

Act 1181 (SB226) "Residents' Rights Bill"

This act provides for civil enforcement of basic, personal rights by allowing a resident, guardian or estate representative to bring a cause of action against a nursing home for injury resulting from a deprivation or infringement of the resident's rights. Administrative enforcement of the same federal Medicaid Residents' Rights by the state's regulatory system has proven to be bureaucratic and largely ineffective. Under pressure from the nursing home industry, the draft bill was amended by Legislators who feared that it would die without these changes. A provision for the separate award of attorney's fees was removed from the final bill, along with a ban on kickbacks and a section that required the state to rate nursing homes "superior," "substandard," or "standard."

Brian Reddick of Wilkes and McHugh, pioneers in nursing home litigation, feels the bill needs to go further, but concedes that "for the first time in recent history, it appeared that legislators seemed to understand there is currently a crisis in our nursing homes. The passage of a nursing home Bill of Rights and the minimum staffing bill should provide the cornerstone for all future measures that seek to protect the most frail and vulnerable people in our society." He feels that media attention to discussion and debate of these bills has raised the level of public awareness. "Laws are useless unless citizens know of their existence and their substance. Hopefully, nursing home residents and their families will now hold providers of substandard care accountable for their actions."

The intention of this bill is to assure each resident of the following rights:

1. The right to civil and religious liberties.
2. The right to private and uncensored communication, correspondence, and visits with any person of the resident's choice.
3. Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident.
4. The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care. This includes access to ombudsmen and advocates and the right to be a member of an advocacy or special interest group. This right also includes the right to prompt efforts by the facility to resolve resident grievances.
5. The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents (Family Council).
6. The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.
7. The right to examine the most recent inspection results, which the facility shall post.

8. The right to manage his or her own financial affairs. Guidelines are also given for situations where the facility is authorized to manage the resident's funds.
9. The right to be fully informed of services available in the facility and of related charges.
10. The right to be informed of his or her medical condition and proposed treatment.
11. The right to refuse medication or treatment and to be informed of the consequences of such decisions.
12. The right to receive adequate and appropriate health care and protective and support services.
13. The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency. Privacy of the resident's body shall be maintained during toileting, bathing, and other activities of personal hygiene.
14. The right to be treated courteously, fairly, and with the fullest measure of dignity.
15. The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those authorized in writing by a physician for a specified and limited period of time or as necessitated by an emergency.
16. The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than 30 days of any involuntary transfer or discharge, except in the case of an emergency.
17. The right to freedom of choice in selecting a personal physician and to obtain pharmaceutical supplies and services from a pharmacy of a resident's choice.
18. The right to retain and use personal clothing and possessions as space permits. If clothing is provided by the facility, it should be of reasonable fit.
19. The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey such rules and regulations.
20. The right to receive notice before a room change.
21. The right to be informed of the bed reservation policy for a hospitalization.
22. For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 CFR Part 483.13.

The facility shall provide a copy of residents' rights to each resident or resident's legal representative at or before admission. The written statement of rights must include a statement that a resident may file a complaint with the OLTC or ombudsman (Contact phone numbers and addresses must be provided). Any violation of the residents' rights shall constitute grounds for action by the OLTC. Annual facility inspections shall include private informal conversations with residents and consultation with the local ombudsman.

Text of Bill:

Act 1181 (SB226) APPROVED: 4/7/1999

By: Senators Brown, Bearden, Bisbee, Bradford, Hoofman, Ross, Scott, B. Walker, Wilson

By: Representatives Magnus, T. Steele, Faris

For An Act To Be Entitled

"AN ACT TO PROVIDE FOR THE PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS; AND FOR OTHER PURPOSES."

Subtitle

"TO PROVIDE FOR THE PROTECTION OF LONG-TERM CARE FACILITY RESIDENTS."

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

SECTION 1. PURPOSE. The purpose of this act is to provide for the development, establishment, and enforcement of basic standards for:

- (1) The health, care and treatment of persons in long-term care facilities; and
- (2) The construction, maintenance, and operation of such facilities which will ensure safe, adequate, and appropriate care, treatment, and health of persons in such facilities.

