

Senior Citizens

Senior citizens and government programs for the elderly were not the primary focus of the General Assembly's 1999 regular session. The General Assembly, however, did enact a number of new statutory provisions intended to improve the quality of long-term care, increase the protection of patients and residents of long-term care facilities, and strengthen regulatory oversight of the long-term care industry. Legislators also considered proposals to expand the current property tax exemption for low-income, elderly, or disabled homeowners, but they were unable to resolve their differing approaches to this issue.

State and Local Government Assistance for Senior Citizens

Medicaid for Elderly and Disabled Persons

Expanded Medicaid Coverage for the Elderly. In North Carolina an individual who is elderly, blind, or disabled may be eligible for Medicaid if (a) his or her income is below North Carolina's medically needy income limit, the income limit for receiving Supplemental Security Income (SSI), or 100 percent of the federal poverty level, and (b) the value of his or her countable assets (excluding his or her home and other specified property) does not exceed \$2,000 (or \$3,000 for a couple). Section 11.11 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs the Department of Health and Human Services (DHHS) to study the feasibility and cost of tripling the Medicaid asset limits for elderly, blind, and disabled persons and to submit a report of its study to the House and Senate Human Resources Appropriations Subcommittees by May 1, 2000.

Medicaid Estate Recovery Policy and Law. The federal Medicaid statute requires states to attempt to recover the costs of Medicaid payments made on behalf of certain elderly or disabled persons by filing claims against their estates after they die. In 1994 North Carolina's General Assembly, in response to this federal requirement, enacted legislation (G.S. 108A-70.5) establishing a state Medicaid Estate Recovery Program. North Carolina's Medicaid Estate Recovery Program is discussed in more detail in John L. Saxon, "Recovering Medicaid Payments from the Estates of Elderly or Disabled Persons," *Elder Law Bulletin* No. 5 (Chapel Hill, N.C.: Institute of Government, The University of North Carolina at Chapel Hill, Aug. 1997).

The Studies Act of 1999, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission to study the current program to determine the feasibility and desirability of enhancing recovery efforts beyond minimum federal requirements. If the commission studies this issue, it must report its findings and recommendations to the General Assembly's regular 2000 legislative session or to the 2001 General Assembly.

State-County Special Assistance Payments for Elderly and Disabled Residents of Adult Care Homes

Increased Maximum Payment. North Carolina's State-County Special Assistance program provides financial assistance to elderly or disabled persons who live in adult care homes and cannot afford to pay the full cost of their care. The cost of Special Assistance payments is divided equally between the state and North Carolina's counties. Effective October 1, 1999, the 1999 Appropriations Act, S.L. 1999-237 (H 168), increases the maximum Special Assistance payment from \$956 to \$982 per month (except in the case of persons who were receiving Special Assistance payments on August 1, 1995). Effective October 1, 2000, the maximum payment will increase to \$1,016 per month.

Medicaid Personal Care Services. The nonfederal share of Medicaid payments for personal care services provided to elderly or disabled adult care home residents who receive Special Assistance payments is divided between the state and counties. Section 11.22 of S.L. 1999-237 revises the formula for allocating this cost between the state and counties. Under the revised formula, the counties' portion of the nonfederal share of these costs will decrease annually, dropping from 50 percent effective January 1, 2000, to 15 percent effective January 1, 2005. The act also authorizes DHHS, effective January 1, 2000, to transfer funds from the State-County Special Assistance program to support expansion of Medicaid personal care services for residents of adult care homes.

S.L. 1999-395 directs the North Carolina Study Commission on Aging to study the rationale and appropriateness of the present approach to sharing nonfederal costs of Medicaid services for persons who receive State-County Special Assistance. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Personal Needs Allowance. S.L. 1999-237 also increases the personal needs allowance for Special Assistance recipients (money that they may retain from their own incomes to pay personal expenses) from \$31 to \$36 per month.

Medical and Social Evaluation of Special Assistance Applicants and Recipients. Section 11.22A of S.L. 1999-237 appropriates \$631,200 for 1999-2000 and \$1,271,200 for 2000-2001 to fund additional positions in DHHS and in county social services departments to evaluate the medical and social needs of elderly and disabled persons requesting or receiving State-County Special Assistance payments for care in adult care homes. The act does not indicate how these funds will be allocated to counties or whether county matching funds are required.

Demonstration Project to Support In-Home Care. Section 11.21 of S.L. 1999-237 authorizes DHHS to provide State-County Special Assistance payments during the 1999-2001 biennium to up to 400 otherwise eligible persons who are living at home rather than in adult care homes. DHHS must make an interim and final report to specified legislative committees with respect to the demonstration project, the cost savings that might result from allowing elderly or disabled persons to remain at home rather than moving to adult care homes, and other specified issues.

