

New Georgia Law Imposes Extensive New Requirements for Georgia Long-Term Care Facilities

Brittany H. Cone, Esq. and Jordan S. Johnson, Esq.
Healthcare and Aging Services Group
Hall Booth Smith, PC

I. Introduction

On June 30, 2020, House Bill 987 (HB 987) was signed into law amidst the COVID-19 pandemic. HB 987 amended Chapter 5 of Title 30 and Title 31 of the Official Code of Georgia Annotated (O.C.G.A.) to provide additional protection for elderly persons in Georgia assisted living communities, nursing homes, and personal care homes. In addition, the legislation amended Title 43 of the O.C.G.A. to rename the State Board of Nursing Home Administrators and establish additional licensure criteria. HB 987 responds to alleged deficient practices in some of Georgia's long-term care facilities and the subsequent investigation into those cases. Beginning July 1, 2021, personal care homes, memory care centers, and assisted living communities are required to meet new staffing, training, and financial stability reporting requirements.

II. Applicability

HB 987 ensures that nursing homes, assisted living facilities, and personal care homes are better equipped to protect the health and well-being of its residents by increasing staffing, training, fines for violations, and pandemic preparedness. Previously, Chapter 5 of Title 30 and 31 of the Georgia Code only applied to nursing homes and nursing home administrators. HB 987 expanded the statutory language to include personal care homes and assisted living communities. A personal care home is defined as a “dwelling, whether operated for profit or not, which undertakes through its ownership or management to provide or arrange for the provision of housing, food service, and one or more personal services for two or more adults.” An assisted living community is defined as “a personal care home with a minimum of 25 beds that is licensed as an assisted living community.”

III. Staffing, Training, and Financial Stability Requirements for Personal Care Homes and Assisted Living Communities

HB 987 distinguishes certain staffing requirements between personal care homes and assisted living communities while requiring the same training and financial stability requirements for those types of long-term care facilities. The following staffing, training, and financial stability requirements are effective *beginning July 1, 2021.*

a. Staffing Requirements

Personal care homes with twenty-five (25) or more beds and assisted living communities are to maintain “an average monthly minimum on-site staffing ratio of one direct care staff person for every 15 residents during all waking hours, and one direct care staff person for every 20 residents during all non-waking hours.”

1. Staffing Requirements Specific to Personal Care Homes With A Memory Care Center

A personal care home with twenty-five (25) or more beds that operate a memory care center may employ certified medication aides (CMAs) to perform "the technical aspects of [the] administration of certain medications." A medication aide must be listed in the Medication Aide Registry established by the Georgia Department of Community Health (DCH). The personal care home must also annually conduct a competency review of each medication aide. HB 987 further details the functions a medication aide may perform in caring for residents, specifically involving the administration of specific medications. If a personal care home employs one or more CMAs, it must also secure the services of a licensed pharmacist to perform duties, including the review of drug regimens, proper disposal of drugs, establishment of policies and procedures for drug therapy, and monitoring compliance with those policies and procedures.

2. Staffing Requirements Specific to Assisted Living Communities

In addition to the on-site staffing ratio requirement, assisted living communities must have at least two on-site direct care staff persons at all times. Moreover, they must have a registered professional nurse or licensed practical nurse on-site, according to the following guidelines:

- 1-30 residents: a minimum of eight (8) hours per week;
- 31-60 residents: a minimum of sixteen (16) hours per week;
- 61-90 residents: a minimum of twenty-four (24) hours per week; and
- More than 90 residents: a minimum of forty (40) hours per week.

b. Training Requirements

Each direct care staff person in a personal care home with twenty-five (25) or more beds and assisted living communities is required to receive initial and annual training covering topics specified by DCH "to ensure a demonstrated knowledge and understanding of caring for elderly and disabled adults."

c. Financial Requirements

Personal care homes with twenty-five (25) or more beds and assisted living communities applying for licensure are required to provide a financial stability affidavit from a certified public accountant affirming the applicant's ability to operate for two years. Additionally, HB 987 requires a minimum of sixty (60) days' written notice to DCH and all residents of "any impending bankruptcy or property eviction that may force discharge or relocation of residents or otherwise adversely impact the provision of safe care and oversight." The legislation also requires "a minimum of 14 days' written notice to [DCH] and all residents of any impending change of ownership that may force discharge or relocation of residents or otherwise adversely impact the provision of safe care and oversight."

