

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS55010-LN-9 (11/16)

Short Title: Assisted Living Facility Amendments. (Public)

Sponsors: Senator Nesbitt.

Referred to:

A BILL TO BE ENTITLED

1 AN ACT TO MAKE TECHNICAL, ORGANIZATIONAL, AND
2 NONSUBSTANTIVE CHANGES ONLY TO THE LAW REGARDING THE
3 LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED
4 INDIVIDUALS FOR PURPOSES OF CLARIFICATION OF THE CURRENT
5 LAW.
6

7 The General Assembly of North Carolina enacts:

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

"Article 1B.

"Licensing of Maternity Homes."

10 **SECTION 1.(b)** G.S. 131D-1 is recodified as G.S. 131D-10.10 under
11 Article 1B of Chapter 131D of the General Statutes.

12 **SECTION 1.(c)** The title of Article 1 of Chapter 131D reads as rewritten:

"Article 1.

Licensing of Facilities.

Adult Care Homes."

13 **SECTION 1.(d)** G.S. 131D-2 is repealed.

14 **SECTION 1.(e)** Effective July 1, 2007, Article 1 of Chapter 131D of the
15 General Statutes, as amended by Section 1(c) of this act, is amended by adding the
16 following new Part to read:
17

"Part 1. Licensing.

18 **§ 131D-2.1. Definitions.**

19 As used in this Article:

- 20 (1) "Abuse." – The willful or grossly negligent infliction of physical pain,
21 injury, or mental anguish, unreasonable confinement, or the willful or
22 grossly negligent deprivation by the administrator or staff of an adult
23

- 1 care home of services which are necessary to maintain mental and
2 physical health.
- 3 (2) "Administrator." – A person approved by the Department of Health
4 and Human Services who has the responsibility for the total operation
5 of a licensed domiciliary home.
- 6 (3) "Adult care home." – An assisted living residence in which the
7 housing management provides 24-hour scheduled and unscheduled
8 personal care services to two or more residents, either directly or, for
9 scheduled needs, through formal written agreement with licensed
10 home care or hospice agencies. Some licensed adult care homes
11 provide supervision to persons with cognitive impairments whose
12 decisions, if made independently, may jeopardize the safety or
13 well-being of themselves or others and therefore require supervision.
14 Medication in an adult care home may be administered by designated,
15 trained staff. Adult care homes that provide care to two to six unrelated
16 residents are commonly called family care homes.
- 17 (4) "Amenities." – Services such as meals, housekeeping, transportation,
18 and grocery shopping that do not involve hands-on personal care.
- 19 (5) "Assisted living residence." – Any group housing and services
20 program for two or more unrelated adults, by whatever name it is
21 called, that makes available, at a minimum, one meal a day and
22 housekeeping services and provides personal care services directly or
23 through a formal written agreement with one or more licensed home
24 care or hospice agencies. The Department may allow nursing service
25 exceptions on a case-by-case basis. Settings in which services are
26 delivered may include self-contained apartment units or single or
27 shared room units with private or area baths. Assisted living residences
28 are to be distinguished from nursing homes subject to provisions of
29 G.S. 131E-102. Housing programs for two or more unrelated adults
30 that target their services to elderly or disabled persons in which the
31 only services provided by the housing management, either directly or
32 through an agreement or other arrangements, are amenities that
33 include, at a minimum, one meal a day and housekeeping services, are
34 exempt from licensure, but are required to be listed with the Division
35 of Aging, providing information on their location and number of units
36 operated. This type of housing is not considered assisted living. There
37 are three types of assisted living residences: adult care homes, adult
38 care homes that serve only elderly persons, and multiunit assisted
39 housing with services. As used in this section, "elderly person" means:
- 40 a. Any person who has attained the age of 55 years or older and
41 requires assistance with activities of daily living, housing, and
42 services, or
- 43 b. Any adult who has a primary diagnosis of Alzheimer's disease
44 or other form of dementia who requires assistance with

