Article 10.

Hospice Licensure Act.

§ 131E-200. Title; purpose.

This Article shall be known as the "Hospice Licensure Act." The purpose of this Article is to establish licensing requirements for hospices. (1983 (Reg. Sess., 1984), c. 1022, s. 1; 1987, c. 34.)

§ 131E-201. Definitions.

As used in this Article, unless a different meaning or construction is clearly required by the context:

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

(2) "Department" means the Department of Health and Human Services.

(3) "Hospice" means any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. This care is provided by a medically directed interdisciplinary team, directly or through an agreement under the direction of an identifiable hospice administration. A hospice program of care provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

(3a) "Hospice inpatient facility" means a freestanding licensed hospice facility or a designated inpatient unit in an existing health service facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in an inpatient setting.

(4) "Hospice patient" means a patient diagnosed as terminally ill by a physician licensed to practice medicine in North Carolina, who the physician anticipates to have a life expectancy of weeks or months, generally not to exceed six months, and who alone, or in conjunction with designated family members, has voluntarily requested and been accepted into a licensed hospice program.

(5) "Hospice patient's family" means the hospice patient's immediate kin, including a spouse, brother, sister, child, or parent. Other relations and individuals with significant personal ties to the hospice patient may be designated as members of the hospice patient's family by mutual agreement among the hospice patient, the relation or individual and the hospice team.

(5a) "Hospice residential care facility" means a freestanding licensed hospice facility which provides palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of terminally ill patients and their families in a group residential setting.

(5b) "Hospice services" means the provision of palliative and supportive medical and other health services to meet the physical, psychological, social, spiritual, and special needs of patients and their families, which are experienced during the final stages of terminal illness and during dying and bereavement.

(6) "Hospice team" or "Interdisciplinary team" means the following hospice personnel: physician licensed to practice medicine in North Carolina; nurse holding a valid, current license as required by North Carolina law; social worker; clergy member; and trained hospice volunteer. Other health care

practitioners may be included on the team as the needs of the patient dictate or at the request of the physician. Other providers of special services may also be included as the needs of the patient dictate.

(7) "Identifiable hospice administration" means an administrative group, individual, or legal entity that has an identifiable organizational structure, accountable to a governing board directly or through a chief executive officer. This administration shall be responsible for the management of all aspects of the program.

(8) "Palliative care" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the patient and family as they experience the stress of the dying process, rather than the treatment aimed at investigation and intervention for the purpose of cure or prolongation of life. (1983 (Reg. Sess., 1984), c. 1022, s. 1; 1993, c. 376, s. 5; 1997-443, s. 11A.118(a).)

§ 131E-202. Licensing.

(a) The Commission shall adopt rules for the licensing and regulation of hospices, hospice inpatient facilities, and hospice residential care facilities pursuant to this Article for the purpose of providing care, treatment, health, safety, welfare, and comfort of hospice patients. These rules shall include, but not be limited to:

(1) The qualifications and supervision of licensed and nonlicensed personnel;

(2) The provision and coordination of home and inpatient care, including the development of a written care plan;

(3) The management, operation, staffing, and equipping of the hospice program;

(4) Clinical and business records kept by the hospice, hospice inpatient care facility, and hospice residential care facility; and

(5) Procedures for the review of utilization and quality of care.

(b) The Department shall provide applications for hospice licensure. Each application filed with the Department shall contain all information requested therein. A license shall be granted to the applicant upon determination by the Department that the applicant has complied with the provisions of this Article and with the rules adopted by the Commission thereunder. Each license shall be issued only for the premises and persons named therein, shall not be transferable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises. The Department shall charge the applicant a nonrefundable annual license fee in the amount of four hundred dollars ($400.00).

(c) The Department shall renew the license in accordance with this Article and with rules adopted thereunder. (1983 (Reg. Sess., 1984), c. 1022, s. 1; 1993, c. 376, s. 6; 2009-451, s. 10.76(h).)

§ 131E-203. Coverage.

(a) Except as provided in subsection (b) of this section, no person or other entity shall operate or represent himself or itself to the public as operating a hospice, a hospice inpatient facility, or a hospice residential care facility, or offer or represent himself or itself to the public as offering hospice services without obtaining a license from the Department pursuant to this Article.

(b) Hospices administered by local health departments established under Article 2 of Chapter 130A of the General Statutes shall not be required to be licensed under this Article.

Additionally, health care facilities and agencies licensed under Article 5 or 6 of Chapter 131E of the General Statutes shall not be required to be separately licensed under this Article. However, any facility or agency exempted from licensure under this subsection which operates a hospice, a hospice inpatient facility, or a hospice residential care facility, or offers hospice services shall be subject to rules adopted pursuant to this Article.

(c) Hospice care shall be available 24 hours a day, seven days a week. (1983 (Reg. Sess., 1984), c. 1022, s. 1; 1993, c. 376, s. 7.)

