

## **Chapter 131D.**

### **Inspection and Licensing of Facilities.**

#### Article 1.

#### Adult Care Homes.

#### Part 1. Licensing.

§ **131D-1:** Recodified as G. S. 131D-10.10 by Session Laws 2009-462, s. 1(b), effective October 1, 2009.

§ **131D-2:** Repealed by Session Laws 2009-462, s. 1, effective October 1, 2009.

#### **§ 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.
- (2) Administrator. – A person approved by the Department of Health and Human Services as an assisted living administrator under G.S. 90-288.14 or as an adult care home administrator under G.S. 90-288.14A, who has the responsibility for the total operation of a licensed adult care home.
- (3) Adult care home. – An assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.
- (3a) Adult care home resident discharge team. – A team consisting of one member from the department of social services and one member from the local management entity responsible for assisting in finding an appropriate placement for discharged residents, as established by the county department of social services in every county which contains an adult care home licensed under this Chapter.
- (4) Amenities. – Services such as meals, housekeeping, transportation, and grocery shopping that do not involve hands-on personal care.
- (5) Assisted living residence. – Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are

delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multiunit assisted housing with services. As used in this section, "elderly person" means:

- a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or
  - b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.
- (6) Compensatory agent. – A spouse, relative, or other caretaker who lives with a resident and provides care to a resident.
  - (7) Department. – The Department of Health and Human Services unless some other meaning is clearly indicated from the context.
  - (8) Exploitation. – The illegal or improper use of an aged or disabled resident or the aged or disabled resident's resources for another's profit or advantage.
  - (9) Family care home. – An adult care home having two to six residents. The structure of a family care home may be no more than two stories high, and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
  - (9a) Hearing Unit. – The chief hearing officer within the Division of Health Benefits designated to preside over hearings regarding the transfer and discharge of adult care home residents, and the chief hearing officer's staff.
  - (10) Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services which are arranged by housing management are provided by a licensed home care or hospice agency through an individualized written care plan. The housing management has a financial interest or financial affiliation or formal written agreement which makes personal care services accessible and available through at least one licensed home care or hospice agency. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service Regulation. The disclosure statement is required to be a part of the annual rental contract that includes a description of the following requirements:
    - a. Emergency response system;

- b. Charges for services offered;
- c. Limitations of tenancy;
- d. Limitations of services;
- e. Resident responsibilities;
- f. Financial/legal relationship between housing management and home care or hospice agencies;
- g. A listing of all home care or hospice agencies and other community services in the area;
- h. An appeals process; and
- i. Procedures for required initial and annual resident screening and referrals for services.

Continuing care retirement communities, subject to regulation by the Department of Insurance under Chapter 58 of the General Statutes, and temporary family health care structures, as defined in G.S. 160D-915, are exempt from the regulatory requirements for multiunit assisted housing with services programs.

- (11) Neglect. – The failure to provide the services necessary to maintain a resident's physical or mental health.
- (12) Personal care services. – Any hands-on services allowed to be performed by In-Home Aides II or III as outlined in Department rules.
- (13) Registration. – The submission by a multiunit assisted housing with services provider of a disclosure statement containing all the information as outlined in subdivision (10) of this section.
- (14) Resident. – A person living in an assisted living residence for the purpose of obtaining access to housing and services provided or made available by housing management.
- (15) Secretary. – The Secretary of Health and Human Services unless some other meaning is clearly indicated from the context. (2009-462, ss. 1(e), 3(a); 2011-272, s. 1; 2014-94, s. 4; 2018-5, s. 11G.1(a); 2019-81, s. 15(a); 2022-62, s. 24.)

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

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

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
- (5) Such other medical and functional care needs as the Medical Care Commission determines cannot be properly met in an adult care home.

(b) Multiunit Assisted Housing With Services. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the resident's needs and prevent

unnecessary relocation, multiunit assisted housing with services shall not care for individuals with any of the following conditions or care needs:

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

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

(d) Obtaining Services. – The resident of an assisted living facility has the right to obtain services at the resident's own expense from providers other than the housing management. This subsection shall not be construed to relieve the resident of the resident's contractual obligation to pay the housing management for any services covered by the contract between the resident and housing management. (2009-462, s. 1(e).)

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

The following are excluded from this Article and are not required to be registered or obtain licensure under this Article:

- (1) Facilities licensed under Chapter 122C or Chapter 131E of the General Statutes.
- (2) Persons subject to rules of the Division of Employment and Independence for People with Disabilities.

- (3) Facilities that care for no more than four persons, all of whom are under the supervision of the United States Veterans Administration.
- (4) Facilities that make no charges for housing, amenities, or personal care service, either directly or indirectly.
- (5) Institutions that are maintained or operated by a unit of government and that were established, maintained, or operated by a unit of government and exempt from licensure by the Department on September 30, 1995. (2009-462, s. 1(e); 2023-65, s. 8.4.)

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

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

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

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

- (1) Was the owner, principal, or affiliate of a licensable facility under this Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes and was responsible for the operation of the facility that had its license revoked until five years after the date the revocation became effective.
- (1a) Was the owner, principal, or affiliate of a licensable facility under this Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes and was responsible for the operation of the facility that had its license summarily suspended until five years after the date the suspension was lifted or terminated.
- (2) Is the owner, principal, or affiliate of an adult care home and is responsible for the operation of the facility 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.
- (3) Is the owner, principal, or affiliate of an adult care home and is responsible for the operation of the facility that had its license downgraded to provisional status or had its admissions suspended as a result of violations under this Article, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes until six

months from the date of restoration from provisional to full licensure, termination of the provisional license, or lifting or termination of the suspension of admissions, as applicable.

- (4) Repealed by Session Laws 2017-184, s. 1, effective October 1, 2017.
- (5) Is or was the owner, principal, or affiliate of an adult care home and is responsible for the operation of the facility where outstanding fees, fines, and penalties imposed by the State against the facility have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration under this subdivision.

An applicant for new licensure may appeal a denial of certification of substantial compliance under subdivision (2) of this subsection 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.

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

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

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

(g) Any applicant for licensure who wishes to contest the denial of a license is entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. The applicant shall file a petition for a contested case within 30 days after the date the Department mails a written notice of the denial to the applicant. (2009-462, s. 1(e); 2017-184, s. 1.)

#### **§ 131D-2.5. License and registration fees.**

(a) The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of three hundred fifteen dollars (\$315.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred sixty dollars (\$360.00) plus a nonrefundable annual per-bed fee of seventeen dollars and fifty cents (\$17.50).

(b) The Department shall charge each registered multiunit assisted housing with services program a nonrefundable annual registration fee of three hundred fifty dollars (\$350.00). Any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with

services program, subject to registration under this section, that fails to register is guilty of a Class 3 misdemeanor and, upon conviction shall be punishable only by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense. (2009-451, s. 10.76(a1); 2009-462, ss. 1(e), 3(b).)

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

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

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

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

(d) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (2009-462, s. 1(e).)

**§ 131D-2.7. Provisional license; license revocation; summary suspension of license; suspension of admission.**

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

- (1) The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles;
- (2) There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

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

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

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

- (1) The Department finds that:

- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and
  - b. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- (2) The Department finds that:
- a. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles; and
  - b. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
  - c. The licensee has failed to comply with the provisions of Articles 1 and 3 of this Chapter and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

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

(d) **Suspension of Admissions.**

- (1) In addition to the administrative penalties described in this Article, the Secretary may suspend the admission of any new residents to an adult care home where the conditions of the adult care home are detrimental to the health or safety of the residents. 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 removing the suspension.
- (2) In imposing a suspension under this section, the Secretary shall consider the following factors:
  - a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
  - b. The character and degree of impact of the conditions at the home on the health or safety of its residents.
- (3) The Secretary of Health and Human Services shall adopt rules to implement this section.
- (4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee. (2009-462, s. 1(e).)

**§ 131D-2.8:** Reserved for future codification purposes.

§ 131D-2.9: Reserved for future codification purposes.

§ 131D-2.10: Reserved for future codification purposes.

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

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

(a) State Inspection and Monitoring. – The Department shall ensure that adult care homes required to be licensed by this Article are monitored for licensure compliance on a regular basis. All facilities licensed under this Article and adult care units in nursing homes are subject to inspections at all times by the Secretary. Except as provided in subsection (a1) of this section, the Division of Health Service Regulation shall inspect all adult care homes and adult care units in nursing homes on an annual basis. Beginning July 1, 2012, the Division of Health Service Regulation shall include as part of its inspection of all adult care homes a review of the facility's compliance with G.S. 131D-4.4A(b) and safe practices for injections and any other procedures during which bleeding typically occurs. In addition, the Department shall ensure that adult care homes are inspected every two years to determine compliance with physical plant and life-safety requirements.

If the annual or biennial licensure inspection of an adult care home is conducted separately from the inspection required every two years to determine compliance with physical plant and life-safety requirements, then the Division of Health Service Regulation shall not cite, as part of the annual or biennial licensure inspection, any noncompliance with any law or regulation that was cited during a physical plant and life-safety inspection, unless, in consultation with the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections, any of the following conditions are met:

- (1) The noncompliance with the law or regulation continues and the noncompliance constitutes a Type A1 Violation, a Type A2 Violation, or a Type B Violation, as defined in G.S. 131D-34.
- (2) The facility has not submitted a plan of correction for the physical plant or life-safety citation that has been accepted by the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections.
- (3) The noncompliance with the physical plant or life-safety law and regulation cited by the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections has not been corrected within the time frame allowed for correction or has increased in severity.

Nothing in this subsection prevents a licensing inspector from referring a concern about physical plant and life-safety requirements to the section within the Division of Health Service Regulation that conducts physical plant and life-safety inspections.

(a1) Waiver of Annual State Inspection. – The Division of Health Service Regulation may waive the annual inspection requirement under subsection (a) of this section for any adult care home that has achieved the highest rating in accordance with rules adopted by the North Carolina Medical Care Commission pursuant to G.S. 131D-10. However, at least once every two years the Division of Health Service Regulation shall inspect any adult care home for which the annual inspection requirement was waived.

- (a2) Informal Dispute Resolution – Division of Health Service Regulation. –
- (1) The Division of Health Service Regulation shall offer each adult care home an opportunity, at the facility's request and upon the facility's receipt of the official statement of deficiencies, to informally resolve disputed findings from inspections conducted by the Division of Health Service Regulation in accordance with this section.
  - (2) Failure of the Division of Health Service Regulation to complete informal dispute resolution timely does not delay the effective date of any enforcement action taken by the Division of Health Service Regulation against an adult care home.
  - (3) An adult care home is not entitled to seek a delay of any enforcement action against it on the grounds that the Division of Health Service Regulation has not completed informal dispute resolution prior to the effective date of the enforcement action.
  - (4) If an adult care home successfully demonstrates during informal dispute resolution that any of the deficiencies cited in the official statement of deficiencies should not have been cited, the Division of Health Service Regulation shall remove the incorrectly cited deficiencies from the official statement of deficiencies and rescind any enforcement actions imposed on the adult care home solely as a result of the incorrectly cited deficiencies.
  - (5) The Division of Health Service Regulation shall make available on its Internet Web site the informal dispute resolution procedures for adult care homes.
- (a3) Informal Dispute Resolution – County Departments of Social Services. –
- (1) The Division of Health Service Regulation and county department of social services shall jointly offer each adult care home an opportunity, at the facility's request and upon the facility's receipt of the official statement of deficiencies, to informally resolve disputed findings from inspections conducted by the county department of social services that resulted in the citation of a Type A1 violation, Type A2 violation, Uncorrected Type A1, violation, Uncorrected Type A2 violation, or Uncorrected Type B violation, in accordance with this section.
  - (2) Failure of the Division of Health Service Regulation and county department of social services to complete informal dispute resolution timely does not delay the effective date of any enforcement action taken by the Division of Health Service Regulation against an adult care home.
  - (3) An adult care home is not entitled to seek a delay of any enforcement action against it on the grounds that the Division of Health Service Regulation and the county department of social services has not completed informal dispute resolution prior to the effective date of the enforcement action.
  - (4) If an adult care home successfully demonstrates during informal dispute resolution that any of the deficiencies cited in the official statement of deficiencies should not have been cited, the county department of social services shall remove the incorrectly cited deficiencies from the official statement of deficiencies and the Division of Health Service Regulation shall rescind any enforcement actions imposed on the adult care home solely as a result of the incorrectly cited deficiencies.

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

(b) **Monitoring by County.** – The Department shall work with county departments of social services to do the routine monitoring in adult care homes to ensure compliance with State and federal laws, rules, and regulations in accordance with policy and procedures established by the Division of Health Service Regulation and to have the Division of Health Service Regulation oversee this monitoring. The county departments of social services shall document in a written report all on site visits, including monitoring visits, revisits, and complaint investigations. The county departments of social services shall submit to the Division of Health Service Regulation written reports of each facility visit within 20 working days of the visit.

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

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

The Secretary may determine that the Department shall assume the county's regulatory responsibility for the county's adult care homes. (2009-462, s. 1(e); 2009-232, s. 3; 2011-99, s. 4; 2011-258, ss. 1, 2; 2017-184, s. 2; 2020-82, s. 3.)

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

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

- (1) Eight hours of prebasic training within 60 days of employment;
- (2) Thirty-two hours of basic training within six months of employment;
- (3) Twenty-four hours of postbasic training within six months of the basic training program;
- (4) A minimum of eight hours of complaint investigation training within six months of employment; and
- (5) A minimum of 16 hours of statewide training annually by the Division of Health Service Regulation.

(b) The joint training requirements by the Department shall be as provided in G.S. 143B-139.5B. (2009-462, s. 1(e).)