- 1 activities of daily living, housing, and services provided by a
2 licensed Alzheimer's and dementia care unit.
- 3 (6) "Compensatory agent." – A spouse, relative, or other caretaker who
4 lives with a resident and provides care to a resident.
- 5 (7) "Department." – The Department of Health and Human Services
6 unless some other meaning is clearly indicated from the context.
- 7 (8) "Exploitation." – The illegal or improper use of an aged or disabled
8 resident or the aged or disabled resident's resources for another's profit
9 or advantage.
- 10 (9) "Family care home." – An adult care home having two to six residents.
11 The structure of a family care home may be no more than two stories
12 high and none of the aged or physically disabled persons being served
13 there may be housed in the upper story without provision for two
14 direct exterior ground-level accesses to the upper story.
- 15 (10) "Multiunit assisted housing with services." – An assisted living
16 residence in which hands-on personal care services and nursing
17 services which are arranged by housing management are provided by a
18 licensed home care or hospice agency through an individualized
19 written care plan. The housing management has a financial interest or
20 financial affiliation or formal written agreement which makes personal
21 care services accessible and available through at least one licensed
22 home care or hospice agency. The resident has a choice of any
23 provider, and the housing management may not combine charges for
24 housing and personal care services. All residents, or their
25 compensatory agents, must be capable, through informed consent, of
26 entering into a contract and must not be in need of 24-hour
27 supervision. Assistance with self-administration of medications may
28 be provided by appropriately trained staff when delegated by a
29 licensed nurse according to the home care agency's established plan of
30 care. Multiunit assisted housing with services programs are required to
31 register with the Division of Facility Services and to provide a
32 disclosure statement. The disclosure statement is required to be a part
33 of the annual rental contract that includes a description of the
34 following requirements:
- 35 a. Emergency response system;
36 b. Charges for services offered;
37 c. Limitations of tenancy;
38 d. Limitations of services;
39 e. Resident responsibilities;
40 f. Financial/legal relationship between housing management and
41 home care or hospice agencies;
42 g. A listing of all home care or hospice agencies and other
43 community services in the area;
44 h. An appeals process; and

1 i. Procedures for required initial and annual resident screening
2 and referrals for services.

3 Continuing care retirement communities, subject to regulation by the
4 Department of Insurance under Chapter 58 of the General Statutes, are
5 exempt from the regulatory requirements for multiunit assisted
6 housing with services programs.

7 (11) "Neglect." – The failure to provide the services necessary to maintain a
8 resident's physical or mental health.

9 (12) "Personal care services." – Any hands-on services allowed to be
10 performed by In-Home Aides II or III as outlined in Department rules.

11 (13) "Registration." – The submission by a multiunit assisted housing with
12 services provider of a disclosure statement containing all the
13 information as outlined in subdivision (10) of this subsection.

14 (14) "Resident." – A person living in an assisted living residence for the
15 purpose of obtaining access to housing and services provided or made
16 available by housing management.

17 (15) "Secretary." – The Secretary of Health and Human Services unless
18 some other meaning is clearly indicated from the context.

19 **"§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted**
20 **housing with services; hospice care.**

21 (a) Adult Care Homes. – Except when a physician certifies that appropriate care
22 can be provided on a temporary basis to meet the resident's needs and prevent
23 unnecessary relocation, adult care homes shall not care for individuals with any of the
24 following conditions or care needs:

25 (1) Ventilator dependency;

26 (2) Individuals requiring continuous licensed nursing care;

27 (3) Individuals whose physician certifies that placement is no longer
28 appropriate;

29 (4) Individuals whose health needs cannot be met in the specific adult care
30 home as determined by the residence; and

31 (5) Such other medical and functional care needs as the Medical Care
32 Commission determines cannot be properly met in an adult care home.

