

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

H.B. 657
Apr 6, 2017
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40346-MG-110A (03/21)

Short Title: Improve Adult Care Home Regulation.

(Public)

Sponsors: Representative Burr.

Referred to:

A BILL TO BE ENTITLED

AN ACT MODIFYING THE LAWS PROHIBITING ISSUANCE OF ADULT CARE HOME LICENSES DUE TO PRIOR VIOLATIONS; EXEMPTING FROM CERTIFICATE OF NEED REVIEW NEW INSTITUTIONAL HEALTH SERVICES INVOLVING THE ACQUISITION OF AN UNLICENSED ADULT CARE HOME THAT WAS PREVIOUSLY LICENSED; ESTABLISHING A PROCESS FOR ADULT CARE HOMES TO REQUEST INFORMAL DISPUTE RESOLUTION OF CERTAIN ADVERSE INSPECTION FINDINGS BY COUNTY DEPARTMENTS OF SOCIAL SERVICES PRIOR TO IMPOSITION OF A PENALTY OR ISSUANCE OF A STAR RATING CERTIFICATE BASED ON THE ADVERSE INSPECTION FINDINGS; AMENDING THE RULES PERTAINING TO MINIMUM TRAINING FOR PERSONAL CARE AIDES; ELIMINATING THE TWELVE- TO TWENTY-FOUR-MONTH PENALTY ON ADULT CARE HOME STAR RATINGS; AND DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO STUDY THE EFFECTIVENESS OF THE NORTH CAROLINA STAR-RATED CERTIFICATE PROGRAM FOR ADULT CARE HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-2.4 reads as rewritten:

"§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals; impact of prior violations on licensure; compliance history review; license renewal.

(a) Licensure. – Except for those facilities exempt under G.S. 131D-2.3, the Department of Health and Human Services shall inspect and license all adult care homes. The Department shall issue a license for a facility not currently licensed as an adult care home for a period of six months. If the licensee demonstrates substantial compliance with Articles 1 and 3 of this Chapter and rules adopted thereunder, the Department shall issue a license for the balance of the calendar year. A facility not currently licensed as an adult care home that was licensed as an adult care home within the preceding 12 months is considered an existing health service facility for the purposes of G.S. 131E-184(a)(8).

(b) Compliance History Review. – Prior to issuing a new license or renewing an existing license, the Department shall conduct a compliance history review of the facility and its principals and affiliates. The Department may refuse to license a facility when the compliance history review shows a pattern of noncompliance with State law by the facility or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents in current or past facilities. The Department shall require compliance history information and make its determination according to rules adopted by the Medical Care Commission.



* D R H 4 0 3 4 6 - M G - 1 1 0 A *

1 (c) Prior Violations. – No new license shall be issued for any adult care home to an
2 applicant for licensure ~~who~~under any of the following circumstances for the period of time
3 indicated:

4 (1) Was the owner, principal, or affiliate of a licensable facility under this
5 Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes
6 and was responsible for the operation of the facility that had its license
7 revoked until ~~one full year~~ five years after the date of ~~revocation~~the
8 revocation became effective.

9 (1a) Was the owner, principal, or affiliate of a licensable facility under this
10 Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes
11 and was responsible for the operation of the facility that had its license
12 summarily suspended until five years after the date the suspension was lifted
13 or terminated.

14 (2) Is the owner, principal, or affiliate of an adult care home and is responsible
15 for the operation of the facility that was assessed a penalty for a Type A or
16 Type B violation until the earlier of one year from the date the penalty was
17 assessed or until the home has substantially complied with the correction
18 plan established pursuant to G.S. 131D-34 and substantial compliance has
19 been certified by the ~~Department~~Department.

20 (3) Is the owner, principal, or affiliate of an adult care home and is responsible
21 for the operation of the facility that had its license ~~summarily suspended or~~
22 ~~downgraded to provisional status~~ or had its admissions suspended as a result
23 of ~~Type A or Type B~~ violations under this Article, Chapter 122C, or Article
24 7 of Chapter 110 of the General Statutes until six months from the date of
25 ~~reinstatement of the license, restoration from provisional to full licensure, or~~
26 ~~termination of the provisional license, as applicable;~~ lifting or termination
27 of the suspension of admissions, as applicable.

