

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

SESSION LAW 2023-150
SENATE BILL 274

AN ACT DIRECTING THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO
EXEMPT CERTAIN HOME ASSISTANCE SERVICES FROM HOME CARE
LICENSURE REQUIREMENTS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Part 3 of Article 6 of Chapter 131E of the General Statutes reads as rewritten:

"Part 3. Home Care Agency and Home Assistance Services Provider Licensure Act.

"§ 131E-135. Title; purpose.

(a) This Part shall be known as "Home Care Agency Licensure and Home Assistance Services Provider Act."

(b) The purpose of this Part is to establish licensing requirements for home care ~~agencies~~ agencies and home assistance services providers.

"§ 131E-136. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (1a) "Geographic service area" means the geographic area in which a licensed agency provides home care services.
- (1b) "Home assistance services" means the following services, which are not home care services:
 - a. In-home companion, sitter, or respite care services provided to an individual.
 - b. Homemaker services provided in combination with in-home companion, sitter, or respite care services.
- (1c) "Home assistance services provider" means a private or public organization that is predominantly engaged in providing, directly or indirectly, home assistance services. This does not include a home care agency, home health agency, or other organization predominantly engaged in providing home care services.
- (2) "Home care agency" means a private or public organization that provides home care services.
- (2a) "Home care agency director" means the person having administrative responsibility for the operation of the licensed agency site.
- (2b) "Home care client" means an individual who receives home care services.
- (3) "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:
 - a. Nursing care provided by or under the supervision of a registered nurse.
 - b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these



therapy services, in a place of temporary or permanent residence used as the individual's home.

- c. Medical social services.
- d. In-home aide services that involve hands-on care to an individual.
- e. Infusion nursing services.
- f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.
- g. In-home companion, sitter, and respite care services provided to an ~~individual~~individual in conjunction with other home care services.
- h. Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

~~The term does~~ terms "home assistance services" and "home care services" do not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided. The term sitter does not include child care facilities licensed in accordance with Chapter 110 of the General Statutes. The term respite care does not include facilities or services licensed in accordance with Chapter 122C of the General Statutes. The terms in-home companion, sitter, homemaker, and respite care services do not include (i) services certified or otherwise overseen by the Department as not providing personal care or (ii) services administered on a voluntary basis for which there is not reimbursement from the recipient or anyone acting on the recipient's behalf.

- (4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E.

- (5) "Homemaker services" means basic home management tasks, shopping, meal preparation, transportation, socialization, medication reminders, and other services that do not require the service provider to touch the client and which do not require training or verification of skills by a registered nurse.

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"§ 131E-138. Licensure requirements.

(a) No person or governmental unit shall operate a home care agency or a home assistance services provider without a license obtained from the Department. Nothing in this Part shall be construed to extend or modify the licensing of individual health professionals by the licensing boards for their professions or to create any new professional license category.

(b) Repealed by Session Laws 1991, c. 59, s. 1.

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of five hundred ten dollars (\$510.00).

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises.

(g) The Commission shall adopt rules to ensure that a home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if: (i) the agency is already certified or accredited by the Joint Commission on Accreditation of Health Care Organizations, National League for Nursing, National Home Caring Council, North Carolina Accreditation Commission for In-Home Aide Services, or other entities recognized by the Commission and (ii) the agency is certified or accredited for all of the home care services that it provides; or (iii) in the case of continuing care retirement communities licensed by the North Carolina Department of Insurance under Article 64 of Chapter 58 which also have nursing beds licensed by the Department of Health and Human Services under Article 6 of Chapter 131E, the Department certifies, as part of its licensure review or survey of the nursing beds, that the facility also meets all of the rules and regulations adopted by the Commission pursuant to this Part. The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews.

(h) Home assistance services providers shall do the following:

(1) Maintain liability insurance.

(2) Inform all new clients that they do not provide health care or hands-on care.

(3) Conduct a criminal background check in each state where any contractor or employee was a resident during the past seven years.

(4) Document that each employee or contractor possesses a valid drivers license, vehicle registration, proof of insurance, and has provided an official driving record from the North Carolina Division of Motor Vehicles.

(5) Require that all services provided by employees or contractors are provided in a safe and appropriate manner that complies with all relevant laws.

(6) Annually attest that they are in compliance with subdivisions (1) through (5) of this subsection.

(i) Home assistance services providers shall not do any of the following:

(1) Submit claims for reimbursement to a private or government-funded health insurer, managed care organization, or health plan for services rendered to or on behalf of a North Carolina resident.

