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HOUSE BILL 677
Committee Substitute Favorable 6/7/11
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Short Title: Discharge of Adult Care Home Residents.

(Public)

Sponsors:

Referred to:

April 7, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE ADULT CARE HOMES WITH GREATER FLEXIBILITY IN THE TRANSFER AND DISCHARGE OF RESIDENTS AND TO ENACT APPEAL RIGHTS FOR ADULT CARE HOME RESIDENTS AND ADULT CARE HOMES WITH RESPECT TO DISCHARGE DECISIONS AND TO CREATE ADULT CARE HOME RESIDENT DISCHARGE TEAMS WITHIN EVERY COUNTY WHICH CONTAINS AN ADULT CARE HOME LICENSED UNDER CHAPTER 131D OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

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

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

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

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

"(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.~~ residents for safe and orderly transfer and discharge."

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

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



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1 provided by law. The Medical Care Commission shall adopt rules pertaining
2 to the transfer and discharge of residents that offer ~~at least the same~~
3 protections to ~~residents as State and federal rules and regulations governing~~
4 ~~the transfer or discharge of residents from nursing homes.~~residents for safe
5 and orderly transfer and discharge."

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

8 "**§ 131D-4.8. Discharge of residents; appeals.**

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

- 11 (1) The discharge is necessary to protect the welfare of the resident and the adult
12 care home cannot meet the needs of the resident, as documented by the
13 resident's physician, physician assistant, or nurse practitioner.
- 14 (2) The health of the resident has improved sufficiently so that the resident is no
15 longer in need of the services provided by the adult care home, as
16 documented by the resident's physician, physician assistant, or nurse
17 practitioner.
- 18 (3) The safety of the resident or other individuals in the adult care home is
19 endangered.
- 20 (4) The health of the resident or other individuals in the adult care home is
21 endangered, as documented by a physician, physician assistant, or nurse
22 practitioner.
- 23 (5) The resident has failed to pay the costs of services and accommodations by
24 the payment due date specified in the resident's contract with the adult care
25 home, after receiving written notice of warning of discharge for failure to
26 pay.
- 27 (6) The discharge is mandated under this Article, Article 3 of this Chapter, or
28 rules adopted by the Medical Care Commission.

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

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

49 (d) If an adult care home resident or the resident's legal representative elects to appeal a
50 discharge initiated by the adult care home, the appeal shall be to the Hearing Unit. The Hearing
51 Unit shall decide all appeals pertaining to the discharge of adult care home residents. The

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

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

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

37 (g) If a discharge is under appeal or if the adult care home resident discharge team has
38 been convened and no decision has been made, the resident shall remain in the facility and shall
39 not be subject to discharge until an appropriate discharge destination that is acceptable to the
40 resident is located."

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

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

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