33 (b) Multiunit Assisted Housing With Services. – Except when a physician
34 certifies that appropriate care can be provided on a temporary basis to meet the
35 resident's needs and prevent unnecessary relocation, multiunit assisted housing with
36 services shall not care for individuals with any of the following conditions or care
37 needs:

38 (1) Ventilator dependency;

39 (2) Dermal ulcers III and IV, except those stage III ulcers which are
40 determined by an independent physician to be healing;

41 (3) Intravenous therapy or injections directly into the vein, except for
42 intermittent intravenous therapy managed by a home care or hospice
43 agency licensed in this State;

- 1 (4) Airborne infectious disease in a communicable state that requires
2 isolation of the individual or requires special precautions by the
3 caretaker to prevent transmission of the disease, including diseases
4 such as tuberculosis and excluding infections such as the common
5 cold;
6 (5) Psychotropic medications without appropriate diagnosis and treatment
7 plans;
8 (6) Nasogastric tubes;
9 (7) Gastric tubes except when the individual is capable of independently
10 feeding himself or herself and caring for the tube, or as managed by a
11 home care or hospice agency licensed in this State;
12 (8) Individuals requiring continuous licensed nursing care;
13 (9) Individuals whose physician certifies that placement is no longer
14 appropriate;
15 (10) Unless the individual's independent physician determines otherwise,
16 individuals who require maximum physical assistance as documented
17 by a uniform assessment instrument and who meet Medicaid nursing
18 facility level-of-care criteria as defined in the State Plan for Medical
19 Assistance. Maximum physical assistance means that an individual has
20 a rating of total dependence in four or more of the seven activities of
21 daily living as documented on a uniform assessment instrument;
22 (11) Individuals whose health needs cannot be met in the specific multiunit
23 assisted housing with services as determined by the residence; and
24 (12) Such other medical and functional care needs as the Medical Care
25 Commission determines cannot be properly met in multiunit assisted
26 housing with services.

27 (c) Hospice Care. – At the request of the resident, hospice care may be provided
28 in an assisted living residence under the same requirements for hospice programs as
29 described in Article 10 of Chapter 131E of the General Statutes.

30 (d) Obtaining Services. – The resident of an assisted living facility has the right
31 to obtain services at the resident's own expense from providers other than the housing
32 management. This subsection shall not be construed to relieve the resident of the
33 resident's contractual obligation to pay the housing management for any services
34 covered by the contract between the resident and housing management.

35 **§ 131D-2.3. Exemptions from licensure.**

36 (a) The following are excluded from this Article and are not required to be
37 registered or obtain licensure under this Article:

- 38 (1) Facilities licensed under Chapter 122C or Chapter 131E of the General
39 Statutes;
40 (2) Persons subject to rules of the Division of Vocational Rehabilitation
41 Services;
42 (3) Facilities that care for no more than four persons, all of whom are
43 under the supervision of the United States Veterans Administration;

1 (4) Facilities that make no charges for housing, amenities, or personal care
2 service, either directly or indirectly; and

3 (5) Institutions that are maintained or operated by a unit of government
4 and that were established, maintained, or operated by a unit of
5 government and exempt from licensure by the Department on
6 September 30, 1995.

7 **"§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals;**
8 **impact of prior violations on licensure; compliance history review;**
9 **license renewal.**

10 (a) Licensure. – Except for those facilities exempt under G.S. 131D-2.3., the
11 Department of Health and Human Services shall inspect and license all adult care
12 homes. The Department shall issue a license for a facility not currently licensed as an
13 adult care home for a period of six months. If the licensee demonstrates substantial
14 compliance with Articles 1 and 3 of this Chapter and rules adopted thereunder, the
15 Department shall issue a license for the balance of the calendar year.

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

24 (c) Prior Violations. – No new license shall be issued for any adult care home to
25 an applicant for licensure who:

26 (1) Was the owner, principal, or affiliate of a licensable facility under
27 Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 of the
28 General Statutes that had its license revoked until one full year after
29 the date of revocation;

30 (2) Is the owner, principal, or affiliate of an adult care home that was
31 assessed a penalty for a Type A or Type B violation until the earlier of
32 one year from the date the penalty was assessed or until the home has
33 substantially complied with the correction plan established pursuant to
34 G.S. 131D-34 and substantial compliance has been certified by the
35 Department;

36 (3) Is the owner, principal, or affiliate of an adult care home that had its
37 license summarily suspended or downgraded to provisional status as a
38 result of Type A or B violations until six months from the date of
39 reinstatement of the license, restoration from provisional to full
40 licensure, or termination of the provisional license, as applicable; or

41 (4) Is the owner, principal, or affiliate of a licensable facility that had its
42 license summarily suspended or downgraded to provisional status as a
43 result of violations under Chapter 122C, or Article 1 of Chapter 131D
44 of the General Statutes or had its license summarily suspended or

1 denied under Article 7 of Chapter 110 of the General Statutes until six
2 months from the date of the reinstatement of the license, restoration
3 from provisional to full licensure, or termination of the provisional
4 license, as applicable.

