

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 770*

Short Title: Licensure Changes/Hosp. Adult Cr. Hms., MH.AB (Public)

Sponsors: Senator Goss.

Referred to: Judiciary I (Civil).

March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE THE SECRETARY OF HEALTH AND HUMAN SERVICES TO SUSPEND ADMISSIONS OR SERVICES IN HOSPITALS AS PART OF TAKING ADVERSE ACTION AGAINST A HOSPITAL'S LICENSE; TO ALLOW FOR THE WAIVER OF HOSPITAL LICENSURE RULES DURING AN EMERGENCY; TO ALLOW CRIMINAL BACKGROUND CHECKS OF EMPLOYEES OF LICENSED MENTAL HEALTH FACILITIES BY PRIVATE ENTITIES; TO MAKE TECHNICAL CORRECTIONS IN THE HEALTH CARE PERSONNEL REGISTRY STATUTES; TO REQUIRE FINES TO BE PAID PRIOR TO TRANSFER OF OWNERSHIP OF ADULT CARE HOMES; AND TO CHANGE TIME FRAMES OF INVESTIGATIONS OF ADULT CARE HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-78 reads as rewritten:

"§ 131E-78. Adverse action on a license.

(a) The Department shall have the authority to deny, suspend, revoke, annul, withdraw, recall, cancel, or amend a license in any case when it finds a substantial failure to comply with the provisions of this Part or any rule promulgated under this Part.

~~(b) The Department shall conduct a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act, when:~~

~~(1) The Department denies an application and the applicant requests a hearing; or~~

~~(2) The Department initiates proceedings under subsection (a).~~

~~(c) Any applicant or operator who is dissatisfied with the decision of the Department as a result of the hearing provided in this section and after a written copy of the decision is served, may request a judicial review under Chapter 150A of the General Statutes, the Administrative Procedure Act.~~

(b1) The Secretary may suspend the admission of any new patients to specific areas of a hospital or suspend specific services of a hospital licensed under this Article

1 where the conditions of the hospital constitute a substantial failure to comply with the
2 provisions of this Part or any rule adopted under this Part and are dangerous to the
3 health or safety of the patients. When the Secretary suspends admissions or specific
4 services, the suspension shall be limited to the smallest possible components of the
5 hospital. The Department shall provide consultation to assist the hospital in correcting
6 the conditions that led to the suspension in order that the suspension can be lifted at the
7 earliest possible time after the Secretary is satisfied that conditions or circumstances
8 merit removal of the suspension. In determining whether to suspend admissions or
9 services under this subsection, the Secretary shall consider the following factors:

- 10 (1) The character and degree of impact of the conditions at the hospital on
11 the health and safety of its patients.
12 (2) The character and degree of impact that the proposed suspension of
13 admissions or services would have on the functionality of the hospital
14 and the availability of services necessary to the community or to
15 current patients of the hospital.
16 (3) Whether all other reasonable means for correcting the problem have
17 been exhausted and no less restrictive alternative to suspension of
18 admissions or service exists.

19 (c1) A facility may contest any adverse action on its license under this subsection
20 in accordance with Chapter 150B of the General Statutes. In contesting the adverse
21 action, the facility must file a petition for a contested case within 20 days after the
22 Department mails notice of the adverse action on the licensee."

23 **SECTION 2.** Part 2 of Article 5 of Chapter 131E of the General Statutes is
24 amended by adding the following new section to read:

25 **"§ 131E-84. Waiver of rules for hospitals that provide temporary shelter or**
26 **temporary services during a disaster or emergency.**

27 (a) The Division of Facility Services may temporarily waive, during disasters or
28 emergencies declared in accordance with Article 1 of Chapter 166A of the General
29 Statutes, any rules of the Commission pertaining to a hospital to the extent necessary to
30 allow the facility to provide temporary shelter and temporary services requested by the
31 emergency management agency. The Division may identify, in advance of a declared
32 disaster or emergency, rules that may be waived, and the extent to which the rules may
33 be waived, upon a declaration of disaster or emergency in accordance with Article 1 of
34 Chapter 166A of the General Statutes. The Division may also waive rules under this
35 subsection during a declared disaster or emergency upon the request of an emergency
36 management agency and may rescind the waiver if, after investigation, the Division
37 determines the waiver poses an unreasonable risk to the health, safety, or welfare of any
38 of the persons occupying the facility. The emergency management agency requesting
39 temporary shelter or temporary services shall notify the Division within 72 hours of the
40 time the preapproved waivers are deemed by the emergency management agency to
41 apply.

