

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH80128-MG-69 (03/23)

Short Title: Discharge of Adult Care Home Residents.

(Public)

Sponsors: Representative Lewis.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADULT CARE HOMES WITH GREATER FLEXIBILITY IN THE TRANSFER AND DISCHARGE OF RESIDENTS, TO MAKE COUNTY DEPARTMENTS OF SOCIAL SERVICES RESPONSIBLE FOR PLACING CERTAIN DISCHARGED RESIDENTS, AND TO ENACT APPEAL RIGHTS FOR ADULT CARE HOME RESIDENTS AND ADULT CARE HOMES WITH RESPECT TO DISCHARGE DECISIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-2.1 is amended by adding a new subdivision to read:

"(16) "Hearing Unit" means the chief hearing officer within the Division of Medical Assistance designated to preside over hearings regarding the transfer and discharge of adult care home residents, and the chief hearing officer's staff."

SECTION 2. G.S. 131D-4.5(5) reads as rewritten:

"(5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules shall offer ~~at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes.~~ residents for safe and orderly transfer and discharge."

SECTION 3. G.S. 131D-21(17) reads as rewritten:

"(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer ~~at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes.~~ residents for safe and orderly transfer and discharge."



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1 **SECTION 4.** Article 1 of Chapter 131D of the General Statutes is amended by
2 adding a new section to read:

3 **"§ 131D-4.8. Discharge of residents; appeals.**

4 (a) An adult care home may initiate discharge of a resident based on any of the
5 following reasons:

6 (1) The discharge is necessary to protect the welfare of the resident and the adult
7 care home cannot meet the needs of the resident, as documented by the
8 resident's physician, physician assistant, or nurse practitioner.

9 (2) The health of the resident has improved sufficiently so that the resident is no
10 longer in need of the services provided by the adult care home, as
11 documented by the resident's physician, physician assistant, or nurse
12 practitioner.

13 (3) The safety of the resident or other individuals in the adult care home is
14 endangered.

15 (4) The health of the resident or other individuals in the adult care home is
16 endangered, as documented by a physician, physician assistant, or nurse
17 practitioner.

18 (5) The resident has failed to pay the costs of services and accommodations by
19 the payment due date specified in the resident's contract with the adult care
20 home, after receiving written notice of warning of discharge for failure to
21 pay.

22 (6) The discharge is mandated under this Article, Article 3 of this Chapter, or
23 rules adopted by the Medical Care Commission.

24 (b) Whenever the Department prohibits an adult care home from discharging a resident
25 for whom the facility has initiated discharge under subdivision (a)(3) or (a)(4) of this section,
26 the Department is prohibited from citing the facility for a violation of this Article, Article 3 of
27 this Chapter, or any rule adopted by the Medical Care Commission if the violation is attributed
28 to behavior by the resident that resulted in harm to the resident or to other individuals in the
29 adult care home.

30 (c) An adult care home shall notify a resident or the resident's legal representative of its
31 intent to initiate discharge of the resident under subsection (a) of this section, in writing, at least
32 30 days before the resident is discharged. The written notice shall include (i) the reasons for the
33 discharge, (ii) an appropriate discharge destination, (iii) personal medical care information
34 relating to the resident, as required by the Department, (iv) a copy of the Adult Care Home
35 Notice of Discharge, (v) a copy of the Adult Care Home Hearing Request Form, and (vi) other
36 information, as required under rules adopted by the Medical Care Commission. The adult care
37 home shall also notify the county department of social services about the discharge, including
38 the date of discharge. The adult care home is responsible for using its best efforts to assist the
39 resident or the resident's legal representative in securing placement of the resident in an
40 appropriate discharge destination prior to the date of discharge. If the resident or legal
41 representative has not secured an appropriate discharge location on the date of discharge, the
42 county department of social services is responsible for placement of the resident.

43 (d) If an adult care home resident or the resident's legal representative elects to appeal a
44 discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing
45 Unit shall decide all appeals pertaining to the discharge of adult care home residents. The
46 decision of the Hearing Unit is the final agency decision. Any person aggrieved by a decision
47 of the Hearing Unit pertaining to an adult care home resident discharge is entitled to immediate
48 judicial review of the decision in Wake County Superior Court or in the superior court of the
49 county where the person resides. The appellant shall file a petition for judicial review not later
50 than 30 days after the person is served with a written copy of the Hearing Unit decision. Within
51 10 days after the petition for judicial review is filed with the superior court, the appellant shall

1 serve copies of the petition by personal service or certified mail upon all parties who were
2 parties of record to the appeal to the Hearing Unit. Other parties to the appeal to the Hearing
3 Unit may file a response to the petition within 30 days after service. The Department as the
4 decision maker in the appeal to the Hearing Unit is not a party of record. Within 30 days after
5 receipt of a petition for judicial review, the Department shall transmit to the superior court the
6 original or a certified copy of the official record in the appeal to the Hearing Unit, together with
7 the final agency decision. In reviewing the Department's final decision, the superior court shall
8 review the official record, de novo, and make findings of fact and conclusions of law. The
9 decision of the Department remains in effect during the pendency of review by the superior
10 court and any further review in the appellate courts.

11 **SECTION 5.** G.S. 150B-1(e) is amended by adding a new subdivision to read:

12 "(18) Hearings provided by the Department of Health and Human Services to
13 decide appeals pertaining to adult care home resident discharges initiated by
14 adult care homes under G.S. 131D-4.8.

15 **SECTION 6.** This act becomes effective October 1, 2011.