

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SESSION LAW 1999-334
SENATE BILL 10

AN ACT TO ENACT REFORMS IN THE LONG-TERM CARE INDUSTRY IN ORDER TO IMPROVE QUALITY OF CARE, INCREASE PROTECTION OF RESIDENTS, AND STRENGTHEN REGULATORY OVERSIGHT OF INDUSTRY PRACTICES.

The General Assembly of North Carolina enacts:

PART I. SUBSTANTIVE PROVISIONS FOR RESIDENT SAFETY

Section 1.1. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new sections to read:

"§ 131D-4.4. Adult care home minimum safety requirements.

In addition to other requirements established by this Article or by rules adopted pursuant to this Article or other provisions of law, every adult care home shall provide to each resident the care, safety, and services necessary to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being in accordance with:

- (1) The resident's individual assessment and plan of care; and
- (2) Rules and standards relating to quality of care and safety adopted under this Chapter.

"§ 131D-4.5. Rules adopted by Medical Care Commission.

The Medical Care Commission shall adopt rules as follows:

- (1) Establishing minimum medication administration standards for adult care homes. The rules shall include the minimum staffing and training requirements for medication aides and standards for professional supervision of adult care homes' medication controls. The requirements shall be designed to reduce the medication error rate in adult care homes to an acceptable level. The requirements shall include, but need not be limited to, all of the following:
 - a. Training for medication aides, including periodic refresher training.
 - b. Standards for management of complex medication regimens.
 - c. Oversight by licensed professionals.
 - d. Measures to ensure proper storage of medication.
- (2) Establishing training requirements for adult care home staff in behavioral interventions. The training shall include appropriate responses to behavioral problems posed by adult care residents. The

training shall emphasize safety and humane care and shall specifically include alternatives to the use of restraints.

- (3) Establishing minimum training and education qualifications for supervisors in adult care homes and specifying the safety responsibilities of supervisors.
- (4) Specifying the qualifications of staff who shall be on duty in adult care homes during various portions of the day in order to assure safe and quality care for the residents. The rules shall take into account varied resident needs and population mixes.
- (5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules may provide for procedures comparable to those provided to nursing home residents pursuant to federal law, to Chapter 131E of the General Statutes, and to related rules.
- (6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to license facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents.
- (7) For the licensure of special care units in accordance with G.S. 131D-4.6, and for disclosures required to be made under G.S. 131D-7.
- (8) For time limited provisional licenses and for granting extensions for provisional licenses.

"§ 131D-4.6. Licensure of special care units.

(a) As used in this section, the term 'special care unit' means a wing or hallway within an adult care home, or a program provided by an adult care home, that is designated especially for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission.

(b) An adult care home that holds itself out to the public as providing a special care unit shall be licensed as such and shall, in addition to other licensing requirements for adult care homes, meet the standards established under rules adopted by the Medical Care Commission.

(c) An adult care home that holds itself out to the public as providing a special care unit without being licensed as a special care unit is subject to licensure actions and penalties provided under G.S. 131D-2(b), as well as any other action permitted by law.

"§ 131D-4.7. Adult care home specialist fund.

There is established the adult care home specialist fund. The fund shall be maintained in and by the Department for the purpose of assisting county departments of social services in paying salaries of adult care home specialists."

Section 1.2. G.S. 131D-2(a1) reads as rewritten:

"(a1) Persons not to be cared for in adult care homes. – Except when a physician certifies that appropriate care can be provided on a temporary basis to meet the

resident's needs and prevent unnecessary relocation, adult care homes shall not care for individuals with any of the following conditions or care needs:

- (1) Ventilator dependency;
- (2) Individuals requiring continuous licensed nursing care;
- (3) Individuals whose physician certifies that placement is no longer appropriate;
- (4) Individuals whose health needs cannot be met in the specific adult care home as determined by the residence; and
- (5) Such other medical and functional care needs as the ~~Social Services~~ Medical Care Commission determines cannot be properly met in an adult care home."

Section 1.3. G.S. 131D-2(a2)(12) reads as rewritten:

"(12) Such other medical and functional care needs as the ~~Social Services~~ Medical Care Commission determines cannot be properly met in multiunit assisted housing with services."

Section 1.4. G.S. 131D-2(c2) reads as rewritten:

"(c2) The ~~Social Services~~ Medical Care Commission shall adopt ~~any~~ rules necessary to carry out this section. The Commission has the authority, in adopting rules, to specify the limitation of nursing services provided by assisted living residences. In developing rules, the Commission shall consider the need to ensure comparable quality of services provided to residents, whether these services are provided directly by a licensed assisted living provider, licensed home care agency, or hospice. In adult care homes, living arrangements where residents require supervision due to cognitive impairments, rules shall be promulgated to ensure that supervision is appropriate and adequate to meet the special needs of these residents."

