Article 13.

Temporary Management of Long-Term Care Facilities.

§ 131E-230. Legislative findings.

The General Assembly finds that:

(1) A substantial number of citizens of this State now reside, or in the future may reside, in long-term care facilities within this State;

(2) Improper operation of long-term care facilities may tend to create a substantial risk of serious physical injury to residents;

(3) The closure of a long-term care facility can have adverse effects on the residents thereof, especially if the closure and transfer of residents is done hastily;

(4) The general health and welfare of the people of this State, particularly those persons residing in long-term care facilities within this State, would be enhanced by development of a procedure for the court appointment of a temporary manager to assure the proper operation of a long-term care facility in certain instances until a manager chosen by the facility is prepared to properly operate the facility, or until the residents can be safely transferred to a proper alternative setting; and

(5) The use of a temporary manager is intended as a temporary measure and the ongoing or long-term operation of a nursing facility by a temporary manager is neither beneficial nor appropriate. (1993, c. 390, s. 1.)

§ 131E-231. Definitions.

As used in this Article, unless otherwise specified:

(1) "Long-term care facility" means a nursing home as defined in G.S. 131E-101(6) and an adult care home as defined in G.S. 131D-2.1(3) or G.S. 131E-101(4).

(2) "Resident" means a person who has been admitted to a long-term care facility.

(3) "Respondent" means the person or entity holding a license pursuant to G.S. 131E-102 or G.S. 131D-2.4 or a person or entity operating a long-term care facility subject to licensure without a license. (1993, c. 390, s. 1; 1995, c. 535, s. 26; 2008-187, s. 38(b); 2009-462, s. 4(l).)

§ 131E-232. Who may petition; contents of petition.

The Department may petition a court of competent jurisdiction to appoint a temporary manager to operate a long-term care facility. The petition shall set forth material facts showing that one or more of the grounds for appointment of a temporary manager set forth in G.S. 131E-234 exist, that the facts set forth in the petition have been brought to the attention of the respondent, and that the conditions described in the petition have not been remedied within a reasonable period of time. The petition shall also set forth a brief description of the action or actions necessary to remedy the alleged conditions. (1993, c. 390, s. 1.)

§ 131E-233. Procedures for appointment; evidence in defense.

(a) The procedure for petitioning the superior court for the appointment of a temporary manager, including service of process shall be in accordance with the North Carolina Rules of Civil Procedure. If personal service of a copy of the petition cannot be made with due diligence upon the respondent, service may be made upon the respondent by sending a copy of the summons and

petition to the respondent by registered mail at the respondent's last known address and by hand-delivering or mailing a copy to the administrative or staff person in charge of the facility.

(b) A hearing shall be held on the petition within 20 days of service of the petition upon the respondent. Both the Department and the respondent may present evidence and written and oral argument at the hearing regarding the allegations of the petition. It shall be relevant evidence in defense to a petition that the conditions alleged in the petition do not in fact exist, that such conditions do not exist to the extent alleged, or that such conditions have been remedied or removed.

(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. (1993, c. 390, s. 1; 1999-334, s. 1.11.)

§ 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, 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. (1993, c. 390, s. 1; 1999-334, s. 1.12.)

§ 131E-235. Alternative to appointment of temporary manager.

(a) After the hearing described in G.S. 131E-233(b), if the court finds that the evidence warrants the granting of the relief sought and the respondent applies to the court for permission to promptly remove or remedy the conditions or pattern specified in the petition and demonstrates the ability to promptly undertake and complete the removal or remedying of such conditions or pattern, the court, in lieu of appointing a temporary manager, may issue an order permitting the respondent to remove or remedy the conditions in accordance with a time schedule and subject to conditions determined by the court, including the posting of security for the performance of the work as may be fixed by the court.

(b) If, after entry of an order pursuant to subsection (a) of this section, it appears that the respondent is not proceeding in accordance with the court's order in removing or remedying the conditions found by the court to exist, the Department, upon notice to the respondent, may move the court for an order appointing a temporary manager pursuant to the court's findings at the original hearing. If upon hearing the matter, the court finds that the respondent is not proceeding in accordance with the court's order, the court may appoint a temporary manager as authorized by G.S. 131E-234. If the respondent has posted security to ensure removal or remedying of the conditions found by the court, the security or any part of the security as is necessary may be used by the temporary manager to remedy the conditions. (1993, c. 390, s. 1.)

§ 131E-236. Compensation of temporary manager.

The court shall set the compensation of the temporary manager. (1993, c. 390, s. 1.)

§ 131E-237. Candidates for temporary managers.

