

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS85192-ST-7 (3/26)

Short Title: Clarify Group Homes Licensure & LEA reimburs. (Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE LICENSING PROCESS FOR NEW GROUP HOME FACILITIES AND FOR THE REIMBURSEMENT OF EDUCATIONAL COSTS BY THE HOME COUNTY TO THE HOST COUNTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 115C-140.1 reads as rewritten:

"§ 115C-140.1. Cost of education of children in group homes, foster homes, etc.

(a) **(Effective until July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with special needs who is placed in or assigned to a group home, foster home or other similar facility, pursuant to State and federal law, shall be borne by the local board of education in which the group home, foster home or other similar facility is located. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar facility.

(a) **(Effective July 1, 2003)** Notwithstanding the provisions of any other statute and without regard for the place of domicile of a parent or guardian, the cost of a free appropriate public education for a child with ~~special needs disabilities~~ who is placed in or assigned to a group ~~home, home or~~ foster home or other similar facility, ~~home,~~ pursuant to State and federal law, shall be borne by the local board of education in which the group ~~home, home or~~ foster home or other similar facility is located. ~~However, the local school administrative unit in which a child is domiciled shall transfer to the local school administrative unit in which the institution is located an amount equal to the actual local cost in excess of State and federal funding required to educate that child in the local school administrative unit for the fiscal year. Nothing in this section obligates any local board of education to bear any cost for the care and maintenance of a child with special needs in a group home, foster home or other similar~~

1 ~~facility.~~ Local administrative units may submit a Special State Reserve Program
2 application for foster home or group home children whose special education and related
3 services costs exceed the per child group home allocation.

4 (b) The State Board of Education shall use State and federal funds appropriated
5 for children with special needs to establish a reserve fund to reimburse local boards of
6 education for the education costs of children assigned to group homes or other facilities
7 as provided in subsection (a) of this section.

8 (c) The Department shall review the current cost of children with disabilities
9 served in the local school administrative units with group homes or foster homes to
10 determine the actual cost of services.

11 (d) Nothing in this section obligates any local board of education to bear any cost
12 for the care and maintenance of a child with disabilities in a group home or foster
13 home."

14 **SECTION 2.** G.S. 112C-23 reads as rewritten:

15 "**§ 122C-23. Licensure.**

16 (a) No person shall establish, maintain, or operate a licensable facility for the
17 mentally ill, developmentally disabled, or substance abusers without a current license
18 issued by the Secretary.

19 (b) Each license is issued to the person only for the premises named in the
20 application and shall not be transferable or assignable except with prior written approval
21 of the Secretary.

22 (c) Any person who intends to establish, maintain, or operate a licensable facility
23 shall apply to the Secretary for a license. The Secretary shall prescribe by rule the
24 contents of the application forms.

25 (d) The Secretary shall issue a license if the Secretary finds that the person
26 complies with this Article and the rules of the Commission and Secretary.

27 (e) Unless a license is provisional or has been suspended or revoked, it shall be
28 valid for a period not to exceed two years from the date of issue. The expiration date of
29 a license shall be specified on the license when issued. Renewal of a regular license is
30 contingent upon receipt of information required by the Secretary for renewal and
31 continued compliance with this Article and the rules of the Commission and the
32 Secretary.

33 A provisional license for a period not to exceed six months may be granted by the
34 Secretary to a person who is temporarily unable to comply with a rule or rules. During
35 this period the licensable facility shall correct the noncompliance based on a plan
36 submitted to and approved by the Secretary. The noncompliance may not present an
37 immediate threat to the health and safety of the individuals in the licensable facility. A
38 provisional license for an additional period of time to meet the noncompliance may not
39 be issued.

40 (e1) Except as provided in subsection (e2) of this section, ~~The Department the~~
41 Secretary shall not enroll any new provider for Medicaid Home or Community Based
42 services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R.
43 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service
44 to any applicant meeting any of the following criteria:

- 1 (1) Was the owner, principal, or affiliate of a licensable facility under
2 Chapter ~~122C~~122C, ~~or~~ Chapter 131D or Article 7 of Chapter 110 that
3 had its license revoked until 60 months after the date of the revocation.
- 4 (2) Is the owner, principal, or affiliate of a licensable facility that was
5 assessed a penalty for a Type A or Type B violation under Article 3 of
6 this Chapter ~~until 60 months after the date of the violation~~ until:
7 a. Six months from the date of the assessment of the violation.
8 b. Twelve months from the date of the assessment of the second
9 violation if two Type A or Type B violations, or combination
10 thereof, have been assessed in a six-month period.
11 c. Thirty-six months from the date of the assessment of the third
12 violation if three Type A or Type B violations, or combination
13 thereof, have been assessed in a 12-month period.
14 d. Sixty months from the date of the assessment of the fourth
15 violation if four Type A or Type B violations, or combination
16 thereof, have been assessed in a 36 month period.
- 17 (3) Is the owner, principal, or affiliate of a licensable facility that had its
18 license summarily suspended or downgraded to provisional status as a
19 result of violations under G.S. 122C-24.1(a) until 60 months after the
20 date of reinstatement or restoration of the license.
- 21 (4) Is the owner, principal, or affiliate of a licensable facility that had its
22 license summarily suspended or downgraded to provisional status as a
23 result of violations under Article 1A of Chapter 131D until 60 months
24 after the date of reinstatement or restoration of the license.
- 25 (5) Is found by the Secretary to have a prior history as a provider under
26 Chapter 122C, Chapter 130D, or Article 7 of Chapter 110 that
27 indicates the applicant will not be able to comply with licensing or
28 enrollment statutes and rules promulgated under those statutes and will
29 probably place clients at high risk of danger if the applicant were
30 granted enrollment.
- 31 (e1) The Secretary may enroll a provider described in subsection (e1) of this
32 section if any of the following circumstances apply:
- 33 (1) The applicant is an area program or county program providing services
34 under G.S. 122C-141, and there is no other provider of the service in
35 the catchment area.
- 36 (2) The Secretary finds that the area program or county program has
37 shown good cause by clear and convincing evidence why the
38 enrollment should be allowed.
- 39 (f) Upon written application and in accordance with rules of the Commission, the
40 Secretary may for good cause waive any of the rules implementing this Article,
41 provided those rules do not affect the health, safety, or welfare of the individuals within
42 the licensable facility. Decisions made pursuant to this subsection may be appealed to
43 the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

1 (g) The Secretary may suspend the admission of any new clients to a facility
2 licensed under this Article where the conditions of the facility are detrimental to the
3 health or safety of the clients. This suspension shall be for the period determined by the
4 Secretary and shall remain in effect until the Secretary is satisfied that conditions or
5 circumstances merit removal of the suspension. In suspending admissions under this
6 subsection, the Secretary shall consider the following factors:

7 (1) The degree of sanctions necessary to ensure compliance with this
8 section and rules adopted to implement this subsection, and

9 (2) The character and degree of impact of the conditions at the facility on
10 the health or safety of its clients.

11 A facility may contest a suspension of admissions under this subsection in
12 accordance with Chapter 150B of the General Statutes. In contesting the suspension of
13 admissions, the facility must file a petition for a contested case within 20 days after the
14 Department mails notice of suspension of admissions to the licensee."

15 **SECTION 3.** G.S. 131D-2 reads as rewritten:

16 **"§ 131D-2. Licensing of adult care homes for the aged and disabled.**

17 (a) The following definitions will apply in the interpretation of this section:

18 (1) "Abuse" means the willful or grossly negligent infliction of physical
19 pain, injury or mental anguish, unreasonable confinement, or the
20 willful or grossly negligent deprivation by the administrator or staff of
21 an adult care home of services which are necessary to maintain mental
22 and physical health.

23 (1a) "Administrator" means a person approved by the Department of Health
24 and Human Services who has the responsibility for the total operation
25 of a licensed domiciliary home.

26 (1b) "Adult care home" is an assisted living residence in which the housing
27 management provides 24-hour scheduled and unscheduled personal
28 care services to two or more residents, either directly or, for scheduled
29 needs, through formal written agreement with licensed home care or
30 hospice agencies. Some licensed adult care homes provide supervision
31 to persons with cognitive impairments whose decisions, if made
32 independently, may jeopardize the safety or well-being of themselves
33 or others and therefore require supervision. Medication in an adult care
34 home may be administered by designated, trained staff. Adult care
35 homes that provide care to two to six unrelated residents are
36 commonly called family care homes.

37 (1c) "Amenities" means services such as meals, housekeeping,
38 transportation, and grocery shopping that do not involve hands-on
39 personal care.

40 (1d) "Assisted living residence" means any group housing and services
41 program for two or more unrelated adults, by whatever name it is
42 called, that makes available, at a minimum, one meal a day and
43 housekeeping services and provides personal care services directly or
44 through a formal written agreement with one or more licensed home

1 care or hospice agencies. The Department may allow nursing service
2 exceptions on a case-by-case basis. Settings in which services are
3 delivered may include self-contained apartment units or single or
4 shared room units with private or area baths. Assisted living residences
5 are to be distinguished from nursing homes subject to provisions of
6 G.S. 131E-102. Effective October 1, 1995, there are two types of
7 assisted living residences: adult care homes and group homes for
8 developmentally disabled adults. Effective July 1, 1996, there is a third
9 type, multiunit assisted housing with services.