5 An applicant for new licensure may appeal a denial of certification of substantial
6 compliance under subdivision (2) of this subsection by filing with the Department a
7 request for review by the Secretary within 10 days of the date of denial of the
8 certification. Within 10 days of receipt of the request for review the Secretary shall
9 issue to the applicant a written determination that either denies certification of
10 substantial compliance or certifies substantial compliance. The decision of the Secretary
11 is final.

12 (d) License Renewals. – License renewals shall be valid for one year from the
13 date of renewal unless revoked earlier by the Secretary for failure to comply with any
14 part of this section or any rules adopted hereunder. Licenses shall be renewed annually
15 upon filing and the Department's approval of the renewal application. The Department
16 shall not renew a license if outstanding fees, fines, and penalties imposed by the State
17 against the home have not been paid. Fines and penalties for which an appeal is pending
18 are exempt from consideration. The renewal application shall contain all necessary and
19 reasonable information that the Department may require.

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

23 **"§ 131D-2.5. License fees.**

24 The Department shall charge each adult care home with six or fewer beds a
25 nonrefundable annual license fee in the amount of two hundred fifty dollars (\$250.00).
26 The Department shall charge each adult care home with more than six beds a
27 nonrefundable annual license fee in the amount of three hundred fifty dollars (\$350.00)
28 plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents (\$12.50).

29 **"§ 131D-2.6. Legal action by Department.**

30 (a) Notwithstanding the existence or pursuit of any other remedy, the Department
31 may, in the manner provided by law, maintain an action in the name of the State for
32 injunction or other process against any person to restrain or prevent the establishment,
33 conduct, management, or operation of an adult care home without a license. Such action
34 shall be instituted in the superior court of the county in which any unlicensed activity
35 has occurred or is occurring.

36 (b) If any person shall hinder the proper performance of duty of the Secretary or
37 his representative in carrying out this section, the Secretary may institute an action in
38 the superior court of the county in which the hindrance has occurred for injunctive relief
39 against the continued hindrance, irrespective of all other remedies at law.

40 (c) Actions under this section shall be in accordance with Article 37 of Chapter 1
41 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

42 **"§ 131D-2.7. Provisional license; license revocation.**

1 (a) Provisional License. – Except as otherwise provided in this section, the
2 Department may amend a license by reducing it from a full license to a provisional
3 license for a period of not more than 90 days whenever the Department finds that:

4 (1) The licensee has substantially failed to comply with the provisions of
5 Articles 1 and 3 of Chapter 131D of the General Statutes and the rules
6 adopted pursuant to these Articles;

7 (2) There is a reasonable probability that the licensee can remedy the
8 licensure deficiencies within a reasonable length of time; and

9 (3) There is a reasonable probability that the licensee will be able
10 thereafter to remain in compliance with the licensure rules for the
11 foreseeable future.

12 The Department may extend a provisional license for not more than one additional
13 90-day period upon finding that the licensee has made substantial progress toward
14 remedying the licensure deficiencies that caused the license to be reduced to provisional
15 status.

16 The Department may also issue a provisional license to a facility, pursuant to rules
17 adopted by the Medical Care Commission, for substantial failure to comply with the
18 provisions of this section or rules adopted pursuant to this section. Any facility wishing
19 to contest the issuance of a provisional license shall be entitled to an administrative
20 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
21 Statutes. A petition for a contested case shall be filed within 30 days after the
22 Department mails written notice of the issuance of the provisional license.

