

STATE OF TENNESSEE

PUBLIC CHAPTER NO. 579

HOUSE BILL NO. 2282

By Representatives Ferguson, Mike Turner, Maddox, Gilmore, Barker, Fitzhugh, Moore, Coleman, Brown, Miller, Favors, Sontany, Matheny, Yokley, Montgomery, Harrison, Niceley, Phillip Johnson, Litz, Curtis Johnson, Todd, Faulkner, Harry Brooks, Hensley, Coley, McDonald, Windle, Fraley, Hackworth, Pruitt, Camper, Sargent, Shepard, McManus, Lois DeBerry, Hardaway, Fincher, Bone, Shaw, Ford, Bass, Stewart, Dean, Roach, Maggart, Rich, Watson, Haynes, Ty Cobb, Lollar, Jim Cobb, Weaver and Mr. Speaker Williams

Substituted for: Senate Bill No. 2275

By Senators Kyle, Finney, Burks, Crowe, Faulk, Yager, Jackson

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11 and Title 56, Chapter 32, relative to the development and creation of adult care homes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. The title of this act is, and may be cited as, the "Critical Adult Care Home Act of 2009."

SECTION 2. Tennessee Code Annotated, Section 68-11-201, is amended by adding the following language as new, appropriately designated subsections:

() "Adult care home" means a single family residence licensed pursuant to this act in which 24-hour residential care, including assistance with activities of daily living, is provided in a homelike environment to no more than five elderly or disabled adults. Adult care homes shall be licensed as Level 2 homes, and meet standards prescribed in this act and in regulations promulgated by the board pursuant to this act. "Adult care home" does not include any facility otherwise licensed by the department of mental health and developmental disabilities.

() "Adult care home provider" means a person twenty-one (21) years of age or older that owns and operates an adult care home and meets all education, training and experience requirements prescribed in this act and in regulations promulgated by the board pursuant to § 68-11-209. An adult care home provider may serve up to five (5) elderly or disabled adults who are unrelated to the adult care home provider by blood or marriage. An adult care home provider may choose to serve one (1) or more elderly or disabled adult members of their own family, in which case, the adult care home provider shall be required to serve at least two (2) additional elderly or disabled adults unrelated to the adult care home provider by blood or marriage, for a total of no more than five (5) elderly or disabled residents served in the adult care home. An adult care home provider

shall live in the adult care home or employ a resident manager to live in the residence.

() “Resident manager” means a person twenty-one (21) years of age or older who lives in an adult care home and oversees the day-to-day operation of the adult care home on behalf of the adult care home provider and meets all education, training and experience requirements prescribed in this act and in regulations promulgated by the board pursuant to § 68-11-209.

() “Substitute caregiver” means any person twenty-one (21) years of age or older who temporarily oversees care and services in an adult care home during the short-term absence of the adult care home provider or resident manager and meets all education, training and experience requirements prescribed in this act and in regulations promulgated by the board pursuant to § 68-11-209.

SECTION 3. Tennessee Code Annotated, Section 68-11-202(a)(1), is amended by adding the words “and adult care homes,” following “outpatient diagnostic centers,” and deleting the words “and facilities operated for the provision of alcohol and drug prevention and treatment services”.

SECTION 4. Tennessee Code Annotated, Section 68-11-202(b)(1), is amended by adding the following as a new subdivision (E):

(E) Adult care homes shall meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. The board for licensing health care facilities may adopt in regulation more stringent standards as it deems necessary in order to ensure the health and safety, including adequate evacuation of residents. As used in this section “adequate evacuation” means the ability of the adult care home provider, resident manger, or substitute caregiver, including such additional minimum staff as may be required by the board in regulation, to evacuate all residents from the dwelling within five (5) minutes. Adult care home providers must install smoke detectors in all resident bedrooms, hallways or access areas that adjoin bedrooms, and common areas where residents congregate including living or family rooms and kitchens. In addition, in multi-level homes, smoke alarms must be installed at the top of stairways. At least one (1) fire extinguisher with a minimum classification as specified by the board for licensing health care facilities must be in a visible and readily accessible location in each room, including basements, and be checked at least once a year by a qualified entity. Adult care home providers shall not place residents who are unable to walk without assistance or who are incapable of independent evacuation in a basement, split-level, second story or other area that does not have an exit at ground level. There must be a second safe means of exit from all sleeping rooms. Providers whose sleeping rooms are above the first floor shall be required to demonstrate an evacuation drill from that room, using the secondary exit, at the time of licensure, renewal, or inspection.

