

NORTH CAROLINA GENERAL ASSEMBLY
1981 SESSION

CHAPTER 923
HOUSE BILL 1098

AN ACT TO CREATE A DOMICILIARY HOME RESIDENTS' BILL OF RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131C of the General Statutes, as enacted by Section 2 of Chapter 275, Session Laws of 1981, is amended by adding the following new Article:

"ARTICLE 4. "Domiciliary Home Residents' Bill of Rights.

"§ 131C-50. **Legislative intent.** — It is the intent of the General Assembly to promote the interests and well-being of the residents in domiciliary homes to include Family Care Homes, Homes for the Aged and Disabled, and Group Homes for Developmentally Disabled Adults licensed pursuant to G.S. 108-77. It is the intent of the General Assembly that every resident's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the resident in the fullest possible exercise of these rights.

"§ 131C-51. **Definitions.** — As used in this Article, the following terms have the meanings specified:

- (1) 'Abuse' has the same meaning as in G.S. 108A-152(a).
- (2) '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 with the sheltered or personal care their age or disability requires. Medical care at a domiciliary home is only occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 130-9(e). The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults.
- (3) 'Exploitation' means exploitation as defined in G.S. 108A-152(j).
- (4) 'Facility' means a domiciliary home licensed pursuant to G.S. 108-77.
- (5) 'Family Care Home' means a domiciliary home having two to five 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 six or more residents.
- (8) 'Neglect' means the failure to provide the services necessary to maintain the physical or mental health of a resident.
- (9) 'Resident' means an aged or disabled person who has been admitted to a facility.

"§ 131C-52. **Declaration of residents' rights.** — Each facility shall treat its residents in accordance with the provisions of this Article. Every resident shall have the following rights:

- (1) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
- (2) To receive care and services which are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
- (3) To receive upon admission and during his or her stay a written statement of the services provided by the facility and the charges for these services.
- (4) To be free of mental and physical abuse, neglect, and exploitation.
- (5) Except in emergencies, to be free from chemical and physical restraint unless authorized for a specified period of time by a physician according to clear and indicated medical need.
- (6) To have his or her personal and medical records kept confidential and not disclosed if he or she objects in writing unless required by State or federal law or regulation.
- (7) To receive a reasonable response to his or her requests from the facility administrator and staff.
- (8) To associate and communicate privately and without restriction with people and groups of his or her own choice on his or her own or their initiative at any reasonable hour.
- (9) To have access at any reasonable hour to a telephone where he or she may speak privately.
- (10) To send and receive mail promptly and unopened, unless the resident requests that someone open and read mail, and to have access at his or her expense to writing instruments, stationery, and postage.
- (11) To be encouraged to exercise his or her rights as a resident and citizen, and to be permitted to make complaints and suggestions without fear of coercion or retaliation.
- (12) To have and use his or her own possessions where reasonable and have an accessible, lockable space provided for security of personal valuables. This space shall be accessible only to the resident, the administrator, or supervisor-in-charge.
- (13) To manage his or her personal needs funds unless such authority has been delegated to another. If authority to manage personal needs funds has been delegated to the facility, the resident has the right to examine the account at any time.
- (14) To be notified when the facility is issued a provisional license by the North Carolina Department of Human Resources and the basis on which the provisional license was issued. The resident's responsible family member or guardian shall also be notified.
- (15) To have freedom to participate by choice in accessible community- activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.
- (16) To receive upon admission to the facility a copy of this section.

"§ 131C-53. Incompetence. — If the resident is adjudicated incompetent or designates another in writing the power to manage his financial affairs, then in such event, his attorney-in-fact, guardian of the person, general guardian, or such other person, no matter how designated, may sign any documents required by the provisions of this Article, may otherwise do or perform any other act, and may receive or furnish any information required by this Article.

"§ 131C-54. No waiver of rights. — No facility may require a resident to waive the rights specified in G.S. 131C-52.

"§ 131C-55. Notice to resident. — (a) A copy of the declaration of the residents' rights shall be posted conspicuously in a public place in all facilities. A copy of the declaration of residents'

rights shall be furnished to the resident upon admittance to the facility, to all residents currently residing in the facility, to a representative payee of the resident, or to any person designated in G.S. 131C-53, and if requested to the residents' responsible family member or guardian. Receipts for the declaration of rights signed by these persons shall be retained in the facility's files. The declaration of rights shall be included as part of the facility's admission policies and procedures.

(b) The address and telephone number of the section in the Department of Human Resources responsible for the enforcement of the provisions of this Article shall be posted and distributed with copies of G.S. 131C-52. The address and telephone number of the county Social Services Department, and the appropriate person or office of the Department of Human Resources shall also be posted and distributed.

"§ 131C-56. Implementation. — Responsibility for implementing the provisions of this Article shall rest with the administrator of the facility. Each facility shall provide appropriate training to staff to implement the declaration of residents' rights included in G.S. 131C-52.

"§ 131C-57. Enforcement and investigation. — (a) The Department of Human Resources shall be responsible for the enforcement of the provisions of this Article. Specifically, the Department of Social Services in the county in which the facility is located, along with the Department of Human Resources, shall be responsible for enforcing the provisions of the declaration of the residents' rights. The director of the county Department of Social Services shall monitor the implementation of the declaration of the residents' rights and shall also investigate any complaints or grievances pertaining to violations of the declaration of rights.

(b) If upon investigation, it is found that any of the provisions of the declaration of rights have been violated, the director of the county Department of Social Services must inform the administrator of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This information must be confirmed in writing to the administrator by the county director who shall specify the identified violation(s), what must be done to correct the violation(s) and dates by which they must be corrected. Such written communication must be made immediately following the investigation, and a copy of the letter shall be sent to the Department of Human Resources.