SECTION 2. DEFINITIONS. When used in this act unless the context otherwise requires, the term:

- (1) "Administrator" means a person who administers, manages, supervises, or is in general administrative charge of a long-term care facility;
- (2) "Bed reservation policy" means the number of consecutive days and the number of days per year that a resident may leave the long-term care facility for overnight therapeutic visits with the family or friends or for hospitalization for an acute condition before the licensee may discharge the resident due to his or her absence from the facility;
- (3) "Board" means the Long Term Care Facility Advisory board created by Arkansas Code 20-10-301;
- (4) "Custodial service" means care for a person which entails observation of diet and sleeping habits and maintenance of a watchfulness over the general health, safety, and well-being of the person;
- (5) "Department" means the Department of Human Services;
- (6) "OLTC" means the Office of Long Term Care, created by Arkansas Code 20-10-202;
- (7) "Ombudsman" means the Long-Term Care Ombudsman established pursuant to Arkansas Code 20-10-601 through 20-10-603;
- (8) "Long-term care facility" means a nursing home, residential care facility, post-acute head injury retraining and residential care facility, or any other facility which provides long-term medical or personal care, *but shall not include any facility which is conducted by and for those who rely exclusively upon treatment by prayer alone for healing in accordance with the tenets or practices of any recognized religious denomination;*
- (9) "Residential care plan" means a written plan developed, maintained, and reviewed not less than quarterly by a registered nurse, with participation from other facility staff and the resident or his or her designee or legal representative, which includes a comprehensive assessment of the needs of an individual resident, a listing of services provided within or outside the facility to meet those needs, and an explanation of service goals; and
- (10) "Resident designee" means a person, other than the owner, administrator, or employee of the facility, designated in writing by a resident or a resident's guardian, if the resident is adjudicated incompetent, to be the resident's representative for a specific, limited purpose.

SECTION 3. RESIDENTS' RIGHTS.

(a) All long-term care facilities shall adopt and make public a statement of the rights and responsibilities of the residents of such facilities and shall treat such residents in accordance with the provisions of that statement. The statement shall assure each resident of the following:

- (1) The right to civil and religious liberties, including knowledge of available choices and the right to independent personal decisions, which will not be infringed upon, and the right to encouragement and assistance from the staff of the facility in the exercise of these rights.
- (2) The right to private and uncensored communication, including, but not limited to, receiving and sending unopened correspondence, access to a telephone, visiting with any person of the resident's choice during visiting hours provided that such visitors are not disruptive or dangerous, and overnight visitation outside the facility with family and friends in accordance with facility policies, physician orders, and Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act regulations, without the

resident's losing his or her bed. Facility visiting hours shall be flexible, taking into consideration special circumstances such as, but not limited to, out-of-town visitors and working relatives or friends. Unless otherwise indicated in the resident care plan, the licensee shall, with the consent of the resident and in accordance with policies approved by the agency, permit recognized volunteer groups, representatives of community-based legal, social, mental health, and leisure programs, and members of the clergy access to the facility during visiting hours for the purpose of visiting with and providing services to any resident.

(3) Any entity or individual that provides health, social, legal, or other services to a resident has the right to have reasonable access to the resident. The resident has the right to deny or withdraw consent to access at any time by any entity or individual. Notwithstanding the visiting policy of the facility, the following individuals must be permitted immediate access to the resident.

(A) Any representative of the federal or state government, including, but not limited to, representatives of the Department of Human Services, any law enforcement officer; any ombudsman; and the resident's individual physician.

(B) Subject to the resident's right to deny or withdraw consent, immediate family or other relatives of the resident. The facility must allow any ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representative and consistent with state law.

(4) The right to present grievances on behalf of himself or herself or others to the staff or administrator of the facility, to governmental officials, or to any other person; to recommend changes in policies and services to facility personnel; and to join with other residents or individuals within or outside the facility to work for improvements in resident care, freedom from restraint, interference, coercion, discrimination, or reprisal. This right includes access to ombudsmen and advocates and the right to be a member of, to be active in, and to associate with advocacy or special interest groups. The right also includes the right to prompt efforts by the facility to resolve resident grievances, including grievances with respect to the behavior of other residents.

(5) The right to organize and participate in resident groups in the facility and the right to have the resident's family meet in the facility with the families of other residents.

(6) The right to participate in social, religious, and community activities that do not interfere with the rights of other residents.

(7) The right to examine, at any time, the results which the facility shall post of the most recent inspection of the facility conducted by a federal or state agency and any plan of correction in effect with respect to the facility.

(8) The right to manage his or her own financial affairs or to delegate such responsibility to the licensee, but only to the extent of the funds held in trust by the licensee for the resident. *An annual* accounting of any transactions made on behalf of the resident shall be furnished to the resident or the person responsible for the resident. The facility may not require a resident to deposit personal funds with the facility. However, upon written authorization of a resident, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as follows:

(A) The facility must establish and maintain a system that ensures a full, complete, and separate accounting, according to generally accepted accounting principles or regulations established by OLTC of each resident's personal funds entrusted to the facility on the resident's behalf;

(B) The accounting system established and maintained by the facility must preclude any commingling of resident funds with facility funds or with the funds of any person other than a resident;

(C) An *annual* accounting of any transaction made on behalf of the resident shall be furnished to the resident or the person responsible for the resident; and

(D) The facility may not impose a charge against the personal funds of a resident for any item or service for which payment is made under Title XVIII or Title XIX of the Social Security Act.

(9) The right to be fully informed, in writing and orally, prior to or at the time of admission and during his or her stay, of services available in the facility and of related charges for such services, including any charges for services not covered under Title XVIII or Title XIX of the Social Security Act or not covered by the basic per diem rates and of bed reservation and refund policies of the facility.

(10) The right to be adequately informed of his or her medical condition and proposed treatment, unless the resident is determined to be unable to provide informed consent under Arkansas law, or the right to be fully informed in advance of any nonemergency changes in care or treatment that may affect the resident's well-being; and, except with respect to a resident adjudged incompetent, the right to participate in the planning of all medical treatment, including the right to refuse medication and treatment, unless otherwise indicated by the resident's physician; and to know the consequences of such actions.

(11) The right to refuse medication or treatment and to be informed of the consequences of such decisions, unless determined unable to provide informed consent under state law. When the resident refuses medication or treatment, the long-term care facility must notify the resident or the resident's legal representative of the consequences of such decision and must document the resident's decision in his or her medical record. The long-term care facility must continue to provide other services the resident agrees to in accordance with the resident's care plan.

(12) The right to receive adequate and appropriate health care and protective and support services, including social services; mental health services, if available; planned recreational activities; and therapeutic and rehabilitative services consistent with the resident care plan, with established and recognized practice standards within the community, and with rules as adopted by the agency.

(13) The right to have privacy in treatment and in caring for personal needs; to close room doors and to have facility personnel knock before entering the room, except in the case of an emergency or unless medically contraindicated; and to security in storing and using personal possessions. Privacy of the resident's body shall be maintained during, but not limited to, toileting, bathing, and other activities of personal hygiene, except as needed for resident safety or assistance.

(14) The right to be treated courteously, fairly, and with the fullest measure of dignity and to receive a written statement and an oral explanation of the services provided by the licensee, including those required to be offered on an as-needed basis.

(15) The right to be free from mental and physical abuse, corporal punishment, extended involuntary seclusion, and from physical and chemical restraints, except those restraints authorized in writing by a physician for a specified and limited period of time or as are necessitated by an emergency. In case of an emergency, restraint may be applied only by a qualified licensed nurse who shall set forth in writing the circumstances requiring the use of restraint, and, in the case of use of a chemical restraint, a physician shall be consulted immediately thereafter. Restraints may not be used in lieu of staff supervision or merely for staff convenience, for punishment, or for reasons other than resident protection or safety.