#### **§ 131D-2.13. Departmental duties.**

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

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

(c) Departmental Complaint Hotline. – Adult care homes shall post the Division of Health Service Regulation's complaint hotline number conspicuously in a public place in the facility.

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

(e) Report on Use of Restraint. – The Department shall report annually on October 1 to the Joint Legislative Oversight Committee on Health and Human Services the following for the immediately preceding fiscal year:

- (1) The level of compliance of each adult care home with applicable State law and rules governing the use of physical restraint and physical hold of residents. The information shall indicate areas of highest and lowest levels of compliance.
- (2) The total number of adult care homes that reported deaths under G.S. 131D-34.1, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 131D-34.1, and the number found by the investigation to be related to the adult care home's use of physical restraint or physical hold. (2009-462, s. 1(e); 2011-291, s. 2.47.)

#### **§ 131D-2.14. Confidentiality.**

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

- (1) Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected.
- (2) Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives unless the resident objects in writing to review of the resident's records or disclosure of such information.
- (3) The facility, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department. The Department shall not disclose:
  - a. Any confidential or privileged information obtained under this section unless the resident or the resident's legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or
  - b. The name of anyone who has furnished information concerning a facility without that person's consent.

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

- (4) Notwithstanding any law to the contrary, Chapter 132 of the General Statutes, the Public Records Law, applies to all records of the State Division of Social Services of the Department of Health and Human Services and of any county department of social services regarding inspections of adult care facilities except for information in the records that is confidential or privileged, including

medical records, or that contains the names of residents or complainants.  
(2009-462, s. 1(e).)

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

(a) Initial Assessment. – The Department shall ensure that facilities conduct and complete an assessment of each resident within 72 hours of admitting the resident. In conducting the assessment, the facility shall use an assessment instrument approved in accordance with rules adopted by the Medical Care Commission. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

(a1) Assessment to Develop Service Plans and Care Plans. – Within 30 days of admission, the facility shall conduct an assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(a2) Medicaid State Plan Personal Care Services Assessment. – To fulfill the activities of daily living portion of any service plan or care plan required under subsection (a1) of this section, or any rules adopted under this Article, the facility may use a service plan that was completed within 35 days of the resident's admission to the facility and represents the result of an assessment to determine the resident's eligibility for personal care services under the Medicaid State Plan. If the facility uses a service plan for personal care services under the Medicaid State Plan developed within 35 days of resident admission, the facility shall be exempt from conducting an assessment of the resident's ability to perform activities of daily living within 30 days of resident admission. For purposes of this subsection, a resident must have received an assessment to develop appropriate and comprehensive service plans and care plans no later than 35 days after resident admission or subsection (a1) of this section applies.

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

- (1) Whether the appropriate assessment instrument was administered and interpreted correctly.
- (2) Whether the facility is capable of providing the necessary services.
- (3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment.
- (4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

(c) Penalties. – If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The 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 removing the suspension. (2009-462, s. 1(e); 2019-180, s. 1.)

#### **§ 131D-2.16. Rules.**

Except as otherwise provided in this Article, the Medical Care Commission shall adopt rules necessary to carry out this Article. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be adopted to ensure that supervision is appropriate and adequate to meet the special needs of these residents. Rule-making authority under this section is in addition to that conferred under G.S. 131D-4.3 and G.S. 131D-4.5. (2009-462, s. 1(e).)

#### **§ 131D-2.17. Impact on other laws; severability.**

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

(b) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable. (2009-462, s. 1(e).)

#### **§ 131D-2.18. Application of other laws.**

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

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

(c) Rules for the operation of the adult care portion of a combination home, as defined in G.S. 131E-101, shall be as provided in G.S. 131E-104. (2009-462, s. 1(e).)

#### **§ 131D-3: Repealed by Session Laws 1995, c. 449, s. 1.**

#### **§ 131D-4: Repealed by Session Laws 1995, c. 449, s. 2.**

#### **§ 131D-4.1. Adult care homes; legislative intent.**

The General Assembly finds and declares that the ability to exercise personal control over one's life is fundamental to human dignity and quality of life and that dependence on others for some assistance with daily life activities should not require surrendering personal control of informed decision making or risk taking in all areas of one's life.

The General Assembly intends to ensure that adult care homes provide services that assist the residents in such a way as to assure quality of life and maximum flexibility in meeting individual needs and preserving individual autonomy. (1995, c. 449, s. 3; c. 535, s. 9.)

#### **§ 131D-4.2. Adult care homes; family care homes; cost reports; exemptions; enforcement.**

(a) Except for family care homes, adult care homes with a licensed capacity of seven to twenty beds, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit audited reports of actual costs to the Department at least every two years in accordance with rules adopted by the Department under G.S. 143B-10. Adult care homes licensed under Chapter 131D of the General Statutes that have special care units shall include in reports required under this subsection cost reports specific to the special care unit and shall not average special care costs with other costs of the adult care home.

(b) Except for family care homes, adult care homes with a licensed capacity of twenty-one beds or more, which are licensed pursuant to this Chapter, to Chapter 122C of the General Statutes, and to Chapter 131E of the General Statutes, shall submit audited reports of actual costs at least every two years to the Department of Health and Human Services, in accordance with rules adopted by the Department under G.S. 143B-10. Adult care homes licensed under Chapter 131D of the General Statutes that have special care units shall include in the reports required under this subsection cost reports specific to the special care unit and shall not average special care costs with other costs of the adult care home.

(c) Repealed by Session Laws 1999-334, s. 3.1.

(d) Facilities that do not receive State/County Special Assistance or Medicaid personal care are exempt from the reporting requirements of this section.

(e) The Department shall establish specific reporting deadlines for each type of facility required to report under this section. If the Department finds good cause for delay, it may extend the deadline for filing a report for up to an additional 30 days.

(f) The Department shall have the authority to conduct audits and review audits submitted pursuant to subsections (a) and (b) of this section.

(g) The Department shall suspend admissions to facilities that fail to submit annual reports by the applicable reporting deadline or by the date established by the Department when good cause for delay is found pursuant to G.S. 131D-4.2(e). Suspension of admissions shall remain in effect until reports are submitted or licenses are suspended or revoked under subdivision (2) of this subsection. The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B of the General Statutes.

(h) The report documentation shall be used to adjust the adult care home rate at least every two years, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget and Management. Rates for family care homes shall be based on market rate data. The Secretary of Health and Human Services shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10. (1995, c. 449, s. 3; c. 535, s. 10; 1997-73, ss. 1, 2; 1997-443, s. 11A.118(a); 1998-212, s. 12.1A; 1999-334, ss. 3.1, 3.2; 2000-140, s. 93.1(a); 2001-157, s. 1; 2001-424, s. 12.2(b); 2016-94, s. 12G.2.)

### **§ 131D-4.3. Adult care home rules.**

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

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

- (2) A minimum of 80 hours of training for personal care aides. The training for aides shall be comparable to State-approved Certified Nurse Aide I training. The facility may exempt from the 80-hour training requirement any personal care aides who are or have been either licensed as a health care professional or listed on the Nurse Aide Registry.
- (3) Monitoring and supervision of residents.
- (4) Oversight and quality of care as stated in G.S. 131D-4.1.
- (5) Adult care homes shall comply with all of the following staffing requirements:
  - a. First shift (morning): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents (licensed capacity or resident census) plus 3.0 hours for all other residents, whichever is greater;
  - b. Second shift (afternoon): 0.4 hours of aide duty for each resident (licensed capacity or resident census), or 8.0 hours of aide duty per each 20 residents plus 3.0 hours for all other residents (licensed capacity or resident census), whichever is greater;
  - c. Third shift (evening): 8.0 hours of aide duty per 30 or fewer residents (licensed capacity or resident census).

The facility shall provide staff to meet the needs of the facility's residents. Each facility shall post in a conspicuous place information about required staffing that enables residents and their families to ascertain each day the number of direct care staff and supervisors that are required by law to be on duty for each shift for that day.

(b) Rules to implement this section shall be adopted as emergency rules in accordance with Chapter 150B of the General Statutes.

(c) The Department may suspend or revoke a facility's license, subject to the provisions of Chapter 150B, to enforce compliance by a facility with this section or to punish noncompliance. (1995, c. 449, s. 3; c. 535, s. 10; 1997-443, s. 11A.118(a); 1998-212, s. 12.16B(a); 2000-111, s. 1; 2001-85, s. 1; 2001-487, s. 85(a); 2017-184, s. 3.)

**§ 131D-4.4. Adult care home minimum safety requirements; smoking prohibited inside long-term care facilities; penalty.**

(a) In addition to other requirements established by this Article or by rules adopted pursuant to this Article or other provisions of law, every adult care home shall provide to each resident the care, safety, and services necessary to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being in accordance with:

- (1) The resident's individual assessment and plan of care; and
- (2) Rules and standards relating to quality of care and safety adopted under this Chapter.

(b) Smoking is prohibited inside long-term care facilities. As used in this section:

- (1) "Long-term care facilities" include adult care homes, nursing homes, skilled nursing facilities, facilities licensed under Chapter 122C of the General Statutes, and other licensed facilities that provide long-term care services.
- (2) "Smoking" means the use or possession of any lighted cigar, cigarette, pipe, or other lighted smoking product.
- (3) "Inside" means a fully enclosed area.

(c) The person who owns, manages, operates, or otherwise controls a long-term care facility where smoking is prohibited under this section shall:

- (1) Conspicuously post signs clearly stating that smoking is prohibited inside the facility. The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- (2) Direct any person who is smoking inside the facility to extinguish the lighted smoking product.
- (3) Provide written notice to individuals upon admittance that smoking is prohibited inside the facility and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(d) The Department may impose an administrative penalty not to exceed two hundred dollars (\$200.00) for each violation on any person who owns, manages, operates, or otherwise controls the long-term care facility and fails to comply with subsection (c) of this section. A violation of this section constitutes a civil offense only and is not a crime. (1999-334, s. 1.1; 2007-459, s. 1.)

**§ 131D-4.4A. Adult care home infection prevention requirements.**

(a) As used in this section, "adult care home staff" means any employee of an adult care home.

(b) In order to prevent transmission of infectious diseases, each adult care home shall do all of the following:

- (1) Implement written infection prevention and control policies and procedures that are based on accepted national standards consistent with the federal Centers for Disease Control and Prevention guidelines on infection control, which shall be maintained in the facility and accessible to adult care home staff working at the facility. The policies and procedures shall address at least all of the following:
  - a. Proper disposal of single-use equipment used to puncture skin, mucous membranes, and other tissues, and proper disinfection of reusable resident care items that are used for multiple residents.
  - b. Sanitation of rooms and equipment, including cleaning procedures, agents, and schedules.
  - c. Accessibility of infection control devices and supplies.
  - d. Blood and bodily fluid precautions.
  - e. Procedures to be followed when adult care home staff is exposed to blood or other body fluids of another person in a manner that poses a significant risk of transmission of HIV, hepatitis B, hepatitis C, or other bloodborne pathogens.
  - f. Procedures to prohibit adult care home staff with exudative lesions or weeping dermatitis from engaging in direct resident care that involves the potential for contact between the resident, equipment, or devices and the lesion or dermatitis until the condition resolves.
  - g. Standard and transmission-based precautions, including the following:
    1. Respiratory hygiene and cough etiquette.
    2. Environmental cleaning and disinfection.
    3. Reprocessing and disinfection of reusable resident devices.

4. Hand hygiene.
  5. Accessibility and proper use of personal protective equipment.
  6. Types of transmission-based precautions and when each type is indicated, including contact precautions, droplet precautions, and airborne precautions.
- h. In accordance with the public health laws of North Carolina, when and how to report to the local health department a suspected or confirmed, reportable communicable disease case or condition, or a communicable disease outbreak.
  - i. Procedures for ensuring that residents, representatives of residents, and adult care home staff are informed of the following without disclosing any personally identifiable information of the facility's residents or staff:
    1. The existence of a communicable disease outbreak within 24 hours following confirmation of the outbreak by the local health department.
    2. When the communicable disease outbreak has resolved.
    3. Any changes to facility operations during the communicable disease outbreak, such as visitation policy changes.
  - j. Measures the facility should consider for specific types of communicable disease outbreaks in order to prevent the spread of illness, such as:
    1. Isolating infected residents.
    2. Limiting or stopping group activities and communal dining.
    3. Limiting or restricting outside visitation to the facility.
    4. Screening staff, residents, and visitors for signs of illness.
    5. Using source control as tolerated by the residents.
  - k. Strategies for addressing potential staffing issues and ensuring adequate staffing is available to meet the needs of the residents during a communicable disease outbreak.
- (2) Require and monitor compliance with the facility's infection prevention and control policies and procedures.
  - (3) Update the infection prevention and control policies and procedures as necessary to maintain consistency with accepted national standards in infection prevention and control.
  - (4) Designate one on-site staff member for each noncontiguous facility who is knowledgeable about the federal Centers for Disease Control and Prevention guidelines on infection control to direct the facility's infection control activities and ensure that all adult care home staff is trained in the facility's written infection prevention and control policies and procedures developed pursuant to subdivision (b)(1) of this section within 30 days after hire and annually thereafter. Any nonsupervisory staff member designated to direct the facility's infection control activities shall complete the infection control course developed by the Department pursuant to G.S. 131D-4.5C.
  - (5) When a communicable disease outbreak has been identified at a facility or there is an emerging infectious disease threat, the facility shall ensure implementation of the facility's infection control and prevention policies and procedures

developed pursuant to subdivision (b)(1) of this section; provided, however, that if guidance or directives specific to a communicable disease outbreak or emerging infectious disease threat have been issued in writing by the Department or local health department, the Department's or local health department's specific guidance or directives shall be implemented by the facility. (2011-99, s. 3; 2021-180, s. 9E.7(a); 2021-189, s. 3.2(a).)

