

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 42*

Short Title: Home Care Changes. (Public)

Sponsors: Senators Swindell, Dannelly, Allran; Boseman, Dalton, Purcell, Rand,
Thomas, and Tillman.

Referred to: Health Care.

February 3, 2005

A BILL TO BE ENTITLED

AN ACT TO MAKE CHANGES TO THE HOME CARE AGENCY LICENSURE
ACT, TO ESTABLISH HOME CARE CLIENTS' RIGHTS, AND TO
APPROPRIATE FUNDS TO INCREASE THE SURVEY CYCLE FOR
LICENSED IN-HOME AGENCIES, AS RECOMMENDED BY THE NORTH
CAROLINA STUDY COMMISSION ON AGING.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 131E-140 reads as rewritten:

"§ 131E-140. Rules and enforcement.

(a) The Commission ~~is authorized to~~ may adopt, amend and repeal all rules necessary for the implementation of this ~~Part.~~ Part and Part 3A of Article 6 of this Chapter. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider.

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

(a2) The Commission shall adopt rules defining geographic service areas and staffing qualifications for licensed home care agencies.

(a3) The Commission shall adopt rules prohibiting licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

(a4) The Commission shall adopt rules requiring applicants for home care licensure to receive training in the requirements for licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care agencies."

1 **SECTION 2.** G.S. 131E-136 reads as rewritten:

2 **"§ 131E-136. Definitions.**

3 As used in this Part, unless otherwise specified:

4 (1) "Commission" means the North Carolina Medical Care Commission.

5 (1a) "Geographic service area" means the geographic area in which a
6 licensed agency provides home care services.

7 (2) "Home care agency" means a private or public organization that
8 provides home care services.

9 (2a) "Home care agency director" means the person having administrative
10 responsibility for the operation of the agency.

11 (2b) "Home care client" means an individual who receives home care
12 services.

13 (3) "Home care services" means any of the following services and directly
14 related medical supplies and appliances, which are provided to an
15 individual in a place of temporary or permanent residence used as an
16 individual's home:

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

19 b. Physical, occupational, or speech therapy, when provided to an
20 individual who also is receiving nursing services, or any other
21 of these therapy services, in a place of temporary or permanent
22 residence used as the individual's home;

23 c. Medical social services;

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

26 e. Infusion nursing services; and

27 f. Assistance with pulmonary care, pulmonary rehabilitation or
28 ventilation.

29 The term does not include: health promotion, preventative health and
30 community health services provided by public health departments;
31 maternal and child health services provided by public health
32 departments, by employees of the Department of Health and Human
33 Services under G.S. 130A-124, or by developmental evaluation centers
34 under contract with the Department of Health and Human Services to
35 provide services under G.S. 130A-124; hospitals licensed under
36 Article 5 of Chapter 131E of the General Statutes when providing
37 follow-up care initiated to patients within six months after their
38 discharge from the hospital; facilities and programs operated under the
39 authority of G.S. 122C and providing services within the scope of
40 G.S. 122C; schools, when providing services pursuant to Article 9 of
41 Chapter 115C; the practice of midwifery by a person licensed under
42 Article 10A of Chapter 90 of the General Statutes; hospices licensed
43 under Article 10 of Chapter 131E of the General Statutes when
44 providing care to a hospice patient; an individual who engages solely

1 in providing his own services to other individuals; incidental health
2 care provided by an employee of a physician licensed to practice
3 medicine in North Carolina in the normal course of the physician's
4 practice; or nursing registries if the registry discloses to a client or the
5 client's responsible party, before providing any services, that (i) it is
6 not a licensed home care agency, and (ii) it does not make any
7 representations or guarantees concerning the training, supervision, or
8 competence of the personnel provided.

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

14 **SECTION 3.** Article 6 of Chapter 131E of the General Statutes is amended
15 by adding a new Part to read:

16 "Part 3A. Home Care Clients' Bill of Rights.

17 **"§ 131E-144.1. Legislative intent.**

18 It is the intent of the General Assembly to support an individual's desire to live at
19 home and receive home care services.

20 **"§ 131E-144.2. Definitions.**

21 Unless otherwise specified, the definitions that are provided in Part 3 of Article 6 of
22 this Chapter apply in this Part.

