

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 56*
House Committee Substitute Favorable 7/11/07

Short Title: Penalty Review/LTC Changes.

(Public)

Sponsors:

Referred to:

February 12, 2007

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PENALTY REVIEW COMMITTEE PROCESS,
EXPAND THE HEALTH CARE PERSONNEL REGISTRY AND AUTHORIZE
THE MEDICAL CARE COMMISSION TO ADOPT RULES ALLOWING THE
ISSUANCE OF RATED CERTIFICATES TO ADULT CARE HOMES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131D-34(h) reads as rewritten:

"(h) The Secretary shall establish a penalty review committee within the Department, which shall meet as often as needed, but no less frequently than once each quarter of the year, at least semiannually to review violations and penalties imposed by the Adult Care Licensure Section; provide a forum for residents, guardians or families of residents, local department of social services, and providers; and make recommendations to the Department for changes in policy, training, or rules as a result of its review and publish a report. to review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129 as follows:

- (1) The Secretary shall administer the work of the Committee and provide public notice of its meetings via Web site, and provide direct notice to the following parties involved in the penalties the Committee will be reviewing:
 - a. The licensed ~~provider;~~ provider, who upon receipt of the notice, shall post the notice of the scheduled Penalty Review Committee meeting in a conspicuous place available to residents, family members, and the public;
 - b. The local department of social services that is responsible for oversight of the facility involved;
 - c. The residents affected; and
 - d. The families or guardians of the residents affected. Those individuals lawfully designated by the affected resident to make health care decisions for the resident.

- 1 (2) The Secretary shall ensure that the Nursing Home/Adult Care Home
2 Penalty Review Committee established by this subsection is comprised
3 of nine members. At least one member shall be appointed from each of
4 the following categories:
5 a. A licensed pharmacist;
6 b. A registered nurse experienced in long term care;
7 c. A representative of a nursing home;
8 d. A representative of an adult care home; and
9 e. Two public members. One shall be a "near" relative of a nursing
10 home patient, chosen from a list prepared by the Office of State
11 Long Term Care Ombudsman, Division of Aging, Department
12 of Health and Human Services. One shall be a "near" relative of
13 a rest home patient, chosen from a list prepared by the Office of
14 State Long Term Care Ombudsman, Division of Aging,
15 Department of Health and Human Services. For purposes of this
16 subdivision, a "near" relative is a spouse, sibling, parent, child,
17 grandparent, or grandchild.
- 18 (3) Neither the pharmacist, nurse, nor public members appointed under
19 this subsection nor any member of their immediate families shall be
20 employed by or own any interest in a nursing home or adult care
21 home.
- 22 (4) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1,
23 2005.
- 24 ~~(4a) The Department of Health and Human Services shall notify families or~~
25 ~~guardians of affected residents of the right to request a penalty review~~
26 ~~committee review of the Department's penalty decision before the~~
27 ~~decision becomes final. Within 60 days of receipt of a request from a~~
28 ~~family member or guardian for review of the Department's penalty~~
29 ~~decision, the penalty review committee shall meet to conduct the~~
30 ~~review and shall inform the family member or guardian of the results~~
31 ~~of the review.~~
- 32 (4b) Prior to serving on the Committee, each member shall complete a
33 training program provided by the Department of Health and Human
34 Services that covers standards of care and applicable State and federal
35 laws and regulations governing facilities licensed under Chapter 131D
36 and Chapter 131E of the General Statutes.
- 37 (5) Each member of the Committee shall serve a term of two years. The
38 initial terms of the members shall commence on August 3, 1989. The
39 Secretary shall fill all vacancies. Unexcused absences from three
40 consecutive meetings constitute resignation from the Committee.
- 41 (6) The Committee shall be cochaired by:
42 a. One member of the Department outside of the Division of
43 ~~Facility Services~~ Health Service Regulation; and
44 b. One member who is not affiliated with the Department."

1 **SECTION 2.** G.S. 131E-256 reads as rewritten:

2 **"§ 131E-256. Health Care Personnel Registry.**

3 (a) The Department shall establish and maintain a health care personnel registry
4 containing the names of all health care personnel working in health care facilities in
5 North Carolina who have:

6 (1) Been subject to findings by the Department of:

7 a. Neglect or abuse of a resident in a health care facility or a
8 person to whom home care services as defined by
9 G.S. 131E-136 or hospice services as defined by G.S. 131E-201
10 are being provided.

