

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

S

1

SENATE BILL 245*

Short Title: Health Care Licensing.

(Public)

Sponsors: Senators Ward; Barker, Block, Carpenter, Cochrane, Conder, Ezzell, Hardin, Hunt of Moore, Martin of Guilford, Marvin, Murphy, Rauch, Raynor, Royall, Sands, Shaw, Sherron, Smith, Speed, Staton, Swain, Taft, Tally, and Walker.

Referred to: Human Resources.

February 22, 1989

A BILL TO BE ENTITLED

AN ACT TO CREATE THE NURSING POOL AND THE HOME CARE AGENCY
LICENSURE ACTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding the following new Parts to read:

“PART E. NURSING POOL LICENSURE ACT.

“§ 131E-154.1. Title; purpose.

(a) This Part shall be known as ‘Nursing Pool Licensure Act’.

(b) The purpose of this Part is to establish licensing requirements for nursing pools.

“§ 131E-154.2. Definitions.

As used in this Part, unless the context clearly implies otherwise:

(1) ‘Commission’ means the North Carolina Medical Care Commission.

(2) ‘Department’ means the Department of Human Resources.

(3) ‘Health Care Facility’ means a hospital, psychiatric facility; rehabilitation facility; long term care facility; home health agency; intermediate care facility for the mentally retarded; chemical dependency treatment facility; and ambulatory surgical facility.

(4) ‘Nursing pool’ means any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel.

1 including nurses, nursing assistants, nurses aides, and orderlies.
2 'Nursing pool' does not include an individual who engages solely in
3 providing his own services on a temporary basis to health care
4 facilities.

5 **"§ 131E-154.3. Licensing.**

6 (a) No person shall operate or represent himself to the public as operating a
7 nursing pool without obtaining a license from the Department.

8 (b) The Department shall provide applications for nursing pool licensure. Each
9 application filed with the Department shall contain all information requested. A license
10 shall be granted to the applicant upon a determination by the Department that the
11 applicant has complied with the provisions of this Part and with the rules adopted by the
12 Commission. Each license shall be issued only for the premises and persons named,
13 shall not be transferrable or assignable except with the written approval of the
14 Department, and shall be posted in a conspicuous place on the licensed premises.

15 (c) The Department shall renew the license in accordance with this Part and with
16 rules adopted pursuant to it.

17 **"§ 131E-154.4. Rules and Enforcement.**

18 (a) The Commission shall adopt, amend, and repeal all rules necessary for the
19 implementation of this Part. These rules shall include the following requirements:

20 (1) The nursing pool shall document that each employee who provides
21 care meets the minimum licensing, training, and continuing education
22 standards for the position in which the employee will be working;

23 (2) The nursing pool shall comply with all other pertinent regulations
24 relating to the health and other qualifications of personnel;

25 (3) The nursing pool shall carry general and professional liability
26 insurance to insure against the loss, damage, or expense incident to a
27 claim arising out of the death or injury of any person as the result of
28 negligence or malpractice in the provision of health care services by
29 the nursing pool or its employees;

30 (4) The nursing pool shall have written administrative and personnel
31 policies to govern the services that it provides. These policies shall
32 include those concerning patient care, personnel, training and
33 orientation, supervision, employee evaluation, and organizational
34 structure; and

35 (5) Any other aspects of nursing pool services that may need to be
36 regulated to protect the public.

37 (b) The Commission shall adopt no rules pertaining to the regulation of charges
38 by the nursing pool or to wages paid by the nursing pool.

39 **"§ 131E-154.5. Inspections.**

40 The Department shall inspect all nursing pools that are subject to rules adopted
41 pursuant to this Part in order to determine compliance with the provisions of this Part
42 and with rules adopted pursuant to it. Inspections shall be conducted in accordance with
43 rules adopted by the Commission.

44 **"§ 131E-154.6. Adverse action on a license; appeal procedures.**

1 (a) The Department may suspend, revoke, annul, withdraw, recall, cancel, or
2 amend a license when there has been a substantial failure to comply with the provisions
3 of this Part or with the rules adopted pursuant to it.

4 (b) The provisions of Chapter 150B of the General Statutes, the Administrative
5 Procedure Act, shall govern all administrative action and judicial review in cases in
6 which the Department has taken the action described in subsection (a) of this section.

