

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

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**SENATE BILL 915**

Short Title: Assisted Living Facility Amendments. (Public)

Sponsors: Senator Nesbitt.

Referred to: Health Care.

March 20, 2007

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE TECHNICAL, ORGANIZATIONAL, AND  
3 NONSUBSTANTIVE CHANGES ONLY TO THE LAW REGARDING THE  
4 LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED  
5 INDIVIDUALS FOR PURPOSES OF CLARIFICATION OF THE CURRENT  
6 LAW.

7 The General Assembly of North Carolina enacts:

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

"Article 1B.

"Licensing of Maternity Homes."

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

12 **SECTION 1.(c)** The title of Article 1 of Chapter 131D reads as rewritten:

"Article 1.

Licensing of Facilities.

Adult Care Homes."

13 **SECTION 1.(d)** G.S. 131D-2 is repealed.

14 **SECTION 1.(e)** Effective July 1, 2007, Article 1 of Chapter 131D of the  
15 General Statutes, as amended by Section 1(c) of this act, is amended by adding the  
16 following new Part to read:

"Part 1. Licensing.

17 **§ 131D-2.1. Definitions.**

18 As used in this Article:

19 (1) "Abuse." – The willful or grossly negligent infliction of physical pain,  
20 injury, or mental anguish, unreasonable confinement, or the willful or  
21 grossly negligent deprivation by the administrator or staff of an adult  
22 care home of services which are necessary to maintain mental and  
23 physical health.

- 1           (2)   "Administrator." – A person approved by the Department of Health  
2           and Human Services who has the responsibility for the total operation  
3           of a licensed domiciliary home.
- 4           (3)   "Adult care home." – An assisted living residence in which the  
5           housing management provides 24-hour scheduled and unscheduled  
6           personal care services to two or more residents, either directly or, for  
7           scheduled needs, through formal written agreement with licensed  
8           home care or hospice agencies. Some licensed adult care homes  
9           provide supervision to persons with cognitive impairments whose  
10          decisions, if made independently, may jeopardize the safety or  
11          well-being of themselves or others and therefore require supervision.  
12          Medication in an adult care home may be administered by designated,  
13          trained staff. Adult care homes that provide care to two to six unrelated  
14          residents are commonly called family care homes.
- 15          (4)   "Amenities." – Services such as meals, housekeeping, transportation,  
16          and grocery shopping that do not involve hands-on personal care.
- 17          (5)   "Assisted living residence." – Any group housing and services  
18          program for two or more unrelated adults, by whatever name it is  
19          called, that makes available, at a minimum, one meal a day and  
20          housekeeping services and provides personal care services directly or  
21          through a formal written agreement with one or more licensed home  
22          care or hospice agencies. The Department may allow nursing service  
23          exceptions on a case-by-case basis. Settings in which services are  
24          delivered may include self-contained apartment units or single or  
25          shared room units with private or area baths. Assisted living residences  
26          are to be distinguished from nursing homes subject to provisions of  
27          G.S. 131E-102. Housing programs for two or more unrelated adults  
28          that target their services to elderly or disabled persons in which the  
29          only services provided by the housing management, either directly or  
30          through an agreement or other arrangements, are amenities that  
31          include, at a minimum, one meal a day and housekeeping services, are  
32          exempt from licensure, but are required to be listed with the Division  
33          of Aging, providing information on their location and number of units  
34          operated. This type of housing is not considered assisted living. There  
35          are three types of assisted living residences: adult care homes, adult  
36          care homes that serve only elderly persons, and multiunit assisted  
37          housing with services. As used in this section, "elderly person" means:
- 38               a.   Any person who has attained the age of 55 years or older and  
39               requires assistance with activities of daily living, housing, and  
40               services, or
- 41               b.   Any adult who has a primary diagnosis of Alzheimer's disease  
42               or other form of dementia who requires assistance with  
43               activities of daily living, housing, and services provided by a  
44               licensed Alzheimer's and dementia care unit.