**§ 131D-4.4B. Guidelines for reporting suspected communicable disease outbreaks.**

The Department shall develop guidelines prescribing the manner in which an adult care home is to report a suspected communicable disease outbreak within the facility to the local health department. (2011-99, s. 3.)

**§ 131D-4.5. Rules adopted by Medical Care Commission.**

The Medical Care Commission shall adopt rules as follows:

- (1) Establishing minimum medication administration standards for adult care homes. The rules shall include the minimum staffing and training requirements for medication aides and standards for professional supervision of adult care homes' medication controls. The requirements shall (i) include compliance with G.S. 131D-4.5B and (ii) be designed to reduce the medication error rate in adult care homes to an acceptable level. The requirements shall include, but need not be limited to, all of the following:
  - a. Training for medication aides, including periodic refresher training.
  - b. Standards for management of complex medication regimens.
  - c. Oversight by licensed professionals.
  - d. Measures to ensure proper storage of medication.
- (2) Establishing training requirements for adult care home staff in behavioral interventions. The training shall include appropriate responses to behavioral problems posed by adult care residents. The training shall emphasize safety and humane care and shall specifically include alternatives to the use of restraints.
- (3) Establishing minimum training and education qualifications for supervisors in adult care homes and specifying the safety responsibilities of supervisors. The minimum training qualifications shall include compliance with G.S. 131D-4.5C.
- (4) Specifying the qualifications of staff who shall be on duty in adult care homes during various portions of the day in order to assure safe and quality care for the residents. The rules shall take into account varied resident needs and population mixes.
- (5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules shall offer protections to residents for safe and orderly transfer and discharge.
- (6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to license facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents.

- (7) For the licensure of special care units in accordance with G.S. 131D-4.6, and for disclosures required to be made under G.S. 131D-8.
- (8) For time limited provisional licenses and for granting extensions for provisional licenses.
- (9) For the issuance of certificates to adult care homes as authorized under G.S. 131D-10. (1999-334, s. 1.1; 2000-111, s. 2; 2007-544, s. 3(a); 2011-99, ss. 1, 2; 2011-272, s. 2.)

**§ 131D-4.5A. Fees for medication aides.**

The Department may impose a fee, not to exceed twenty-five dollars (\$25.00), on an applicant seeking certification as an assisted living home medication aide to cover the costs of testing and materials in administering a certification examination. (2010-31, s. 10.36A(a).)

**§ 131D-4.5B. Adult care home medication aides; training and competency evaluation requirements.**

(a) By January 1, 2012, the Division of Health Service Regulation shall develop a mandatory, annual in-service training program for adult care home medication aides on infection control, safe practices for injections and any other procedures during which bleeding typically occurs, and glucose monitoring. Each medication aide who successfully completes the in-service training program shall receive partial credit, in an amount determined by the Department, toward the continuing education requirements for adult care home medication aides established by the Commission pursuant to G.S. 131D-4.5.

(b) Beginning October 1, 2013, an adult care home is prohibited from allowing staff to perform any unsupervised medication aide duties unless that individual has previously worked as a medication aide during the previous 24 months in an adult care home or successfully completed all of the following:

- (1) A five-hour training program developed by the Department that includes training and instruction in all of the following:
  - a. The key principles of medication administration.
  - b. The federal Centers for Disease Control and Prevention guidelines on infection control and, if applicable, safe injection practices and procedures for monitoring or testing in which bleeding occurs or the potential for bleeding exists.
- (2) A clinical skills evaluation consistent with 10A NCAC 13F .0503 and 10A NCAC 13G .0503.
- (3) Within 60 days from the date of hire, the individual must have completed the following:
  - a. An additional 10-hour training program developed by the Department that includes training and instruction in all of the following:
    - 1. The key principles of medication administration.
    - 2. The federal Centers of Disease Control and Prevention guidelines on infection control and, if applicable, safe injection practices and procedures for monitoring or testing in which bleeding occurs or the potential for bleeding exists.
  - b. An examination developed and administered by the Division of Health Service Regulation in accordance with subsection (c) of this section.

(c) By October 1, 2012, the Division of Health Service Regulation shall develop and administer an examination for individuals seeking employment as a medication aide in an adult care home. (2011-99, s. 5.)

**§ 131D-4.5C. Adult care home supervisors; infection control training requirements.**

(a) The Department shall develop, in consultation with associations representing adult care home providers, model infection prevention and control policies and procedures that are consistent with accepted national standards and address the factors identified in G.S. 131D-4.4A(b)(1). The Department shall make these model infection prevention and control policies and procedures available to adult care homes on the Department's internet website.

(b) The Department shall develop a mandatory, annual course for adult care home supervisors on implementation of the model infection prevention and control policies and procedures developed by the Department in accordance with subsection (a) of this section. Each supervisor that successfully completes the mandatory infection control course shall receive credit, in an amount determined by the Department, toward the continuing education requirements for adult care home supervisors established by the Commission pursuant to G.S. 131D-4.5. (2011-99, s. 5; 2021-189, s. 3.2(b).)

**§ 131D-4.6. Licensure of special care units.**

(a) As used in this section, the term "special care unit" means a wing or hallway within an adult care home, or a program provided by an adult care home, that is designated especially for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(b) An adult care home that holds itself out to the public as providing a special care unit shall be licensed as such and shall, in addition to other licensing requirements for adult care homes, meet the standards established under rules adopted by the Medical Care Commission.

(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under Part 1 of this Article, as well as any other action permitted by law. (1999-334, s. 1.1; 2009-462, s. 4(f).)

**§ 131D-4.7. Adult care home specialist fund.**

There is established the adult care home specialist fund. The fund shall be maintained in and by the Department for the purpose of assisting county departments of social services in paying salaries of adult care home specialists. (1999-334, s. 1.1.)

**§ 131D-4.8. Discharge of residents; appeals.**

(a) An adult care home may initiate discharge of a resident based on any of the following reasons:

- (1) The discharge is necessary to protect the welfare of the resident and the adult care home cannot meet the needs of the resident, as documented by the resident's physician, physician assistant, or nurse practitioner.
- (2) The health of the resident has improved sufficiently so that the resident is no longer in need of the services provided by the adult care home, as documented by the resident's physician, physician assistant, or nurse practitioner.

- (3) The safety of the resident or other individuals in the adult care home is endangered.
- (4) The health of the resident or other individuals in the adult care home is endangered, as documented by a physician, physician assistant, or nurse practitioner.
- (5) The resident has failed to pay the costs of services and accommodations by the payment due date specified in the resident's contract with the adult care home, after receiving written notice of warning of discharge for failure to pay.
- (6) The discharge is mandated under this Article, Article 3 of this Chapter, or rules adopted by the Medical Care Commission.

(b) Upon arrival at any adult care home, an individual must be identified to receive a discharge notice on behalf of the resident. An adult care home shall notify a resident, the resident's legal representative, and the individual identified to receive a discharge notice of its intent to initiate the discharge of the resident under subsection (a) of this section, in writing, at least 30 days before the resident is discharged. The written notice shall include (i) the reasons for the discharge, (ii) an appropriate discharge destination if known, (iii) personal medical care information relating to the resident, as required by the Department, (iv) a copy of the Adult Care Home Notice of Discharge, (v) a copy of the Adult Care Home Hearing Request Form, and (vi) other information, as required under rules adopted by the Medical Care Commission. If a discharge is initiated under subdivision (a)(1) of this section on the basis that a resident's physician requires a different level of care for the resident, the discharge is not subject to appeal for that specific reason unless there is a documented conflict between two or more of the resident's physicians regarding the resident's appropriate level of care but remains subject to appeal on all other available grounds.

(c) During any appeal of a discharge to the Hearing Unit, if the Hearing Unit determines that the discharge destination identified in the written notice required by subsection (b) of this section does not include an appropriate discharge destination, the Department shall not prohibit discharge solely for that reason, provided that any discharge shall comply with subsection (e) of this section.

(d) If an adult care home resident or the resident's legal representative elects to appeal a discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing Unit shall decide all appeals pertaining to the discharge of adult care home residents. The decision of the Hearing Unit is the final agency decision. Any person aggrieved by a decision of the Hearing Unit pertaining to an adult care home resident discharge is entitled to immediate judicial review of the decision in Wake County Superior Court or in the superior court of the county where the person resides. The appellant shall file a petition for judicial review not later than 30 days after the person is served with a written copy of the Hearing Unit decision. Within 10 days after the petition for judicial review is filed with the superior court, the appellant shall serve copies of the petition by personal service or certified mail upon all parties who were parties of record to the appeal to the Hearing Unit. Other parties to the appeal to the Hearing Unit may file a response to the petition within 30 days after service. The Department as the decision maker in the appeal to the Hearing Unit is not a party of record. Within 30 days after receipt of a petition for judicial review, the Department shall transmit to the superior court the original or a certified copy of the official record in the appeal to the Hearing Unit, together with the final agency decision. In reviewing the Department's final decision, the superior court shall review the official record, de novo, and make findings of fact and conclusions of law. The decision of the Department remains in effect during the pendency of review by the superior court and any further review in the appellate courts.

(e) The facility shall convene the adult care home resident discharge team to assist with finding a placement for a resident if, at the time of notice of discharge, the destination is unknown, or the destination is not appropriate for the resident. The facility is not solely responsible for securing an appropriate discharge destination. Local management entities shall take the lead role for the discharge destination for those residents whose primary unmet needs are related to mental health, developmental disabilities, or substance abuse and who meet the criteria for the target population established by the Division of Mental Health, Developmental Disabilities, and Substance Use Services. Local departments of social services shall take the lead role for those residents whose primary unmet needs are related to health, including Alzheimer's disease and other forms of dementia, welfare, abuse, or neglect. When the adult care home resident discharge team is convened at the request of a facility, the adult care home resident discharge team shall consult with that facility, as well as the resident receiving the discharge notice and that resident's legal representative. Upon the request of the resident or the resident's legal representative, the Regional Long-Term Care Ombudsman shall serve as a member of the adult care home resident discharge team. The facility requesting the adult care home resident discharge team to be convened shall notify the resident and the resident's legal representative of this right. The adult care home resident discharge team shall provide the Hearing Unit with the discharge location at or before the discharge hearing.

(f) Meetings of the adult care home resident discharge team are not subject to the provisions of Article 33C of Chapter 143 of the General Statutes. All information and records acquired by the adult care home resident discharge team in the exercise of its duties are confidential unless all parties give written consent to the release of that information.

(g) If a discharge is under appeal to the Hearing Unit, the resident shall remain in the facility and shall not be subject to discharge until issuance of the decision of the Hearing Unit with the following exceptions:

- (1) The discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility as documented by the resident's physician, physician assistant, or nurse practitioner;
- (2) The safety of other individuals in the facility is endangered; [or]
- (3) The health of other individuals in the facility is endangered as documented by a physician, physician assistant, or nurse practitioner. (2011-272, s. 4; 2023-65, s. 5.2(b).)

**§ 131D-5: Repealed by Session Laws 1983, c. 637, s. 1.**

**§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.**

(a) It is the policy of this State to enable people who would otherwise need full-time care away from their own residences to remain in their residences as long as possible and to enjoy as much independence as possible. One of the programs that permits adults to remain in their residences and with their families is adult day care.

(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. The Department of Health and Human Services shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services

Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission.

(b1) An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

- (1) A statement of the overall philosophy and mission of the adult day care program and how it reflects the special needs of participants with dementia.
- (2) The process and criteria for providing or discontinuing special care services.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the participant's condition.
- (4) Staffing ratios and how they meet the participant's need for increased special care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias.
- (7) Frequency and type of participant activities provided.
- (8) Involvement of families in special care and availability of family support programs.
- (9) Additional costs and fees to the participant for special care.

(b2) As part of its certification renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult day care program subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(b3) Nothing in this section shall be construed as prohibiting an adult day care program that does not advertise, market, or otherwise promote itself as providing special care services for persons with Alzheimer's disease or other dementias from providing adult day care services to persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.

(b4) As used in this section, the term "special care service" means a program, service, or activity designed especially for participants with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(c) The Secretary may impose a civil penalty not to exceed one hundred dollars (\$100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c1) Any person, firm, agency, or corporation that harms or willfully neglects a person under its care is guilty of a Class 1 misdemeanor.

(d) The following programs are exempted from the provisions of this section:

- (1) Those that care for three people or less;
- (2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility; [and]
- (3) Those that are required by other statutes to be licensed by the Department of Health and Human Services. (1985, c. 349, s. 1; 1993, c. 539, s. 954; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a); 1998-215, s. 77; 1999-334, s. 2.2; 2001-90, s. 1; 2015-241, s. 12G.3(b).)

#### **§ 131D-6.1. Licensure to offer overnight respite; rules; enforcement.**

(a) As used in this section, "overnight respite services" means the provision of group care and supervision in a place other than their usual place of abode on a 24-hour basis for a specified period of time to adults who may be physically or mentally disabled in order to provide temporary relief for a caregiver and includes services provided by any facility certified to provide adult day care services pursuant to G.S. 131D-6, or adult day health services pursuant to 10A NCAC, Chapter 06, Subchapter S, or both. Overnight respite services may include the services of the adult day care program or the adult day health program.

(b) Any facility described under subsection (a) of this section seeking to offer overnight respite services shall apply to the Department for licensure to offer a program of overnight respite services. The Department shall annually license facilities providing a program of overnight respite services under rules adopted by the Medical Care Commission pursuant to subsection (c) of this section. As part of the licensure process, the Division of Health Service Regulation shall inspect the construction projects associated with, and the operations of, each facility providing a program of overnight respite services for compliance with the rules adopted by the Medical Care Commission pursuant to subsection (c) of this section.

