

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

S

3

SENATE BILL 302*
Health Care Committee Substitute Adopted 4/17/19
House Committee Substitute Favorable 7/9/19

Short Title: Update ACH Svc & Care Plan/Bd of Nursing.

(Public)

Sponsors:

Referred to:

March 20, 2019

A BILL TO BE ENTITLED

AN ACT TO AUTHORIZE ADULT CARE HOMES TO USE SERVICE PLANS COMPLETED AS THE RESULT OF A MEDICAID PERSONAL CARE SERVICES ASSESSMENT TO FULFILL THE ACTIVITIES OF DAILY LIVING PORTION OF THE REQUIRED SERVICE PLANS OR CARE PLANS FOR ADULT CARE HOME RESIDENTS; TO AMEND ASSISTED LIVING ADMINISTRATOR CERTIFICATION QUALIFICATIONS; AND TO IMPLEMENT NORTH CAROLINA BOARD OF NURSING TECHNICAL CHANGES AND PROCEDURAL EFFICIENCIES.

The General Assembly of North Carolina enacts:

PART I. AUTHORIZE ADULT CARE HOMES TO USE SERVICE PLANS COMPLETED FOR MEDICAID PERSONAL CARE SERVICES ASSESSMENT FOR ACTIVITIES OF DAILY LIVING PORTION OF SERVICE PLANS OR CARE PLANS AND AMEND ASSISTED LIVING ADMINISTRATOR QUALIFICATIONS

SECTION 1. G.S. 131D-2.15 reads as rewritten:

"§ 131D-2.15. Resident assessments.

(a) Initial Assessment. – The Department shall ensure that facilities conduct and complete an assessment of each resident within 72 hours of admitting the ~~resident and annually thereafter.~~ resident. In conducting the assessment, the facility shall use an assessment instrument ~~approved by the Secretary upon the advice of the Director of the Division of Aging and Adult Services.~~ approved in accordance with rules adopted by the Medical Care Commission. The Department shall provide ongoing training for facility personnel in the use of the approved assessment instrument.

(a1) ~~The Assessment to Develop Service Plans and Care Plans.~~ – Within 30 days of admission, the facility shall use the conduct an assessment to develop appropriate and comprehensive service plans and care plans and to determine the level and type of facility staff that is needed to meet the needs of residents. The assessment shall determine a resident's level of functioning and shall include, but not be limited to, cognitive status and physical functioning in activities of daily living. Activities of daily living are personal functions essential for the health and well-being of the resident. The assessment shall not serve as the basis for medical care. The assessment shall indicate if the resident requires referral to the resident's physician or other appropriate licensed health care professional or community resource.

(a2) Medicaid State Plan Personal Care Services Assessment. – To fulfill the activities of daily living portion of any service plan or care plan required under subsection (a1) of this section, or any rules adopted under this Article, the facility may use a service plan that was completed



* S 3 0 2 - V - 3 *

1 within 35 days of the resident's admission to the facility and represents the result of an assessment
 2 to determine the resident's eligibility for personal care services under the Medicaid State Plan. If
 3 the facility uses a service plan for personal care services under the Medicaid State Plan developed
 4 within 35 days of resident admission, the facility shall be exempt from conducting an assessment
 5 of the resident's ability to perform activities of daily living within 30 days of resident admission.
 6 For purposes of this subsection, a resident must have received an assessment to develop
 7 appropriate and comprehensive service plans and care plans no later than 35 days after resident
 8 admission or subsection (a1) of this section applies.

9 (b) Review. – The Department, as part of its inspection and licensing of adult care homes,
 10 shall review assessments and related service plans and care plans for a selected number of
 11 residents. In conducting this review, the Department shall ~~determine~~determine all of the
 12 following:

- 13 (1) Whether the appropriate assessment instrument was administered and
 14 interpreted ~~correctly~~correctly.
- 15 (2) Whether the facility is capable of providing the necessary ~~services~~services.
- 16 (3) Whether the service plan or care plan conforms to the results of an
 17 appropriately administered and interpreted ~~assessment~~assessment.
- 18 (4) Whether the service plans or care plans are being implemented fully and in
 19 accordance with an appropriately administered and interpreted assessment.