23 (b) License Revocation. – The Department may revoke a license whenever:

24 (1) The Department finds that:

25 a. The licensee has substantially failed to comply with the
26 provisions of Articles 1 and 3 of Chapter 131D of the General
27 Statutes and the rules adopted pursuant to these Articles; and

28 b. It is not reasonably probable that the licensee can remedy the
29 licensure deficiencies within a reasonable length of time; or

30 (2) The Department finds that:

31 a. The licensee has substantially failed to comply with the
32 provisions of Articles 1 and 3 of Chapter 131D of the General
33 Statutes and the rules adopted pursuant to these Articles; and

34 b. Although the licensee may be able to remedy the deficiencies
35 within a reasonable time, it is not reasonably probable that the
36 licensee will be able to remain in compliance with licensure
37 rules for the foreseeable future; or

38 c. The Department finds that the licensee has failed to comply
39 with the provisions of Articles 1 and 3 of Chapter 131D of the
40 General Statutes and the rules adopted pursuant to these
41 Articles, and the failure to comply endangered the health,
42 safety, or welfare of the patients in the facility.

43 **§ 131D-2.8. Penalties.**

1 (a) Any individual or corporation that establishes, conducts, manages, or operates
2 a facility subject to licensure under this section without a license is guilty of a Class 3
3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than
4 fifty dollars (\$50.00) for the first offense and not more than five hundred dollars
5 (\$500.00) for each subsequent offense. Each day of a continuing violation after
6 conviction shall be considered a separate offense.

7 (b) In addition, the Department may summarily suspend a license pursuant to
8 G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation, or
9 any condition which presents an imminent danger to the health and safety of any
10 resident of the home. Any facility wishing to contest summary suspension of a license
11 shall be entitled to an administrative hearing as provided in the Administrative
12 Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case
13 shall be filed within 20 days after the Department mails a notice of summary suspension
14 to the licensee.

15 **"§ 131D-2.9 and 2.10: Reserved for future codification purposes.**

16 "Part 2. Other Laws Pertaining to the Inspection
17 and Operation of Adult Care Homes.

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

20 (a) State Inspection and Monitoring. – The Department shall ensure that adult
21 care homes required to be licensed by this Article are monitored for licensure
22 compliance on a regular basis. All facilities licensed under this Article and adult care
23 units in nursing homes are subject to inspections at all times by the Secretary. The
24 Division of Facility Services shall inspect all adult care homes and adult care units in
25 nursing homes on an annual basis. In addition, the Department shall ensure that adult
26 care homes are inspected every two years to determine compliance with physical plant
27 and life-safety requirements.

28 (b) Monitoring by County. – The Department shall work with county
29 departments of social services to do the routine monitoring in adult care homes to
30 ensure compliance with State and federal laws, rules, and regulations in accordance with
31 policy and procedures established by the Division of Facility Services and to have the
32 Division of Facility Services oversee this monitoring and perform any required
33 follow-up inspection. The county departments of social services shall document in a
34 written report all on-site visits, including monitoring visits, revisits, and complaint
35 investigations. The county departments of social services shall submit to the Division of
36 Facility Services written reports of each facility visit within 20 working days of the
37 visit.

38 (c) State Review of County Compliance. – The Division of Facility Services
39 shall conduct and document annual reviews of the county departments of social
40 services' performance. When monitoring is not done timely or there is failure to identify
41 or document noncompliance, the Department may intervene in the particular service in
42 question. Department intervention shall include one or more of the following activities:

- 1 (1) Sending staff of the Department to the county departments of social
2 services to provide technical assistance and to monitor the services
3 being provided by the facility.
- 4 (2) Advising county personnel as to appropriate policies and procedures.
- 5 (3) Establishing a plan of action to correct county performance.

6 The Secretary may determine that the Department shall assume the county's
7 regulatory responsibility for the county's adult care homes.

8 **"§ 131D-2.12. Training requirements; county departments of social services.**

9 (a) The county departments of social services' adult home specialists and their
10 supervisors shall complete:

- 11 (1) Eight hours of prebasic training within 60 days of employment;
- 12 (2) Thirty-two hours of basic training within six months of employment;
- 13 (3) Twenty-four hours of postbasic training within six months of the basic
14 training program;
- 15 (4) A minimum of eight hours of complaint investigation training within
16 six months of employment; and
- 17 (5) A minimum of 16 hours of statewide training annually by the Division
18 of Facility Services.

19 (b) The joint training requirements by the Department shall be as provided in
20 G.S. 143B-139.5B.

