

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 657

Short Title: Improve Adult Care Home Regulation. (Public)

Sponsors: Representatives Burr, Dobson, White, and Sauls (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Aging, if favorable, Health, if favorable, Judiciary I

April 11, 2017

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



1 history information and make its determination according to rules adopted by the Medical Care  
2 Commission.

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

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

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

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

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

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

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

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

48 (d) License Renewals. – License renewals shall be valid for one year from the date of  
49 renewal unless revoked earlier by the Secretary for failure to comply with any part of this  
50 section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the  
51 Department's approval of the renewal application. The Department shall not renew a license if

1 outstanding fees, fines, and penalties imposed by the State against the home have not been paid.  
 2 Fines and penalties for which an appeal is pending are exempt from consideration. The renewal  
 3 application shall contain all necessary and reasonable information that the Department may  
 4 require.

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

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

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

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

20 "**§ 131D-2.11. Inspections, monitoring, and review by State agency and county**  
 21 **departments of social services.**

22 ...

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

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

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

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

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

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

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

48 (1) The Division of Health Service Regulation and county department of social  
 49 services shall jointly offer each adult care home an opportunity, at the  
 50 facility's request and upon the facility's receipt of the official statement of  
 51 deficiencies, to informally resolve disputed findings from inspections

1 conducted by the county department of social services that resulted in the  
 2 citation of a Type A1 violation, Type A2 violation, Uncorrected Type A1,  
 3 violation, Uncorrected Type A2 violation, or Uncorrected Type B violation,  
 4 in accordance with this section.

5 (2) Failure of the Division of Health Service Regulation and county department  
 6 of social services to complete informal dispute resolution timely does not  
 7 delay the effective date of any enforcement action taken by the Division of  
 8 Health Service Regulation against an adult care home.

9 (3) An adult care home is not entitled to seek a delay of any enforcement action  
 10 against it on the grounds that the Division of Health Service Regulation and  
 11 the county department of social services has not completed informal dispute  
 12 resolution prior to the effective date of the enforcement action.

13 (4) If an adult care home successfully demonstrates during informal dispute  
 14 resolution that any of the deficiencies cited in the official statement of  
 15 deficiencies should not have been cited, the county department of social  
 16 services shall remove the incorrectly cited deficiencies from the official  
 17 statement of deficiencies and the Division of Health Service Regulation shall  
 18 rescind any enforcement actions imposed on the adult care home solely as a  
 19 result of the incorrectly cited deficiencies.

20 (5) The Division of Health Service Regulation shall make available on its  
 21 Internet Web site the informal dispute resolution procedures for adult care  
 22 homes.

23 ...."

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

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

28 (1) Repealed by Session Laws 2000-111, s. 1.

29 (2) A minimum of ~~75-80~~ hours of training for personal care aides performing  
 30 heavy care tasks and a minimum of 40 hours of training for all personal care  
 31 aides. The training for aides providing heavy care tasks shall be comparable  
 32 to State-approved Certified Nurse Aide I training. ~~For those aides meeting~~  
 33 ~~the 40-hour requirement, at least 20 hours shall be classroom training to~~  
 34 ~~include at a minimum:~~

- 35 a. ~~Basic nursing skills;~~
- 36 b. ~~Personal care skills;~~
- 37 c. ~~Cognitive, behavioral, and social care;~~
- 38 d. ~~Basic restorative services;~~
- 39 e. ~~Residents' rights.~~

40 ~~A minimum of 20 hours of training shall be provided for aides in family care homes that do not~~  
 41 ~~have heavy care residents. Persons who either pass a competency examination developed by the~~  
 42 ~~Department of Health and Human Services, have been employed as personal care aides for a~~  
 43 ~~period of time as established by the Department, or meet minimum requirements of a~~  
 44 ~~combination of training, testing, and experience as established by the Department shall be~~  
 45 ~~exempt from the training requirements of this subdivision; The facility may exempt from the~~  
 46 ~~80-hour training requirement any personal care aides who are or have been either licensed as a~~  
 47 ~~health care professional or listed on the Nurses Aides Registry.~~

48 (3) ~~Monitoring and supervision of residents;~~ residents.

49 (4) Oversight and quality of care as stated in ~~G.S. 131D-4.1;~~ and G.S. 131D-4.1.

50 (5) Adult care homes shall comply with all of the following staffing  
 51 requirements:

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

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

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

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

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

25 "**§ 131D-10. Adult care home rated certificates.**

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

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

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

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

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

1       (c1) The Division of Health Service Regulation shall issue a star rating to a facility  
2 within 45 days from the date the Division mails the survey or inspection report to the facility,  
3 except when a timely request has been made by the facility under G.S. 131D-2.11 for informal  
4 dispute resolution. If a facility makes a timely request for informal dispute resolution, the  
5 Division of Health Service Regulation shall issue a star rating to the facility within 15 days  
6 from the date the Division mails the informal dispute decision to the facility.

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

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

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

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

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

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

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

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

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

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

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

43 2017.