20 (c) Penalties. – If the Department finds that the facility is not carrying out its assessment
 21 responsibilities in accordance with this section, the Department shall notify the facility and
 22 require the facility to implement a corrective action plan. The Department shall also notify the
 23 resident of the results of its review of the assessment, service plans, and care plans developed for
 24 the resident. In addition to administrative penalties, the Secretary may suspend the admission of
 25 any new residents to the facility. The suspension shall be for the period determined by the
 26 Secretary and shall remain in effect until the Secretary is satisfied that conditions or
 27 circumstances merit removing the suspension."

28 **SECTION 2.** G.S. 90-288.14 reads as rewritten:

29 **"§ 90-288.14. Assisted living administrator certification.**

30 ~~An applicant shall be certified by the~~ The Department shall certify as an assisted living
 31 administrator ~~if the~~ any applicant who meets all of the following qualifications:

- 32 (1) Is at least 21 years old.
- 33 (2) Provides a satisfactory criminal background report from the State Repository
 34 of Criminal Histories, which shall be provided by the State Bureau of
 35 Investigation upon its receiving fingerprints from the applicant. If the
 36 applicant has been a resident of this State for less than five years, the applicant
 37 shall provide a satisfactory criminal background report from both the State
 38 and National Repositories of Criminal Histories.
- 39 (2a) Does not have a substantiated finding of neglect, abuse, misappropriation of
 40 property, diversion of drugs, or fraud listed on the Health Care Personnel
 41 Registry established under G.S. 131E-256.
- 42 (3) ~~Successfully~~ Has a high school diploma or its equivalent and successfully
 43 completes the equivalent of two years of coursework at an accredited college
 44 or university ~~university~~, or has a minimum of 60 months of supervisory
 45 experience, or has a combination of education and experience as approved by
 46 the Department. For purposes of this section, "supervisory experience" means
 47 having full-time, direct management responsibility, including some
 48 responsibility for hiring and firing, over the equivalent of at least two full-time
 49 employees with direct resident care responsibilities. Such supervisory
 50 experience shall have been in a licensed adult care home or licensed nursing
 51 home within the seven years preceding the date of application.

- 1 (4) Successfully completes a Department approved administrator-in-training
- 2 program of at least 120 hours of study in courses relating to assisted living
- 3 residences.
- 4 (5) Successfully completes a written examination administered by the
- 5 Department."

6
7 **PART II. NORTH CAROLINA BOARD OF NURSING CHANGES**

8 **SECTION 3. G.S. 90-171.20 reads as rewritten:**

9 **"§ 90-171.20. Definitions.**

10 As used in this Article, unless the context requires otherwise:

- 11 ...
- 12 (3) "License" means a permit issued by the Board to practice nursing as a
- 13 registered nurse or as a licensed practical nurse, including a renewal thereof.
- 14 (3a) "Licensee" means any person issued a license by the Board, whether the
- 15 license is active or inactive, including an inactive license by means of
- 16 surrender.

17"

18 **SECTION 4. G.S. 90-171.21 reads as rewritten:**

19 **"§ 90-171.21. Board of Nursing; composition; selection; vacancies; qualifications; term of**

20 **office; compensation.**

21 ...

22 (d) Qualifications. – Of the eight registered nurse members on the Board, one shall be a

23 nurse administrator employed by a hospital or a hospital system, who shall be accountable for

24 the administration of nursing services and not directly involved in patient care; one shall be an

25 individual who meets the requirements to practice as a certified registered nurse anesthetist, a

26 certified nurse midwife, a clinical nurse specialist, or a nurse practitioner; two shall be staff

27 nurses, defined as individuals who are primarily involved in direct patient care regardless of

28 practice setting; one shall be an at-large registered nurse who meets the requirements of

29 sub-subdivisions (1) a., a1., and b. of this subsection, but is not currently an educator in a program

30 leading to licensure or any other degree-granting program; and three shall be nurse educators.