- 1           (6)    "Compensatory agent." – A spouse, relative, or other caretaker who  
2                   lives with a resident and provides care to a resident.
- 3           (7)    "Department." – The Department of Health and Human Services  
4                   unless some other meaning is clearly indicated from the context.
- 5           (8)    "Exploitation." – The illegal or improper use of an aged or disabled  
6                   resident or the aged or disabled resident's resources for another's profit  
7                   or advantage.
- 8           (9)    "Family care home." – An adult care home having two to six residents.  
9                   The structure of a family care home may be no more than two stories  
10                  high and none of the aged or physically disabled persons being served  
11                  there may be housed in the upper story without provision for two  
12                  direct exterior ground-level accesses to the upper story.
- 13          (10)   "Multiunit assisted housing with services." – An assisted living  
14                  residence in which hands-on personal care services and nursing  
15                  services which are arranged by housing management are provided by a  
16                  licensed home care or hospice agency through an individualized  
17                  written care plan. The housing management has a financial interest or  
18                  financial affiliation or formal written agreement which makes personal  
19                  care services accessible and available through at least one licensed  
20                  home care or hospice agency. The resident has a choice of any  
21                  provider, and the housing management may not combine charges for  
22                  housing and personal care services. All residents, or their  
23                  compensatory agents, must be capable, through informed consent, of  
24                  entering into a contract and must not be in need of 24-hour  
25                  supervision. Assistance with self-administration of medications may  
26                  be provided by appropriately trained staff when delegated by a  
27                  licensed nurse according to the home care agency's established plan of  
28                  care. Multiunit assisted housing with services programs are required to  
29                  register with the Division of Facility Services and to provide a  
30                  disclosure statement. The disclosure statement is required to be a part  
31                  of the annual rental contract that includes a description of the  
32                  following requirements:
- 33                  a.     Emergency response system;  
34                  b.     Charges for services offered;  
35                  c.     Limitations of tenancy;  
36                  d.     Limitations of services;  
37                  e.     Resident responsibilities;  
38                  f.     Financial/legal relationship between housing management and  
39                  home care or hospice agencies;  
40                  g.     A listing of all home care or hospice agencies and other  
41                  community services in the area;  
42                  h.     An appeals process; and  
43                  i.     Procedures for required initial and annual resident screening  
44                        and referrals for services.

1 Continuing care retirement communities, subject to regulation by the  
2 Department of Insurance under Chapter 58 of the General Statutes, are  
3 exempt from the regulatory requirements for multiunit assisted  
4 housing with services programs.

5 (11) "Neglect." – The failure to provide the services necessary to maintain a  
6 resident's physical or mental health.

7 (12) "Personal care services." – Any hands-on services allowed to be  
8 performed by In-Home Aides II or III as outlined in Department rules.

9 (13) "Registration." – The submission by a multiunit assisted housing with  
10 services provider of a disclosure statement containing all the  
11 information as outlined in subdivision (10) of this subsection.

12 (14) "Resident." – A person living in an assisted living residence for the  
13 purpose of obtaining access to housing and services provided or made  
14 available by housing management.

15 (15) "Secretary." – The Secretary of Health and Human Services unless  
16 some other meaning is clearly indicated from the context.

17 **§ 131D-2.2. Persons not to be cared for in adult care homes and multiunit assisted**  
18 **housing with services; hospice care.**

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

23 (1) Ventilator dependency;

24 (2) Individuals requiring continuous licensed nursing care;

25 (3) Individuals whose physician certifies that placement is no longer  
26 appropriate;

27 (4) Individuals whose health needs cannot be met in the specific adult care  
28 home as determined by the residence; and

29 (5) Such other medical and functional care needs as the Medical Care  
30 Commission determines cannot be properly met in an adult care home.

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

36 (1) Ventilator dependency;

37 (2) Dermal ulcers III and IV, except those stage III ulcers which are  
38 determined by an independent physician to be healing;

39 (3) Intravenous therapy or injections directly into the vein, except for  
40 intermittent intravenous therapy managed by a home care or hospice  
41 agency licensed in this State;

42 (4) Airborne infectious disease in a communicable state that requires  
43 isolation of the individual or requires special precautions by the  
44 caretaker to prevent transmission of the disease, including diseases

1           such as tuberculosis and excluding infections such as the common  
2           cold;

3           (5) Psychotropic medications without appropriate diagnosis and treatment  
4           plans;

5           (6) Nasogastric tubes;

6           (7) Gastric tubes except when the individual is capable of independently  
7           feeding himself or herself and caring for the tube, or as managed by a  
8           home care or hospice agency licensed in this State;

9           (8) Individuals requiring continuous licensed nursing care;

10          (9) Individuals whose physician certifies that placement is no longer  
11          appropriate;

12          (10) Unless the individual's independent physician determines otherwise,  
13          individuals who require maximum physical assistance as documented  
14          by a uniform assessment instrument and who meet Medicaid nursing  
15          facility level-of-care criteria as defined in the State Plan for Medical  
16          Assistance. Maximum physical assistance means that an individual has  
17          a rating of total dependence in four or more of the seven activities of  
18          daily living as documented on a uniform assessment instrument;

19          (11) Individuals whose health needs cannot be met in the specific multiunit  
20          assisted housing with services as determined by the residence; and

21          (12) Such other medical and functional care needs as the Medical Care  
22          Commission determines cannot be properly met in multiunit assisted  
23          housing with services.