(16) The right to be transferred or discharged only for medical reasons or for the welfare of other residents, and the right to be given reasonable advance notice of no less than thirty (30) days of any involuntary transfer or discharge, except in the case of an emergency as determined by a licensed professional on the staff of the long-term care facility, or in the case of conflicting rules and regulations which govern Title XVIII or Title XIX of the Social Security Act. For nonpayment of a bill for care received, the resident shall be given thirty (30) days advance notice. A licensee certified to provide services under Title XIX of the Social Security Act may not transfer or discharge a resident solely because the source of payment for care changes. Admission to a long-term care facility operated by a licensee may not be conditioned upon a waiver of such right, and any document or provision in a document which purports to waive or preclude such right is void and unenforceable. Any licensee certified to provide services under Title XIX of the Social Security Act that obtains or attempts to obtain such a waiver of a resident's rights as established herein is subject to disciplinary action as provided in subdivision (a)(3). The resident and the family or representative of the resident shall be consulted in choosing another facility.

(17) The right to freedom of choice in selecting a personal physician; to obtain pharmaceutical supplies and services from a pharmacy of the resident's choice, at the resident's own expense or through Title XIX of the Social Security Act; and to obtain information about, and to participate in, community-based activities programs, unless medically contraindicated as documented by a physician in the resident's medical record. If a resident chooses to use a community pharmacy and the facility in which the resident resides uses a unit-dose system, the pharmacy selected by the resident shall be one that provides a compatible unit-dose system, provides service delivery, and stocks the drugs normally used by long term care residents. If a resident chooses to use a community unit-dose system, and the facility in which the resident resides does not use a unit-dose system, the pharmacy selected by the resident shall be one that provides service delivery and stocks the drugs normally used by the long-term care residents.

(18) The right to retain and use personal clothing and possessions as space permits, unless to do so would infringe upon the rights of other residents or unless medically contraindicated as documented in the resident's medical record by a physician. If clothing is provided to the resident by the licensee, it shall be of reasonable fit.

(19) The right to have copies of the rules and regulations of the facility and an explanation of the responsibility of the resident to obey all reasonable rules and regulations of the facility and to respect the personal rights and private property of the other residents.

(20) The right to receive notice before the room of the resident in the facility is changed.

(21) The right to be informed of the bed reservation policy for a hospitalization. The long-term care facility shall inform a private-pay resident and his or her responsible party that his or her bed will be reserved for any single hospitalization for a period up to thirty (30) days provided the long-term care facility receives reimbursement. Any resident who is a recipient of assistance under Title XIX of the Social Security Act, or the resident's designee or legal representative, shall be informed by the licensee *that his or her bed, for which there is Title XIX reimbursement available, will be reserved up to five (5) days* but that the bed will not be reserved if it is medically determined by a physician that the resident will not need it or will not be able to return to the long-term care facility, or if the agency determines that the long-term care facility's occupancy rate ensures the availability of a bed for the resident. Notice shall be provided within twenty-four (24) hours of hospitalization.

(22) For residents of Medicaid or Medicare certified facilities, the right to challenge a decision by the facility to discharge or transfer the resident, as required under Title 42 C.F.R. Part 488.12.

(b) The licensee for each long-term care facility shall orally inform the resident of the resident's rights and provide a copy of the statement required by subdivision (a)(1) to each resident or the resident's legal representative at or before the resident's admission to a facility. The licensee shall provide a copy of the resident's rights to each staff member of the facility. Each such licensee shall prepare a written plan and provide appropriate staff training to implement the provisions of this section. The written statement of rights must include a statement that a resident may file a complaint with the OLTC or ombudsman. The statement must be in boldfaced type and shall include the name, address, and telephone numbers of the ombudsman and adult abuse registry where complaints may be lodged.

(c) Any violation of the resident's rights set forth in this section *may* constitute grounds for action by the OLTC. In order to determine whether the licensee is adequately protecting resident's rights, the annual inspection of the facility shall include private informal conversations with a sample of residents to discuss resident's experiences within the facility with respect to rights specified in this section and general compliance with standards, and consultation with the ombudsman in the area in which the long-term care facility is located.

(d) Any person who submits or reports a complaint concerning a suspected violation of the resident's rights or concerning services or conditions in a facility or who testifies in any administrative or judicial proceeding arising from such complaint shall have immunity from civil liability thereof, unless that person has acted in bad faith, with malicious purpose, or if the court finds that there was a complete absence of a justiciable issue of either law or fact.

