

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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SENATE BILL 80\*

Short Title: Home Care Licensing.

(Public)

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Sponsors: Senators Richardson, Cochrane, Speed, Carpenter; Forrester, Martin of Guilford, Marvin, Perdue, and Raynor.

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Referred to: Human Resources.

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February 14, 1991

1 A BILL TO BE ENTITLED  
2 AN ACT TO AMEND THE HOME HEALTH LICENSURE ACT.  
3 The General Assembly of North Carolina enacts:

4 Section 1. Chapter 131E of the General Statutes reads as rewritten:

5 **"PART C. HOME ~~HEALTH-CARE~~ AGENCY LICENSURE ACT.**

6 **"§ 131E-135. Title; purpose.**

7 (a) This Part shall be known as 'Home ~~Health-Care~~ Agency Licensure Act'.

8 (b) The purpose of this Part is to establish licensing requirements for home ~~health~~  
9 ~~care~~ agencies.

10 **"§ 131E-136. Definitions.**

11 As used in this Part, unless otherwise specified:

12 (1) 'Commission' means the North Carolina Medical Care Commission.

13 (2) 'Home ~~health-care~~ agency' means a private or public organization  
14 which provides home ~~health-care~~ services.

15 (3) 'Home ~~health-care~~ services' means ~~health-care and medical services and~~  
16 ~~medical supplies~~ any of the following services which are provided to an  
17 individual by a home ~~health-care~~ agency or by others under  
18 arrangements with the agency, ~~on a visiting basis,~~ in a place of  
19 temporary or permanent residence used as an individual's home. ~~The~~  
20 ~~services may include but are not limited to the following:~~ home:

21 a. ~~Part time or intermittent nursing~~ Nursing care provided by or  
22 under the supervision of a registered nurse;

- 1                   b.     Physical, ~~occupational~~ occupational, respiratory or speech  
2                   therapy;  
3                   c.     ~~Medical social services, home health aid services, and other~~  
4                   ~~therapeutic services; services;~~  
5                   d.     ~~Medical supplies, other than drugs and biologicals, and the use~~  
6                   ~~of medical appliances. In-home aide services that involve~~  
7                   ~~hands-on care to an individual; and~~  
8                   e.     Infusion nursing services.

9                   The term does not include: health promotion; preventative health and  
10                  community health services provided by public health departments  
11                  without reimbursement from third party payors or from the individual  
12                  served; hospices licensed under Article 10 of Chapter 131E of the  
13                  General Statutes when providing care to a hospice patient; an  
14                  individual who engages solely in providing his own individual services  
15                  to another individual; or nursing registries if the registry discloses to a  
16                  client or the client's responsible party, before providing any services,  
17                  that (i) it is not a licensed home care agency, and (ii) it does not make  
18                  any representations or guarantees concerning the training, supervision,  
19                  or competence of the personnel provided.

20     **"§ 131E-137. Home health services to be provided in all counties.**

21           (a)     Every county shall provide ~~home health services as defined in this Part.~~ part-  
22           time, intermittent home care nursing services, and at least one of the following home  
23           care services: part-time, intermittent physical therapy, occupational therapy, speech  
24           therapy, medical social work, or home health aide services.

25           (b)     For purposes of this section, ~~home health~~ these services shall be as defined in  
26           ~~this Part,~~ subsection (a) of this section, except that these services may be provided by  
27           any organization listed in subsection (c) of this section.

28           (c)     ~~Home health~~ These services may be provided by a ~~county health department, by~~  
29           ~~a district health department, by a home health~~ home care agency licensed under this Part, ~~or~~  
30           ~~by a public agency.~~ Part. The county may provide ~~home health~~ these services by contract  
31           with another ~~health department or with a home health agency or public agency~~ home care  
32           agency in another county.

33           (d)     Repealed by Session Laws 1985, c. 8, s. 1, effective July 1, 1985.

34     **"§ 131E-138. Licensure requirements.**

35           (a)     No person or governmental unit shall operate a ~~home health~~ care agency  
36           without a license obtained from the Department.

37           (b)     ~~An applicant shall provide nursing service and at least one other home health~~  
38           ~~service, as stated in G.S. 131E-136(3).~~

39           (c)     An application for a license shall be available from the Department, and each  
40           application filed with the Department shall contain all information requested by the  
41           Department. A license shall be granted to the applicant upon a determination by the  
42           Department that the applicant has complied with the provisions of this Part and the rules  
43           promulgated by the Commission under this Part.