In the petition the Department shall nominate at least one candidate for temporary manager and shall include the name, address, and qualifications of each nominee. The Department shall maintain a list of persons qualified to act as temporary managers. The person or persons nominated

by the Department to serve as temporary manager shall either be employed by the Department or be one of the persons on the list of qualified persons maintained by the Department. This nominee shall be approved by the court reviewing the Department's petition for appointment of a temporary manager. (1993, c. 390, s. 1.)

§ 131E-238. Temporary manager; powers and duties.

A temporary manager appointed under this section:

(1) May exercise those powers and shall perform those duties ordered by the court;

(2) Shall operate the long-term care facility in compliance with State and federal laws and assure the safety of the residents and the delivery of services to them;

(3) May operate the facility under a temporary license issued by the Department in the event that the license of the original operator has been revoked or suspended or was never issued;

(4) Shall have the same rights as the respondent to possession of the building in which the long-term care facility is located and of all goods and fixtures located in the building at the time the temporary manager is appointed. If the court finds that between the time the petition is filed and the temporary manager is appointed, the respondent has transferred assets for the purpose of frustrating the intent of this section, the court may require the respondent to repay to the temporary manager the value of such transferred assets. The temporary manager shall take all actions necessary to protect and conserve the assets and property of which the temporary manager takes possession, and the proceeds of any transfer, and may use them only in the performance of the powers and duties set forth in this section and as may be ordered by the court;

(5) May use the building, fixtures, furnishings, and any accompanying consumable goods in providing care and services to residents and to any other persons receiving services from the long-term care facility at the time the petition for temporary management was filed. The temporary manager shall collect payment for all goods and services provided to residents or others at the same rate and method of payment as was charged by the respondent at the time the petition for temporary management was filed, unless a different rate is set by the State or other third-party payors. The temporary manager shall owe a duty to the owner of the long-term care facility to protect and preserve, and to avoid the waste or diminution of, the building, fixtures, furnishings, consumable goods, receipts, and other assets of the facility and to prevent the use of those assets for any purpose other than the reasonable operation of the facility;

(6) May correct or eliminate any deficiency in the structure or furnishings of the long-term care facility that endangers the safety or health of residents, provided the total cost of correction of all such deficiencies does not exceed one thousand dollars ($1,000);

(7) Shall submit to the court a plan in accordance with G.S. 131E-239 for correction or elimination of any deficiency or deficiencies in the structure or furnishings of the long-term care facility that endanger the safety or health of residents and that are estimated to exceed one thousand dollars ($1,000), and shall carry out the plan with any modification approved by the court;

(8) May enter into contracts and hire agents and employees to carry out the powers and duties created under this section, provided that the temporary manager must notify the court and the respondent prior to entering into any substantially new contract obligating the respondent to pay more than one thousand dollars ($1,000);

(9) Except as specified in G.S. 131E-241, shall honor all leases, mortgages, and secured transactions governing the building in which the long-term care facility is located and all goods and fixtures in the building of which the temporary manager has taken possession, but, in the case of a rental agreement, only to the extent of payments that are for the use of the property during the period of the temporary management, or, in the case of a purchase agreement, come due during the period of the temporary management;

(10) Shall have full power to direct, manage, and discharge employees of the long-term care facility, consistent with applicable State and federal laws governing the employment of these employees;

(11) If transfer of the residents is necessary, shall cooperate with the Department or local departments of social services or both in carrying out the transfer of residents to an alternative placement;

(12) Shall be entitled to and shall take possession of all property or assets of residents in the possession of the respondents. The temporary manager shall preserve all property, assets, and records of residents of which the temporary manager takes possession and shall provide for the prompt transfer of the property, assets, and records to the alternative placement of any transferred resident. No owner, licensee, or administrator of a facility under temporary management shall be liable for the waste, mismanagement, or other negligent or intentional wrongful act of a temporary manager with respect to the property or assets of residents; and

(13) May be held liable in his personal capacity only for his own gross negligence or intentional acts. (1993, c. 390, s. 1.)

§ 131E-239. Plan for correction of deficiencies in excess of one thousand dollars ($1,000).

(a) If the temporary manager determines that it is necessary to correct a deficiency or deficiencies in the structure or furnishings reasonably estimated by the temporary manager to cost in excess of one thousand dollars ($1,000), the temporary manager shall submit to the court a written plan that contains the following:

(1) A description of the deficiency or deficiencies that require correction;

(2) A description of the method proposed by the temporary manager for correction of the deficiency or deficiencies; and

(3) An estimate of the cost of the correction or corrections.

(b) A copy of the plan shall be served upon the Department and the respondent on the same day that it is submitted to the court.