Section 1.5. G.S. 131D-2(b) is amended by adding the following new subdivision to read:

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

Section 1.6. G.S. 131D-21 is amended by adding the following new subdivision to read:

"(17) To not be transferred or discharged from a facility except for medical reasons, the residents' own or other residents' welfare, nonpayment for the stay, or when the transfer is mandated under State or federal law. The resident shall be given at least 30 days' advance notice to ensure orderly transfer or discharge, except in the case of jeopardy to the

health or safety of the resident or others in the home. The resident has the right to appeal a facility's attempt to transfer or discharge the resident pursuant to rules adopted by the Secretary, and the resident shall be allowed to remain in the facility until resolution of the appeal unless otherwise provided by law. The Secretary shall adopt rules pertaining to the transfer and discharge of residents that offer at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes."

Section 1.7. G.S. 131D-2(b)(1) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the ~~Social Services~~ Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) 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 ~~Health and Human Services~~ for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any ~~domiciliary~~ adult care home whose administrator was the administrator for any ~~domiciliary~~ adult care 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. Except as otherwise provided in this subdivision, the ~~The~~ Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

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

The Department may extend a provisional license for not more than one additional 90-day period upon finding that the licensee has made

substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

The Department may revoke a license whenever:

- a. The Department finds that:
 1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
 2. It is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
- b. The Department finds that:
 1. The licensee has substantially failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles; and
 2. Although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- c. The Department finds that the licensee has failed to comply with the provisions of Articles 1 and 3 of Chapter 131D of the General Statutes and the rules adopted pursuant to these Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

The Department may also issue a provisional license to a facility, pursuant to rules adopted by the ~~Social Services~~ Medical Care Commission, for substantial failure to comply with the provisions of this section or rules ~~promulgated~~ adopted 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."

Section 1.8. G.S. 131D-26 is amended by adding the following new subsection to read:

"(a1) When the department of social services in the county in which a facility is located receives a complaint alleging a violation of the provisions of this Article pertaining to patient care or patient safety, the department of social services shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.

- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes."

Section 1.9. G.S. 131E-124 is amended by adding two new subsections to read:

"(a1) When the Department receives a complaint alleging a violation of the provisions of this Part pertaining to patient care or patient safety, the Department shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

...

(d) Pursuant to 42 U.S.C. § 1395 and G.S. 131E-127, a nursing home as defined in G.S. 131E-101(6), is not in violation of any applicable statute, rule, or regulation for any action taken pursuant to a physician's order when the physician has determined that the action is medically necessary."

Section 1.10. G.S. 108A-103 is amended by adding the following new subsection to read:

"(d) The director shall initiate the evaluation described in subsection (a) of this section as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days."

Section 1.11. G.S. 131E-233 is amended by adding the following new subsection to read:

- "(c) (1) Upon petition by the Department for emergency intervention, a court may order the appointment of an emergency temporary manager after finding that there is reasonable cause to believe that:
- a. Conditions or a pattern of conditions exist in the long-term care facility that create an immediate substantial risk of death or serious physical harm to residents; or
 - b. The long-term care facility is closing or intends to close before the time in which a hearing would ordinarily be scheduled, and:
 - 1. Adequate arrangements for relocating residents have not been made, or
 - 2. Quick relocation would not be in the best interest of residents.
- (2) The court shall appoint an emergency temporary manager to serve until a hearing is conducted in accordance with ordinary procedures and shall direct the temporary manager to make only such changes in administration as necessary to protect the health or safety of residents until the emergency condition is resolved.
- (3) The court shall schedule a hearing on the appointment of an emergency temporary manager within three days after service of notice of the filing of the petition. Notice of the filing of the petition and other relevant information, including the factual basis of the belief that an emergency temporary manager is needed shall be served upon the facility as provided in this Article. The notice shall be given at least 24 hours prior to the hearing of the petition for emergency intervention, except that the court may issue an immediate emergency order ex parte upon a finding as fact that:
- a. The conditions specified above exist, and
 - b. There is likelihood that a resident may suffer irreparable injury or death if the order is delayed.
- The order shall contain a show-cause notice to each person upon whom the notice is served directing the person to appear immediately or at any time up to and including the time for the hearing of the petition for emergency services and show cause, if any exists, for the dissolution or modification of the order. Unless dissolved by the court for good cause shown, the emergency order ex parte shall be in effect until the hearing is held on the petition for emergency services. At the hearing, if the court determines that the emergency continues to exist, the court may order the provision of emergency services in accordance with subsections (a) and (b) of this section."