Adult Protective Services

Funding for Adult Protective Services Workers. County departments of social services are required to provide adult protective services to disabled (often elderly) adults who are abused, neglected, or exploited. Because the state has not provided earmarked state funding to counties to provide these services, counties have used federal Social Services Block Grant funds or county funding to pay for adult protective services. The 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates

\$1 million in new, recurring state funding for 1999–2000 and \$2 million in recurring state funding for 2000–2001 to support additional social worker positions providing adult protective services through county departments of social services. The legislation does not indicate how this funding will be allocated by the state Division of Social Services among the counties or whether matching county funds are required.

Investigation of Adult Protective Services Reports. Section 1.10 of S.L. 1999-334 (S 10) amends G.S. 108A-103 to establish new time frames for the investigation by county departments of social services of certain reports involving the abuse or neglect of disabled adults. Reports alleging life-threatening situations must be investigated immediately. Investigations of complaints alleging the abuse of an adult care home resident must be initiated within twenty-four hours of receipt of the complaint; investigations involving the neglect of an adult care home resident must be initiated within forty-eight hours. All other investigations must be initiated within two weeks of the date the complaint is received. The county social services department must complete all adult protective services investigations within thirty days.

Prescription Drug Program for the Elderly

Section 11.1 of S.L. 1999-237 directs DHHS to develop a proposal for the establishment of a public-private prescription drug assistance program to serve low-income elderly and disabled persons who are not eligible for Medicaid and who need prescription drugs to treat a condition that, if left untreated, could result in their admission to a nursing facility or otherwise qualifying for Medicaid. DHHS must submit its report and proposals for the program to the General Assembly by May 1, 2000.

S.L. 1999-237 also appropriates \$500,000 to DHHS for each year of the 1999–2001 biennium to pay for outpatient prescription drugs for the treatment of cardiovascular disease and diabetes for persons who are over the age of sixty-five, are not eligible for full Medicaid benefits, have incomes that do not exceed 150 percent of the federal poverty level, and have been diagnosed with cardiovascular disease or diabetes.

Affordable Housing for the Elderly

Section 12.1 of S.L. 1999-237 directs that \$2.5 million of the funds appropriated to the Housing Finance Agency from the Housing Trust Fund for 1999–2000 (and \$500,000 for 2000–2001) be used to provide affordable housing for the elderly.

Property Tax Exemption for Elderly or Disabled Homeowners

State law [G.S. 105-277.1(a)] currently exempts from local property taxes the first \$20,000 in value of a permanent residence owned and occupied by any North Carolina resident who is at least sixty-five years old (or totally and permanently disabled) and has an annual income of \$15,000 or less. The state Department of Revenue reimburses cities and counties for a portion, but not all, of the local property tax revenues lost as a result of this exemption.

In 1999 the House passed legislation (H 1480, which was incorporated into H 168, second edition) that would have increased the amount of the property tax exclusion for elderly or disabled homeowners from \$20,000 to \$25,000, increased the income eligibility threshold for the exemption from \$15,000 to \$25,000, and required the state to annually reimburse local governments for the tax revenues lost during 2000 as a result of the revised homestead tax exemption for elderly and disabled homeowners.

The Senate, by contrast, passed legislation (S 286) that, subject to voter approval of an enabling constitutional amendment, would have given the board of county commissioners in each county the option of increasing (without state reimbursement) the amount of the property tax exclusion for elderly or disabled homeowners, the income eligibility threshold for the exemption, or both the amount of the exclusion and the income eligibility threshold.

Unable to resolve the differences between these competing proposals to expand the homestead property tax exemption, the General Assembly included a provision in the 1999 Appropriations Act (S.L. 1999-237, sec. 6.2) directing Senate and House leaders to designate an appropriate legislative committee to study a range of options for providing homestead property tax relief to low-income elderly and disabled homeowners. The options that may be considered by the special study committee include increasing the income eligibility threshold, indexing the exemption amount and income threshold, excluding Social Security benefits from income in determining eligibility for the exemption, and amending the N.C. Constitution to allow increased or expanded homestead property tax relief through local option. The special study committee must report its recommendations, including the estimated fiscal impact on the state and local governments, to the General Assembly by May 1, 2000.

Study Commission on Aging

S.L. 1999-76 (S 40) amends G.S. 120-186.1(a) to increase from six to eight the maximum number of noncommission members that may be appointed to serve on subcommittees of the North Carolina Study Commission on Aging.

Long-Term Care for the Elderly and Disabled

State Long-Term Care System

Section 11.7A of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs DHHS to “develop a system that provides a continuum of long-term care for elderly and disabled individuals and their families.” The system must include a structure for screening, assessment, and care management across settings of care, a process to determine outcome measures for care, and an integrated data system to track expenditures, consumer characteristics, and consumer outcomes. Effective January 1, 2001, the system must implement the initial phase of a comprehensive data system that tracks long-term care expenditures, services, consumer profiles, and consumer preferences and that provides a system of statewide long-term care services coordination and case management to minimize administrative costs, improve access to services, and minimize obstacles to the delivery of long-term care services to people in need.