10 (1e) "Compensatory agent" means a spouse, relative, or other caretaker
11 who lives with a resident and provides care to a resident.

12 (1f) "Department" means the Department of Health and Human Services
13 unless some other meaning is clearly indicated from the context.

14 (2) Repealed by Session Laws 2001-209, s. 1(a).

15 (3) Repealed by Session Laws 1995, c. 535, s. 8.

16 (4) "Exploitation" means the illegal or improper use of an aged or disabled
17 resident or his resources for another's profit or advantage.

18 (5) "Family care home" means an adult care home having two to six
19 residents. The structure of a family care home may be no more than
20 two stories high and none of the aged or physically disabled persons
21 being served there may be housed in the upper story without provision
22 for two direct exterior ground-level accesses to the upper story.

23 (6) Repealed by Session Laws 2001-209, s. 1(b).

24 (7) Repealed by Session Laws 1995, c. 535, s. 8.

25 (7a) Effective July 1, 1996, "multiunit assisted housing with services"
26 means an assisted living residence in which hands-on personal care
27 services and nursing services which are arranged by housing
28 management are provided by a licensed home care or hospice agency,
29 through an individualized written care plan. The housing management
30 has a financial interest or financial affiliation or formal written
31 agreement which makes personal care services accessible and
32 available through at least one licensed home care or hospice agency.
33 The resident has a choice of any provider, and the housing
34 management may not combine charges for housing and personal care
35 services. All residents, or their compensatory agents, must be capable,
36 through informed consent, of entering into a contract and must not be
37 in need of 24-hour supervision. Assistance with self-administration of
38 medications may be provided by appropriately trained staff when
39 delegated by a licensed nurse according to the home care agency's
40 established plan of care. Multiunit assisted housing with services
41 programs are required to register with the Division of Facility Services
42 and to provide a disclosure statement. The disclosure statement is
43 required to be a part of the annual rental contract that includes a
44 description of the following requirements:

- 1 a. Emergency response system;
- 2 b. Charges for services offered;
- 3 c. Limitations of tenancy;
- 4 d. Limitations of services;
- 5 e. Resident responsibilities;
- 6 f. Financial/legal relationship between housing management and
- 7 home care or hospice agencies;
- 8 g. A listing of all home care or hospice agencies and other
- 9 community services in the area;
- 10 h. An appeals process; and
- 11 i. Procedures for required initial and annual resident screening
- 12 and referrals for services.

13 Continuing care retirement communities, subject to regulation by the
14 Department of Insurance under Chapter 58 of the General Statutes, are
15 exempt from the regulatory requirements for multiunit assisted
16 housing with services programs.

- 17 (8) "Neglect" means the failure to provide the services necessary to
- 18 maintain a resident's physical or mental health.
- 19 (9) "Personal care services" means any hands-on services allowed to be
- 20 performed by In-Home Aides II or III as outlined in Department rules.
- 21 (10) "Registration" means the submission by a multiunit assisted housing
- 22 with services provider of a disclosure statement containing all the
- 23 information as outlined in subdivision (7a) of this subsection.
- 24 (11) "Resident" means a person living in an assisted living residence for the
- 25 purpose of obtaining access to housing and services provided or made
- 26 available by housing management.
- 27 (12) "Secretary" means the Secretary of Health and Human Services unless
- 28 some other meaning is clearly indicated from the context.

29 (a1) Persons not to be cared for in adult care homes. – Except when a physician
30 certifies that appropriate care can be provided on a temporary basis to meet the
31 resident's needs and prevent unnecessary relocation, adult care homes shall not care for
32 individuals with any of the following conditions or care needs:

- 33 (1) Ventilator dependency;
- 34 (2) Individuals requiring continuous licensed nursing care;
- 35 (3) Individuals whose physician certifies that placement is no longer
- 36 appropriate;
- 37 (4) Individuals whose health needs cannot be met in the specific adult care
- 38 home as determined by the residence; and
- 39 (5) Such other medical and functional care needs as the Medical Care
- 40 Commission determines cannot be properly met in an adult care home.

