

House Bill 318

By: Representatives McClinton of the 59<sup>th</sup>, Post 1, Howard of the 98<sup>th</sup>, Ashe of the 42<sup>nd</sup>, Post 2, Mobley of the 58<sup>th</sup>, Sinkfield of the 50<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 6 of Title 49 of the Official Code of Georgia Annotated, relating to  
2 services for the aging, so as to enact the "Adult Day Center Licensure Act"; to provide a  
3 short title; to define terms; to provide the Department of Human Resources with the authority  
4 to promulgate regulations for the operation of adult day centers; to provide the Department  
5 of Human Resources the authority to issue and revoke licenses of adult day centers; to  
6 provide access to adult day centers for the Department of Human Resources for the purpose  
7 of inspection and investigation; to provide a penalty for noncompliance; to provide a  
8 procedure for review of licensure decisions made by the Department of Human Resources;  
9 to provide for related matters; to provide for effective dates; to repeal conflicting laws; and  
10 for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 **SECTION 1.**

13 Chapter 6 of Title 49 of the Official Code of Georgia Annotated, relating to services for the  
14 aging, is amended by adding after Code Section 49-6-77, relating to rules and regulations to  
15 implement Georgia Family Caregiver Support, a new article to read as follows:

16 "ARTICLE 7

17 49-6-80.

18 This article shall be known and may be cited as the 'Adult Day Center Licensure Act.'

19 49-6-81.

20 The intent of the General Assembly is to promote, safeguard, and protect the well-being  
21 of adults participating in adult day care or adult day health services by authorizing,  
22 promoting, and supporting licensure regulations for adult day care and adult day services  
23 providers. It is further the intent of the General Assembly that the Department of Human

Resources shall serve as the agency responsible for promulgating, implementing, and enforcing the licensure regulations.

49-6-82.

As used in this article, the term:

(1) 'Adult day care' means the provision of services under a social model, as defined in paragraph (7) of this Code section.

(2) 'Adult day center' means a facility that provides adult day care and adult day services, as defined in paragraphs (1) and (3) of this Code section, to three or more persons.

(3) 'Adult day services' means the provision of services under a medical model, defined in paragraph (6) of this Code section.

(4) 'Department' means the Department of Human Resources.

(5) 'Functionally impaired' means any person sixty years of age or older with physical or mental limitations that restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently.

(6) 'Medical model' means programs that provide social, rehabilitative, and health services to physically impaired, mentally impaired, or physically and mentally impaired persons aged sixty and over:

(A) To meet the needs of such functionally impaired persons, as defined in paragraph (5) of this Code section; or

(B) For the purpose of restoring or maintaining optimal capacity for self care. Such care shall be based on individual plans of care and shall be provided for no more than three hours in any 24 hour period.

(7) 'Social model' means programs that provide nonmedical care, primarily social and recreational activities, to persons aged sixty and over in need of limited personal care assistance, supervision, or assistance essential for sustaining the activities of daily living. Such care shall be based on individual plans of care and shall be provided for no more than three hours in any 24 hour period.

49-6-83.

(a) All adult day centers shall be licensed annually by the department in accordance with procedures, standards, rules, and regulations to be established by the department and approved by the board. The department shall develop and publish standards for licensing adult day centers. The department shall seek the opinions of consumers and providers in the promulgation of these standards, as well as for any future amendments to these standards.

(b) Application for a license shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license and upon presentation by the applicant of evidence that the adult day center meets the standards prescribed by the department, the department shall issue such adult day center a license for a one-year period.

(c) The department shall assist applicants or licensees in meeting standards of the department and, if a licensee is for any reason denied renewal of a license, a license is revoked, or any applicant for a license cannot meet department standards, the department shall assist in planning the placement of adults, if any, in alternative arrangements.

(d) If the department finds that any adult day center applicant does not meet the standards prescribed by the department but is attempting to meet such standards, the department may, in its discretion, issue a temporary license to such adult day center, but such temporary license shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such center is making progress toward meeting prescribed standards of the department, the department may, in its discretion, reissue such temporary license for one additional period not to exceed one year. As an alternative to a temporary license, the department, in its discretion, may issue a restricted license which states the restrictions on its face.

(e) The department shall refuse a license upon a showing of:

(1) Noncompliance with the rules and regulations for adult day centers as adopted by the department which are designated in writing to the facilities as being related to adults' health and safety;

(2) Flagrant and continued operation of an unlicensed center in contravention of the law; or

(3) Prior license denial or revocation within one year of application.

