

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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HOUSE BILL 756
Committee Substitute Favorable 5/1/95

Short Title: Rest Home Changes.

(Public)

Sponsors:

Referred to:

April 5, 1995

1 A BILL TO BE ENTITLED
2 AN ACT TO AID IN ENSURING THAT RESIDENTS IN DOMICILIARY CARE
3 HOMES ARE IN SAFE AND WELL-MANAGED FACILITIES.

4 The General Assembly of North Carolina enacts:

5 Section 1. G.S. 131D-2 reads as rewritten:

6 "**§ 131D-2. Licensing of domiciliary homes for the aged and disabled.**

7 (a) The following definitions will apply in the interpretation of this section:

8 (1) 'Abuse' means the willful or grossly negligent infliction of physical
9 pain, injury or mental anguish, unreasonable confinement, or the willful
10 or grossly negligent deprivation by the administrator or staff of a
11 domiciliary home of services which are necessary to maintain mental
12 and physical health.

13 (1a) 'Administrator' means a person approved by the Department of Human
14 Resources who has the responsibility for the total operation of a licensed
15 domiciliary home.

16 (2) 'Developmentally disabled adult' means a person who has attained the
17 age of 18 years and who has a developmental disability defined as a
18 severe, chronic disability of a person which:

- 1 a. Is attributed to a mental or physical impairment or combination
2 of mental and physical impairments;
- 3 b. Is manifested before the person attains age 22;
- 4 c. Is likely to continue indefinitely;
- 5 d. Results in substantial functional limitations in three or more of
6 the following areas of major life activity: (i) self-care, (ii)
7 receptive and expressive language, (iii) learning, (iv) mobility,
8 (v) self-direction, (vi) capacity for independent living, and (vii)
9 economic self-sufficiency; and
- 10 e. Reflects the person's need for a combination and sequence of
11 special, interdisciplinary, or generic care, treatment, or other
12 services which are of lifelong or extended duration and are
13 individually planned and coordinated.
- 14 (3) 'Domiciliary home' means any facility, by whatever name it is called,
15 which provides residential care for aged or disabled persons whose
16 principal need is a home which provides the supervision and personal
17 care appropriate to their age or disability. Medical care at a domiciliary
18 home is only occasional or incidental, such as may be given in the home
19 of any individual or family, but medication is administered by
20 designated staff of the home. Personal care given in a domiciliary home
21 includes direct assistance, by designated staff, to residents in personal
22 grooming, bathing, dressing, feeding, shopping, laundering clothes,
23 handling personal finances, arranging transportation, scheduling
24 medical or business appointments, as well as attending to any personal
25 needs residents may be incapable of or unable to attend for themselves.
26 Domiciliary homes are to be distinguished from nursing homes subject
27 to licensure under G.S. 131E-102. The three types of domiciliary
28 homes are homes for the aged and disabled, family care homes and
29 group homes for developmentally disabled adults.
- 30 (4) 'Exploitation' means the illegal or improper use of an aged or disabled
31 resident or his resources for another's profit or advantage.
- 32 (5) 'Family care home' means a domiciliary home having two to six
33 residents. The structure of a family care home may be no more than two
34 stories high and none of the aged or physically disabled persons being
35 served there may be housed in the upper story without provision for two
36 direct exterior ground-level accesses to the upper story.
- 37 (6) 'Group home for developmentally disabled adults' means a domiciliary
38 home which has two to nine developmentally disabled adult residents.
- 39 (7) 'Home for the aged and disabled' means a domiciliary home which has
40 seven or more residents.
- 41 (8) 'Neglect' means the failure to provide the services necessary to maintain
42 a resident's physical or mental health.
- 43 (b) Licensure; inspections. –

1 (1) The Department of Human Resources shall inspect and license, under
2 rules adopted by the Social Services Commission, all domiciliary homes
3 for persons who are aged or mentally or physically disabled except
4 those exempt in subsection (d) of this section. Licenses issued under
5 the authority of this section shall be valid for one year from the date of
6 issuance unless revoked earlier by the Secretary of Human Resources
7 for failure to comply with any part of this section or any rules adopted
8 hereunder. No new license shall be issued for any domiciliary home
9 whose administrator was the administrator for any domiciliary home
10 that had its license revoked until one full year after the date of
11 revocation. Licenses shall be renewed annually upon filing and the
12 Department's approval of the renewal application. A license shall not be
13 renewed if outstanding fines and penalties imposed by the State against
14 the home have not been paid. Fines and penalties for which an appeal is
15 pending are exempt from consideration. The renewal application shall
16 contain all necessary and reasonable information that the Department
17 may by rule require. The Department may also issue a provisional
18 license to a facility, pursuant to rules adopted by the Social Services
19 Commission, for substantial failure to comply with the provisions of
20 this section or rules promulgated pursuant to this section. Any facility
21 wishing to contest the issuance of a provisional license shall be entitled
22 to an administrative hearing as provided in the Administrative
23 Procedure Act, Chapter 150B of the General Statutes. A petition for a
24 contested case shall be filed within 30 days after the Department mails
25 written notice of the issuance of the provisional license.