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

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

32          **"§ 131D-2.3. Exemptions from licensure.**

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

35               (1) Facilities licensed under Chapter 122C or Chapter 131E of the General  
36               Statutes;

37               (2) Persons subject to rules of the Division of Vocational Rehabilitation  
38               Services;

39               (3) Facilities that care for no more than four persons, all of whom are  
40               under the supervision of the United States Veterans Administration;

41               (4) Facilities that make no charges for housing, amenities, or personal care  
42               service, either directly or indirectly; and

43               (5) Institutions that are maintained or operated by a unit of government  
44               and that were established, maintained, or operated by a unit of

1           government and exempt from licensure by the Department on  
2           September 30, 1995.

3   "**§ 131D-2.4. Licensure of adult care homes for aged and disabled individuals;**  
4       **impact of prior violations on licensure; compliance history review;**  
5       **license renewal.**

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

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

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

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

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

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

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

19 **"§ 131D-2.5. License fees.**

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

25 **"§ 131D-2.6. Legal action by Department.**

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

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

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

38 **"§ 131D-2.7. Provisional license; license revocation.**

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

- 42        (1) The licensee has substantially failed to comply with the provisions of  
43 Articles 1 and 3 of Chapter 131D of the General Statutes and the rules  
44 adopted pursuant to these Articles;

- 1           (2) There is a reasonable probability that the licensee can remedy the  
2 licensure deficiencies within a reasonable length of time; and  
3           (3) There is a reasonable probability that the licensee will be able  
4 thereafter to remain in compliance with the licensure rules for the  
5 foreseeable future.

6           The Department may extend a provisional license for not more than one additional  
7 90-day period upon finding that the licensee has made substantial progress toward  
8 remedying the licensure deficiencies that caused the license to be reduced to provisional  
9 status.

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

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

18           (1) The Department finds that:

- 19           a. The licensee has substantially failed to comply with the  
20 provisions of Articles 1 and 3 of Chapter 131D of the General  
21 Statutes and the rules adopted pursuant to these Articles; and  
22           b. It is not reasonably probable that the licensee can remedy the  
23 licensure deficiencies within a reasonable length of time; or

24           (2) The Department finds that:

- 25           a. The licensee has substantially failed to comply with the  
26 provisions of Articles 1 and 3 of Chapter 131D of the General  
27 Statutes and the rules adopted pursuant to these Articles; and  
28           b. Although the licensee may be able to remedy the deficiencies  
29 within a reasonable time, it is not reasonably probable that the  
30 licensee will be able to remain in compliance with licensure  
31 rules for the foreseeable future; or  
32           c. The Department finds that the licensee has failed to comply  
33 with the provisions of Articles 1 and 3 of Chapter 131D of the  
34 General Statutes and the rules adopted pursuant to these  
35 Articles, and the failure to comply endangered the health,  
36 safety, or welfare of the patients in the facility.

37 **"§ 131D-2.8. Penalties.**

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



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

9 **"§ 131D-2.9 and 2.10: Reserved for future codification purposes.**

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

12 **"§ 131D-2.11. Inspections, monitoring, and review by State agency and county**  
13 **departments of social services.**

14       (a) State Inspection and Monitoring. – The Department shall ensure that adult  
15 care homes required to be licensed by this Article are monitored for licensure  
16 compliance on a regular basis. All facilities licensed under this Article and adult care  
17 units in nursing homes are subject to inspections at all times by the Secretary. The  
18 Division of Facility Services shall inspect all adult care homes and adult care units in  
19 nursing homes on an annual basis. In addition, the Department shall ensure that adult  
20 care homes are inspected every two years to determine compliance with physical plant  
21 and life-safety requirements.

22       (b) Monitoring by County. – The Department shall work with county  
23 departments of social services to do the routine monitoring in adult care homes to  
24 ensure compliance with State and federal laws, rules, and regulations in accordance with  
25 policy and procedures established by the Division of Facility Services and to have the  
26 Division of Facility Services oversee this monitoring and perform any required  
27 follow-up inspection. The county departments of social services shall document in a  
28 written report all on-site visits, including monitoring visits, revisits, and complaint  
29 investigations. The county departments of social services shall submit to the Division of  
30 Facility Services written reports of each facility visit within 20 working days of the  
31 visit.

32       (c) State Review of County Compliance. – The Division of Facility Services  
33 shall conduct and document annual reviews of the county departments of social  
34 services' performance. When monitoring is not done timely or there is failure to identify  
35 or document noncompliance, the Department may intervene in the particular service in  
36 question. Department intervention shall include one or more of the following activities:

37               (1) Sending staff of the Department to the county departments of social  
38               services to provide technical assistance and to monitor the services  
39               being provided by the facility.

