

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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SENATE BILL 1449

Short Title: Adult Care Home Moratorium Clarification.

(Public)

Sponsors: Senator Rand.

Referred to: Health Care.

June 18, 2002

A BILL TO BE ENTITLED

1 AN ACT TO CLARIFY THAT PERSONS WHO OBTAINED THE RIGHT TO
2 DEVELOP OR EXPAND ASSISTED LIVING FACILITIES AS THE RESULT OF
3 LITIGATION ARE NOT SUBJECT TO THE ADULT CARE HOME
4 MORATORIUM LAW OR THE ADULT CARE HOME CERTIFICATE OF
5 NEED LAW.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Section 11.69 of S.L. 1997-443, as amended by Section
9 12.16C(a) of S.L. 1998-212, as further amended by Section 1 of S.L. 1999-135 as
10 amended by Section 11.9(a) of S.L. 2000-67, and as further amended by Section 3 of
11 S.L. 2001-234, reads as rewritten:

12 **"Section 11.69.** (a) The General Assembly finds:

- 13 (1) That the cost of care for seventy percent (70%) of adult care home
14 residents is paid by the State and the counties;
- 15 (2) That the cost to the State for care for residents in adult care homes is
16 substantial, and high vacancy rates in adult care homes further
17 increases the cost of care;
- 18 (3) That the proliferation of unnecessary adult care home beds results in
19 costly duplication and underuse of facilities and may result in lower
20 quality service; and
- 21 (4) That it is necessary to protect the general welfare and lives, health, and
22 property of the people of the State to slow temporarily licensure of
23 adult care home beds pending a finding of a more definitive means of
24 developing and maintaining the quality of adult care home beds so that
25 unnecessary costs to the State do not result, adult care home beds are
26 available where needed, and that individuals who need care in adult
27 care homes may have access to quality care.

1 (b) Effective until December 31, 2001, the Department of Health and Human
2 Services shall not approve the addition of any adult care home beds for any type home
3 or facility in the State, except as follows:

- 4 (1) Plans submitted for approval prior to May 18, 1997, may continue to
5 be processed for approval;
- 6 (2) Plans submitted for approval subsequent to May 18, 1997, may be
7 processed for approval if the individual or organization submitting the
8 plan demonstrates to the Department that on or before August 25,
9 1997, the individual or organization purchased real property, entered
10 into a contract to purchase or obtain an option to purchase real
11 property, entered into a binding real property lease arrangement, or has
12 otherwise made a binding financial commitment for the purpose of
13 establishing or expanding an adult care home facility. An owner of real
14 property who entered into a contract prior to August 25, 1997, for the
15 sale of an existing building together with land zoned for the
16 development of not more than 50 adult care home beds with a
17 proposed purchaser who failed to consummate the transaction may,
18 after August 25, 1997, sell the property to another purchaser and the
19 Department may process and approve plans submitted by the purchaser
20 for the development of not more than 50 adult care home beds. It shall
21 be the responsibility of the applicant to establish, to the satisfaction of
22 the Department, that any of these conditions have been met;
- 23 (3) Adult care home beds in facilities for the developmentally disabled
24 with six beds or less which are or would be licensed under G.S. 131D
25 or G.S. 122C may continue to be approved;
- 26 (4) If the Department determines that the vacancy rate of available adult
27 care home beds in a county is fifteen percent (15%) or less of the total
28 number of available beds in the county as of August 26, 1997, and no
29 new beds have been approved or licensed in the county or plans
30 submitted for approval in accordance with subdivision (1) or (2) of this
31 section which would raise the vacancy rate above fifteen percent
32 (15%) in the county, then the department may accept and approve the
33 addition of beds in that county; or
- 34 (5) If a county board of commissioners determines that a substantial need
35 exists for the addition of adult care home beds in that county, the board
36 of commissioners may request that a specified number of additional
37 beds be licensed for development in their county. In making their
38 determination, the board of commissioners shall give consideration to
39 meeting the needs of Special Assistance clients. The Department may
40 approve licensure of the additional beds from the first facility that files
41 for licensure and subsequently meets the licensure requirements.

42 (b1) Any person who obtained an exemption under subsection (b) of this section
43 and has not obtained a license for the beds for which the exemption was granted shall no
44 longer be authorized to develop the beds, unless all of the following conditions are met:

- 1 (1) No later than June 1, 2002, the person granted the exemption shall
2 submit to the Department of Health and Human Services fully
3 executed copies of loan closing papers for a loan to the exempted
4 person or a letter from a certified public accountant which states that
5 liquid reserves have been placed in a separately identified account for
6 the exempted person that document sufficient funding to cover the
7 entire capital cost of the project for which the exemption was granted.
- 8 (2) No later than December 1, 2002, the person granted the exemption
9 shall submit to the Department of Health and Human Services
10 documentation from the builder or architect that the foundation and
11 footings of the facility for which the exemption was granted have been
12 completed.
- 13 (3) No later than December 1, 2003, the person granted the exemption
14 shall submit to the Department of Health and Human Services a copy
15 of the certificate of occupancy from the local building inspector for the
16 facility for which the exemption was granted.