IV. Memory Care Center Requirements

HB 987 requires a certificate issued by DCH to operate a memory care center beginning July 1, 2021. A memory care center is defined as “a freestanding or incorporated specialized unit within an assisted living community or personal care home that either holds itself out as providing additional or specialized memory” care or charges a higher rate for such care. By July 1, 2021, every assisted living community and personal care home with a memory care center must obtain a certificate from the Department.

a. Staffing Requirements

At a minimum, a memory care center must have “one dementia trained direct care staff person for every twelve (12) residents on-site during all waking hours and for every fifteen (15) residents on-site during all non-waking hours based on a monthly average.” Also, HB 987 requires one registered professional nurse, licensed practical nurse or certified medication aide, and two on-site direct care staff persons at all times. Moreover, one registered professional nurse or licensed practical nurse must be on-site or available in the building at all times as follows:

- 1-12 residents: a minimum of eight (8) hours per week;
- 13-30 residents: a minimum of sixteen (16) hours per week;
- 31-40 residents: a minimum of twenty-four (24) hours per week; and
- More than 40 residents: a minimum of forty (40) hours per week.

b. Training Requirements

HB 987 further provides that “all staff, regardless of role, are required to have at least four hours of dementia-specific orientation within the first 30 days of working in the center.” Additionally, all direct care staff at memory care centers must complete initial orientation training within the first thirty (30) days. The direct care staff must “complete a minimum of 16 hours of specialized training in dementia care within the first 30 days of working independently with residents with Alzheimer’s or other dementias, and a minimum of 8 hours of such specialized training in dementia care annually thereafter.”

V. Administrator Licensing Requirements

Assisted living community administrators and certain personal care home administrators are subject to licensure requirements effective July 1, 2021, within sixty (60) days of hire. The legislation also changes the State Board of Nursing Home Administrators' name to the State Board of Long-Term Care Facility Administrators and the composition of the Board. The members of the Board must now be comprised of three members who are nursing home administrators in Georgia (one of which must represent a nonproprietary nursing home); three members who are either a personal care home administrator or an assisted living community administrator; two members of the public who are not involved in a long-term care facility administrator capacity; and one member who is a healthcare professional with specific criteria. All persons who desire to serve as an administrator of a long-term care facility must obtain a license from the Board and meet certain criteria, including being at least twenty-one (21) years of age, having a reputable and

responsible character, and meeting the standards and criteria established by the Board. Any person acting in an administrator capacity without a license is subjected to a misdemeanor.

VI. Fines

Facilities will be subject to increased maximum fines for violations cited by the DCH from \$1,000 to \$2,000 per day for each violation, and up to a total of \$40,000. HB 987 also imposes a mandatory fine of a minimum of \$5,000 for a violation that caused death or serious physical harm to a resident. Serious physical harm is described as “an injury which causes significant impairment of the physical condition of the resident as determined by qualified medical personnel.”

VII. Retaliation

HB 987 amends Chapter 5 of Title 30 of the O.C.G.A. (“Disabled Adults and Elder Persons Protection Act”) to provide that “no person shall discriminate or retaliate in any manner against: (1) Any person who makes a report pursuant to this chapter, who testifies in any judicial proceeding arising from the report, who provides protective services, who participates in an investigation, or who participates on an Adult Abuse, Neglect, and Exploitation Multidisciplinary Team under the provisions of this chapter; or (2) Any disabled adult or elder person who is the subject of a report.”

VIII. Conclusion

Due to the significant implications, all long-term care facilities must comply with HB 987 by July 1, 2021. We are available to assist with any questions or issues that may arise.