

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 926
Health & Human Resources Committee Substitute Adopted 4/21/03
House Committee Substitute Favorable 6/10/03

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

Sponsors:

Referred to:

April 3, 2003

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, year after all State and federal funding has been exhausted. ~~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.~~

1 (b) The State Board of Education shall use State and federal funds appropriated
2 for children with special needs to establish a reserve fund to reimburse local boards of
3 education for the education costs of children assigned to group homes or other facilities
4 as provided in subsection (a) of this section. Local school administrative units may
5 submit a Special State Reserve Program application for foster home or group home
6 children whose special education and related services costs exceed the per child group
7 home allocation.

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 **SECTION 2.** G.S. 122C-23 reads as rewritten:

12 "**§ 122C-23. Licensure.**

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

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

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

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

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

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

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

42 (1) ~~Was The applicant was the owner, principal, or affiliate of a licensable~~
43 facility under Chapter ~~122C~~122C, ~~or Chapter 131D~~131D, or Article 7

1 of Chapter 110 that had its license revoked until 60 months after the
2 date of the revocation.

3 (2) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
4 facility that was assessed a penalty for a Type A or Type B violation
5 under Article 3 of this Chapter ~~until 60 months after the date of the~~
6 ~~violation.~~Chapter, or any combination thereof, and any one of the
7 following conditions exist:

8 a. A single violation has been assessed in the six months prior to
9 the application.

10 b. Two violations have been assessed in the 18 months prior to the
11 application and 18 months have not passed from the date of the
12 most recent violation.

13 c. Three violations have been assessed in the 36 months prior to
14 the application and 36 months have not passed from the date of
15 the most recent violation.

16 d. Four or more violations have been assessed in the 60 months
17 prior to application and 60 months have not passed from the
18 date of the most recent violation.

19 (3) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
20 facility that had its license summarily suspended or downgraded to
21 provisional status as a result of violations under G.S. 122C-24.1(a)
22 until 60 months after the date of reinstatement or restoration of the
23 license.

24 (4) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
25 facility that had its license summarily suspended or downgraded to
26 provisional status as a result of violations under Article 1A of Chapter
27 131D until 60 months after the date of reinstatement or restoration of
28 the license.

29 (e2) The Secretary may enroll a provider described in subsection (e1) of this
30 section if any of the following circumstances apply:

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

34 (2) The Secretary finds that the area program or county program has
35 shown good cause by clear and convincing evidence why the
36 enrollment should be allowed.

37 (e3) For purposes of subdivision (e1)(2), fines assessed prior to October 23, 2002,
38 are not applicable to this provision. However, licensure or enrollment shall be denied if
39 an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of
40 Chapter 110 is such that the Secretary has concluded the applicant will likely be unable
41 to comply with licensing or enrollment statutes, rules, or regulations. In the event the
42 Secretary denies licensure or enrollment under this subsection, the reasons for the denial
43 and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in
44 writing.

1 (f) Upon written application and in accordance with rules of the Commission, the
2 Secretary may for good cause waive any of the rules implementing this Article,
3 provided those rules do not affect the health, safety, or welfare of the individuals within
4 the licensable facility. Decisions made pursuant to this subsection may be appealed to
5 the Commission for a hearing in accordance with Chapter 150B of the General Statutes.

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

- 12 (1) The degree of sanctions necessary to ensure compliance with this
13 section and rules adopted to implement this subsection, and
- 14 (2) The character and degree of impact of the conditions at the facility on
15 the health or safety of its clients.

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

20 **SECTION 3.** G.S. 131D-2(b)(1b) reads as rewritten:

21 "(1b) No new license shall be issued for any adult care home to an applicant
22 for licensure who:

- 23 a. Was the owner, principal, or affiliate of ~~an adult care home a~~
24 licensable facility under Chapter 122C, Chapter 131D, or
25 Article 7 of Chapter 110 that had its license revoked until one
26 full year after the date of revocation;
- 27 b. Is the owner, principal, or affiliate of an adult care home that
28 was assessed a penalty for a Type A or Type B violation until
29 the earlier of one year from the date the penalty was assessed or
30 until the home has substantially complied with the correction
31 plan established pursuant to G.S. 131D-34 and substantial
32 compliance has been certified by the Department; or
- 33 c. Is the owner, principal, or affiliate of an adult care home that
34 had its license summarily suspended or downgraded to
35 provisional status as a result of Type A or B violations until six
36 months from the date of reinstatement of the license, restoration
37 from provisional to full licensure, or termination of the
38 provisional license, as applicable.
- 39 d. Is the owner, principal, or affiliate of a licensable facility that
40 had its license summarily suspended or downgraded to
41 provisional status as a result of violations under Chapter 122C,
42 or Article 1 of Chapter 131D, or had its license summarily
43 suspended or denied under Article 7 of Chapter 110 until six
44 months from the date of the reinstatement of the license,

1 restoration from provisional to full licensure, or termination of
2 the provisional license, as applicable.