SECTION 5. Tennessee Code Annotated, Section 68-11-202(a)(5)(B), is amended by adding the words “adult care homes,” following “HIV supportive living facilities,” and before “etc.”

SECTION 6. Tennessee Code Annotated, Section 68-11-202(c)(1), is deleted in its entirety and substituted with the following language:

(c)

(1) When construction is planned by any facility required to be licensed by the department, except home care organizations as defined in § 68-11-201, for any building, additions to an existing building or substantial alterations to an existing building, two (2) sets of plans and specifications shall be submitted to the department to be approved. However, only one (1) set of schematics shall be submitted to the department for approval of plans and specifications converting an existing single family dwelling into: (1) a licensed residential health care facility with six (6) or fewer beds and (2) a licensed adult care home with five (5) or fewer residents.

SECTION 7. Tennessee Code Annotated, Section 68-11-204(a)(1), is amended by deleting the words “or ambulatory surgical treatment center” and substituting instead “ambulatory surgical treatment center, or adult care homes”.

SECTION 8. Tennessee Code Annotated, Section 68-11-206, is deleted in its entirety and substituted with the following language:

68-11-206.

(a) Any person, partnership, association, corporation, or any state, county or local governmental unit, or any division, department, board or agency of the governmental unit, in order to lawfully establish, conduct, operate or maintain a hospital, recuperation center, nursing home, home for the aged, residential HIV supportive living facility, assisted-care living facility, home care organization, residential hospice, birthing center, prescribed child care center, renal dialysis clinic, outpatient diagnostic center, ambulatory surgical treatment center or adult care home in this state, shall obtain a license from the department, upon the approval and recommendation of the board in the following manner:

(1) The applicant shall submit an application on a form to be prepared by the department with the approval of the board, showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a facility and with rules and regulations lawfully promulgated under this part. The application shall contain the following additional information:

- (A) The name(s) of the applicant(s);
- (B) The type of institution to be operated;
- (C) The location of the institution;

(D) The name of the person, or persons, to be in charge of the institution or, for adult care home applicants, the name of the resident manager, if applicable;

(E) A certification that the applicant has implemented a policy of informing its employees of their obligations under § 71-6-103 to report incidents of abuse or neglect;

(F) If an application for a nursing home license, a list of all nursing homes that the applicant, or any person or entity holding a majority legal or equitable interest in the applicant, owns or operates and, if the applicant has not operated a nursing home in this state for a continuous period of twenty-four (24) months preceding the application, the information specified in § 68-11-804(c)(1) for each such nursing home located outside this state; and

(G) Such other information as the department, with the approval of the board, may require;

(2)

(A) In addition to the requirements noted in subdivision (a)(1) above, an application for an adult care home license shall include the following additional information:

(i) The maximum number of residents;

(ii) Type of license;

(iii) If any residents are family members of the applicant;

(iv) Names and locations of all other facilities in and outside the state of Tennessee for which the applicant has any license and the compliance history of each facility, including penalties, suspensions, or other disciplinary actions;

(v) The extent to which a resident manager, substitute caregivers and other staff will be used in the facility;

(vi) A list of any unsatisfied judgments,

(vii) Past or pending litigation against the applicant;

(viii) Unpaid taxes local, state and federal taxes;

(ix) Notification regarding any bankruptcy filings made by the applicant;

(x) Demonstration of the applicant's financial ability to maintain sufficient financial resources to support the operating costs of the adult care home; and

(xi) Comprehensive business plan for the first two years of operation.

(B) The board shall promulgate regulations specifying additional financial requirements such as bonds or liability insurance.

