

Hall of the House of Representatives
83rd General Assembly - Regular Session, 2001
Amendment Form

Subtitle of House Bill No. 1635

"TO CREATE WITHIN THE DEPARTMENT OF HUMAN SERVICES AN ASSISTED
LIVING PROGRAM FOR THE STATE OF ARKANSAS; TO ALLOW RESIDENTIAL CARE
FACILITIES TO CONVERT TO ASSISTED LIVING FACILITIES."

Amendment No. 2 to House Bill No. 1635.

Amend House Bill No. 1635 as originally introduced:

Delete sections 1 through 10 and substitute the following:

SECTION 1. Title.

This act shall be known as "The Arkansas Assisted Living Act".

SECTION 2. Purpose and intent.

(a) The purpose of this act is to:

(1) Promote the availability of appropriate services for elderly persons and adults with disabilities in the least restrictive and most homelike environment;

(2) Encourage the development of facilities that promote the dignity, individuality, privacy, and decision-making ability of such persons;

(3) Provide for the health, safety, and welfare of residents of facilities offering assisted living services in the state;

(4) Promote continued improvement of such facilities;

(5) Include residential care facilities in the assisted living program

(6) Encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes.

(b) The General Assembly recognizes that:

(1) Facilities offering assisted living services are a necessary part of the continuum of long-term care in the State of Arkansas; and

(2) Facilities offering assisted living services should be operated and regulated as residential environments with supportive services and not as medical or nursing facilities;

(3) The services available in these facilities, either directly or through contract or agreement, are intended to help residents remain as independent as possible; and

(4) Residential care facilities have been providing many assisted living services for years and should be allowed to participate in the new assisted living program

SECTION 3. Definitions.

For purposes of this act:

(1)(A) "Assisted living facility" means any building or buildings, section or distinct part of a building, boarding home, home for the aged, or other residential facility, whether operated for profit or not, which undertakes through its ownership or management to provide assisted living services for a period exceeding twenty-four (24) hours to more than three (3) adult residents of the facility who are not relatives of the owner or administrator;

(B) "Assisted living facility" includes those facilities which provide assisted living services either directly or through contractual arrangements or which facilitate contracting in the name of residents;

(2) "Assisted living program" means a program of assisted living services;

(3) "Assisted living services" means housing, meals, laundry, socialization, transportation, one or more personal services, and limited nursing services;

(4) "Department" means the Department of Human Services and its divisions and offices;

(5)(A) "Limited nursing services" means acts that may be performed by licensed personnel while carrying out their professional duties, but limited to those acts that the department specifies by rule;

(B) Acts which may be specified by rule as allowable limited nursing services shall be for persons who meet the admission criteria established by the department for facilities offering assisted living services, shall not be complex enough to require twenty-four (24) hour nursing supervision and may include such services as the application and care of routine dressings, and care of casts, braces, and splints;

(6) "Person" means an individual, partnership, association, corporation or other entity;

(7)(A) "Personal services" means assistance with or supervision of the activities of daily living and self-administration of medication and other similar services as the department may define by rule; and

(B) "Personal services" shall not be construed to mean the provision of medical, dental, alcohol and drug abuse treatment, or mental health services; and

(8) "Twenty-four (24) hour nursing" means services that are ordered by a physician for a resident whose condition requires the supervision of a physician and continued monitoring of vital signs and physical status and whose condition is medically complex enough to require on-site nursing supervision on a twenty-four (24) hour per day basis.

SECTION 4. Assisted Living Program

(a) The department is directed to establish an Assisted Living Program for adults, including those who meet the medical necessity determination for nursing facility care, provided, however, that such individuals cannot have conditions that require twenty-four (24) hour nursing.

(b)(1) The department shall promulgate rules and regulations not inconsistent with the provisions of this act as it shall deem necessary or desirable to properly and efficiently carry out the purposes and intent of this act.

(2) The regulations, including documentation, shall take into account the congregate nature of assisted living as opposed to individual settings, and the regulations shall include, but not be limited to:

(A) Fire, health, and life safety codes;

(B) Physical plant requirements, including space requirements for housing, toilet facilities and related items;

(C) Staffing requirements; and

(D) Services requirements.

(c)(1) No resident shall be permitted to remain in an assisted living facility if his condition requires twenty-four (24) hour nursing care or other services that an assisted living facility is not authorized by law to provide.

(2) This prohibition shall apply even if the resident is willing to enter into an agreement to relieve the facility of responsibility or otherwise manage the risk.

(d) Residential care facilities licensed or holding a permit of approval as of the effective date of this act and subsequent purchasers shall, upon application, be licensed as assisted living facilities, provided:

(1) The facility shall provide a small refrigerator in each resident's room except as otherwise provided by regulation;

(2) The facility shall provide a microwave oven in each resident's room except as otherwise provided by regulation;

(3) The facility meets minimum space requirements for resident rooms of one hundred fifty (150) square feet per person or two hundred thirty (230) square feet for two (2) persons sharing a room exclusive of entryway, closet and bathroom or one hundred (100) square feet per person or one hundred eighty (180) square feet for two (2) persons if the room has a half or full bath or if there is a shared bathroom between two (2) rooms;

(4) The application conforms to all other assisted living regulations, except as provided in this act; and

(5) Before obtaining the assisted living license, the residential care facility has no more than two (2) Class A or Class B violations pursuant to Arkansas Code 20-10-205 within the previous six (6) months.