(c) The Medical Care Commission shall adopt rules governing the licensure of adult day care and adult day health facilities providing a program of overnight respite services in accordance with this section. The Medical Care Commission shall seek input from stakeholders before proposing rules for adoption as required by this subsection. The rules shall limit the provision of overnight respite services for each adult to (i) not more than 14 consecutive calendar days, and not more than 60 total calendar days, during a 365-day period or (ii) the amount of respite allowed under the North Carolina Innovations waiver or Community Alternatives Program for Disabled Adults (CAP/DA) waiver, as applicable. The rules shall include minimum requirements to ensure the health and safety of overnight respite participants. These requirements shall address all of the following:

- (1) Program management.
- (2) Staffing.
- (3) Building specifications.

- (4) Fire safety.
- (5) Sanitation.
- (6) Nutrition.
- (7) Enrollment.
- (8) Bed capacity limitations, which shall not exceed six beds in each adult day care program.
- (9) Medication management.
- (10) Program activities.
- (11) Personal care, supervision, and other services.

(d) The Medical Care Commission shall, as necessary, amend the rules pertaining to the provision of respite care in adult care homes and family care homes to address each of the categories enumerated in subsection (c) of this section.

(e) The Division of Health Service Regulation shall have the authority to enforce the rules adopted by the Medical Care Commission under subsections (c) and (d) of this section and shall be responsible for conducting annual inspections and investigating complaints pertaining to overnight respite services in facilities licensed to provide a program of overnight respite services.

(f) Each facility licensed to provide a program of overnight respite services under this section shall periodically report the number of individuals served and the average daily census to the Division of Health Service Regulation on a schedule determined by the Division.

(g) The Division of Health Service Regulation is authorized to do both of the following with respect to a facility licensed to provide overnight respite services under this section in a manner that complies with the provisions of G.S. 131D-2.7:

- (1) Suspend admissions to programs of overnight respite services in facilities licensed to provide these services.
- (2) Suspend or revoke a facility's license to provide a program of overnight respite services.

(h) Nothing in this section shall be construed to prevent a facility licensed to provide overnight respite services under this section from receiving State funds or participating in any government insurance plan, including the Medicaid program, to the extent authorized or permitted under applicable State or federal law.

(i) The Department shall charge each adult day care and each adult day health facility seeking to provide overnight respite services a nonrefundable initial licensure fee of three hundred fifty dollars (\$350.00) and a nonrefundable annual renewal licensure fee in the amount of three hundred fifteen dollars (\$315.00). (2015-241, s. 12G.3(a).)

**§ 131D-7. Waiver of rules and increase in bed capacity during an emergency.**

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to adult care homes to the extent necessary to allow the adult care home to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of

any of the persons occupying the adult care home. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(a) In the event of a declaration of a state of emergency by the Governor in accordance with Article 1A of Chapter 166A of the General Statutes, a declaration of a national emergency by the President of the United States, a declaration of a public health emergency by the Secretary of the United States Department of Health and Human Services; or to the extent necessary to allow for consistency with any temporary waiver or modification issued by the Secretary of the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services under section 1135 or 1812(f) of the Social Security Act; or when the Division of Health Service Regulation determines the existence of an emergency that poses a risk to the health or safety of residents, the Division of Health Service Regulation may do either or both of the following:

- (1) Temporarily waive any rules of the Commission pertaining to adult care homes.
- (2) Allow an adult care home to temporarily increase its bed capacity.

(b) As used in this section, "emergency management agency" is as defined in G.S. 166A-19.3. (1999-307, s. 2; 2007-182, s. 1; 2012-12, s. 2(s); 2022-74, s. 9E.2(b).)

**§ 131D-7.1. Secretary to establish visitation protocols during declared disasters and emergencies.**

(a) As used in this section and in G.S. 131D-7.2, the following terms have the following meanings:

- (1) Disaster declaration. – As defined in G.S. 166A-19.3(3).
- (2) Emergency. – As defined in G.S. 166A-19.3(6).
- (3) Facility. – An adult care home, including a family care home, licensed under this Article.
- (4) Normal visitation policy. – The visitation policy that was in effect at a facility on January 1, 2020.

(b) The Secretary shall, in consultation with licensed operators of adult care homes, including family care homes, and any other stakeholders the Secretary deems relevant, establish visitation protocols for residents of these facilities that will become effective during a disaster declaration or emergency that results in the suspension or curtailment of a facility's normal visitation policy for any reason. The visitation protocols shall provide for at least the following:

- (1) Each resident shall have the right to designate one preapproved visitor and one preapproved alternate visitor. The preapproved visitor, or if the preapproved visitor is unavailable, the preapproved alternate visitor, shall be allowed to visit the resident at least twice per month during any period of time during which the facility's normal visitation policy is suspended or curtailed for any reason during the declared disaster or emergency.
- (2) Prior to admission, each facility shall explain and provide to each resident written notification of the visitation protocols established by the Secretary under this section.
- (3) Visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy. (2021-145, s. 3(a).)

**§ 131D-7.2. Resident visitation rights for adult care homes, including family care homes, during a disaster declaration or emergency.**

Notwithstanding any provision of this Part, Chapter 166A of the General Statutes, or any other provision of law to the contrary, the visitation protocols established by the Secretary under G.S. 131D-7.1 shall be in effect during any period of time when (i) there is a declared disaster or emergency and (ii) an adult care home, including a family care home, licensed under this Article suspends or restricts the normal visitation policy for any reason. (2021-145, s. 3(a).)

**§ 131D-7.5. Patient visitation rights for adult care home residents and special care unit residents.**

(a) Any facility licensed under this Chapter shall allow residents to receive visitors of their choice to the fullest extent permitted under the infection and prevention control program of the facility and applicable guidelines or orders issued by the Centers for Disease Control and Prevention, the Department, local health departments, or any other government public health agency.

(b) In the event the Department finds an adult care home has violated any rule, regulation, guidance, directive, or law relating to a resident's visitation rights, the Department may issue a warning to the facility about the violation and give the facility not more than 24 hours to allow visitation. If visitation is not allowed after the 24-hour warning period, the Department shall impose a civil penalty in an amount not less than five hundred dollars (\$500.00) for each instance on each day the facility was found to have a violation. This civil penalty shall be in addition to any licensure action, fine, or civil penalty that the Department may impose pursuant to this Chapter.

(c) Notwithstanding the provisions of subsection (b) of this section, in the event that circumstances require the complete closure of a facility to visitors, the facility shall use its best efforts to develop alternate visitation protocols that would allow visitation to the greatest extent safely possible. If those alternate protocols are found by the Department, the local health departments, or any other government public health agency to violate any rule, regulation, guidance, or federal law relating to a resident's visitation rights, the Department may impose a civil penalty in an amount not less than five hundred dollars (\$500.00) for each instance on each day the facility was found to have a violation. This civil penalty shall be in addition to any licensure action, fine, or civil penalty that the Department may impose pursuant to this Chapter.

(d) Each facility shall provide notice of the patient visitation rights in this act to residents and, when possible, family members of residents. The required notice shall also include the contact information for the agency or individuals tasked with investigating violations of adult care home resident visitation.

(e) Subject to, and to the fullest extent permitted by, any rules, regulations, or guidelines adopted by either the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention or any federal law, each facility shall allow compassionate care visits. The facility may require compassionate care visitors to submit to health screenings necessary to prevent the spread of infectious diseases, and, notwithstanding anything to the contrary in this section, the facility may restrict a compassionate care visitor who does not pass a health screening requirement or who has tested positive for an infectious disease. The facility may require compassionate care visitors to adhere to infection control procedures, including wearing personal protective equipment. Compassionate care situations that require visits include, but are not limited to, the following:

- (1) End-of-life situations.
- (2) A resident who was living with his or her family before recently being admitted to the facility is struggling with the change in environment and lack of physical family support.
- (3) A resident who is grieving after a friend or family member recently passed away.
- (4) A resident who needs cueing and encouragement with eating or drinking, previously provided by family or caregivers, is experiencing weight loss or dehydration.
- (5) A resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently when the resident had rarely cried in the past. (2021-171, s. 5; 2021-181, s. 2(d), (e).)

**§ 131D-8. Adult care home special care units; disclosure of information required.**

(a) An adult care home licensed under this Part that provides care for persons in special care units as defined in G.S. 131D-4.6 shall disclose the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosure shall be in writing and shall be made to all of the following:

- (1) The Department as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.
- (3) The Office of State Long-Term Care Ombudsman, annually, or more often if requested.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the resident's condition.
- (4) Staffing ratios and how they meet the resident's need for increased care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of residents with Alzheimer's disease or other dementias.
- (7) Frequency and type of programs and activities for residents of the special care unit.
- (8) Involvement of families in resident care, and availability of family support programs.
- (9) Additional costs and fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult care home subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult care home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosures required under this section apply only to an adult care home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term "special care unit" has the same meaning as applies under G.S. 131D-4.6. (1999-334, s. 2.1; 1999-456, s. 61(a).)

### **§ 131D-9. Immunization of employees and residents of adult care homes.**

(a) Except as provided in subsection (e) of this section, an adult care home licensed under this Article shall require residents and employees to be immunized annually against influenza virus and shall require residents to also be immunized against pneumococcal disease.

(b) Upon admission, an adult care home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against influenza virus and pneumococcal disease.

(b1) An adult care home shall notify every employee of the immunization requirements of this section and shall request that the employee agree to be immunized against the influenza virus.

(c) An adult care home shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and each employee, as required under this section. Upon finding that a resident is lacking one or both of these immunizations or that an employee has not been immunized against influenza virus, or if the adult care home is unable to verify that the individual has received the required immunization, the adult care home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of or who is newly employed by the adult care home after November 30 but before March 30 of the following year, the adult care home shall determine the individual's status for the immunizations required under this section, and if found to be deficient, the adult care home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Commission for Public Health shall have the authority to adopt rules to implement the immunization requirements of this section.

(g) As used in this section, "employee" means an individual who is a part-time or full-time employee of the adult care home. (2000-112, ss. 1, 2; 2007-182, s. 1.3.)

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

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

- (1) Inspections and substantiated complaint investigations conducted by the Department to determine compliance with licensing statutes and rules. Specific areas to be reviewed include:
  - a. Admission and discharge procedures.
  - b. Medication management.
  - c. Physical plant.
  - d. Resident care and services, including food services, resident activities programs, and safety measures.
  - e. Residents' rights.
  - f. Sanitation grade.
  - g. Special Care Units.
  - h. Use of physical restraints and alternatives.
- (b) The Division of Health Service Regulation shall issue ratings to a facility pursuant to the rules adopted under this section based on both of the following:
  - (1) Inspections and investigations of complaints conducted pursuant to G.S. 131D-2.11 and G.S. 131D-26 that revealed noncompliance with statutes and rules.
  - (2) The facility's participation in any quality improvement programs approved by the Department.
- (c) Repealed by Session Laws 2017-184, s. 5, effective October 1, 2017.
- (c1) The Division of Health Service Regulation shall issue a star rating to a facility within 45 days from the date the Division mails the survey or inspection report to the facility, except when a timely request has been made by the facility under G.S. 131D-2.11 for informal dispute resolution. If a facility makes a timely request for informal dispute resolution, the Division of Health Service Regulation shall issue a star rating to the facility within 15 days from the date the Division mails the informal dispute decision to the facility.
- (d) Adult care homes shall display the rating certificate in a location visible to the public. Certificates shall include the Web site address for the Department of Health and Human Services, Division of Health Service Regulation, which can be accessed for specific information regarding the basis of the facility rating. For access by the public on request, adult care homes shall also maintain on-site a copy of information provided by the Department of Health and Human Services, Division of Health Service Regulation, regarding the basis of the facility rating.
- (e) The Department shall make available free of charge to the general public on the Division of Health Service Regulation Web site each facility rating and specific information regarding the basis for calculating each facility rating. (2007-544, s. 3(b); 2017-184, s. 5.)

## Article 1A.

### Control over Child Placing and Child Care.

#### Part 1. In General.

#### **§ 131D-10.1. Foster Care Children's Bill of Rights; purpose.**

(a) It is the policy of this State to strengthen and preserve the family as a unit consistent with a high priority of protecting children's welfare. When a child requires care outside the family unit, it is the duty of the State to assure that the quality of substitute care is as close as possible to the care and nurturing that society expects of a family. However, the State recognizes there are instances when protecting a child's welfare outweighs reunifying the family unit, and as such, the

care of residential care facilities providing high quality services that include meeting the children's educational needs as determined by the Department of Health and Human Services, Division of Social Services can satisfy the standard of protecting a child's welfare, regardless of the child's age, particularly when the sibling groups can be kept intact. To that end, the General Assembly promotes the following in the provision of foster care:

- (1) A safe foster home free of violence, abuse, neglect, and danger.
- (2) First priority regarding placement in a home with siblings.
- (3) The ability to communicate with the assigned social worker or case worker overseeing the child's case and have calls made to the social worker or case worker returned within a reasonable period of time.
- (4) Allowing the child to remain enrolled in the school the child attended before being placed in foster care, if at all possible.
- (5) Having a social worker, when a child is removed from the home, to immediately begin conducting an investigation to identify and locate all grandparents, adult siblings, and other adult relatives of the child to provide those persons with specific information and explanation of various options to participate in placement of a child.
- (6) Participation in school extracurricular activities, community events, and religious practices.
- (7) Communication with the biological parents if the child placed in foster care receives any immunizations and whether any additional immunizations are needed if the child will be transitioning back into a home with his or her biological parents.
- (8) Establishing and having access to a bank or savings account in accordance with State laws and federal regulations.
- (9) Obtaining identification and permanent documents, including a birth certificate, social security card, and health records by the age of 16, to the extent allowed by federal and State law.
- (10) The use of appropriate communication measures to maintain contact with siblings if the child placed in foster care is separated from his or her siblings.
- (11) Meaningful participation in a transition plan for those phasing out of foster care, including participation in family team, treatment team, court, and school meetings.