31 Minimum ongoing employment requirements for every registered nurse and licensed practical

32 nurse shall include continuous employment equal to or greater than fifty percent (50%) of a

33 full-time position that meets the criteria for the specified Board member position. Of the three

34 nurse educators, one shall be a practical nurse educator, one shall be an associate degree or

35 diploma nurse educator, and one shall be a baccalaureate or higher degree nurse educator. All

36 nurse educators shall meet the minimum education requirement as established by the Board's

37 education program standards for nurse faculty. Candidates eligible for election to the Board as

38 nurse educators are not eligible for election as the at-large member.

- 39 (1) Except for the at-large member, every registered nurse member shall meet the
- 40 following criteria:
- 41 a. Hold ~~a current,~~ an active, unencumbered license to practice as a
- 42 registered nurse in North Carolina.
- 43 a1. Be a resident of North Carolina.
- 44 b. Have a minimum of five years of experience as a registered nurse.
- 45 c. Have been engaged continuously in a position that meets the criteria
- 46 for the specified Board position for at least three years immediately
- 47 preceding election.
- 48 d. Show evidence that the employer of the registered nurse is aware that
- 49 the nurse intends to serve on the Board.
- 50 (2) Every licensed practical nurse member shall meet the following criteria:

- 1 a. Hold ~~a current,~~ an active, unencumbered license to practice as a
- 2 licensed practical nurse in North Carolina.
- 3 a1. Be a resident of North Carolina.
- 4 c. Have a minimum of five years of experience as a licensed practical
- 5 nurse.
- 6 d. Have been engaged continuously in the position of a licensed practical
- 7 nurse for at least three years immediately preceding election.
- 8 e. Show evidence that the employer of the licensed practical nurse is
- 9 aware that the nurse intends to serve on the Board.
- 10 (3) A public member ~~appointed by the Governor~~ shall not be a ~~provider of health~~
- 11 ~~services or employed in the health services field. No licensed nurse or licensed~~
- 12 ~~health care professional or employed by a health care institution, health care~~
- 13 ~~insurer, or a health care professional school. No public member appointed by~~
- 14 ~~the Governor~~ or person in the public member's immediate family as defined
- 15 by G.S. 90-405(8) shall be currently employed as a licensed nurse or been
- 16 previously employed as a licensed nurse.
- 17 ...

18 (g) ~~Reimbursement.~~ Compensation. – Board members are entitled to receive

19 compensation and reimbursement ~~as authorized by G.S. 93B-5~~ for all expenses proper and

20 necessary as determined by the Board to discharge its duties and to enforce the laws regulating

21 the practice of nursing. The per diem compensation of Board members shall not exceed two

22 hundred dollars (\$200.00) per member for time spent in the performance and discharge of duties

23 as a member."

24 **SECTION 5.** G.S. 90-171.23 reads as rewritten:

25 **"§ 90-171.23. Duties, powers, and meetings.**

- 26 ...
- 27 (b) Duties, powers. The Board is empowered to:
- 28 ...
- 29 (6) Examine, license, and renew the licenses of duly qualified applicants for
- 30 licensure.
- 31 (6a) Determine whether an applicant or licensee is mentally and physically capable
- 32 of practicing nursing with reasonable skill and safety. The Board may require
- 33 an applicant or licensee to submit to a mental health examination by a licensed
- 34 mental health professional designated by the Board and to a physical
- 35 examination by a physician or other licensed health care professional
- 36 designated by the Board. The Board may order an applicant or licensee to be
- 37 examined before or after charges are presented against the applicant or
- 38 licensee. The results of the mental health examination or physical examination
- 39 shall be reported directly to the Board and shall be admissible into evidence
- 40 in a hearing before the Board.
- 41 (7) ~~Cause the prosecution of all persons violating this Article. Determine and~~
- 42 ~~administer appropriate disciplinary action against all regulated parties who are~~
- 43 ~~found to be in violation of this Article or rules adopted by the Board.~~
- 44 ...
- 45 (10) ~~Grant or deny~~ Grant, deny, or withdraw approval for nursing programs as
- 46 provided in G.S. 90-171.39.
- 47 ...
- 48 (18) ~~Establish programs for aiding in the recovery and rehabilitation of nurses who~~
- 49 ~~experience chemical addiction or abuse or mental or physical disabilities and~~
- 50 ~~programs for monitoring such nurses for safe practice.~~ monitoring the
- 51 treatment, recovery, and safe practice of nurses with substance use disorders,

