

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 699

Short Title: Regulatory Reform/PACE Program Organizations. (Public)

Sponsors: Representatives Dobson and Sasser (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Health, if favorable, Rules, Calendar, and Operations of the House

April 11, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO REDUCE OR ELIMINATE REGULATIONS THAT MAY BE DUPLICATIVE
3 OR NOT COST-EFFECTIVE FOR THE PROGRAM OF ALL-INCLUSIVE CARE FOR
4 THE ELDERLY MANAGED CARE PROGRAM.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 131E-138 reads as rewritten:

7 "§ 131E-138. Licensure requirements.

8 (a) ~~No~~ Except as provided in subsection (f1) of this section, no person or governmental
9 unit shall operate a home care agency without a license obtained from the Department. Nothing
10 in this Part shall be construed to extend or modify the licensing of individual health professionals
11 by the licensing boards for their professions or to create any new professional license category.

12 ...

13 (f1) Exceptions to licensure. – If home care services are provided to a participant of the
14 Program of All-Inclusive Care for the Elderly through an organization that has a valid Program
15 of All-Inclusive Care for the Elderly agreement with the Centers for Medicare and Medicaid
16 Services and the Division of Health Benefits of the Department of Health and Human Services,
17 then the entity providing the home care services shall not be required to hold license under this
18 section.

19"

20 SECTION 2.(a) G.S. 131D-2.1 reads as rewritten:

21 "§ 131D-2.1. Definitions.

22 As used in this Article:

23 ...

24 (3) Adult care home. – An assisted living residence in which the housing
25 management provides 24-hour scheduled and unscheduled personal care
26 services to two or more residents, either directly or for scheduled needs,
27 through formal written agreement with licensed home care or hospice
28 agencies—agencies or with a Program of All-Inclusive Care for the Elderly
29 organization that has a valid program agreement with the Centers for Medicare
30 and Medicaid Services and the Division of Health Benefits of the Department
31 of Health and Human Services. Some licensed adult care homes provide
32 supervision to persons with cognitive impairments whose decisions, if made
33 independently, may jeopardize the safety or well-being of themselves or
34 others and therefore require supervision. Medication in an adult care home
35 may be administered by designated trained staff. Adult care homes that



provide care to two to six unrelated residents are commonly called family care homes.

...
(5)

Assisted living residence. – Any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice ~~agencies.~~agencies, or with a Program of All-Inclusive Care for the Elderly organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits of the Department of Health and Human Services. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102. There are three types of assisted living residences: adult care homes, adult care homes that serve only elderly persons, and multiunit assisted housing with services. As used in this section, "elderly person" means:

- a. Any person who has attained the age of 55 years or older and requires assistance with activities of daily living, housing, and services, or
- b. Any adult who has a primary diagnosis of Alzheimer's disease or other form of dementia who requires assistance with activities of daily living, housing, and services provided by a licensed Alzheimer's and dementia care unit.

...
(10)

Multiunit assisted housing with services. – An assisted living residence in which hands-on personal care services and nursing services ~~which that~~ are arranged by housing management are provided through an individualized written care plan by a licensed home care or hospice agency ~~through an individualized written care plan.~~or by a Program of All-Inclusive Care for the Elderly organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits of the Department of Health and Human Services. The housing management has a financial interest or financial affiliation or formal written agreement ~~which that~~ makes personal care services accessible and available through at least one licensed home care or hospice ~~agency.~~agency or through a Program of All-Inclusive Care for the Elderly organization that has a valid program agreement with the Centers for Medicare and Medicaid Services and the Division of Health Benefits of the Department of Health and Human Services. The resident has a choice of any provider, and the housing management may not combine charges for housing and personal care services. All residents, or their compensatory agents, must be capable, through informed consent, of entering into a contract and must not be in need of 24-hour supervision. Assistance with self-administration of medications may be provided by appropriately trained staff when delegated by a licensed nurse according to the home care agency's or the Program of All-Inclusive Care for the Elderly organization's established plan of care. Multiunit assisted housing with services programs are required to register annually with the Division of Health Service Regulation. Multiunit assisted housing with services programs are required to provide a disclosure statement to the Division of Health Service

- 1 Regulation. The disclosure statement is required to be a part of the annual
 2 rental contract that includes a description of all of the following requirements:
 3 a. Emergency response ~~system;~~system.
 4 b. Charges for services ~~offered;~~offered.
 5 c. Limitations of ~~tenancy;~~tenancy.
 6 d. Limitations of ~~services;~~services.
 7 e. Resident ~~responsibilities;~~responsibilities.
 8 f. Financial/legal relationship between housing management and home
 9 care or hospice ~~agencies;~~agencies or Program of All-Inclusive Care for
 10 the Elderly organizations.
 11 g. A listing of all home care or hospice agencies and other community
 12 services in the ~~area;~~area.
 13 h. An appeals ~~process;~~ and process.
 14 i. Procedures for required initial and annual resident screening and
 15 referrals for services.