41 (a2) Persons not to be cared for in multiunit assisted housing with services. –
42 Except when a physician certifies that appropriate care can be provided on a temporary
43 basis to meet the resident's needs and prevent unnecessary relocation, multiunit assisted

1 housing with services shall not care for individuals with any of the following conditions
2 or care needs:

- 3 (1) Ventilator dependency;
- 4 (2) Dermal ulcers III and IV, except those stage III ulcers which are
5 determined by an independent physician to be healing;
- 6 (3) Intravenous therapy or injections directly into the vein, except for
7 intermittent intravenous therapy managed by a home care or hospice
8 agency licensed in this State;
- 9 (4) Airborne infectious disease in a communicable state that requires
10 isolation of the individual or requires special precautions by the
11 caretaker to prevent transmission of the disease, including diseases
12 such as tuberculosis and excluding infections such as the common
13 cold;
- 14 (5) Psychotropic medications without appropriate diagnosis and treatment
15 plans;
- 16 (6) Nasogastric tubes;
- 17 (7) Gastric tubes except when the individual is capable of independently
18 feeding himself and caring for the tube, or as managed by a home care
19 or hospice agency licensed in this State;
- 20 (8) Individuals requiring continuous licensed nursing care;
- 21 (9) Individuals whose physician certifies that placement is no longer
22 appropriate;
- 23 (10) Unless the individual's independent physician determines otherwise,
24 individuals who require maximum physical assistance as documented
25 by a uniform assessment instrument and who meet Medicaid nursing
26 facility level-of-care criteria as defined in the State Plan for Medical
27 Assistance. Maximum physical assistance means that an individual has
28 a rating of total dependence in four or more of the seven activities of
29 daily living as documented on a uniform assessment instrument;
- 30 (11) Individuals whose health needs cannot be met in the specific multiunit
31 assisted housing with services as determined by the residence; and
- 32 (12) Such other medical and functional care needs as the Medical Care
33 Commission determines cannot be properly met in multiunit assisted
34 housing with services.

35 (a3) Hospice care. – At the request of the resident, hospice care may be provided
36 in an assisted living residence under the same requirements for hospice programs as
37 described in Article 10 of Chapter 131E of the General Statutes.

38 (b) Licensure; inspections. –

- 39 (1) The Department of Health and Human Services shall inspect and
40 license, under rules adopted by the Medical Care Commission, all
41 adult care homes for persons who are aged or mentally or physically
42 disabled except those exempt in subsection (c) of this section. Licenses
43 issued under the authority of this section shall be valid for one year
44 from the date of issuance unless revoked earlier by the Secretary for

1 failure to comply with any part of this section or any rules adopted
2 hereunder. Licenses shall be renewed annually upon filing and the
3 Department's approval of the renewal application. A license shall not
4 be renewed if outstanding fines and penalties imposed by the State
5 against the home have not been paid. Fines and penalties for which an
6 appeal is pending are exempt from consideration. The renewal
7 application shall contain all necessary and reasonable information that
8 the Department may by rule require. Except as otherwise provided in
9 this subdivision, the Department may amend a license by reducing it
10 from a full license to a provisional license for a period of not more
11 than 90 days whenever the Department finds that:

- 12 a. The licensee has substantially failed to comply with the
13 provisions of Articles 1 and 3 of Chapter 131D of the General
14 Statutes and the rules adopted pursuant to these Articles;
- 15 b. There is a reasonable probability that the licensee can remedy
16 the licensure deficiencies within a reasonable length of time;
17 and
- 18 c. There is a reasonable probability that the licensee will be able
19 thereafter to remain in compliance with the licensure rules for
20 the foreseeable future.

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

25 The Department may revoke a license whenever:

- 26 a. 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. It is not reasonably probable that the licensee can remedy
32 the licensure deficiencies within a reasonable length of
33 time; or
- 34 b. The Department finds that:
 - 35 1. The licensee has substantially failed to comply with the
36 provisions of Articles 1 and 3 of Chapter 131D of the
37 General Statutes and the rules adopted pursuant to these
38 Articles; and
 - 39 2. Although the licensee may be able to remedy the
40 deficiencies within a reasonable time, it is not reasonably
41 probable that the licensee will be able to remain in
42 compliance with licensure rules for the foreseeable
43 future; or

- 1 c. The Department finds that the licensee has failed to comply
2 with the provisions of Articles 1 and 3 of Chapter 131D of the
3 General Statutes and the rules adopted pursuant to these
4 Articles, and the failure to comply endangered the health,
5 safety, or welfare of the patients in the facility.

6 The Department may also issue a provisional license to a facility,
7 pursuant to rules adopted by the Medical Care Commission, for
8 substantial failure to comply with the provisions of this section or rules
9 adopted pursuant to this section. Any facility wishing to contest the
10 issuance of a provisional license shall be entitled to an administrative
11 hearing as provided in the Administrative Procedure Act, Chapter
12 150B of the General Statutes. A petition for a contested case shall be
13 filed within 30 days after the Department mails written notice of the
14 issuance of the provisional license.

