

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003**

**SESSION LAW 2003-294
SENATE BILL 926**

**AN ACT TO CLARIFY THE LICENSING PROCESS FOR NEW GROUP HOME
FACILITIES AND FOR THE REIMBURSEMENT OF EDUCATIONAL COSTS
BY THE HOME COUNTY TO THE HOST COUNTY.**

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-140.1 reads as rewritten:

"§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.

(a) **(Effective until July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal law, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(a) **(Effective July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with ~~special needs~~ disabilities who is placed in or assigned to a ~~group home, home or foster home or other similar facility, home,~~ pursuant to State and federal law, shall be borne by the local board of education in which the ~~group home, home or foster home or other similar facility~~ is located. However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal ~~year, year after all State and federal funding has been exhausted.~~ Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(b) The State Board of Education shall use State and federal funds appropriated for children with special needs to establish a reserve fund to reimburse local boards of education for the education costs of children assigned to group homes or other facilities as provided in subsection (a) of this section. Local school administrative units may submit a Special State Reserve Program application for foster home or group home children whose special education and related services costs exceed the per child group home allocation.

(c) The Department shall review the current cost of children with disabilities served in the local school administrative units with group homes or foster homes to determine the actual cost of services."

SECTION 2. G.S. 122C-23 reads as rewritten:

"§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, developmentally disabled, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and shall not be transferable or assignable except with prior written approval of the Secretary.

(c) Any person who intends to establish, maintain, or operate a licensable facility shall apply to the Secretary for a license. The Secretary shall prescribe by rule the contents of the application forms.

(d) The Secretary shall issue a license if the Secretary finds that the person complies with this Article and the rules of the Commission and Secretary.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for a period not to exceed two years from the date of issue. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person who is temporarily unable to comply with a rule or rules. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. The noncompliance may not present an immediate threat to the health and safety of the individuals in the licensable facility. A provisional license for an additional period of time to meet the noncompliance may not be issued.

(e1) Except as provided in subsection (e2) of this section, The Department the Secretary shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

- (1) ~~Was The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C122C, or Chapter 131D131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.~~
- (2) ~~Is The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of this Chapter until 60 months after the date of the violation. Chapter, or any combination thereof, and any one of the following conditions exist:~~
 - a. A single violation has been assessed in the six months prior to the application.
 - b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
- (3) ~~Is The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) until 60 months after the date of reinstatement or restoration of the license.~~
- (4) ~~Is The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter~~

131D until 60 months after the date of reinstatement or restoration of the license.

(e2) The Secretary may enroll a provider described in subsection (e1) of this section if any of the following circumstances apply:

- (1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.
- (2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

(e3) For purposes of subdivision (e1)(2), fines assessed prior to October 23, 2002, are not applicable to this provision. However, licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

- (1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection, and
- (2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee."

SECTION 3. G.S. 131D-2(b)(1b) reads as rewritten:

"(1b) No new license shall be issued for any adult care home to an applicant for licensure who:

- a. Was the owner, principal, or affiliate of ~~an adult care home a~~ licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until one full year after the date of revocation;
- b. Is the owner, principal, or affiliate of an adult care home that was assessed a penalty for a Type A or Type B violation until the earlier of one year from the date the penalty was assessed or until the home has substantially complied with the correction plan established pursuant to G.S. 131D-34 and substantial compliance has been certified by the Department; or
- c. Is the owner, principal, or affiliate of an adult care home that had its license summarily suspended or downgraded to provisional status as a result of Type A or B violations until six months from the date of reinstatement of the license, restoration

from provisional to full licensure, or termination of the provisional license, as applicable.

- d. Is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Chapter 122C, or Article 1 of Chapter 131D, or had its license summarily suspended or denied under Article 7 of Chapter 110 until six months from the date of the reinstatement of the license, restoration from provisional to full licensure, or termination of the provisional license, as applicable.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subparagraph b. of this subdivision by filing with the Department a request for review by the Secretary within 10 days of the date of denial of the certification. Within 10 days of receipt of the request for review the Secretary shall issue to the applicant a written determination that either denies certification of substantial compliance or certifies substantial compliance. The decision of the Secretary is final."

SECTION 4. G.S. 131D-10.3 reads as rewritten:

"§ 131D-10.3. Licensure required.

(a) No person shall operate, establish or provide foster care for children or receive and place children in residential care facilities, family foster homes, or adoptive homes without first applying for a license to the Department and submitting the required information on application forms provided by the Department.