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

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

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

7 (g) The Commission shall adopt rules to ensure that a home care agency shall be  
8 deemed to meet the licensure requirements and issued a license without further review  
9 or inspection if: (i) the agency is already certified or accredited by the Joint  
10 Commission on Accreditation of Healthcare Organizations, National League for  
11 Nursing, National Home Caring Council, North Carolina Accreditation Commission for  
12 In-Home Aide Services, or other entities recognized by the Commission; and (ii) the  
13 agency is certified or accredited for all of the home care services that it provides. The  
14 Department may, at its discretion, determine the frequency and extent of the review and  
15 inspection of home health agencies already certified as meeting federal requirements,  
16 but not more frequently than on an annual basis.

17 **"§ 131E-139. Adverse action on a license.**

18 (a) The Department may suspend, revoke, annul, withdraw, recall, cancel or  
19 amend a license when there has been a substantial failure to comply with the provisions  
20 of this Part or the rules promulgated under this Part.

21 (b) The provisions of Chapter 150A of the General Statutes, The Administrative  
22 Procedure Act, shall govern all administrative action and judicial review in cases where  
23 the Department has taken the action described in subsection (a).

24 **"§ 131E-140. Rules and enforcement.**

25 (a) The Commission is authorized to adopt, amend and repeal all rules necessary  
26 for the implementation of this Part.

27 (a1) The Commission shall adopt rules that recognize the different types of home  
28 care services and shall adopt specific requirements for each type of service.

29 (b) The Department shall enforce the rules adopted or amended by the  
30 Commission with respect to home ~~health~~-care agencies.

31 **"§ 131E-141. Inspection.**

32 (a) The Department shall inspect home health agencies in accordance with rules  
33 adopted by the Commission to determine compliance with the provisions of this Part  
34 and the rules established by the Commission.

35 (b) Notwithstanding the provisions of G.S. 8-53, 'Communications between  
36 physician and patient,' or any other provision of law relating to the confidentiality of  
37 communications between physician and patient, the representatives of the Department  
38 who make these inspections may review any writing or other record in any recording  
39 medium which pertains to the admission, discharge, medication, treatment, medical  
40 condition, or history of persons who are or have been clients of the agency being  
41 inspected unless that client objects in writing to review of that client's records.  
42 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or  
43 through an agency who may be interviewed by representatives of the Department may  
44 disclose to these representatives information related to any inquiry, notwithstanding the

1 existence of the physician-patient privilege in G.S. 8-53, 'Communication between  
2 physician and patient,' or any other rule of law; Provided the client has not made written  
3 objection to this disclosure. The agency, its employees, and any person interviewed  
4 during these inspections shall be immune from liability for damages resulting from the  
5 disclosure of any information to the Department. Any confidential or privileged  
6 information received from review of records or interviews shall be kept confidential by  
7 the Department and not disclosed without written authorization of the client or legal  
8 representative, or unless disclosure is ordered by a court of competent jurisdiction. The  
9 Department shall institute appropriate policies and procedures to ensure that this  
10 information shall not be disclosed without authorization or court order. The Department  
11 shall not disclose the name of anyone who has furnished information concerning an  
12 agency without the consent of that person. Neither the names of persons furnishing  
13 information nor any confidential or privileged information obtained from records or  
14 interviews shall be considered 'public records' within the meaning of G.S. 132-1, "'  
15 Public records' defined.' Prior to releasing any information or allowing any inspections  
16 referred to in this section, the client must be advised in writing by the licensed agency  
17 that the client has the right to object in writing to release of information or review of the  
18 client's records and that by an objection in writing the client may prohibit the inspection  
19 or release of the records.

20 **"§ 131E-141.1. Penalties for violation.**

21 Any person establishing, conducting, managing, or operating any home care agency  
22 without a license is guilty of a misdemeanor and upon conviction is liable for a fine of  
23 not more than five hundred dollars(\$500.00) for the first offense and not more than five  
24 hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing  
25 violation after conviction shall be considered a separate offense.

26 **"§ 131E-142. Injunction.**

27 (a) Notwithstanding the existence or pursuit of any other remedy, the Department  
28 ~~may, shall,~~ in the manner provided by law, maintain an action in the name of the State  
29 for injunction or other process against any person or governmental unit to restrain or  
30 prevent the establishment, conduct, management or operation of a home ~~health care~~  
31 agency with a license.

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

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

38 Sec. 2. This act becomes effective January 1, 1992.