- 15 (1a) In addition to the licensing and inspection requirements mandated by
16 subdivision (1) of this subsection, the Department shall ensure that
17 adult care homes required to be licensed by this Article are monitored
18 for licensure compliance on a regular basis. In carrying out this
19 requirement, the Department shall work with county departments of
20 social services to do the routine monitoring and to have the Division of
21 Facility Services oversee this monitoring and perform any follow-up
22 inspection called for. The Department shall monitor regularly the
23 enforcement of rules pertaining to air circulation, ventilation, and room
24 temperature in resident living quarters. These rules shall include the
25 requirement that air conditioning or at least one fan per resident
26 bedroom and living and dining areas be provided when the
27 temperature in the main center corridor exceeds 80 degrees Fahrenheit.
28 The Department shall also keep an up-to-date directory of all persons
29 who are administrators as defined in subdivision (1a) of subsection (a)
30 of this section.

- 31 (1b) No new license shall be issued for any adult care home to an applicant
32 for licensure who:

- 33 a. Was the owner, principal, or affiliate of ~~an adult care home a~~
34 licensable facility under Chapter 122C, Chapter 131D or Article
35 7 of Chapter 110 that had its license revoked until one full year
36 after the date of revocation;
37 b. Is the owner, principal, or affiliate of an adult care home that
38 was assessed a penalty for a Type A or Type B violation until
39 the earlier of one year from the date the penalty was assessed or
40 until the home has substantially complied with the correction
41 plan established pursuant to G.S. 131D-34 and substantial
42 compliance has been certified by the Department; or
43 c. Is the owner, principal, or affiliate of an adult care home that
44 had its license summarily suspended or downgraded to

1 provisional status as a result of Type A or B violations until six
2 months from the date of reinstatement of the license, restoration
3 from provisional to full licensure, or termination of the
4 provisional license, as applicable.

- 5 d. Is the owner, principal, or affiliate of a licensable facility that
6 had its license summarily suspended or downgraded to
7 provisional status as a result of violations under Chapter 122C
8 or Article 1 of Chapter 131D or had its license summarily
9 suspended or denied under Article 7 of Chapter 110 until six
10 months from the date of the reinstatement of the license,
11 restoration from provisional to full licensure, or termination of
12 the provisional license, as applicable.

13 An applicant for new licensure may appeal a denial of certification
14 of substantial compliance under subparagraph b. of this subdivision by
15 filing with the Department a request for review by the Secretary within
16 10 days of the date of denial of the certification. Within 10 days of
17 receipt of the request for review the Secretary shall issue to the
18 applicant a written determination that either denies certification of
19 substantial compliance or certifies substantial compliance. The
20 decision of the Secretary is final.

- 21 (2) Any individual or corporation that establishes, conducts, manages, or
22 operates a facility subject to licensure under this section without a
23 license is guilty of a Class 3 misdemeanor, and upon conviction shall
24 be punishable only by a fine of not more than fifty dollars (\$50.00) for
25 the first offense and not more than five hundred dollars (\$500.00) for
26 each subsequent offense. Each day of a continuing violation after
27 conviction shall be considered a separate offense.
- 28 (3) In addition, the Department may summarily suspend a license pursuant
29 to G.S. 150B-3(c) whenever it finds substantial evidence of abuse,
30 neglect, exploitation or any condition which presents an imminent
31 danger to the health and safety of any resident of the home. Any
32 facility wishing to contest summary suspension of a license shall be
33 entitled to an administrative hearing as provided in the Administrative
34 Procedure Act, Chapter 150B of the General Statutes. A petition for a
35 contested case shall be filed within 20 days after the Department mails
36 a notice of summary suspension to the licensee.
- 37 (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality
38 of communications between physician and patient, in the course of an
39 inspection conducted under subsection (b):
- 40 a. Department representatives may review any writing or other
41 record concerning the admission, discharge, medication, care,
42 medical condition, or history of any person who is or has been a
43 resident of the facility being inspected, and

1 b. Any person involved in giving care or treatment at or through
2 the facility may disclose information to Department
3 representatives;

4 unless the resident objects in writing to review of his records or
5 disclosure of such information.

6 The facility, its employees and any other person interviewed in the
7 course of an inspection shall be immune from liability for damages
8 resulting from disclosure of any information to the Department.

9 The Department shall not disclose:

10 a. Any confidential or privileged information obtained under this
11 subsection unless the resident or his legal representative
12 authorizes disclosure in writing or unless a court of competent
13 jurisdiction orders disclosure, or

14 b. The name of anyone who has furnished information concerning
15 a facility without that person's consent.

16 The Department shall institute appropriate policies and procedures
17 to ensure that unauthorized disclosure does not occur. All confidential
18 or privileged information obtained under this section and the names of
19 persons providing such information shall be exempt from Chapter 132
20 of the General Statutes.

21 (5) Notwithstanding any law to the contrary, Chapter 132 of the General
22 Statutes, the Public Records Law, applies to all records of the State
23 Division of Social Services of the Department of Health and Human
24 Services and of any county department of social services regarding
25 inspections of domiciliary care facilities except for information in the
26 records that is confidential or privileged, including medical records, or
27 that contains the names of residents or complainants.