A violation of subdivisions (1) through (11) of this subsection shall not be construed to create a cause of action under this section against the State, the Department of Health and Human Services, or a person or entity providing foster care pursuant to this Article.

(a1) No agency or other State entity shall deny or delay (i) the opportunity to become a foster parent or (ii) the placement of a child in foster care on the basis of race, color, or national origin of the person or the child involved.

(b) The purpose of this Article is to assign the authority to protect the health, safety and well-being of children separated from or being cared for away from their families. (1983, c. 637, s. 2; 2009-408, s. 1; 2013-326, s. 1; 2023-14, s. 6.5(b).)

## **§ 131D-10.2. Definitions.**

For purposes of this Article, unless the context clearly implies otherwise:

- (1) "Adoption" means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) "Adoptive Home" means a family home approved by a child placing agency to accept a child for adoption.
- (3) "Child" means an individual less than 21 years of age, who has not been emancipated under the provisions of Article 35 of Chapter 7B of the General Statutes.
- (4) "Child Placing Agency" means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) "Children's Camp" means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6a) "Criminal History" means a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment of a crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug-related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states.
- (7) "Department" means the Department of Health and Human Services.
- (8) "Family Foster Home" means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.
- (9) "Foster Care" means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.
- (9a) "Foster Parent" means any individual who is 21 years of age or older who is licensed by the State to provide foster care.
- (10) "Person" means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) "Primarily Educational Institution" means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.

- (12) "Provisional License" means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) "Residential Child-Care Facility" means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care.
- (14) "Therapeutic Foster Home" means a family foster home where, in addition to the provision of foster care, foster parents who receive appropriate training provide a child with behavioral health treatment services under the supervision of a county department of social services, an area mental health program, or a licensed private agency and in compliance with licensing rules adopted by the Commission. (1983, c. 637, s. 2; 1993, c. 180, s. 5; 1995, c. 507, s. 23.26(a); 1997-140, s. 1; 1997-443, s. 11A.118(a); 1998-202, s. 13(hh); 2001-487, s. 84(b); 2007-276, s. 11; 2015-241, s. 12C.9(d).)

**§ 131D-10.2A. Reasonable and prudent parent standard.**

(a) The reasonable and prudent parent standard is the standard characterized by careful and sensible parental decisions that are reasonably intended to maintain the health, safety, and best interests of the child while at the same time encouraging the emotional and developmental growth of the child that a caregiver shall use when determining whether to allow a child in foster care under the responsibility of the State to participate in extracurricular, enrichment, cultural, and social activities.

(b) Every child care institution shall designate an on-site official who is authorized to apply the reasonable and prudent parent standard pursuant to this section.

(c) A caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child care institution where the child is placed, or the county department of social services, must use the reasonable and prudent parent standard when determining whether to allow a child in foster care to participate in extracurricular, enrichment, and social activities.

(d) A caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, may be held liable for an act or omission of the child if the caregiver fails to act in accordance with the reasonable and prudent parent standard under this section. To the extent it may be applicable, the liability of a county department of social services, or the Department of Health and Human Services, shall be strictly adjudicated according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified immunities of public officials acting in the course and scope of their employment.

(e) Unless otherwise ordered by a court with jurisdiction pursuant to G.S. 7B-200, a caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, exercising the reasonable and prudent parent standard has the authority to provide or withhold permission, without prior approval of the court or a county department of social services, to allow a child in foster care, in the custody of a county department of social services, or under the placement authority of a county department of social services through a voluntary placement agreement to participate in normal childhood activities. Normal childhood activities shall include, but are not limited to, extracurricular, enrichment, and social activities and

may include overnight activities outside the direct supervision of the caregiver for periods of over 24 hours and up to 72 hours.

(f) The caregiver, including the child's foster parent, whether the child is in a family foster home or a therapeutic foster home, or the designated official at a child care institution where the child is placed, shall not be liable for injuries to the child that occur as a result of acting in accordance with the reasonable and prudent parent standard.

(g) The immunity provided in subsection (f) of this section does not apply if it is determined that the injuries to the child were caused by gross negligence, willful and wanton conduct, or intentional wrongdoing, or arose out of the operation of a motor vehicle. Any liability under this subsection that may be attributable to either the county department of social services or the Department of Health and Human Services shall be strictly adjudicated according to and in compliance with the terms of G.S. 153A-435, et seq., or G.S. 143-291, et seq., as applicable. Nothing in this subsection is intended to abrogate or diminish the qualified immunities of public officials acting in the course and scope of their employment.

(h) For any action under this section, the burden of proof with respect to a breach of the reasonable and prudent parent standard shall be by clear and convincing evidence. (2015-135, s. 2.1.)

#### **§ 131D-10.2B. Foster care until 21 years of age.**

(a) A child placed in foster care who has attained the age of 18 years may continue receiving foster care services until reaching 21 years of age as provided by law. A child who initially chooses to opt out of foster care upon attaining the age of 18 years may opt to receive foster care services at a later date until reaching 21 years of age.

(b) A child who has attained the age of 18 years and chosen to continue receiving foster care services until reaching 21 years of age may continue to receive benefits pursuant to Part 4 of Article 2 of Chapter 108A of the General Statutes upon meeting the requirements under G.S. 108A-48(c). (2015-241, s. 12C.9(e).)

#### **§ 131D-10.2C. (Contingent effective date – see note) Allowable number of children in family foster home.**

(a) Except as provided in subsection (b) of this section, no more than five children shall reside in any family foster home at any time. These five children include the foster parent's own children, children placed for family foster care, licensed capacity for in-home day care children, children kept for babysitting, or any other children residing in the home. Children kept for in-home day care and babysitting are considered residents of the home.

(b) A family foster home may have more than five children if one of the following exceptions applies:

- (1) If written documentation is submitted to the licensing authority for family foster care that siblings will be placed together and the foster home complies with all other licensure requirements. The out-of-home family services agreement for each sibling shall specify that siblings will be placed together and shall also address the foster parents' skill, stamina, and ability to care for the children.
- (2) A family foster home that would otherwise qualify for family foster home licensure or placement of one child or siblings in foster care, but does not qualify solely due to the presence five children in the home, shall be eligible for licensure as a family foster home or placement of a child or siblings in foster

care. Written documentation must be submitted to the licensing authority that siblings will be placed together to allow more than five children to be placed in the foster home under this section. The out-of-home family services agreement for each sibling shall specify that siblings will be placed together. Any family foster home qualifying for placement of more than five children under this section shall meet all other licensure requirements. (2023-82, s. 1.)

**§ 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.

(d1) Notwithstanding any other provision of law, the Department shall grant or deny a license to provide foster care or therapeutic foster care within three months from the date of application.

(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 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) The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its license revoked until 60 months after the date of the revocation.
- (2) 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, 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) 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) 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, 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. (1983, c. 637, s. 2; 2002-164, s. 4.4; 2003-294, s. 4; 2017-41, s. 9.1.)

**§ 131D-10.3A. Mandatory criminal checks.**

- (a) Effective January 1, 1996, in order to ensure the safety and well-being of any child placed for foster care in a home, the Department shall ensure that the criminal histories of all foster

parents, individuals applying for licensure as foster parents, and individuals 18 years of age or older who reside in a family foster home, are checked and, based on the criminal history check, a determination is made as to whether the foster parents, and other individuals required to be checked, are fit for a foster child to reside with them in the home. The Department shall ensure that, as of the effective date of this Article, all individuals required to be checked are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all individuals who are required to be checked pursuant to subsection (a) of this section are checked upon relicensure for county and State criminal histories.

(c) The Department shall prohibit an individual from providing foster care by denying or revoking the license to provide foster care if an individual required to submit to a criminal history check pursuant to subsection (a) of this section has a criminal history. The Department may prohibit an individual from providing foster care by denying or revoking the license to provide foster care if the Department determines that the safety and well being of a child placed in the home for foster care would be at risk based on other criminal convictions, whether felony or misdemeanor.

(d) The Department of Public Safety shall provide to the Department the criminal history of the individuals specified in subsection (a) of this section obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Public Safety, along with the request, the fingerprints of the individual to be checked, any additional information required by the Department of Public Safety, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the individual to be checked. The fingerprints of the individual to be checked shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(e) At the time of application, the individual whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

"NOTICE

MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS 18 YEARS OF AGE OR OLDER WHO RESIDE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, State, and federal conviction of a felony by a court of competent jurisdiction or pending felony indictment of a crime for child abuse or neglect, spousal abuse, a crime against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, other than physical assault or battery; a county, State, or federal conviction of a felony by a court of competent jurisdiction or a pending felony indictment for physical assault, battery, or a drug related offense, if the offense was committed within the past five years; or similar crimes under federal law or under the laws of other states. Your

fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have a foster child reside with you, you shall have the opportunity to complete or challenge the accuracy of the information contained in the SBI or FBI identification records.

If licensure is denied or the foster home license is revoked by the Department of Health and Human Services as a result of the criminal history check, if you are a foster parent, or are applying to become a foster parent, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

Refusal to consent to a criminal history check is grounds for the Department to deny or revoke a license to provide foster care. Any person who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and any person applying to be licensed as a foster parent, and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the criminal history of all individuals required to be checked. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of an individual's criminal history to the foster parent or any other individual required to be checked. The Department shall also notify the individual of the individual's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Public Safety shall perform the State and national criminal history checks on individuals required by this section and shall charge the Department a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Health and Human Services, shall bear the costs of

implementing this section. (1995, c. 507, s. 23.26(b); 1997-140, s. 2; 1997-443, ss. 11A.89, 11A.118(a); 2003-304, s. 4; 2007-276, ss. 12, 13; 2014-100, s. 17.1(fff).)

#### **§ 131D-10.4. Exemptions.**

This Article does not apply to any of the following:

- (1) Any residential child-care facility chartered by the laws of this State (or operating under charters of other states which have complied with the corporation laws of this State) which has a plant and assets worth sixty thousand dollars (\$60,000) or more and which is owned or operated by a religious denomination or fraternal order and which was in operation before July 1, 1977.
- (2) State institutions for children with serious emotional disturbances, delinquent children, or individuals with mental illnesses, intellectual or other developmental disabilities, or substance use disorders.
- (3) Secure detention facilities as specified in Part 3 of Article 13 of Chapter 143B of the General Statutes.
- (4) Licensable facilities subject to the rules of the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services as specified in Article 2 of Chapter 122C of the General Statutes.
- (5) Persons authorized by statute to receive and place children for foster care and adoption in accordance with G.S. 108A-14.
- (6) Primarily educational institutions as defined in G.S. 131D-10.2(11).
- (7) Individuals who are related by blood, marriage, or adoption to the child. (1983, c. 637, s. 2; 1985, c. 589, s. 39; 1991, c. 636, s. 19(b); 1998-202, s. 13(ii); 1999-423, s. 6; 2000-137, s. 4(gg); 2011-145, s. 19.1(l); 2019-76, s. 16.)

#### **§ 131D-10.5. Powers and duties of the Commission.**

In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

- (1) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article.
- (2) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article.
- (3) Adopt rules governing procedures to appeal Department decisions pursuant to this Article granting, denying, suspending or revoking licenses.
- (4) Adopt criteria for waiver of licensing rules adopted pursuant to this Article.
- (5) Adopt rules on documenting the use of physical restraint in residential child-care facilities.
- (6) Adopt rules establishing personnel and training requirements related to the use of physical restraints and time-out for staff employed in residential child-care facilities.
- (7) Adopt rules establishing educational requirements, minimum age, relevant experience, and criminal record status for executive directors and staff employed by child placing agencies and residential child care facilities.
- (8) Adopt any rules necessary for the expansion of foster care for individuals who have attained the age of 18 years and chosen to continue receiving foster care

services to 21 years of age in accordance with G.S. 131D-10.2B. (1983, c. 637, s. 2; 2000-129, s. 2(a); 2007-30, s. 2; 2009-188, s. 2; 2015-241, s. 12C.9(f).)

### **§ 131D-10.5A. Collection of data on use of restraints in residential child-care facilities.**

A residential child-care facility that employs physical restraint of a child shall collect data on the use of the restraint. The data shall reflect for each incidence, the type of procedure used, the length of time employed, alternatives considered or employed, and the effectiveness of the procedure or alternative employed. The facility shall analyze the data on at least a quarterly basis to monitor effectiveness, determine trends, and take corrective action where necessary. The facility shall make the data available to the Department upon request. Nothing in this subsection abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department under this subsection. In reviewing data requested under this subsection, the Department shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this subsection. (2000-129, s. 2(b).)