(C) An adult care home provider shall obtain a separate license for each adult care home. An adult care home provider may, upon operation of a licensed adult care home for a minimum period of one year and completion of an annual licensure survey without any findings of noncompliance resulting in penalties, suspensions, or other disciplinary actions, submit application to separately license a second adult care home. Only upon operation of two (2) licensed adult care homes for a consecutive period of at least one (1) year, licensure survey in each facility without any findings of non-compliance resulting in penalties, suspensions, or other disciplinary actions, may an adult care home provider submit application to separately license additional adult care homes. The board may grant an exception to the one-at-a-time license requirement for Level 2 adult care homes for nursing facilities, assisted care living facilities and other providers when such nursing facility, assisted care living facility or provider has demonstrated expertise in delivering the specialized services necessary to the specified population that would be served by the licensed adult care homes. The board may establish in regulations a limit on the total number of adult care homes that can be operated by a single adult care home provider.

(D) A Level 2 license allows an adult care home provider to serve adults requiring specialized services. For purposes of this section "specialized services" means services provided to ventilator dependent residents and residents with a traumatic brain injury as defined in section 68-55-101(5). The applicant shall specify the type of license sought as a part of its application. The board shall

promulgate regulations specifying additional requirements for a Level 2 license.

(3) At a minimum, Level 2 adult care home providers serving ventilator-dependent residents shall meet all of the following requirements:

(A) Have an audible, redundant alarm system located outside of residents' room to alert the adult care home provider or resident manager of a resident disconnection or ventilator failure;

(B) Have a functioning emergency back-up generator adequate to maintain electrical service for residents needs until regular service is restored;

(C) All ventilators shall be equipped with internal battery backup systems;

(D) A backup ventilator shall be available at all times;

(4)

The board shall promulgate in regulation additional licensure requirements that define appropriate health and safety standards necessary to protect the health and welfare of residents. Specific elements to be addressed include, but are not limited to facility and building standards; minimum size and number of bedrooms and bathrooms; number of residents to a bedroom and a bathroom; sanitation; hazardous waste disposal; disaster preparedness; medication administration and storage, and resident record requirements;

(5)

The board shall maintain current information on all licensed adult care home providers. The information shall include: name, location and mailing address of the facility; description of the facility; date of last inspection; penalties; suspensions; and other disciplinary actions. The information shall be made available upon request to a prospective resident, resident, or family member.

(6) If the board determines that a license for any facility shall not be granted, it shall so notify the applicant. The decision of the board shall be final;

(7) If the board finds that the applicant complies with the provisions of this part and the rules and regulations promulgated

under this part, then the board shall recommend and approve the issuance of a license, and thereupon a license shall be issued by the department licensing the applicant to operate the facility for the remainder of the fiscal year; and

(8) Each license to operate a facility shall expire on June 30 following its issuance and shall become invalid on that date unless renewed. A licensee may renew its license within sixty (60) days following the license expiration date upon payment of the renewal fee in addition to a late penalty established by the board for each month or fraction of a month that payment for renewal is late; provided, that the late penalty shall not exceed twice the renewal fee. If a licensee fails to renew its license within sixty (60) days following the license expiration date, then the licensee shall reapply for licensure in accordance with the rules established by the board. A license shall not be assignable or transferable, shall be issued only for the premises named in the application, shall be posted in a conspicuous place in the facility and may be renewed from year to year.

(b)

(1) Upon request by a licensee, the board shall have authority to place a license in an inactive status for a period determined by the board upon a finding that:

(A) The licensee has a need to temporarily suspend operations; and

(B) The licensee intends to continue operations after a period of suspension.

(2) Placing a license in an inactive status shall not relieve the licensee from the annual license fees imposed by § 68-11-216.

SECTION 9. Tennessee Code Annotated, Section 68-11-207, is deleted in its entirety and substituted with the following language:

68-11-207.