17 (b2) Notwithstanding the provisions of subsection (b1) of this section, any person
18 who obtained an exemption under subsection (b) of this section for the construction of a
19 new building that is not connected to any other existing structure by more than a
20 protected walkway, and who obligated one or more Qualifying Financial Commitments
21 for the construction of the building of a value totaling at least twenty-five thousand
22 dollars (\$25,000), before January 1, 2001, may proceed to develop the beds and obtain a
23 license for the operation of the beds if all of the following conditions are met.
24 Exemptions that were received for increases in bed capacity of existing buildings must
25 meet the requirements set forth in subsection (b1) of this section.

- 26 (1) No later than the close of business on June 1, 2004, the person granted
27 the exemption shall submit to the Department of Health and Human
28 Services fully executed copies of loan closing papers for a loan to the
29 exempted person or a letter from a certified public accountant which
30 states that liquid reserves have been placed in a separately identified
31 account for the exempted person that document sufficient funding to
32 cover the entire capital cost of the project for which the exemption was
33 granted.
- 34 (2) Not later than the close of business on December 1, 2004, the person
35 granted the exemption shall submit to the Department of Health and
36 Human Services documentation from the builder or architect that the
37 foundation and footings of the facility for which the exemption was
38 granted have been completed.
- 39 (3) Not later than the close of business on December 1, 2005, the person
40 granted the exemption shall submit to the Department of Health and
41 Human Services a copy of the certificate of occupancy from the
42 building inspector for the facility for which the exemption was
43 granted.

1 For the purposes of this subsection, "Qualifying Financial Commitments" includes
2 any and all of the following expenses: (i) zoning fees and expenses; (ii) marketing and
3 other demographic research and studies; (iii) site preparation costs including soil testing
4 and soil boring costs; (iv) water and sewer improvements; (v) professional fees
5 associated with the foregoing activities and which are otherwise connected to the
6 development of the site, including accounting, architectural, engineering, and legal fees.

7 (b3) Notwithstanding any other provision of law to the contrary, including any
8 other provision of this section and any provision of S.L. 2001-234, any person who:

9 (1) Engaged in litigation with the State or a State agency to determine
10 whether the person was subject to the moratorium enacted under this
11 section, and

12 (2) Prior to June 21, 2001, entered into a settlement agreement with the
13 State or a State agency resolving the litigation and the settlement
14 agreement provided that the person had the right to develop or expand
15 certain assisted living facilities,

16 may develop or expand the assisted living facilities as permitted by and in accordance
17 with the settlement agreement. If the settlement agreement also identified other persons
18 as having the right to develop or expand certain assisted living facilities, then, not
19 withstanding any other provision of law to the contrary, including any other provision of
20 this section and any provision of S.L. 2001-234, the identified other persons may
21 develop or expand the assisted living facilities as permitted by and in accordance with
22 the settlement agreement.

23 (c) The Department shall study the issue of high vacancy rates for adult care
24 home beds, including the impact of those vacancy rates on cost-effectiveness and
25 quality of care for the occupants of adult care homes and other facilities, and make
26 recommendations with respect to the need for establishing new procedures for
27 determining the State and county reimbursement amounts for Special Assistance
28 recipients, the need for the establishment of a certificate of need type process for adult
29 care homes, or any changes needed in the certificate of need process for any other
30 facilities to prevent high vacancy rates for adult care home beds. The Department also
31 shall study the issue of the availability of beds for Special Assistance clients and how
32 recent new bed development has impacted the availability, quality, and cost of beds
33 available for those clients. The Department shall report the results of its study, along
34 with the recommendations required by this section and any other proposals and
35 recommendations, to the Chairs of the House and Senate Appropriations Subcommittees
36 on Human Resources by February 1, 1998. The Department's report shall include any
37 observations or recommendations it deems appropriate with respect to correlations
38 between the vacancy rates and the condition or age of facilities.

39 (d) This section shall not apply to adult care home ~~beds which~~ beds that are part
40 of a continuing care facility subject to the jurisdiction of or licensed by the Department
41 of Insurance pursuant to Article 64, Chapter 58 of the General Statutes.

42 (e) This section is effective when this act becomes law."

43 **SECTION 2.** This act is effective when it becomes law.