21 **"§ 131D-2.13. Departmental duties.**

22 (a) Enforcement of Room Ventilation and Temperature. – The Department shall
23 monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and
24 room temperature in resident living quarters. These rules shall include the requirement
25 that air conditioning or at least one fan per resident bedroom and living and dining areas
26 be provided when the temperature in the main center corridor exceeds 80 degrees
27 Fahrenheit.

28 (b) Administrator Directory. – The Department shall keep an up-to-date directory
29 of all persons who are administrators as defined in G.S. 131D-2.1.

30 (c) Departmental Complaint Hotline. – Adult care homes shall post the Division
31 of Facility Services' complaint hotline number conspicuously in a public place in the
32 facility.

33 (d) Provider File. – The Department of Health and Human Services shall
34 establish and maintain a provider file to record and monitor compliance histories of
35 facilities, owners, operators, and affiliates of nursing homes and adult care homes.

36 (e) Report on Use of Restraint. – The Department shall report annually on
37 October 1 to the Joint Legislative Oversight Committee on Mental Health,
38 Developmental Disabilities, and Substance Abuse Services the following for the
39 immediately preceding fiscal year:

- 40 (1) The level of compliance of each adult care home with applicable State
41 law and rules governing the use of physical restraint and physical hold
42 of residents. The information shall indicate areas of highest and lowest
43 levels of compliance.

- 1 (2) The total number of adult care homes that reported deaths under
2 G.S. 131D-34.1, the number of deaths reported by each facility, the
3 number of deaths investigated pursuant to G.S. 131D-34.1, and the
4 number found by the investigation to be related to the adult care
5 home's use of physical restraint or physical hold.

6 **"§ 131D-2.14. Confidentiality.**

7 Notwithstanding G.S. 8-53 or any other law relating to confidentiality of
8 communications between physician and patient, in the course of an inspection
9 conducted under G.S. 131D-2.11:

- 10 (1) Department representatives may review any writing or other record
11 concerning the admission, discharge, medication, care, medical
12 condition, or history of any person who is or has been a resident of the
13 facility being inspected, and

- 14 (2) Any person involved in giving care or treatment at or through the
15 facility may disclose information to Department representatives unless
16 the resident objects in writing to review of his records or disclosure of
17 such information.

- 18 (3) The facility, its employees, and any other person interviewed in the
19 course of an inspection shall be immune from liability for damages
20 resulting from disclosure of any information to the Department. The
21 Department shall not disclose:

22 a. Any confidential or privileged information obtained under this
23 section unless the resident or his legal representative authorizes
24 disclosure in writing or unless a court of competent jurisdiction
25 orders disclosure, or

26 b. The name of anyone who has furnished information concerning
27 a facility without that person's consent.

28 The Department shall institute appropriate policies and procedures
29 to ensure that unauthorized disclosure does not occur. All confidential
30 or privileged information obtained under this section and the names of
31 persons providing such information shall be exempt from Chapter 132
32 of the General Statutes.

- 33 (4) Notwithstanding any law to the contrary, Chapter 132 of the General
34 Statutes, the Public Records Law, applies to all records of the State
35 Division of Social Services of the Department of Health and Human
36 Services and of any county department of social services regarding
37 inspections of domiciliary care facilities except for information in the
38 records that is confidential or privileged, including medical records, or
39 that contains the names of residents or complainants.

40 **"§ 131D-2.15. Resident assessments.**

41 (a) The Department shall ensure that facilities conduct and complete an
42 assessment of each resident within 72 hours of admitting the resident and annually
43 thereafter. In conducting the assessment, the facility shall use an assessment instrument
44 approved by the Secretary upon the advice of the Director of the Division of Aging. The

1 Department shall provide ongoing training for facility personnel in the use of the
2 approved assessment instrument.

3 The facility shall use the assessment to develop appropriate and comprehensive
4 service plans and care plans and to determine the level and type of facility staff that is
5 needed to meet the needs of residents. The assessment shall determine a resident's level
6 of functioning and shall include, but not be limited to, cognitive status and physical
7 functioning in activities of daily living. Activities of daily living are personal functions
8 essential for the health and well-being of the resident. The assessment shall not serve as
9 the basis for medical care. The assessment shall indicate if the resident requires referral
10 to the resident's physician or other appropriate licensed health care professional or
11 community resource.

