

GENERAL ASSEMBLY OF NORTH CAROLINA
1991 SESSION

CHAPTER 572
SENATE BILL 257

AN ACT TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO
ISSUE PROVISIONAL LICENSES FOR DOMICILIARY HOMES AND TO
ESTABLISH CERTAIN APPEALS TIME LIMITS.

The General Assembly of North Carolina enacts:

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

"(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. 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.
- (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 misdemeanor, and upon conviction shall be punishable 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. 150A-3(e)~~ 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."

Sec. 2. G.S. 131D-2(h) reads as rewritten:

"(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."

Sec. 3. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty 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 a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly."

Sec. 4. This act becomes effective October 1, 1991, and applies to licenses issued and appeals entered into on and after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

James C. Gardner
President of the Senate

Daniel Blue, Jr.
Speaker of the House of Representatives