28 (6) Prior to issuing a new license or renewing an existing license, the
29 Department shall conduct a compliance history review of the facility
30 and its principals and affiliates. The Department may refuse to license
31 a facility when the compliance history review shows a pattern of
32 noncompliance with State law by the facility or its principals or
33 affiliates, or otherwise demonstrates disregard for the health, safety,
34 and welfare of residents in current or past facilities. The Department
35 shall require compliance history information and make its
36 determination according to rules adopted by the Medical Care
37 Commission.

38 (c) The following are excluded from the provisions of this section and are not
39 required to be registered or obtain licensure under this section:

40 (1) Facilities licensed under Chapter 122C or Chapter 131E of the General
41 Statutes;

42 (2) Persons subject to rules of the Division of Vocational Rehabilitation
43 Services;

- 1 (3) Facilities that care for no more than four persons, all of whom are
2 under the supervision of the United States Veterans Administration;
3 (4) Facilities that make no charges for housing, amenities, or personal care
4 service, either directly or indirectly; and
5 (5) Institutions that are maintained or operated by a unit of government
6 and that were established, maintained, or operated by a unit of
7 government and exempt from licensure by the Department on
8 September 30, 1995.

9 (c1) Although the contract obligation still remains to pay the housing management
10 for any services covered by the contract between the resident and housing management,
11 the resident of an assisted living facility has the right to obtain services not at the
12 expense of the housing management, from providers other than the housing
13 management.

14 (c2) The Medical Care Commission shall adopt rules necessary to carry out this
15 section. The Commission has the authority, in adopting rules, to specify the limitation of
16 nursing services provided by assisted living residences. In developing rules, the
17 Commission shall consider the need to ensure comparable quality of services provided
18 to residents, whether these services are provided directly by a licensed assisted living
19 provider, licensed home care agency, or hospice. In adult care homes, living
20 arrangements where residents require supervision due to cognitive impairments, rules
21 shall be promulgated to ensure that supervision is appropriate and adequate to meet the
22 special needs of these residents.

23 (c3) Nothing in this section shall be construed to supersede any federal or State
24 antitrust, antikickback, or safe harbor laws or regulations.

25 (c4) Housing programs for two or more unrelated adults that target their services
26 to elderly or disabled persons in which the only services provided by the housing
27 management, either directly or through an agreement or other arrangements, are
28 amenities that include, at a minimum, one meal a day and housekeeping services, are
29 exempt from licensure, but are required to be listed with the Division of Aging,
30 providing information on their location and number of units operated. This type of
31 housing is not considered assisted living.

32 (d) Repealed by Session Laws 1995, c. 535, s. 8.

33 (e) The Department shall ensure that facilities conduct and complete an
34 assessment of each resident within seventy-two hours of admitting the resident and
35 annually thereafter. In conducting the assessment, the facility shall use an assessment
36 instrument approved by the Secretary upon the advice of the Director of the Division of
37 Aging. The Department shall provide ongoing training for facility personnel in the use
38 of the approved assessment instrument.

39 The facility shall use the assessment to develop appropriate and comprehensive
40 service plans and care plans and to determine the level and type of facility staff that is
41 needed to meet the needs of residents. The assessment shall determine a resident's level
42 of functioning and shall include, but not be limited to, cognitive status and physical
43 functioning in activities of daily living. Activities of daily living are personal functions
44 essential for the health and well-being of the resident. The assessment shall not serve as

1 the basis for medical care. The assessment shall indicate if the resident requires referral
2 to the resident's physician or other appropriate licensed health care professional or
3 community resource.

4 The Department as part of its inspection and licensing of adult care homes shall
5 review assessments and related service plans and care plans for a selected number of
6 residents. In conducting this review, the Department shall determine:

- 7 (1) Whether the appropriate assessment instrument was administered and
8 interpreted correctly;
- 9 (2) Whether the facility is capable of providing the necessary services;
- 10 (3) Whether the service plan or care plan conforms to the results of an
11 appropriately administered and interpreted assessment; and
- 12 (4) Whether the service plans or care plans are being implemented fully
13 and in accordance with an appropriately administered and interpreted
14 assessment.

15 If the Department finds that the facility is not carrying out its assessment
16 responsibilities in accordance with this section, the Department shall notify the facility
17 and require the facility to implement a corrective action plan. The Department shall also
18 notify the resident of the results of its review of the assessment, service plans, and care
19 plans developed for the resident. In addition to administrative penalties, the Secretary
20 may suspend the admission of any new residents to the facility. The suspension shall be
21 for the period determined by the Secretary and shall remain in effect until the Secretary
22 is satisfied that conditions or circumstances merit removing the suspension.

