



# HOUSE BILL 657: Improve Adult Care Home Regulation.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	August 20, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Theresa Matula Legislative Analyst
<b>Analysis of:</b>	S.L. 2017-184		

**OVERVIEW:** *S.L. 2017-184 makes the following changes pertaining to adult care homes:*

- *Exempts from certificate of need review the acquisition of certain unlicensed adult care homes.*
- *Implements an informal dispute resolution process for certain inspection findings.*
- *Changes the training requirements for personal care aides.*
- *Makes changes to the star rating program.*
- *Requires the Department of Health and Human Services to study the Star Rated Certificate Program and report on progress to the Joint Legislative Oversight Committee on Health and Human Services by February 1, 2018, with a final report by October 1, 2018.*

*This act becomes effective October 1, 2017, with the following exceptions, which became effective July 25, 2017: Section 4, which requires the Division of Health Service Regulation, Department of Health and Human Services, and county Departments of Social Services to establish procedures to implement an Informal Dispute Resolution; Section 6, requiring the Star-Rated Certificate study; and Section 7 pertaining to the certificate of need exemption.*

### CURRENT LAW:

Adult Care Home – Defined in G.S. 131D-2.1(3) as an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes.

G.S. 131E-184 – Allows the Department of Health and Human Services to exempt from certificate of need review a new institutional health service if notice is received that certain specified conditions exist.

**BILL ANALYSIS:** Section 1 of the act amends G.S. 131D-2.4 which pertains to the licensure of adult care homes. *Subsection (a)* is amended to provide that a facility not currently licensed as an adult care home but licensed as such in the preceding 12 months, is considered and existing health service facility under G.S. 131E-184(a)(8).

*Subsection (c)* of G.S. 131D-2.4 outlines the circumstances in which new licenses are prohibited from being issued to applicants. This subsection is amended by the act to incorporate circumstances in which the owner, principal, or affiliate of a licensable facility was also responsible for the operation and had its license revoked; summarily suspended; was assessed a penalty for a Type A or B violation; had its license downgraded to provisional status or admissions suspended; or where fees, fines, and penalties imposed by

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the State against the facility have not been paid. The changes also contemplate situations where the owner, principal, or affiliate is not responsible for operation in an effort to avoid emergency resident relocation. The prohibition period on new licenses is increased in certain circumstances where the owner, principal or affiliate was also responsible for operation. A new subdivision (5) is added to prohibit a new license from being issued when the owner, principal, or affiliate is also responsible for the operation of the facility and outstanding fees, fines and penalties have not been paid.

*Subsection (f)* is amended to provide that the consent of the current licensee is not a required prerequisite to a change of ownership if the current licensee has been: (i) removed from the facility due to summary ejectment or due to the expedited eviction of drug traffickers and other criminals, or (ii) abandoned the facility, as determined by the reasonable discretion of the Department of Health and Human Services (DHHS).

*Subsection (g)* is a new subsection that provides that any applicant for licensure who wishes to contest the denial of a license is entitled to an administrative hearing as provided in Chapter 150B (Administrative Procedure). The applicant must file a petition for a contested case within 30 days after the date DHHS mails the written notice of denial to the applicant.

**Section 2** amends G.S. 131D-2.11 pertaining to inspections, monitoring, and review by the State and by county departments of social services. The section is amended to set out an "Informal Dispute Resolution – Division of Health Service Regulation" process (subsection (a2) of the current law) and an "Informal Dispute Resolution – County Departments of Social Services" process (new subsection (a3)). The new "Informal Dispute Resolution – County Departments of Social Services" process provides the following:

- (1) The Division of Health Service Regulation (DHSR) and county department of social services (DSS) must jointly offer each adult care home an opportunity, at the facility's request and upon the facility's receipt of the official statement of deficiencies, to informally resolve disputed findings from inspections conducted by the county DSS that resulted in the citation of a Type A1 violation, Type A2 violation, Uncorrected Type A1, violation, Uncorrected Type A2 violation, or Uncorrected Type B violation, in accordance with the section.
- (2) Provides that failure of the DHSR and county DSS to complete informal dispute resolution timely does not delay the effective date of any enforcement action taken by the DHSR against an adult care home.
- (3) Provides that an adult care home is not entitled to seek a delay of any enforcement action against it on the grounds that the DHSR and the county DSS has not completed informal dispute resolution prior to the effective date of the enforcement action.
- (4) Provides that if an adult care home successfully demonstrates during the informal dispute resolution process that any of the deficiencies cited in the official statement of deficiencies should not have been cited, the county DSS shall remove the incorrectly cited deficiencies from the official statement of deficiencies and the DHSR must rescind any enforcement actions imposed on the adult care home solely as a result of the incorrectly cited deficiencies.
- (5) Requires the DHSR to make available on its Internet Web site the informal dispute resolution procedures for adult care homes.

**Section 3** of the act amends G.S. 131D-4.3 which outlines the minimum rules that must be adopted for adult care homes by the NC Medical Care Commission. Specifically the rules pertaining to personal care aides are being amended to provide that the minimum amount of training is 80 hours regardless of whether the individual is employed in an adult care home or a family care home. (Currently, 75 hours is required for aides performing heavy care tasks and a minimum of 40 hours of training is required for all personal care aides. Also under current law, 20 of the 40 hours of training are required to be classroom training,

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and family care home aides that do not have heavy care residents are limited to a minimum of 20 hours of training.) The facility is allowed to exempt from the 80-hour training requirement any personal care aides who are or have been either licensed as a health care professional or listed on the Nurse Aide Registry.

**Section 4** requires the DHSR and county DSSs to establish procedures to implement the requirement of the Informal Dispute Resolution – County Departments of Social Services (G.S. 131D-2.11(a3)), contained in Section 2 of the act, 60 days after the effective date of the act (October 1, 2017). Section 4 of the act became effective July 25, 2017.

**Section 5** amends G.S. 131D-10 which provides for the [adult care home rated certificates](#). *Subsection (b)* of G.S. 131D-10 is amended to provide that the DHSR must issue ratings to a facility pursuant to rules adopted by the NC Medical Care Commission based on both:

(1) Inspections and investigations of complaints conducted pursuant to G.S. 131D-2.11 [Inspections, monitoring and review by the State and county DSSs] and G.S. 131D-26 [Enforcement and investigation] that revealed noncompliance with the statutes and rules.

(2) The facilities participation in any quality improvement programs approved by the Department.

*Subsection (c)* of G.S. 131D-10 that previously required Type A penalties to affect the rating for 24 months and Type B penalties to affect the rating for 12 months is removed.

*A new subsection (c1)* is added to require DHSR to issue a star rating to a facility within 45 days from the date the Division mails the survey or inspection report to the facility, except when a request for an informal dispute resolution is made. If a facility makes a timely request for an informal dispute resolution, the DHSR must issue a star rating to the facility within 15 days from the date the Division mails the decision to the facility.

*Subsection (d)* amends the availability of the rating information to require each facility rating and specific information regarding the basis for calculating each facility rating to be available free of charge on the DHSR Web site.

**Section 6** require DHHS to conduct a study of the [North Carolina Star Rated Certificate Program](#). The study must (i) evaluate the effectiveness of the program in providing information to consumers of adult care home services, (ii) examine potential evidence-based alternatives, and (iii) make recommendations for any regulatory or legislative changes that could result in improvement of the current system. By February 1, 2018, the Department is required to report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on the progress of the study. By October 1, 2018, the Department must conclude the study and report its findings and recommendations, including any recommendations for regulatory or legislative changes, to the Oversight Committee and the Fiscal Research Division. Section 6 became effective July 25, 2017.

**Section 7** amends G.S. 131E-184(a)(8) pertaining to the exemption from certificate of need to provide that a facility not currently licensed as an adult care home that was licensed as an adult care home within the preceding 12 months is considered an existing health service facility for purposes of the subdivision when acquiring an existing health service facility, including equipment owned by the health service facility at the time of acquisition. (This conforms to the changes in Section 1 of the bill in G.S. 131D-2.4(a).) Section 7 became effective July 25, 2017.

**EFFECTIVE DATE:** Except as otherwise provided, the bill would become effective October 1, 2017.