

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 915  
Health Care Committee Substitute Adopted 7/26/07

Short Title: Assisted Living Facility Amendments. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE  
LAW REGARDING THE LICENSURE AND INSPECTION OF FACILITIES  
FOR AGED AND DISABLED INDIVIDUALS.

The General Assembly of North Carolina enacts:

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

"Article 1B.

"Licensing of Maternity Homes."

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

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

"Article 1.

Licensing of Facilities.

Adult Care Homes."

**SECTION 1.(d)** G.S. 131D-2 is repealed.

**SECTION 1.(e)** Article 1 of Chapter 131D of the General Statutes, as amended by Section 1(c) of this act, is amended by adding the following new Parts to read:

"Part 1. Licensing.

**§ 131D-2.1. Definitions.**

As used in this Article:

(1) "Abuse." – The willful or grossly negligent infliction of physical pain, injury, or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of an adult care home of services which are necessary to maintain mental and physical health.

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

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 Type 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 licensee has failed to comply with the provisions of  
39 Articles 1 and 3 of Chapter 131D of the General Statutes and  
40 the rules adopted pursuant to these Articles, and the failure to  
41 comply endangered the health, safety, or welfare of the patients  
42 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 Health Service Regulations shall inspect all adult care homes and adult care  
25 units in nursing homes on an annual basis. In addition, the Department shall ensure that  
26 adult care homes are inspected every two years to determine compliance with physical  
27 plant 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 Health Service Regulation and to  
32 have the Division of Health Service Regulation oversee this monitoring and perform  
33 any required follow-up inspection. The county departments of social services shall  
34 document in a written report all on-site visits, including monitoring visits, revisits, and  
35 complaint investigations. The county departments of social services shall submit to the  
36 Division of Health Service Regulation written reports of each facility visit within 20  
37 working days of the visit.

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

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 Health Service Regulation's complaint hotline number conspicuously in a public  
32          place in the 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 and

1 Adult Services. The Department shall provide ongoing training for facility personnel in  
2 the use of the 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 becomes effective October 1, 2007. Licenses issued  
35 pursuant to G.S. 131D-2 remain effective until the date of annual renewal at which time  
36 Part 1 of Article 1 of Chapter 131D of the General Statutes shall apply. In all other  
37 respects, beginning October 1, 2007, Part 1 of Article 1 of Chapter 131D shall apply to  
38 the operation of facilities currently licensed under G.S. 131D-2.