

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 1042*
PROPOSED COMMITTEE SUBSTITUTE S1042-PCS55337-SQ-16

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

(Public)

Sponsors:

Referred to:

March 31, 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17 SECTION 1.(d) G.S. 131D-2 is repealed.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 domiciliary 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



* S 1 0 4 2 - P C S 5 5 3 3 7 - S Q - 1 6 *

1 with cognitive impairments whose decisions, if made independently, may
2 jeopardize the safety or well-being of themselves or others and therefore
3 require supervision. Medication in an adult care home may be administered
4 by designated trained staff. Adult care homes that provide care to two to six
5 unrelated residents are commonly called family care homes.

6 (4) Amenities. – Services such as meals, housekeeping, transportation, and
7 grocery shopping that do not involve hands-on personal care.

8 (5) Assisted living residence. – Any group housing and services program for
9 two or more unrelated adults, by whatever name it is called, that makes
10 available, at a minimum, one meal a day and housekeeping services and
11 provides personal care services directly or through a formal written
12 agreement with one or more licensed home care or hospice agencies. The
13 Department may allow nursing service exceptions on a case-by-case basis.
14 Settings in which services are delivered may include self-contained
15 apartment units or single or shared room units with private or area baths.
16 Assisted living residences are to be distinguished from nursing homes
17 subject to provisions of G.S. 131E-102. Housing programs for two or more
18 unrelated adults that target their services to elderly or disabled persons in
19 which the only services provided by the housing management, either directly
20 or through an agreement or other arrangements, are amenities that include, at
21 a minimum, one meal a day and housekeeping services, are exempt from
22 licensure, but are required to be listed with the Division of Aging and Adult
23 Services, providing information on their location and number of units
24 operated. This type of housing is not considered assisted living. There are
25 three types of assisted living residences: adult care homes, adult care homes
26 that serve only elderly persons, and multiunit assisted housing with services.
27 As used in this section, "elderly person" means:

28 a. Any person who has attained the age of 55 years or older and
29 requires assistance with activities of daily living, housing, and
30 services, or

31 b. Any adult who has a primary diagnosis of Alzheimer's disease or
32 other form of dementia who requires assistance with activities of
33 daily living, housing, and services provided by a licensed
34 Alzheimer's and dementia care unit.

35 (6) Compensatory agent. – A spouse, relative, or other caretaker who lives with
36 a resident and provides care to a resident.

37 (7) Department. – The Department of Health and Human Services unless some
38 other meaning is clearly indicated from the context.

39 (8) Exploitation. – The illegal or improper use of an aged or disabled resident or
40 the aged or disabled resident's resources for another's profit or advantage.

41 (9) Family care home. – An adult care home having two to six residents. The
42 structure of a family care home may be no more than two stories high, and
43 none of the aged or physically disabled persons being served there may be
44 housed in the upper story without provision for two direct exterior
45 ground-level accesses to the upper story.

46 (10) Multiunit assisted housing with services. – An assisted living residence in
47 which hands-on personal care services and nursing services which are
48 arranged by housing management are provided by a licensed home care or
49 hospice agency through an individualized written care plan. The housing
50 management has a financial interest or financial affiliation or formal written
51 agreement which makes personal care services accessible and available

1 through at least one licensed home care or hospice agency. The resident has
2 a choice of any provider, and the housing management may not combine
3 charges for housing and personal care services. All residents, or their
4 compensatory agents, must be capable, through informed consent, of
5 entering into a contract and must not be in need of 24-hour supervision.
6 Assistance with self-administration of medications may be provided by
7 appropriately trained staff when delegated by a licensed nurse according to
8 the home care agency's established plan of care. Multiunit assisted housing
9 with services programs are required to register annually with the Division of
10 Health Service Regulation. The Department shall charge each registered
11 multiunit assisted housing with services program a nonrefundable annual
12 registration fee of three hundred fifty dollars (\$350.00). Any individual or
13 corporation that establishes, conducts, manages, or operates a multiunit
14 housing with services program, subject to registration under this section, that
15 fails to register is guilty of a Class 3 misdemeanor and, upon conviction shall
16 be punishable only by a fine of not more than fifty dollars (\$50.00) for the
17 first offense and not more than five hundred dollars (\$500.00) for each
18 subsequent offense. Each day of a continuing violation after conviction shall
19 be considered a separate offense. Multiunit assisted housing with services
20 programs are required to provide a disclosure statement to the Division of
21 Health Service Regulation. The disclosure statement is required to be a part
22 of the annual rental contract that includes a description of the following
23 requirements:

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

36 Continuing care retirement communities, subject to regulation by the
37 Department of Insurance under Chapter 58 of the General Statutes, are
38 exempt from the regulatory requirements for multiunit assisted housing with
39 services programs.

- 40 (11) Neglect. – The failure to provide the services necessary to maintain a
41 resident's physical or mental health.
- 42 (12) Personal care services. – Any hands-on services allowed to be performed by
43 In-Home Aides II or III as outlined in Department rules.
- 44 (13) Registration. – The submission by a multiunit assisted housing with services
45 provider of a disclosure statement containing all the information as outlined
46 in subdivision (10) of this section.
- 47 (14) Resident. – A person living in an assisted living residence for the purpose of
48 obtaining access to housing and services provided or made available by
49 housing management.
- 50 (15) Secretary. – The Secretary of Health and Human Services unless some other
51 meaning is clearly indicated from the context.