SECTION 4. CIVIL ENFORCEMENT.

(a) Any resident who is injured by a deprivation or infringement of his or her rights as specified in this act may bring a cause of action against any licensee responsible for the deprivation or infringement. The action may be brought by the resident or his or her guardian or by the personal representative of the estate of a deceased resident. The action may be brought in any court of competent jurisdiction in the county in which the injury occurred or where the licensee is located to enforce such rights and to recover actual and punitive damages. No separate award of attorney's fees may be made by the court. The resident may seek to recover actual damages when there is a finding that an employee of the long term care facility failed to do something which a reasonably careful person would do, or did something which a reasonable person would not do, under circumstances similar to those shown by the evidence in the case, which caused an injury due to an infringement or a deprivation of the resident's rights.

(b) A licensee shall not be liable for the medical negligence of any physician rendering care or treatment to the resident except for the services of a medical director as required in this act. Nothing in this subsection shall be construed to protect a licensee from liability for failure to provide a resident with appropriate observation, assessment, nursing diagnosis, planning, intervention, and evaluation of care by nursing staff.

(c) For the purpose of this section, punitive damages may be awarded for conduct which is willful, wanton, gross or flagrant, reckless, or consciously indifferent to the rights of the resident.

SECTION 5. PATIENT RECORDS - PENALTIES FOR ALTERATION.

(a) Any person who fraudulently alters, defaces, or falsifies any medical or other long-term care facility record, or causes or procures any of these offenses to be committed, commits a Class A misdemeanor.

(b) A conviction *under this section* is also grounds for restriction, suspension, or termination of license privileges for *the person*.

SECTION 6. ADMINISTRATION AND MANAGEMENT OF LONG-TERM CARE FACILITIES.

Every licensed facility shall comply with all applicable standards and rules of the OLTC and shall:

- (1) Be under the administrative direction and charge of a licensed administrator.
- (2) Have available the regular, consultative, and emergency services of physicians licensed by the *state and required by state and federal regulations*.
- (3) Provide for the access of the facility residents to dental and other health-related services, recreational services, rehabilitative services, and social work services appropriate to their needs and conditions and not directly furnished by the licensee.
- (4) If the facility was not cited for any deficiencies in the past twelve (12) months, be encouraged by OLTC to provide services, including, but not limited to, respite and adult day services, which enable individuals to move in and out of the facility. A facility is not subject to any additional licensure requirements for providing these services. Respite care may be offered to persons in need of short-term or temporary long-term care services. Respite care must be provided in accordance with this act and rules adopted by the OLTC. However, the OLTC shall, by rule, adopt modified requirements for resident assessment, resident care plans, resident contracts, physician orders, and other provisions, as appropriate, for short-term or temporary long-term care services. The OLTC shall allow for shared programming and staff in a facility which meets minimum standards and offers services pursuant to this subsection, but, if the facility is cited for deficiencies in *quality of care, categories or tags*, may require additional staff and programs appropriate to the needs of service recipients. A person who receives respite care may not be counted as a resident of the facility for purposes of the facility's licensed capacity unless that person receives twenty-four (24) hour respite care. A person receiving either respite care for 24 hours or longer or adult day services must be included when calculating minimum staffing for the facility. Any costs and revenues generated by a long-term care facility from nonresidential programs or services shall be excluded from the calculations of Medicaid per diems for long-term care institutional care reimbursement.
- (5) If the facility was not cited for any deficiencies in the last twelve (12) months, exceeds minimum staffing standards, and is part of a retirement community that offers other services pursuant to part III, part IV, or part V, be allowed to share programming and staff.
- (6) Maintain the facility premises and equipment and conduct its operations in a safe and sanitary manner.
- (7) If the licensee furnishes food service, provide a wholesome and nourishing diet sufficient to meet generally accepted standards of proper nutrition for its residents and provide such therapeutic diets as may be prescribed by attending physicians. In making rules to implement this subsection, the OLTC shall be guided by standards recommended by nationally recognized professional groups and associations with knowledge of dietetics.
- (8) Keep full records of resident admissions and discharges, medical and general health status, including medical records, personal and social history, and identity and address of next of kin, or other persons who may have responsibility for the affairs of the residents; and individual resident care plans including, but not limited to, prescribed services, service frequency and duration, and service goals. The records shall be open to inspection by the OLTC.
- (9) Keep such fiscal records of its operations and conditions as may be necessary to provide information pursuant to this act.
- (10) Furnish copies of personnel records for employees affiliated with such facility, to any other facility licensed by this state requesting this information pursuant to this act. Such information contained in the records may include, but is not limited to, disciplinary matters and any reason for termination. Any facility releasing such records pursuant to this act shall be considered to be acting in good faith and may not be held liable for information contained in such records, absent a showing that the facility maliciously falsified such records.

