



NORTH CAROLINA GENERAL ASSEMBLY
Legislative Services Office

Paul Y. Coble, Legislative Services Officer

Program Evaluation Division
300 N. Salisbury Street, Suite 100 LOB
Raleigh, NC 27603-5925
Tel. 919-301-1404 Fax 919-301-1406

John W. Turcotte
Director

MEMORANDUM

Date: December 1, 2015
To: Joint Legislative Oversight Committee on Health and Human Services, Joint Legislative Program Evaluation Oversight Committee
From: John Turcotte, Director, Program Evaluation Division
Subject: Interim Report for the Evaluation on the Provision of Overnight Respite Care in Adult Day Care Facilities

Purpose of this PED Interim Report. Session Law 2015-52 directed the Program Evaluation Division to provide an interim report by December 1, 2015 on the criteria the legislation specifies for assisting the General Assembly in determining whether the provision of overnight respite in an adult day care setting is a worthwhile service. Our office issued a report in October 2015, on the success of a pilot program administered by the Department of Health and Human Services (DHHS), which authorized this service at four adult day care facilities.

First of Two Conflicting Provisions. Session Law 2015-52 extended the pilot program from June 2015 to June 2017, allowing four adult day care facilities to continue offering overnight respite. This pilot program restricts state and Medicaid funds from being used for the service.

Other Conflicting Provision. The 2015 Appropriations Act (Session Law 2015-241) expands this service to adult day care facilities statewide, making it a permanent service, and has set the above-mentioned pilot program to be repealed upon the adoption of licensure rules or in June 2017, whichever is earliest. The legislation also allows these facilities to collect state and Medicaid funding for the service.

November 23 JLPEOC Instructions to Staff to Draft Corrective Legislation. At its November 23, 2015 meeting, JLPEOC heard a presentation on this issue from PED staff, and the Committee has instructed staff to draft legislation for the Committee's consideration for introduction in the 2016 short session to:

- repeal the study provision in Session Law 2015-52;
- direct DHHS to report semi-annually to the Joint Legislative Oversight Committee on Health and Human Services on the status of the implementation of the permanent service;
- direct DHHS to collect the performance data deemed necessary by the October 2014 PED report, which would include the monthly number of clients utilizing the service, the average monthly bed utilization per facility, the number of clients who use the service more than once a year; and related information; and
- direct the University of North Carolina's School of Government to develop standards for pilot projects, and require future pilot projects directed by the General Assembly to adhere to these standards.

DHHS Has Taken and Planned Other Actions—Does Not Oppose Direction of Requested Draft Legislation. DHHS's Division of Health Service Regulation (DHSR), which regulates the overnight service, does not oppose the focus of proposed draft legislation as outlined by JLPEOC. DHSR has also said it has taken and further plans to take several steps to implement the permanent service statewide as directed by the 2015 Appropriations Act. Action steps include:

- In October 2015, DHSR's Construction Section and Adult Care Licensure Section met to discuss the licensure process, application for facilities to complete, and necessary database modifications to implement the permanent overnight service.
- In November 2015, DHSR also met with DHHS's Division of Aging and Adult Services (DAAS) to discuss in more detail necessary licensure components for these facilities, a process of inspection by DHSR and DAAS to obtain a license, and modifications to the pilot program's rules given lessons learned for incorporation into the service's final rules.
- By February 2016, DHSR expects to have draft rules in place and available for consideration by stakeholders, and to discuss these rules with stakeholders by April 2016.
- Between August and November 2016, DHSR expects to present the rules to the Medicaid Care Commission for adoption.

