

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

S

3

SENATE BILL 198  
Second Edition Engrossed 3/24/99  
House Committee Substitute Favorable 5/10/99

Short Title: Adult Care Home Licensure.

(Public)

---

Sponsors:

---

Referred to:

---

March 1, 1999

1 A BILL TO BE ENTITLED  
2 AN ACT PERTAINING TO THE ISSUANCE OF A NEW ADULT CARE HOME  
3 LICENSE TO AN APPLICANT WHO WAS THE LICENSEE OR  
4 ADMINISTRATOR OF AN ADULT CARE HOME THE LICENSE OF WHICH  
5 HAD BEEN REVOKED OR DOWNGRADED TO PROVISIONAL STATUS OR  
6 AGAINST WHICH A TYPE A PENALTY HAD BEEN ASSESSED, AND TO  
7 ALLOW NURSING HOME RESIDENTS OR THEIR REPRESENTATIVES  
8 ACCESS TO INFORMATION ABOUT COMPLAINT INVESTIGATIONS.

9 The General Assembly of North Carolina enacts:

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

11 "(b) Licensure; inspections. –

12 (1) The Department of Health and Human Services shall inspect and  
13 license, under rules adopted by the Social Services Commission, all  
14 adult care homes for persons who are aged or mentally or physically  
15 disabled except those exempt in subsection (c) of this section. Licenses  
16 issued under the authority of this section shall be valid for one year from  
17 the date of issuance unless revoked earlier by the Secretary of Health  
18 and Human Services for failure to comply with any part of this section

1 or any rules adopted hereunder. ~~No new license shall be issued for any~~  
2 ~~domiciliary home whose administrator was the administrator for any~~  
3 ~~domiciliary home [adult care home] that had its license revoked until one full~~  
4 ~~year after the date of revocation.~~ Licenses shall be renewed annually upon  
5 filing and the Department's approval of the renewal application. A  
6 license shall not be renewed if outstanding fines and penalties imposed  
7 by the State against the home have not been paid. Fines and penalties  
8 for which an appeal is pending are exempt from consideration. The  
9 renewal application shall contain all necessary and reasonable  
10 information that the Department may by rule require. The Department  
11 may amend a license by reducing it from a full license to a provisional  
12 license whenever the Department finds that:

- 13 a. The licensee has substantially failed to comply with the  
14 provisions of Articles 1 and 3 of Chapter 131D of the General  
15 Statutes and the rules adopted pursuant to these Articles;  
16 b. There is a reasonable probability that the licensee can remedy the  
17 licensure deficiencies within a reasonable length of time; and  
18 c. There is a reasonable probability that the licensee will be able  
19 thereafter to remain in compliance with the licensure rules for the  
20 foreseeable future.

21 The Department may revoke a license whenever:

- 22 a. The Department finds that:  
23 1. The licensee has substantially failed to comply with the  
24 provisions of Articles 1 and 3 of Chapter 131D of the  
25 General Statutes and the rules adopted pursuant to these  
26 Articles; and  
27 2. It is not reasonably probable that the licensee can remedy  
28 the licensure deficiencies within a reasonable length of  
29 time; or  
30 b. The Department finds that:  
31 1. The licensee has substantially failed to comply with the  
32 provisions of Articles 1 and 3 of Chapter 131D of the  
33 General Statutes and the rules adopted pursuant to these  
34 Articles; and  
35 2. Although the licensee may be able to remedy the  
36 deficiencies within a reasonable time, it is not reasonably  
37 probable that the licensee will be able to remain in  
38 compliance with licensure rules for the foreseeable future;  
39 or  
40 c. The Department finds that the licensee has failed to comply with  
41 the provisions of Articles 1 and 3 of Chapter 131D of the General  
42 Statutes and the rules adopted pursuant to these Articles, and the

1 failure to comply endangered the health, safety, or welfare of the  
2 patients in the facility.

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

12 Section 2. G.S. 131D-2(b) is amended by adding the following subdivision to  
13 read:

14 "(1b) No new license shall be issued for any adult care home to an applicant  
15 for licensure who:

16 a. Was the owner, principal, or affiliate of an adult care home that  
17 had its license revoked until one full year after the date of  
18 revocation;

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

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

31 An applicant for new licensure may appeal a denial of certification of substantial  
32 compliance under subparagraph b. of this subdivision by filing with the Department a  
33 request for review by the Secretary within 10 days of the date of denial of the  
34 certification. Within 10 days of receipt of the request for review the Secretary shall issue  
35 to the applicant a written determination that either denies certification of substantial  
36 compliance or certifies substantial compliance. The decision of the Secretary is final."

37 Section 3. G.S. 131E-124(c) reads as rewritten:

38 "(c) The Department shall maintain the confidentiality of all persons who register  
39 complaints with the Department and of all medical records inspected by the Department.  
40 A person who has filed a complaint shall have access to information about a complaint  
41 investigation involving a specific resident if written authorization is obtained from the  
42 resident, legal representative, or responsible party. The designation of the responsible  
43 party shall be maintained by the nursing facility in the resident's medical record."

1 Section 4. G.S. 131E-141(b) reads as rewritten:

2 "(b) Notwithstanding the provisions of G.S. 8-53, "Communications between  
3 physician and patient,"or any other provision of law relating to the confidentiality of  
4 communications between physician and patient, the representatives of the Department  
5 who make these inspections may review any writing or other record in any recording  
6 medium which pertains to the admission, discharge, medication, treatment, medical  
7 condition, or history of persons who are or have been clients of the agency being  
8 inspected unless that client objects in writing to review of that client's records.  
9 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or  
10 through an agency who may be interviewed by representatives of the Department may  
11 disclose to these representatives information related to any inquiry, notwithstanding the  
12 existence of the physician-patient privilege in G.S. 8-53, "Communication between  
13 physician and patient,"or any other rule of law; provided the client has not made written  
14 objection to this disclosure. The agency, its employees, and any person interviewed  
15 during these inspections shall be immune from liability for damages resulting from the  
16 disclosure of any information to the Department. Any confidential or privileged  
17 information received from review of records or ~~interviews-interviews~~, except as noted in  
18 G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed without  
19 written authorization of the client or legal representative, or unless disclosure is ordered  
20 by a court of competent jurisdiction. The Department shall institute appropriate policies  
21 and procedures to ensure that this information shall not be disclosed without  
22 authorization or court order. The Department shall not disclose the name of anyone who  
23 has furnished information concerning an agency without the consent of that person.  
24 Neither the names of persons furnishing information nor any confidential or privileged  
25 information obtained from records or interviews shall be considered "public  
26 records"within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing  
27 any information or allowing any inspections referred to in this section, the client must be  
28 advised in writing by the licensed agency that the client has the right to object in writing  
29 to release of information or review of the client's records and that by an objection in  
30 writing the client may prohibit the inspection or release of the records."

31 Section 5. This act is effective when it becomes law. Sections 1 and 2 of this  
32 act apply to license applications filed on or after the effective date of this act. The Social  
33 Services Commission and the Secretary of Health and Human Services may adopt  
34 temporary rules pursuant to Chapter 150B of the General Statutes to implement Sections  
35 1 and 2 of this act.