SECTION 7. PROPERTY AND PERSONAL AFFAIRS OF RESIDENTS.

(a) The admission of a resident to a facility and his or her presence in the facility shall not confer on the facility or its owner, administrator, employees, or representatives any authority to manage, use, or

dispose of any property of the resident; nor shall such admission or presence confer on any of the aforementioned persons any authority or responsibility for the personal affairs of the resident, except that which may be necessary for the safety of the residents and orderly management of the facility.

(b) No licensee, owner, administrator, employee, or representative thereof shall act as guardian, trustee, or conservator for any resident of the facility or any such resident's property unless the person is the resident's spouse or blood relative within the third degree of *consanguinity* or if ordered by a court before the effective date of this act.

(c) A licensee shall provide for the safekeeping of personal effects, funds, and other property of the resident in the facility. Whenever necessary for the protection of valuables, or in order to avoid unreasonable responsibility thereof, the licensee may require that such valuables be excluded or removed from the facility and kept at some place not subject to the control of the licensee.

(d) A licensee shall keep complete and accurate records of all funds and other effects and property of its residents received by it for safekeeping.

(e)

(1) Any funds or other property belonging to a resident which are received by a licensee shall be held in trust. Funds held in trust shall be kept separate from the funds and property of the facility; shall be deposited in a bank, savings and loan association, trust company, or credit union located in this state and, if possible, located in the same county in which the facility is located; shall not be represented as part of the assets of the facility on a financial statement; and shall be used or otherwise expended only for the account of the resident.

(2) The licensee may enter into a self-insurance agreement as specified in rules adopted by the OLTC. Funds contained in the pool shall run to any resident suffering financial loss as a result of the violation by the licensee of the provisions of this section. Such funds shall be awarded to any resident in an amount equal to the amount that the resident can establish, by affidavit or other adequate evidence, was deposited in trust with the licensee and which could not be paid to the resident within thirty (30) days of the resident's request. The OLTC shall promulgate rules with regard to the establishment, organization, and operation of such self-insurance pools. Such rules shall include, but shall not be limited to, requirements for monetary reserves to be maintained by such self-insurers to assure their financial solvency.

(3) If, at any time during the period for which a license is issued, a licensee that has not entered into a self-insurance agreement, as provided in subsection (b), is requested to provide safekeeping for the personal funds of a resident, the licensee shall notify the agency of the request and make application for a surety bond or for participation in a self-insurance agreement within seven (7) days of the request, exclusive of weekends and holidays. Copies of the application, along with written documentation of related correspondence with an insurance agency or group, shall be maintained by the licensee for review by the OLTC and the Ombudsman.

(4) Moneys or securities received as advance payment for care may not at any time exceed the cost of care for a six (6) month period.

(5) At least *annually*, the licensee shall furnish the resident and the guardian, trustee, or conservator, if any, for the resident a complete and verified statement of all funds and other property to which this subsection applies, detailing the amounts and items received, together with their sources and disposition. In any event, the licensee shall furnish such a statement annually and upon the discharge or transfer of a resident.

