

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 744
SENATE BILL 245

AN ACT TO CREATE THE NURSING POOL LICENSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding the following new Part 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, including nurses, nursing assistants, nurses aides, and orderlies. 'Nursing pool' does not include an individual who engages solely in providing his own services on a temporary basis to health care facilities.

"§ 131E-154.3. Licensing.

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

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. 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 with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferrable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

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

(d) Nursing pools administered by health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article.

"§ 131E-154.4. Rules and enforcement.

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

- (1) The nursing pool shall document that each employee who provides care meets the minimum licensing, training, and continuing education standards for the position in which the employee will be working;
- (2) The nursing pool shall comply with all other pertinent regulations relating to the health and other qualifications of personnel;
- (3) The nursing pool shall carry general and professional liability insurance to insure against the loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the nursing pool or its employees;
- (4) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure; and
- (5) Any other aspects of nursing pool services that may need to be regulated to protect the public.

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

"§ 131E-154.5. Inspections.

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

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

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

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

"§ 131E-154.7. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process

against any person to restrain or prevent the establishment, conduct, management, or operation of a nursing pool without a license or to restrain or prevent substantial noncompliance with this Part or the rules adopted pursuant to it.

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

"§ 131E-154.8. Confidentiality.

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

- (1) Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a nursing pool patient; and
- (2) Any person involved in treating a patient at or through a nursing pool may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A nursing pool shall not release any information or allow any inspections under this section without first informing each affected patient in writing of his right to object to and thus prohibit release of information or review of records pertaining to him.

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

(b) The Department shall not disclose:

- (1) Any confidential or privileged information obtained under this section unless the patient or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure; or
- (2) The name of anyone who has furnished information concerning a nursing pool without that person's consent.

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

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

Sec. 2. The North Carolina Study Commission on Aging established by Article 21 of Chapter 120 of the General Statutes may study the need for regulation of agencies not licensed under State statute or certified for Medicare that provide nursing and nurse's aide services to persons at home. The North Carolina Study Commission on

Aging may report its findings, including any legislative recommendations, to the 1991 General Assembly.

Sec. 3. Nothing in this act obligates the General Assembly to appropriate funds to implement its terms. The Department of Human Resources shall implement this act to the extent that funds are available within the Department's budget or are appropriated by the General Assembly. The Department of Human Resources shall report to the Joint Legislative Commission on Governmental Operations by April 1, 1990 on any funds expended in the implementation of this act and on projected costs for the full implementation of this act.

Sec. 4. This act shall become effective July 1, 1990.

In the General Assembly read three times and ratified this the 9th day of August, 1989.