§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.

(a) It is the policy of this State to enable people who would otherwise need full-time care away from their own residences to remain in their residences as long as possible and to enjoy as much independence as possible. One of the programs that permits adults to remain in their residences and with their families is adult day care.

(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally disabled, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. The Department of Health and Human Services shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission.

(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.

(b2) 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.

(b3) 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.

(b4) 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.

(c) The Secretary may impose a civil penalty not to exceed one hundred dollars ($100.00) for each violation on a person, firm, agency, or corporation who willfully violates any provision of this section or any rule adopted by the Social Services Commission pursuant to this section. Each day of a continuing violation constitutes a separate violation.

In determining the amount of the civil penalty, the Secretary shall consider the degree and extent of the harm or potential harm caused by the violation.

The Social Services Commission shall adopt rules concerning the imposition of civil penalties under this subsection.

The clear proceeds of civil penalties imposed pursuant to this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c1) Any person, firm, agency, or corporation that harms or willfully neglects a person under its care is guilty of a Class 1 misdemeanor.

(d) The following programs are exempted from the provisions of this section:

(1) Those that care for three people or less;

(2) Those that care for two or more persons, all of whom are related by blood or marriage to the operator of the facility; [and]

(3) Those that are required by other statutes to be licensed by the Department of Health and Human Services. (1985, c. 349, s. 1; 1993, c. 539, s. 954; 1994, Ex. Sess., c. 24, s. 14(c); 1997-443, s. 11A.118(a); 1998-215, s. 77; 1999-334, s. 2.2; 2001-90, s. 1; 2015-241, s. 12G.3(b).)