23 (f) If any provisions of this section or the application of it to any person or
24 circumstance is held invalid, the invalidity does not affect other provisions or
25 applications of the section which can be given effect without the invalid provision or
26 application, and to this end the provisions of this section are severable.

27 (g) In order for an adult care home to maintain its license, it shall not hinder or
28 interfere with the proper performance of duty of a lawfully appointed community
29 advisory committee, as defined by G.S. 131D-31 and G.S. 131D-32.

30 (h) Suspension of admissions to adult care home:

- 31 (1) In addition to the administrative penalties described in subsection (b),
32 the Secretary may suspend the admission of any new residents to an
33 adult care home, where the conditions of the adult care home are
34 detrimental to the health or safety of the residents. This suspension
35 shall be for the period determined by the Secretary and shall remain in
36 effect until the Secretary is satisfied that conditions or circumstances
37 merit removing the suspension.
- 38 (2) In imposing a suspension under this subsection, the Secretary shall
39 consider the following factors:
 - 40 a. The degree of sanctions necessary to ensure compliance with
41 this section and rules adopted hereunder; and
 - 42 b. The character and degree of impact of the conditions at the
43 home on the health or safety of its residents.

1 (3) The Secretary of Health and Human Services shall adopt rules to
2 implement this subsection.

3 (4) Any facility wishing to contest a suspension of admissions shall be
4 entitled to an administrative hearing as provided in the Administrative
5 Procedure Act, Chapter 150B of the General Statutes. A petition for a
6 contested case shall be filed within 20 days after the Department mails
7 a notice of suspension of admissions to the licensee.

8 (i) Notwithstanding the existence or pursuit of any other remedy, the Department
9 of Health and Human Services may, in the manner provided by law, maintain an action
10 in the name of the State for injunction or other process against any person to restrain or
11 prevent the establishment, conduct, management or operation of an adult care home
12 without a license. Such action shall be instituted in the superior court of the county in
13 which any unlicensed activity has occurred or is occurring.

14 If any person shall hinder the proper performance of duty of the Secretary or his
15 representative in carrying out this section, the Secretary may institute an action in the
16 superior court of the county in which the hindrance has occurred for injunctive relief
17 against the continued hindrance, irrespective of all other remedies at law.

18 Actions under this subsection shall be in accordance with Article 37 of Chapter 1 of
19 the General Statutes and Rule 65 of the Rules of Civil Procedure."

20 **SECTION 4.** G.S. 131D-10.3 reads as rewritten:

21 "**§ 131D-10.3. Licensure required.**

22 (a) No person shall operate, establish or provide foster care for children or
23 receive and place children in residential care facilities, family foster homes, or adoptive
24 homes without first applying for a license to the Department and submitting the required
25 information on application forms provided by the Department.

26 (b) Persons licensed or seeking a license under this Article shall permit the
27 Department access to premises and information required to determine whether the
28 person is in compliance with licensing rules of the Commission.

29 (c) Persons licensed pursuant to this Article shall be periodically reviewed by the
30 Department to determine whether they comply with Commission rules and whether
31 licensure shall continue.

32 (d) This Article shall apply to all persons intending to organize, develop or
33 provide foster care for children or receive and place children in residential child-care
34 facilities, family foster homes or adoptive homes irrespective of such persons having
35 applied for or obtained a certification, registration or permit to carry on work not
36 controlled by this Article except persons exempted in G.S. 131D-10.4.

37 (e) Unless revoked or modified to a provisional or suspended status, the terms of
38 a license issued by the Department shall be in force for a period not to exceed 24
39 months from the date of issuance under rules adopted by the Commission.

40 (f) Persons licensed or seeking a license who are temporarily unable to comply
41 with a rule or rules may be granted a provisional license. The provisional license can be
42 issued for a period not to exceed six months. The noncompliance with a rule or rules
43 shall not present an immediate threat to the health and safety of the children, and the
44 person shall have a plan approved by the Department to correct the area(s) of

1 noncompliance within the provisional period. A provisional license for an additional
2 period of time to meet the same area(s) of noncompliance shall not be issued.

3 (g) In accordance with Commission rules, a person may submit to the
4 Department documentation of compliance with the standards of a nationally recognized
5 accrediting body, and the Department on the basis of such accreditation may deem the
6 person in compliance with one or more Commission licensing rules.