42 (b) As used in this section 'emergency management agency' is as defined in
43 G.S. 166A-4."

44 **SECTION 3.** G.S. 122C-80(b) reads as rewritten:

1 "(b) Requirement. – An offer of employment by a provider licensed under this
2 Chapter to an applicant to fill a position that does not require the applicant to have an
3 occupational license is conditioned on consent to a State and national criminal history
4 record check of the applicant. If the applicant has been a resident of this State for less
5 than five years, then the offer of employment is conditioned on consent to a State and
6 national criminal history record check of the applicant. The national criminal history
7 record check shall include a check of the applicant's fingerprints. If the applicant has
8 been a resident of this State for five years or more, then the offer is conditioned on
9 consent to a State criminal history record check of the applicant. A provider shall not
10 employ an applicant who refuses to consent to a criminal history record check required
11 by this section. Except as otherwise provided in this subsection, within five business
12 days of making the conditional offer of employment, a provider shall submit a request
13 to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record
14 check required by this ~~section~~section or shall submit a request to a private entity to
15 conduct a State criminal history record check required by this section. Notwithstanding
16 G.S. 114-19.10, the Department of Justice shall return the results of national criminal
17 history record checks for employment positions not covered by Public Law 105-277 to
18 the Department of Health and Human Services, Criminal Records Check Unit. Within
19 five business days of receipt of the national criminal history of the person, the
20 Department of Health and Human Services, Criminal Records Check Unit, shall notify
21 the provider as to whether the information received may affect the employability of the
22 applicant. In no case shall the results of the national criminal history record check be
23 shared with the provider. Providers shall make available upon request verification that a
24 criminal history check has been completed on any staff covered by this section. A
25 county that has adopted an appropriate local ordinance and has access to the Division of
26 Criminal Information data bank may conduct on behalf of a provider a State criminal
27 history record check required by this section without the provider having to submit a
28 request to the Department of Justice. In such a case, the county shall commence with the
29 State criminal history record check required by this section within five business days of
30 the conditional offer of employment by the provider. All criminal history information
31 received by the provider is confidential and may not be disclosed, except to the
32 applicant as provided in subsection (c) of this section."

33 **SECTION 4.(a)** G.S. 131E-114.2 reads as rewritten:

34 "**§ 131E-114.2. Use of medication aides to perform technical aspects of medication**
35 **administration.**

36 (a) Facilities licensed and medication administration services provided under this
37 Part may utilize medication aides to perform the technical aspects of medication
38 administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.

39 (1) A medication aide who is employed in a facility licensed under Article
40 ~~5, Article 6, Part 1, and Article 10~~ 5 and Article 6, Part 1 of this
41 Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry
42 in addition to being listed on the Medication Aide Registry.

1 (2) Medication administration as used in ~~Article 5, Article 6, Part 1, and~~
2 ~~Article 10~~ Article 5 and Article 6, Part 1 of this Chapter shall not
3 include intravenous or injectable medication services.

4 (b) The Commission shall adopt rules to implement this section. Rules adopted
5 by the Commission shall include:

6 (1) Training and competency evaluation of medication aides as provided
7 for under this section.

8 (2) Requirements for listing under the Medication Aide Registry as
9 provided for under ~~G.S. 131E-271~~ G.S. 131E-270.

10 (3) Requirements for supervision of medication aides by licensed health
11 professionals or appropriately qualified supervisory personnel
12 consistent with this Part."

13 **SECTION 4.(b)** G.S. 131E-270(a) reads as rewritten:

14 (a) The Department shall establish and maintain a Medication Aide Registry
15 containing the names of all health care personnel in North Carolina who have
16 successfully completed a medication aide training program that has been approved by
17 the North Carolina Board of ~~Nursing and Nursing~~, passed a State-administered
18 medication aide competency ~~exam~~ exam and met any other requirements set by the
19 Medical Care Commission."

