

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1991

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HOUSE BILL 168\*  
House Committee Substitute Favorable 4/19/91

Short Title: Home Care Licensing.

(Public)

Sponsors:

Referred to:

February 25, 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:

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

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

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

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

43           **"§ 131E-137. ~~Home health services~~ Services to be provided in all counties.**

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

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

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

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

14 **"§ 131E-138. Licensure requirements.**

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

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

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

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

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

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

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

1 and extent of the review and inspection of home health agencies already certified as  
2 meeting federal requirements, but not more frequently than on an annual basis for  
3 routine reviews.

4 **"§ 131E-139. Adverse action on a license.**

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

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

11 **"§ 131E-140. Rules and enforcement.**

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

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

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

22 **"§ 131E-141. Inspection.**

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

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

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

11 **"§ 131E-141.1. Penalties for violation.**

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

16 **"§ 131E-142. Injunction.**

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

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

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

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

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