(a) The board may suspend or revoke the license issued under this part on any of the following grounds:

(1) A violation of the provisions of this part or of the rules and regulations or minimum standards issued pursuant to this part, or, in the event of a nursing home, that has entered into an agreement with the department to furnish services under Title XVIII (42 U.S.C. § 1395 et seq.) or XIX (42 U.S.C. § 1396 et seq.) of the Social Security Act, any of the requirements for participation in the medical assistance program set out in title 42 of the Code of Federal Regulations, to such an extent that the board considers the licensee a chronic violator.

(2) Permitting, aiding or abetting the commission of any illegal act in such institutions; or

(3) Conduct or practice found by the board to be detrimental to the welfare of the patients in such institutions.

(b)

(1) In those cases where the conditions of any nursing home, home for the aged or adult care home are, or are likely to be, detrimental to the health, safety or welfare of the patient or resident, the commissioner has the authority to suspend the admission of any new patients or residents to the facility pending a prompt hearing before the board, or an administrative judge, if the board cannot be convened promptly.

(2) The commissioner is authorized, at any time prior to a hearing, based on information presented to the commissioner showing that such conditions have been and will continue to remain corrected, to revoke the suspension of admissions.

(3) Whenever the commissioner suspends the admission of any new patients, the commissioner shall detail, in a notice to the facility, the specific violations causing the suspension.

(4) Notice shall detail what conditions are considered detrimental to the health, safety or welfare of the patients and an explanation of the specific time frame when and conditions under which the facility can reasonably expect the suspension to be lifted.

(5) Within ten (10) days of receiving this notice or lesser timeframe when deemed necessary by the board to ensure the health, safety and welfare of adult care home residents, an adult care home provider shall submit a corrective action plan to the board delineating the measures to be taken to address violations

and associated timeframes. If it is deemed by the board to be necessary to ensure the health, safety and welfare of adult care home residents, the commissioner may require the adult care home provider to take all necessary actions to correct violations immediately.

(6) If the facility complies with these conditions, the commissioner shall lift the suspension within the time frame, unless other conditions exist that warrant an additional suspension or continuation of the suspension. The board has the authority to:

(A) Continue, revoke or modify the suspension of admissions;

(B) Revoke, suspend or condition the license of the facility; and

(C) Enter such other orders as it deems necessary.

(7) Unless the immediate protection of the health, safety or welfare of residents of a nursing home requires otherwise, the commissioner, after ordering a suspension of admissions to a nursing home pursuant to this section, shall provide notice of the suspension as soon as practicable to the members of the senate and house of representatives of the general assembly in whose district the nursing home is located.

(c) In imposing the sanctions authorized in this section, the board may consider all factors that it deems relevant, including, but not limited to, the following:

(1) The degree of sanctions necessary to ensure immediate and continued compliance;

(2) The character and degree of impact of the violation on the health, safety and welfare of the patients in the facility;

(3) The conduct of the facility against whom the notice of violation is issued in taking all feasible steps or procedures necessary or appropriate to comply or correct the violation; and

(4) Any prior violations by the facility of statutes, regulations or orders of the board.

(d) The board may, in its discretion, after the hearing, hold the case under advisement and made a recommendation as to requirements to be met by the facility in order to avoid either suspension or revocation of license or suspension of admissions.

(e) The board shall promulgate regulations defining the sanction structure and associated penalties.

(f)

(1) In addition to the authority granted above, the board shall have the authority to place a facility on probation. In the case of a nursing facility, to be considered for probation, a nursing facility must have had at least two (2) separate substantiated complaint investigation surveys within six (6) months, where each survey had at least one deficiency cited at the level of substandard quality of care or immediate jeopardy, as those terms are defined at 42 CFR 488.301. None of the surveys may have been initiated by an unusual event or incident self-reported by the nursing facility.

(2) If a facility meets the criteria for a violation pursuant to regulations established by the board or in the case of a nursing facility meets the criteria pursuant to subdivision (f)(1), the board may hold a hearing at its next regularly scheduled meeting to determine if the facility should be placed on probation. Prior to initiating the hearing, the board shall provide notice to the facility detailing what specific noncompliance the board has identified that the facility must respond to at the probation hearing.

