

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-234
SENATE BILL 937**

AN ACT TO REGULATE THE DEVELOPMENT OF ADULT CARE HOMES
UNDER THE CERTIFICATE OF NEED LAW.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-175 reads as rewritten:

"§ 131E-175. Findings of fact.

The General Assembly of North Carolina makes the following findings:

- (8) That because persons who have received exemptions under Section 11.9(a) of S.L. 2000-67, as amended, and under Section 11.69(b) of S.L. 1997-443, as amended by Section 12.16C(a) of S.L. 1998-212, and as amended by Section 1 of S.L. 1999-135, have had sufficient time to complete development plans and initiate construction of beds in adult care homes.
- (9) That because with the enactment of this legislation, beds allowed under the exemptions noted above and pending development will count in the inventory of adult care home beds available to provide care to residents in the State Medical Facilities Plan.
- (10) That because State and county expenditures provide support for nearly three-quarters of the residents in adult care homes through the State County Special Assistance program, and excess bed capacity increases costs per resident day, it is in the public interest to promote efficiencies in delivering care in those facilities by controlling and directing their growth in an effort to prevent underutilization and higher costs and provide appropriate geographical distribution."

SECTION 2. G.S. 131E-176 reads as rewritten:

"§ 131E-176. Definitions.

As used in this Article, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (9b) "Health service facility" means a hospital; psychiatric facility; rehabilitation facility; ~~long term care facility;~~ nursing home facility; adult care home; kidney disease treatment center, including freestanding hemodialysis units; intermediate care facility for the mentally retarded; home health agency office; chemical dependency treatment facility; diagnostic center; oncology treatment center; hospice, hospice inpatient facility, hospice residential care facility; and ambulatory surgical facility.
- (9c) "Health service facility bed" means a bed licensed for use in a health service facility in the categories of (i) acute care beds; (ii) psychiatric beds; (iii) rehabilitation beds; (iv) ~~nursing care~~ nursing home beds; (v) intermediate care beds for the mentally retarded; (vi) chemical dependency treatment beds; (vii) hospice inpatient facility beds; ~~and~~ (viii) hospice residential care facility ~~beds;~~ beds; and (ix) adult care home beds.

...
(12a) "Adult care home" means a facility with seven or more beds licensed under G.S. 131D-2 or Chapter 131E of the General Statutes that 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 and disability and for whom medical care is only occasional or incidental.

...
~~(14d) "Long term care facility" means a health service facility whose bed complement of health service facility beds is composed principally of nursing care facility beds.~~

...
(17b) "Nursing home facility" means a health service facility whose bed complement of health service facility beds is composed principally of nursing home facility beds.

"
...
SECTION 3. Section 11.69 of S.L. 1997-443, as amended by Section 12.16C(a) of S.L. 1998-212, and as further amended by Section 1 of S.L. 1999-135 as amended by Section 11.9(a) of S.L. 2000-67, reads as rewritten:

"Section 11.69. (a) The General Assembly finds:

- (1) That the cost of care for seventy percent (70%) of adult care home residents is paid by the State and the counties;
- (2) That the cost to the State for care for residents in adult care homes is substantial, and high vacancy rates in adult care homes further increases the cost of care;
- (3) That the proliferation of unnecessary adult care home beds results in costly duplication and underuse of facilities and may result in lower quality service; and
- (4) That it is necessary to protect the general welfare and lives, health, and property of the people of the State to slow temporarily licensure of adult care home beds pending a finding of a more definitive means of developing and maintaining the quality of adult care home beds so that unnecessary costs to the State do not result, adult care home beds are available where needed, and that individuals who need care in adult care homes may have access to quality care.

(b) Effective until ~~September 30, 2001,~~ December 31, 2001, the Department of Health and Human Services shall not approve the addition of any adult care home beds for any type home or facility in the State, except as follows:

- (1) Plans submitted for approval prior to May 18, 1997, may continue to be processed for approval;
- (2) Plans submitted for approval subsequent to May 18, 1997, may be processed for approval if the individual or organization submitting the plan demonstrates to the Department that on or before August 25, 1997, the individual or organization purchased real property, entered into a contract to purchase or obtain an option to purchase real property, entered into a binding real property lease arrangement, or has otherwise made a binding financial commitment for the purpose of establishing or expanding an adult care home facility. An owner of real property who entered into a contract prior to August 25, 1997, for the sale of an existing building together with land zoned for the development of not more than 50 adult care home beds with a proposed purchaser who failed to consummate the transaction may, after August 25, 1997, sell the property to another purchaser and the Department may process and approve plans submitted by the purchaser for the development of not more than 50 adult care home beds. It shall

be the responsibility of the applicant to establish, to the satisfaction of the Department, that any of these conditions have been met;

