

March 5, 2009

H 456. TECH. & ORG. CHANGES/CERTAIN DHHS FACILITIES. Filed 3/5/09. *TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE LAW REGARDING THE LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED INDIVIDUALS.*

Technical and organizational changes. Under current law, Article 1, entitled *Licensing of Facilities*, of GS Chapter 131D provides licensing requirements regarding maternity homes and adult care homes. This act makes technical and organizational changes as indicated: (1) adds new Article 1B, entitled *Licensing of Maternity Homes*, to GS Chapter 131D; (2) recodifies GS 131D-1 (currently, licensing of maternity homes) as GS 131D-10.10 under new Article 1B of GS Chapter 131D; (3) amends the title of Article 1 of GS Chapter 131D to *Adult Care Homes* (was, *Licensing of Facilities*). Repeals GS 131D-2 (licensing of adult care homes for the aged and disabled). However, provides that licenses issued under GS 131D-2 remain effective until the date of annual renewal at which time the proposed new licensing provisions will apply.

Additionally, repeals GS 131D-41 (regarding compliance history provider file) and GS 131D-42 (regarding report on use of restraint).

Creates new *Part 1. Licensing* and new *Part 2. Other Laws Pertaining to the Inspection and Operation of Adult Care Homes* under GS 131D, Article 1, as amended. Enumerates new statutes 131D-2.1 through 131D-2.8, and reserves 131D-2.9 and 2.10 for future codification purposes, in new Part 1, and GS 131D-2.11 through GS 131D-2.19 in new Part 2.

Part 1. Provides definitions of the terms as used in GS 131D, Article 1, as amended.

Indicates that there are three types of assisted living residences: (1) adult care homes, (2) adult care homes that serve only elderly persons, and (3) multiunit assisted housing with services. Identifies persons with care needs or conditions that do not permit them to be cared for in adult care homes and multiunit assisted housing with services, except when a doctor certifies that appropriate care can be provided in such facilities on a temporary basis to meet their needs and prevent unnecessary relocation. Identifies facilities, institutions, and persons who are exempt from the licensure provisions of this Article. Directs the Department of Health and Human Services (DHHS) to inspect and license all adult care homes except for those meeting the criteria for exemption. Provides regulations for the issuance or renewal of licenses by DHHS. Requires a compliance history review prior to issuing a new license or renewing an existing license and directs that no new license may be issued for any adult care home with certain prior violations resulting in penalties. Provides information regarding appealing a denial of certification. Provides for a nonrefundable annual license fee of (1) \$250 for an adult care home with six or fewer beds and (2) \$350 for an adult care home with more than six beds plus a nonrefundable annual per bed fee of \$12.50.

Provides that DHHS may take legal action in the name of the state to prevent the establishment, conduct, management, or operation of an adult care home without a license in accordance with GS Chapter 37, Article 1, and Rule 65 of the Rules of Civil Procedure.

Authorizes DHHS to issue a provisional license and provides criteria for issuing a provisional license. Also authorizes DHHS to revoke a license and provides the criteria to be considered in a license revocation. Provides that any individual or corporation establishing, managing, conducting, or operating a facility subject to licensure without a license is guilty of a Class 3 misdemeanor, punishable by not more than a \$50 fine for a first offense and not more than \$500 for each subsequent offense. Provides that each day of a continuing violation is considered a separate offense. Also provides criteria for DHHS to suspend a license under GS 150B-3(c). Such a suspension may be contested as provided in GS Chapter 150B.

Part 2. Provides additional laws regarding inspections and monitoring by DHHS and monitoring by county departments of social services of adult care homes required to be licensed under this Article. Specifies training requirements for county departments of social services' adult care home specialists and their supervisors and directs that DHHS' joint training requirements are to be provided as in GS 143B-139.5B. Enumerates the duties of DHHS with regards to monitoring the enforcement of rules regarding environmental quality within adult care homes, maintaining provider files, and making an annual report on October 1 to the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services on the use of physical restraint in adult care homes. Directs DHHS to ensure that facilities conduct and complete an assessment of each resident within 72 hours of admitting the resident and annually

thereafter. Provides directives as to how the assessment is to be used in providing appropriate care for the resident.

Provides that in addition to other administrative penalties in the act, the Secretary of Health and Human Services may suspend admission of any new residents to an adult care home where the conditions of the facility are detrimental to the health or safety of the residents. Provides criteria for imposing the suspension and for contesting the suspension of admissions.

Directs the Medical Care Commission to adopt rules necessary to carry out this Article except as otherwise provided in the Article. Provides that this rule-making authority is in addition to that conferred under GS 131D-4.3 and 131D-4.5.

