

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 824
HOUSE BILL 688

AN ACT TO AMEND THE LICENSING OF DOMICILIARY HOMES FOR THE AGED AND DISABLED AND THE DOMICILIARY BILL OF RIGHTS.

The General Assembly of North Carolina enacts:

Section 1. The title of G.S. 131D-2 is rewritten to read:
"Licensing of domiciliary homes for the aged and disabled."

Sec. 2. G.S. 131D-2(a)(1) and G.S. 131D-20(1) are rewritten to read:

"'Abuse' means the willful or grossly negligent infliction of physical pain, injury or mental anguish, unreasonable confinement, or the willful or grossly negligent deprivation by the administrator or staff of a domiciliary home of services which are necessary to maintain mental and physical health."

Sec. 3. G.S. 131D-2(a)(3) and G.S. 131D-20(2) are rewritten to read:

"'Domiciliary home' means any facility, by whatever name it is called, which provides residential care for aged or disabled persons whose principal need is a home which provides the supervision and personal care appropriate to their age or disability. Medical care at a domiciliary home is only occasional or incidental, such as may be given in the home of any individual or family, but medication is administered by designated staff of the home. Personal care given in a domiciliary home includes direct assistance, by designated staff, to residents in personal grooming, bathing, dressing, feeding, shopping, laundering clothes, handling personal finances, arranging transportation, scheduling medical or business appointments, as well as attending to any personal needs residents may be incapable of or unable to attend for themselves. Domiciliary homes are to be distinguished from nursing homes subject to licensure under G.S. 131E-102. The three types of domiciliary homes are homes for the aged and disabled, family care homes and group homes for developmentally disabled adults."

Sec. 4. G.S. 131D-2(a)(2) is rewritten to read:

"'Developmentally disabled adult' means a person who has attained the age of 18 years and who has a developmental disability defined as a severe, chronic disability of a person which:

- (a) Is attributed to a mental or physical impairment or combination of mental and physical impairments;
- (b) Is manifested before the person attains age 22;
- (c) Is likely to continue indefinitely;
- (d) Results in substantial functional limitations in three or more of the following areas of major life activity: (i) self- care, (ii) receptive and expressive language, (iii)

learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency; and

(e) Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated."

Sec. 5. G.S. 131D-2(a)(4) and G.S. 131D-20(3) are rewritten to read:

"Exploitation' means the illegal or improper use of an aged or disabled resident or his resources for another's profit or advantage."

Sec. 6. G.S. 131D-2(d) is amended by deleting the citation "G.S. 130-9(e)" and substituting therefor "G.S. 131E- 102". G.S. 131D-2(d) is further amended by deleting the words "Nursing Homes" on line 4 and substituting therefor the words "Licensure requirements".

Sec. 7. G.S. 131D-2(a)(5) and G.S. 131D-20(5) are amended by deleting the comma between the words "direct" and "exterior" on line 5.

Sec. 8. G.S. 131D-2(a)(7) and G.S. 131D-20(7) are amended by changing the word "six" to "seven".

Sec. 9. G.S. 131D-2(b) is rewritten to read:

"(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.
- (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(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.
- (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. 10. G.S. 131D-2(c) is amended by rewriting the first two lines to read:

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

Sec. 11. G.S. 131D-2(f) is amended by changing the word "act" wherever it appears to the word "section".

Sec. 12. G.S. 131D-2 is amended by adding new subsections to read:

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

(h) Suspension of admissions to domiciliary home:

(1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to a domiciliary home, where the conditions of the domiciliary home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:

- a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and
- b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Human Resources shall adopt rules to implement this subsection.

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

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

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

Sec. 13. G.S. 131D-21(14) is amended on lines 1 and 3 by inserting the words "or notice of revocation of license" immediately following the words "provisional license".

Sec. 14. G.S. 131D-22 is rewritten to read:

"§ 131D-22. Transfer of management responsibilities.—Any representative authorized in writing by a resident to manage his financial affairs, any resident's legal guardian as appointed by a court, or any resident's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by this Article, perform any other act, and receive or furnish any information required by this Article."

Sec. 15. G.S. 131D-26(a) is amended on line 3 by deleting the words and punctuation ", along with" and substituting therefor the word "and".

Sec. 16. G.S. 131D-26(b) is rewritten to read:

"(b) If upon investigation, it is found that any of the provisions of the declaration of rights has been violated, the director of the county department of social services or a designee must orally inform the administrator immediately of the specific violations, what must be done to correct them, and set a date by which the violations must be corrected. This same information must be confirmed in writing to the administrator by the county director or a designee within 10 working days following the investigation. A copy of the letter shall be sent to the Department of Human Resources."

Sec. 17. G.S. 131D-30(a) is amended by adding a new paragraph at the end thereof to read:

"Notwithstanding the notice requirements of G.S. 131D-26(b), any penalty imposed by the Department under this section shall commence on the day the violation began."

Sec. 18. G.S. 131D-30(d)(2) is amended by deleting the word "service" and substituting therefor the word "receipt".

Sec. 19. G.S. 131D-33 is repealed.

Sec. 20. This act shall become effective January 1, 1984.

In the General Assembly read three times and ratified, this the 19th day of July, 1983.