The legislation further directs DHHS to pursue strategies to provide alternative funding of long-term care services by shifting the balance of the financial responsibility for long-term care services from public to private sources by promoting public-private partnerships and personal responsibility for long-term care through private long-term care insurance, tax credits, reverse mortgages, and changes in Medicaid eligibility rules.

DHHS must submit a report to the General Assembly and specified legislative committees and commissions by April 15, 2000, addressing its progress in developing the long-term care system, proposing a budget and budget management plan for all publicly financed long-term care services available to elderly North Carolinians, and addressing whether a single division of DHHS is an appropriate organizational structure for coordination of all long-term care services for state residents.

Abuse and Neglect of Persons in Long-Term Care Facilities

Criminal Penalties for Abuse and Neglect of Patients or Residents in Long-Term Care Facilities. G.S. 14-32.2 establishes criminal penalties for the abuse of patients of health care facilities (nursing homes and other specified facilities) and residents of residential care facilities (adult care homes). Section 3.15 of S.L. 1999-334, as amended by the 1999 Technical Corrections Act, S.L. 1999-456 (H 162), amends G.S. 14-32.2 by (1) defining *abuse* as the willful or culpably negligent infliction of physical injury or the willful or culpably negligent violation of any law

designed for the health or welfare of a patient or resident, and (2) making it a Class A1 misdemeanor for a person to abuse a patient or resident of a health care facility or residential care facility when the abuse evinces a pattern of conduct that is willful or culpably negligent and proximately causes bodily injury to a patient or resident (other than serious bodily injury or death). The amendments to G.S. 14-32.2 are effective December 1, 1999, and apply to offenses committed on or after that date.

Investigation of Complaints Regarding the Care or Safety of Residents of Nursing and Adult Care Homes. G.S. 131D-26 requires county departments of social services to investigate complaints alleging violations of the Adult Care Home Residents' Bill of Rights. Section 1.8 of S.L. 1999-334 amends G.S. 131D-26 to establish new time frames for the investigation of complaints involving the care or safety of residents. Complaints alleging life-threatening situations must be investigated immediately. Investigations of complaints alleging the abuse of a resident must be initiated within twenty-four hours of receipt of the complaint; investigations involving the neglect of a resident must be initiated within forty-eight hours. All other investigations must be initiated within two weeks of the date the complaint is received. County social services departments must complete all investigations within thirty days.

Section 1.9 of S.L. 1999-334 amends G.S. 131E-124 to establish identical time frames for the investigation by DHHS of alleged violations of the Nursing Home Patients' Bill of Rights involving the care or safety of residents.

Long-Term Care Facilities

Appointment of Temporary Managers for Long-Term Care Facilities. Article 13 of G.S. Chapter 131E establishes procedures under which a court may appoint a temporary manager to ensure the proper operation of a long-term care facility (adult care home or nursing home) when conditions in the facility create a substantial risk of death or serious physical harm to residents or patients or when other specified conditions exist. Section 1.11 of S.L. 1999-334 amends G.S. 131E-234 to add as an additional ground for the appointment of a temporary manager a facility's continued pattern of failing to comply with applicable laws and rules. Due to constitutional concerns, S.L. 1999-334 repeals statutory language authorizing DHHS to finance its temporary management contingency fund from the proceeds of penalties imposed on nursing and adult care homes.

S.L. 1999-334 also amends G.S. 131E-233 to allow the appointment of an emergency temporary manager for a long-term care facility when DHHS petitions the court for emergency intervention and the court finds reasonable cause to believe that (a) conditions in the facility create an immediate substantial risk of death or serious physical harm to residents, or (b) the facility will close before the time in which a hearing ordinarily would be scheduled and adequate arrangements for relocating residents have not been made or quick relocation would not be in the best interest of residents. If the court appoints an emergency temporary manager, he or she may serve only until a hearing is conducted on DHHS's petition to appoint a temporary manager and may make only those changes in administration of the facility that are necessary to protect the health or safety of residents until the emergency is resolved. A court hearing regarding appointment of an emergency temporary manager must be held within three days of service of notice of the petition for emergency intervention and no sooner than twenty-four hours after notice of the hearing. The court, however, may issue an ex parte immediate emergency order if the court finds that grounds exist for the appointment of an emergency temporary manager and a likelihood exists that a resident may suffer irreparable injury or death if the order is delayed. Unless this ex parte order is dissolved by the court for good cause shown, it remains in effect until a hearing is held on DHHS's petition for appointment of an emergency temporary manager.

