

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007**

**SESSION LAW 2007-444
HOUSE BILL 772**

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; TO CHANGE TIME FRAMES OF INVESTIGATIONS OF ADULT CARE HOMES; AND TO REQUIRE THE CODIFIER OF RULES TO CHANGE THE NAME OF THE DIVISION OF FACILITY SERVICES AND THE HEALTH SERVICES COMMISSION.

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

(1) The character and degree of impact of the conditions at the hospital on the health and safety of its patients.

(2) The character and degree of impact that the proposed suspension of admissions or services would have on the functionality of the hospital

and the availability of services necessary to the community or to current patients of the hospital.

- (3) Whether all other reasonable means for correcting the problem have been exhausted and no less restrictive alternative to suspension of admissions or service exists.

(c1) A hospital may contest any adverse action on its license under this section in accordance with Chapter 150B of the General Statutes."

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

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

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

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

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

"(b) Requirement. – An offer of employment by a provider licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, a provider shall submit a request to the Department of Justice under G.S. 114-19.10 to conduct a criminal history record check required by this section ~~or shall submit a request to a private entity to conduct a State criminal history record check required by this section.~~ Notwithstanding G.S. 114-19.10, the Department of Justice shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Division of Criminal Information data bank may conduct on behalf of a provider a State criminal

history record check required by this section without the provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section. For purposes of this subsection, the term 'private entity' means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency."

SECTION 3.1. G.S. 131D-40 is amended by adding a new subsection to read:

"(h) For purposes of this section, the term 'private entity' means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency."

SECTION 3.2. G.S. 131E-265 is amended by adding a new subsection to read:

"(h) For purposes of this section, the term 'private entity' means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency."

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

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

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

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

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

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

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

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

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

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

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

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

"(b) Licensure; inspections. –

(1) The Department of Health and Human Services shall inspect and license, under rules adopted by the Medical Care Commission, all adult care homes for persons who are aged or mentally or physically disabled except those exempt in subsection (c) of this section. Licenses issued under the authority of this section shall be valid for one year

from the date of issuance unless revoked earlier by the Secretary for failure to comply with any part of this section or any rules adopted hereunder. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. The Department shall charge each adult care home with six or fewer beds a nonrefundable annual license fee in the amount of two hundred fifty dollars (\$250.00). The Department shall charge each adult care home with more than six beds a nonrefundable annual license fee in the amount of three hundred fifty dollars (\$350.00) plus a nonrefundable annual per-bed fee of twelve dollars and fifty cents (\$12.50). A license shall not be renewed nor a new license issued 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. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall contain all necessary and reasonable information that the Department may by rule require. Except as otherwise provided in this subdivision, the Department may amend a license by reducing it from a full license to a provisional license for a period of not more than 90 days whenever the Department finds that:

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

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

The Department may revoke a license whenever:

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

Articles, and the failure to comply endangered the health, safety, or welfare of the patients in the facility.

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

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

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

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

The investigation shall be completed within ~~30~~60 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes."

SECTION 5.5.(a) Wherever the name "Division of Facility Services" appears in the North Carolina Administrative Code, the Codifier of Rules shall replace "Division of Facility Services" with "Division of Health Service Regulation."

SECTION 5.5.(b) Wherever the name "Health Services Commission" appears in the North Carolina Administrative Code, the Codifier of Rules shall replace "Health Services Commission" with "Commission for Public Health."

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

In the General Assembly read three times and ratified this the 26th day of July, 2007.

s/ Beverly E. Perdue
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:23 a.m. this 23rd day of August, 2007