16 Continuing care retirement communities, subject to regulation by the
 17 Department of Insurance under Chapter 58 of the General Statutes, and
 18 temporary family health care structures, as defined in G.S. 160A-383.5, are
 19 exempt from the regulatory requirements for multiunit assisted housing with
 20 services programs.

21"

22 **SECTION 2.(b)** G.S. 131D-2.2(b) reads as rewritten:

23 "(b) Multiunit Assisted Housing With Services. – Except when a physician certifies that
 24 appropriate care can be provided on a temporary basis to meet the resident's needs and prevent
 25 unnecessary relocation, multiunit assisted housing with services shall not care for individuals
 26 with any of the following conditions or care needs:

- 27 (1) Ventilator ~~dependency;~~dependency.
 28 (2) Dermal ulcers III and IV, except those stage III ulcers which are determined
 29 by an independent physician to be ~~healing;~~healing.
 30 (3) Intravenous therapy or injections directly into the vein, except for intermittent
 31 intravenous therapy managed by a home care or hospice agency licensed in
 32 this ~~State;~~State.
 33 (4) Airborne infectious disease in a communicable state that requires isolation of
 34 the individual or requires special precautions by the caretaker to prevent
 35 transmission of the disease, including diseases such as tuberculosis and
 36 excluding infections such as the common ~~cold;~~cold.
 37 (5) Psychotropic medications without appropriate diagnosis and treatment
 38 ~~plans;~~plans.
 39 (6) Nasogastric ~~tubes;~~tubes.
 40 (7) Gastric tubes, except when the individual is capable of independently feeding
 41 himself or herself and caring for the tube, or as managed by a home care or
 42 hospice agency licensed in this ~~State;~~State.
 43 (8) Individuals requiring continuous licensed nursing ~~care;~~care.
 44 (9) Individuals whose physician certifies that placement is no longer
 45 ~~appropriate;~~appropriate.
 46 (10) Unless the individual's independent physician determines ~~otherwise,~~
 47 otherwise or the individual is enrolled in the Program of All-Inclusive Care
 48 for the Elderly, individuals who require maximum physical assistance as
 49 documented by a uniform assessment instrument and who meet Medicaid
 50 nursing facility level-of-care criteria as defined in the State Plan for Medical
 51 Assistance. Maximum physical assistance means that an individual has a

1 rating of total dependence in four or more of the seven activities of daily living
 2 as documented on a uniform assessment ~~instrument;~~instrument.

3 (11) Individuals whose health needs cannot be met in the specific multiunit assisted
 4 housing with services as determined by the ~~residence;~~ and residence.

5 (12) Such other medical and functional care needs as the Medical Care
 6 Commission determines cannot be properly met in multiunit assisted housing
 7 with services."

8 **SECTION 2.(c)** G.S. 131D-2.2(d) reads as rewritten:

9 "(d) Obtaining Services. – The resident of an assisted living facility has the right to obtain
 10 services at the resident's own expense from providers other than the housing management. This
 11 subsection shall not be construed to relieve the resident of the resident's contractual obligation to
 12 pay the housing management for any services covered by the contract between the resident and
 13 housing management. The resident of an assisted living facility has the right to select as the
 14 resident's health care provider the Program of All-Inclusive Care for the Elderly without
 15 jeopardizing residency in the assisted living facility."

16 **SECTION 2.(d)** G.S. 131D-2.16 reads as rewritten:

17 "**§ 131D-2.16. Rules.**

18 Except as otherwise provided in this Article, the Medical Care Commission shall adopt rules
 19 necessary to carry out this Article. The Commission has the authority, in adopting rules, to
 20 specify the limitation of nursing services provided by assisted living residences. In developing
 21 rules, the Commission shall consider the need to ensure comparable quality of services provided
 22 to residents, whether these services are provided directly by a licensed assisted living provider,
 23 licensed home care agency, a Program of All-Inclusive Care for the Elderly organization that has
 24 a valid program agreement with the Centers for Medicare and Medicaid Services and the Division
 25 of Health Benefits of the Department of Health and Human Services, or hospice. In adult care
 26 homes, living arrangements where residents require supervision due to cognitive impairments,
 27 rules shall be adopted to ensure that supervision is appropriate and adequate to meet the special
 28 needs of these residents. Rule-making authority under this section is in addition to that conferred
 29 under G.S. 131D-4.3 and G.S. 131D-4.5."

30 **SECTION 2.(e)** G.S. 131D-6 reads as rewritten:

31 "**§ 131D-6. Certification of adult day care programs; purpose; definition; penalty.**

32 ...

33 (d) ~~The~~ All of the following programs are exempted from the provisions of this section:

34 (1) Those that care for three people or ~~less;~~less.

35 (2) Those that care for two or more persons, all of whom are related by blood or
 36 marriage to the operator of the ~~facility;~~facility.

37 (3) Those that are required by other statutes to be licensed by the Department of
 38 Health and Human Services.

39 (4) Program of All-Inclusive Care for the Elderly organizations that have a valid
 40 program agreement with the Centers for Medicare and Medicaid Services and
 41 the Division of Health Benefits of the Department of Health and Human
 42 Services when providing services to participants in the program."

43 **SECTION 3.** This act is effective October 1, 2019.