

## 2017 Legislative Update

August 9, 2017

Dear Members,

As the 2017 Legislative Session is coming to an end, one of the benefits we provide our members is strong advocacy in the General Assembly and across state government.

This year NCALTCF leadership, lobbyists and our attorney James C. Wrenn, Jr. worked hard on a number of important legislative issues that we believe will be beneficial for our homes.

One of our accomplishments were that we were successful in helping to pass a much-needed increase in the Personal Care Services (PCS) rate and also continuing the supplemental Special Assistance (SA) rate of \$34/month/resident to help offset the cost of providing board and care to SA residents.

We worked with DHSR staff and key stakeholders in getting updates to G.S. 131D, the Adult Care Home licensing statutes, as well as supporting language that requires the Department of Health and Human Services to study the effectiveness of the star-rated certificate program for adult care homes.

In addition, we are happy to report there was no repeal of the Certificate of Need law which regulates the development and placement of new healthcare facilities and services in the state. Given the current legislative climate, we believe we had a successful legislative session for our members and providers, although there is still much work that needs to be done for the future.

If you have questions regarding any of the following laws, please contact me at (919) 787-3560.

Thank you for your support for NCALTCF and the work you do to provide services to residents and families in your community. We hope you, you staff and residents have a great rest of the summer.

Jeff Horton, Executive Director, NCALTCF

## **Session Law 2017-57, Senate Bill 257: Appropriations Act of 2017**

(<http://ncleg.net/Sessions/2017/Bills/Senate/PDF/S257v9.pdf>)

### Moratorium on Special Care Unit Licenses

Extends the moratorium on special care unit licenses from July 1, 2017, and ending June 30, 2019 and prohibits the Department of Health and Human Services (DHHS), Division of Health Service Regulation, from issuing any licenses for special care units as defined in G.S. 131D-4.6 and G.S. 131E-114. The prohibition does not restrict DHHS from doing any of the following:

- (1) Issuing a license to a facility that is acquiring an existing special care unit.
- (2) Issuing a license for a special care unit in any area of the State upon a determination by the Secretary of the Department of Health and Human Services that increased access to this type of care is necessary in that area during the moratorium imposed by this section.
- (3) Processing all completed applications for special care unit licenses received by the Division of Health Service Regulation along with the applicable license fee prior to June 1, 2013.
- (4) Issuing a license to a facility that was in possession of a certificate of need as of July 31, 2013, that included authorization to operate special care unit beds.

Section 11G.3.(b) requires DHHS to submit a report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division by March 1, 2019, containing at least the following information:

- (1) The number of licensed special care units in the State.
- (2) The capacity of the currently licensed special care units to serve people in need of their services.
- (3) The anticipated growth in the number of people who will need the services of a licensed special care unit.
- (4) The number of applications received from special care units seeking licensure as permitted by this section and the number of those applications that were not approved.

### Personal Care Services (PCS)

- Retroactive PCS Payment

Section 11H.12A.(a) The Department of Health and Human Services, Division of Medical Assistance, shall amend Section 5.5, Retroactive Prior Approval for PCS, of Clinical Coverage

Policy 3L, State Plan Personal Care Services (PCS), to extend the allowable retroactive period for prior approvals for personal care services from 10 days to 30 days upon the same conditions that are currently required for retroactive prior approval of personal care services. This section shall not be construed to require Medicaid reimbursement for personal care services provided within the retroactive period in excess of the number of hours approved through the prior approval process.

Section 11H.12A.(b) This section becomes effective August 1, 2017, and applies to Requests for Independent Assessment for Personal Care Services Attestation for Medical Need forms received on or after that date.

- Increase in PCS Rate

Section 11H.12.(a) Beginning January 1, 2018, the Department of Health and Human Services, Division of Medical Assistance (DMA), shall increase to three dollars and ninety cents (\$3.90) the rate paid per 15-minute billing unit for PCS provided pursuant to Clinical Coverage Policy 3L. (*translates to \$15.60/hour*).