(c) If the Department or respondent makes a written request for a hearing within seven days after the submission of the plan to the court, a hearing on the proposed plan of correction shall be held. If a hearing is requested by a party, the hearing shall be held within 14 days of the written request. The Department, respondent, and temporary manager shall have the opportunity to present evidence at the hearing regarding the proposed plan. Upon hearing the evidence, the court

may approve the plan, modify the plan, or, if the court determines as a result of the evidence that the alleged deficiency does not require correction, it may reject the plan. If no party requests a hearing on the plan in accordance with this subsection, the court may order the temporary manager to proceed to implement the plan.

(d) In the event of an emergency situation involving the structure or furnishings of the facility the correction of which will cost in excess of one thousand dollars ($1,000) and where failure to correct the situation immediately will likely result in serious physical harm or death to residents, the temporary manager may proceed to correct the situation in the most economical and efficient manner under the circumstances without prior court approval of a plan. If the court later determines pursuant to G.S. 131E-244(b) that the expenditure was not necessary or reasonable under the circumstances, payment for the expenditure or any part determined to be unreasonable or unnecessary by the court, must be paid from the contingency fund described in G.S. 131E-242. If the payment was initially made by the temporary manager from the contingency fund, the respondent shall have no obligation to repay those funds to the contingency fund upon a finding that the expenditure was unreasonable or unnecessary. If the payment was initially made by the temporary manager from operating revenues of the facility, the respondent shall be entitled to repayment of those amounts from the contingency fund. (1993, c. 390, s. 1.)

§ 131E-240. Payment to temporary manager.

(a) A person served with notice of an order of the court appointing a temporary manager and of the temporary manager's name and address shall be liable to pay the temporary manager for any goods or services provided by the temporary manager after the date of the order if the person would have been liable for the goods or services supplied by the respondent or an agent of the respondent. The temporary manager shall give a receipt for each payment and shall keep a copy of each receipt on file. The temporary manager shall deposit amounts received in a special account and shall use this account for all disbursements.

(b) The temporary manager may bring an action to enforce the liability created by subsection (a) of this section. Proof of payment to the temporary manager is as effective in favor of the person making the payment as payment of the amount to the person who, but for this subsection, would have been entitled to receive the sum paid.

(c) A resident may not be discharged, nor may any contract or rights be forfeited or impaired, nor may forfeiture or liability be increased, by reason of an omission to pay a respondent, licensee, or other person a sum paid to the temporary manager. (1993, c. 390, s. 1.)

§ 131E-241. Avoidance of preexisting leases, mortgages, and contracts.

(a) A temporary manager shall not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the respondent, licensee, or administrator of the long-term care facility if the temporary manager demonstrates to the court that the rental price, rate of interest, or other compensation to be paid under the contract or agreement is unreasonable in light of conditions existing at the time the agreement was entered into by the parties or in light of the relationship of the parties.

(b) If the temporary manager is in possession of real estate or goods subject to a lease, mortgage, security interest, or other contract that the temporary manager is permitted to avoid under subsection (a) of this section, and if the real estate or goods are necessary for the continued operation of the long-term care facility, the temporary manager may apply to the court to set a reasonable rental price, rate of interest, or other compensation to be paid by the temporary manager

during the duration of the temporary management. The court shall hold a hearing on the application within 15 days after receipt of the application. At least 10 days prior to the hearing, the temporary manager shall send notice of the application to any known person with any beneficial interest in the property involved.

(c) Payment by the temporary manager of the amount determined by the court to be reasonable is a defense to any action against the temporary manager for payment or for possession of the goods or real estate subject to the lease, mortgage, security interest, or other contract involved by any person who received such notice, but the payment does not relieve the obligee of liability for the difference between the amount paid by the temporary manager and the amount due under the original lease, mortgage, or security interest involved. (1993, c. 390, s. 1.)

§ 131E-242. Contingency fund.

(a) The Department may maintain a temporary management contingency fund.

(b) Upon a showing that proper expenses of the temporary management under this Article exceed the operating funds of the long-term care facility, the court, in its discretion, may order that the Department provide funds from the contingency fund to the temporary manager to operate the facility and compensate the temporary manager.

(c) When the total funds available in the contingency fund exceed five hundred thousand dollars ($500,000), the Department may reallocate any or all of the amount in excess of five hundred thousand dollars ($500,000) for other activities intended to protect the health and property of residents. (1993, c. 390, s. 1; 1995, c. 535, s. 27; 1998-215, s. 78(d); 1999-334, s. 1.13.)

§ 131E-243. Review and termination of temporary management.

(a) The operations and continuing need for a temporary manager shall be reviewed by the court every 30 days following the appointment of the temporary manager.

(b) The court may order the replacement of a temporary manager upon a showing that the temporary manager has mismanaged the long-term care facility.

(c) The court shall order the termination of the temporary management upon the recommendation of the Department or upon a showing that the conditions leading to imposition of the temporary management have been resolved.