23 **"§ 131E-144.3. Declaration of home care clients' rights.**

24 Each client of a home care agency shall have the following rights:

- 25 (1) To be informed and participate in his or her plan of care.
26 (2) To be treated with respect, consideration, dignity, and full recognition
27 of his or her individuality and right to privacy.
28 (3) To receive care and services that are adequate, appropriate, and in
29 compliance with relevant federal and State laws and rules and
30 regulations.
31 (4) To voice grievances about care and not be subjected to discrimination
32 or reprisal for doing so.
33 (5) To have his or her personal and medical records kept confidential and
34 not be disclosed without appropriate written consent.
35 (6) To be free of mental and physical abuse, neglect, and exploitation.
36 (7) To receive a written statement of services provided by the agency and
37 the charges for these services.
38 (8) To be informed of the process for acceptance and continuance of
39 service and eligibility determination.
40 (9) To accept or refuse services.
41 (10) To be informed of the agency's on-call service.
42 (11) To be informed of supervisory accessibility and availability.
43 (12) To be advised of the agency's procedures for discharge.
44 (13) To receive a reasonable response to his or her requests of the agency.

1 (14) To be notified within 10 days when the agency's license has been
2 revoked, suspended, canceled, annulled, withdrawn, recalled, or
3 amended.

4 **"§ 131E-144.4. Notice to client.**

5 (a) During the agency's initial evaluation visit or before furnishing services, a
6 home care agency shall provide each client with the following:

7 (1) A copy of the declaration of home care clients' rights.

8 (2) The address and telephone number for information, questions, or
9 complaints about services provided by the agency.

10 (3) The address and telephone number of the section of the Department of
11 Health and Human Services responsible for the enforcement of the
12 provisions of this Part.

13 (4) The address and telephone number of the county social services
14 department.

15 (b) Receipts for the declaration of home care clients' rights and contact
16 information required in this section shall be signed by the client and shall be retained in
17 the agency's files.

18 **"§ 131E-144.5. Implementation.**

19 Responsibility for implementing the provisions of this Part shall rest with the agency
20 director. Each agency shall provide appropriate training to implement this Part.

21 **"§ 131E-144.6. Enforcement and investigation.**

22 (a) The Department of Health and Human Services shall be responsible for the
23 provisions of this Part. The Department shall investigate complaints made to it and reply
24 within a reasonable period of time, not to exceed 60 days.

25 (a1) When the Department of Health and Human Services receives a complaint
26 alleging a violation of the provisions of this Part pertaining to client care or client
27 safety, the Department shall initiate an investigation as follows:

28 (1) Immediately upon receipt of the complaint if the complaint alleges a
29 life-threatening situation.

30 (2) Within 24 hours if the complaint alleges abuse of a client as defined by
31 G.S. 131D-20(1).

32 (3) Within 48 hours if the complaint alleges neglect of a client as defined
33 by G.S. 131D-20(8).

34 (4) Within two weeks in all other situations.

35 The investigation shall be completed within 30 days. The requirements of this
36 section are in addition to and not in lieu of any investigatory and reporting requirements
37 for health care personnel pursuant to Article 15 of this Chapter, or for adult protective
38 services pursuant to Article 6 of Chapter 108A of the General Statutes.

39 (b) A home care agency shall investigate, within 72 hours, complaints made to
40 the agency by a home care client or the client's family and must document both the
41 existence of the complaint and the resolution of the complaint.

42 **"§ 131E-144.7. Confidentiality.**

1 (a) The Department of Health and Human Services is authorized to inspect home
2 care clients' medical records maintained at the agency when necessary to investigate any
3 alleged violation of this Part.

4 (b) The Department shall maintain the confidentiality of all persons who register
5 complaints with the Department and of all medical records inspected by the
6 Department. A person who has filed a complaint shall have access to information about
7 a complaint investigation involving a specific home care client if written authorization
8 is obtained from the client or legal representative."

9 **SECTION 4.** There is appropriated from the General Fund to the
10 Department of Health and Human Services, Division of Facility Services, the sum of
11 five hundred fifty thousand dollars (\$550,000) for the 2005-2006 fiscal year and the
12 sum of five hundred fifty thousand dollars (\$550,000) for the 2006-2007 fiscal year to
13 increase the survey cycle to every two years for licensed only home care agencies.

14 **SECTION 5.** The Department of Health and Human Services shall study
15 whether there are any additional "health care facilities" and "health care personnel" that
16 are employed in health care settings that should be contained in the Health Care
17 Personnel Registry and listed in G.S. 131E-256. The Department shall report its
18 findings and recommendations to the North Carolina Study Commission on Aging by
19 December 1, 2005.

20 **SECTION 6.** Section 4 of this act becomes effective July 1, 2005. Section 3
21 of this act becomes effective January 1, 2006. The remainder of this act is effective
22 when it becomes law.