28 (4) ~~Is the owner, principal, or affiliate of a licensable facility that had its license~~
29 ~~summarily suspended or downgraded to provisional status as a result of~~
30 ~~violations under this Article or Chapter 122C of the General Statutes or had~~
31 ~~its license summarily suspended or denied under Article 7 of Chapter 110 of~~
32 ~~the General Statutes until six months from the date of the reinstatement of~~
33 ~~the license, restoration from provisional to full licensure, or termination of~~
34 ~~the provisional license, as applicable.~~

35 (5) Is or was the owner, principal, or affilate of an adult care home and is
36 responsible for the operation of the facility where outstanding fees, fines,
37 and penalties imposed by the State against the facility have not been paid.
38 Fines and penalties for which an appeal is pending are exempt from
39 consideration under this subdivision.

40 An applicant for new licensure may appeal a denial of certification of substantial
41 compliance under subdivision (2) of this subsection by filing with the Department a request for
42 review by the Secretary within 10 days of the date of denial of the certification. Within 10 days
43 of receipt of the request for review, the Secretary shall issue to the applicant a written
44 determination that either denies certification of substantial compliance or certifies substantial
45 compliance. The decision of the Secretary is final.

46 (d) License Renewals. – License renewals shall be valid for one year from the date of
47 renewal unless revoked earlier by the Secretary for failure to comply with any part of this
48 section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the
49 Department's approval of the renewal application. The Department shall not renew a license if
50 outstanding fees, fines, and penalties imposed by the State against the home have not been paid.
51 Fines and penalties for which an appeal is pending are exempt from consideration. The renewal

1 application shall contain all necessary and reasonable information that the Department may
2 require.

3 (e) In order for an adult care home to maintain its license, it shall not hinder or interfere
4 with the proper performance of duty of a lawfully appointed community advisory committee, as
5 defined by G.S. 131D-31 and G.S. 131D-32.

6 (f) The Department shall not issue a new license for a change of ownership of an adult
7 care home if outstanding fees, fines, and penalties imposed by the State against the home have
8 not been paid. Fines and penalties for which an appeal is pending are exempt from
9 consideration. The consent of the current licensee is not a required prerequisite to a change of
10 ownership of an adult care home if the current licensee has (i) been removed from the facility
11 pursuant to Articles 3 and 7 of Chapter 42 of the General Statutes or (ii) abandoned the facility,
12 as determined by the Department's reasonable discretion.

13 (g) Any applicant for licensure who wishes to contest the denial of a license is entitled
14 to an administrative hearing as provided in Chapter 150B of the General Statutes. The applicant
15 shall file a petition for a contested case within 30 days after the date the Department mails a
16 written notice of the denial to the applicant."

17 **SECTION 2.** G.S. 131D-2.11 reads as rewritten:

18 "**§ 131D-2.11. Inspections, monitoring, and review by State agency and county**
19 **departments of social services.**

20 ...

21 (a2) ~~Informal Dispute Resolution-Resolution~~ – Division of Health Service Regulation. –

22 (1) The Division of Health Service Regulation shall offer each adult care home
23 an opportunity, at the facility's request and upon the facility's receipt of the
24 official statement of deficiencies, to informally resolve disputed findings
25 from inspections conducted by the Division of Health Service Regulation in
26 accordance with this section.

27 (2) Failure of the Division of Health Service Regulation to complete informal
28 dispute resolution timely does not delay the effective date of any
29 enforcement action taken by the Division of Health Service Regulation
30 against an adult care home.

31 (3) An adult care home is not entitled to seek a delay of any enforcement action
32 against it on the grounds that the Division of Health Service Regulation has
33 not completed informal dispute resolution prior to the effective date of the
34 enforcement action.

35 (4) If an adult care home successfully demonstrates during informal dispute
36 resolution that any of the deficiencies cited in the official statement of
37 deficiencies should not have been cited, the Division of Health Service
38 Regulation shall remove the incorrectly cited deficiencies from the official
39 statement of deficiencies and rescind any enforcement actions imposed on
40 the adult care home solely as a result of the incorrectly cited deficiencies.

41 (5) ~~Upon request, the~~The Division of Health Service Regulation shall ~~provide an~~
42 ~~adult care home with written notification of these informal dispute resolution~~
43 ~~procedures.~~make available on its Internet Web site the informal dispute
44 resolution procedures for adult care homes.

45 (a3) Informal Dispute Resolution – County Departments of Social Services. –

46 (1) The Division of Health Service Regulation and county department of social
47 services shall jointly offer each adult care home an opportunity, at the
48 facility's request and upon the facility's receipt of the official statement of
49 deficiencies, to informally resolve disputed findings from inspections
50 conducted by the county department of social services that resulted in the
51 citation of a Type A1 violation, Type A2 violation, Uncorrected Type A1,

violation, Uncorrected Type A2 violation, or Uncorrected Type B violation, in accordance with this section.