Section 1.12. G.S. 131E-234 reads as rewritten:

"§ 131E-234. Grounds for appointment of temporary manager.

Upon a showing by the Department that one or more of the following grounds exist, the court may appoint a temporary manager for an initial period of 30 days or the first review by a superior court judge pursuant to G.S. 131E-243, whichever is longer:

- (1) Conditions or a pattern of conditions exist in the long-term care facility that create a substantial risk of death or serious physical harm to residents or that death or serious physical harm has occurred, and it is probable that the facility will not or cannot immediately remedy those conditions or pattern of ~~conditions~~; conditions, or the facility has shown a pattern of failure to comply with applicable laws and rules and continues to fail to comply;
- (2) The long-term care facility is operating without a license;
- (3) The license of the long-term care facility has been revoked or the long-term care facility is closing or intends to close and: (i) adequate arrangements for relocating residents have not been made, or (ii) quick relocation would not be in the best interest of the residents; or
- (4) A previous court order has been issued requiring the respondent to act or refrain from acting in a manner directly affecting the care of the residents and the respondent has failed to comply with the court order."

Section 1.13. G.S. 131E-242(a) reads as rewritten:

"§ 131E-242. Contingency fund.

(a) The Department ~~shall establish~~ may maintain a temporary management contingency fund ~~fund from the proceeds of penalties collected by the Department under the provisions of G.S. 131D-2 for adult care homes."~~

Section 1.14. G.S. 131D-2(e) reads as rewritten:

"(e) ~~The Department of Health and Human Services shall provide the method of evaluation of residents in adult care 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.~~ The Department shall ensure that facilities conduct and complete an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. In conducting the assessment, the facility shall use an assessment instrument approved by the Secretary upon the advice of the Director of the Division of Aging. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

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

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

- (1) Whether the appropriate assessment instrument was administered and interpreted correctly;
- (2) Whether the facility is capable of providing the necessary services;
- (3) Whether the service plan or care plan conforms to the results of an appropriately administered and interpreted assessment; and
- (4) Whether the service plans or care plans are being implemented fully and in accordance with an appropriately administered and interpreted assessment.

If the Department finds that the facility is not carrying out its assessment responsibilities in accordance with this section, the Department shall notify the facility and require the facility to implement a corrective action plan. The Department shall also notify the resident of the results of its review of the assessment, service plans, and care plans developed for the resident. In addition to administrative penalties, the Secretary may suspend the admission of any new residents to the facility. The 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."

Section 1.15. G.S. 131D-2(b)(1a) reads as rewritten:

"(1a) In addition to the licensing and inspection requirements mandated by subdivision (1) of this subsection, the Department shall ensure that adult care homes 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 monitor regularly the enforcement of rules pertaining to air circulation, ventilation, and room temperature in resident living quarters. These rules shall include the requirement that air conditioning or at least one fan per resident bedroom and living and dining areas be provided when the temperature in the main center corridor exceeds 80 degrees Fahrenheit. 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."

PART II. ADULT CARE HOME DISCLOSURE REQUIREMENTS

Section 2.1. Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"§ 131D-7. Adult care home special care units; disclosure of information required.

(a) An adult care home licensed under this Part that provides care for persons in special care units as defined in G.S. 131D-4.6 shall disclose the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosure shall be in writing and shall be made to all of the following:

- (1) The Department as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.
- (3) The Office of State Long-Term Care Ombudsman, annually, or more often if requested.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the resident's condition.
- (4) Staffing ratios and how they meet the resident's need for increased care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of residents with Alzheimer's disease or other dementias.
- (7) Frequency and type of programs and activities for residents of the special care unit.
- (8) Involvement of families in resident care, and availability of family support programs.
- (9) Additional costs and fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult care home subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult care home that does not offer a special care unit from admitting a person with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition. The disclosures required under this section apply only to an adult care home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term 'special care unit' has the same meaning as applies under G.S. 131D-4.6."

