

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 280
HOUSE BILL 756

AN ACT TO AID IN ENSURING THAT RESIDENTS IN DOMICILIARY CARE
HOMES ARE IN SAFE AND WELL-MANAGED FACILITIES.

The General Assembly of North Carolina enacts:

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

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

- (a) The following definitions will apply in the interpretation of this section:
- (1) 'Abuse' means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of a domiciliary home of services which are necessary to maintain mental and physical health.
 - (1a) 'Administrator' means a person approved by the Department of Human Resources who has the responsibility for the total operation of a licensed domiciliary home.
 - (2) 'Developmentally disabled adult' means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:
 - a. Is attributed to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the person attains age 22;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and
 - e. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.
 - (3) 'Domiciliary home' means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be

given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.

- (4) 'Exploitation' means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage.
 - (5) 'Family care home' means a domiciliary home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
 - (6) 'Group home for developmentally disabled adults' means a domiciliary home which has two to nine developmentally disabled adult residents.
 - (7) 'Home for the aged and disabled' means a domiciliary home which has seven or more residents.
 - (8) 'Neglect' means the failure to provide the services necessary to maintain a resident's physical or mental health.
- (b) Licensure; inspections. –
- (1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all domiciliary homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any domiciliary home whose administrator was the administrator for any domiciliary home that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. The Department may also issue a provisional license to a facility, pursuant to rules

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

- (1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that domiciliary care facilities required to be licensed by this Article are monitored for licensure compliance on a regular basis. In carrying out this requirement, the Department shall work with county departments of social services to do the routine monitoring and to have the Division of Facility Services oversee this monitoring and perform any follow-up inspection called for. The Department shall also keep an up-to-date directory of all persons who are administrators as defined in subdivision (1a) of subsection (a) of this section.
- (2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor, and upon conviction shall be punishable only by a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.
- (3) In addition, the Department may summarily suspend a license pursuant to G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.
- (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):
 - a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and
 - b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

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

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

The Department shall not disclose:

- a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or
- b. The name of anyone who has furnished information concerning a facility without that person's consent.

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

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

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

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

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

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

(f) If any provisions of this section or the application of it to any person or circumstance is held invalid, the invalidity does not affect other provisions or

applications of the section which can be given effect without the invalid provision or application, and to this end the provisions of this section are severable.

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

(h) Suspension of admissions to domiciliary home:

- (1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to a domiciliary home, where the conditions of the domiciliary 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.
- (2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:
 - a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
 - b. The character and degree of impact of the conditions at the home on the health or safety of its residents.
- (3) The Secretary of Human Resources shall adopt rules to implement this subsection.
- (4) 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.

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

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

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

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

In the General Assembly read three times and ratified this the 19th day of June, 1995.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives