copy of the statement of the

qualified professional attesting to the fitness of the system until the next licensure survey by the ~~office~~ department.

(c)(1) The facility shall start the emergency generator at least one (1) time each month and shall ensure that the generator remains in proper operating condition.

(2) The facility shall perform all recommended and required maintenance and tests on the emergency system as specified by the manufacturer of the system or as recommended by the person or entity performing the installation.

(3) Until the next licensure survey by the ~~office~~ department, the facility shall record and maintain a log of all maintenance performed by the facility and of each monthly start-up and the operating condition of the generator at each monthly start-up.

(d) Unless otherwise specified in this subchapter, the installation and maintenance of the generator shall meet the requirements specified in National Fire Protection Association publications.

SECTION 17. Arkansas Code § 20-10-1804(a) and (b), concerning penalties under the Long-Term Care Facilities Emergency Generator Act of 2001, are amended to read as follows:

(a)(1) If a nursing facility or nursing home fails to comply with this subchapter, the following penalties may be applied to the facility:

~~(1)(A)~~ A fine not to exceed five thousand dollars (\$5,000) may be assessed by the ~~Office of Long-Term Care~~ Department of Human Services for each month in which the facility fails to comply with any provision of this subchapter;

~~(2)(A)(B)(i)~~ A fine not to exceed ten thousand dollars (\$10,000) may be assessed by the ~~office~~ department for each calendar day during which a facility lacks electrical power if the outage continues for more than eight (8) consecutive hours.

~~(B)(ii)~~ However, the fine may be imposed if the facility fails to provide emergency power for life-sustaining equipment or life-support equipment and to exit lighting immediately upon loss of normal or regular power supplies;

~~(3)(C)~~ In addition to any fine or other penalty, the facility may be prohibited from admitting new residents until the facility is in

compliance with the requirements of this subchapter, as determined by the ~~office~~ department; and

~~(4)(D)~~ A fine not to exceed ten thousand dollars (\$10,000) may be assessed by the ~~office~~ department for each new admission that occurs during a period in which new admissions are prohibited~~+~~.

~~(5)(2)~~ Appeals from the imposition of any monetary penalty under this subchapter shall be made pursuant to § 20-10-208~~+~~ and.

~~(6)(3)~~ Appeals from the imposition of a denial of new admissions under this subchapter shall be made pursuant to § 20-10-303 [repealed].

(b) Penalties allowed under this subchapter may be waived by the ~~office~~ department for any existing facility that is scheduled to be replaced by a new facility ~~which~~ that is under construction as of June 1, 2002.

SECTION 18. Arkansas Code § 20-10-1906(e), concerning scheduling informal dispute resolution hearings and submission of documentary evidence, is amended to read as follows:

(e)(1) If the request for an informal dispute resolution hearing does not include a request by the long-term care facility for a hearing at which the long-term care facility may appear before the impartial decision maker, or upon agreement of the long-term care facility and the ~~Office of Long-Term Care~~ Department of Human Services, the impartial decision maker may conduct the hearing by telephone conference call or by a review of documentary evidence submitted by the parties.

(2)(A) If the informal dispute resolution hearing is conducted by record review, the impartial decision maker may request, and the parties shall provide, a written statement setting forth the parties' positions for accepting, rejecting, or modifying each deficiency in dispute.

(B) The written statement shall specify the documentary evidence that supports the position of each party for each deficiency in dispute.

(C) The long-term care facility shall provide its written statement to the impartial decision maker and the ~~office~~ Department of Human Services.

(D) The ~~office~~ Department of Human Services shall then provide its written statement in rebuttal to the impartial decision maker and the long-term care facility.

SECTION 19. Arkansas Code § 20-10-1907(a), concerning the conduct of informal dispute resolution hearings for long-term care facilities, is amended to read as follows:

(a) Unless the long-term care facility chooses another order of presentation of arguments:

(1) The ~~Office of Long-Term Care~~ Department of Human Services shall present the initial arguments at the hearing; and

(2) After the ~~office~~ Department of Human Services completes its arguments, the long-term care facility shall present its arguments.

SECTION 20. Arkansas Code § 20-10-1907(f), concerning the conduct of informal dispute resolution hearings for long-term care facilities, is amended to read as follows:

(f) Only employees of the ~~office~~ Department of Human Services may appear or participate at the hearing for or on behalf of the ~~office~~ Department of Human Services.

SECTION 21. Arkansas Code § 20-10-1907(i)(2), concerning the conduct of informal dispute resolution hearings for long-term care facilities, is amended to read as follows:

(2) The ~~office~~ Department of Human Services shall review the reports under subdivision (i)(1) of this section and shall:

(A) Determine what patterns of sustained and overturned deficiencies exist; and

(B) Evaluate the training process to address the identified patterns.

SECTION 22. Arkansas Code § 20-10-2004(a), concerning licensure under the Unlicensed Long-Term Care Facilities Act, is amended to read as follows:

(a) Any assisted living facility or residential care facility composed of a building or buildings, section, or distinct part of a building, whether operated for profit or not, shall be licensed as a long-term care facility by the ~~Office of Long-Term Care~~ Department of Human Services if the facility:

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

- (2) Provides meals or other congregate services; and
- (3) Either:
 - (A) Provides supervision of residents; or
 - (B) Offers or provides assistance with activities of daily living, including, ~~but not limited to~~ without limitation:
 - (i) Eating;
 - (ii) Bathing;
 - (iii) Dressing;
 - (iv) Grooming;
 - (v) Ambulating;
 - (vi) Toileting; or
 - (vii) Taking medications.

SECTION 23. Arkansas Code § 20-10-2005(d), concerning existing unlicensed facilities under the Unlicensed Long-Term Care Facilities Act, is amended to read as follows:

(d) ~~The Office of Long-Term Care~~ Department of Human Services shall report to the Health Services Permit Agency when a facility has been licensed without a state permit of approval under this section.

SECTION 24. Arkansas Code Title 25, Chapter 10, Subchapter 1, is amended to add an additional section to read as follows:

25-10-145. Surveys conducted by Department of Human Services.

(a) As used in this section, "survey" means any process by which compliance with federal and state law and rules applicable to a facility or program provider is determined.

(b) The Department of Human Services, through the Division of Provider Services and Quality Assurance, is responsible for:

(1) Certifying, licensing, and surveying long-term care providers, Medicaid providers, substance abuse providers, and other programs or providers licensed by the department;

(2) Conducting quality assurance activities to review outcomes, monitor compliance, and promote workforce development; and

(3) Referring issues found by the department to divisions within the department or state agencies as necessary to comply with federal or state laws or rules, including without limitation to address compliance issues

found by the department.

(c) The scope of a survey or audit conducted by the department under § 20-46-701 et seq. shall be limited to determining whether a facility or program provider is in compliance with the applicable federal and state laws and rules.

(d) The department shall promulgate rules necessary for facility or program provider surveys conducted by the department, which shall include without limitation provisions concerning:

- (1) Conducting entrance and exit conferences;
- (2) Access to records of a facility or program provider;
- (3) Corrective action plans; and
- (4) Timelines for completion of a survey.

/s/D. Wallace