November 23 JLPEOC Meeting Handout Included. A copy of the handout presented to JLPEOC at the November 2015 meeting regarding the competing pieces of legislation on the overnight service is included in this interim report. A copy of the prior PED evaluation is available at: <http://www.ncleg.net/PED/Reports/2014/Respite.html>

For Additional Information or Clarification. Please contact Brent Lucas (brent.lucas@ncleg.net or 919-301-1424) if you need additional information about this matter.

cc: Drexdal Pratt, Director, DHHS Division of Health Service Regulation
Jesse Goodman, Chief, DHHS DHSR Health Care Personnel Education and Credentialing Section



PROGRAM EVALUATION DIVISION

NORTH CAROLINA GENERAL ASSEMBLY

Discussion of Legislation Expanding Overnight Respite Services Statewide and Directing PED Study

1. Background/Timeline:

- a. **June, 2011:** S.L. 2011-104 enacted, establishing a pilot program allowing four adult day care facilities to provide overnight respite services through June 2015, without Medicaid or state funding. Prior to this legislation, these facilities were not authorized to provide this service. This legislation mandated PED study the success of the pilot and report to the General Assembly on or before October 1, 2014 on the feasibility of continuing to provide overnight respite care at adult day care facilities.
- b. **October, 2014:** PED submitted its report on overnight respite at adult day care facilities. The report had four findings: 1) although stakeholders perceived the pilot to be successful, only one facility consistently provided the service; 2) the design of the pilot did not meet many components of a well-designed pilot program; 3) the funding restrictions limited the effectiveness of the pilot; and 4) there is anecdotal evidence of the need for overnight respite at these facilities but no organizations representing respite stakeholders maintain data on its demand.
- c. **June, 2015:** S.L. 2015-52 extended the original pilot program to June 30, 2017, and maintained the restriction of providing no Medicaid or state funding. The act also requires an additional PED study on the pilot and alternative services, reports which are due to the JLPEOC and Joint Legislative Oversight Committee on Health and Human Services by December 1, 2015 (interim report) and October 1, 2016 (full report). For the study, the Department of Health and Human Services is to collect data from the adult overnight respite pilot programs.
- d. **September, 2015:** S.L. 2015-241, Section 12G.3 (HB 97, 2015 Appropriations Act) expanded the overnight respite service to all adult day care facilities across the state and allows any licensed facility to collect Medicaid and other state funds for the service. The pilot program is to be repealed either on June 30, 2017, or the adoption of rules by DHHS to implement the program, whichever is earlier.

2. **Issue:** Both S.L. 2015-52 and S.L. 2015-241, Section 12G.3 repeal the pilot program but with potentially differing effective dates for the repeal. Additionally, the budget bill provision (Section 12G.3 of S.L. 2015-241) does not repeal the PED study requirement of S.L. 2015-52. The General Assembly has expanded the service statewide to all adult day care facilities, but the study PED has been directed to conduct mandates the collection and analysis of data from the pilot programs. The utility of further PED study of a repealed pilot may be limited.

3. **Recommended Action:** JLPEOC should instruct staff to draft legislation for the committee's consideration for introduction during the short session to 1) repeal the PED study provision in S.L. 2015-52, and 2) direct DHHS to report to the Joint Legislative Oversight Committee on Health and Human Services semi-annually until the full implementation of the service and to collect the performance data identified in the PED report once full implementation has been achieved.

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015**

**SESSION LAW 2015-52
SENATE BILL 291**

AN ACT TO EXTEND THE DURATION OF THE OVERNIGHT RESPITE PILOT PROGRAM AND TO PROVIDE A MORE COMPREHENSIVE EVALUATION OF THE PILOT PROGRAM.

The General Assembly of North Carolina enacts:

SECTION 1. Section 2 of S.L. 2011-104 reads as rewritten:

"SECTION 2.(a) The Department of Health and Human Services shall report on the status of the pilot once a year to the Program Evaluation Division. The Program Evaluation Division shall evaluate the provision of overnight respite services in an adult day care program through the experiences of this pilot. The evaluation shall include whether this pilot was successful as measured by the participants in receipt of overnight respite, the primary caregivers of participants, the adult day care programs participating in the pilot, and the Department of Health and Human Services. On or before October 1, 2014, the Program Evaluation Division shall provide a report to the General Assembly on the feasibility of continuing to provide overnight respite in an adult day care program.