### **§ 131D-10.6. Powers and duties of the Department.**

In addition to other powers and duties prescribed by law, the Department shall exercise the following powers and duties:

- (1) Investigate applicants for licensure to determine whether they are in compliance with licensing rules adopted by the Commission and the provisions of this Article.
- (2) Grant a license when an investigation shows compliance with this Article and Commission rules. The license shall be valid for a period not to exceed 24 months as specified by Commission rules and may be revoked or placed in suspended or provisional status sooner if the Department finds that licensure rules are not being met or upon a finding that the health, safety or welfare of children is threatened.
- (3) Administer and enforce the provisions of this Article and the rules of the Commission.
- (4) Appoint hearing officers to conduct appeals pursuant to this Article.
- (5) Prescribe the form in which application for licensure or a request for waiver of Commission rules shall be submitted.
- (6) Inspect facilities and obtain records, documents and other information necessary to determine compliance with the provisions of this Article and Commission rules.
- (7) Grant, deny, suspend or revoke a license or a provisional license, in accordance with this Article, G.S. 108A-150, and Commission rules.
- (8) Act to grant or deny a request for waiver of Commission rules within 10 business days after its receipt. Grant a waiver for good cause to Commission rules that do not affect the health, safety, or welfare of children in facilities subject to licensure under this Article, in accordance with Commission rules.
- (9) Undertake a comprehensive study of the existing procedures for granting or denying an application for licensure or a request for waiver of Commission rules and report to the General Assembly on or before May 1, 1998, regarding

its efforts to make the process more efficient and less time-consuming and its recommendations for any changes in the licensing laws or rules. The study shall include the development of a procedure that will ensure that the local Guardian Ad Litem Program is notified by the county department of social services of the request for a waiver if a guardian has been appointed for any child who may be affected by the waiver.

- (10) Report annually on October 1 to the Joint Legislative Oversight Committee on Health and Human Services the level of facility compliance with applicable State law governing the use of restraint and time-out in residential child-care facilities. The report shall also include the total number of facilities that reported deaths under this section, the number of deaths reported by each facility, the number of deaths investigated pursuant to this section, and the number found by the investigation to be related to the use of physical restraint or time-out. (1983, c. 637, s. 2; 1997-110, s. 1; 2000-129, s. 5(b); 2003-58, s. 3; 2011-291, s. 2.48; 2019-240, s. 25(b).)

#### **§ 131D-10.6A. Training by the Division of Social Services required.**

(a) The Division of Social Services, Department of Health and Human Services, shall require a minimum of 30 hours of preservice training for foster care parents either prior to licensure or within six months from the date a provisional license is issued pursuant to G.S.131D-10.3, and a mandated minimum of 10 hours of continuing education for all foster care parents annually after the year in which a license is obtained. As part of licensure, the training shall include a module that is created and made available by the Department that explains, at a minimum, the roles and obligations of a foster parent in judicial proceedings conducted under Subchapter I of Chapter 7B of the General Statutes.

(b) The Division of Social Services shall establish minimum training requirements for child welfare services staff. The minimum training requirements established by the Division are as follows:

- (1) Child welfare services workers shall complete a minimum of 72 hours of preservice training before assuming direct client contact responsibilities. In completing this requirement, the Division of Social Services shall ensure that each child welfare worker receives training on family centered practices and State and federal law regarding the basic rights of individuals relevant to the provision of child welfare services, including the right to privacy, freedom from duress and coercion to induce cooperation, and the right to parent.
- (2) Child protective services workers shall complete a minimum of 18 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.
- (3) Foster care and adoption workers shall complete a minimum of 39 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.
- (4) Child welfare services supervisors shall complete a minimum of 72 hours of preservice training before assuming supervisory responsibilities and a minimum of 54 hours of additional training that the Division of Social Services determines is necessary to adequately meet training needs.

- (5) Child welfare services staff shall complete 24 hours of continuing education annually. In completing this requirement, the Division of Social Services shall provide each child welfare services staff member with annual update information on family centered practices and State and federal law regarding the basic rights of individuals relevant to the provision of child welfare services, including the right to privacy, freedom from duress and coercion to induce cooperation, and the right to parent.
- (c) The Division of Social Services may grant an exception in whole or in part to the requirement under subdivision (b)(1) of this section to child welfare workers who meet either of the following:
  - (1) Satisfactorily complete or are enrolled in a masters or bachelors program after July 1, 1999, from a North Carolina social work program accredited pursuant to the Council on Social Work Education. The program's curricula must cover the specific preservice training requirements as established by the Division of Social Services.
  - (2) Have child welfare work experience in another state and have completed child welfare training equivalent to training in this State.
- (d) The Division of Social Services shall ensure that training opportunities are available for county departments of social services and consolidated human service agencies to meet the training requirements of subsection (b) of this section. (1995, c. 324, s. 23.25; 1997-390, s. 11.1; 1997-443, s. 11A.118(a); 2000-67, s. 11.14(c); 2003-304, s. 4.2; 2021-132, s. 1(i); 2023-65, s. 7.4.)

#### **§ 131D-10.6B. Report of death.**

(a) A facility licensed under this Article shall notify the Department immediately upon the death of any resident of the facility that occurs within seven days of physical restraint of the resident, and shall notify the Department within three days of the death of any resident of the facility resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Department shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402, that a person with a disability has died. The Department shall provide the agency access to the information about each death reported to the agency pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department, and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a resident of the facility occurs within seven days of the use of physical restraint, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the agency. In carrying out the requirements of this section, the Department and the

agency shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 5(a); 2007-323, ss. 19.1(g), (h).)

### **§ 131D-10.6C. Maintaining a register of licensed foster homes by the Division of Social Services.**

(a) The Division of Social Services shall keep a register of all licensed family foster and therapeutic foster homes. The register shall contain the following information:

- (1) The name, age, and address of each foster parent.
- (2) Repealed by Session Laws 2012-153, s. 7, effective October 1, 2012.
- (3) The foster parent's supervising agency.
- (4) The number of hours of mandated training completed by the foster parent.
- (5) The date of the initial licensure.
- (6) The current licensing period.
- (7) Any adverse licensing actions.
- (8) Repealed by Session Laws 2012-153, s. 7, effective October 1, 2012.

(b) The register shall be a public record under Chapter 132 of the General Statutes. However, the Division, without penalty, may withhold any specific information about a foster parent to the extent the release of the information would likely pose a threat to the health or safety of the foster parent or a foster child. A person who is denied access to information under this section may seek a court order compelling disclosure or copying in accordance with G.S. 132-9(a). Information not specified in subsection (a) of this section shall be considered confidential and not subject to disclosure. (2003-304, s. 5; 2012-153, s. 7.)

### **§ 131D-10.7. Penalties.**

Any person who establishes or provides foster care for children or who receives and places children in residential child-care facilities, family foster homes or adoptive homes without a license shall be guilty of a Class 3 misdemeanor, and upon conviction shall only be punishable by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense. (1983, c. 637, s. 2; 1993, c. 539, s. 955; 1994, Ex. Sess., c. 24, s. 14(c).)

### **§ 131D-10.8. Injunction.**

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a facility operating without a license or in a manner that threatens the health, safety or welfare of the individuals in the facility.

(b) If any person shall interfere with the proper performance or duty of the Department in carrying out this Article, the Department may institute an action in the superior court of the county

in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law. (1983, c. 637, s. 2.)

### **§ 131D-10.9. Administrative and judicial review.**

All procedures arising out of this Article, including all notification, hearing and appeal procedures, shall be governed by the appropriate provisions of Chapter 150B of the Administrative Procedure Act. (1983, c. 637, s. 2; 1987, c. 827, s. 243.)

## Part 2. A Family for Every Child Initiative.

**§ 131D-10.9A:** Repealed by Session Laws 2021-90, s. 21, effective July 22, 2021.

### **§ 131D-10.9B. Permanency Innovation Initiative Fund.**

(a) There is created the Permanency Innovation Initiative Fund that will support a project with services provided by Children's Home Society of North Carolina to (i) improve permanency outcomes for children living in foster care through reunification with parents, providing placement or guardianship with other relatives, or adoption, (ii) improve engagement with biological relatives of children in or at risk of entering foster care, and (iii) reduce costs associated with maintaining children in foster care. In implementing these goals, the Permanency Innovation Initiative Fund shall support the following strategies:

- (1) Repealed by Session Laws 2018-68, s. 7.1, effective October 1, 2018.
- (2) Child Focused Recruitment Services, which is a program that follows the Wendy's Wonderful Kids Model as developed by The Dave Thomas Foundation for Adoption and works with children in public foster care to develop and execute adoption recruitment plans tailored to the needs of the individual child. These services include enhanced family engagement practices to discover and engage relatives of children living in public foster care.
- (3) Permanency Training Services, which are services delivered by Children's Home Society of North Carolina to support county departments of social services to implement the permanency strategies under subdivision (2) of this subsection, advance permanency-focused services for children in the legal custody of county departments of social services, and provide training and support services to caregivers and family members who are supporting the permanency goal of children in the legal custody of county departments of social services.

(a1) No more than fifteen percent (15%) of the State funds appropriated for this program shall be used for administrative costs.

(b) This program shall not constitute an entitlement and is subject to the availability of funds.

(c) The Social Services Commission shall adopt rules to implement the provisions of this section. (2013-360, s. 12C.10(e); 2018-68, s. 7.1; 2020-78, s. 4G.1; 2021-180, s. 9I.9(a).)

### **§ 131D-10.9C. Foster parents' Bill of Rights.**

(a) The State recognizes the importance of foster parents in the vital role of supporting children and families experiencing foster care. When children are removed from their parents or legal guardians, families are almost immediately integrated into a team, including child welfare

workers, resource parents, a guardian ad litem, attorneys, and others who are working together to address the issues leading to the foster care.

(b) In an effort to ensure that foster parents are treated with dignity, respect, and trust in their work for the Department of Health and Human Services, Division of Social Services, with this team, the State supports and promotes the following for foster parents in the provision of foster care:

- (1) To serve as a respected member of the child welfare team. Foster parents will also honor children placed in their homes in accordance with G.S. 131D-10.1.
- (2) To receive information about the responsibilities of foster parents and access to support services, including all of the following:
  - a. Required training and resources to ensure preparedness for caring for children experiencing loss and trauma.
  - b. Access to the Division of Social Services and licensing agency policies, including traveling with children in- and out-of-state, family visits and time, supervised and unsupervised, complaint and grievance policies, and confidentiality.
  - c. Any known information to help better care for children, including health and behavioral health history, disability, exposure to trauma, and educational needs.
  - d. Additional or necessary information that the county department of social services has that may be relevant to the care of the child when the child is placed with the foster parents.
  - e. Advance notice of scheduled meetings and appointments regarding case planning and care of the child.
  - f. Reasonable notice, subject to the circumstances of each particular case, to a foster parent with regard to the removal of a child from the foster home.
  - g. Participation in transition planning when it is in the best interest of the child.
  - h. 24/7 emergency contact information in the event of crisis or emergency.
  - i. Referral to resources for dealing with loss and separation when children return home to their parents.
- (3) Be notified of any costs or expenses that may be eligible for reimbursement.
- (4) Have timely allocation of resources, including submission of child care vouchers and a monthly stipend that meets or exceeds the rate established by the Division of Social Services.
- (5) Receive notice of hearings regarding the child placed in the foster home and to be heard in court, either verbally or in writing, as provided for in G.S. 7B-906.1.
- (6) Receive timely information pertinent to the day-to-day care of the child, including educational and health needs.
- (7) Have input in court and be included as a valued member of the child's team, including the right to be informed by the clerk of court of periodic reviews of the juvenile case of a child in foster care at least 15 days before each review, and the right to provide input, verbal or written, during periodic reviews of any information that may be relevant to a child's best interests so that the court may use that information in forming its opinion on the case.

- (8) Provide input to, advocate for, and seek out support from the supervising agency without fear of reprisal, including the right to request respite as needed or to request a break between placements.
- (9) Be allowed reasonable opportunities to be consulted with and considered in the scheduling of home visits, therapies, and other meetings related to the child that the foster or resource parents are allowed or required to attend.
- (10) Request a change in licensing workers.
- (11) Be considered as prospective adoptive placement after a termination of parental rights hearing or relinquishment pursuant to G.S. 7B-1112.1.
- (12) Utilize the reasonable and prudent parent standard in determining whether a foster parent can allow a child in the foster parent's care to participate in educational field trips and extracurricular, enrichment, and social activities. This standard is characterized by careful and thoughtful parental decision-making that is intended to maintain a child's health, safety, and best interest while encouraging the child's social, emotional, and developmental growth.
- (13) Request a shared parenting agreement that includes clear expectations and appropriate boundaries for all parties.
- (14) Request contact information be kept confidential by the supervising agency when safety concerns are present.

(c) A violation of this Bill of Rights shall not be construed to create a cause of action under this section against the State, the Department of Health and Human Services, private supervising agencies, local county departments of social services, or an entity providing foster care pursuant to this Article. Nothing in this Bill of Rights shall override existing law or administrative rule. (2021-144, s. 1.)

## Article 1B.

### Licensing of Maternity Homes.

#### **§ 131D-10.10. Licensing of Maternity Homes.**

(a) The Department of Health and Human Services shall inspect and license all maternity homes established in the State under rules adopted by the Social Services Commission. The Commission shall adopt rules establishing educational requirements, minimum age, relevant experience, and criminal record status for executive directors and staff employed in maternity homes.

(b) Facilities subject to the provisions of this section shall include:

- (1) Institutions or homes maintained for the purpose of receiving pregnant women for care before, during, and after delivery, and
- (2) Institutions or lying-in homes maintained for the purpose of receiving pregnant women for care before and after delivery, when delivery takes place in a licensed hospital. (1868-9, c. 170, s. 3; Code, ss. 2332, 2333; Rev., ss. 3914, 3915; 1917, c. 170, s. 1; 1919, c. 46, ss. 1, 2; C.S., s. 5006; 1925, c. 90, ss. 1, 2; 1927, c. 65; 1931, c. 175; 1937, c. 319, s. 2; c. 436, ss. 3, 5; 1941, c. 270, s. 1; 1945, c. 185; 1951, c. 103; c. 1098, s. 2; 1953, c. 117; 1955, c. 269; 1957, c. 100, s. 1; c. 541, s. 7; 1959, c. 684; 1961, c. 51, s. 2; 1965, cc. 391, 1175; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1997-443, s. 11A.118(a); 2007-30, s. 1; 2009-188, s. 1; 2009-462, s. 1(b).)

