

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 456
Committee Substitute Favorable 4/15/09

Short Title: Tech. & Org. Changes/Certain DHHS Facilities.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE LAW
3 REGARDING THE LICENSURE AND INSPECTION OF FACILITIES FOR AGED
4 AND DISABLED INDIVIDUALS.

5 The General Assembly of North Carolina enacts:

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

8 "Article 1B.

9 "Licensing of Maternity Homes."

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

12 SECTION 1.(c) The title of Article 1 of Chapter 131D of the General Statutes
13 reads as rewritten:

14 "Article 1.

15 ~~Licensing of Facilities.~~

16 Adult Care Homes."

17 SECTION 1.(d) G.S. 131D-2 is repealed.

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

20 "Part 1. Licensing.

21 "§ 131D-2.1. Definitions.

22 As used in this Article:

- 23 (1) Abuse. – The willful or grossly negligent infliction of physical pain, injury,
24 or mental anguish, unreasonable confinement, or the willful or grossly
25 negligent deprivation by the administrator or staff of an adult care home of
26 services which are necessary to maintain mental and physical health.
- 27 (2) Administrator. – A person approved by the Department of Health and
28 Human Services who has the responsibility for the total operation of a
29 licensed adult care home.
- 30 (3) Adult care home. – An assisted living residence in which the housing
31 management provides 24-hour scheduled and unscheduled personal care
32 services to two or more residents, either directly or for scheduled needs,
33 through formal written agreement with licensed home care or hospice
34 agencies. Some licensed adult care homes provide supervision to persons
35 with cognitive impairments whose decisions, if made independently, may
36 jeopardize the safety or well-being of themselves or others and therefore
37 require supervision. Medication in an adult care home may be administered



- 1 by designated trained staff. Adult care homes that provide care to two to six
2 unrelated residents are commonly called family care homes.
- 3 (4) Amenities. – Services such as meals, housekeeping, transportation, and
4 grocery shopping that do not involve hands-on personal care.
- 5 (5) Assisted living residence. – Any group housing and services program for
6 two or more unrelated adults, by whatever name it is called, that makes
7 available, at a minimum, one meal a day and housekeeping services and
8 provides personal care services directly or through a formal written
9 agreement with one or more licensed home care or hospice agencies. The
10 Department may allow nursing service exceptions on a case-by-case basis.
11 Settings in which services are delivered may include self-contained
12 apartment units or single or shared room units with private or area baths.
13 Assisted living residences are to be distinguished from nursing homes
14 subject to provisions of G.S. 131E-102. There are three types of assisted
15 living residences: adult care homes, adult care homes that serve only elderly
16 persons, and multiunit assisted housing with services. As used in this
17 section, "elderly person" means:
- 18 a. Any person who has attained the age of 55 years or older and
19 requires assistance with activities of daily living, housing, and
20 services, or
- 21 b. Any adult who has a primary diagnosis of Alzheimer's disease or
22 other form of dementia who requires assistance with activities of
23 daily living, housing, and services provided by a licensed
24 Alzheimer's and dementia care unit.
- 25 (6) Compensatory agent. – A spouse, relative, or other caretaker who lives with
26 a resident and provides care to a resident.
- 27 (7) Department. – The Department of Health and Human Services unless some
28 other meaning is clearly indicated from the context.
- 29 (8) Exploitation. – The illegal or improper use of an aged or disabled resident or
30 the aged or disabled resident's resources for another's profit or advantage.
- 31 (9) Family care home. – An adult care home having two to six residents. The
32 structure of a family care home may be no more than two stories high, and
33 none of the aged or physically disabled persons being served there may be
34 housed in the upper story without provision for two direct exterior
35 ground-level accesses to the upper story.
- 36 (10) Multiunit assisted housing with services. – An assisted living residence in
37 which hands-on personal care services and nursing services which are
38 arranged by housing management are provided by a licensed home care or
39 hospice agency through an individualized written care plan. The housing
40 management has a financial interest or financial affiliation or formal written
41 agreement which makes personal care services accessible and available
42 through at least one licensed home care or hospice agency. The resident has
43 a choice of any provider, and the housing management may not combine
44 charges for housing and personal care services. All residents, or their
45 compensatory agents, must be capable, through informed consent, of
46 entering into a contract and must not be in need of 24-hour supervision.
47 Assistance with self-administration of medications may be provided by
48 appropriately trained staff when delegated by a licensed nurse according to
49 the home care agency's established plan of care. Multiunit assisted housing
50 with services programs are required to register with the Division of Health
51 Service Regulation and to provide a disclosure statement. The disclosure