Authorizes DHHS to review records of residents in any adult care home facility being inspected notwithstanding GS 8-53 or any other laws relating to doctor and patient confidentiality and inures any adult care home facility, its employees, and any other person interviewed in the course of inspection from liability for damages resulting from disclosure of evidence to DHHS.

Asserts that nothing in this section is to be construed to supersede any federal or state antitrust, anti-kickback, or safe harbor laws or regulations. Provides that if any provisions of the proposed provisions or their applications are held to be invalid, the invalidity does not affect other provisions or applications that can be given effect without the invalid provisions or applications.

Provides for the application of other laws as follows: (1) certification of assisted living administrators is as provided under GS Chapter 90, Article 20A; (2) compliance with the Health Care Personnel Registry is as provided under GS 131E-256; and (3) rules for the operation of the adult care portion of a combination home as defined in GS 131E-101 is as provided in GS 131E-104.

Except as otherwise indicated, effective October 1, 2009.

Intro. by Insko.

GS 131D

April 15, 2009

H 456. TECH. & ORG. CHANGES/CERTAIN DHHS FACILITIES. Filed 3/5/09. House committee substitute makes the following changes to 1st edition. Deletes from the definition of *assisted living residence* in GS 131D-2.1 that (1) housing programs for two or more unrelated adults that target their services to elderly or disabled persons in which the only services provided by the housing management, either directly or through an agreement or other arrangements, are amenities that include, at a minimum, one meal a day and housekeeping services are exempt from licensure, but are required to be listed with the Division of Aging and Adult Services, providing information on their location and the number of units operated and (2) this type of housing is not considered assisted living.

Amends proposed new GS 131D-2.4 to add that the Department of Health and Human Services (DHHS) is prohibited from issuing a new license for a change of ownership of an adult care home if outstanding fees, fines, and penalties imposed by the state against the home have not been paid. Exempts fines and penalties for which an appeal is pending from consideration. Makes technical changes.

Deletes proposed GS 131D-2.8 (Penalties) and proposed GS 131D-2.16 (Suspension of admissions). Instead, amends proposed new GS 131D-2.7 to move the provision that provides that DHHS may summarily suspend a license whenever it finds substantial evidence of abuse, neglect, exploitation, or any condition which presents an imminent danger to the health and safety of any resident of the home which was previously in GS 131D-2.8. Also inserts provision from deleted GS 131D-2.16, which provides that the Secretary of DHHS may suspend the admission of any new residents to an adult care home, in addition to other administrative penalties, where the conditions of the adult care home are detrimental to the health and safety of the residents. Also amends proposed new GS 131D-2.6 to include language from deleted GS 131D-2.8 to provide that any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a Class 3 misdemeanor and, upon conviction, is punishable by a maximum \$50 fine for the first offense and a maximum \$500 fine for each subsequent offense.

Effective January 1, 2010, amends proposed GS 131D-2.1(10) to provide that multiunit assisted housing with services programs are required to register *annually* with the Division of

Health Service Regulation. Amends proposed GS 131D-2.5 to require DHHS to charge each registered multiunit assisted housing with services program a \$350 nonrefundable annual registration fee. Makes any individual or corporation that establishes, conducts, manages, or operates a multiunit housing with services program, subject to registration, that fails to register guilty of a Class 3 misdemeanor and, upon conviction, punishable by a maximum \$50 fine for the first offense and a maximum \$500 fine for each subsequent offense. Each day of a continuing violation after conviction is considered a separate offense. Repeals SL 2008-166 (establishes the multiunit assisted housing with services annual registration fee, effective January 1, 2010).

Makes other technical changes.

July 15, 2009

H 456. TECH. & ORG. CHANGES/CERTAIN DHHS FACILITIES. Filed 3/5/09. Senate committee substitute makes the following changes to 2nd edition. Makes conforming changes to GS 58-55-35, GS 90-288.12, GS 90-288.13, GS 90-288.19, GS 113-351, GS 131D-4.6, GS 131D-19, GS 131D-20, GS 131D-29, GS 131E-76, GS 131E-176, GS 131E-231, GS 131E-256, and GS 143B-181.21 by revising statutory references to refer to the provisions in new Part 1 of GS Chapter 131D, Article 1.

August 18, 2009

SL 2009-462 (H 456). TECHNICAL AND ORGANIZATIONAL CHANGES/CERTAIN DHHS FACILITIES. AN ACT TO MAKE TECHNICAL AND ORGANIZATIONAL CHANGES TO THE LAW REGARDING THE LICENSURE AND INSPECTION OF FACILITIES FOR AGED AND DISABLED INDIVIDUALS. Summarized in *Daily Bulletin* 3/5/09, 4/15/09, and 7/15/09. Enacted August 7, 2009. Section 3 is effective January 1, 2010. The remainder is effective October 1, 2009.