## Article 2.

### Local Confinement Facilities.

#### **§ 131D-11. Inspection.**

The Department of Health and Human Services shall, as authorized by G.S. 153-51, inspect regularly all local confinement facilities as defined by G.S. 153-50(4) to determine compliance with the minimum standards for local confinement facilities adopted by the Social Services Commission. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C.S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1997-443, s. 11A.118(a).)

#### **§ 131D-12. Approval of new facilities.**

The Department of Health and Human Services shall, as authorized by G.S. 153-51, approve the plans for the construction or major modification of any local confinement facility. (1868-9, c. 170, s. 5; Code, s. 2335; Rev., s. 3917; 1917, c. 170, s. 1; C.S., s. 5008; 1957, c. 86; 1961, c. 186; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1997-443, s. 11A.118(a).)

#### **§ 131D-13. Failure to provide information.**

If the board of commissioners of any county, the chief of police of any municipality, or any officer or employee of any local confinement facility shall fail or refuse to furnish to the Department of Health and Human Services any information about any local confinement facility which is required by law to be furnished, or shall fail to allow the inspection of any such facility, such board or individual shall be guilty of a Class 1 misdemeanor. (1869-70, c. 154, s. 3; Code, s. 2341; 1891, c. 491, s. 2; Rev., s. 3566; C.S., s. 5013; 1957, c. 100, s. 1; 1969, c. 546, s. 1; 1973, c. 476, s. 138; 1981, c. 275, s. 2; 1993, c. 539, s. 956; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a).)

#### **§§ 131D-14 through 131D-18. Reserved for future codification purposes.**

## Article 3.

### Adult Care Home Residents' Bill of Rights.

#### **§ 131D-19. Legislative intent.**

It is the intent of the General Assembly to promote the interests and well-being of the residents in adult care homes and assisted living residences licensed pursuant to Part 1 of this Article. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights. It is the intent of the General Assembly that rules developed by the Social Services Commission to implement Article 1 and Article 3 of Chapter 131D of the General Statutes encourage every resident's quality of life, autonomy, privacy, independence, respect, and dignity and provide the following:

- (1) Diverse and innovative housing models that provide choices of different lifestyles that are acceptable, cost-effective, and accessible to all consumers regardless of age, disability, or financial status;
- (2) A residential environment free from abuse, neglect, and exploitation;

- (3) Available, affordable personal service models and individualized plans of care that are mutually agreed upon by the resident, family, and providers and that include measurable goals and outcomes;
- (4) Client assessment, evaluation, and independent case management that enhance quality of life by allowing individual risk-taking and responsibility by the resident for decisions affecting daily living to the greatest degree possible based on the individual's ability; and
- (5) Oversight, monitoring, and supervision by State and county governments to ensure every resident's safety and dignity and to assure that every resident's needs, including nursing and medical care needs if and when needed, are being met. (1981, c. 923, s. 1; 1995, c. 535, s. 12; 2009-462, s. 4(g).)

**§ 131D-20. Definitions.**

As used in this Article, the following terms have the meanings specified:

- (1) "Abuse" means 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.
- (2) Repealed by Session Laws 1995, c. 535, s. 13, effective October 1, 1995.
- (2a) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Health Service Regulation.
- (2b) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102.
- (3) "Exploitation" means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
- (4) "Facility" means an adult care home licensed under G.S. 131D-2.4.
- (5) "Family care home" means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in

the upper story without provision for two direct exterior ground-level accesses to the upper story.

- (6) Repealed by Session Laws 2001-209, s. 1(c), effective June 15, 2001.
- (7) Repealed by Session Laws 1995, c. 535, s. 13.
- (8) "Neglect" means the failure to provide the services necessary to maintain the physical or mental health of a resident.
- (9) "Resident" means an aged or disabled person who has been admitted to a facility. (1981, c. 923, s. 1; 1981 (Reg. Sess., 1982), c. 1282, s. 20.2C; 1983, c. 824, ss. 2, 3, 5, 7, 8; 1995, c. 535, s. 13; 1997-456, s. 21; 2001-209, s. 1(c); 2007-182, s. 1; 2009-462, s. 4(h).)

**§ 131D-21. Declaration of residents' rights.**

Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

- (1) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
- (2) To receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
- (3) To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
- (4) To be free of mental and physical abuse, neglect, and exploitation.
- (5) Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
- (6) To have his or her personal and medical records kept confidential and not disclosed except as permitted or required by applicable State or federal law.
- (7) To receive a reasonable response to his or her requests from the facility administrator and staff.
- (8) To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.
- (9) To have access at any reasonable hour to a telephone where he or she may speak privately.
- (10) To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.
- (11) To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
- (12) To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.
- (13) To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been

delegated to the facility, the resident has the right to examine the account at any time.

- (14) To be notified when the facility is issued a provisional license or notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The resident's responsible family member or guardian shall also be notified.
- (15) To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.
- (16) To receive upon admission to the facility a copy of this section.
- (17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Medical Care Commission, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Medical Care Commission shall adopt rules pertaining to the transfer and discharge of residents that offer protections to residents for safe and orderly transfer and discharge. (1981, c. 923, s. 1; 1983, c. 824, s. 13; 1983 (Reg. Sess., 1984), c. 1076; 1997-443, s. 11A.118(a); 1999-334, s. 1.6; 2000-111, s. 3; 2011-272, s. 3; 2011-314, s. 5.)

#### **§ 131D-21.1. Peer review.**

It is not a violation of G.S. 131D-21(6) for medical records to be disclosed to a private peer review committee if:

- (1) The peer review committee has been approved by the Department;
- (2) The purposes of the peer review committee are to:
  - a. Survey facilities to verify a high level of quality care through evaluation and peer assistance;
  - b. Resolve written complaints in a responsible and professional manner; and
  - c. Develop a basic knowledge of care and standards useful in establishing a means of measuring quality of care; and
- (3) The peer review committee keeps such records confidential. (1983, c. 816, s. 1.)

#### **§ 131D-21.2. Quality assurance, medical, or peer review committees.**

(a) A member of a duly appointed quality assurance, medical, or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131D-21.1.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered

public records within the meaning of G.S. 132-1, " 'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against an adult care home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (2004-149, s. 2.3; 2006-264, s. 65.)

#### **§ 131D-22. Transfer of management responsibilities.**

Any representative authorized in writing by a resident to manage his financial affairs, any resident's legal guardian as appointed by a court, or any resident's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by this Article, perform any other act, and receive or furnish any information required by this Article. (1981, c. 923, s. 1; 1983, c. 824, s. 14.)

#### **§ 131D-23. No waiver of rights.**

No facility may require a resident to waive the rights specified in G.S. 131D-21. (1981, c. 923, s. 1.)

#### **§ 131D-24. Notice to resident.**

(a) A copy of the declaration of the residents' rights shall be posted conspicuously in a public place in all facilities. A copy of the declaration of residents' rights shall be furnished to the resident upon admittance to the facility, to all residents currently residing in the facility, to a representative payee of the resident, or to any person designated in G.S. 131D-22, and if requested to the resident's responsible family member or guardian. Receipts for the declaration of rights signed by these persons shall be retained in the facility's files. The declaration of rights shall be included as part of the facility's admission policies and procedures.

(b) The address and telephone number of the section in the Department of Health and Human Services responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of G.S. 131D-21. The address and telephone number of the county social services department, and the appropriate person or office of the Department of Health and Human Services shall also be posted and distributed. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

#### **§ 131D-25. Implementation.**

Responsibility for implementing the provisions of this Article shall rest with the administrator of the facility. Each facility shall provide appropriate training to staff to implement the declaration of residents' rights included in G.S. 131D-21. (1981, c. 923, s. 1.)

#### **§ 131D-26. Enforcement and investigation.**

(a) The Department of Health and Human Services shall be responsible for the enforcement of the provisions of this Article. Specifically, the department of social services in the county in which the facility is located and the Department of Health and Human Services, shall be responsible for enforcing the provisions of the declaration of the residents' rights. The director of the county department of social services shall monitor the implementation of the declaration of the residents' rights and shall also investigate any complaints or grievances pertaining to violations of the declaration of rights.

(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 60 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

(b) If upon investigation, it is found that any of the provisions of the declaration of rights has been violated, the director of the county department of social services or a designee must orally inform the administrator immediately of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This same information must be confirmed in writing to the administrator by the county director or a designee within 10 working days following the investigation. A copy of the letter shall be sent to the Department of Health and Human Services.

(c) Upon receiving requests for assistance in resolving complaints from the county department of social services, the Department of Health and Human Services shall ensure compliance with the provisions of this Article.

(d) The county director of social services shall annually make a report to the Department of Health and Human Services about the number of substantiated violations of G.S. 131D-21, the nature of the violations, and the number of violations referred to the Department of Health and Human Services for resolution. (1981, c. 923, s. 1; 1983, c. 824, ss. 15, 16; 1997-443, s. 11A.118(a); 1999-334, s. 1.8; 2007-444, s. 5(b).)

#### **§ 131D-27. Confidentiality.**

The Department of Health and Human Services is authorized to inspect residents' records maintained at the facility when necessary to investigate any alleged violation of the declaration of the residents' rights. The Department of Health and Human Services shall maintain the confidentiality of all persons who register complaints with the Department of Health and Human Services and of all records inspected by the Department of Health and Human Services. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

#### **§ 131D-28. Civil action.**

Every resident shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Health and Human Services, a general guardian, or any person appointed ad litem pursuant to law, may institute an action pursuant to this section on behalf of the resident or residents. Any agency or person above named may enforce the rights of the resident specified in G.S. 131D-21 which the resident himself is unable to enforce. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a).)

**§ 131D-29. Revocation of license.**

The Department of Health and Human Services shall have the authority to revoke a license issued under G.S. 131D-2.4 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Health and Human Services requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Health and Human Services may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed. (1981, c. 923, s. 1; 1997-443, s. 11A.118(a); 2009-462, s. 4(i).)

**§ 131D-30. Repealed by Session Laws 1987, c. 600, s. 1.**

**§ 131D-31. Adult care home community advisory committees.**

(a) Statement of Purpose. – It is the intention of the General Assembly that community advisory committee members function as representatives of the Office of the State Long-Term Care Ombudsman and through their designation work to maintain the intent of the Adult Care Home Residents' Bill of Rights within the licensed adult care homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with adult care homes to ensure quality care for the elderly and adults with disabilities.

(b) Establishment and Appointment of Committees. –

- (1) A community advisory committee shall be established in each county that has at least one licensed adult care home, shall serve all the homes in the county, and shall work with each of these homes for the best interests of the residents. In a county that has one, two, or three adult care homes with 10 or more beds, the committee shall have five members.
- (2) In a county with four or more adult care homes with 10 or more beds, the committee shall have one additional member for each adult care home with 10 or more beds in excess of three, and may have up to five additional members at the discretion of the county commissioners, not to exceed a maximum of 25 members. In each county with four or more adult care homes with 10 or more beds, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each adult care home in the county. Each member must serve on at least one subcommittee.

- (3) In counties with no adult care homes with 10 or more beds, the committee shall have five members. Regardless of how many members a particular community advisory committee is required to have, at least one member of each committee shall be a person involved in the area of intellectual or other developmental disabilities.
- (4) The boards of county commissioners are encouraged to appoint the adult care home community advisory committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) shall be chosen from among persons nominated by a majority of the chief administrators of adult care homes in the county. If the adult care home administrators fail to make a nomination within 45 days after written notification has been sent to them requesting a nomination, these appointments may be made without nominations. If the county commissioners fail to appoint members to a committee, the appointments shall be made by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after nominations have been requested from the adult care home administrators. In making appointments, the Office of the State Long-Term Care Ombudsman shall follow the same appointment process as that specified for the county commissioners.
- (5) Notwithstanding any other provision of this Article, appointment to an adult care home community advisory committee is contingent upon designation of the appointee by the Office of the State Long-Term Care Ombudsman in accordance with G.S. 143B-181.18. A designated appointee is directly accountable to the State Long-Term Care Ombudsman Program in order to perform the duties as a representative of the Office of the State Long-Term Care Ombudsman. Removal of the appointee's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the appointment to the adult care home community advisory committee.
- (6) Any individual who serves as a community advisory committee member must go through the Office of the State Long-Term Care Ombudsman's certification and designation process and meet the certification and designation requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures.

(c) Joint Nursing and Adult Care Home Community Advisory Committees. – Appointment to the nursing home community advisory committees shall preclude appointment to the adult care home community advisory committees except where written approval to combine these committees is obtained from the Office of the State Long-Term Care Ombudsman. Where this approval is obtained, the joint nursing and adult care home community advisory committee shall have the membership required of nursing home community advisory committees and one additional member for each adult care home with 10 or more beds licensed in the county. In counties with no adult care homes with 10 or more beds, there shall be one additional member for every four other types of adult care homes in the county. In no case shall the number of members on the joint nursing and adult care home community advisory committee exceed 25. Each member shall exercise the statutory rights and responsibilities of both nursing home community advisory committees and adult care home community advisory committees. In making appointments to this joint committee, the county commissioners shall solicit nominations from both nursing and adult

care home administrators for the appointment of approximately (but no more than) one-third of the members.

(d) Terms of Office. – Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a two- or three-year term at the county commissioners' discretion to ensure staggered terms of office.

(e) Vacancies. – Any vacancy shall be filled by appointment of a person for a one-year term. If this vacancy is in a position filled by an appointee nominated by the chief administrators of adult care homes within the county, then the county commissioners shall fill the vacancy from persons nominated by a majority of the chief administrators. If the adult care home administrators fail to make a nomination by registered mail within 45 days after written notification has been sent to them requesting a nomination, this appointment may be made without nominations. If the county commissioners fail to fill a vacancy, the vacancy shall be filled by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after the commissioners have been notified of the appointment or vacancy.

