

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 851

Short Title: Limit Provisional License.

(Public)

Sponsors: Senators Kinnaird; Forrester, Foxx, Lee, Lucas, Martin of Guilford, and Rand.

Referred to: Children & Human Resources.

April 15, 1997

A BILL TO BE ENTITLED

**AN ACT TO LIMIT THE AMOUNT OF TIME AN ADULT CARE HOME MAY
OPERATE UNDER A PROVISIONAL LICENSE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-2(b) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any domiciliary home whose administrator was the administrator for any domiciliary home (adult care home) that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which

1 an appeal is pending are exempt from consideration. The renewal
2 application shall contain all necessary and reasonable information that
3 the Department may by rule require. The Department may also issue a
4 provisional license to a facility, pursuant to rules adopted by the Social
5 Services Commission, for substantial failure to comply with the
6 provisions of this section or rules promulgated pursuant to this section.
7 A facility shall not operate under a provisional license for more than a
8 total of 180 days in a calendar year. If a facility has operated under a
9 provisional license for more than 180 days in a calendar year and any
10 physical plant changes directed by the Department do not require a
11 longer period of time to complete, the Department shall initiate
12 revocation proceedings. Any facility wishing to contest the issuance of
13 a provisional license shall be entitled to an administrative hearing as
14 provided in the Administrative Procedure Act, Chapter 150B of the
15 General Statutes. A petition for a contested case shall be filed within 30
16 days after the Department mails written notice of the issuance of the
17 provisional license.

- 18 (1a) In addition to the licensing and inspection requirements mandated by
19 subdivision (1) of this subsection, the Department shall ensure that adult
20 care homes required to be licensed by this Article are monitored for
21 licensure compliance on a regular basis. In carrying out this
22 requirement, the Department shall work with county departments of
23 social services to do the routine monitoring and to have the Division of
24 Facility Services oversee this monitoring and perform any follow-up
25 inspection called for. The Department shall also keep an up-to-date
26 directory of all persons who are administrators as defined in subdivision
27 (1a) of subsection (a) of this section.
- 28 (2) Any individual or corporation that establishes, conducts, manages, or
29 operates a facility subject to licensure under this section without a
30 license is guilty of a Class 3 misdemeanor, and upon conviction shall be
31 punishable only by a fine of not more than fifty dollars (\$50.00) for the
32 first offense and not more than five hundred dollars (\$500.00) for each
33 subsequent offense. Each day of a continuing violation after conviction
34 shall be considered a separate offense.
- 35 (3) In addition, the Department may summarily suspend a license pursuant
36 to G.S. 150B-3(c) whenever it finds substantial evidence of abuse,
37 neglect, exploitation or any condition which presents an imminent
38 danger to the health and safety of any resident of the home. Any facility
39 wishing to contest summary suspension of a license shall be entitled to
40 an administrative hearing as provided in the Administrative Procedure
41 Act, Chapter 150B of the General Statutes. A petition for a contested
42 case shall be filed within 20 days after the Department mails a notice of
43 summary suspension to the licensee.

1 (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of
2 communications between physician and patient, in the course of an
3 inspection conducted under subsection (b):

4 a. Department representatives may review any writing or other
5 record concerning the admission, discharge, medication, care,
6 medical condition, or history of any person who is or has been a
7 resident of the facility being inspected, and

8 b. Any person involved in giving care or treatment at or through the
9 facility may disclose information to Department representatives;
10 unless the resident objects in writing to review of his records or
11 disclosure of such information.

12 The facility, its employees and any other person interviewed in the
13 course of an inspection shall be immune from liability for damages
14 resulting from disclosure of any information to the Department.

15 The Department shall not disclose:

16 a. Any confidential or privileged information obtained under this
17 subsection unless the resident or his legal representative
18 authorizes disclosure in writing or unless a court of competent
19 jurisdiction orders disclosure, or

20 b. The name of anyone who has furnished information concerning a
21 facility without that person's consent.

22 The Department shall institute appropriate policies and procedures to
23 ensure that unauthorized disclosure does not occur. All confidential or
24 privileged information obtained under this section and the names of
25 persons providing such information shall be exempt from Chapter 132
26 of the General Statutes.

27 (5) Notwithstanding any law to the contrary, Chapter 132 of the General
28 Statutes, the Public Records Law, applies to all records of the State
29 Division of Social Services of the Department of Human Resources and
30 of any county department of social services regarding inspections of
31 domiciliary care facilities except for information in the records that is
32 confidential or privileged, including medical records, or that contains
33 the names of residents or complainants."

34 Section 2. This act is effective when it becomes law and applies beginning
35 with calendar year 1998.