1 "§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted
2 housing with services; hospice care.

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

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

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

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

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

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

6 **"§ 131D-2.3. Exemptions from licensure.**

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

- 9 (1) Facilities licensed under Chapter 122C or Chapter 131E of the General
10 Statutes;
- 11 (2) Persons subject to rules of the Division of Vocational Rehabilitation
12 Services;
- 13 (3) Facilities that care for no more than four persons, all of whom are under the
14 supervision of the United States Veterans Administration;
- 15 (4) Facilities that make no charges for housing, amenities, or personal care
16 service, either directly or indirectly; and
- 17 (5) Institutions that are maintained or operated by a unit of government and that
18 were established, maintained, or operated by a unit of government and
19 exempt from licensure by the Department on September 30, 1995.

20 **"§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals; impact of**
21 **prior violations on licensure; compliance history review; license renewal.**

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

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

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

- 38 (1) Was the owner, principal, or affiliate of a licensable facility under Chapter
39 122C, Chapter 131D, or Article 7 of Chapter 110 of the General Statutes that
40 had its license revoked until one full year after the date of revocation;
- 41 (2) Is the owner, principal, or affiliate of an adult care home that was assessed a
42 penalty for a Type A or Type B violation until the earlier of one year from
43 the date the penalty was assessed or until the home has substantially
44 complied with the correction plan established pursuant to G.S. 131D-34 and
45 substantial compliance has been certified by the Department;
- 46 (3) Is the owner, principal, or affiliate of an adult care home that had its license
47 summarily suspended or downgraded to provisional status as a result of
48 Type A or Type B violations until six months from the date of reinstatement
49 of the license, restoration from provisional to full licensure, or termination of
50 the provisional license, as applicable; or

1 (4) Is the owner, principal, or affiliate of a licensable facility that had its license
2 summarily suspended or downgraded to provisional status as a result of
3 violations under Chapter 122C or Article 1 of Chapter 131D of the General
4 Statutes or had its license summarily suspended or denied under Article 7 of
5 Chapter 110 of the General Statutes until six months from the date of the
6 reinstatement of the license, restoration from provisional to full licensure, or
7 termination of the provisional license, as applicable.

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

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

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

25 **"§ 131D-2.5. License fees.**

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

31 **"§ 131D-2.6. Legal action by Department.**

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

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

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

43 **"§ 131D-2.7. Provisional license; license revocation.**

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

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

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

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

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

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

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

14 (1) The Department finds that:

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

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

20 (2) The Department finds that:

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

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

28 c. The licensee has failed to comply with the provisions of Articles 1
29 and 3 of Chapter 131D of the General Statutes and the rules adopted
30 pursuant to these Articles, and the failure to comply endangered the
31 health, safety, or welfare of the patients in the facility.

32 **"§ 131D-2.8. Penalties.**

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

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

46 **"§§ 131D-2.9 and 2.10: Reserved for future codification purposes.**

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

49 **"§ 131D-2.11. Inspections, monitoring, and review by State agency and county**
50 **departments of social services.**

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

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

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

22 (1) Sending staff of the Department to the county departments of social services
23 to provide technical assistance and to monitor the services being provided by
24 the facility.

25 (2) Advising county personnel as to appropriate policies and procedures.

26 (3) Establishing a plan of action to correct county performance.

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

29 **"§ 131D-2.12. Training requirements; county departments of social services.**

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

32 (1) Eight hours of prebasic training within 60 days of employment;

33 (2) Thirty-two hours of basic training within six months of employment;

34 (3) Twenty-four hours of postbasic training within six months of the basic
35 training program;

36 (4) A minimum of eight hours of complaint investigation training within six
37 months of employment; and

38 (5) A minimum of 16 hours of statewide training annually by the Division of
39 Health Service Regulation.

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

42 **"§ 131D-2.13. Departmental duties.**

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

48 (b) Administrator Directory. – The Department shall keep an up-to-date directory of all
49 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, and

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
49 domiciliary care facilities except for information in the records that is
50 confidential or privileged, including medical records, or that contains the
51 names of residents or complainants.

"§ 131D-2.15. Resident assessments.

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

The facility shall use the 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.

(b) 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:

(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; and

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

(c) 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.

"§ 131D-2.16. Suspension of admissions.

(a) In addition to the administrative penalties described in G.S. 131D-2.8, 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.

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

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

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

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

(d) 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.

1 **"§ 131D-2.17. Rules.**

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

12 **"§ 131D-2.18. Impact on other laws; severability.**

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

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

19 **"§ 131D-2.19. Application of other laws.**

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

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

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

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

27 **SECTION 3.** This act becomes effective October 1, 2009. Licenses issued
28 pursuant to G.S. 131D-2 remain effective until the date of annual renewal at which time Part 1
29 of Article 1 of Chapter 131D of the General Statutes shall apply. In all other respects,
30 beginning October 1, 2009, Part 1 of Article 1 of Chapter 131D shall apply to the operation of
31 facilities currently licensed under G.S. 131D-2.