§ 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.)