(d) When a long-term care facility is returned to its owner, the court may impose conditions to assure compliance with applicable laws and regulations. (1993, c. 390, s. 1.)

§ 131E-244. Accounting lien for expenses.

(a) Within 30 days after termination of the temporary management, the temporary manager shall give the court a complete accounting of:

(1) All property of which the temporary manager took possession;
(2) All funds collected under this Article;
(3) Expenses of the temporary management; and
(4) All disbursements or transfers of facility funds or other assets made during the period of temporary management. On the same day the accounting is filed with the court, the temporary manager shall serve on the respondent by registered mail a copy of this accounting.

(b) If the operating funds collected during the temporary management exceed the reasonable expenses of the temporary management, the court shall order payment of the excess to the respondent, after reimbursement to the contingency fund. If the operating funds are insufficient

to cover the reasonable expenses of the temporary management, the respondent shall be liable for the deficiency, except as described in this section. If the respondent demonstrates to the court that repayment of amounts spent from the contingency fund would significantly impair the provision of appropriate care or services to residents, the court may order repayment over a period of time with or without interest or may order that the respondent be required to repay only part or none of the amount spent from the contingency fund. In reaching this decision, the court may consider all assets, revenues, debts and other obligations of the long-term care facility, the likelihood of the sale of the long-term care facility where repayment forgiveness would result in unjust enrichment of the respondent, and shall consider the impact of its determination on the provision of care to residents. The respondent may petition the court to determine the reasonableness of any expenses of the temporary management. The respondent shall not be responsible for expenses in excess of amounts the court finds to be reasonable. Payment recovered from the respondent shall be used to reimburse the contingency fund for amounts used by the temporary manager.

(c) The court may order that the Department have a lien for any reasonable costs of the temporary management that are not covered by the operating funds collected by the temporary manager and for any funds paid out of the contingency fund during the temporary management upon any beneficial interest, direct or indirect, of any respondent in the following property:

(1) The building in which the long-term care facility is located;

(2) The land on which the long-term care facility is located;

(3) Any fixtures, equipment, or goods used in the operation of the long-term care facility; or

(4) The proceeds from any conveyance of property described in subdivisions (1), (2), and (3) of this subsection made by the respondent within one year prior to the filing of the petition for temporary management unless such transfers were made in good faith, in the ordinary course of business, and without intent to frustrate the intent of subsection (b) of this section. Transfers made coincidental with serious deficiencies in resident care may be considered evidence of intent to frustrate the intent of subsection (b) of this section.

(d) To the extent permitted by other provisions of applicable State or federal law, the lien provided for in this section is superior to any lien or other interest that arises subsequent to the filing of the petition for temporary management under this section, except for a construction or mechanic's lien arising out of work performed with the express consent of the temporary manager.

(e) The clerk of court in the county in which the long-term care facility is located shall record the filing of the petition for temporary management in the lien docket opposite the names of the respondents and licensees named in the petition.

(f) Within 60 days after termination of the temporary management, the temporary manager shall file a notice of any lien created under this section. If the lien is on real property, the notice shall be filed with the clerk of court in the county where the long-term care facility is located and entered on the lien docket. If the lien is on personal property, the lien shall be filed with the person against whom the lien is claimed, and shall state the name of the temporary manager, the date of the petition for temporary management, the date of the termination of temporary management, a description of the property involved, and the amount claimed. No lien shall exist under this section against any person, on any property, or for any amount not specified in the notice filed under this section. (1993, c. 390, s. 1.)

§ 131E-245. Obligations of licensee.

Nothing in this Article shall relieve any respondent, licensee, or administrator of a long-term care facility placed in temporary management of any civil or criminal liability, or any duty imposed by law, by reason of acts or omissions of the respondent, licensee, or administrator prior to the appointment of the temporary manager. Nothing in this Article shall suspend during the temporary management any obligation of the respondent, licensee, or administrator for payment of taxes, other operating and maintenance expenses of the long-term care facility, nor the respondent, licensee, or administrator or any other person for the payment of mortgages or liens. No owner, licensee, or administrator shall be held personally liable for acts or omissions of the temporary manager or the temporary manager's employees during the term of the temporary management. No licensee or administrator may be held responsible or liable for licensure fines, sanctions or penalties, or other administrative sanctions, arising or imposed as a result of acts or omissions occurring during the period of temporary management unless those sanctions result from acts or omissions by the licensee or administrator. (1993, c. 390, s. 1.)

§ 131E-246. Conflict of laws.

In the event of a conflict between federal laws or regulations and State law or rules, the federal laws or regulations shall control. (1993, c. 390, s. 1.)

§ 131E-247. Reserved for future codification purposes.

§ 131E-248. Reserved for future codification purposes.

§ 131E-249. Reserved for future codification purposes.