(e) Residential care facilities which choose to become assisted living facilities under subsection (d) shall not be required to meet physical plant or other physical amenities requirements beyond that required for residential care facilities as of January 1, 2001, except as provided in subsection (d).

(f) Assisted living regulations promulgated by the department shall be reasonable and shall not have the effect of excluding residential care facilities from entering the program provided they meet the requirements of this act.

(g)(1) The department shall take all actions necessary to develop a home and community-based care waiver application in accordance with Section 1915(c) of the Social Security Act.

(2) The waiver application shall seek federal financial participation to increase access to services in assisted living facilities by raising Medicaid income and resource limits to the maximum eligibility level of other home and community-based waivers in effect.

(3) The waiver application shall seek permission to serve a minimum of one thousand (1,000) persons at a time, and shall be submitted to the Health Care Financing Administration by June 30, 2001.

(4) The department's implementation of the waiver shall be reasonable and shall not have the effect of excluding residential care facilities which have become assisted living facilities under the provisions of this act.

(h)(1) Residential care facilities that choose not to become assisted living facilities will be permitted to continue participating in the Medicaid personal care program.

(2) If an assisted living facility has Medicaid residents who are not in the waiver program but could qualify for non-waiver Medicaid services, then the facility shall be permitted to provide Medicaid personal care for those residents.

(i) Assisted living services may be provided directly or through contractual arrangement.

SECTION 5. Fees.

(a) The department is authorized to charge fees which shall be paid by assisted living facilities to cover administrative costs associated with licensing, inspection and the regulation of assisted living facilities.

(b) The department shall promulgate rules and regulations necessary for charging administrative fees.

SECTION 6. Reimbursement.

For Medicaid eligible clients, the department shall reimburse assisted living facilities on a per diem basis in accordance with approval for per diem reimbursement from the Health Care Financing Administration.

SECTION 7. Licensure.

(a)(1) Each assisted living facility in the State of Arkansas shall first obtain a license to operate from the department.

(2) The department shall promulgate rules and regulations for the licensure and operation of assisted living facilities.

(b) Any person establishing, conducting, managing, or operating an assisted living facility within the meaning of this act, or using the term "assisted living" to promote their services, without first obtaining an assisted living license shall be guilty of a Class A misdemeanor and upon conviction shall be subject to the penalties prescribed for a Class A misdemeanor. Provided, however, that residential care facilities licensed or holding a permit of approval as of the effective date of this act may use the term "assisted living" to promote their services.

(c) Each day an assisted living facility shall operate after a first conviction shall be considered a Class D felony and the person establishing, conducting, managing, or operating an assisted living facility upon conviction shall be subject to the penalties prescribed for a Class D felony.

SECTION 8. Limited Licensure Option.

Facilities licensed as of the effective date of this act and subsequent purchasers have the option of converting all or part of the facility to assisted living under section 4(d) or choosing to remain licensed as residential care facility.

SECTION 9. Permit of Approval.

(a) Facilities offering assisted living services must obtain a permit

of approval. Provided, however, that permits of approval held by residential care facilities as of the effective date of this act, or held by subsequent purchasers of those facilities, shall also be considered permits of approval for assisted living without further action. However, residential care facilities that choose to offer assisted living services are not exempted from assisted living licensure requirements except as provided in Section 4.

(b) Provided, further, that in order to take advantage of a Robert Wood Johnson Foundation grant, one (1) new facility chosen by the department may serve as a pilot project without the necessity of a permit of approval. This facility shall be exempt from the permit of approval process provided that in 2001 it is awarded funding from the Coming Home Project and tax credits from the Arkansas Development Finance Authority. The facility shall have no more than sixty (60) beds and shall serve a population a majority of which is low-income as defined by the federal Department of Housing and Urban Development. The pilot project facility must still meet all other licensure requirements. The Coming Home Project means the Robert Wood Johnson Foundation/NCB Development Corporation grant.

SECTION 10. EMERGENCY CLAUSE. It is hereby found and determined by the Eighty-third General Assembly that because of eligibility rules in the state's Medicaid program many low to moderate income citizens are being prevented from accessing the most appropriate health care setting; that assisted living is being underutilized in Arkansas; that the current paperwork burden in the Medicaid personal care program discourages participation by Medicaid providers; and that until this situation is changed, the citizens will be deprived of access to appropriate health care. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health and safety shall become effective on the date of its approval by the Governor. If the bill is neither approved nor vetoed by the Governor, it shall become effective on the expiration of the period of time during which the Governor may veto the bill. If the bill is vetoed by the Governor and the veto is overridden, it shall become effective on the date the last house overrides the veto."

The Amendment was read _____
By: Representative T. Steele
LH/RRS
RRS641

Chief Clerk