1 mental health disorders, or physical conditions impacting the ability to deliver
 2 safe care.

3 (18a) ~~Establish programs~~ Enter into agreements for aiding in the remediation of
 4 nurses who experience practice deficiencies.

5 ...
 6 (24) ~~Order the production of any records concerning the practice of nursing~~
 7 ~~relevant to a complaint received by the Board or an inquiry or investigation~~
 8 ~~conducted by or on behalf of the Board or subpoena the production of any~~
 9 ~~patient records, documents, or other materials concerning any matter to be~~
 10 ~~heard before or inquired into by the Board, notwithstanding any other~~
 11 ~~provision of law providing for the application of any health care~~
 12 ~~provider-patient privilege regarding records, documents, or other materials.~~
 13 All records, documents, or other materials compiled by the Board are subject
 14 to G.S. 90-171.37C. Upon written request and after a hearing, the Board shall
 15 revoke a subpoena if the Board finds the evidence does not relate to a matter
 16 in issue, or if the subpoena does not describe the required evidence with
 17 sufficient particularity, or if the subpoena is invalid for any other legal
 18 reason."

19 **SECTION 6.** G.S. 90-171.33 reads as rewritten:

20 **"§ 90-171.33. Temporary license.**

21 (a) ~~Until the implementation of the computer adaptive licensure examination, the Board~~
 22 ~~may issue a nonrenewable temporary license to persons who are applying for licensure under~~
 23 ~~G.S. 90-171.30, and who are scheduled for the licensure examination at the first opportunity after~~
 24 ~~graduation, for a period not to exceed the lesser of nine months or the date of applicant's~~
 25 ~~notification of the results of the licensure examination. The Board shall revoke the temporary~~
 26 ~~license of any person who does not take the examination as scheduled, or who has failed the~~
 27 ~~examination for licensure as provided by this act.~~

28 (b) ~~Upon implementation of the computer adaptive licensure examination, no temporary~~
 29 ~~licenses will be issued to persons who are applying for licensure under G.S. 90-171.30.~~

30 (c) The Board may issue a nonrenewable temporary license to persons applying for
 31 licensure under G.S. 90-171.32 for a period not to exceed the lesser of six months or until the
 32 Board determines whether the applicant is qualified to practice nursing in North Carolina.
 33 Temporary licensees may perform patient-care services within limits defined by the Board. In
 34 defining these limits, the Board shall consider the ability of the temporary licensee to safely and
 35 properly carry out patient-care services. Temporary licensees shall be held to the standard of care
 36 of a fully licensed nurse."

37 **SECTION 7.** G.S. 90-171.37 reads as rewritten:

38 **"§ 90-171.37. ~~Revocation, discipline, suspension, probation, or denial of~~**
 39 **~~licensure.~~Disciplinary authority.**

40 (a) The Board may initiate an investigation upon receipt of information about any
 41 practice that might violate any provision of this Article or any rule or regulation promulgated by
 42 the Board. In accordance with the provisions of Chapter 150B of the General Statutes, the Board
 43 shall have the power and authority to: ~~(i) refuse to issue a license to practice nursing; (ii) refuse~~
 44 ~~to issue a certificate of renewal of a license to practice nursing; (iii) revoke or suspend a license~~
 45 ~~to practice nursing; and (iv) invoke other such disciplinary measures, censure, or probative terms~~
 46 ~~against a licensee as it deems fit and proper; in any instance or instances in which the Board is~~
 47 ~~satisfied that the applicant or licensee to take the following actions: (i) place on probation, with~~
 48 ~~or without conditions; (ii) impose limitations and conditions; (iii) accept voluntary surrender of~~
 49 ~~a license; (iv) publicly reprimand; (v) issue public letters of concern; (vi) require satisfactory~~
 50 ~~completion of treatment programs or remedial or educational training; (vii) deny or refuse to~~
 51 ~~issue a license, deny or refuse to issue a license renewal, issue a fine, suspend a license, and~~

