

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70725-LNf-373 (5/18)

Short Title: License Hospice Care Organizations. (Public)

Sponsors: Representatives Clary, Insko, and Earle (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO PROVIDE FOR LICENSURE OF HOSPICE AGENCIES.

The General Assembly of North Carolina enacts:

SECTION 1. Article 6 of Chapter 131E of the General Statutes of North Carolina is amended by adding the following new Part to read:

"Part 3B. Hospice Agency Licensure Act.

"§ 131E-144.10. Title; purpose.

(a) This Part shall be known as "Hospice Agency Licensure Act".

(b) The purpose of this Part is to establish licensing requirements for hospice agencies.

"§ 131E-144.11. Definitions.

As used in this Part, unless otherwise specified:

(1) "Commission" is the North Carolina Medical Care Commission.

(2) "Geographic service area" is the geographic area in which a licensed agency provides hospice services.

(3) "Hospice agency" is a private or public organization that provides hospice services.

(4) "Hospice agency director" is the person having administrative responsibility for the operation of the licensed agency site.

(5) "Hospice client" is an individual who receives hospice services.

(6) "Hospice services" is any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:

a. Nursing care provided by or under the supervision of a registered nurse;

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

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

- 35 (4) "Hospice agency" is a hospice agency which is certified to receive
36 Medicare and Medicaid reimbursement for providing nursing care,
37 therapy, medical social services, and home health aide services on a
38 part-time, intermittent basis as set out in G. S. 131E and is thereby also
39 subject to Article 9 of Chapter 131E.

40 **"§ 131E-144.12. Licensure requirements.**

41 (a) No person or governmental unit shall operate a hospice agency without a
42 license obtained from the Department. Nothing in this Part shall be construed to extend
43 or modify the licensing of individual health professionals by the licensing boards for
44 their professions or to create any new professional license category.

1 (b) An application for a license shall be available from the Department, and each
2 application filed with the Department shall contain all information requested by the
3 Department. A license shall be granted to the applicant upon a determination by the
4 Department that the applicant has complied with the provisions of this Part and the rules
5 promulgated by the Commission under this Part. The Department shall charge the
6 applicant a nonrefundable annual license fee in the amount of three hundred fifty dollars
7 (\$350.00).

8 (c) The Department shall renew the license in accordance with the rules of the
9 Commission.

10 (d) Each license shall be issued only for the premises and persons named in the
11 license and shall not be transferable or assignable except with the written approval of
12 the Department.

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

14 (f) The Commission shall adopt rules to ensure that a hospice agency shall be
15 deemed to meet the licensure requirements and issued a license without further review
16 or inspection if: (i) the agency is already certified or accredited by the Joint Commission
17 on Accreditation of Health Care Organizations, National League for Nursing, North
18 Carolina Accreditation Commission for In-Home Aide Services, or other entities
19 recognized by the Commission; and (ii) the agency is certified or accredited for all of
20 the hospice services that it provides; or (iii) in the case of continuing care retirement
21 communities licensed by the North Carolina Department of Insurance under Article 64
22 of Chapter 58 that also have nursing beds licensed by the Department of Health and
23 Human Services under Article 6 of Chapter 131E, the Department certifies, as part of its
24 licensure review or survey of the nursing beds, that the facility also meets all of the
25 rules and regulations adopted by the Commission pursuant to this Part. The Department
26 may, at its discretion, determine the frequency and extent of the review and inspection
27 of hospice agencies already certified as meeting federal requirements, but not more
28 frequently than on an annual basis for routine reviews.

29 **"§ 131E-144.13. Adverse action on a license.**

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

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

36 **"§ 131E-144.14. Rules and enforcement.**

37 (a) The Commission may adopt rules necessary for the implementation of this
38 Part and Part 3A of Article 6 of this Chapter. Provided, these rules shall not extend,
39 modify, or limit the licensing of individual health professionals by their respective
40 licensing boards; nor shall these rules in any way be construed to extend the appropriate
41 scope of practice of any individual health care provider. Rules authorized under this
42 section include rules:

43 (1) That recognize the different types of hospice services and shall adopt
44 specific requirements for the provision of each type of hospice service.

