

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 677
Committee Substitute Favorable 6/7/11

Short Title: Discharge of Adult Care Home Residents. (Public)

Sponsors:

Referred to:

April 7, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE ADULT CARE HOMES WITH GREATER FLEXIBILITY IN THE
3 TRANSFER AND DISCHARGE OF RESIDENTS AND TO ENACT APPEAL RIGHTS
4 FOR ADULT CARE HOME RESIDENTS AND ADULT CARE HOMES WITH
5 RESPECT TO DISCHARGE DECISIONS AND TO CREATE ADULT CARE HOME
6 RESIDENT DISCHARGE TEAMS WITHIN EVERY COUNTY WHICH CONTAINS
7 AN ADULT CARE HOME LICENSED UNDER CHAPTER 131D OF THE GENERAL
8 STATUTES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** G.S. 131D-2.1 is amended by adding two new subdivisions to read:

11 "(16) Hearing Unit. – The chief hearing officer within the Division of Medical
12 Assistance designated to preside over hearings regarding the transfer and
13 discharge of adult care home residents, and the chief hearing officer's staff.

14 (17) Adult care home resident discharge team. – A team consisting of two
15 members from the department of social services and one member from the
16 local management entity responsible for assisting in finding an appropriate
17 placement for discharged residents, as established by the county department
18 of social services in every county which contains an adult care home
19 licensed under this Chapter."

20 **SECTION 2.** G.S. 131D-4.5(5) reads as rewritten:

21 "(5) Implementing the due process and appeal rights for discharge and transfer of
22 residents in adult care homes afforded by G.S. 131D-21. The rules shall
23 offer ~~at least the same~~ protections to residents as ~~State and federal rules and~~
24 ~~regulations governing the transfer or discharge of residents from nursing~~
25 ~~homes.~~ residents for safe and orderly transfer and discharge."

26 **SECTION 3.** G.S. 131D-21(17) reads as rewritten:

27 "(17) To not be transferred or discharged from a facility except for medical
28 reasons, the residents' own or other residents' welfare, nonpayment for the
29 stay, or when the transfer is mandated under State or federal law. The
30 resident shall be given at least 30 days' advance notice to ensure orderly
31 transfer or discharge, except in the case of jeopardy to the health or safety of
32 the resident or others in the home. The resident has the right to appeal a
33 facility's attempt to transfer or discharge the resident pursuant to rules
34 adopted by the Medical Care Commission, and the resident shall be allowed
35 to remain in the facility until resolution of the appeal unless otherwise
36 provided by law. The Medical Care Commission shall adopt rules pertaining



1 to the transfer and discharge of residents that offer at least the same
2 protections to residents as State and federal rules and regulations governing
3 the transfer or discharge of residents from nursing homes. residents for safe
4 and orderly transfer and discharge."

5 **SECTION 4.** Article 1 of Chapter 131D of the General Statutes is amended by
6 adding a new section to read:

7 **"§ 131D-4.8. Discharge of residents; appeals.**

8 (a) An adult care home may initiate discharge of a resident based on any of the
9 following reasons:

10 (1) The discharge is necessary to protect the welfare of the resident and the adult
11 care home cannot meet the needs of the resident, as documented by the
12 resident's physician, physician assistant, or nurse practitioner.

13 (2) The health of the resident has improved sufficiently so that the resident is no
14 longer in need of the services provided by the adult care home, as
15 documented by the resident's physician, physician assistant, or nurse
16 practitioner.

17 (3) The safety of the resident or other individuals in the adult care home is
18 endangered.

19 (4) The health of the resident or other individuals in the adult care home is
20 endangered, as documented by a physician, physician assistant, or nurse
21 practitioner.

22 (5) The resident has failed to pay the costs of services and accommodations by
23 the payment due date specified in the resident's contract with the adult care
24 home, after receiving written notice of warning of discharge for failure to
25 pay.

26 (6) The discharge is mandated under this Article, Article 3 of this Chapter, or
27 rules adopted by the Medical Care Commission.