(3) Prior to imposing probation, the board may consider and address in its findings all factors that it deems relevant, including, but not limited to, the following:

(A) What degree of sanctions is necessary to ensure immediate and continued compliance;

(B) Whether the noncompliance was an unintentional error or omission, or was not fully within the control of the facility;

(C) Whether the facility recognized the noncompliance and took steps to correct the identified issues, including whether the facility notified the department of the noncompliance, either voluntarily or as required by state law or regulations;

(D) The character and degree of impact of the noncompliance on the health, safety and welfare of the patient or patients in the facility;

(E) The conduct of the facility in taking all feasible steps or procedures necessary or appropriate to comply or correct the noncompliance; and

(F) The facility's prior history of compliance or noncompliance.

(4) If the board places a facility on probation, the facility shall detail in a plan of correction those specific actions, which when followed, will correct the noncompliance identified by the board.

(5) During the period of probation, the facility shall make reports on a schedule determined by the board. These reports shall demonstrate and explain to the board how the facility is implementing the actions identified in its plan of correction. In making such reports, the board shall not require the facility to disclose any information protected as privileged or confidential under any state or federal law or regulation.

(6) The board is authorized at any time during the probation to remove the probational status of the facility's license, based on information presented to it showing that the conditions identified by the board have been corrected and are reasonably likely to remain corrected.

(7) The board shall rescind the probational status of the facility, if it determines that the facility has complied with its plan of correction as submitted and approved by the board, unless the facility has additional noncompliance that warrants an additional term of probation.

(8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation that the facility is not taking steps to correct noncompliance or otherwise not responding in good faith pursuant to the plan of correction, the board may take any additional action as authorized by law.

(g) The hearing to place a facility on probation and judicial review of the board's decision shall be in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(h) The provisions in this section in no way relieve any party from the responsibility to report suspected adult abuse, neglect or exploitation to, or to share information with, the adult protective services program in accordance with the provisions of the Tennessee Adult Protection Act, compiled in title 71, chapter 6, part 1.

(i) After determinations of violations have been made that are subsequent to any complaint investigation survey that could lead to a suspension or revocation of the license of a nursing home or the loss of federal funds relating to any agreement to furnish services by a nursing home under Title XVIII, compiled in 42 U.S.C. 1395 et seq. or Title XIX, compiled in 42 U.S.C. 1396 et seq., of the Social Security Act, and unless the immediate protection of the health and safety of the residents of a nursing home requires otherwise, the department shall seek to provide, if practicable, a period of up to thirty (30) days for further fact finding

relative to violations and their correction before any findings that would require the suspension or revocation of license or the loss of federal funds.

(j) The adult care home provider shall inform residents verbally and in writing of their right to file a complaint with the state at any time, the process for filing a complaint and contact information for filing a complaint. The facility shall also advise residents of the availability of a long-term care ombudsman, and how to contact such ombudsman for assistance. Verbal and written communication to the resident shall indicate, at a minimum, that complaints regarding suspected adult abuse, neglect or exploitation shall be reported to the adult protective services program (APS); complaints regarding licensure shall be reported to the board; and all other complaints shall be reported to the appropriate state designated oversight entity. Complaints received by the adult care home provider shall be forwarded to the appropriate state oversight entity.

(1) The adult care home provider shall not prohibit or discourage the filing of complaints or use intimidation against any person filing a complaint.

(2) The adult care home provider may not retaliate against the resident or the person acting on behalf of the resident in any way. Such non permissible actions include, but are not limited to: increasing charges; decreasing services, rights or privileges; taking or threatening to take any action to coerce or compel the resident to leave the facility; or abusing or threatening to harass or abuse a resident in any manner.

(3) Persons acting in good faith in filing a complaint are immune from any liability, civil or criminal.

(4) An adult care home provider shall place a resident manager, substitute caregiver, or employee against whom an allegation of abuse, neglect, or exploitation has been made on administrative leave of absence until the investigation is complete.

(5) Investigations shall be completed by the appropriate state oversight entity within timeframes established in applicable statutes or regulations, or as expeditiously as necessary to ensure the health, safety and welfare of adult care home residents.

