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SENATE BILL 80*
Human Resources Committee Substitute Adopted 4/22/91
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Short Title: Home Care Licensing.

(Public)

Sponsors:

Referred to:

February 14, 1991

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE HOME HEALTH AGENCY 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 and directly related
17 medical supplies and appliances, which are provided to an individual
18 by a home health agency or by others under arrangements with the agency,
19 on a visiting basis, in a place of temporary or permanent residence used
20 as an individual's home. The services may include but are not limited to the
21 following: home:

- 1 a. ~~Part-time or intermittent nursing~~ Nursing care provided by or
2 under the supervision of a registered nurse;
3 b. ~~Physical, occupational-occupational, or speech therapy; therapy,~~
4 when provided to an individual who also is receiving nursing
5 services, or any other of these therapy services, in a place of
6 temporary or permanent residence used as the individual's
7 home;
8 c. ~~Medical social services, home health aid services, and other~~
9 ~~therapeutic services; services;~~
10 d. ~~Medical supplies, other than drugs and biologicals, and the use~~
11 ~~of medical appliances. In-home aide services that involve~~
12 hands-on care to an individual;
13 e. Infusion nursing services; and
14 f. Assistance with pulmonary care, pulmonary rehabilitation, or
15 ventilation.

16 The term does not include: health promotion, preventative health and
17 community health services provided by public health departments;
18 maternal and child health services provided by public health
19 departments, by employees of the Department of Environment, Health,
20 and Natural Resources under G.S. 130A-124, or by developmental
21 evaluation centers under contract with the Department of Environment,
22 Health, and Natural Resources to provide services under G.S. 130A-
23 124; hospitals licensed under Article 5 of Chapter 131E of the General
24 Statutes when providing follow-up care initiated to patients within six
25 months after their discharge from the hospital; facilities and programs
26 operated under the authority of G.S. 122C and providing services
27 within the scope of G.S. 122C; schools, when providing services
28 pursuant to Article 9 of Chapter 115C; the practice of midwifery by a
29 person licensed under Article 10A of Chapter 90 of the General
30 Statutes; hospices licensed under Article 10 of Chapter 131E of the
31 General Statutes when providing care to a hospice patient; an
32 individual who engages solely in providing his own services to other
33 individuals; incidental health care provided by an employee of a
34 physician licensed to practice medicine in North Carolina in the
35 normal course of the physician's practice; or nursing registries if the
36 registry discloses to a client or the client's responsible party, before
37 providing any services, that (i) it is not a licensed home care agency,
38 and (ii) it does not make any representations or guarantees concerning
39 the training, supervision, or competence of the personnel provided.

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

1 **"§ 131E-137. ~~Home health services~~ Services to be provided in all counties.**

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

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

9 (c) ~~Home health~~ These services may shall be provided by a county health
10 department, by a district health department, by a home health home care agency
11 licensed under this Part, or by a public agency. Part. The county may provide home
12 health these services by contract with another health department or with a home health
13 agency or public agency home care agency in another county.

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

15 **"§ 131E-138. Licensure requirements.**

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

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

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

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

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

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

33 (g) The Commission shall adopt rules to ensure that a home care agency shall be
34 deemed to meet the licensure requirements and issued a license without further review
35 or inspection if: (i) the agency is already certified or accredited by the Joint
36 Commission on Accreditation of Health Care Organizations, National League for
37 Nursing, National Home Caring Council, North Carolina Accreditation Commission for
38 In-Home Aide Services, or other entities recognized by the Commission and (ii) the
39 agency is certified or accredited for all of the home care services that it provides; or (iii)
40 in the case of continuing care retirement communities licensed by the North Carolina
41 Department of Insurance under Article 64 of Chapter 58 which also have nursing beds
42 licensed by the Department of Human Resources under Article 6 of Chapter 131E, the
43 Department certifies, as part of its licensure review or survey of the nursing beds, that
44 the facility also meets all of the rules and regulations adopted by the Commission

1 pursuant to this Part. The Department may, at its discretion, determine the frequency
2 and extent of the review and inspection of home health agencies already certified as
3 meeting federal requirements, but not more frequently than on an annual basis for
4 routine reviews.