"SECTION 2.(b) Following the 2014 report and in order to provide a more comprehensive evaluation of the pilot, the Department of Health and Human Services shall coordinate with the Program Evaluation Division regarding the collection of additional information. The Program Evaluation Division shall specify what information the Department needs to collect and the timeframe for reporting the information. Based on information collected through the Department, the Program Evaluation Division shall provide information on each of the items below which will assist in determining whether the provision of overnight respite in an adult day care setting is a worthwhile service.

- (1) The actual number of overnight respite participants per month.
- (2) The percentage of an adult day care entity's clients that need overnight respite; the percentage of clients that use overnight respite; the percentage of clients using the service more than once if they had a need arise; the percentage of clients using overnight respite that are not regular adult day care clients; and the average monthly bed utilization for overnight respite at each location.
- (3) Customer satisfaction levels for individuals who participate and their families.
- (4) Satisfaction levels of adult day care entities offering overnight respite services.
- (5) The viability of an adult day care offering overnight respite from a cost/benefit standpoint.
- (6) The need for overnight respite options in the State currently and the need forecast through 2025.
- (7) The degree to which overnight respite provided in an adult day care setting supports older and disabled adults who wish to live in the least restrictive and supportive setting possible.
- (8) The potential for saving public dollars due to delayed institutionalization when overnight respite is readily available.
- (9) Based on the pilot, a recommendation regarding whether the State should allow the provision of overnight respite in an adult day care setting beyond the pilot.



- (10) A recommendation regarding whether the current regulations are sufficient to ensure the safety and well-being of residents participating in overnight respite in an adult day care setting.
- (11) A recommendation regarding whether adult day care overnight respite should require certification or licensure.
- (12) If a recommendation is made to expand overnight respite in an adult day care setting, the feasibility of funding sources other than private pay, including the possibility of coverage for the service under Medicaid.

The Program Evaluation Division shall provide an interim report on the criteria specified in this section on or before December 1, 2015, and a final report on or before October 1, 2016, to the Joint Legislative Program Evaluation Oversight Committee and to the Joint Legislative Oversight Committee on Health and Human Services."

SECTION 2. Section 3 of S.L. 2011-104 reads as rewritten:

"SECTION 3. This act becomes effective when it becomes law; adult day care programs participating in the pilot shall be selected and have received an initial inspection by January 1, 2012; and this act is repealed ~~June 1, 2015.~~ June 30, 2017."

SECTION 3. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 28th day of May, 2015.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Pat McCrory
Governor

Approved 8:30 a.m. this 4th day of June, 2015

G.S. 131D-4.6 and G.S. 131E-114. This prohibition shall not restrict the Department from doing any of the following:

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

SECTION 12G.2.(a1) The Department shall submit a report to the Joint Legislative Oversight Committee on Health and Human Services by March 1, 2016, containing at least the following information:

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

SECTION 12G.2.(b) This section is effective when this act becomes law.

LICENSURE OF OVERNIGHT RESPITE FACILITIES

SECTION 12G.3.(a) Article 1 of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-6.1. Licensure to offer overnight respite; rules; enforcement.

(a) As used in this section, "overnight respite services" means the provision of group care and supervision in a place other than their usual place of abode on a 24-hour basis for a specified period of time to adults who may be physically or mentally disabled in order to provide temporary relief for a caregiver and includes services provided by any facility certified to provide adult day care services pursuant to G.S. 131D-6, or adult day health services pursuant to 10A NCAC, Chapter 06, Subchapter S, or both. Overnight respite services may include the services of the adult day care program or the adult day health program.

(b) Any facility described under subsection (a) of this section seeking to offer overnight respite services shall apply to the Department for licensure to offer a program of overnight respite services. The Department shall annually license facilities providing a program of overnight respite services under rules adopted by the Medical Care Commission pursuant to subsection (c) of this section. As part of the licensure process, the Division of Health Service Regulation shall inspect the construction projects associated with, and the operations of, each facility providing a program of overnight respite services for compliance with the rules adopted by the Medical Care Commission pursuant to subsection (c) of this section.