Use of Long-Term Care Facilities to Provide Temporary Shelter or Services during Disasters and Emergencies. S.L. 1999-307 (S 34) authorizes the temporary waiver of rules governing nursing and adult care homes to the extent necessary to allow these facilities to provide temporary shelter or services to the public during declared disasters or emergencies, unless the DHHS Division of Facility Services determines that waiver of these rules would pose an

unreasonable risk to the health, safety, or welfare of any person in the facility. Waivers may be preapproved as part of a predisaster plan or granted on a case-by-case basis.

Health Care Personnel Registry. S.L. 1999-159 (H 1258) amends G.S. 131E-256 to require health care facilities (including nursing homes, adult care homes, and home care agencies) to check the state Health Care Personnel Registry before hiring health care personnel and to clarify that health care facilities are required to report to the Registry *substantiated* allegations against health care personnel. Section 3.14 of S.L. 1999-334 requires the Joint Legislative Health Care Oversight Committee to study whether the Health Care Personnel Registry is working effectively and to recommend any changes needed to improve its effectiveness. The committee must report its findings and recommendations to the General Assembly by May 1, 2000.

Immunization of Employees and Residents. Part VII of the Studies Act of 1999, S.L. 1999-395 (H 163), directs the North Carolina Study Commission on Aging to study the advisability of annual immunization of residents and employees of nursing homes, adult care homes, and adult day care homes against influenza and immunization of residents every five years against pneumococcal disease. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Adult Care Homes and Assisted Living Facilities

Rule-Making Authority with Respect to Adult Care Homes. S.L. 1999-334 amends G.S. 143B-153, G.S. 143B-165, and several provisions in G.S. Chapter 131D to transfer from the Social Services Commission to the Medical Care Commission rule-making authority with respect to the licensure, inspection, and operation of adult care homes and personnel requirements for adult care home staff.

Although the General Assembly's intent seems to have been to transfer all rule-making authority with respect to adult care homes from the Social Services Commission to the Medical Care Commission (except when a statute expressly authorizes the Secretary of Health and Human Services to exercise rule-making authority with respect to adult care homes), S.L. 1999-334 failed to amend G.S. 131D-4.3, which authorizes the Social Services Commission to adopt rules with respect to the assessment of adult care home residents, independent case management for adult care home residents, training requirements for personal care aides employed by adult care homes, monitoring and supervision of adult care home residents, oversight of and quality of care in adult care homes, and adult care home staffing requirements.

Under new G.S. 131D-4.5, the Medical Care Commission is required to adopt rules (1) establishing minimum medication administration standards for adult care homes designed to reduce the medication error rate to an acceptable level; (2) establishing minimum staffing and training requirements for medication aides and standards for professional supervision of medication controls; (3) establishing training requirements for adult care home staff in behavioral interventions; (4) establishing minimum training and education qualifications for supervisors in adult care homes; (5) specifying the safety responsibilities of adult care home supervisors; (6) specifying the qualifications of adult care home staff on duty during various portions of the day to ensure safe and quality care for residents; (7) establishing procedures for determining the compliance history of adult care homes' principals and affiliates and criteria for refusing licensure to applicants that have a history of failing to comply with state law or disregarding the health, safety, or welfare of residents; (8) issuing licenses for special care units that provide care for residents with Alzheimer's disease or other dementias; (9) implementing due process and appeal rights regarding the discharge or transfer of adult care home residents; and (10) regarding the issuance of time-limited provisional licenses and extensions for provisional licenses for adult care homes.

Under Section 3.10 of S.L. 1999-334, the Secretary of Health and Human Services is required to adopt temporary rules implementing new G.S. 131D-4.5. Those rules will remain effective until the Medical Care Commission adopts permanent rules.

Study Responsibility for Regulating Adult Care Homes. Section 3.12 of S.L. 1999-334 requires DHHS to recommend, by February 1, 2000, to the North Carolina Study Commission on

Aging a more efficient system of regulatory administration for adult care homes that delineates clear authority and streamlines government functions. The Study Commission on Aging must review DHHS's recommendation and advise the General Assembly by May 1, 2000. S.L. 1999-334 also requires the Study Commission on Aging to study the lack of uniformity, accountability, and central authority in the current regulatory system and their impact on care delivery and quality of life for adult care home residents. The commission must report these findings and recommendations to the General Assembly by May 1, 2000.

Grounds for Denying License. S.L. 1999-113 (S 198) amends G.S. 131D-2 (effective with respect to license applications filed on or after May 28, 1999) to prohibit the issuance of a new adult care home license to an applicant who was the "owner, principal, or affiliate" of an adult care home that had its license revoked, that had its license summarily suspended or downgraded to provisional status as a result of Type A or Type B violations, or that was assessed a penalty for a Type A or Type B violation. If issuance of a license is prohibited under new G.S. 131D-2(b)(1b), the respective periods of disqualification are one year from the date of the prior license revocation, six months from the date of reinstatement of the license or restoration from provisional to full licensure or termination of the provisional license, or until certification of substantial compliance with the correction plan under G.S. 131D-34.