- (2) Failure of the Division of Health Service Regulation and county department of social services to complete informal dispute resolution timely does not delay the effective date of any enforcement action taken by the Division of Health Service Regulation against an adult care home.
- (3) An adult care home is not entitled to seek a delay of any enforcement action against it on the grounds that the Division of Health Service Regulation and the county department of social services has not completed informal dispute resolution prior to the effective date of the enforcement action.
- (4) If an adult care home successfully demonstrates during informal dispute resolution that any of the deficiencies cited in the official statement of deficiencies should not have been cited, the county department of social services shall remove the incorrectly cited deficiencies from the official statement of deficiencies and the Division of Health Service Regulation shall rescind any enforcement actions imposed on the adult care home solely as a result of the incorrectly cited deficiencies.
- (5) The Division of Health Service Regulation shall make available on its Internet Web site the informal dispute resolution procedures for adult care homes.

...."

SECTION 3. G.S. 131D-4.3(a) reads as rewritten:

"(a) Pursuant to G.S. 143B-165, the North Carolina Medical Care Commission shall adopt rules to ensure at a minimum, but shall not be limited to, the provision of each of the following by adult care homes:

- (1) Repealed by Session Laws 2000-111, s. 1.
- (2) A minimum of ~~75-80~~ hours of training for personal care aides ~~performing heavy care tasks and a minimum of 40 hours of training for all personal care aides.~~ The training for aides ~~providing heavy care tasks~~ shall be comparable to State-approved Certified Nurse Aide I training. ~~For those aides meeting the 40-hour requirement, at least 20 hours shall be classroom training to include at a minimum:~~
 - a. ~~Basic nursing skills;~~
 - b. ~~Personal care skills;~~
 - c. ~~Cognitive, behavioral, and social care;~~
 - d. ~~Basic restorative services;~~
 - e. ~~Residents' rights.~~

~~A minimum of 20 hours of training shall be provided for aides in family care homes that do not have heavy care residents. Persons who either pass a competency examination developed by the Department of Health and Human Services, have been employed as personal care aides for a period of time as established by the Department, or meet minimum requirements of a combination of training, testing, and experience as established by the Department shall be exempt from the training requirements of this subdivision; The facility may exempt from the 80-hour training requirement any personal care aides who are or have been either licensed as a health care professional or listed on the Nurses Aides Registry.~~

- (3) Monitoring and supervision of ~~residents;~~ residents.
- (4) Oversight and quality of care as stated in ~~G.S. 131D-4.1;~~ and G.S. 131D-4.1.
- (5) Adult care homes shall comply with all of the following staffing requirements:
 - a. First shift (morning): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per

1 each 20 residents (licensed capacity or resident census) plus 3.0
2 hours for all other residents, whichever is greater;

- 3 b. Second shift (afternoon): 0.4 hours of aide duty for each resident
4 (licensed capacity or resident census), or 8.0 hours of aide duty per
5 each 20 residents plus 3.0 hours for all other residents (licensed
6 capacity or resident census), whichever is greater;
7 c. Third shift (evening): 8.0 hours of aide duty per 30 or fewer residents
8 (licensed capacity or resident census).

9 ~~In addition to these requirements, the~~ The facility shall provide staff to meet
10 the needs of the facility's ~~heavy care residents equal to the amount of time~~
11 ~~reimbursed by Medicaid. As used in this subdivision, the term "heavy care~~
12 ~~resident" means an individual residing in an adult care home who is defined~~
13 ~~"heavy care" by Medicaid and for which the facility is receiving enhanced~~
14 ~~Medicaid payments for such needs.~~ residents. Each facility shall post in a
15 conspicuous place information about required staffing that enables residents
16 and their families to ascertain each day the number of direct care staff and
17 supervisors that are required by law to be on duty for each shift for that day."

18 **SECTION 4.(a)** The Division of Health Service Regulation and county
19 departments of social services shall establish procedures to implement the requirements of
20 G.S. 131D-2.11(a3), as amended by this act, within 60 days after the effective date of this act.

21 **SECTION 4.(b)** This section is effective when it becomes law.