(f) Officers. – The committee shall elect from its members a chair, to serve a one-year term.

(g) Minimum Qualifications for Appointment. – Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by the committee, or employee or governing board member of a home served by the committee, or immediate family member of a resident in a home served by the committee may be a member of that committee. Any county commissioner who is appointed to the committee serves on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Office of the State Long-Term Care Ombudsman.

(h) Training, Certification, and Designation. – The Office of the State Long-Term Care Ombudsman shall develop training requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2). Each committee member must receive certification training as specified by the State Long-Term Care Ombudsman Program Policies and Procedures and be designated as representatives of the State Long-Term Care Ombudsman Program prior to exercising any power under G.S. 131D-32. The State Long-Term Care Ombudsman Program shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(i) Privilege. – Any written communication made by a member of an adult care home advisory committee within the course and scope of the member's duties, as specified in G.S. 131D-32, is privileged to the extent provided in this subsection. All communication is the property of the Office of the State Long-Term Care Ombudsman and is subject to the Office's disclosure policies. This privilege is a defense in a cause of action for libel if the member was acting in good faith and the statements and communications do not amount to intentional wrongdoing.

To the extent that any adult care home advisory committee or any member is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity provided in this subsection to the extent of indemnification by insurance. (1981, c. 923, s. 1; 1983, c. 88, s. 1; 1987, c. 682, s. 2; 1995, c. 535, s. 14; 1997-176, s. 2; 1997-443, s. 11A.118(a); 2017-103, s. 1(a); 2019-76, s. 17.)

**§ 131D-32. Functions of adult care home community advisory committees.**

(a) The committee shall serve as the nucleus for increased community involvement with adult care homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in adult care homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of adult care homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for adult care home residents.

(d) The committee shall establish linkages with the adult care home administrators and the county department of social services for the purpose of maintaining the intent of the Adult Care Home Residents' Bill of Rights.

(e) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq. The committee shall notify the enforcement agency of all verified violations of the Adult Care Home Residents' Bill of Rights.

(f) The committee or subcommittee may communicate through the committee chair with the Department of Health and Human Services, the county department of social services, or any other agency in relation to the interest of any resident.

(g) Each committee shall quarterly visit the adult care homes with 10 or more beds it serves. For each official quarterly visit, a majority of the committee members shall be present. A minimum of three members of the committee shall make at least one visit annually to each other type of adult care home licensed in the county. In addition, each committee may visit the adult care homes it serves whenever it deems it necessary to carry out its duties. In counties with subcommittees, the subcommittee assigned to a home shall perform the duties of the committee under this subsection, and a majority of the subcommittee members must be present for any visit. When visits are made to group homes for developmentally disabled adults, rules concerning confidentiality as adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall apply.

(h) The individual members of the committee shall have the right between 10:00 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to members of the subcommittee which serves that home. A majority of the committee or subcommittee members shall be present to enter the facility at other hours. Before entering any adult care home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(i) The committee shall prepare reports as required by the Department of Health and Human Services containing an appraisal of the problems of adult care homes facilities as well as issues affecting long-term care in general. Copies of the report shall be sent to the board of county commissioners, county department of social services and the Division of Aging.

(j) Nothing contained in this section shall be construed to require the expenditure of any county funds to carry out the provisions in this section. (1981, c. 923, s. 1; 1983, c. 88, s. 2; 1991, c. 636, s. 19(b); 1995, c. 254, s. 6; c. 535, s. 15; 1997-443, s. 11A.118(a).)

**§ 131D-33: Repealed by Session Laws 1983, c. 824, s. 19.**

**§ 131D-34. Penalties; remedies.**

(a) **Violation Classification and Penalties.** – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of requirements of G.S. 131D-21 or applicable State and federal laws and regulations. Citations for violations shall be classified and penalties assessed according to the nature of the violation as follows:

- (1) "Type A1 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, abuse, neglect, or exploitation. The person making the findings shall do the following:
  - a. Orally and immediately inform the facility of the Type A1 Violation and the specific findings.
  - a1. Require a written plan of protection regarding how the facility will immediately abate the Type A1 Violation in order to protect residents from further risk or additional harm.
  - b. Within 15 working days of the investigation, send a report of the findings to the facility.
  - c. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The Department shall impose a civil penalty in an amount not less than five hundred dollars (\$500.00) nor more than ten thousand dollars (\$10,000) for each Type A1 Violation in facilities licensed for six or fewer beds. The Department shall impose a civil penalty in an amount not less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000) for each Type A1 Violation in facilities licensed for seven or more beds. Where a facility has failed to correct a Type A1 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the violation continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

- (1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:
  - a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.
  - b. Require a written plan of protection regarding how the facility will immediately abate the Type A2 Violation in order to protect clients or residents from further risk or additional harm.

- c. Within 15 working days of the investigation, send a report of the findings to the facility.
- d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.

- (2) "Type B Violation" means a violation by a facility of the regulations, standards and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility which is detrimental to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:
- a. Orally and immediately inform the facility of the Type B Violation and the specific findings.
  - b. Require a written plan of protection regarding how the facility will immediately abate the Type B Violation in order to protect residents from further risk or additional harm.
  - c. Within 15 working days of the investigation, send a report of the findings to the facility.
  - d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars (\$400.00) for each day that the violation continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.

- (2a) A Type A1, Type A2, or Type B Violation as defined above shall not include a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131D-21 or applicable State or federal laws and regulations governing the licensure or certification of a facility if all of the following criteria are met:
- a. The violation was discovered by the facility.
  - b. The Department determines that the violation was abated immediately.
  - c. The violation was corrected prior to inspection by the Department.

- d. The Department determines that reasonable preventative measures were in place prior to the violation.
- e. The Department determines that subsequent to the violation, the facility implemented corrective measures to achieve and maintain compliance.
- (2b) As used in this section, "substantial risk" shall mean the risk of an outcome that is substantially certain to materialize if immediate action is not taken.
- (3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under subsection (a) of this section when a facility under the same management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and the current violation is for the same specific provision of a statute or regulation for which it received a violation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to Article 4 of this Chapter.
- (b) Repealed by Session Laws 2011-249, s. 2, effective June 23, 2011.
- (c) Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:
  - (1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur;
    - (1a) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur;
    - (1b) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur;
    - (1c) A resident died;
    - (1d) A resident died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation;
    - (1e) A resident died and there is substantial risk for further resident death;
  - (2) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131D-40 and other applicable State and federal laws and regulations;
    - (2a) Efforts by the licensee to correct violations;
  - (3) The number and type of previous violations committed by the licensee within the past 36 months; and
  - (4) Repealed by Session Laws 2011-249, s. 2, effective June 23, 2011;
  - (5) The number of residents put at risk by the violation.
- (c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Department shall document the findings in written record and shall make the written record available to all affected parties including:
  - (1) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.
  - (2) The local department of social services who is responsible for oversight of the facility involved;
  - (3) The licensee involved;
  - (4) The residents affected; and

(5) The family member who serves as a responsible party or those who have legal authority on behalf of the affected resident.

(c2) Local county departments of social services and Division of Health Service Regulation personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(d1) The Department shall impose a civil penalty on any applicant for licensure who provides false information or omits information on the portion of the licensure application requesting information on owners, administrators, principals, or affiliates of the facility. The amount of the penalty shall be as is prescribed for a Type A1 Violation.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the administrative law judge may order that the penalty be adjusted accordingly.

(f) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the date of the letter of notification of the penalty amount.

(g) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g1) In lieu of assessing all or some of the administrative penalty, the Secretary may order a facility to provide staff training, or consider the approval of training completed by the facility after the violation, if all of the following criteria are met:

- (1) The training is determined by the Department to be specific to the violation.
- (2) The training is approved by the Department.
- (3) The training is taught by someone approved by the Department.
- (4) The facility has corrected the violation and continues to remain in compliance with the regulation.

(h) Repealed by Session Laws 2016-50, s. 2, effective June 30, 2016.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law. (1987, c. 600, s. 3; 1989, c. 556, s. 1; 1991, c. 66, s. 1; c. 572, s. 3; 1993, c. 390, s. 4; 1993 (Reg. Sess., 1994), c. 698, s. 1; 1995, c. 535, s. 16; 1995 (Reg. Sess., 1996), c. 602, s. 1; 1997-431, s. 1; 1997-443, s. 11A.118(a); 1998-215, s. 78(a); 2005-276, s. 10.40A(l); 2007-182, ss. 1, 1.1; 2007-544, s. 1; 2011-249, s. 2; 2011-398, s. 45; 2016-50, s. 2.)

### **§ 131D-34.1. Report of death of resident.**

(a) An adult care home shall notify the Department of Health and Human Services immediately upon the death of any resident that occurs in the adult care home or that occurs within 24 hours of the resident's transfer to a hospital if the death occurred within seven days of the adult care home's use of physical restraint or physical hold of the resident, and shall notify the Department of Health and Human Services within three days of the death of any resident of the adult care home resulting from violence, accident, suicide, or homicide. The Department may assess a civil penalty of not less than five hundred dollars (\$500.00) and not more than one thousand dollars (\$1,000) against a facility that fails to notify the Department of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Department or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from an adult care home in accordance with subsection (a) of this section, the Department of Health and Human Services shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, P.L. 106-402, that a person with a disability has died. The Department shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a resident of the adult care home occurs within seven days of the adult care home's use of physical restraint or physical hold, the Department shall initiate immediately an investigation of the death.

(d) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Department or the agency. In carrying out the requirements of this section, the Department and the agency shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(e) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section. (2000-129, s. 6(a); 2007-323, ss. 19.1(i), 19.1(j).)

#### Article 4.

#### Temporary Management of Adult Care Homes.

#### **§ 131D-35. Temporary management of adult care homes.**

The provisions of Article 13 of Chapter 131E are incorporated by reference in this Article. (1993, c. 390, s. 3; 1995, c. 535, s. 18.)

#### **§§ 131D-36 through 131D-39. Reserved for future codification purposes.**

#### Article 5.

Miscellaneous Provisions.

**§ 131D-40. Criminal history record checks required for certain applicants for employment.**

(a) Requirement; Adult Care Home. – An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the adult care home as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the contract agency of the adult care home as to whether

the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the adult care home or a contract agency of the adult care home shall consider all of the following factors in determining whether to hire the applicant:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the job duties of the position to be filled.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(c) Limited Immunity. – An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These crimes also include possession or sale of drugs in violation of the North Carolina Controlled

Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302 or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.

(e) **Penalty for Furnishing False Information.** – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) **Conditional Employment.** – An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 143B-939.
- (2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) **Immunity From Liability.** – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(h) For purposes of this section, the term "private entity" means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency. (1995 (Reg. Sess., 1996), c. 606, s. 2; 1997-125, s. 1; 2000-154, ss. 2.(a), (b); 2004-124, ss. 10.19D(b), (g); 2005-4, ss. 6, 7; 2007-444, s. 3.1; 2012-12, s. 2(uu); 2014-100, s. 17.1(ggg); 2015-181, s. 47.)

§ 131D-41: Repealed by Session Laws 2009-462, s. 2, effective October 1, 2009.

§ 131D-42: Repealed by Session Laws 2009-462, s. 2, effective October 1, 2009.

§ 131D-43: Reserved for future codification purposes.

§ 131D-44: Reserved for future codification purposes.

**§ 131D-45. Examination and screening for the presence of controlled substances required for applicants for employment in adult care homes.**

(a) An offer of employment by an adult care home licensed under this Article to an applicant is conditioned on the applicant's consent to an examination and screening for controlled substances. The examination and screening shall be conducted in accordance with Article 20 of Chapter 95 of the General Statutes. A screening procedure that utilizes a single-use test device may be used for the examination and screening of applicants and may be administered on-site. If the results of the applicant's examination and screening indicate the presence of a controlled substance, the adult care home shall not employ the applicant unless the applicant first provides to the adult care home written verification from the applicant's prescribing physician that every controlled substance identified by the examination and screening is prescribed by that physician to treat the applicant's medical or psychological condition. The verification from the physician shall include

the name of the controlled substance, the prescribed dosage and frequency, and the condition for which the substance is prescribed. If the result of an applicant's or employee's examination and screening indicates the presence of a controlled substance, the adult care home may require a second examination and screening to verify the results of the prior examination and screening.

(b) An adult care home may require random examination and screening for controlled substances as a condition of continued employment. If the adult care home has reasonable grounds to believe that an employee is an abuser of a controlled substance, the adult care home may require that employee to undergo examination and screening for controlled substances as a condition of continued employment.

(c) An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the adult care home to employ or continue the employment of an individual on the basis of the results of an examination and screening of the applicant or employee for controlled substances.

(d) An entity and officers and employees of an entity that perform controlled substance examination and screening in accordance with Article 20 of Chapter 95 of the General Statutes shall be immune from civil liability for conducting or failing to conduct the examination and screening if the examination and screening are requested and received in compliance with this section and with Article 20 of Chapter 95 of the General Statutes.

(e) The results of an examination and screening conducted at the request of an adult care home in accordance with this section are confidential and not a public record under Chapter 132 of the General Statutes. The adult care home shall maintain the confidentiality of all information related to the examination and screening of an applicant for employment or an individual currently employed by the adult care home.

(f) The adult care home shall pay expenses related to controlled substance examination and screening pursuant to this section, except examinee-requested retests. The examinee shall pay all reasonable expenses for retests of confirmed positive results. (2013-167, s. 1.)