

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**SESSION 1997**

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**SENATE BILL 851**

Children & Human Resources Committee Substitute Adopted 4/30/97

Short Title: Limit Provisional License.

(Public)

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Sponsors:

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Referred to:

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April 15, 1997

**A BILL TO BE ENTITLED**

**AN ACT TO LIMIT THE AMOUNT OF TIME AN ADULT CARE HOME MAY  
OPERATE UNDER A PROVISIONAL LICENSE.**

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-2(b) reads as rewritten:

"(b) Licensure; inspections. –

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services 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 of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. No new license shall be issued for any domiciliary home whose administrator was the administrator for any domiciliary home (adult care home) that had its license revoked until one full year after the date of revocation. Licenses shall be renewed annually upon filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fines and penalties imposed by the

1 State against the home have not been paid. Fines and penalties for which  
2 an appeal is pending are exempt from consideration. The renewal  
3 application shall contain all necessary and reasonable information that  
4 the Department may by rule require. The Department may amend a  
5 license by reducing it from a full license to a provisional license  
6 whenever the Department finds that:

- 7 a. The licensee has substantially failed to comply with the  
8 provisions of G.S. 131E, Article 6, and the rules promulgated  
9 under that Article;  
10 b. There is a reasonable probability that the licensee can remedy the  
11 licensure deficiencies within a reasonable length of time; and  
12 c. There is a reasonable probability that the licensee will be able  
13 thereafter to remain in compliance with the licensure rules for the  
14 foreseeable future.

15 The Department may revoke a license whenever:

- 16 a. The Department finds that:  
17 1. The licensee has substantially failed to comply with the  
18 provisions of G.S. 131E, Article 6, and the rules  
19 promulgated under that Article; and  
20 2. It is not reasonably probable that the licensee can remedy  
21 the licensure deficiencies within a reasonable length of  
22 time; or  
23 b. The Department finds that:  
24 1. The licensee has substantially failed to comply with the  
25 provisions of G.S. 131E, Article 6; and  
26 2. Although the licensee may be able to remedy the  
27 deficiencies within a reasonable time, it is not reasonably  
28 probable that the licensee will be able to remain in  
29 compliance with licensure rules for the foreseeable future;  
30 or  
31 c. The Department finds that there has been any failure to comply  
32 with the provisions of G.S. 131E, Article 6, and the rules  
33 promulgated under that Article that endanger the health, safety,  
34 or welfare of the patients in the facility.

35 The Department may also issue a provisional license to a facility,  
36 pursuant to rules adopted by the Social Services Commission, for  
37 substantial failure to comply with the provisions of this section or rules  
38 promulgated pursuant to this section. A facility shall not operate under  
39 a provisional license for more than a total of 180 days in a calendar  
40 year. If a facility has operated under a provisional license for more than  
41 180 days in a calendar year and any physical plant changes directed by  
42 the Department do not require a longer period of time to complete, the  
43 Department shall initiate revocation proceedings. Any facility wishing

1 to contest the issuance of a provisional license shall be entitled to an  
2 administrative hearing as provided in the Administrative Procedure Act,  
3 Chapter 150B of the General Statutes. A petition for a contested case  
4 shall be filed within 30 days after the Department mails written notice  
5 of the issuance of the provisional license.

6 (1a) In addition to the licensing and inspection requirements mandated by  
7 subdivision (1) of this subsection, the Department shall ensure that adult  
8 care homes required to be licensed by this Article are monitored for  
9 licensure compliance on a regular basis. In carrying out this  
10 requirement, the Department shall work with county departments of  
11 social services to do the routine monitoring and to have the Division of  
12 Facility Services oversee this monitoring and perform any follow-up  
13 inspection called for. The Department shall also keep an up-to-date  
14 directory of all persons who are administrators as defined in subdivision  
15 (1a) of subsection (a) of this section.

16 (2) Any individual or corporation that establishes, conducts, manages, or  
17 operates a facility subject to licensure under this section without a  
18 license is guilty of a Class 3 misdemeanor, and upon conviction shall be  
19 punishable only by a fine of not more than fifty dollars (\$50.00) for the  
20 first offense and not more than five hundred dollars (\$500.00) for each  
21 subsequent offense. Each day of a continuing violation after conviction  
22 shall be considered a separate offense.

23 (3) In addition, the Department may summarily suspend a license pursuant  
24 to G.S. 150B-3(c) whenever it finds substantial evidence of abuse,  
25 neglect, exploitation or any condition which presents an imminent  
26 danger to the health and safety of any resident of the home. Any facility  
27 wishing to contest summary suspension of a license shall be entitled to  
28 an administrative hearing as provided in the Administrative Procedure  
29 Act, Chapter 150B of the General Statutes. A petition for a contested  
30 case shall be filed within 20 days after the Department mails a notice of  
31 summary suspension to the licensee.

32 (4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of  
33 communications between physician and patient, in the course of an  
34 inspection conducted under subsection (b):

35 a. Department representatives may review any writing or other  
36 record concerning the admission, discharge, medication, care,  
37 medical condition, or history of any person who is or has been a  
38 resident of the facility being inspected, and

39 b. Any person involved in giving care or treatment at or through the  
40 facility may disclose information to Department representatives;  
41 unless the resident objects in writing to review of his records or  
42 disclosure of such information.

1           The facility, its employees and any other person interviewed in the  
2 course of an inspection shall be immune from liability for damages  
3 resulting from disclosure of any information to the Department.

4           The Department shall not disclose:

5           a.       Any confidential or privileged information obtained under this  
6 subsection unless the resident or his legal representative  
7 authorizes disclosure in writing or unless a court of competent  
8 jurisdiction orders disclosure, or

9           b.       The name of anyone who has furnished information concerning a  
10 facility without that person's consent.

11           The Department shall institute appropriate policies and procedures to  
12 ensure that unauthorized disclosure does not occur. All confidential or  
13 privileged information obtained under this section and the names of  
14 persons providing such information shall be exempt from Chapter 132  
15 of the General Statutes.

16           (5)       Notwithstanding any law to the contrary, Chapter 132 of the General  
17 Statutes, the Public Records Law, applies to all records of the State  
18 Division of Social Services of the Department of Human Resources and  
19 of any county department of social services regarding inspections of  
20 domiciliary care facilities except for information in the records that is  
21 confidential or privileged, including medical records, or that contains  
22 the names of residents or complainants."

23           Section 2. This act is effective when it becomes law and applies beginning  
24 with calendar year 1998.