Section 2.2. G.S. 131D-6 is amended by adding the following new subsection to read:

"(b1) An adult day care program that provides or that advertises, markets, or otherwise promotes itself as providing special care services for persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs

disease or condition shall provide the following written disclosures to the Department and to persons seeking adult day care program special care services:

- (1) A statement of the overall philosophy and mission of the adult day care program and how it reflects the special needs of participants with dementia.
- (2) The process and criteria for providing or discontinuing special care services.
- (3) The process used for assessment and establishment of the plan of care and its implementation, including how the plan of care is responsive to changes in the participant's condition.
- (4) Staffing ratios and how they meet the participant's need for increased special care and supervision.
- (5) Staff training that is dementia-specific.
- (6) Physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias.
- (7) Frequency and type of participant activities provided.
- (8) Involvement of families in special care and availability of family support programs.
- (9) Additional costs and fees to the participant for special care.

(c) As part of its certification renewal procedures and inspections, the Department shall examine for accuracy the written disclosure of each adult day care program subject to this section. Substantial changes to written disclosures shall be reported to the Department at the time the change is made.

(d) Nothing in this section shall be construed as prohibiting an adult day care program that does not advertise, market, or otherwise promote itself as providing special care services for persons with Alzheimer's disease or other dementias from providing adult day care services to persons with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition.

(e) As used in this section, the term 'special care service' means a program, service, or activity designed especially for participants with Alzheimer's disease or other dementias, a mental health disability, or other special needs disease or condition as determined by the Medical Care Commission."

PART III. MISCELLANEOUS AND CONFORMING PROVISIONS

Section 3.1. Effective July 1, 1999, G.S. 131D-4.2(c) is repealed.

Section 3.2. G.S. 131D-4.2(h) reads as rewritten:

"(h) The report documentation shall be used to adjust the adult care home rate annually, an adjustment that is in addition to the annual standard adjustment for inflation as determined by the Office of State Budget and Management. Rates for family care homes shall be based on market rate data. ~~The Department~~ Secretary of Health and Human Services shall adopt rules for the rate-setting methodology and audited cost reports in accordance with G.S. 143B-10."

Section 3.3. G.S. 131D-2(a) is amended by adding the following new subdivision to read:

"(1f) 'Department' means the Department of Health and Human Services unless some other meaning is clearly indicated from the context."

Section 3.4. G.S. 131D-2(a) is amended by adding the following new subdivision to read:

"(12) 'Secretary' means the Secretary of Health and Human Services unless some other meaning is clearly indicated from the context."

Section 3.5. Effective October 1, 1999, G.S. 143B-153(3) reads as rewritten:

"(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

- a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;
- b. ~~For the inspection and licensing of adult care homes for aged or disabled persons as provided by G.S. 131D-2(b) and for personnel requirements of staff employed in adult care homes;~~
- c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;
- d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;
- e. Repealed by Session Laws 1981, c. 562, s. 7.
- f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina."

Section 3.6. G.S. 143B-165(10) reads as rewritten:

"(10) The Commission shall have the power and duty to ~~promulgate~~ adopt rules ~~and regulations~~ for the operation of nursing homes, as defined by ~~G.S. 130-9(e)~~. Article 6 of Chapter 131E of the General Statutes."

Section 3.7. Effective October 1, 1999, G.S. 143B-165 is amended by adding the following new subdivision to read:

"(13) The Commission shall have the power and duty to adopt rules for the inspection and licensure of adult care homes and operation of adult care homes, as defined by Article 1 of Chapter 131D of the General Statutes, and for personnel requirements of staff employed in adult care homes, except where rule-making authority is assigned to the Secretary."

Section 3.8. The Department of Health and Human Services shall establish and maintain a provider file to record and monitor compliance histories of facilities, owners, operators, and affiliates of nursing homes and adult care homes.

Section 3.9. The Department of Health and Human Services shall continue its demonstration project testing whether the TEACCH model is a viable method for finding and retaining competent staff for adult care homes and nursing homes.

Section 3.10. The Secretary of Health and Human Services shall adopt temporary rules in accordance with Chapter 150B of the General Statutes to implement G.S. 131D-4.5 as enacted by this act. The Secretary shall adopt temporary rules within 60 days of the date this act becomes law. The Secretary's authority to adopt temporary rules to implement G.S. 131D-4.5 as enacted by this act expires on the date that permanent rules adopted by the Medical Care Commission to implement G.S. 131D-4.5 as enacted by this act become effective.

Section 3.11. Part 14E of Article 3 of Chapter 143B of the General Statutes is repealed.

Section 3.12. The Department of Health and Human Services shall recommend to the North Carolina Study Commission on Aging a more efficient system of regulatory administration for adult care homes that delineates clear authority and streamlines government functions. The Department shall report its recommendations to the North Carolina Study Commission on Aging on or before February 1, 2000. The North Carolina Study Commission on Aging shall review the Department's recommendations and shall make recommendations to the General Assembly on or before May 1, 2000.