26 (1a) In addition to the licensing and inspection requirements mandated by
27 subdivision (1) of this subsection, the Department shall ensure that
28 domiciliary care facilities required to be licensed by this Article are
29 monitored for licensure compliance on a regular basis. In carrying out
30 this requirement, the Department shall work with county departments of
31 social services to do the routine monitoring and to have the Division of
32 Facility Services oversee this monitoring and perform any follow-up
33 inspection called for. The Department shall also keep an up-to-date
34 directory of all persons who are administrators as defined in subdivision
35 (1a) of subsection (a) of this section.

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

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

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

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

17 b. Any person involved in giving care or treatment at or through the
18 facility may disclose information to Department representatives;
19 unless the resident objects in writing to review of his records or
20 disclosure of such information.

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

24 The Department shall not disclose:

25 a. Any confidential or privileged information obtained under this
26 subsection unless the resident or his legal representative
27 authorizes disclosure in writing or unless a court of competent
28 jurisdiction orders disclosure, or

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

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

36 (5) Notwithstanding any law to the contrary, Chapter 132 of the General
37 Statutes, the Public Records Law, applies to all records of the State
38 Division of Social Services of the Department of Human Resources and
39 of any county department of social services regarding inspections of
40 domiciliary care facilities except for information in the records that is
41 confidential or privileged, including medical records, or that contains
42 the names of residents or complainants.

1 (c) The following facilities are exempt from this section and shall not be required
2 to obtain a license hereunder:

- 3 (1) Those which care for one person only;
- 4 (2) Those which care for two or more persons, all of whom are related or
5 connected by blood or by marriage to the operator of the facility;
- 6 (3) Those which make no charges for care, either directly or indirectly;
- 7 (4) Those which care for no more than four persons, all of whom are under
8 the supervision of the United States Veterans Administration.

9 (d) This section does not apply to any institution which is established, maintained
10 or operated by any unit of government, by any commercial inn or hotel, or to any facility
11 licensed by the Medical Care Commission under the provisions of G.S. 131E-102,
12 entitled 'Licensure requirements.' If any nursing home licensed under G.S. 131E-102 also
13 functions as a domiciliary home, then the domiciliary home component must comply
14 with rules adopted by the Medical Care Commission.

15 (e) The Department of Human Resources shall provide the method of evaluation
16 of residents in domiciliary homes in order to determine when any of those residents are in
17 need of the professional medical and nursing care provided in licensed nursing homes.

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

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

25 (h) Suspension of admissions to domiciliary home:

- 26 (1) In addition to the administrative penalties described in subsection (b),
27 the Secretary may suspend the admission of any new residents to a
28 domiciliary home, where the conditions of the domiciliary home are
29 detrimental to the health or safety of the residents. This suspension
30 shall be for the period determined by the Secretary and shall remain in
31 effect until the Secretary is satisfied that conditions or circumstances
32 merit removing the suspension.
- 33 (2) In imposing a suspension under this subsection, the Secretary shall
34 consider the following factors:
 - 35 a. The degree of sanctions necessary to ensure compliance with this
36 section and rules adopted hereunder; and
 - 37 b. The character and degree of impact of the conditions at the home
38 on the health or safety of its residents.
- 39 (3) The Secretary of Human Resources shall adopt rules to implement this
40 subsection.
- 41 (4) Any facility wishing to contest a suspension of admissions shall be
42 entitled to an administrative hearing as provided in the Administrative
43 Procedure Act, Chapter 150B of the General Statutes. A petition for a

1 contested case shall be filed within 20 days after the Department mails a
2 notice of suspension of admissions to the licensee.

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

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

13 Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of
14 the General Statutes and Rule 65 of the Rules of Civil Procedure."

15 Sec. 2. This act becomes effective October 1, 1995, and applies to revocations
16 and records of inspections made on or after that date.