(f) All licensed adult day centers shall prominently display the license issued to such center by the department at some point near the entrance of the premises of such center that is open to view by the public.

(g) The department's action revoking or refusing to renew or issue a license required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case within the meaning of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' except that thirty days' notice in writing from the department's designee shall be required prior to license revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any person who will testify at that hearing.

(h) It shall be the duty of the department to inspect at regular intervals all licensed adult day centers within the state. The department shall have the right of entrance, privilege of inspection, and right of access to all adults under the care and control of the licensee.

(i) If any flagrant abuses, dereliction, or deficiencies are made known to the department or its duly authorized agents during their inspection of any adult day center or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(j) If abuses, dereliction, or deficiencies are found in the operation and management of any adult day center, they shall be brought immediately to the attention of the management of such center; and if correctable, but not corrected within a reasonable time, the department shall revoke the license or commission of such agency in the manner prescribed in this Code section.

(k) The department may require periodic reports from adult day centers in such forms and at such times as the department may prescribe.

(l) Any adult day center that shall operate without a license issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license shall constitute a separate offense.

(m) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of an adult day center in willful violation of this article or of any regulation or order of the department.

49-6-84.

(a) Unless otherwise provided, any person who violates the provisions of Code Section 49-6-83 or who hinders, obstructs, or otherwise interferes with any representative of the department in the discharge of that person's official duties in making inspections as provided in Code Section 49-6-83 or in investigating complaints as provided in Code Section 49-6-83 shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing provision of this chapter; any rule, regulation, or order issued under this chapter; or any term, condition, or limitation of any license certificate under this chapter and is thereby subjecting an adult in care to injury or a life-threatening situation; or

(B) Commits any violation for which a license certificate may be revoked under rules or regulations issued pursuant to this chapter

1 may be subject to civil penalty, to be imposed by the department, not to exceed \$500.00.  
2 If any violation is a continuing one, each day of such violation shall constitute a separate  
3 violation for the purpose of computing the applicable civil penalty.

4 (2) Whenever the department proposes to subject a person to the imposition of a civil  
5 penalty under this subsection, it shall notify such person in writing of:

6 (A) The date, facts, and nature of each act or omission with which the person is  
7 charged;

8 (B) The specific Code section, rule, regulation, order, or license certificate limitation  
9 involved in the violation; and

10 (C) Each penalty and the amount which the department proposes to impose for each  
11 penalty.

12 Such written notice shall be sent by registered or certified mail or statutory overnight  
13 delivery by the department to the last known address of such person. The person so  
14 notified shall be granted an opportunity to show in writing, within such reasonable period  
15 as the department shall by rule or regulation prescribe, why such penalty should not be  
16 imposed. The notice shall also advise such person that, upon failure to pay the civil  
17 penalty subsequently determined by the department, if any, the penalty may be collected  
18 by civil action. Any person upon whom a civil penalty is imposed may appeal such  
19 action pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

20 (3) A civil penalty finally determined under this Code section may be collected by civil  
21 action in the event that such penalty is not paid as required. On the request of the  
22 department, the Attorney General is authorized to institute a civil action to collect a  
23 penalty imposed pursuant to this subsection. The Attorney General shall have the  
24 exclusive power to compromise, mitigate, or remit such civil penalties as are referred to  
25 the Attorney General for collection.

26 (4) All moneys collected from civil penalties shall be paid to the state for deposit in the  
27 general fund."

## 28 **SECTION 2.**

29 (a)(1) For purposes of promulgating rules and regulations, Section 1 of this Act shall  
30 become effective on July 1 of the fiscal year in which this Act becomes effective as  
31 provided in paragraph (3) of this subsection.

32 (2) For all other purposes, Section 1 of this Act shall become effective July 1 of the fiscal  
33 year following the year in which this Act becomes effective as provided in paragraph (3)  
34 of this subsection.

35 (3) Section 1 of this Act shall become effective only upon the specific appropriation of  
36 funds for purposes of such section including without limitation those positions necessary

- 1 for implementation as expressed in an appropriations Act enacted by the General  
2 Assembly.
- 3 (b) All sections of this Act other than Section 1 shall become effective July 1, 2003.

- 4 **SECTION 3.**
- 5 All laws and parts of laws in conflict with this Act are repealed.