

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 257

Short Title: Rest Home Appeals Process.

(Public)

Sponsors: Senators Seymour; Daniel, Richardson, and Walker.

Referred to: Human Resources.

March 21, 1991

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO
ISSUE PROVISIONAL LICENSES FOR DOMICILIARY HOMES AND TO
ESTABLISH CERTAIN APPEALS TIME LIMITS.

The General Assembly of North Carolina enacts:

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

"(b) Licensure; inspections. –

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all domiciliary homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. The Department may also issue provisional licenses to facilities, pursuant to rules adopted by the Social Services Commission. 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.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a

1 license is guilty of a misdemeanor, and upon conviction shall be
2 punishable by a fine of not more than fifty dollars (\$50.00) for the first
3 offense and not more than five hundred dollars (\$500.00) for each
4 subsequent offense. Each day of a continuing violation after conviction
5 shall be considered a separate offense.

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

16 (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality
17 of communications between physician and patient, in the course of an
18 inspection conducted under subsection (b):

19 a. Department representatives may review any writing or other
20 record concerning the admission, discharge, medication, care,
21 medical condition, or history of any person who is or has been a
22 resident of the facility being inspected, and

23 b. Any person involved in giving care or treatment at or through
24 the facility may disclose information to Department
25 representatives;

26 unless the resident objects in writing to review of his records or
27 disclosure of such information.

28 The facility, its employees and any other person interviewed in the
29 course of an inspection shall be immune from liability for damages
30 resulting from disclosure of any information to the Department.

31 The Department shall not disclose:

32 a. Any confidential or privileged information obtained under this
33 subsection unless the resident or his legal representative
34 authorizes disclosure in writing or unless a court of competent
35 jurisdiction orders disclosure, or

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

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

43 Sec. 2. G.S. 131D-2(h) reads as rewritten:

44 "(h) Suspension of admissions to domiciliary home:

- 1 (1) In addition to the administrative penalties described in subsection (b),
2 the Secretary may suspend the admission of any new residents to a
3 domiciliary home, where the conditions of the domiciliary home are
4 detrimental to the health or safety of the residents. This suspension
5 shall be for the period determined by the Secretary and shall remain in
6 effect until the Secretary is satisfied that conditions or circumstances
7 merit removing the suspension.
- 8 (2) In imposing a suspension under this subsection, the Secretary shall
9 consider the following factors:
- 10 a. The degree of sanctions necessary to ensure compliance with
11 this section and rules adopted hereunder; and
- 12 b. The character and degree of impact of the conditions at the
13 home on the health or safety of its residents.
- 14 (3) The Secretary of Human Resources shall adopt rules to implement this
15 subsection.
- 16 (4) Any facility wishing to contest a suspension of admissions shall be
17 entitled to an administrative hearing as provided in the Administrative
18 Procedure Act, Chapter 150B of the General Statutes. A petition for a
19 contested case shall be filed within 20 days after the Department mails
20 a notice of suspension of admissions to the licensee."

21 Sec. 3. G.S. 131D-34(e) reads as rewritten:

22 "(e) Any facility wishing to contest a penalty shall be entitled to an administrative
23 hearing as provided in the Administrative Procedure Act, Chapter 150B of the General
24 Statutes. A petition for a contested case shall be filed within 30 days after the
25 Department mails a notice of penalty to a licensee. One issue at the administrative
26 hearing shall be the reasonableness of the amount of any civil penalty assessed by the
27 Department. If a civil penalty is found to be unreasonable, the hearing officer may
28 recommend that the penalty be modified accordingly."

29 Sec. 4. This act becomes effective October 1, 1991, and applies to licenses
30 issued and appeals entered into on and after that date.