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

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

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

44 **"§ 131D-2.12. Training requirements; county departments of social services.**

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

- 3           (1) Eight hours of prebasic training within 60 days of employment;  
4           (2) Thirty-two hours of basic training within six months of employment;  
5           (3) Twenty-four hours of postbasic training within six months of the basic  
6 training program;  
7           (4) A minimum of eight hours of complaint investigation training within  
8 six months of employment; and  
9           (5) A minimum of 16 hours of statewide training annually by the Division  
10 of Facility Services.

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

13 **"§ 131D-2.13. Departmental duties.**

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

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

22       (c) Departmental Complaint Hotline. – Adult care homes shall post the Division  
23 of Facility Services' complaint hotline number conspicuously in a public place in the  
24 facility.

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

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

- 32           (1) The level of compliance of each adult care home with applicable State  
33 law and rules governing the use of physical restraint and physical hold  
34 of residents. The information shall indicate areas of highest and lowest  
35 levels of compliance.  
36           (2) The total number of adult care homes that reported deaths under  
37 G.S. 131D-34.1, the number of deaths reported by each facility, the  
38 number of deaths investigated pursuant to G.S. 131D-34.1, and the  
39 number found by the investigation to be related to the adult care  
40 home's use of physical restraint or physical hold.

41 **"§ 131D-2.14. Confidentiality.**

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

- 1           (1) Department representatives may review any writing or other record  
2 concerning the admission, discharge, medication, care, medical  
3 condition, or history of any person who is or has been a resident of the  
4 facility being inspected, and
- 5           (2) Any person involved in giving care or treatment at or through the  
6 facility may disclose information to Department representatives unless  
7 the resident objects in writing to review of his records or disclosure of  
8 such information.
- 9           (3) The facility, its employees, and any other person interviewed in the  
10 course of an inspection shall be immune from liability for damages  
11 resulting from disclosure of any information to the Department. The  
12 Department shall not disclose:
- 13           a. Any confidential or privileged information obtained under this  
14 section unless the resident or his legal representative authorizes  
15 disclosure in writing or unless a court of competent jurisdiction  
16 orders disclosure, or
- 17           b. The name of anyone who has furnished information concerning  
18 a facility without that person's consent.

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

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

31 **§ 131D-2.15. Resident assessments.**

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

38           The facility shall use the assessment to develop appropriate and comprehensive  
39 service plans and care plans and to determine the level and type of facility staff that is  
40 needed to meet the needs of residents. The assessment shall determine a resident's level  
41 of functioning and shall include, but not be limited to, cognitive status and physical  
42 functioning in activities of daily living. Activities of daily living are personal functions  
43 essential for the health and well-being of the resident. The assessment shall not serve as  
44 the basis for medical care. The assessment shall indicate if the resident requires referral

1 to the resident's physician or other appropriate licensed health care professional or  
2 community resource.

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

6 (1) Whether the appropriate assessment instrument was administered and  
7 interpreted correctly;

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

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

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

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

22 **"§ 131D-2.16. Suspension of admissions.**

23 (a) In addition to the administrative penalties described in G.S. 131D-2.8, the  
24 Secretary may suspend the admission of any new residents to an adult care home where  
25 the conditions of the adult care home are detrimental to the health or safety of the  
26 residents. This suspension shall be for the period determined by the Secretary and shall  
27 remain in effect until the Secretary is satisfied that conditions or circumstances merit  
28 removing the suspension.

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

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

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

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

37 (d) Any facility wishing to contest a suspension of admissions shall be entitled to  
38 an administrative hearing as provided in the Administrative Procedure Act, Chapter  
39 150B of the General Statutes. A petition for a contested case shall be filed within 20  
40 days after the Department mails a notice of suspension of admissions to the licensee.

41 **"§ 131D-2.17. Rules.**

42 Except as otherwise provided in this Article, the Medical Care Commission shall  
43 adopt rules necessary to carry out this Article. The Commission has the authority, in  
44 adopting rules, to specify the limitation of nursing services provided by assisted living

1 residences. In developing rules, the Commission shall consider the need to ensure  
2 comparable quality of services provided to residents, whether these services are  
3 provided directly by a licensed assisted living provider, licensed home care agency, or  
4 hospice. In adult care homes, living arrangements where residents require supervision  
5 due to cognitive impairments, rules shall be adopted to ensure that supervision is  
6 appropriate and adequate to meet the special needs of these residents. Rule-making  
7 authority under this section is in addition to that conferred under G.S. 131D-4.3 and  
8 G.S. 131D-4.5.

9 **"§ 131D-2.18. Impact on other laws; severability.**

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

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

16 **"§ 131D-2.19. Application of other laws.**

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

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

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

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

24 **SECTION 3.** This act is effective when it becomes law.