(c) The Medical Care Commission shall adopt rules governing the licensure of adult day care and adult day health facilities providing a program of overnight respite services in accordance with this section. The Medical Care Commission shall seek input from stakeholders before proposing rules for adoption as required by this subsection. The rules shall limit the provision of overnight respite services for each adult to (i) not more than 14 consecutive calendar days, and not more than 60 total calendar days, during a 365-day period or (ii) the amount of respite allowed under the North Carolina Innovations waiver or Community Alternatives Program for Disabled Adults (CAP/DA) waiver, as applicable. The rules shall include minimum requirements to ensure the health and safety of overnight respite participants. These requirements shall address all of the following:

- (1) Program management.
- (2) Staffing.
- (3) Building specifications.
- (4) Fire safety.

- (5) Sanitation.
- (6) Nutrition.
- (7) Enrollment.
- (8) Bed capacity limitations, which shall not exceed six beds in each adult day care program.
- (9) Medication management.
- (10) Program activities.
- (11) Personal care, supervision, and other services.

(d) The Medical Care Commission shall, as necessary, amend the rules pertaining to the provision of respite care in adult care homes and family care homes to address each of the categories enumerated in subsection (c) of this section.

(e) The Division of Health Service Regulation shall have the authority to enforce the rules adopted by the Medical Care Commission under subsections (c) and (d) of this section and shall be responsible for conducting annual inspections and investigating complaints pertaining to overnight respite services in facilities licensed to provide a program of overnight respite services.

(f) Each facility licensed to provide a program of overnight respite services under this section shall periodically report the number of individuals served and the average daily census to the Division of Health Service Regulation on a schedule determined by the Division.

(g) The Division of Health Service Regulation is authorized to do both of the following with respect to a facility licensed to provide overnight respite services under this section in a manner that complies with the provisions of G.S. 131D-2.7:

- (1) Suspend admissions to programs of overnight respite services in facilities licensed to provide these services.
- (2) Suspend or revoke a facility's license to provide a program of overnight respite services.

(h) Nothing in this section shall be construed to prevent a facility licensed to provide overnight respite services under this section from receiving State funds or participating in any government insurance plan, including the Medicaid program, to the extent authorized or permitted under applicable State or federal law.

(i) The Department shall charge each adult day care and each adult day health facility seeking to provide overnight respite services a nonrefundable initial licensure fee of three hundred fifty dollars (\$350.00) and a nonrefundable annual renewal licensure fee in the amount of three hundred fifteen dollars (\$315.00)."

SECTION 12G.3.(b) G.S. 131D-6(b) reads as rewritten:

"(b) As used in this section "adult day care program" means the provision of group care and supervision in a place other than their usual place of abode on a less than 24-hour basis to adults who may be physically or mentally ~~disabled~~, ~~disabled~~, except that an adult day care program provider may provide overnight respite services on a 24-hour basis in accordance with G.S. 131D-6.1. The Department of Health and Human Services shall annually inspect and certify all adult day care programs, under rules adopted by the Social Services Commission. The Social Services Commission shall adopt rules to protect the health, safety, and welfare of persons in adult day care programs. These rules shall include minimum standards relating to management of the program, staffing requirements, building requirements, fire safety, sanitation, nutrition, and program activities. Adult day care programs are not required to provide transportation to participants; however, those programs that choose to provide transportation shall comply with rules adopted by the Commission for the health and safety of participants during transport.

The Department of Health and Human Services shall enforce the rules of the Social Services Commission."

