

SENATE BILL 2816

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 68, Chapter 11, relative to the development and creation of community-based adult care homes for disabled adults suffering from the effects of traumatic brain injury.

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

SECTION 1. This act shall be known and may be cited as the “Community-Based TBI Adult Care Home Act of 2012.”

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

( ) “Community-based TBI adult care home” means a single family residence owned and operated by a community-based traumatic brain injury (TBI) adult care home provider in which residential care, including assistance with activities of daily living, is provided in a homelike environment to no more than eight (8) disabled adults suffering from the effects of a traumatic brain injury (TBI) as defined in § 68-55-101;

( ) “Community-based TBI adult care home provider” means a person twenty-one (21) years of age or older who owns and operates a community-based TBI adult care home. A community-based TBI adult care home provider shall hold national certification by the Academy of Certified Brain Injury Specialists as a certified brain injury specialist (CBIS) or 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 disabled adults suffering from the effects of a traumatic brain injury;

SECTION 3. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following new section:

68-11-273.

(a) Community-based TBI adult care homes shall be licensed by the board and meet the standards prescribed in this part and in regulations promulgated by the board pursuant to this act, unless the board waives the same.

(b) As a condition for licensure, a community-based TBI adult care home provider shall provide community-based care for its residents in addition to residential care. During weekdays, the disabled adults residing in a community-based TBI adult care home shall be provided day services through a separate facility licensed by the state. On weekends, the disabled adults shall participate in community activities, including, but not limited to, church attendance, visits to local parks, and other recreational activities of their choice or the choice of their family or legal representatives.

(c) Community-based TBI adult care home providers shall not be required to live in or employ a resident manager or substitute caregiver to live in a community-based TBI adult care home. However, a community-based TBI adult care home provider shall employ staff members to supervise the residents at all times, including overnights and during weekends.

SECTION 4. Tennessee Code Annotated, Section 68-11-202(a)(1), is amended by deleting the word “and” before “adult care homes” and adding the words “and community-based TBI adult care homes” following the words “adult care homes.”

SECTION 5. Tennessee Code Annotated, Section 68-11-202(b)(1)(E), is amended by deleting the subdivision in its entirety and by substituting the following language:

(E) Adult care homes and community-based TBI 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 rules more stringent standards as it deems necessary in order to ensure the health and safety, including adequate evacuation of residents consistent with this part. As used in this section “adequate evacuation” means the ability of the adult care home provider, community-based TBI adult care home provider, resident manager, or substitute caregiver, including such additional minimum staff as may be required by the board in regulation in accordance with this part, to evacuate all residents from the dwelling within five (5) minutes. Adult care home providers and community-based TBI 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 and community-based TBI 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. At the discretion of the board consistent with this part,

community-based TBI adult care homes equipped with sprinkler systems may not be required to comply with these fire code requirements in their entirety.

SECTION 6. Tennessee Code Annotated, Section 68-11-202(b)(5)(B), is amended by adding the words “community-based TBI adult care homes,” following the words “adult care homes,” and before “etc.”

SECTION 7. Tennessee Code Annotated, Section 68-11-202(c)(1), is amended by adding the following as a new subdivision (C):

(C) Community-based TBI adult care homes with eight (8) or fewer residents.

SECTION 8. Tennessee Code Annotated, Section 68-11-202(c), is amended by adding the following new subdivision (2) and redesignating subsequent subdivisions accordingly:

(2) The requirements of subdivision (c)(1) shall not apply to a community-based TBI adult care home or a community-based TBI adult care home provider if the residence was being used for the benefit of disabled adults suffering from the effects of a traumatic brain injury prior to July 1, 2009, and the provider complies with the other requirements of this part.

SECTION 9. Tennessee Code Annotated, Section 68-11-204(a)(1), is amended by deleting the word “or” following the words “ambulatory surgical treatment center” and adding the words “or community-based TBI adult care homes” following the words “adult care homes.”

SECTION 10. Tennessee Code Annotated, Section 68-11-206(a), is amended by deleting the word “or” following the words “ambulatory surgical treatment center” and adding the words “or community-based TBI adult care homes” following the words “adult care home.”

SECTION 11. Tennessee Code Annotated, Section 68-11-206(a)(2)(A), is amended by adding the words “or community-based TBI adult care home” following the words “adult care home.”

SECTION 12. Tennessee Code Annotated, Section 68-11-206(a)(2), is amended by adding the following language as new, appropriately designated subdivisions:

(E) The requirements of subdivision (a)(2)(C) shall not apply to a community-based TBI adult care home or a community-based TBI adult care home provider if the residences were being used for the benefit of disabled adults suffering from the effects of a traumatic brain injury prior to July 1, 2009, and the provider complies with the other applicable requirements of this part.

(F) A license authorized by this part allows a community-based TBI adult care home provider to serve disabled adults suffering from the effects of a traumatic brain injury as defined in § 68-55-101. A community-based TBI adult care home provider shall not be required to obtain a Level 2 or any other licensure, other than a license to operate its day services through a separate facility licensed by this state. The board shall promulgate regulations specifying additional requirements for community-based TBI adult care home licensure consistent with this part.

SECTION 13. Tennessee Code Annotated, Section 68-11-207, is amended by deleting the subsections (b) and (j) and by substituting instead the following as new subsections (b) and (j):

(b)

(1) In those cases where the conditions of any nursing home, home for the aged, community-based TBI adult care home 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 or community-based TBI adult care home residents, an adult care home provider or a community-based TBI 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 or community-based TBI adult care home residents, the commissioner may require the adult care home provider or community-based TBI 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.

(j)

(1) The adult care home provider or community-based TBI 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 the 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. Complaints regarding licensure shall be reported to the board. All other complaints shall be reported to the appropriate state designated oversight entity. Complaints received by the adult care home provider or community-based TBI adult care home provider shall be forwarded to the appropriate state oversight entity.

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

(3) The adult care home provider or community-based TBI adult care home provider may not retaliate against the resident or the person acting on behalf of the resident in any way. Such nonpermissible actions include, but are not limited to:

(A) Increasing charges;

(B) Decreasing services, rights or privileges;

(C) Taking or threatening to take any action to coerce or compel the resident to leave the facility; or

(D) Abusing or threatening to harass or abuse a resident in any manner.

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

(5) An adult care home provider or community-based TBI 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.

(6) 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 or community-based TBI adult care home residents.

(7) 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 or community-based TBI adult care home provider shall be informed by written correspondence. The complainant shall also be advised of the complaint's resolution.

(8) The board shall maintain a file of reported complaints. The file shall include the name of the adult care home provider or community-based TBI 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 14. Tennessee Code Annotated, Section 68-11-209(a)(1), is amended by deleting the word "or" following the words "assisted-care living facility" and adding the words "or

community-based TBI adult care home residents” following the words “adult care home residents”.

SECTION 15. Tennessee Code Annotated, Section 68-11-209(c)(1), is amended by deleting the word “or” following the words “assisted-care living facility” and adding the words “or community-based TBI adult care home residents” following the words “adult care home residents”.

SECTION 16. Tennessee Code Annotated, Section 68-11-209(h)(1), is amended by adding the words “and community-based TBI adult care home providers” following the words “Level 2 adult care home providers”

SECTION 17. Tennessee Code Annotated, Section 68-11-209(h)(2), is amended by adding the following language as new, appropriately designated subdivisions:

(F) A community-based TBI adult care home provider shall hold national certification by the Academy of Certified Brain Injury Specialists as a certified brain injury specialist (CBIS) or 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 disabled adults suffering from the effects of a traumatic brain injury.

(G) Community-based TBI adult care home providers shall not be required to live in or employ a resident manager or substitute caregiver to live in a community-based TBI adult care home. However, a community-based TBI adult care home provider shall employ staff members to supervise the residents at all times, including overnights and during weekends.

SECTION 18. Tennessee Code Annotated, Section 68-11-210(b)(2)(A), is amended by deleting the word “and” before the words “adult care home” and adding the words “and community-based TBI adult care home” following the words “adult care home”.

SECTION 19. Tennessee Code Annotated, Section 68-11-210(a), is amended by adding as a new subdivision (5), the following:

(5) Community-based TBI adult care homes are subject to the following inspection standards:

(A) The board shall inspect a community-based TBI adult care home prior to issuing an initial license;

(B) The board shall conduct an unannounced inspection of a community-based TBI adult care home in accordance with subdivision (a)(1); and

(C) The board shall be permitted access to enter and inspect any a community-based TBI adult care home upon the receipt of an oral or written complaint, any time the board has cause to believe that a community-based TBI 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 20. Tennessee Code Annotated, Section 68-11-213(b), is amended by deleting the word “or” following the words “assisted-care living facility” and adding the words “or community-based TBI adult care home” following the words “adult care home”.

SECTION 21. Tennessee Code Annotated, Section 68-11-213(g), is amended by deleting the word ‘or’ following the words “assisted-care living facility” and adding the words “or community-based TBI adult care home’ following the words “adult care home”.