11 b. Misappropriation of the property of a resident in a health care
12 facility, as defined in subsection (b) of this section including
13 places where home care services as defined by G.S. 131E-136
14 or hospice services as defined by G.S. 131E-201 are being
15 provided.

16 c. Misappropriation of the property of a health care facility.

17 d. Diversion of drugs belonging to a health care ~~facility or to a~~
18 ~~patient or client facility.~~

19 d1. Diversion of drugs belonging to a patient or client of the health
20 care facility.

21 e. Fraud against a health care ~~facility or against a patient or client~~
22 ~~for whom the employee is providing services facility.~~

23 e1. Fraud against a patient or client for whom the employee is
24 providing services.

25 (2) Been accused of any of the acts listed in subdivision (1) of this
26 subsection, but only after the Department has screened the allegation
27 and determined that an investigation is required.

28 The Health Care Personnel Registry shall also contain all findings by the
29 Department of neglect of a resident in a nursing facility or abuse of a resident in a
30 nursing facility or misappropriation of the property of a resident in a nursing facility by
31 a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

32 (a1) The Department shall include in the registry a brief statement of any
33 individual disputing the finding entered against the individual in the health care
34 personnel registry pursuant to subdivision (1) of subsection (a) of this section.

35 (b) For the purpose of this section, the following are considered to be "health care
36 facilities":

37 (1) Adult Care Homes as defined in G.S. 131D-2.

38 (2) Hospitals as defined in G.S. 131E-76.

39 (3) Home Care Agencies as defined in G.S. 131E-136.

40 (4) Nursing Pools as defined by G.S. 131E-154.2.

41 (5) Hospices as defined by G.S. 131E-201.

42 (6) Nursing Facilities as defined by G.S. 131E-255.

43 (7) State-Operated Facilities as defined in G.S. 122C-3(14)f.

44 (8) Residential Facilities as defined in G.S. 122C-3(14)e.

- 1 (9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.
- 2 (10) Licensable Facilities as defined in G.S. 122C-3(14)b.
- 3 (11) Multiunit Assisted Housing with Services as defined in G.S. 131D-2.
- 4 (12) Community-Based Providers of Services for the Mentally Ill, the
- 5 Developmentally Disabled, and Substance Abusers that are not
- 6 required to be licensed under Article 2 of Chapter 122C of the General
- 7 Statutes.
- 8 (13) Agencies providing in-home aide services funded through the Home
- 9 and Community Care Block Grant Program in accordance with
- 10 G.S. 143B-181.1(a)11.

11 (c) For the purpose of this section, the term "health care personnel" means any

12 unlicensed staff of a health care facility that has direct access to residents, clients, or

13 their property. Direct access includes any health care facility unlicensed staff that during

14 the course of employment has the opportunity for direct contact with an individual or an

15 individual's property, when that individual is a resident or person to whom services are

16 provided. ~~the following are considered to be "health care personnel":~~

- 17 (1) ~~In an adult care home, an adult care personal aide who is any person~~
- 18 ~~who either performs or directly supervises others who perform task~~
- 19 ~~functions in activities of daily living which are personal functions~~
- 20 ~~essential for the health and well being of residents such as bathing,~~
- 21 ~~dressing, personal hygiene, ambulation or locomotion, transferring,~~
- 22 ~~toileting, and eating.~~
- 23 (2) ~~A nurse aide.~~
- 24 (3) ~~An in home aide or an in home personal care aide who provides~~
- 25 ~~hands on paraprofessional services.~~
- 26 (4) ~~Unlicensed assistant personnel who provide hands on care, including,~~
- 27 ~~but not limited to, habilitative aides and health care technicians.~~

28 (d) Health care personnel who wish to contest findings under subdivision (a)(1)

29 of this section are entitled to an administrative hearing as provided by the

30 Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a

31 contested case shall be filed within 30 days of the mailing of the written notice of the

32 Department's intent to place its findings about the person in the Health Care Personnel

33 Registry.

34 (d1) Health care personnel who wish to contest the placement of information

35 under subdivision (a)(2) of this section are entitled to an administrative hearing as

36 provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A

37 petition for a contested case hearing shall be filed within 30 days of the mailing of the

38 written notice of the Department's intent to place information about the person in the

39 Health Care Personnel Registry under subdivision (a)(2) of this section. Health care

40 personnel who have filed a petition contesting the placement of information in the

41 health care personnel registry under subdivision (a)(2) of this section are deemed to

42 have challenged any findings made by the Department at the conclusion of its

43 investigation.