Section 3.13. The North Carolina Study Commission on Aging shall study the following:

- (1) Establishment of a licensing fee as a source of revenue for monitoring, staffing, and temporary management of adult care homes.
- (2) The need for licensure of adult care home administrators, separate from the licensure of adult care facilities.
- (3) The lack of uniformity, accountability, and central authority in the current regulatory system and how this impacts on care delivery and quality of life for adult care home residents.
- (4) How to address problems that arise when adult care homes admit persons whose behavior poses a threat to the safety and well-being of other residents.

The Commission shall report its findings and recommendations to the General Assembly on or before May 1, 2000.

Section 3.13A. The Mental Health Study Commission shall study issues related to the appropriate placement of persons with mental health disabilities in adult care homes. In conducting the study, the Commission shall consider whether adequate mental health services are available to residents in adult care homes. The Commission shall report its findings and recommendations to the 1999 General Assembly, Regular Session 2000, not later than May 1, 2000.

Section 3.14. The Joint Legislative Health Care Oversight Committee shall study whether the Health Care Personnel Registry is working effectively and shall recommend any changes needed to improve its effectiveness. In conducting its study, the Committee shall consider the following:

- (1) The extent to which employers of health care personnel subject to listing in the Registry are complying with statutory requirements to report incidents to the Registry.

- (2) The extent to which employers of health care personnel subject to listing in the Registry are contacting the Registry before making hiring decisions to ascertain if applicants are listed in the Registry.
- (3) Whether the scope of the Registry should be expanded to cover other types of health care personnel or health care facilities.
- (4) Other issues relating to the Health Care Personnel Registry and its purpose.

The Committee shall also study the requirements for criminal history record checks for applicants for employment in adult care homes. In conducting this study, the Committee shall determine if the requirements should be strengthened or otherwise amended to expand the scope or procedure for the check or to make the information revealed by the check more quickly available to employers.

The Health Care Oversight Committee shall report its findings and recommendations to the General Assembly on or before May 1, 2000.

Section 3.15. G.S. 14-32.2 reads as rewritten:

"§ 14-32.2. Patient abuse and neglect; punishments.

(a) It shall be unlawful for any person to physically abuse a patient of a health care facility or a resident of a residential care facility, when the abuse ~~is the result of an intentional or culpable negligent act or omission which causes serious bodily injury or death. results in death or bodily injury.~~

(b) Unless the conduct is prohibited by some other provision of law providing for greater punishment,

- (1) ~~Any person who violates~~ A violation of subsection (a) above is ~~guilty of~~ a Class C felony where intentional conduct proximately causes the death of the patient or resident;
- (2) ~~Any person who violates~~ A violation of subsection (a) above is ~~guilty of~~ a Class E felony where culpably negligent conduct proximately causes the death of the patient or resident;
- (3) ~~Any person who violates~~ A violation of subsection (a) above is ~~guilty of~~ a Class F felony where such conduct is willful or culpably negligent and proximately causes serious bodily injury to the patient or resident.
- (4) A violation of subsection (a) is a Class A1 misdemeanor where such conduct evinces a pattern of conduct and the conduct is willful or culpably negligent and proximately causes bodily injury to a patient or resident.

(c) 'Health Care Facility' shall include hospitals, skilled nursing facilities, intermediate care facilities, intermediate care facilities for the mentally retarded, psychiatric facilities, rehabilitation facilities, kidney disease treatment centers, home health agencies, ambulatory surgical facilities, and any other health care related facility whether publicly or privately owned.

(c1) 'Residential Care Facility' shall include adult care homes and any other residential care related facility whether publicly or privately owned.

(d) 'Person' shall include any natural person, association, corporation, partnership, or other individual or entity.

(e) 'Culpably negligent' shall mean conduct of a willful, gross and flagrant character, evincing reckless disregard of human life.

(e1) 'Abuse' means the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law designed for the health, welfare, or comfort of a patient or resident.

(f) Any defense which may arise under G.S. 90-321(h) or G.S. 90-322(d) pursuant to compliance with Article 23 of Chapter 90 shall be fully applicable to any prosecution initiated under this section.

(g) Criminal process for a violation of this section may be issued only upon the request of a District Attorney.

(h) The provisions of this section shall not supersede any other applicable statutory or common law offenses."

Section 3.16. Section 3.15 of this act becomes effective December 1, 1999, and applies to offenses committed on or after that date. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Frank W. Ballance, Jr.
Deputy President Pro Tempore of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 5:45 p.m. this 22nd day of July, 1999