(b) Persons licensed or seeking a license under this Article shall permit the Department access to premises and information required to determine whether the person is in compliance with licensing rules of the Commission.

(c) Persons licensed pursuant to this Article shall be periodically reviewed by the Department to determine whether they comply with Commission rules and whether licensure shall continue.

(d) This Article shall apply to all persons intending to organize, develop or provide foster care for children or receive and place children in residential child-care facilities, family foster homes or adoptive homes irrespective of such persons having applied for or obtained a certification, registration or permit to carry on work not controlled by this Article except persons exempted in G.S. 131D-10.4.

(e) Unless revoked or modified to a provisional or suspended status, the terms of a license issued by the Department shall be in force for a period not to exceed 24 months from the date of issuance under rules adopted by the Commission.

(f) Persons licensed or seeking a license who are temporarily unable to comply with a rule or rules may be granted a provisional license. The provisional license can be issued for a period not to exceed six months. The noncompliance with a rule or rules shall not present an immediate threat to the health and safety of the children, and the person shall have a plan approved by the Department to correct the area(s) of noncompliance within the provisional period. A provisional license for an additional period of time to meet the same area(s) of noncompliance shall not be issued.

(g) In accordance with Commission rules, a person may submit to the Department documentation of compliance with the standards of a nationally recognized accrediting body, and the Department on the basis of such accreditation may deem the person in compliance with one or more Commission licensing rules.

(h) Except as provided in subsection (i) of this section, the Secretary ~~The Department~~ shall not enroll any new provider for Medicaid Home or Community Based services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

- (1) ~~Was~~ The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C or 122C, Chapter 131D131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.
- (2) ~~Is~~ The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of Chapter 122C until 60 months after the date of the violation. Chapter 122C, or any combination thereof, and any one of the following conditions exist:
 - a. A single violation has been assessed in the six months prior to the application.
 - b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.
 - c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.
 - d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.
- (3) ~~Is~~ The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C- 24.1(a) until 60 months after the date of reinstatement or restoration of the license.
- (4) ~~Is~~ The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D131D, or had its license summarily suspended or denied under Article 7 of Chapter 110 until 60 months after the date of reinstatement or restoration of the license.
 - (i) The Secretary may enroll a provider described in subsection (h) of this section if any of the following circumstances apply:
 - (1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.
 - (2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.
 - (j) For purposes of subdivision (h)(2) of this section, fines assessed prior to October 23, 2002, are not applicable to this provision. However, licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing."

SECTION 5. Section 3 of S.L. 2002-164 reads as rewritten:

"SECTION 3. The State Board of Education shall provide for a local school administrative unit to request funds from the Group Homes Program for Children with Disabilities if a child assigned to that unit was not in that unit's April headcount child count for exceptional children with disabilities or the average daily membership for the previous school year, even if the local school administrative unit received Group Homes Program funds for that child for a portion of the preceding school year. The local school administrative unit shall receive full school year funding upon the local school

unit's request for group home or foster home program funds. These funds may not be requested except by a local school administrative unit."

SECTION 6.(a) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction shall report on the following Program information:

- (1) The number and other demographic information of children served utilizing Comprehensive Treatment Services Program funds or who are placed out of their home under the auspices of one of the referenced agencies.
- (2) The amount and source of funds expended to implement the Program.
- (3) Information regarding the number of children screened for mental health, developmental disabilities, or substance abuse; specific placement of children including the placement of children in programs or facilities outside of the child's home county; and treatment needs of children served.
- (4) The average length of stay in residential treatment, transition, and return to home.
- (5) The number of children diverted from institutions or other out-of-home placements such as training schools and State psychiatric hospitals and a description of the services provided.
- (6) Recommendations on other areas that need to be improved.
- (7) Other information relevant to successfully maintaining children in their county of residence.
- (8) A method of identifying and reporting child placements outside of the family unit in group homes or therapeutic foster care home settings.

SECTION 6.(b) The Department of Health and Human Services, in conjunction with the Department of Juvenile Justice and Delinquency Prevention, and the Department of Public Instruction shall submit a report by April 1, 2004, on the method of identifying and reporting child placements outside of the family unit in group homes or therapeutic foster care home settings to the House of Representatives Appropriations Subcommittee on Health and Human Services, the Senate Appropriations Committee on Health and Human Services, and the Fiscal Research Division.

SECTION 7. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 23rd day of June, 2003.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 4:38 p.m. this 4th day of July, 2003