28 (b) An adult care home shall notify a resident and the resident's legal representative of
29 its intent to initiate discharge of the resident under subsection (a) of this section, in writing, at
30 least 30 days before the resident is discharged. The written notice shall include (i) the reasons
31 for the discharge, (ii) an appropriate discharge destination if known, (iii) personal medical care
32 information relating to the resident, as required by the Department, (iv) a copy of the Adult
33 Care Home Notice of Discharge, (v) a copy of the Adult Care Home Hearing Request Form,
34 and (vi) other information, as required under rules adopted by the Medical Care Commission. If
35 a discharge is initiated under subdivision (a)(1) of this section on the basis that a resident's
36 physician requires a different level of care for the resident, the discharge is not subject to
37 appeal for that specific reason but remains subject to appeal on all other available grounds.

38 (c) During any appeal of a discharge to the Hearing Unit, if the Hearing Unit
39 determines that the discharge destination identified by the adult care home in the written notice
40 required by subsection (b) of this section does not include an appropriate discharge destination,
41 the Department shall not prohibit discharge solely for that reason. The Hearing Unit shall
42 determine, in its discretion, an appropriate discharge destination within 60 days after the date of
43 the hearing. In making this determination, the Hearing Unit may require the facility and the
44 county department of social services to provide any necessary information to assist the Hearing
45 Unit in determining an appropriate discharge destination for the resident.

46 (d) If an adult care home resident or the resident's legal representative elects to appeal a
47 discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing
48 Unit shall decide all appeals pertaining to the discharge of adult care home residents. The
49 decision of the Hearing Unit is the final agency decision. Any person aggrieved by a decision
50 of the Hearing Unit pertaining to an adult care home resident discharge is entitled to immediate
51 judicial review of the decision in Wake County Superior Court or in the superior court of the

1 county where the person resides. The appellant shall file a petition for judicial review not later
2 than 30 days after the person is served with a written copy of the Hearing Unit decision. Within
3 10 days after the petition for judicial review is filed with the superior court, the appellant shall
4 serve copies of the petition by personal service or certified mail upon all parties who were
5 parties of record to the appeal to the Hearing Unit. Other parties to the appeal to the Hearing
6 Unit may file a response to the petition within 30 days after service. The Department as the
7 decision maker in the appeal to the Hearing Unit is not a party of record. Within 30 days after
8 receipt of a petition for judicial review, the Department shall transmit to the superior court the
9 original or a certified copy of the official record in the appeal to the Hearing Unit, together with
10 the final agency decision. In reviewing the Department's final decision, the superior court shall
11 review the official record, de novo, and make findings of fact and conclusions of law. The
12 decision of the Department remains in effect during the pendency of review by the superior
13 court and any further review in the appellate courts.

14 (e) The facility shall convene the adult care home resident discharge team to assist with
15 finding a placement for a resident if, at the time of notice of discharge, the destination is
16 unknown, the destination is not appropriate for the resident, or the destination is not acceptable
17 to the resident. The facility is not solely responsible for securing an appropriate discharge
18 destination. When the adult care home resident discharge team is convened at the request of a
19 facility, the adult care home resident discharge team shall consult with that facility, as well as
20 the resident receiving the discharge notice and that resident's legal representative. Upon the
21 request of the resident or the resident's legal representative, the Regional Long-Term Care
22 Ombudsman shall serve as a member of the adult care home resident discharge team. The
23 facility requesting the adult care home resident discharge team to be convened shall notify the
24 resident and the resident's legal representative of this right. If an adult care home discharge
25 team is unable to find an appropriate discharge destination or unable to find a discharge
26 destination that is acceptable to the resident, the discharge decision shall be directed to the
27 Hearing Unit. The Hearing Unit shall determine an appropriate discharge destination within 60
28 days after the Hearing Unit receives notice that it is directed to determine an appropriate
29 discharge destination.

30 (f) Meetings of the adult care home resident discharge team are not subject to the
31 provisions of Article 33C of Chapter 143 of the General Statutes. All information and records
32 acquired by the adult care home resident discharge team in the exercise of its duties are
33 confidential unless all parties give written consent to the release of that information."

34 **SECTION 5.** G.S. 150B-1(e) is amended by adding a new subdivision to read:

35 "(18) Hearings provided by the Department of Health and Human Services to
36 decide appeals pertaining to adult care home resident discharges initiated by
37 adult care homes under G.S. 131D-4.8."

38 **SECTION 6.** This act becomes effective October 1, 2011.