(f) In the event of the death of a resident, a licensee *shall within thirty (30) days of the resident's death provide an accounting and shall return* all refunds and funds held in trust to the resident's personal representative, if one has been appointed at the time the long-term care facility disburses such funds, and if not, to the resident's spouse or adult next of kin named in a beneficiary designation form provided by the long-term care facility to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, funds due to the resident shall be placed in an interest-bearing account in a bank, savings and loan association, trust company, or credit union located in this state and, if possible, located within the same county in which the facility is located, which funds shall not be represented as part of the assets of the facility on a financial statement, and the licensee shall maintain such account until such time as the trust funds are disbursed pursuant to the provisions of Arkansas's Probate Code. All other property of a deceased resident being held in trust by the licensee shall be returned to the resident's personal representative, if one has been appointed at the time the long-term care facility disburses such property, and if not, to the resident's spouse or adult next of kin named in a beneficiary

designation form provided by the long-term care facility to the resident. In the event the resident has no spouse or adult next of kin or such person cannot be located, property being held is disbursed pursuant to the provisions of Arkansas Probate Code. The trust funds and property of deceased residents shall be kept separate from the funds and the property of the licensee and from the funds and property of the residents of the facility. The long-term care facility needs to maintain only one account in which the trust funds amounting to less than one hundred dollars (\$100) of deceased residents are placed. However, it shall be the obligation of the long-term care facility to maintain adequate records to permit compilation of interest due each individual resident's account. Separate accounts shall be maintained with respect to trust funds of deceased residents equal to or in excess of \$100. Any other property of a deceased resident held in trust by a licensee which is not disbursed in accordance with the provisions of Arkansas Probate Code shall escheat to the state as provided by law.

SECTION 8. RIGHT OF ENTRY AND INSPECTION

The department and any duly designated officer or employee thereof or an Ombudsman shall have the right to enter upon and into the premises of any long-term care facility, at any time in order to determine the state of compliance with the provisions of this act and rules in force pursuant thereto. The right of entry and inspection shall also extend to any premises which the agency has reason to believe is being operated or maintained as a facility without a license, but no such entry or inspection of any premises shall be made without the permission of the owner or person in charge thereof, unless an inspection order is first obtained from a circuit court upon a showing of reasonable cause to inspect that certain premises are being maintained and operated in violation of this *act and statutory licensure requirements*.

SECTION 9. AVAILABILITY, DISTRIBUTION, AND POSTING OF REPORTS AND RECORDS.

(a) The OLTC shall, within *ten (10)* days after the date of an annual inspection visit or *within thirty (30)* days after the date of any interim visit, forward the results of all inspections of long-term care facilities to:

(1) The ombudsman in whose county the inspected facility is located; and

(2) At least one public library or, in the absence of a public library, the county *clerk* in the county in which the inspected facility is located.

b) Each long-term care facility licensee shall maintain as public information, available upon request, records of inspection reports pertaining to that facility that have been filed with, or issued by, any governmental agency. Copies of such reports shall be retained in such records for not less than five (5) years after the date the reports are filed or issued.

(c) Any records of a long-term care facility determined by the OLTC to be necessary and essential to establish lawful compliance with any rules or standards shall be made available to the OLTC on the premises of the *facility, with the exception of quality assurance committee records*.

(d) Every long-term care facility licensee shall:

(1) Post, in a sufficient number of prominent positions in the long-term care facility so as to be accessible to all residents and to the general public, the last inspection report or survey pertaining to the long-term care facility and issued by the OLTC, with references to the page numbers of the full reports, noting any deficiencies found by the OLTC and the actions taken by the licensee to rectify such deficiencies.

(2) Upon request, provide to any person who has completed a written application with an intent to be admitted to, or to any resident of, such long-term care facility, or to any relative, spouse, or guardian of such person, a copy of the last inspection report pertaining to the long-term care facility and issued by the agency, provided the person requesting the report agrees to pay a reasonable charge to cover copying costs.

SECTION 10. Arkansas Code 20-10-224, as amended by Act 485 of 1989, is repealed.

SECTION 11. All provisions of this act of a general and permanent nature are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code Revision Commission shall incorporate the same in the Code.

SECTION 12. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect

without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 13. All laws and parts of laws in conflict with this act are hereby repealed.