1 statement is required to be a part of the annual rental contract that includes a
2 description of the following requirements:

- 3 a. Emergency response system;
4 b. Charges for services offered;
5 c. Limitations of tenancy;
6 d. Limitations of services;
7 e. Resident responsibilities;
8 f. Financial/legal relationship between housing management and home
9 care or hospice agencies;
10 g. A listing of all home care or hospice agencies and other community
11 services in the area;
12 h. An appeals process; and
13 i. Procedures for required initial and annual resident screening and
14 referrals for services.

15 Continuing care retirement communities, subject to regulation by the
16 Department of Insurance under Chapter 58 of the General Statutes, are
17 exempt from the regulatory requirements for multiunit assisted housing with
18 services programs.

- 19 (11) Neglect. – The failure to provide the services necessary to maintain a
20 resident's physical or mental health.
21 (12) Personal care services. – Any hands-on services allowed to be performed by
22 In-Home Aides II or III as outlined in Department rules.
23 (13) Registration. – The submission by a multiunit assisted housing with services
24 provider of a disclosure statement containing all the information as outlined
25 in subdivision (10) of this section.
26 (14) Resident. – A person living in an assisted living residence for the purpose of
27 obtaining access to housing and services provided or made available by
28 housing management.
29 (15) Secretary. – The Secretary of Health and Human Services unless some other
30 meaning is clearly indicated from the context.

31 **§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted**
32 **housing with services; hospice care; obtaining services.**

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

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

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

- 49 (1) Ventilator dependency;
50 (2) Dermal ulcers III and IV, except those stage III ulcers which are determined
51 by an independent physician to be healing;

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

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

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

36 **"§ 131D-2.3. Exemptions from licensure.**

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

- 39 (1) Facilities licensed under Chapter 122C or Chapter 131E of the General
40 Statutes;
41 (2) Persons subject to rules of the Division of Vocational Rehabilitation
42 Services;
43 (3) Facilities that care for no more than four persons, all of whom are under the
44 supervision of the United States Veterans Administration;
45 (4) Facilities that make no charges for housing, amenities, or personal care
46 service, either directly or indirectly; and
47 (5) Institutions that are maintained or operated by a unit of government and that
48 were established, maintained, or operated by a unit of government and
49 exempt from licensure by the Department on September 30, 1995.

50 **"§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals; impact of**
51 **prior violations on licensure; compliance history review; license renewal.**

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

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

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

17 (1) Was the owner, principal, or affiliate of a licensable facility under this
18 Chapter, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes
19 that had its license revoked until one full year after the date of revocation;

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

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

30 (4) Is the owner, principal, or affiliate of a licensable facility that had its license
31 summarily suspended or downgraded to provisional status as a result of
32 violations under this Article or Chapter 122C of the General Statutes or had
33 its license summarily suspended or denied under Article 7 of Chapter 110 of
34 the General Statutes until six months from the date of the reinstatement of
35 the license, restoration from provisional to full licensure, or termination of
36 the provisional license, as applicable.

37 An applicant for new licensure may appeal a denial of certification of substantial
38 compliance under subdivision (2) of this subsection by filing with the Department a request for
39 review by the Secretary within 10 days of the date of denial of the certification. Within 10 days
40 of receipt of the request for review, the Secretary shall issue to the applicant a written
41 determination that either denies certification of substantial compliance or certifies substantial
42 compliance. The decision of the Secretary is final.

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

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

4 (f) The Department shall not issue a new license for a change of ownership of an adult
5 care home if outstanding fees, fines, and penalties imposed by the State against the home have
6 not been paid. Fines and penalties for which an appeal is pending are exempt from
7 consideration.