S.L. 1999-113 repeals the provisions of G.S. 131D-2(b)(1) that previously prohibited, for a period of one year from the date of the prior license revocation, the issuance of a new adult care home license to any home whose administrator was the administrator of an adult care home that had its license revoked.

Section 3.8 of S.L. 1999-334 requires DHHS to establish and maintain a provider file to record and monitor compliance histories of nursing and adult care homes and the owners, operators, and affiliates of nursing and adult care homes. Section 1.5 of S.L. 1999-334 enacts a new statute [G.S. 131D-2(b)(6)] requiring DHHS, under rules adopted by the Medical Care Commission, to conduct a compliance history review of an adult care home, and its principals and affiliates, before issuing or renewing a license to operate the adult care home; it also allows DHHS to deny licensure if the compliance history review shows a pattern of noncompliance with state law by the facility, or its principals or affiliates, or otherwise demonstrates disregard for the health, safety, and welfare of residents.

Provisional Licenses. Section 1.7 of S.L. 1999-334 amends G.S. 131D-2(b)(1) to provide that provisional licenses for adult care homes may be issued for a period of not more than ninety days and that DHHS may extend a provisional license for not more than one additional ninety-day period upon a finding that the licensee has made substantial progress toward remedying the licensure deficiencies that caused the license to be reduced to provisional status.

Licensure Compliance. The Studies Act of 1999, S.L. 1999-395 (H 163), authorizes the Legislative Research Commission (LRC) to study alternative methods, such as compliance with state or national accreditation standards, that would better ensure licensure compliance and good quality of care in long-term care facilities. The objective is to free state resources currently used for routine inspections of facilities in order to focus on facilities that have been the subjects of complaints or that have a history of noncompliance with state licensing laws. The Studies Act also authorizes the LRC to study the feasibility of biannual inspection and grading of adult care homes by county social services departments. If the LRC decides to study either or both of these matters, it must report its findings and recommendations to the General Assembly's regular legislative session in 2000 or to the 2001 General Assembly.

Exemption from Licensure. S.L. 1999-193 (H 96) amends G.S. 131D-2(c), effective September 30, 1995, to exempt from the adult care home licensure requirements of G.S. Chapter 131D facilities that (a) are maintained or operated by a unit of government, (b) were established, maintained, or operated by a unit of government on September 30, 1995, and (c) were exempt from licensure on September 30, 1995. The effect of this legislation is to reinstate retroactively the exemption from licensure for Beaufort County's county home for the aged, which was repealed inadvertently by the General Assembly in 1995.

Accreditation of Adult Care Homes. Section 11.20 of the 1999 Appropriations Act, S.L. 1999-237 (H 168), directs DHHS to develop a plan and criteria for accreditation of adult care

homes and for enhanced payments to facilities that meet accreditation criteria. DHHS must submit its findings, recommendations, and proposed plan to the North Carolina Study Commission on Aging and the Joint Legislative Health Care Oversight Committee by April 1, 2000.

Adult Care Home Specialist Fund. S.L. 1999-334 establishes an Adult Care Home Specialist Fund in the DHHS to pay the salaries of adult care home specialists employed by county departments of social services. The law, however, does not indicate how this new fund will be funded, establish a formula for distributing funds to counties, or indicate whether local matching funds will be required.

Special Care Units for Residents with Alzheimer's Disease or Other Dementias. S.L. 1999-334 repeals the provisions of G.S. 143B-181.50 and -181.52, which required the Social Services Commission to adopt rules containing state standards for *special care units* in adult care homes (defined as a separate, closed wing or hallway that is designed especially for residents with Alzheimer's disease or related dementias), and replaces them with new requirements regarding the licensure of special care units in adult care homes and the disclosure of information by adult care homes that advertise, market, promote, or hold themselves out to the public as providing special care units for persons with Alzheimer's disease, other dementias, other mental health disabilities, or other special needs diseases or conditions. The special licensure and disclosure requirements do not apply to adult care homes that do not hold themselves out as providing a special care unit, nor do they prohibit such facilities from admitting as a resident a person with Alzheimer's disease or other dementia, mental health disability, or special needs disease or condition.

Section 1.1. of S.L. 1999-334 enacts a new statute (G.S. 131D-4.6) requiring that special care units in adult care homes be licensed as such and meet additional licensure standards adopted by the Medical Care Commission. The new law defines a *special care unit* as a program, wing, or hallway in an adult care home designated especially for the care of residents with Alzheimer's disease or other dementias, mental health disabilities, or special needs diseases or conditions as determined by the Medical Care Commission.