5 **"§ 131E-139. Adverse action on a license.**

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

9 (b) The provisions of Chapter ~~150A~~–150B of the General Statutes, The
10 Administrative Procedure Act, shall govern all administrative action and judicial review
11 in cases where the Department has taken the action described in subsection (a).

12 **"§ 131E-140. Rules and enforcement.**

13 (a) The Commission is authorized to adopt, amend and repeal all rules necessary
14 for the implementation of this Part. Provided, these rules shall not extend, modify, or
15 limit the licensing of individual health professionals by their respective licensing
16 boards; nor shall these rules in any way be construed to extend the appropriate scope of
17 practice of any individual health care provider.

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

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

23 **"§ 131E-141. Inspection.**

24 (a) The Department shall inspect home ~~health-care~~ agencies in accordance with
25 rules adopted by the Commission to determine compliance with the provisions of this
26 Part and the rules established by the Commission.

27 (b) Notwithstanding the provisions of G.S. 8-53, 'Communications between
28 physician and patient,' or any other provision of law relating to the confidentiality of
29 communications between physician and patient, the representatives of the Department
30 who make these inspections may review any writing or other record in any recording
31 medium which pertains to the admission, discharge, medication, treatment, medical
32 condition, or history of persons who are or have been clients of the agency being
33 inspected unless that client objects in writing to review of that client's records.
34 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or
35 through an agency who may be interviewed by representatives of the Department may
36 disclose to these representatives information related to any inquiry, notwithstanding the
37 existence of the physician-patient privilege in G.S. 8-53, 'Communication between
38 physician and patient,' or any other rule of law; Provided the client has not made written
39 objection to this disclosure. The agency, its employees, and any person interviewed
40 during these inspections shall be immune from liability for damages resulting from the
41 disclosure of any information to the Department. Any confidential or privileged
42 information received from review of records or interviews shall be kept confidential by
43 the Department and not disclosed without written authorization of the client or legal
44 representative, or unless disclosure is ordered by a court of competent jurisdiction. The

1 Department shall institute appropriate policies and procedures to ensure that this
2 information shall not be disclosed without authorization or court order. The Department
3 shall not disclose the name of anyone who has furnished information concerning an
4 agency without the consent of that person. Neither the names of persons furnishing
5 information nor any confidential or privileged information obtained from records or
6 interviews shall be considered 'public records' within the meaning of G.S. 132-1, "'
7 Public records"defined.' Prior to releasing any information or allowing any inspections
8 referred to in this section, the client must be advised in writing by the licensed agency
9 that the client has the right to object in writing to release of information or review of the
10 client's records and that by an objection in writing the client may prohibit the inspection
11 or release of the records.

12 **"§ 131E-141.1. Penalties for violation.**

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

17 **"§ 131E-142. Injunction.**

18 (a) Notwithstanding the existence or pursuit of any other remedy, the Department
19 ~~may, shall,~~ in the manner provided by law, maintain an action in the name of the State
20 for injunction or other process against any person or governmental unit to restrain or
21 prevent the establishment, conduct, management or operation of a home ~~health-care~~
22 agency ~~with~~-without a license.

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

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

29 Sec. 2. The Commission shall adopt rules necessary to regulate home care
30 services provided by a hospital. Such rules shall be comparable, but not necessarily
31 identical to the Commission's rules for home care agencies and shall become effective
32 July 1, 1992.

33 Sec. 3. This act becomes effective July 1, 1992. The Commission shall upon
34 ratification develop rules to implement this act; provided that these rules shall become
35 effective July 1, 1992. During the development of the Commission's rules, the
36 Department shall study whether any additional appropriations will be necessary to
37 implement this act; and shall report the results of its study to the beginning of the 1992
38 Session of the General Assembly.