7 **"§ 131E-154.7. Injunction.**

8 (a) Notwithstanding the existence or pursuit of any other remedy, the Department
9 may maintain an action in the name of the State for injunctive relief or other process
10 against any person to restrain or prevent the establishment, conduct, management, or
11 operation of a nursing pool without a license or to restrain or prevent substantial
12 noncompliance with this Part or the rules adopted pursuant to it.

13 (b) If any person hinders the proper performance of duty of the Department in
14 carrying out the provisions of this Part, the Department may institute an action in the
15 superior court of the county in which the hindrance occurred for injunctive relief against
16 the continued hindrance.

17 **"§ 131E-154.8. Confidentiality.**

18 (a) Notwithstanding G.S. 8-53 or any other law pertaining to confidentiality of
19 communications between physician and patient, in the course of an inspection
20 conducted pursuant to G.S. 131E-154.5:

21 (1) Department representatives may review any writing or other record
22 concerning the admission, discharge, medication, treatment, medical
23 condition, or history of any person who is or has been a nursing pool
24 patient; and

25 (2) Any person involved in treating a patient at or through a nursing pool
26 may disclose information to a Department representative unless the
27 patient objects in writing to review of his records or disclosure of the
28 information. A nursing pool shall not release any information or allow
29 any inspections under this section without first informing each affected
30 patient in writing of his right to object to and thus prohibit release of
31 information or review of records pertaining to him.

32 A nursing pool, its employees, and any other person interviewed in the course of an
33 inspection shall be immune from liability for damages resulting from disclosure of the
34 information to the Department.

35 (b) The Department shall not disclose:

36 (1) Any confidential or privileged information obtained under this section
37 unless the patient or his legal representative authorizes disclosure in
38 writing or unless a court of competent jurisdiction orders disclosure; or

39 (2) The name of anyone who has furnished information concerning a
40 nursing pool without that person's consent.

41 The Department shall institute appropriate policies and procedures to ensure that
42 unauthorized disclosure does not occur. Any Department employee who willfully
43 discloses this information without appropriate authorization or court order shall be

1 guilty of a misdemeanor and, upon conviction, fined at the discretion of the court but
2 not in excess of five hundred dollars (\$500.00).

3 (c) All confidential or privileged information obtained under this section and the
4 names of all persons providing this information are exempt from Chapter 132 of the
5 General Statutes.

6 **"PART F. HOME CARE AGENCY LICENSURE ACT.**

7 **"§ 131E-154.11. Title; purpose.**

8 (a) This Part shall be know as 'Home Care Agency Licensure Act'.

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

11 **"§ 131E-154.12. Definitions.**

12 As used in this Part, unless the context clearly implies otherwise:

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

14 (2) 'Department' means the Department of Human Resources.

15 (3) 'Home care agency' means any person, firm, corporation, partnership,
16 or association engaged in the business of arranging or providing
17 directly or through contract arrangement one or more of the following
18 services to persons at home: nursing services and nurses aides
19 services. 'Home care agency' does not include home health agencies
20 qualified to participate under the provisions of Titles XVIII and XIX
21 of the federal Social Security Act, hospices licensed under G.S. 131E-
22 200, or an individual who engages solely in providing his own
23 services.

24 (4) 'Nurses aides services' means nursing-related activities provided by a
25 paraprofessional under the supervision of a nurse to a patient with
26 health care needs, including, but not limited to, services provided by
27 personal care service aides, home health aides, private duty nursing
28 assistants, and advanced level chore workers.

29 **"§ 131E-154.13. Licensing.**

30 (a) No person shall operate or represent himself to the public as operating a home
31 care agency without obtaining a license from the Department.

32 (b) The Department shall provide applications for home care agency licensure.
33 Each application filed with the Department shall contain all information requested. A
34 license shall be granted to the applicant upon a determination by the Department that
35 the applicant has complied with the provisions of this Part and with the rules adopted by
36 the Commission. Each license shall be issued only for the premises and persons named,
37 shall not be transferrable or assignable except with the written approval of the
38 Department, and shall be posted in a conspicuous place on the licensed premises.

39 (c) The Department shall renew the license in accordance with this Part and with
40 rules adopted pursuant to it.