1 (d2) Before hiring health care personnel into a health care facility or service, every
2 employer at a health care facility shall access the Health Care Personnel Registry and
3 shall note each incident of access in the appropriate business files.

4 (e) The Department shall provide an employer at a health care facility or
5 potential employer at a health care facility of any person listed on the Health Care
6 Personnel Registry information concerning the nature of the finding or allegation and
7 the status of the investigation.

8 (f) No person shall be liable for providing any information for the health care
9 personnel registry if the information is provided in good faith. Neither an employer,
10 potential employer, nor the Department shall be liable for using any information from
11 the health care personnel registry if the information is used in good faith for the purpose
12 of screening prospective applicants for employment or reviewing the employment status
13 of an employee.

14 (g) Health care facilities shall ensure that the Department is notified of all
15 allegations against health care personnel, including injuries of unknown source, which
16 appear to be related to any act listed in subdivision (a)(1) of this section. Facilities must
17 have evidence that all alleged acts are investigated and must make every effort to
18 protect residents from harm while the investigation is in progress. The results of all
19 investigations must be reported to the Department within five working days of the initial
20 notification to the Department.

21 (h) The North Carolina Medical Care Commission shall adopt, amend, and repeal
22 all rules necessary for the implementation of this section.

23 (i) In the case of a finding of neglect under subdivision (1) of subsection (a) of
24 this section, the Department shall establish a procedure to permit health care personnel
25 to petition the Department to have his or her name removed from the registry upon a
26 determination that:

- 27 (1) The employment and personal history of the nurse aid does not reflect
28 a pattern of abusive behavior or neglect;
- 29 (2) The neglect involved in the original finding was a singular occurrence;
30 and
- 31 (3) The petition for removal is submitted after the expiration of the
32 one-year period which began on the date the petitioner's name was
33 added to the registry under subdivision (1) of subsection (a) of this
34 section."

35 **SECTION 3.(a)** G.S. 131D-4.5 reads as rewritten:

36 "**§ 131D-4.5. Rules adopted by Medical Care Commission.**

37 The Medical Care Commission shall adopt rules as follows:

- 38 (1) Establishing minimum medication administration standards for adult
39 care homes. The rules shall include the minimum staffing and training
40 requirements for medication aides and standards for professional
41 supervision of adult care homes' medication controls. The
42 requirements shall be designed to reduce the medication error rate in
43 adult care homes to an acceptable level. The requirements shall
44 include, but need not be limited to, all of the following:

- a. Training for medication aides, including periodic refresher training.
 - b. Standards for management of complex medication regimens.
 - c. Oversight by licensed professionals.
 - d. Measures to ensure proper storage of medication.
- (2) Establishing training requirements for adult care home staff in behavioral interventions. The training shall include appropriate responses to behavioral problems posed by adult care residents. The training shall emphasize safety and humane care and shall specifically include alternatives to the use of restraints.
 - (3) Establishing minimum training and education qualifications for supervisors in adult care homes and specifying the safety responsibilities of supervisors.
 - (4) Specifying the qualifications of staff who shall be on duty in adult care homes during various portions of the day in order to assure safe and quality care for the residents. The rules shall take into account varied resident needs and population mixes.
 - (5) Implementing the due process and appeal rights for discharge and transfer of residents in adult care homes afforded by G.S. 131D-21. The rules shall offer at least the same protections to residents as State and federal rules and regulations governing the transfer or discharge of residents from nursing homes.
 - (6) Establishing procedures for determining the compliance history of adult care homes' principals and affiliates. The rules shall include criteria for refusing to license facilities which have a history of, or have principals or affiliates with a history of, noncompliance with State law, or disregard for the health, safety, and welfare of residents.
 - (7) For the licensure of special care units in accordance with G.S. 131D-4.6, and for disclosures required to be made under G.S. 131D-8.
 - (8) For time limited provisional licenses and for granting extensions for provisional licenses.
 - (9) For the issuance of certificates to adult care homes as authorized under G.S. 131D-10."