SECTION 22. Tennessee Code Annotated, Sections 68-11-213(i) is amended in subdivision (1) by deleting the word “or” following the words “assisted-care living facility” and adding the words “or community-based TBI adult care home” following the words “adult care home” and in subdivision (2) by deleting the word "and" following the words "assisted-care living facility" and substituting the words "and community-based TBI adult care homes" following the words "adult care homes".

SECTION 23. Tennessee Code Annotated, Section 68-11-213(i)(3), is amended by adding the words “or community-based TBI adult care homes” following the words “adult care homes” and adding the words “and community-based TBI adult care home providers” following the words “adult care home providers”.

SECTION 24. Tennessee Code Annotated, Section 68-11-270, is deleted in its entirety and substituted with the following language:

(a) An adult care home provider or community-based TBI adult care home provider shall conduct an assessment of a prospective resident before admitting the resident. The assessment shall include, but it 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 the resident's family member or representative.

(b) As a result of the assessment, the adult care home provider or community-based TBI 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 or community-based TBI 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 the resident's family members or representatives 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; provided, however,

no such care coordinator requirement shall apply to a community-based TBI adult care home services. 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 or community-based TBI adult care home provider under the self-direction of the resident or of the resident's family member;

(6) Identification of risks to health and safety;

(7) Strategies to mitigate identified risks; and

(8) For community-based TBI adult care homes, activities in the community for which the resident, the resident's family, or legal representative has an interest, including, but not limited to, church attendance, visits to local parks, and other recreational activities.

(c) An adult care home provider or community-based TBI 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 or community-based TBI 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. For community-based TBI adult care homes, there shall be no requirement that all three (3) meals be provided at the same residence, since the residents will consume some of these meals while at the separately licensed day care facility.

(e) An adult care home provider or community-based TBI 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 or community-based TBI 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 or community-based TBI adult care home provider. The agreement shall be signed and dated by the adult care home provider or community-based TBI adult care home provider and resident or the resident's family member or legal representative and presented to the resident and the resident's family member or legal 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 or community-based TBI adult care home provider may not include any illegal or unenforceable provision in an agreement with a

resident. The adult care home provider or community-based TBI 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 or community-based TBI adult care home provider shall provide twenty-four (24) hour staffing coverage that is adequate to meet the needs of residents. For community-based TBI adult care home providers, this will include both the residences and the day services facility under separate license. Staffing and clinical expertise should correspond to the license category of the adult care home or community-based TBI adult care home in accordance with this part. In addition, adult care home providers or community-based TBI adult care home providers shall coordinate with primary care physicians, specialists and other health care professionals, as appropriate.

(h) Residents of adult care homes or community-based TBI adult care homes shall be granted specific rights that shall be specified by the board in rules. Adult care home providers or community-based TBI adult care home providers shall guarantee these rights and help residents exercise them. The adult care home provider or community-based TBI 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 or community-based TBI adult care home. The adult care home provider or community-based TBI adult care home provider cannot require a resident to waive any of the resident's rights.

(i) An adult care home provider or community-based TBI adult care home provider may not transfer or discharge a resident from an adult care home or community-based TBI 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 or community-based TBI 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 or community-based TBI 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 or community-based TBI adult care home provider shall 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 or community-based TBI 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 the transition plan; provided, however, no care coordinator requirement shall apply to a community-based TBI adult care home. The adult care home provider or community-based TBI 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 or community-based TBI adult care home provider, the current adult care home provider or community-based TBI adult care home provider shall develop a transition plan for all residents to facilitate the transition to the new adult care home provider or community-based TBI 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 or community-based TBI 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 or community-based TBI adult care home provider shall provide ninety (90) days' advance notice to residents, and shall develop a transition plan to maintain continuity of care for the residents and to minimize the impact of transition. The plan shall be developed in conjunction with the board, or, for adult care home services reimbursed through the TennCare CHOICES program, the MCO as appropriate; provided, however, no requirement for working with an MCO shall apply to a community-based TBI adult care home services. The adult care home provider or community-based TBI 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 in accordance with this part.

SECTION 25. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following new section:

68-11-274.

(a) Nothing in this part, including the community-based TBI adult care homes authorized by this act, shall entitle any community-based TBI adult care home provider to funds from the TennCare CHOICES program or any successor to the TennCare program, other than those funds for which the provider or its residents are eligible separate and apart from this act.

(b) The "Critical Adult Care Home Act of 2009", Chapter 579 of the Public Acts of 2009, shall have no applicability to this act unless it is specifically authorized in this act.

SECTION 26. This act shall take effect on July 1, 2012, the public welfare requiring it.