

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H

5

HOUSE BILL 677  
Committee Substitute Favorable 6/7/11  
Third Edition Engrossed 6/7/11  
Senate Health Care Committee Substitute Adopted 6/14/11  
Fifth Edition Engrossed 6/15/11

Short Title: Discharge of Adult Care Home Residents. (Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADULT CARE HOMES WITH GREATER FLEXIBILITY IN THE TRANSFER AND DISCHARGE OF RESIDENTS AND TO ENACT APPEAL RIGHTS FOR ADULT CARE HOME RESIDENTS AND ADULT CARE HOMES WITH RESPECT TO DISCHARGE DECISIONS AND TO CREATE ADULT CARE HOME RESIDENT DISCHARGE TEAMS WITHIN EVERY COUNTY WHICH CONTAINS AN ADULT CARE HOME LICENSED UNDER CHAPTER 131D OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 131D-2.1 is amended by adding two new subdivisions to read:

"(16) Hearing Unit. – 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.

"(17) Adult care home resident discharge team. – A team consisting of one member from the department of social services and one member from the local management entity responsible for assisting in finding an appropriate placement for discharged residents, as established by the county department of social services in every county which contains an adult care home licensed under this Chapter."

**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



1 adopted by the Medical Care Commission, and the resident shall be allowed  
2 to remain in the facility until resolution of the appeal unless otherwise  
3 provided by law. The Medical Care Commission shall adopt rules pertaining  
4 to the transfer and discharge of residents that offer ~~at least the same~~  
5 ~~protections to residents as State and federal rules and regulations governing~~  
6 ~~the transfer or discharge of residents from nursing homes.~~residents for safe  
7 and orderly transfer and discharge."

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

10 **"§ 131D-4.8. Discharge of residents; appeals.**

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

- 13 (1) The discharge is necessary to protect the welfare of the resident and the adult  
14 care home cannot meet the needs of the resident, as documented by the  
15 resident's physician, physician assistant, or nurse practitioner.  
16 (2) The health of the resident has improved sufficiently so that the resident is no  
17 longer in need of the services provided by the adult care home, as  
18 documented by the resident's physician, physician assistant, or nurse  
19 practitioner.  
20 (3) The safety of the resident or other individuals in the adult care home is  
21 endangered.  
22 (4) The health of the resident or other individuals in the adult care home is  
23 endangered, as documented by a physician, physician assistant, or nurse  
24 practitioner.  
25 (5) The resident has failed to pay the costs of services and accommodations by  
26 the payment due date specified in the resident's contract with the adult care  
27 home, after receiving written notice of warning of discharge for failure to  
28 pay.  
29 (6) The discharge is mandated under this Article, Article 3 of this Chapter, or  
30 rules adopted by the Medical Care Commission.

31 (b) Upon arrival at any adult care home, an individual must be identified to receive a  
32 discharge notice on behalf of the resident. An adult care home shall notify a resident, the  
33 resident's legal representative, and the individual identified to receive a discharge notice of its  
34 intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at  
35 least 30 days before the resident is discharged. The written notice shall include (i) the reasons  
36 for the discharge, (ii) an appropriate discharge destination if known, (iii) personal medical care  
37 information relating to the resident, as required by the Department, (iv) a copy of the Adult  
38 Care Home Notice of Discharge, (v) a copy of the Adult Care Home Hearing Request Form,  
39 and (vi) other information, as required under rules adopted by the Medical Care Commission. If  
40 a discharge is initiated under subdivision (a)(1) of this section on the basis that a resident's  
41 physician requires a different level of care for the resident, the discharge is not subject to  
42 appeal for that specific reason unless there is a documented conflict between two or more of the  
43 resident's physicians regarding the resident's appropriate level of care but remains subject to  
44 appeal on all other available grounds.

45 (c) During any appeal of a discharge to the Hearing Unit, if the Hearing Unit  
46 determines that the discharge destination identified in the written notice required by subsection  
47 (b) of this section does not include an appropriate discharge destination, the Department shall  
48 not prohibit discharge solely for that reason, provided that any discharge shall comply with  
49 subsection (e) of this section.