1 revoke a license or privilege to practice nursing in this State for any person the Board finds to
2 have done any of the following:

- 3 (1) Has given false information or has withheld material information from the
4 Board in procuring or attempting to procure a license to practice nursing.
5 (2) Has been convicted of or pleaded guilty or nolo contendere to any crime which
6 indicates that the nurse is unfit or incompetent to practice nursing or that the
7 nurse has deceived or defrauded the public.
8 (3) ~~Has a mental or physical disability or uses any drug to a degree that interferes~~
9 ~~with his or her fitness to practice nursing.~~ Is unable to practice nursing with
10 reasonable skill and safety to patients by reason of illness, excessive use of
11 alcohol, drugs, chemicals, or any other type of material, or by reason of any
12 physical or mental abnormality.
13 (4) Engages in conduct that endangers the public health.
14 (5) Is unfit or incompetent to practice nursing by reason of deliberate or negligent
15 acts or omissions regardless of whether actual injury to the patient is
16 established.
17 (6) Engages in conduct that deceives, defrauds, or harms the public in the course
18 of professional activities or services.
19 (6a) Engages in unprofessional conduct that is nonconforming to the standards of
20 acceptable and prevailing nursing practice or the ethics of the nursing
21 profession, even if a patient is not injured.
22 (6b) Commits acts of dishonesty, injustice, or immorality in the course of the
23 licensee's practice or otherwise, including acts outside of this State.
24 (6c) Has had a license or privilege to practice nursing denied, revoked, suspended,
25 restricted, or acted against by any jurisdiction. For purposes of this
26 subdivision, the licensing authority's acceptance of a license to practice
27 nursing that is voluntarily relinquished by a nurse, by stipulation, consent
28 order, or other settlement in response to or in anticipation of the filing of
29 administrative charges against the nurse's license, is an action against a license
30 to practice nursing. The Board is empowered and authorized to take action
31 based on the factual findings of the licensing authority that took action.
32 (6d) Fails to respond to the Board's inquiries in a reasonable manner or time
33 regarding any matter affecting the license to practice nursing.
34 (7) Has violated any provision of this ~~Article.~~ Article or any provision of the rules
35 adopted by the Board under this Article.
36 (8) ~~Has willfully violated any rules enacted by the Board.~~

37 (b) The Board may take any of the actions specified above in this section when a
38 registered nurse approved to perform medical acts has violated rules governing the performance
39 of medical acts by a registered nurse; provided this shall not interfere with the authority of the
40 North Carolina Medical Board to enforce rules and regulations governing the performance of
41 medical acts by a registered nurse.

42 (c) The Board may reinstate a revoked license, revoke censure or ~~probative terms,~~
43 probation, or remove other licensure restrictions when it finds that the reasons for revocation,
44 censure or ~~probative terms,~~ probation, or other licensure restrictions no longer exist and that the
45 ~~nurse or applicant~~ licensee or applicant for a license can reasonably be expected to safely and
46 properly practice nursing.

47 (d) The Board retains jurisdiction over an expired, inactive, or voluntarily surrendered
48 license. The Board's jurisdiction over the licensee extends for all matters, known or unknown to
49 the Board, at the time of the expiration, inactivation, or surrender of the license.

1 (e) The Board, members of the Board, and staff shall not be held liable in any civil or
2 criminal proceeding for exercising the powers and duties authorized by law provided the person
3 was acting in good faith."