- (3) Adult care home beds in facilities for the developmentally disabled with six beds or less which are or would be licensed under G.S. 131D or G.S. 122C may continue to be approved;
- (4) If the Department determines that the vacancy rate of available adult care home beds in a county is fifteen percent (15%) or less of the total number of available beds in the county as of August 26, 1997, and no new beds have been approved or licensed in the county or plans submitted for approval in accordance with subdivision (1) or (2) of this section which would raise the vacancy rate above fifteen percent (15%) in the county, then the department may accept and approve the addition of beds in that county; or
- (5) If a county board of commissioners determines that a substantial need exists for the addition of adult care home beds in that county, the board of commissioners may request that a specified number of additional beds be licensed for development in their county. In making their determination, the board of commissioners shall give consideration to meeting the needs of Special Assistance clients. The Department may approve licensure of the additional beds from the first facility that files for licensure and subsequently meets the licensure requirements.

(b1) Any person who obtained an exemption under subsection (b) of this section and has not obtained a license for the beds for which the exemption was granted shall no longer be authorized to develop the beds, unless all of the following conditions are met:

- (1) No later than June 1, 2002, the person granted the exemption shall submit to the Department of Health and Human Services fully executed copies of loan closing papers for a loan to the exempted person or a letter from a certified public accountant which states that liquid reserves have been placed in a separately identified account for the exempted person that document sufficient funding to cover the entire capital cost of the project for which the exemption was granted.
- (2) No later than December 1, 2002, the person granted the exemption shall submit to the Department of Health and Human Services documentation from the builder or architect that the foundation and footings of the facility for which the exemption was granted have been completed.
- (3) No later than December 1, 2003, the person granted the exemption shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the local building inspector for the facility for which the exemption was granted.

(b2) Notwithstanding the provisions of subsection (b1) of this section, any person who obtained an exemption under subsection (b) of this section for the construction of a new building that is not connected to any other existing structure by more than a protected walkway, and who obligated one or more Qualifying Financial Commitments for the construction of the building of a value totaling at least twenty-five thousand dollars (\$25,000), before January 1, 2001, may proceed to develop the beds and obtain a license for the operation of the beds if all of the following conditions are met. Exemptions that were received for increases in bed capacity of existing buildings must meet the requirements set forth in subsection (b1) of this section.

- (1) No later than the close of business on June 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services fully executed copies of loan closing papers for a loan to the exempted person or a letter from a certified public accountant which states that liquid reserves have been placed in a separately identified account for the exempted person that document sufficient funding to

cover the entire capital cost of the project for which the exemption was granted.

- (2) Not later than the close of business on December 1, 2004, the person granted the exemption shall submit to the Department of Health and Human Services documentation from the builder or architect that the foundation and footings of the facility for which the exemption was granted have been completed.
- (3) Not later than the close of business on December 1, 2005, the person granted the exemption shall submit to the Department of Health and Human Services a copy of the certificate of occupancy from the building inspector for the facility for which the exemption was granted.

For the purposes of this subsection, "Qualifying Financial Commitments" includes any and all of the following expenses: (i) zoning fees and expenses; (ii) marketing and other demographic research and studies; (iii) site preparation costs including soil testing and soil boring costs; (iv) water and sewer improvements; (v) professional fees associated with the foregoing activities and which are otherwise connected to the development of the site, including accounting, architectural, engineering, and legal fees.

(c) The Department shall study the issue of high vacancy rates for adult care home beds, including the impact of those vacancy rates on cost-effectiveness and quality of care for the occupants of adult care homes and other facilities, and make recommendations with respect to the need for establishing new procedures for determining the State and county reimbursement amounts for Special Assistance recipients, the need for the establishment of a certificate of need type process for adult care homes, or any changes needed in the certificate of need process for any other facilities to prevent high vacancy rates for adult care home beds. The Department also shall study the issue of the availability of beds for Special Assistance clients and how recent new bed development has impacted the availability, quality, and cost of beds available for those clients. The Department shall report the results of its study, along with the recommendations required by this section and any other proposals and recommendations, to the Chairs of the House and Senate Appropriations Subcommittees on Human Resources by February 1, 1998. The Department's report shall include any observations or recommendations it deems appropriate with respect to correlations between the vacancy rates and the condition or age of facilities.

(d) This section shall not apply to adult care home beds which are part of a continuing care facility subject to the jurisdiction of or licensed by the Department of Insurance pursuant to Article 64, Chapter 58 of the General Statutes.

(e) This section is effective when this act becomes law."

SECTION 4. The Department of Health and Human Services shall study and make recommendations regarding the State Medical Facilities Planning methodology that would be necessary in order to delineate the various populations currently being served in facilities regulated as adult care homes according to the needs of those populations. The Department shall report its findings and recommendations to the State Health Care Coordinating Council not later than May 1, 2002.

SECTION 5. Sections 1 and 2 of this act become effective January 1, 2002.
The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 11th day of June, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 3:25 p.m. this 21st day of June, 2001