(6) Investigation findings shall be reported to the board in an anonymous probable cause presentation for the purpose of determining the appropriate discipline. Once this determination is made by the board, the adult care home provider shall be informed by written correspondence. The complainant shall also be advised of the complaint's resolution.

(7) The board shall maintain a file of reported complaints. The file shall include the name of the adult care home provider

against whom the complaint is filed, the date the complaint is filed, the action taken by the board on the complaint and date of action taken.

SECTION 10. Tennessee Code Annotated, Section 68-11-209(a)(1), is amended by adding the words "or adult care home" following "assisted-care living facility" and before "residents."

SECTION 11. Tennessee Code Annotated, Section 68-11-209(c)(1), is amended by deleting the words "or assisted care living facility," and substituting instead "assisted-care living facility, or adult care home".

SECTION 12. Tennessee Code Annotated, Section 68-11-209, is amended by adding the following language and a new subdivision (h):

(h)

(1) The board shall promulgate in regulations requirements for education, experience and training, continuous education, background check, and abuse registry checks for Level 2 adult care home providers, resident managers, substitute caregivers and staff. These requirements shall be commensurate with the expected responsibilities and care of residents in each applicable setting, and shall be dependent upon the level of licensure. The education, experience and requirements for Level 2 adult care home providers shall be sufficient to demonstrate competency in caring for residents and the ability to adequately maintain the health, safety and welfare of residents. The board shall develop additional standards for Level 2 adult care home providers that require education, training and experience necessary to adequately address the needs of persons with traumatic brain injury or ventilator dependent persons.

(2) The rules required under subdivision (1) of this subsection shall include but not be limited to the following:

(A) A resident manager for a Level 2 adult care home provider must meet the education, experience, and training requirements of a Level 2 adult care home provider.

(B) A Level 2 adult care home provider serving ventilator dependent residents must hold a current professional license or employ a resident manager who holds a current professional license as a physician, nurse practitioner, registered nurse or respiratory therapist who is trained and experienced in the care of ventilator dependent residents.

(C) A Level 2 adult care home provider serving residents with traumatic brain injury must hold a current professional license or employ a resident manager who holds a current professional license as a physician, nurse practitioner, registered nurse, or respiratory therapist who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury.

(D) A substitute caregiver for a Level 2 adult care home for persons with traumatic brain injury must hold a current professional license as a physician, nurse practitioner, registered nurse, licensed rehabilitation professional or licensed mental health professional who is trained and experienced in the care and rehabilitation of residents with traumatic brain injury and must demonstrate competency in caring for persons with traumatic brain injury.

(E) A substitute caregiver for a Level 2 adult care home serving ventilator dependent residents must hold a current professional license as a physician, nurse practitioner, registered nurse, or respiratory therapist who is trained and experienced in

the care of ventilator dependent residents and must demonstrate competency in caring for ventilator dependent residents.

(3) All adult care home providers, resident managers and substitute caregivers shall complete annually twelve (12) hours of continuing education related to care of the elderly and persons with disabilities and business operations of adult care homes.

(4) The adult care home provider shall train all staff to meet the routine and emergency needs of residents. The adult care home provider is also responsible for training resident managers, substitute caregivers, and staff on the health care tasks that can be administered through self-direction.

(5) The adult care home provider shall be responsible for supervision, training and overall conduct of resident managers, substitute caregivers and staff as it relates to their job performance and responsibilities.

SECTION 13. Tennessee Code Annotated, Section 68-11-210(b)(2)(A), is amended by deleting the words "and assisted-care living facility" and substituting instead the words "assisted-care living facility, and adult care home".

SECTION 14. Tennessee Code Annotated, Section 68-11-210(a), is amended by adding as a new subdivision (4), the following:

(4) Adult care homes are subject to the following inspection standards:

(A) The board shall inspect an adult care home prior to issuing an initial license.

(B) The board shall conduct an unannounced inspection of an adult care home in accordance with subdivision (1) of this subsection.

(C) The board shall be permitted access to enter and inspect any adult care home upon the receipt of an oral or written complaint, any time the board has cause to believe that an adult care home is operating without a license, or any time there exists a perceived threat to the health, safety or welfare of any resident.