- **Additional Note** - Although not included in the above Appropriations Act of 2017, DMA issued a Public Notice ([https://files.nc.gov/ncdma/documents/files/Public Notice SPA%2017-009 PCS.pdf](https://files.nc.gov/ncdma/documents/files/Public_Note_SPA%2017-009_PCS.pdf)) on July 31, 2017 regarding the PCS rate increase, which states that in addition to the increase of the above PCS rate of \$3.90 per 15-minute billing unit effective January 1, 2018, the PCS rate will also be increased to \$3.88 per 15-minute billing unit (*translates to \$15.52/hour*) effective August 1, 2017 and will remain in effect until the higher rate takes effect in January 2018. However, it is not expected that the Centers for Medicare and Medicaid Services, the Federal agency which oversees state Medicaid programs, will approve the rate increases for at least a few months. Once the rate increases are approved, DMA will provide guidance to providers regarding how to get paid retroactively for the August 1, 2017 rate increase. As always, NCALTCF will keep members updated as things progress.

### Special assistance increase

Section 11C.13.(b) Appropriates \$5 million/ year to increase the rate paid for adult care homes that receive state-county special assistance funding payments for low-income patients. Adds \$34/month per resident to payment for two years only, requires counties to pay 50% of the cost of providing for these residents'.

The payments authorized by this section expires on June 30, 2019.

## **Session Law 2017-103, House Bill 248: Changes to Adult Care Home and Nursing Home Advisory Committees and Ombudsman program**

<http://ncleg.net/Sessions/2017/Bills/House/PDF/H248v5.pdf>

County Commissioners in each county appoint Advisory Committee Members to ensure Resident Rights. The committee members will now function as representatives of the Office of the State Ombudsman program. This change was necessary due to changes in federal law. You should not see any changes in how the teams operate and function in required visits to our homes. It will give authority to the state to discharge members if they do not function within the law.

## **Session Law 2017-184, House Bill 657: Improve Adult Care Home Regulation**

<http://ncleg.net/Sessions/2017/Bills/House/PDF/H657v4.pdf>

Proposed Changes to “§ 131D-2.11. Inspections, monitoring, and review by State and county departments of social services.”

In 2011, G.S. 131D-2.11(a2) established a process for “Informal Dispute Resolution” (IDR) whereby adult care homes may informally resolve disputed findings from inspections conducted by the DHSR Adult Care Licensure Section. IDR enables a facility to informally dispute findings prior to imposition of a penalty or issuance of a star rating certificate based on those findings.

Per G.S. 131D-2.11(b) and G.S. 131D-26, local county Departments of Social Services (DSS) are responsible for the routine monitoring of adult care homes and investigation of complaints regarding the care and services at adult care homes, both of which may result in findings. DSS has the authority to cite facility non-compliance which, at certain violation levels, may result in the imposition of a penalty and reduction of the facility’s star rating based on those findings. Currently, there is no statutory IDR process for violations cited by a local DSS. This law will require that Type A1 violations, Type A2 violations, and uncorrected Type B violations cited by the local DSS would be subject to IDR upon request of the facility since these violations may all result in a reduction of a facility’s star rating. Standard violations and abated Type B violations cited by a local DSS will not be subject to IDR. This IDR process will closely mirror the already established IDR process for violations cited by the State. The coordination of the IDR procedures will be handled by the DHSR Adult Care Licensure Section in partnership with the local County DSS’s.

Proposed Changes to “§ 131D-2.4 Licensure of adult care homes for aged and disabled individuals; impact of prior violations on licensure; compliance history review; license renewal.”

The changes to G.S. 131D-2.4 (i) further restrict the issuance of an adult care home license to legal persons responsible for the operation of an adult care home that have been the subject of certain enforcement actions; (ii) clarify the legal requirements governing the issuance of a license following a change of ownership of an adult care home where the current licensee is removed from the facility through summary ejection or abandons the facility; (iii) clarify that an adult care home that has been unlicensed for no more than twelve months can receive a new license to operate as an adult care home; and (iv) shortens the appeal period for a denial of an adult care home license from 60 days to 30 days. These changes seek to bar operators who have grievously violated the licensing laws and rules from operating an adult care home, keeps them from getting relicensed within a short period of time, and further seeks to protect building owners from licensed operators who refuse to cooperate with an orderly change of ownership following the termination of their lease. Over time, these changes should help lower the number of homes that are abruptly closed due either to licensure action by the State or by operator abandonment.