(c) Upon receiving requests for assistance in resolving complaints from the county Department of Social Services, the Department of Human Resources shall ensure compliance with the provisions of this Article.

(d) The county director of social services shall annually make a report to the Department of Human Resources about the number of substantiated violations of G.S. 131C-52, the nature of the violations, and the number of violations referred to the Department of Human Resources for resolution.

"§ 131C-58. Confidentiality. — The Department of Human Resources is authorized to inspect residents' records maintained at the facility when necessary to investigate any alleged violation of the declaration of the residents' rights. The Department of Human Resources shall maintain the confidentiality of all persons who register complaints with the Department of Human Resources and of all records inspected by the Department of Human Resources.

"§ 131C-59. Civil action. — Every resident shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Article. The Department of Human Resources, a general guardian, or any person appointed ad litem pursuant to law, may institute an action pursuant to this section on behalf of the resident or residents. Any agency or person above named may enforce the rights of the resident specified in G.S. 131C-52 which the resident himself is unable to enforce.

"§ 131C-60. Revocation of license. — The Department of Human Resources shall have the authority to revoke a license issued pursuant to G.S. 108-77 in any case where it finds that there has been a substantial failure to comply with the provisions of this Article.

Such revocation shall be effected by mailing to the licensee by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, shall give written notice to the Department of Human Resources requesting a hearing, in which case the notice shall be deemed to be suspended. If a hearing has been requested, the licensee shall be given a prompt and fair hearing pursuant to the Administrative Procedure Act. At any time at or prior to the hearing, the Department of Human Resources may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed.

"§ 131C-61. Penalties; remedies. — (a) The Department of Human Resources shall impose an administrative penalty in accordance with provisions of this Article on any facility:

- (1) Which fails to comply with either the entire section of residents' rights listed in G.S. 131C-52 or with any of these rights, the failure to comply with which endangers the health, safety or welfare of a resident, or
 - (2) Which refuses to allow an authorized representative of the Department of Human Resources to inspect the premises and records of the facility.
- (b) Each day of a continued violation shall constitute a separate violation. The penalty for each violation shall be ten dollars (\$10.00) per day per resident affected by the violation.
- (c) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act.
- (d) The Secretary of Human Resources may bring a civil action in the Superior Court of Wake County to recover the amount of the administrative penalty whenever a facility:
- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of such penalty, or
 - (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after service of a written copy of the decision as provided in G.S. 150A-36.

"§ 131C-62. Domiciliary Home Community Advisory Committees. — (a) Statement of Purpose. It is the intent of the General Assembly that community advisory committees work to maintain the spirit of the Domiciliary Home Residents' Bill of Rights within the licensed domiciliary homes in this State. It is the further intent of the General Assembly that the committees promote community involvement and cooperation with domiciliary homes to ensure quality care for the elderly and disabled adults.

(b) Establishment and Appointment of Committees. Counties are encouraged to establish a Domiciliary Home Community Advisory Committee in each county which has at least one licensed domiciliary home. The committee shall serve all the homes in the county, and shall work with each home for the best interests of the persons residing in each home. Each committee shall be appointed by the Board of County Commissioners. The size of the committee, the makeup of its members, and the length of their terms will be left to the discretion of the County Commissioners. It is desirable for County Commissioners to have input from all interested parties, including the local domiciliary home operators regarding the appointment of the committees. Each county shall have the necessary flexibility in appointing committee members. Existing advocacy committees such as the Nursing Home Community Advisory Committees may be utilized for this purpose.

(c) Minimum Qualifications for Appointment. Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member of a home served by a committee, or immediate family member of a resident in a home served by a committee may be a member of a committee. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for actual

expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the county Department of Social Services, and the Department of Human Resources.

"§ 131C-63. Functions of Domiciliary Home Community Advisory Committees. — (a) The committee shall serve as the nucleus for increased community involvement with domiciliary homes and their residents.

(b) The committee shall promote community education and awareness of the needs of aging and disabled persons who reside in domiciliary homes, and shall work towards keeping the public informed about aspects of long-term care and the operation of domiciliary homes in North Carolina.

(c) The committee shall develop and recruit volunteer resources to enhance the quality of life for domiciliary home residents.

(d) The committee or individual members of the committee shall have the right between 10:00 a.m. and 8:00 p.m. to enter the facility the committee serves in order to carry out the members' responsibilities. The committee shall have access to residents of the home, as well as access to the facility and its staff. Before entering any domiciliary home, the committee or members of the committee shall identify themselves to the person present at the facility who is in charge of the facility at that time.

(e) The committee shall establish linkages with the domiciliary home administrators and the county Department of Social Services for the purpose of maintaining the spirit of the Domiciliary Home Residents' Bill of Rights. This would include identifying any alleged violations of the Bill of Rights, discussing them with the Domiciliary Home Administrator if possible, and reporting such situations to the county Department of Social Services, which has responsibility for resolution.

(f) The committee shall prepare an annual report to the Board of County Commissioners with a copy to the Department of Human Resources containing an appraisal of the problems of domiciliary care facilities as well as issues affecting long-term care in general.

"§ 131C-64. Cooperation. — In order for a domiciliary home as defined by G.S. 131C-51(2) to be licensed under that subsection, the home shall cooperate with the community advisory committee, when such committee has been appointed by the County Commissioners."

Sec. 2. The revisor of statutes shall change all references to G.S. 108-77 in this act to the appropriate section as recodified by Section 2 of Chapter 275, Session Laws of 1981.

Sec. 3. This act shall become effective October 1, 1981, except that G.S. 131C-62 through G.S. 131C-64 shall become effective January 1, 1982.

In the General Assembly read three times and ratified, this the 10th day of July, 1981.