3 An applicant for new licensure may appeal a denial of certification
4 of substantial compliance under subparagraph b. of this subdivision by
5 filing with the Department a request for review by the Secretary within
6 10 days of the date of denial of the certification. Within 10 days of
7 receipt of the request for review the Secretary shall issue to the
8 applicant a written determination that either denies certification of
9 substantial compliance or certifies substantial compliance. The
10 decision of the Secretary is final."

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

12 "**§ 131D-10.3. Licensure required.**

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

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

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

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

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

31 (f) Persons licensed or seeking a license who are temporarily unable to comply
32 with a rule or rules may be granted a provisional license. The provisional license can be
33 issued for a period not to exceed six months. The noncompliance with a rule or rules
34 shall not present an immediate threat to the health and safety of the children, and the
35 person shall have a plan approved by the Department to correct the area(s) of
36 noncompliance within the provisional period. A provisional license for an additional
37 period of time to meet the same area(s) of noncompliance shall not be issued.

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

42 (h) Except as provided in subsection (i) of this section, the Secretary ~~The~~
43 ~~Department~~ shall not enroll any new provider for Medicaid Home or Community Based
44 services or other Medicaid services, as defined in 42 C.F.R. 440.90, 42 C.F.R.

1 440.130(d), and 42 C.F.R. 440.180, or issue a license for a new facility or a new service
2 to any applicant meeting any of the following criteria:

3 (1) ~~Was~~The applicant was the owner, principal, or affiliate of a licensable
4 facility under Chapter ~~122C or 122C,~~ Chapter ~~131D~~131D, or Article 7
5 of Chapter 110 that had its license revoked until 60 months after the
6 date of the revocation.

7 (2) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
8 facility that was assessed a penalty for a Type A or Type B violation
9 under Article 3 of Chapter ~~122C until 60 months after the date of the~~
10 ~~violation.~~Chapter 122C, or any combination thereof, and any one of
11 the following conditions exist:

12 a. A single violation has been assessed in the six months prior to
13 the application.

14 b. Two violations have been assessed in the 18 months prior to the
15 application and 18 months have not passed from the date of the
16 most recent violation.

17 c. Three violations have been assessed in the 36 months prior to
18 the application and 36 months have not passed from the date of
19 the most recent violation.

20 d. Four or more violations have been assessed in the 60 months
21 prior to application and 60 months have not passed from the
22 date of the most recent violation.

23 (3) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
24 facility that had its license summarily suspended or downgraded to
25 provisional status as a result of violations under G.S. 122C- 24.1(a)
26 until 60 months after the date of reinstatement or restoration of the
27 license.

28 (4) ~~Is~~The applicant is the owner, principal, or affiliate of a licensable
29 facility that had its license summarily suspended or downgraded to
30 provisional status as a result of violations under Article 1A of Chapter
31 ~~131D~~131D, or had its license summarily suspended or denied under
32 Article 7 of Chapter 110 until 60 months after the date of reinstatement
33 or restoration of the license.

34 (i) The Secretary may enroll a provider described in subsection (h) of this
35 section if any of the following circumstances apply:

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

39 (2) The Secretary finds that the area program or county program has
40 shown good cause by clear and convincing evidence why the
41 enrollment should be allowed.

42 (j) For purposes of subdivision (h)(2) of this section, fines assessed prior to
43 October 23, 2002, are not applicable to this provision. However, licensure or enrollment
44 shall be denied if an applicant's history as a provider under Chapter 131D, Chapter

1 122C, or Article 7 of Chapter 110 is such that the Secretary has concluded the applicant
2 will likely be unable to comply with licensing or enrollment statutes, rules, or
3 regulations. In the event the Secretary denies licensure or enrollment under this
4 subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter
5 150B shall be given to the provider in writing."

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

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

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

- 19 (1) The number and other demographic information of children served
20 utilizing Comprehensive Treatment Services Program funds or who
21 are placed out of their home under the auspices of one of the
22 referenced agencies.
- 23 (2) The amount and source of funds expended to implement the Program.
- 24 (3) Information regarding the number of children screened for mental
25 health, developmental disabilities, or substance abuse; specific
26 placement of children including the placement of children in programs
27 or facilities outside of the child's home county; and treatment needs of
28 children served.
- 29 (4) The average length of stay in residential treatment, transition, and
30 return to home.
- 31 (5) The number of children diverted from institutions or other out-of-home
32 placements such as training schools and State psychiatric hospitals and
33 a description of the services provided.
- 34 (6) Recommendations on other areas that need to be improved.
- 35 (7) Other information relevant to successfully maintaining children in
36 their county of residence.
- 37 (8) A method of identifying and reporting child placements outside of the
38 family unit in group homes or therapeutic foster care home settings.

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

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

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