SECTION 15. Tennessee Code Annotated, Section 68-11-213(b), is amended by deleting the words "alcohol and drug treatment center" and substituting instead the words, "adult care home,".

SECTION 16. Tennessee Code Annotated, Section 68-11-213(g), is deleted in its entirety and substituted with the following language:

(g) In addition to requiring that the home for the aged, assisted-care living facility, or adult care home make application for licensure, the department may immediately initiate a petition for injunctive relief or any other relief available in law or equity. The department may recommend and direct the home for the

aged, assisted-care living facility or adult care home to immediately cease and desist operations when the health, safety, or welfare of the patients or residents requires emergency action.

SECTION 17. Tennessee Code Annotated, Section 68-11-213(i), is deleted in its entirety and substituted with the following language:

(i)

(1) The department may assess a civil penalty not to exceed five thousand dollars (\$5,000) against any person or entity operating an assisted-care living facility or adult care home without having the license required by this chapter. Each day of operation is a separate violation.

(2) The board for licensing health care facilities is authorized to establish as part of its comprehensive system of quality assurance and enforcement a system for assessing civil monetary penalties, including appropriate due process, for assisted-care living facilities and adult care homes that are in serious violation of state laws and regulations, resulting in endangerment to the health, safety, and welfare of residents.

(3) All penalties for adult care homes shall be deposited by the department with the state treasurer to a general fund account specifically designated for the purpose of providing adult care home educational training programs and continuing education requirements for adult care home providers, resident managers, substitute caregivers, and staff. The commissioner of finance and administration shall determine the appropriate use for these funds.

(4) Beginning one hundred eighty (180) days after the promulgation of regulations under this part by the department, the department may assess a civil penalty not to exceed three thousand dollars (\$3,000) against any licensed assisted-care living facility for admitting or retaining residents not meeting the definition of assisted-care facility resident set forth in this chapter. Each such resident shall constitute a separate violation.

SECTION 18. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

68-11-2---.

(a) An adult care home provider shall conduct an assessment of a prospective resident before admitting the resident. The assessment shall include, but is not limited to diagnoses, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the assessment shall be given to the prospective resident and his or her family member or representative.

(b) As a result of the assessment, the adult care home provider shall develop a residential plan of care for the day-to-day delivery of

residential services, including personal and health care needs and night care needs. The adult care home provider shall use a person centered approach that focuses on the needs and preferences of the resident and takes into consideration the supports necessary to sustain the person in the community and to maintain and whenever possible, to improve functional abilities. At a minimum, the resident and his or her family members or representative shall be actively involved in the development of the plan of care. If adult care home services are or will be reimbursed through the TennCare CHOICES program, or any successor thereto, the residential plan of care should be developed in collaboration with the member's care coordinator to ensure consistency regarding the member's comprehensive plan of care for the CHOICES program. Residential plans of care shall be reviewed at least quarterly and updated at a minimum on an annual basis and more frequently as resident's health status changes and circumstances warrant. The residential plan of care shall include, at a minimum, the following elements:

- (1) Health and functional status, including cognitive/behavioral health status and any ADL deficiencies;
 - (2) Resident needs and preferences, including personal and health care needs, and night care needs;
 - (3) Significant health conditions and required course of treatment for management of chronic conditions;
 - (4) Medication regimen;
 - (5) Any health care tasks that have been ordered by a health care professional that will be performed by the adult care home provider under the self-direction of the resident or his/her family member.
 - (6) Identification of risks to health and safety;
 - (7) Strategies to mitigate identified risks;
- (c) An adult care home provider shall be able to meet the needs, including personal and health care needs and night care needs, of a resident before admitting the resident.
- (d) An adult care home provider shall provide three (3) nutritionally balanced meals per day or shall make arrangements for meals on an as needed basis. Meal planning and preparation shall take into consideration any special dietary needs of the resident, as prescribed by his or her physician.
- (e) An adult care home provider shall also provide to residents a daily regimen of activities commensurate with the resident's needs, as identified through the assessment developed pursuant to section (a) and specified in the residential plan of care.