(2) Employ or contract with an individual who was convicted of a relevant offense as defined in G.S. 131D-40(d).

(3) Employ or contract with an individual listed on the National Sex Offender Public Website.

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"§ 131E-140. Rules and enforcement.

(a) The Commission may adopt, amend and repeal all rules necessary for the implementation of this Part and Part 3A of Article 6 of this Chapter. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider. Rules authorized under this section include rules:

- (1) That recognize the different types of home care services and home assistance services providers and shall adopt specific requirements for the provision of each type of home care service.
- (2) To establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the North Carolina General Statutes provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.
- (3) For the purpose of ensuring effective supervision of in-home aide staff and timely provision of services, the Commission shall adopt rules defining geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies.
- (4) Prohibiting licensed home care agencies or home assistance services providers from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).
- (5) Requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(a1) The Commission shall adopt rules defining the scope of permissible advertising and promotional practice by home care ~~agencies~~ agencies and home assistance services providers.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care agencies and home assistance services providers and shall conduct an inspection of each home care agency at least every three years.

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"§ 131E-141.1. Penalties for violation.

Any person who knowingly and willfully establishes, conducts, manages or operates any home care agency or home assistance services provider without a license is guilty of a Class 3 misdemeanor and upon conviction is liable only for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense.

"§ 131E-142. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department shall, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home care agency or home assistance services provider without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure.

"§ 131E-143. Smoking prohibited; penalty.

(a) ~~A home~~ Home care agency-agencies and home assistance services providers shall prohibit ~~its~~ their employees from smoking while providing services to an individual in the individual's home. ~~The home~~ Home care agency-agencies and home assistance services providers shall inform ~~its~~ their clients that employees ~~of the agency~~ are prohibited from smoking in a client's home. As used in this section:

- (1) "Employee" includes an individual under contract with the home care agency to provide home care ~~services~~ services and an individual under contract with a home assistance services provider to provide home assistance services.
- (2) "Smoking" means the use or possession of any lighted cigar, cigarette, pipe, or other lighted smoking product.

(b) The Department may impose an administrative penalty not to exceed two hundred dollars (\$200.00) for each violation on any person who owns, manages, operates, or otherwise controls the home care agency or home assistance services provider and fails to comply with this section. A violation of this section constitutes a civil offense only and is not a crime.

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SECTION 1.(b) G.S. 131E-272 reads as rewritten:

"§ 131E-272. Initial licensure fees for new facilities.

The following fees are initial licensure fees for new facilities and are applicable as follows:

| Facility Type | Number of Beds | Initial License Fee | Initial Bed Fee | |
|--|----------------|------------------------------|-----------------|-----------|
| Adult Care Licensure | More than 6 | \$400.00 | \$19.00 | |
| | 6 or Fewer | \$350.00 | \$ - | |
| Acute and Home Care General Acute Hospitals | 1-49 | \$550.00 | \$19.00 | |
| | 50-99 | \$750.00 | \$19.00 | |
| | 100-199 | \$950.00 | \$19.00 | |
| | 200-399 | \$1150.00 | \$19.00 | |
| | 400-699 | \$1550.00 | \$19.00 | |
| | 700+ | \$1950.00 | \$19.00 | |
| Other Hospitals | | \$1050.00 | \$19.00 | |
| Home Care | - | \$560.00 \$510.00 | \$ - | |
| <u>Home Assistance Services</u> | - | <u>\$510.00</u> | <u>\$ -</u> | |
| Ambulatory Surgical Ctrs. | - | \$900.00 | \$85.00 | |
| Hospice (Free Standing) | - | \$450.00 | \$ - | |
| Abortion Clinics | - | \$750.00 | \$ - | |
| Cardiac Rehab. Centers | - | \$425.00 | \$ - | |
| Nursing Home & L&C Nursing Homes | | \$470.00 | \$19.00 | |
| | All Others | \$ - | \$19.00 | |
| Mental Health Facilities | Nonresidential | \$265.00 | \$ - | |
| | Non ICF/IID | 6 or fewer | \$350.00 | \$ - |
| | ICF/IID only | 6 or fewer | \$900.00 | \$ - |
| | Non ICF/IID | More than 6 | \$525.00 | \$19.00 |
| | ICF/IID only | More than 6 | \$850.00 | \$19.00." |

SECTION 2. This act is effective when it becomes law.

In the General Assembly read three times and ratified this the 25th day of October, 2023.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 5:11 p.m. this 9th day of November, 2023