4 **SECTION 8.** G.S. 90-171.37A reads as rewritten:

5 **"§ 90-171.37A. Use of hearing committee and depositions.**

6 (a) The Board, in its discretion, may designate in writing three or more of its members to
7 conduct hearings as a hearing committee to ~~take~~ receive evidence. A majority of the hearing
8 committee shall be licensed nurses.

9 (b) Evidence and testimony may be presented at hearings before the Board or a hearing
10 committee in the form of depositions before any person authorized to administer oaths in
11 accordance with the procedure for the taking of depositions in civil actions in the superior court.
12 At the discretion of the Board, witness testimony may be received by telephone or
13 videoconferencing at a hearing.

14"

15 **SECTION 9.** Article 9A of Chapter 90 of the General Statutes is amended by adding
16 new sections to read:

17 **"§ 90-171.37B. Appeal from Board's disciplinary action of licensee.**

18 (a) A licensee may appeal a public disciplinary action made by the Board under
19 G.S. 90-171.37(a). A licensee may appeal any public disciplinary action made by the Board to
20 the superior court located in the county where the licensee resides or where the Board is located
21 by filing written notice of appeal within 30 days after receipt of the Board's decision. A licensee
22 must state all exceptions to the Board's decision in the licensee's written notice of appeal and
23 properly identify the general court of justice where the licensee intends the appeal to be heard.

24 (b) Within 30 days of receiving a licensee's written notice of appeal, the Board shall
25 prepare, certify, and file the record, charges, notice of hearing, transcript of testimony,
26 documents, and written evidence produced at the hearing, the Board's decision, and a licensee's
27 notice of appeal with the clerk of superior court in the county where the licensee appealed the
28 Board's decision.

29 **"§ 90-171.37C. Confidentiality of Board investigative information; Board to keep public**
30 **records; cooperation with law enforcement; self-reporting requirements; patient**
31 **protection.**

32 (a) All records, papers, investigative information, and other documents containing
33 information that the Board, its members, or its employees possess, gather, or receive as a result
34 of investigations, inquiries, assessments, or interviews conducted in connection with a licensing
35 complaint, appeal, assessment, potential impairment matter, or disciplinary matter shall not be
36 considered public records under Chapter 132 of the General Statutes, and are privileged,
37 confidential, not subject to discovery, subpoena, or any means of legal compulsion for release to
38 anyone other than the Board, its employees, or consultants involved in the application for license,
39 impairment assessment, or discipline of a licensee, except as provided in subsection (b) of this
40 section. For the purposes of this section, "investigative information" means investigative files
41 and reports, information relating to the identity and report of a physician or other professional
42 performing an expert review for the Board, and any of the Board's deposition transcripts related
43 to a hearing not admitted into evidence.

44 (b) The Board shall provide the licensee or applicant for a license access to all
45 information in its possession that the Board intends to offer into evidence at the licensee's or
46 applicant's hearing, unless good cause is shown for delay. This information shall be subject to
47 any privilege or restriction set forth by rule, statute, or legal precedent and must be requested in
48 writing from the licensee or applicant who is the subject of the complaint or investigation. The
49 Board shall not be required to produce (i) information subject to attorney-client privilege or (ii)
50 investigative information that the Board will not offer into evidence, and is related to advice,
51 opinions, or recommendations of the Board's staff, consultants, or agents.

1 (c) Any licensee's notice of statement of charges, notice of hearing, and all information
2 contained in those documents shall be public records under Chapter 132 of the General Statutes.

3 (d) If the Board, its employees, or its agents possess investigative information indicating
4 a crime may have been committed, the Board may report the information to the appropriate law
5 enforcement agency or district attorney of the district in which the offense was committed. The
6 Board shall cooperate with and assist any law enforcement agency or district attorney conducting
7 a criminal investigation or prosecution of a licensee by providing relevant information. This
8 information shall be confidential under G.S. 132-1.4 and shall remain confidential after
9 disclosure to a law enforcement agency or district attorney.

10 (e) All licensees shall self-report to the Board any of the following within 30 days of their
11 arrest or indictment:

12 (1) Any felony arrest or indictment.