Section 2.1 of the act enacts a new statutory provision (G.S. 131D-7) requiring adult care homes with special care units to disclose the following information, in writing, to persons seeking placement in a special care unit or the authorized representatives of such persons (before placement in a special care unit), to the Office of State Long-Term Care Ombudsman (annually or more often upon request), and to DHHS (as part of the annual licensure process and when there is any substantial change with respect to required disclosures): (1) the form of care or treatment provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias, mental health disabilities, or other special needs; (2) the overall philosophy and mission of the facility and how it reflects the special needs of such residents; (3) the process and criteria for placement, transfer, or discharge to or from the special care unit; (4) the process used for assessing such residents and establishing, changing, and implementing plans of care for such residents; (5) staffing ratios and how they meet the residents' needs for increased care and supervision; (6) dementia-specific staff training; (7) physical environment and design facilities that specifically address the needs of residents with Alzheimer's disease and other dementias; (8) frequency and types of programs and activities for residents of the special care unit; (9) involvement of families in resident care and availability of family support programs; and (10) additional costs and fees for special care. DHHS must examine the accuracy of the written disclosures as part of its license renewal procedures and inspection process.

Assessment of Adult Care Home Residents. Section 1.14 of S.L. 1999-334 amends G.S. 131D-2(e) to require that adult care homes conduct an assessment of each resident within seventy-two hours of admitting the resident and annually thereafter. The assessment must use an instrument approved by DHHS upon the advice of the Director of the DHHS Division of Aging. The assessment must include a determination of the resident's cognitive and physical functioning in activities of daily living. Adult care homes must use the assessment to develop appropriate and comprehensive service plans and care plans, to determine the level and type of staff needed to meet the needs of residents, and to determine whether the resident requires referral to the resident's physician or another licensed health care professional or community resource. DHHS must provide ongoing training for adult care home staff in the use of the approved

assessment instrument, ensure that adult care homes conduct these assessments, and review the assessments and related service and care plans of a selected number of residents as part of its process for inspecting and licensing adult care homes. If DHHS determines that an adult care home is not carrying out its responsibilities with respect to the assessment of residents, it must require the facility to implement a corrective action plan and may, in addition to other available administrative penalties, suspend the admission of new residents to the facility until the conditions have been corrected.

Transfer or Discharge of Adult Care Home Residents. Section 1.6 of S.L. 1999-334 adds a new provision to the Adult Care Home Residents' Bill of Rights [G.S. 131D-21(17)] prohibiting the transfer or discharge of a resident from an adult care home except for medical reasons, the welfare of the resident or other residents, nonpayment of the resident's bill for care, or when the transfer is mandated by state or federal law. Residents who are transferred or discharged must be given at least thirty days advance notice (except in cases in which the health or safety of the resident or others might be jeopardized) and must have the right to appeal a proposed transfer or discharge under rules that offer at least the same protections as federal and state rules governing the transfer or discharge of patients in nursing homes.

Patient Care and Safety. Section 1.1 of S.L. 1999-334 enacts a new statutory provision (G.S. 131D-4.4) requiring all adult care homes to provide to each resident the care, safety, and services necessary to enable the resident to attain and maintain the highest practicable level of physical, emotional, and social well-being in accordance with the resident's individual assessment and plan of care and rules and standards relating to quality of care and safety adopted under G.S. Chapter 131D.

Air-Conditioning, Ventilation, and Room Temperature. Section 1.15 of S.L. 1999-334 requires that adult care homes comply with applicable rules regarding air circulation, ventilation, and room temperature in resident living quarters, including requirements for the use of air conditioning or providing at least one fan for each resident bedroom and living and dining areas when temperatures in the main center corridor exceed 80 degrees Fahrenheit.

Adult Care Home Staff. Section 3.9 of S.L. 1999-334 S requires DHHS to continue its demonstration project testing whether the TEACCH model is a viable method for finding and retaining competent staff for adult care homes and nursing homes.

Staffing Grants for Adult Care Homes. Section 11.22(f) of the 1999 Appropriations Act, S.L. 1999-237 (H 168), appropriates \$2 million in state funding for state fiscal year (SFY) 1999–2000 (and \$500,000 for SFY 2000–2001) for grants to adult care homes that are required to add staff, or that have added staff, to comply with the increased third-shift staffing requirements of G.S. 131D-4.3(a)(5). State funding for these grants must be matched equally by county funding. The criteria and conditions for these grants are the same as those established for the program in 1998. DHHS must incorporate the staffing grants into its State-County Special Assistance payment methodology effective October 1, 2000.

Payment Rates for Family Care Homes. Effective July 1, 1999, Section 3.1 of S.L. 1999-334 S repeals G.S. 131D-4.2(c), which required family care homes to submit annual costs reports to DHHS. Section 3.2 of the act requires that rates for family care homes be based on market rate data.

Moratorium on Construction or Expansion of Adult Care Home Facilities. In 1997 the General Assembly enacted legislation imposing a moratorium on the construction or expansion of adult care home facilities. S.L. 1999-135 (H 944) extends this moratorium from August 26, 1999, until September 30, 2000.

Assisted Living Residence Administrators. Effective January 1, 2000, S.L. 1999-443 (H 512) enacts the Assisted Living Administrators Act as Article 20A of G.S. Chapter 90.