50 (d) If an adult care home resident or the resident's legal representative elects to appeal a  
51 discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing

1 Unit shall decide all appeals pertaining to the discharge of adult care home residents. The  
2 decision of the Hearing Unit is the final agency decision. Any person aggrieved by a decision  
3 of the Hearing Unit pertaining to an adult care home resident discharge is entitled to immediate  
4 judicial review of the decision in Wake County Superior Court or in the superior court of the  
5 county where the person resides. The appellant shall file a petition for judicial review not later  
6 than 30 days after the person is served with a written copy of the Hearing Unit decision. Within  
7 10 days after the petition for judicial review is filed with the superior court, the appellant shall  
8 serve copies of the petition by personal service or certified mail upon all parties who were  
9 parties of record to the appeal to the Hearing Unit. Other parties to the appeal to the Hearing  
10 Unit may file a response to the petition within 30 days after service. The Department as the  
11 decision maker in the appeal to the Hearing Unit is not a party of record. Within 30 days after  
12 receipt of a petition for judicial review, the Department shall transmit to the superior court the  
13 original or a certified copy of the official record in the appeal to the Hearing Unit, together with  
14 the final agency decision. In reviewing the Department's final decision, the superior court shall  
15 review the official record, de novo, and make findings of fact and conclusions of law. The  
16 decision of the Department remains in effect during the pendency of review by the superior  
17 court and any further review in the appellate courts.

18 (e) The facility shall convene the adult care home resident discharge team to assist with  
19 finding a placement for a resident if, at the time of notice of discharge, the destination is  
20 unknown, or the destination is not appropriate for the resident. The facility is not solely  
21 responsible for securing an appropriate discharge destination. Local management entities shall  
22 take the lead role for the discharge destination for those residents whose primary unmet needs  
23 are related to mental health, developmental disabilities, or substance abuse and who meet the  
24 criteria for the target population established by the Division of Mental Health, Developmental  
25 Disabilities, and Substance Abuse Services. Local departments of social services shall take the  
26 lead role for those residents whose primary unmet needs are related to health, including  
27 Alzheimer's disease and other forms of dementia, welfare, abuse, or neglect. When the adult  
28 care home resident discharge team is convened at the request of a facility, the adult care home  
29 resident discharge team shall consult with that facility, as well as the resident receiving the  
30 discharge notice and that resident's legal representative. Upon the request of the resident or the  
31 resident's legal representative, the Regional Long-Term Care Ombudsman shall serve as a  
32 member of the adult care home resident discharge team. The facility requesting the adult care  
33 home resident discharge team to be convened shall notify the resident and the resident's legal  
34 representative of this right. The adult care home resident discharge team shall provide the  
35 Hearing Unit with the discharge location at or before the discharge hearing.

36 (f) Meetings of the adult care home resident discharge team are not subject to the  
37 provisions of Article 33C of Chapter 143 of the General Statutes. All information and records  
38 acquired by the adult care home resident discharge team in the exercise of its duties are  
39 confidential unless all parties give written consent to the release of that information.

40 (g) If a discharge is under appeal to the Hearing Unit, the resident shall remain in the  
41 facility and shall not be subject to discharge until issuance of the decision of the Hearing Unit  
42 with the following exceptions:

- 43 (1) The discharge is necessary for the resident's welfare and the resident's needs  
44 cannot be met in the facility as documented by the resident's physician,  
45 physician assistant, or nurse practitioner;
- 46 (2) The safety of other individuals in the facility is endangered;
- 47 (3) The health of other individuals in the facility is endangered as documented  
48 by a physician, physician assistant, or nurse practitioner."

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

1                   "(18) Hearings provided by the Department of Health and Human Services to  
2                   decide appeals pertaining to adult care home resident discharges initiated by  
3                   adult care homes under G.S. 131D-4.8."  
4                   **SECTION 6.** This act becomes effective October 1, 2011.