8 **"§ 131D-2.5. License fees.**

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

14 **"§ 131D-2.6. Legal action by Department.**

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

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

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

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

32 **"§ 131D-2.7. Provisional license; license revocation; summary suspension of license;**
33 **suspension of admission.**

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

37 (1) The licensee has substantially failed to comply with the provisions of
38 Articles 1 and 3 of this Chapter and the rules adopted pursuant to these
39 Articles;

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

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

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

47 The Department also may issue a provisional license to a facility, pursuant to rules adopted
48 by the Medical Care Commission, for substantial failure to comply with the provisions of this
49 section or rules adopted pursuant to this section. Any facility wishing to contest the issuance of
50 a provisional license shall be entitled to an administrative hearing as provided in the
51 Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested

1 case shall be filed within 30 days after the Department mails written notice of the issuance of
2 the provisional license.

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

4 (1) The Department finds that:

5 a. The licensee has substantially failed to comply with the provisions of
6 Articles 1 and 3 of this Chapter and the rules adopted pursuant to
7 these Articles; and

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

10 (2) The Department finds that:

11 a. The licensee has substantially failed to comply with the provisions of
12 Articles 1 and 3 of this Chapter and the rules adopted pursuant to
13 these Articles; and

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

18 c. The licensee has failed to comply with the provisions of Articles 1
19 and 3 of this Chapter and the rules adopted pursuant to these Articles,
20 and the failure to comply endangered the health, safety, or welfare of
21 the patients in the facility.

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

29 (d) Suspension of Admissions.

30 (1) In addition to the administrative penalties described in this Article, the
31 Secretary may suspend the admission of any new residents to an adult care
32 home where the conditions of the adult care home are detrimental to the
33 health or safety of the residents. This suspension shall be for the period
34 determined by the Secretary and shall remain in effect until the Secretary is
35 satisfied that conditions or circumstances merit removing the suspension.

36 (2) In imposing a suspension under this section, the Secretary shall consider the
37 following factors:

38 a. The degree of sanctions necessary to ensure compliance with this
39 section and rules adopted hereunder; and

40 b. The character and degree of impact of the conditions at the home on
41 the health or safety of its residents.

42 (3) The Secretary of Health and Human Services shall adopt rules to implement
43 this section.

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

49 **"§§ 131D-2.8 through 2.10: Reserved for future codification purposes.**

50 **"Part 2. Other Laws Pertaining to the Inspection**
51 **and Operation of Adult Care Homes.**

1 "§ 131D-2.11. Inspections, monitoring, and review by State agency and county
2 departments of social services.

3 (a) State Inspection and Monitoring. – The Department shall ensure that adult care
4 homes required to be licensed by this Article are monitored for licensure compliance on a
5 regular basis. All facilities licensed under this Article and adult care units in nursing homes are
6 subject to inspections at all times by the Secretary. The Division of Health Service Regulation
7 shall inspect all adult care homes and adult care units in nursing homes on an annual basis. In
8 addition, the Department shall ensure that adult care homes are inspected every two years to
9 determine compliance with physical plant and life-safety requirements.

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

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

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

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

31 "§ 131D-2.12. Training requirements; county departments of social services.

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

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

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

44 "§ 131D-2.13. Departmental duties.

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

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

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

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

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

10 (1) The level of compliance of each adult care home with applicable State law
11 and rules governing the use of physical restraint and physical hold of
12 residents. The information shall indicate areas of highest and lowest levels of
13 compliance.

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

19 **"§ 131D-2.14. Confidentiality.**

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

22 (1) Department representatives may review any writing or other record
23 concerning the admission, discharge, medication, care, medical condition, or
24 history of any person who is or has been a resident of the facility being
25 inspected.

26 (2) Any person involved in giving care or treatment at or through the facility
27 may disclose information to Department representatives unless the resident
28 objects in writing to review of the resident's records or disclosure of such
29 information.

30 (3) The facility, its employees, and any other person interviewed in the course of
31 an inspection shall be immune from liability for damages resulting from
32 disclosure of any information to the Department. The Department shall not
33 disclose:

34 a. Any confidential or privileged information obtained under this
35 section unless the resident or the resident's legal representative
36 authorizes disclosure in writing or unless a court of competent
37 jurisdiction orders disclosure, or

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

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

45 (4) Notwithstanding any law to the contrary, Chapter 132 of the General
46 Statutes, the Public Records Law, applies to all records of the State Division
47 of Social Services of the Department of Health and Human Services and of
48 any county department of social services regarding inspections of adult care
49 facilities except for information in the records that is confidential or
50 privileged, including medical records, or that contains the names of residents
51 or complainants.