Proposed Changes to “§ 131D-4.3. Adult care home rules.”

The purpose of the proposed changes to G.S. 131D-4.3 is to amend the rules pertaining to minimum training for personal care aides by updating the statute to reflect current requirements and practices for training of personal care aides (PCAs) in adult care homes (ACH), as well as to remove outdated language related to the old Medicaid Personal Care Services (PCS) program that no longer exists.

- Training of Personal Care Aides

Current law differentiates between the training hours required for staff who provide care for “heavy care” residents (80 hours required) and those who are not “heavy care” (only 40 hours required). The term “heavy care” is not defined and is not recognized by regulators or providers in the ACH industry. It is also no longer a term used by the Medicaid PCS Program. In addition, rule 10A NCAC 13F .0501 which was promulgated in 2004, requires the ACH to ensure that an aide has completed an 80-hour training course, which is incongruent with current statutory language. Due to the steady increase in the acuity level of residents’ needs in ACHs, the majority of ACHs require their PCA staff to complete the 80-hour training. This allows the facility to utilize that staff person to care for all residents of the facility, regardless of acuity, and ensures the facility can meet residents’ needs as

they “age in place,” preventing the need for the resident/family to seek alternate placement. The 80- hour training course for PCAs is most appropriate given the acuity of residents in ACHs and the fact that this is currently standard practice in most adult care homes. Staff who are or have been licensed health care professionals or are listed on the Nurse Aide Registry are exempt from this training requirement.

Current law allows for family care homes (FCHs), which are licensed to provide care for 2-6 residents, to provide 20 hours of training to personal care aides (PCAs), which increases to 40 hours of training if caring for residents with “heavy care” needs. The 20 hours is not sufficient to effectively cover training and competency for basic personal care tasks. Based on current staffing rules for FCHs, one staff member cares for all residents in a FCH. That staff person must be able to meet the needs of all residents in the facility. Because FCH’s care for residents with the same acuity levels as larger ACH’s, just on a smaller scale, FCH staff should have the same training requirements to adequately meet the needs of the residents and to allow the residents to “age in place.”

- Deletion of the Term “Heavy Care”

Current law differentiates between the required staffing and training hours required for staff who provide care for “heavy care” residents (80 hours required) and those who are not “heavy care” (only 40 hours required). The term “heavy care” is not defined and is not recognized by providers or regulators in the adult care industry. It is also no longer a term used by the Medicaid PCS Program. This term is obsolete. This law removes this term from the statute and requiring facilities to staff based on the needs of the residents in their care with all facilities to provide a basic 80-hour training for PCAs.

#### Proposed Changes to “§ 131D-2.10. Adult care home rated certificates.”

In 2007, G.S. 131D-10 established a system for the issuance of certificates to adult care homes based upon inspections, penalties imposed, and investigations of substantiated complaints that reveal noncompliance with statutes and rules. Citations in specific rule areas, as defined in this statute, negatively impact a facility’s star rating as “demerit points” are taken from the rating. Other facility actions such as participation in quality improvement, having a sprinkler system and/or generator, and correction of citations result in “merit points” added to the rating.

Per G.S. 131D-10 (c), Type A penalties affect the rating for 24 months from the date the penalty is assessed and Type B penalties affect the rating for 12 months from the date the penalty is assessed.

This provision penalizes a facility for up to two years without regard to any remedial actions taken by the facility and even impacts a new owner's rating when the new owner completely changes the operations of the facility. The stakeholder group agreed with this recommendation.

**This legislation will eliminate the 24-month impact of imposed Type A penalties and the 12-month impact of assessed Type B penalties upon a facility's star rating and will direct that a study be conducted to evaluate the star-rating program's effectiveness in providing information to consumers and to explore potential evidence based alternatives. Once the study is complete, the Department is directed to make recommendations for any regulatory or legislative changes that could result in improvement to the current star-rating system. By February 1, 2018, the Department must report to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division on the progress of the study and by October 1, 2018, the Department shall conclude the study and report its findings and recommendations, including any recommendations for regulatory or legislative changes, to the Joint Legislative Oversight Committee on Health and Human Services and the Fiscal Research Division.**