(f) An adult care home provider shall develop a written agreement for each resident specifying, at a minimum, resident rights, house rules and the rate schedule, including any patient liability for which the resident will be responsible. The written agreement shall specify the consequences for non-payment of patient liability, as applicable, which may include involuntary discharge from the adult care home. The agreement shall be signed and dated by the adult care home provider and the resident or his or her family member or representative and presented to the resident and his or her family member or representative both verbally and in writing. The agreement shall be reviewed and updated as necessary as a part of the residential plan of care review process. The adult home care provider may not include any illegal or unenforceable provision in an agreement with a resident. The adult care home provider must give thirty (30) days written notice to the resident prior to making any change in the rates.

(g) An adult care home provider shall provide 24 hour staffing coverage that is adequate to meet the needs of residents. Staffing and clinical expertise should correspond to the license category of the adult care home. In addition, adult care home providers shall coordinate with primary care physician, specialists, and other health care professionals as appropriate.

(h) Residents of adult care homes shall be granted specific rights that shall be specified by the board in rules. Adult care home providers shall guarantee these rights and help residents exercise them. The adult care home provider shall post a copy of the resident rights in the entry or other equally prominent place in the adult care home. The adult care home provider cannot require a resident to waive any of the resident's rights.

(i) An adult care home provider may not transfer or discharge a resident from an adult care home unless the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the welfare of other residents, due to nonpayment of patient liability, or closing or selling the facility.

(j) For discharges or transfers related to medical reasons, for the welfare of the resident or for the welfare of other residents or due to nonpayment of patient liability, the adult care home provider shall give the resident written notice at least thirty (30) days prior to the proposed transfer or discharge, except in a medical emergency that requires immediate action. In such cases, the adult care home provider shall give the resident written notice as soon as possible under the circumstances.

(k) In the event the transfer or discharge is due to medical reasons, the welfare of the resident, or for the welfare of other residents, the adult care home provider shall work with the board, or for adult care home services reimbursed through the TennCare CHOICES program, the member's care coordinator to develop a transition plan in order to

maintain continuity of care for the resident and to minimize the impact of the transition. The adult care home provider shall assist the resident in locating an alternative appropriate setting, which shall be specified in the transition plan. The transition plan shall also include the most recent version of the resident's plan of care.

(l) In the event the transfer or discharge is due to selling the facility to another adult care home provider, the current adult care home provider shall develop a transition plan for all residents to facilitate the transition to the new adult care home provider and shall maintain its license and operation of the facility until the point in time the new adult care home provider's license is approved.

(m) In the event the transfer or discharge is due to closing of a facility, the adult care home provider shall provide ninety (90) day advance notice to residents and shall work with the board, or for adult care home services reimbursed through the TennCare CHOICES program, the MCO as appropriate, to develop a transition plan to maintain continuity of care for the residents and to minimize the impact of transition. The adult care home provider shall assist each resident in locating an alternative placement, which shall be specified in the transition plan. The transition plan shall also include the most recent version of the resident's plan of care.

(n) The board may promulgate regulations specifying additional components of the transition plan.

SECTION 19. Tennessee Code Annotated, Section 56-32-102(2), is amended by deleting the semicolon at the end, inserting a period, and by inserting the following language at the end:

In addition to the foregoing, an HMO that participates in the TennCare program under Title XIX of the Social Security Act or any successor to the TennCare program, "basic health care services" shall include, but is not limited to, services made necessary as the result of Title XIX federal programs or waivers for which TennCare is primarily responsible for implementation or enforcement;

SECTION 20. For the purpose of rulemaking, this act shall take effect on July 1, 2009, the public welfare requiring it. For all other purposes, this act shall take effect on January 1, 2010, the public welfare requiring it.

PASSED: June 16, 2009



KENT WILLIAMS, SPEAKER
HOUSE OF REPRESENTATIVES



RON RAMSEY
SPEAKER OF THE SENATE

APPROVED this 1st day of July 2009



PHIL BREDESEN, GOVERNOR