1 (2) To establish staff qualifications, including professional requirements
2 for hospice agency staff. The rules may require that one or more staff
3 of an agency be either licensed or certified. The rules may establish
4 minimum training and education qualifications for staff and may
5 include the recognition of professional certification boards for those
6 professions not licensed or certified under other provisions of the
7 North Carolina General Statutes provided that the professional board
8 evaluates applicants on a basis that protects the public health, safety, or
9 welfare.

10 (3) For the purpose of ensuring effective supervision of hospice aide staff
11 and timely provision of services, the Commission shall adopt rules
12 defining geographic service areas for services and staffing
13 qualifications for licensed hospice agencies.

14 (4) Prohibiting licensed hospice agencies from hiring individuals listed on
15 the Health Care Personnel Registry in accordance with
16 G.S. 131E-256(a)(1).

17 (5) Requiring applicants for hospice licensure to receive training in the
18 requirements for licensure, the licensure process, and the rules
19 pertaining to the operation of a hospice agency.

20 (b) The Commission shall adopt rules defining the scope of permissible
21 advertising and promotional practice by hospice agencies.

22 (c) The Department shall enforce the rules adopted by the Commission with
23 respect to hospice agencies and shall conduct an inspection of each agency at least every
24 three years.

25 **"§ 131E-144.15. Inspection.**

26 (a) The Department shall inspect hospice agencies in accordance with rules
27 adopted by the Commission to determine compliance with the provisions of this Part
28 and the rules established by the Commission.

29 (b) Notwithstanding the provisions of G.S. 8-53, "Communications between
30 physician and patient", or any other provision of law relating to the confidentiality of
31 communications between physician and patient, the representatives of the Department
32 who make these inspections may review any writing or other record in any recording
33 medium which pertains to the admission, discharge, medication, treatment, medical
34 condition, or history of persons who are or have been clients of the agency being
35 inspected unless that client objects in writing to review of that client's records.
36 Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or
37 through an agency who may be interviewed by representatives of the Department may
38 disclose to these representatives information related to any inquiry, notwithstanding the
39 existence of the physician-patient privilege in G.S. 8-53, "Communication between
40 physician and patient", or any other rule of law; provided the client has not made
41 written objection to this disclosure. The agency, its employees, and any person
42 interviewed during these inspections shall be immune from liability for damages
43 resulting from the disclosure of any information to the Department. Any confidential or
44 privileged information received from review of records or interviews, except as noted in

1 G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed
2 without written authorization of the client or legal representative, or unless disclosure is
3 ordered by a court of competent jurisdiction. The Department shall institute appropriate
4 policies and procedures to ensure that this information shall not be disclosed without
5 authorization or court order. The Department shall not disclose the name of anyone who
6 has furnished information concerning an agency without the consent of that person.
7 Neither the names of persons furnishing information nor any confidential or privileged
8 information obtained from records or interviews shall be considered "public records"
9 within the meaning of G.S. 132-1. Prior to releasing any information or allowing any
10 inspections referred to in this section, the client must be advised in writing by the
11 licensed agency that the client has the right to object in writing to release of information
12 or review of the client's records and that by an objection in writing the client may
13 prohibit the inspection or release of the records.

14 (c) An agency must provide each client with a written notice of the Division of
15 Facility Services hotline number in advance of furnishing care to the client or during the
16 initial evaluation visit before the initiation of services.

17 **"§ 131E-144.16. Penalties for violation.**

18 Any person who knowingly and willfully establishes, conducts, manages or operates
19 any hospice agency without a license is guilty of a Class 3 misdemeanor and upon
20 conviction is liable only for a fine of not more than five hundred dollars (\$500.00) for
21 the first offense and not more than five hundred dollars (\$500.00) for each subsequent
22 offense.

23 **"§ 131E-144.17. Injunction.**

24 (a) Notwithstanding the existence or pursuit of any other remedy, the Department
25 shall, in the manner provided by law, maintain an action in the name of the State for
26 injunction or other process against any person or governmental unit to restrain or
27 prevent the establishment, conduct, management or operation of a hospice agency
28 without a license.

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

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

35 **SECTION 2.** There is appropriated from the General Fund to the
36 Department of Health and Human Services, Division of Facility Services, the sum of
37 forty-two thousand five hundred dollars (\$42,500) for the 2006-2007 fiscal year. These
38 funds shall be used to support two full-time equivalent positions to survey all licensed
39 hospice providers every three years.

40 **SECTION 3.** This act becomes effective January 1, 2007.