The act applies to all persons who operate, administer, manage, or supervise an adult care home or other assisted living residence as defined in G.S. 131D-2(a)(1d), including for-profit and nonprofit facilities and facilities owned or operated by the federal government, the state, or local governments. Those not included are family care homes, combination homes (as defined in G.S. 131E-101) and hospitals that contain adult care beds, and continuing care facilities if adult care beds are housed in the same facility as nursing home beds.

Effective January 1, 2000, the act requires that all assisted living residence administrators (as defined above) be certified by DHHS. Certification requirements include a satisfactory criminal background report and satisfactory completion of an approved administrator-in-training program. Any individual who has been actively engaged as an assisted living administrator in North Carolina for at least one year may be certified before December 31, 1999, without meeting the act's certification requirements unless a review of his or her record shows a pattern of noncompliance with state law or disregard for the health, safety, and welfare of residents in a facility in which the individual works or has worked as an assisted living administrator.

Studies. Section 3.13 of S.L. 1999-334 requires the Study Commission on Aging to study using licensure fees as a source of revenue for monitoring, staffing, and temporary management of adult care homes; licensure of adult care home administrators; the lack of uniformity, accountability, and central authority in the current system of regulating adult care homes and how this impacts on care delivery and quality of life for adult care home residents; and how to address problems that arise when adult care homes admit persons whose behavior poses a threat to the safety and well-being of other residents. The commission is required to report its findings and recommendations to the General Assembly by May 1, 2000.

Section 3.13A of S.L. 1999-334 requires the Mental Health Study Commission to examine issues related to the appropriate placement of persons with mental health disabilities in adult care homes and whether adequate mental health services are available to residents in adult care homes. The commission must report its findings and recommendations to the General Assembly by May 1, 2000.

Section 3.14 of S.L. 1999-334 requires the Joint Legislative Health Care Oversight Committee to study whether the requirements and procedures for criminal history record checks on applicants for employment in adult care homes should be strengthened, expanded, or changed. The committee must report its findings and recommendations to the General Assembly by May 1, 2000.

Nursing Homes and Continuing Care Retirement Facilities

Special Care Units for Nursing Home Patients with Alzheimer's Disease or Other Dementias. S.L. 1999-334 repeals the provisions of G.S. 143B-181.50 and -181.51, which required the Medical Care Commission to adopt rules containing state standards for *special care units* in nursing homes (defined as a separate, closed wing or hallway that is designed especially for residents with Alzheimer's disease or related dementias).

Requirements regarding the disclosure of information with respect to special care units for nursing home patients with Alzheimer's disease or other dementias (similar to the disclosure requirements for special care units in adult care homes adopted by S.L. 1999-334) were included in H 977 (which passed the House on April 26, 1999) and in S 783 (which passed both the Senate and the House but was not ratified because the Senate refused to concur in additional, unrelated provisions that were added to the bill by the House). Both of these bills are eligible for further consideration during the regular legislative session in 2000.

Nursing Homes' Compliance with Orders of Physicians. Section 1.9 of S.L. 1999-334 amends G.S. 131E-124 to provide that a nursing home is not in violation of any applicable statute or rule for any action taken pursuant to a physician's order when the physician has determined that the action is medically necessary.

Nursing Home Administrators Board. S.L. 1999-217 (S 622) amends the provisions of G.S. 90-280 governing the fees that may be charged by the Nursing Home Administrators Board for application processing, examinations, inactive licensees, temporary licenses, and certification of continuing education course providers.

Property Tax Exemption for Certain Nonprofit Continuing Care Retirement Homes. S.L. 1999-191 (S 325), which makes corrections and conforming changes relating to the taxation of continuing care retirement homes, is discussed in Chapter 16 (Local Taxes and Tax Collection).

Adult Day Care Programs

Adult Day Care Programs Providing Special Care for Persons with Alzheimer's Disease or Other Dementias. Section 2.2. of S.L. 1999-334 amends G.S. 131D-6 to require adult day care programs that promote themselves as providing special care services designed especially for persons with Alzheimer's disease or other dementias, mental health disabilities, or special needs diseases or conditions (as determined by the Medical Care Commission) to disclose the following information in writing to persons seeking adult day care program special care services and to DHHS: (1) the overall philosophy and mission of the program and how it reflects the special needs of such participants; (2) the process and criteria for providing and discontinuing special care services; (3) the process used for assessing such participants and establishing, changing, and implementing plans of care for such participants; (4) staffing ratios and how they meet the participants' needs for increased care and supervision; (5) dementia-specific staff training; (6) physical environment and design features that specifically address the needs of participants with Alzheimer's disease or other dementias; (7) frequency and types of activities for such participants; (8) involvement of families in special care and availability of family support programs; and (9) additional costs and fees for special care. DHHS must examine the accuracy of the written disclosures as part of its certification renewal procedures and inspection process. The act does not prohibit an adult day care program from providing special care services for persons with Alzheimer's disease or other dementias or require the disclosure of information regarding special care services if the program does not advertise, market, or otherwise promote itself as providing special care services.