1 **"§ 131D-2.15. Resident assessments.**

2 (a) The Department shall ensure that facilities conduct and complete an assessment of
3 each resident within 72 hours of admitting the resident and annually thereafter. In conducting
4 the assessment, the facility shall use an assessment instrument approved by the Secretary upon
5 the advice of the Director of the Division of Aging and Adult Services. The Department shall
6 provide ongoing training for facility personnel in the use of the approved assessment
7 instrument.

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

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

19 (1) Whether the appropriate assessment instrument was administered and
20 interpreted correctly;

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

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

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

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

34 **"§ 131D-2.16. Rules.**

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

45 **"§ 131D-2.17. Impact on other laws; severability.**

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

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

1 **"§ 131D-2.18. Application of other laws.**

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

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

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

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

9 **SECTION 3.(a)** G.S. 131D-2.1(10), as enacted by Section 1 of this act, reads as
10 rewritten:

11 "(10) "Multiunit assisted housing with services." – An assisted living residence in
12 which hands-on personal care services and nursing services which are
13 arranged by housing management are provided by a licensed home care or
14 hospice agency through an individualized written care plan. The housing
15 management has a financial interest or financial affiliation or formal written
16 agreement which makes personal care services accessible and available
17 through at least one licensed home care or hospice agency. The resident has
18 a choice of any provider, and the housing management may not combine
19 charges for housing and personal care services. All residents, or their
20 compensatory agents, must be capable, through informed consent, of
21 entering into a contract and must not be in need of 24-hour supervision.
22 Assistance with self-administration of medications may be provided by
23 appropriately trained staff when delegated by a licensed nurse according to
24 the home care agency's established plan of care. Multiunit assisted housing
25 with services programs are required to register annually with the Division of
26 Health Service Regulation. Regulation and to provide a disclosure statement.
27 Multiunit assisted housing with services programs are required to provide a
28 disclosure statement to the Division of Health Service Regulation. The
29 disclosure statement is required to be a part of the annual rental contract that
30 includes a description of the following requirements:

- 31 a. Emergency response system;
32 b. Charges for services offered;
33 c. Limitations of tenancy;
34 d. Limitations of services;
35 e. Resident responsibilities;
36 f. Financial/legal relationship between housing management and home
37 care or hospice agencies;
38 g. A listing of all home care or hospice agencies and other community
39 services in the area;
40 h. An appeals process; and
41 i. Procedures for required initial and annual resident screening and
42 referrals for services.

43 Continuing care retirement communities, subject to regulation by the
44 Department of Insurance under Chapter 58 of the General Statutes, are
45 exempt from the regulatory requirements for multiunit assisted housing with
46 services programs."

47 **SECTION 3.(b)** G.S. 131D-2.5, as enacted by Section 1 of this act, reads as
48 rewritten:

49 **"§ 131D-2.5. License and registration fees.**

50 (a) The Department shall charge each adult care home with six or fewer beds a
51 nonrefundable annual license fee in the amount of two hundred fifty dollars (\$250.00). The

1 Department shall charge each adult care home with more than six beds a nonrefundable annual
2 license fee in the amount of three hundred fifty dollars (\$350.00) plus a nonrefundable annual
3 per-bed fee of twelve dollars and fifty cents (\$12.50).

4 (b) The Department shall charge each registered multiunit assisted housing with
5 services program a nonrefundable annual registration fee of three hundred fifty dollars
6 (\$350.00). Any individual or corporation that establishes, conducts, manages, or operates a
7 multiunit housing with services program, subject to registration under this section, that fails to
8 register is guilty of a Class 3 misdemeanor and, upon conviction shall be punishable only by a
9 fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred
10 dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after
11 conviction shall be considered a separate offense."

12 **SECTION 3.(c)** S.L. 2008-166 is repealed.

13 **SECTION 4.** Section 3 of this act becomes effective January 1, 2010, and the
14 remainder of this act becomes effective October 1, 2009. Licenses issued pursuant to
15 G.S. 131D-2 remain effective until the date of annual renewal at which time Part 1 of Article 1
16 of Chapter 131D of the General Statutes shall apply. In all other respects, beginning October 1,
17 2009, Part 1 of Article 1 of Chapter 131D shall apply to the operation of facilities currently
18 licensed under G.S. 131D-2.