41 **"§ 131E-154.14. Rules and Enforcement.**

42 (a) The Commission shall adopt, amend, and repeal all rules necessary for the
43 implementation of this Part. These rules shall include the following requirements:

- 1 (1) The home care agency shall document that each employee who
2 provides care meets the minimum licensing, training, and continuing
3 education standards for the position in which the employee will be
4 working;
- 5 (2) The home care agency shall comply with all other pertinent regulations
6 relating to the health and other qualifications of personnel;
- 7 (3) A home care agency shall maintain clinical records on all patients,
8 including a plan of treatment prescribed by the patient's physician;
- 9 (4) The home care agency shall have written administrative and personnel
10 policies to govern the services that it provides. These policies shall
11 include those concerning patient care, personnel, training and
12 orientation, supervision, employee evaluation, and organizational
13 structure; and
- 14 (5) Any other aspects of home care agency services that may need to be
15 regulated to protect the public.

16 (b) The Commission shall adopt no rules pertaining to the regulation of charges
17 by the home care agency or to wages paid by the home care agency.

18 **"§ 131E-154.15. Inspections.**

19 The Department shall inspect all home care agencies that are subject to rules adopted
20 pursuant to this Part in order to determine compliance with the provisions of this Part
21 and with rules adopted pursuant to it. Inspections shall be conducted in accordance with
22 rules adopted by the Commission.

23 **"§ 131E-154.16. Adverse action on a license; appeal procedures.**

24 (a) The Department may suspend, revoke, annul, withdraw, recall, cancel, or
25 amend a license when there has been a substantial failure to comply with the provisions
26 of this Part or with the rules adopted pursuant to it.

27 (b) The provisions of Chapter 150B of the General Statutes, the Administrative
28 Procedure Act, shall govern all administrative action and judicial review in cases in
29 which the Department has taken the action described in subsection (a) of this section.

30 **"§ 131E-154.17. Injunction.**

31 (a) Notwithstanding the existence or pursuit of any other remedy, the Department
32 may maintain an action in the name of the State for injunctive relief or other process
33 against any person to restrain or prevent the establishment, conduct, management, or
34 operation of a home care agency without a license or to restrain or prevent substantial
35 noncompliance with this Part or the rules adopted pursuant to it.

36 (b) If any person hinders the proper performance of duty of the Department in
37 carrying out the provisions of this Part, the Department may institute an action in the
38 superior court of the county in which the hindrance occurred for injunctive relief against
39 the continued hindrance.

40 **"§ 131E-154.18. Confidentiality.**

41 (a) Notwithstanding G.S. 8-53 or any other law pertaining to confidentiality of
42 communications between physician and patient, in the course of an inspection
43 conducted pursuant to G.S. 131E-154.5:

1 (1) Department representatives may review any writing or other record
2 concerning the admission, discharge, medication, treatment, medical
3 condition, or history of any person who is or has been a home care
4 agency patient; and

5 (2) Any person involved in treating a patient at or through a home care
6 agency may disclose information to a Department representative
7 unless the patient objects in writing to review of his records or
8 disclosure of the information. A home care agency shall not release
9 any information or allow any inspections under this section without
10 first informing each affected patient in writing of his right to object to
11 and thus prohibit release of information or review of records pertaining
12 to him.

13 A home care agency, its employees, and any other person interviewed in the course of
14 an inspection shall be immune from liability for damages resulting from disclosure of
15 the information to the Department.

16 (b) The Department shall not disclose:

17 (1) Any confidential or privileged information obtained under this section
18 unless the patient or his legal representative authorizes disclosure in
19 writing or unless a court of competent jurisdiction orders disclosure; or

20 (2) The name of anyone who has furnished information concerning a
21 home care agency without that person's consent.

22 The Department shall institute appropriate policies and procedures to ensure that
23 unauthorized disclosure does not occur. Any Department employee who willfully
24 discloses this information without appropriate authorization or court order shall be
25 guilty of a misdemeanor and, upon conviction, fined at the discretion of the court but
26 not in excess of five hundred dollars (\$500.00).

27 (c) All confidential or privileged information obtained under this section and the
28 names of all persons providing this information are exempt from Chapter 132 of the
29 General Statutes."

30 Sec. 2. This act shall become effective October 1, 1989.