22 **SECTION 5.** G.S. 131D-10 reads as rewritten:

23 **"§ 131D-10. Adult care home rated certificates.**

24 (a) Rules adopted by the North Carolina Medical Care Commission for issuance of
25 certificates to adult care homes shall contain a rating based, at a minimum, on the following:

- 26 (1) Inspections and substantiated complaint investigations conducted by the
27 Department to determine compliance with licensing statutes and rules.
28 Specific areas to be reviewed include:
29 a. Admission and discharge procedures.
30 b. Medication management.
31 c. Physical plant.
32 d. Resident care and services, including food services, resident
33 activities programs, and safety measures.
34 e. Residents' rights.
35 f. Sanitation grade.
36 g. Special Care Units.
37 h. Use of physical restraints and alternatives.

38 (b) ~~The initial ratings awarded~~ The Division of Health Service Regulation shall issue
39 ratings to a facility pursuant to the rules adopted under this section ~~shall be based on~~
40 ~~inspections, penalties imposed, both of the following:~~

- 41 (1) Inspections and investigations of ~~substantiated~~ complaints conducted
42 pursuant to G.S. 131D-2.11 and G.S. 131D-26 that revealed noncompliance
43 with statutes and rules, ~~that occurred on or after the act becomes law.~~ rules.
44 (2) The facility's participation in any quality improvement programs approved
45 by the Department.

46 (c) ~~Type A penalties shall affect the rating for 24 months from the date the penalty is~~
47 ~~assessed. Type B penalties shall affect the rating for 12 months from the date the penalty is~~
48 ~~assessed.~~

49 (c1) The Division of Health Service Regulation shall issue a star rating to a facility
50 within 45 days from the date the Division mails the survey or inspection report to the facility,
51 except when a timely request has been made by the facility under G.S. 131D-2.11 for informal

1 dispute resolution. If a facility makes a timely request for informal dispute resolution, the
2 Division of Health Service Regulation shall issue a star rating to the facility within 15 days
3 from the date the Division mails the informal dispute decision to the facility.

4 (d) Adult care homes shall display the rating certificate in a location visible to the
5 public. Certificates shall include the Web site address for the Department of Health and Human
6 Services, Division of Health Service Regulation, which can be accessed for specific
7 information regarding the basis of the facility rating. For access by the public on request, adult
8 care homes shall also maintain on-site a copy of information provided by the Department of
9 Health and Human Services, Division of Health Service Regulation, regarding the basis of the
10 facility rating. ~~In addition to information on the basis of the rating, the Department of Health~~
11 ~~and Human Services, Division of Health Service Regulation, shall make information available~~
12 ~~via its Web site and in the materials available on site at the facility regarding quality~~
13 ~~improvement efforts undertaken by the facility including:~~

14 (1) ~~Participation in any quality improvement programs approved by the Department.~~

15 (2) ~~The facility's attainment of the North Carolina New Organizational Vision Award~~
16 ~~special licensure designation authorized in Article 5, Chapter 131E of the General Statutes.~~

17 (e) The Department shall make available free of charge to the general public on the
18 Division of Health Service Regulation Web site each facility rating and specific information
19 regarding the basis for calculating each facility rating."

20 **SECTION 6.(a)** The Department of Health and Human Services shall conduct a
21 study of the North Carolina Star Rated Certificate Program. The study shall (i) evaluate the
22 effectiveness of the program in providing information to consumers of adult care home
23 services, (ii) examine potential evidence-based alternatives, and (iii) make recommendations
24 for any regulatory or legislative changes that could result in improvement of the current system.

25 **SECTION 6.(b)** By February 1, 2018, the Department shall report to the Joint
26 Legislative Oversight Committee on Health and Human Services and the Fiscal Research
27 Division on the progress of the study. By October 1, 2018, the Department shall conclude the
28 study and report its findings and recommendations, including any recommendations for
29 regulatory or legislative changes, to the Joint Legislative Oversight Committee on Health and
30 Human Services and the Fiscal Research Division.

31 **SECTION 6.(c)** This section is effective when it becomes law.

32 **SECTION 7.(a)** G.S. 131E-184(a)(8) reads as rewritten:

33 "(8) To acquire an existing health service facility, including equipment owned by
34 the health service facility at the time of acquisition. A facility not currently
35 licensed as an adult care home that was licensed as an adult care home
36 within the preceding 12 months is considered an existing health service
37 facility for the purposes of this subdivision."

38 **SECTION 7.(b)** This section is effective when it becomes law.

39 **SECTION 8.** Except as otherwise provided, this act becomes effective October 1,

40 2017.