7 (h) Except as provided in subsection (i) of this section, the Secretary, The
8 ~~Department~~ shall not enroll any new provider for Medicaid Home or Community Based
9 services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R.
10 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service
11 to any applicant meeting any of the following criteria:

- 12 (1) Was the owner, principal, or affiliate of a licensable facility under
13 ~~Chapter 122C or 122C, Chapter 131D or Article 7 of Chapter 110~~ that
14 had its license revoked until 60 months after the date of the revocation.
- 15 (2) Is the owner, principal, or affiliate of a licensable facility that was
16 assessed a penalty for a Type A or Type B violation under Article 3 of
17 Chapter 122C ~~until 60 months after the date of the violation until:~~
 - 18 a. Six months from the date of the assessment of the violation.
 - 19 b. Twelve months from the date of the assessment of the second
20 violation if two Type A or Type B violations, or combination
21 thereof, have been assessed in a six-month period.
 - 22 c. Thirty-six months from the date of the assessment of the third
23 violation if three Type A or Type B violations, or combination
24 thereof, have been assessed in a 12-month period.
 - 25 d. Sixty months from the date of the assessment of the fourth
26 violation if four Type A or Type B violations, or combination
27 thereof, have been assessed in a 36-month period.
- 28 (3) Is the owner, principal, or affiliate of a licensable facility that had its
29 license summarily suspended or downgraded to provisional status as a
30 result of violations under G.S. 122C- 24.1(a) until 60 months after the
31 date of reinstatement or restoration of the license.
- 32 (4) Is the owner, principal, or affiliate of a licensable facility that had its
33 license summarily suspended or downgraded to provisional status as a
34 result of violations under Article 1A of Chapter 131D or had its license
35 summarily suspended or denied under Article 7 of Chapter 110 until
36 60 months after the date of reinstatement or restoration of the license.
- 37 (5) Is found by the Secretary to have a prior history as a provider under
38 Chapter 122C, Chapter 130D, or Article 7 of Chapter 110 that
39 indicates the applicant will not be able to comply with licensing or
40 enrollment statutes and rules promulgated under those statutes and will
41 probably place clients at high risk of danger if the applicant were
42 granted enrollment.

43 (i) The Secretary may enroll a provider described in subsection (e1) of this
44 section if any of the following circumstances apply:

1 (1) The applicant is an area program or county program providing services
2 under G.S. 122C-141, and there is no other provider of the service in
3 the catchment area.

4 (2) The Secretary finds that the area program or county program has
5 shown good cause by clear and convincing evidence why the
6 enrollment should be allowed."

7 **SECTION 5.** Section 3 of S.L. 2002-164 reads as rewritten:

8 **"SECTION 3.** The State Board of Education shall provide for a local school
9 administrative unit to request funds from the Group Homes Program for Children with
10 Disabilities if a child assigned to that unit was not in that unit's April headcount
11 childcount for exceptional children with disabilities or the average daily membership for
12 the previous school year, even if the local school administrative unit received Group
13 Homes Program funds for that child for a portion of the preceding school year. The
14 local school administrative unit shall receive full school year funding upon the local
15 school unit's request for group home or foster home program funds. These funds may
16 not be requested except by a local school administrative unit."

17 **SECTION 6(a).** The Department of Health and Human Services, in
18 conjunction with the Department of Juvenile Justice and Delinquency Prevention, and
19 the Department of Public Instruction shall report on the following Program information:

20 (1) The number and other demographic information of children served
21 utilizing Comprehensive Treatment Services Program funds or who
22 are placed out of their home under the auspices of one of the
23 referenced agencies.

24 (2) The amount and source of funds expended to implement the Program.

25 (3) Information regarding the number of children screened for mental
26 health, developmental disabilities, or substance abuse; specific
27 placement of children including the placement of children in programs
28 or facilities outside of the child's home county; and treatment needs of
29 children served.

30 (4) The average length of stay in residential treatment, transition, and
31 return to home.

32 (5) The number of children diverted from institutions or other out-of-home
33 placements such as training schools and State psychiatric hospitals and
34 a description of the services provided.

35 (6) Recommendations on other areas that need to be improved.

36 (7) Other information relevant to successfully maintaining children in
37 their county of residence.

38 (8) A method of identifying and reporting child placements outside of the
39 family unit in group homes or therapeutic foster care home settings.

40 **SECTION 6(b).** The Department of Health and Human Services, in
41 conjunction with the Department of Juvenile Justice and Delinquency Prevention, and
42 the Department of Public Instruction shall submit a report by April 1, 2004, on the
43 method of identifying and reporting child placements outside of the family unit in group
44 homes or therapeutic foster care home settings to the House of Representatives

1 Appropriations Subcommittee on Health and Human Services, the Senate
2 Appropriations Committee on Health and Human Services, and the Fiscal Research
3 Division.

4 **SECTION 7.** There is appropriated from the General Fund to the State Aid
5 for Children with Disabilities in the Public School Fund the sum of five hundred
6 thousand dollars (\$500,000) for each year of the 2003-2004 fiscal year.

7 **SECTION 8.** This act is effective when it becomes law.