12 (b) The Department, as part of its inspection and licensing of adult care homes,
13 shall review assessments and related service plans and care plans for a selected number
14 of residents. In conducting this review, the Department shall determine:

15 (1) Whether the appropriate assessment instrument was administered and
16 interpreted correctly;

17 (2) Whether the facility is capable of providing the necessary services;

18 (3) Whether the service plan or care plan conforms to the results of an
19 appropriately administered and interpreted assessment; and

20 (4) Whether the service plans or care plans are being implemented fully
21 and in accordance with an appropriately administered and interpreted
22 assessment.

23 (c) If the Department finds that the facility is not carrying out its assessment
24 responsibilities in accordance with this section, the Department shall notify the facility
25 and require the facility to implement a corrective action plan. The Department shall also
26 notify the resident of the results of its review of the assessment, service plans, and care
27 plans developed for the resident. In addition to administrative penalties, the Secretary
28 may suspend the admission of any new residents to the facility. The suspension shall be
29 for the period determined by the Secretary and shall remain in effect until the Secretary
30 is satisfied that conditions or circumstances merit removing the suspension.

31 **§ 131D-2.16. Suspension of admissions.**

32 (a) In addition to the administrative penalties described in G.S. 131D-2.8, the
33 Secretary may suspend the admission of any new residents to an adult care home where
34 the conditions of the adult care home are detrimental to the health or safety of the
35 residents. This suspension shall be for the period determined by the Secretary and shall
36 remain in effect until the Secretary is satisfied that conditions or circumstances merit
37 removing the suspension.

38 (b) In imposing a suspension under this section, the Secretary shall consider the
39 following factors:

40 (1) The degree of sanctions necessary to ensure compliance with this
41 section and rules adopted hereunder; and

42 (2) The character and degree of impact of the conditions at the home on
43 the health or safety of its residents.

1 (c) The Secretary of Health and Human Services shall adopt rules to implement
2 this section.

3 (d) Any facility wishing to contest a suspension of admissions shall be entitled to
4 an administrative hearing as provided in the Administrative Procedure Act, Chapter
5 150B of the General Statutes. A petition for a contested case shall be filed within 20
6 days after the Department mails a notice of suspension of admissions to the licensee.

7 **"§ 131D-2.17. Rules.**

8 Except as otherwise provided in this Article, the Medical Care Commission shall
9 adopt rules necessary to carry out this Article. The Commission has the authority, in
10 adopting rules, to specify the limitation of nursing services provided by assisted living
11 residences. In developing rules, the Commission shall consider the need to ensure
12 comparable quality of services provided to residents, whether these services are
13 provided directly by a licensed assisted living provider, licensed home care agency, or
14 hospice. In adult care homes, living arrangements where residents require supervision
15 due to cognitive impairments, rules shall be adopted to ensure that supervision is
16 appropriate and adequate to meet the special needs of these residents. Rule-making
17 authority under this section is in addition to that conferred under G.S. 131D-4.3 and
18 G.S. 131D-4.5.

19 **"§ 131D-2.18. Impact on other laws; severability.**

20 (a) Nothing in this section shall be construed to supersede any federal or State
21 antitrust, antikickback, or safe harbor laws or regulations.

22 (b) If any provisions of this section or the application of it to any person or
23 circumstance is held invalid, the invalidity does not affect other provisions or
24 applications of the section which can be given effect without the invalid provision or
25 application, and to this end the provisions of this section are severable.

26 **"§ 131D-2.19. Application of other laws.**

27 (a) Certification of assisted living administrators shall be as provided under
28 Article 20A of Chapter 90 of the General Statutes.

29 (b) Compliance with the Health Care Personnel Registry shall be as provided
30 under G.S. 131E-256.

31 (c) Rules for the operation of the adult care portion of a combination home, as
32 defined in G.S. 131E-101, shall be as provided in G.S. 131E-104."

33 **SECTION 2.** G.S. 131D-41 and G.S. 131D-42 are repealed.

34 **SECTION 3.** This act is effective when it becomes law.