13 (2) Any arrest for driving while impaired or driving under the influence.

14 (3) Any arrest or indictment for the possession, use, or sale of any controlled
15 substance.

16 (f) The Board, its members, or its staff may release confidential information concerning
17 the denial, annulment, suspension, or revocation of a license to any other health care licensing
18 board in this State, other state, or country, or authorized Department of Health and Human
19 Services personnel who are charged with the enforcement or investigative responsibilities of
20 licensure.

21 If the Board releases this confidential information, the Board shall notify and provide a
22 summary of the information to the licensee within 60 days after the information is transmitted.
23 The licensee may make a written request that the Board provide the licensee a copy of all
24 information transmitted within 30 days of receiving notice of the initial transmittance. The Board
25 shall not provide the information if the information relates to an ongoing criminal investigation
26 by any law enforcement agency or authorized Department of Health and Human Services
27 personnel with enforcement or investigative responsibilities.

28 (g) Notwithstanding the provisions of this section, the Board shall withhold the identity
29 of a patient, including information relating to dates and places of treatment, or any other
30 information that would tend to identify the patient, in any proceeding, record of a hearing, and in
31 the notice of charges against any licensee, unless the patient or the patient's representative
32 expressly consents to the public disclosure.

33 **"§ 90-171.37D. Service of notices.**

34 (a) Any notice required by this Article may be served either personally by an employee
35 of the Board or by an officer authorized by law to serve process, or by registered or certified
36 mail, return requested, directed to the licensee or applicant at his or her last known address as
37 shown by the records of the Board. If notice is served personally, it shall be deemed to have been
38 served at the time when the officer or employee of the Board delivers the notice to the person
39 addressed or delivers the notice at the licensee's or applicant's last known address as shown by
40 records of the Board with a person of suitable age and discretion then residing therein. Where
41 notice is served in a manner authorized by Rule 4(j) of the North Carolina Rules of Civil
42 Procedure, it shall be deemed to have been served on the date borne by the return receipt showing
43 delivery of the notice to the licensee's or applicant's last known address as shown by the records
44 of the Board, regardless of whether the notice was actually received or whether the notice was
45 unclaimed or undeliverable for any reason."

46 **SECTION 10.** G.S. 90-171.39 reads as rewritten:

47 **"§ 90-171.39. Approval.**

48 The Board shall designate persons to survey proposed nursing programs, including the
49 clinical facilities- programs. The persons designated by the Board shall submit a written report
50 of the survey to the Board. If in the opinion of the Board the standards for approved nursing
51 education are met, the program shall be given approval."

1 **SECTION 11.** G.S. 90-171.40 reads as rewritten:

2 "**§ 90-171.40. Ongoing approval.**

3 The Board shall review all nursing programs in the State at least every ~~eight~~ 10 years or more
4 often as considered necessary. If the Board determines that any approved nursing program does
5 not meet or maintain the standards required by the Board, the Board shall give written notice
6 specifying the deficiencies to the institution responsible for the program. The Board shall
7 ~~withdraw approval from~~ evaluate and take appropriate action, including withdrawing approval,
8 for a program that fails to correct deficiencies within a reasonable time. The Board shall publish
9 ~~annually~~ a list of nursing programs in this State showing their approval status."

10 **SECTION 12.** G.S. 90-171.43 reads as rewritten:

11 "**§ 90-171.43. License required.**

12 (a) No person shall practice or offer to practice as a registered nurse or licensed practical
13 nurse, or use the word "nurse" as a title for herself or himself, or use an abbreviation to indicate
14 that the person is a registered nurse or licensed practical nurse, unless the person is currently
15 licensed as a registered nurse or licensed practical nurse as provided by this Article. If the word
16 "nurse" is part of a longer title, such as "nurse's aide", a person who is entitled to use that title
17 shall use the entire title and may not abbreviate the title to "nurse". This Article shall not,
18 however, be construed to prohibit or limit the following:

- 19 (1) The performance by any person of any act for which that person holds a
20 license issued pursuant to North Carolina law;
- 21 (2) The clinical practice by students enrolled in approved nursing programs,
22 continuing education programs, or refresher courses under the supervision of
23 qualified faculty;
- 24 (3) The performance of nursing performed by persons who hold a temporary
25 license issued pursuant to G.S. 90-171.33;
- 26 (4) The delegation to any person, including a member of the patient's family, by
27 a physician licensed to practice medicine in North Carolina, a licensed dentist
28 or registered nurse of those patient-care services which are routine, repetitive,
29 limited in scope that do not require the professional judgment of a registered
30 nurse or licensed practical nurse;
- 31 (5) Assistance by any person in the case of emergency.

32 Any person permitted to practice nursing without a license as provided in subdivision (2) or
33 (3) of this section shall be held to the same standard of care as any licensed nurse.

34 (b) The Board shall have the authority to promulgate rules to enforce the provisions of
35 this section."

36 **SECTION 13.** Article 9A of Chapter 90 of the General Statutes is amended by
37 adding a new section to read:

38 "**§ 90-171.49. Disasters and emergencies.**

39 If the Governor declares a state of emergency or a county or municipality enacts ordinances
40 under G.S. 153A-121, 160A-174, 166A-19.31, or Article 22 of Chapter 130A of the General
41 Statutes, the Board may waive the requirements of this Article to allow emergency health services
42 to the public."

43 **SECTION 14.** G.S. 90-171.47 reads as rewritten:

44 "**§ 90-171.47. Reports: immunity from suit.**

45 Any person who has reasonable cause to suspect misconduct or incapacity of a licensee or
46 who has reasonable cause to suspect that any person is in violation of this Article, including those
47 actions specified in ~~G.S. 90-171.37(1) through (8), G.S. 90-171.37, G.S. 90-171.43, and~~
48 ~~G.S. 90-171.44,~~ shall report the relevant facts to the Board. Upon receipt of such charge or upon
49 its own initiative, the Board may give notice of an administrative hearing or may, after diligent
50 investigation, dismiss unfounded charges. Any person making a report pursuant to this section

1 shall be immune from any criminal prosecution or civil liability resulting therefrom unless such
2 person knew the report was false or acted in reckless disregard of whether the report was false."

3 **SECTION 15.** G.S. 90-171.48 reads as rewritten:

4 "**§ 90-171.48. Criminal history record checks of applicants for licensure.**

5 ...

6 (c) If an applicant's criminal history record check reveals one or more convictions listed
7 under subsection (a)(2) of this section, the conviction shall not automatically bar licensure. The
8 Board shall consider all of the following factors regarding the conviction:

9 (1) The level of seriousness of the crime.

10 (2) The date of the crime.

11 (3) The age of the person at the time of the conviction.

12 (4) The circumstances surrounding the commission of the crime, if known.

13 (5) The nexus between the criminal conduct of the person and the job duties of
14 the position to be filled.

15 (6) The person's prison, jail, probation, parole, rehabilitation, and employment
16 records since the date the crime was committed.

17 (7) The subsequent commission by the person of a crime listed in subsection (a)
18 of this section.

19 If, after reviewing the factors, the Board determines that the grounds set forth in ~~subsections (1),~~
20 ~~(2), (3), (4), (5), or (6)~~ of G.S. 90-171.37 exist, the Board may deny licensure of the applicant.

21 The Board may disclose to the applicant information contained in the criminal history record
22 check that is relevant to the denial. The Board shall not provide a copy of the criminal history
23 record check to the applicant. The applicant shall have the right to appear before the Board to
24 appeal the Board's decision. However, an appearance before the full Board shall constitute an
25 exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

26"

27 **PART III. EFFECTIVE DATE**

28 **SECTION 16.** Part II of this act becomes effective October 1, 2019, and applies to
29 licenses granted or renewed on or after that date and actions taken by the Board of Nursing on or
30 after that date, and the remainder of the act is effective when it becomes law.
31