Other Legislation of Interest to Senior Citizens

Gifts by Guardians

Gifts for Governmental or Charitable Purposes. North Carolina's statutes regarding guardianship of incompetent persons allow a superior court judge to approve gifts by the guardian of the estate of an incompetent person from the incompetent person's income or principal for religious, charitable, medical, or educational purposes or to certain governmental agencies. G.S. 35A-1335 and -1340. S.L. 1999-270 (§ 1003) imposes three new requirements with respect to these types of gifts: (1) the proposed gift must be of a nature that the incompetent person would have approved before being declared incompetent; (2) in the case of an incompetent person who has executed a will before being declared incompetent, the gift must not jeopardize nondiscretionary distributions under a revocable trust executed by the incompetent person before he or she was declared incompetent, and beneficiaries under the revocable trust must approve the gift; (3) in the case of the gift of a nonprobate asset, all persons who would share the nonprobate asset if the incompetent person were dead must be given notice and an opportunity to object to the gift.

Gifts to Individuals. S.L. 1999-270 also enacts new statutory provisions (G.S. 35A-1336.1 and -1341.1) allowing a judge to approve gifts from an incompetent person's income or principal to certain individuals, including the incompetent person's spouse, parents, or descendants; persons who were named as beneficiaries under a trust or will executed by the incompetent person before he or she was declared incompetent; and other specified relatives or individuals. The judge may not approve gifts to individuals unless the incompetent person's remaining income or principal is sufficient to support the incompetent person and persons for whom the incompetent person has a duty to provide support. In the case of gifts to individuals from an incompetent person's principal, approval of the gift is subject to additional conditions similar to those that apply to gifts from an incompetent person's principal for governmental or charitable purposes.

Transfer of Assets to Revocable Trusts. S.L. 1999-270 amends G.S. 35A-1251 to authorize the guardian of the estate of an incompetent person to petition the court for approval of a transfer of the ward's assets to a revocable trust executed by the ward before he or she was declared

incompetent if (a) the ward also executed a valid will directing that the transferred assets be distributed to the trust at the ward's death or (b) the trust has the same dispositive provisions as the ward's will or provides that the trust assets are to be distributed to the ward's estate upon the ward's death. If the court approves the transfer of assets to the trust, the guardian may, upon thirty days notice to the trustee, withdraw the transferred assets (or the proceeds from the sale of the transferred assets) from the trust unless the assets have been distributed or disposed of by the trustee pursuant to the terms of the trust before he or she receives notice from the guardian.

Gifts by Attorneys-in-Fact

G.S. 32-2(15) allows the attorney-in-fact under a power of attorney to make a gift from the principal's income or property to himself or herself if the power of attorney executed by the principal allows the attorney-in-fact to do so. S.L. 1999-385 (H 604) amends G.S. 32-2(15) (effective with respect to powers of attorney executed on or after October 1, 1999) to authorize such gifts only to the extent that they are also in accordance with the principal's personal history of making or joining in the making of lifetime gifts.

Unemployment Benefits for Workers with Elder Care Responsibilities

S.L. 1999-196 (H 277) amends North Carolina's unemployment compensation laws to provide that an unemployed worker may not be disqualified for unemployment compensation benefits when the individual's inability to accept bona fide permanent employment during a particular shift would result in an "undue family hardship" or when the individual's discharge is solely due to an inability to accept work during a particular shift as the result of an "undue family hardship." "Undue family hardship" includes an individual's inability to accept a particular shift because he or she is unable to obtain elder care during that shift for his or her aged or disabled parent. The provisions of S.L. 1999-196 expire on June 30, 2001.

State and Local Government Retirement Benefits

Part XXVIII of the 1999 Appropriations Act, S.L. 1999-237 (H 168), provides cost-of-living increases for members of the Teachers' and State Employees' Retirement System (TSERS) (2.3 percent for TSERS), the Consolidated Judicial Retirement System (CJRS), the Legislative Retirement System, and the Local Governmental Employees' Retirement System (LGERS). It enacts provisions allowing the transfer, under certain conditions, of retirement contributions and service from TSERS and LGERS to CJRS and adjusting the CJRS retirement benefit formula based on transferred TSERS and LGERS service credits. It also repeals G.S. 135-72, which prohibited the payment of CJRS retirement benefits to retirees serving as active judicial officers in the United States courts.

Legal Rights of Grandparents to Visit Grandchildren

Legislation (H 639) to amend North Carolina's laws regarding the authority of courts to enter orders granting grandparents the legal right to visit with their grandchildren was introduced in the House but defeated on April 28, 1999.

John L. Saxon