20 **SECTION 5.(a)** G.S. 131D-2(b)(1), as amended by Sections 10.40A(i) and
21 41.2(a) of S.L. 2005-276, reads as rewritten:

22 "(b) Licensure; inspections. –

23 (1) The Department of Health and Human Services shall inspect and
24 license, under rules adopted by the Medical Care Commission, all
25 adult care homes for persons who are aged or mentally or physically
26 disabled except those exempt in subsection (c) of this section. Licenses
27 issued under the authority of this section shall be valid for one year
28 from the date of issuance unless revoked earlier by the Secretary for
29 failure to comply with any part of this section or any rules adopted
30 hereunder. Licenses shall be renewed annually upon filing and the
31 Department's approval of the renewal application. The Department
32 shall charge each adult care home with six or fewer beds a
33 nonrefundable annual license fee in the amount of two hundred fifty
34 dollars (\$250.00). The Department shall charge each adult care home
35 with more than six beds a nonrefundable annual license fee in the
36 amount of three hundred fifty dollars (\$350.00) plus a nonrefundable
37 annual per-bed fee of twelve dollars and fifty cents (\$12.50). A license
38 shall not be renewed nor a new license issued for a change of
39 ownership of an adult care home if outstanding fees, fines, and
40 penalties imposed by the State against the home have not been paid.
41 Fines and penalties for which an appeal is pending are exempt from
42 consideration. The renewal application shall contain all necessary and
43 reasonable information that the Department may by rule require.
44 Except as otherwise provided in this subdivision, the Department may

1 amend a license by reducing it from a full license to a provisional
2 license for a period of not more than 90 days whenever the Department
3 finds that:

- 4 a. The licensee has substantially failed to comply with the
5 provisions of Articles 1 and 3 of Chapter 131D of the General
6 Statutes and the rules adopted pursuant to these Articles;
7 b. There is a reasonable probability that the licensee can remedy
8 the licensure deficiencies within a reasonable length of time;
9 and
10 c. There is a reasonable probability that the licensee will be able
11 thereafter to remain in compliance with the licensure rules for
12 the foreseeable future.

13 The Department may extend a provisional license for not more than
14 one additional 90-day period upon finding that the licensee has made
15 substantial progress toward remedying the licensure deficiencies that
16 caused the license to be reduced to provisional status.

17 The Department may revoke a license whenever:

- 18 a. The Department finds that:
19 1. The licensee has substantially failed to comply with the
20 provisions of Articles 1 and 3 of Chapter 131D of the
21 General Statutes and the rules adopted pursuant to these
22 Articles; and
23 2. It is not reasonably probable that the licensee can remedy
24 the licensure deficiencies within a reasonable length of
25 time; or
26 b. The Department finds that:
27 1. The licensee has substantially failed to comply with the
28 provisions of Articles 1 and 3 of Chapter 131D of the
29 General Statutes and the rules adopted pursuant to these
30 Articles; and
31 2. Although the licensee may be able to remedy the
32 deficiencies within a reasonable time, it is not reasonably
33 probable that the licensee will be able to remain in
34 compliance with licensure rules for the foreseeable
35 future; or
36 c. The Department finds that the licensee has failed to comply
37 with the provisions of Articles 1 and 3 of Chapter 131D of the
38 General Statutes and the rules adopted pursuant to these
39 Articles, and the failure to comply endangered the health,
40 safety, or welfare of the patients in the facility.

41 The Department may also issue a provisional license to a facility,
42 pursuant to rules adopted by the Medical Care Commission, for
43 substantial failure to comply with the provisions of this section or rules
44 adopted pursuant to this section. Any facility wishing to contest the

1 issuance of a provisional license shall be entitled to an administrative
2 hearing as provided in the Administrative Procedure Act, Chapter
3 150B of the General Statutes. A petition for a contested case shall be
4 filed within 30 days after the Department mails written notice of the
5 issuance of the provisional license."

6 **SECTION 5.(b)** G.S. 131D-26 (a1) reads as rewritten:

7 "(a1) When the department of social services in the county in which a facility is
8 located receives a complaint alleging a violation of the provisions of this Article
9 pertaining to patient care or patient safety, the department of social services shall initiate
10 an investigation as follows:

- 11 (1) Immediately upon receipt of the complaint if the complaint alleges a
12 life-threatening situation.
- 13 (2) Within 24 hours if the complaint alleges abuse of a resident as defined
14 by G.S. 131D-20(1).
- 15 (3) Within 48 hours if the complaint alleges neglect of a resident as
16 defined by G.S. 131D-20(8).
- 17 (4) Within two weeks in all other situations.

18 ~~The investigation shall be completed within 30 days.~~ The requirements of this section
19 are in addition to and not in lieu of any investigatory requirements for adult protective
20 services pursuant to Article 6 of Chapter 108A of the General Statutes."

21 **SECTION 6.** This act is effective when it becomes law.