

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005**

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**HOUSE BILL 2742**

Short Title: License Hospice Care Organizations. (Public)

Sponsors: Representatives Clary, Insko, Earle (Primary Sponsors); Alexander, B. Allen, Faison, LaRoque, Lucas, Ross, and Tucker.

Referred to: Rules, Calendar, and Operations of the House.

May 30, 2006

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;

b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other

1                   of these therapy services, in a place of temporary or permanent  
2                   residence used as the individual's home;

3                   c. Medical social services;

4                   d. In-home aide services that involve hands-on care to an  
5                   individual;

6                   e. Infusion nursing services; and

7                   f. Assistance with pulmonary care, pulmonary rehabilitation or  
8                   ventilation.

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

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

38       **"§ 131E-144.12. Licensure requirements.**

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

43                  (b)       An application for a license shall be available from the Department, and each  
44                  application filed with the Department shall contain all information requested by the

1 Department. A license shall be granted to the applicant upon a determination by the  
2 Department that the applicant has complied with the provisions of this Part and the rules  
3 promulgated by the Commission under this Part. The Department shall charge the  
4 applicant a nonrefundable annual license fee in the amount of three hundred fifty dollars  
5 (\$350.00).

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

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

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

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

27 **"§ 131E-144.13. Adverse action on a license.**

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

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

34 **"§ 131E-144.14. Rules and enforcement.**

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

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

43 (2) To establish staff qualifications, including professional requirements  
44 for hospice agency staff. The rules may require that one or more staff

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

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

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

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

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

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

23 **"§ 131E-144.15. Inspection.**

24 (a) The Department shall inspect hospice agencies in accordance with rules  
25 adopted by the Commission to determine compliance with the provisions of this Part  
26 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  
39 written objection to this disclosure. The agency, its employees, and any person  
40 interviewed during these inspections shall be immune from liability for damages  
41 resulting from the disclosure of any information to the Department. Any confidential or  
42 privileged information received from review of records or interviews, except as noted in  
43 G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed  
44 without written authorization of the client or legal representative, or unless disclosure is

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

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

15 **"§ 131E-144.16. Penalties for violation.**

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

21 **"§ 131E-144.17. Injunction.**

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

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

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

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

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