SECTION 3.(b) Article 1 of Chapter 131D of the General Statutes is amended by adding the following new section to read:

"§ 131D-10. Adult care home rated certificates.

(a) Rules adopted by the North Carolina Medical Care Commission for issuance of certificates to adult care homes shall contain a rating based, at a minimum, on the following:

- (1) Inspections and substantiated complaint investigations conducted by the Department to determine compliance with licensing statutes and rules. Specific areas to be reviewed include:
 - a. Admission and discharge procedures.

- 1 b. Medication management.
- 2 c. Physical plant.
- 3 d. Resident care and services, including food services, resident
- 4 activities programs, and safety measures.
- 5 e. Residents' rights.
- 6 f. Sanitation grade.
- 7 g. Special Care Units.
- 8 h. Use of physical restraints and alternatives.

9 (b) The initial ratings awarded to a facility pursuant to the rules adopted under
10 this section shall be based on inspections, penalties imposed, and investigations of
11 substantiated complaints that revealed noncompliance with statutes and rules, that
12 occurred on or after the act becomes law.

13 (c) Type A penalties shall affect the rating for 24 months from the date the
14 penalty is assessed. Type B penalties shall affect the rating for 12 months from the date
15 the penalty is assessed.

16 (d) Adult care homes shall display the rating certificate in a location visible to the
17 public. Certificates shall include the Web site address for the Department of Health and
18 Human Services, Division of Health Service Regulation, which can be accessed for
19 specific information regarding the basis of the facility rating. For access by the public
20 on request, adult care homes shall also maintain on-site a copy of information provided
21 by the Department of Health and Human Services, Division of Health Service
22 Regulation, regarding the basis of the facility rating. In addition to information on the
23 basis of the rating, the Department of Health and Human Services, Division of Health
24 Service Regulation, shall make information available via its Web site and in the
25 materials available on-site at the facility regarding quality improvement efforts
26 undertaken by the facility including:

- 27 (1) Participation in any quality improvement programs approved by the
28 Department.
- 29 (2) The facility's attainment of the North Carolina New Organizational
30 Vision Award special licensure designation authorized in Article 5,
31 Chapter 131E of the General Statutes."

32 **SECTION 3.(c)** The Department of Health and Human Services shall
33 provide a copy of emergency, temporary, and permanent rules adopted pursuant to this
34 section to the North Carolina Study Commission on Aging at the same time the
35 Department submits the adopted rules to the Rules Review Commission for its review
36 under Chapter 150B of the General Statutes.

37 **SECTION 3.(d)** The Department of Health and Human Services, Divisions
38 of Health Service Regulation, Aging and Adult Services, and Medical Assistance shall
39 study the structure and cost of a system to reward adult care homes which receive high
40 ratings. The Department shall report findings and recommendations on this study to the
41 North Carolina Study Commission on Aging not later than March 1, 2008.

42 **SECTION 3.(e)** It is the intent of the General Assembly to provide funding
43 for technical assistance to adult care homes for the 2008-2009 fiscal year.

1 **SECTION 3.(f)** The Department of Health and Human Services, Division of
2 Health Service Regulation and Division of Aging and Adult Services, shall study
3 expanding the rated certificate system to other facilities and services licensed and
4 certified by the Department. The Department shall report to the North Carolina Study
5 Commission on Aging on the expansion of the rating system by October 1, 2009.

6 **SECTION 3.(g)** The Department of Health and Human Services, Division of
7 Health Service Regulation, shall report on the implementation of the rated certificate
8 system. The Department shall make an interim report to the North Carolina Study
9 Commission on Aging not later than October 1, 2009, and a final report to the
10 Commission not later than October 1, 2010.

11 **SECTION 4.** Section 1 of this act becomes effective October 1, 2007.
12 Section 2 becomes effective January 1, 2008. Certificates authorized under Section 3
13 shall be issued beginning January 1, 2009. The remainder of this act is effective when it
14 becomes law.