SECTION 12G.3.(c) G.S. 131E-267(g) reads as rewritten:

"(g) The fee imposed for the review of the following residential construction projects is:

Residential Project	Project Fee
Family Care Homes	\$225.00 flat fee
ICF/MR Group Homes	\$350.00 flat fee
Group Homes: 1-3 beds	\$125.00 flat fee
Group Homes: 4-6 beds	\$225.00 flat fee
Group Homes: 7-9 beds	\$275.00 flat fee
<u>Adult Day Care Overnight Respite Facility</u>	<u>\$225.00 flat fee</u>

Adult Day Health Overnight Respite Facility

\$225.00 flat fee

Other residential:

More than 9 beds

\$275.00 plus \$0.15 per square foot of project space."

SECTION 12G.3.(d) Of the funds appropriated to the Department of Health and Human Services, Division of Health Service Regulation, the sum of eighty-two thousand six hundred six dollars (\$82,606) for the 2015-2016 fiscal year and the sum of eighty-eight thousand thirty-three dollars (\$88,033) for the 2016-2017 fiscal year shall be used to create one full-time equivalent Nursing Consultant position and one full-time equivalent Engineer/Architect position within the Division dedicated to inspecting adult day care, adult day health, adult care home, and family care home facilities seeking licensure to provide overnight respite services in accordance with G.S. 131D-6.1, as enacted by subsection (a) of this section.

SECTION 12G.3.(e) The Department of Health and Human Services, Division of Aging and Adult Services, shall add adult day care overnight respite programs as a service category under the Home and Community Care Block Grant. Counties may elect to use (i) an adult day care or adult day health facility licensed to provide a program of overnight respite under G.S. 131D-6.1, as enacted by subsection (a) of this section, (ii) an adult care home, or (iii) a family care home to provide overnight respite services to caregivers of older adults from funds received under the Home and Community Care Block Grant.

SECTION 12G.3.(f) The Department of Health and Human Services, Division of Medical Assistance, shall take any and all action necessary to amend the North Carolina Innovations waiver and the North Carolina Community Alternatives Program for Disabled Adults (CAP/DA) waiver for the purpose of allowing facilities licensed to provide adult day health overnight respite services under G.S. 131D-6.1, as enacted by subsection (a) of this section, to become allowable providers of overnight respite under each waiver.

SECTION 12G.3.(g) The overnight respite pilot program authorized under S.L. 2011-104 is repealed on the earlier of June 30, 2017, or the date the overnight respite licensure process established pursuant to G.S. 131D-6.1, as enacted by subsection (a) of this section, is implemented and fully operational. For the purpose of this subsection, the overnight respite licensure process shall not be deemed fully operational prior to the adoption of rules pursuant to G.S. 131D-6.1(c), as enacted by subsection (a) of this section. The Department of Health and Human Services shall report to the Revisor of Statutes the date that G.S. 131D-6.1, as enacted by subsection (a) of this section, is implemented and fully operational.

SUBPART XII-H. DIVISION OF MEDICAL ASSISTANCE (MEDICAID)

REINSTATE MEDICAID ANNUAL REPORT

SECTION 12H.1.(a) The Department of Health and Human Services, Division of Medical Assistance, shall reinstate the publication of the Medicaid Annual Report and accompanying tables, which was discontinued after 2008. The Division shall publish the report and tables on its Web site and shall not publish copies in print.

SECTION 12H.1.(b) If the Department of Health and Human Services, Division of Medical Assistance, has not complied with the requirements of subsection (a) of this section by June 1, 2016, then the Office of State Budget and Management shall not allot any funds to the Department of Health and Human Services, Division of Central Management and Support, until the 2015 Medicaid Annual Report and accompanying tables have been published in accordance with subsection (a) of this section.

MEDICAID ELIGIBILITY

SECTION 12H.2.(a) Families and children who are categorically and medically needy are eligible for Medicaid, subject to the following annual income levels:

Family Size	Categorically	Medically
	Needy	Needy
	Income Level	Income Level
1	\$ 5,208	\$ 2,904
2	6,828	3,804
3	8,004	4,404
4	8,928	4,800