§ 131E-204. Inspections.

The Department shall inspect all hospices that are subject to rules adopted pursuant to this Article in order to determine compliance with the provisions of this Article and with rules adopted thereunder. Inspections shall be conducted in accordance with rules adopted by the Commission. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

§ 131E-205. Adverse action on a license; appeal procedures.

(a) The Department may suspend, revoke, cancel, or amend a license when there has been a substantial failure to comply with this Article or with rules and regulations adopted thereunder.

(b) Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action pursuant to subsection (a) and all judicial review arising therefrom. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

§ 131E-206. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent the establishment, conduct, management, or operation of a hospice without a license.

(b) Notwithstanding the provisions of G.S. 131E-203(b) or the existence of any other remedy, the Department may maintain an action in the name of the State for injunctive relief or other process against any person to restrain or prevent substantial noncompliance with this Article or the rules adopted thereunder.

(c) If any person shall hinder the proper performance of duty of the Department in carrying out the provisions of this Article, the Department may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance. (1983 (Reg. Sess., 1984), c. 1022, s. 1.)

§ 131E-207. Confidentiality.

(a) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under G.S. 131E-204:

(1) Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any person who is or has been a hospice patient; and

(2) Any person involved in treating a patient at or through a hospice may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A hospice shall not release any information or allow any inspections under this section without first

informing each affected patient in writing of his right to object to and thereby prohibit release of information or review of records pertaining to him.

A hospice, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

(b) The Department shall not disclose:

(1) Any confidential or privileged information obtained under this section unless the patient or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure; or

(2) The name of anyone who has furnished information concerning a hospice without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. Any Department employee who willfully discloses this information without appropriate authorization or court order shall be guilty of a Class 3 misdemeanor and upon conviction only fined at the discretion of the court but not to exceed five hundred dollars ($500.00).

(c) All confidential or privileged information obtained under this section and the names of persons providing this information shall be exempt from Chapter 132 of the General Statutes. (1983 (Reg. Sess., 1984), c. 1022, s. 1; 1993, c. 539, s. 965; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 131E-207.1: Reserved for future codification purposes.

§ 131E-207.2: Reserved for future codification purposes.

§ 131E-207.3: Reserved for future codification purposes.

§ 131E-207.4: Reserved for future codification purposes.

§ 131E-207.5. Patient visitation rights for residents of hospice care facilities.

(a) Each hospice care facility licensed under this Article shall permit patients to receive visitors to the fullest extent permitted under any applicable rules, regulations, or guidelines adopted by either the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention or any federal law.

(b) In the event the Centers for Medicare and Medicaid Services, the Centers for Disease Control and Prevention, or any other federal agency finds a hospice care facility has violated any rule, regulation, guidance, or federal law relating to a patient's visitation rights, the Department may issue a warning to the hospice care facility about the violation and give the hospice care facility not more than 24 hours to allow visitation. If visitation is not allowed after the 24-hour warning period, the Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) for each instance on each day the hospice care facility was found to have a violation. This civil penalty shall be in addition to any fine or civil penalty that the Centers for Medicare and Medicaid Services or other federal agency may choose to impose.

(c) Notwithstanding the provisions of subsection (b) of this section, in the event that circumstances require the complete closure of a hospice care facility to visitors, the hospice care facility shall use its best efforts to develop alternate visitation protocols that would allow visitation to the greatest extent safely possible. If those alternate protocols are found by the Centers for Medicare and Medicaid Services, the Centers for Disease Control and Prevention, or any other

federal agency to violate any rule, regulation, guidance, or federal law relating to a patient's visitation rights, the Department may impose a civil penalty in an amount not less than five hundred dollars ($500.00) for each instance on each day the hospice care facility was found to have a violation. This civil penalty shall be in addition to any fine or civil penalty that the Centers for Medicare and Medicaid Services or other federal agency may choose to impose.

(d) Each hospice care facility shall provide notice of the patient visitation rights in this act to patients and, when possible, family members of patients. The required notice shall also include the contact information for the agency or individuals tasked with investigating violations of hospice care facility patient visitation.

(e) Subject to, and to the fullest extent permitted by, any rules, regulations, or guidelines adopted by either the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention or any federal law, each hospice care facility shall allow compassionate care visits. A hospice care facility may require compassionate care visitors to submit to health screenings necessary to prevent the spread of infectious diseases, and, notwithstanding anything to the contrary in this section, a hospice care facility may restrict a compassionate care visitor who does not pass a health screening requirement or who has tested positive for an infectious disease. A hospice care facility may require compassionate care visitors to adhere to infection control procedures, including wearing personal protective equipment. Compassionate care situations that require visits include, but are not limited to, the following:

(1) End-of-life situations.
(2) A patient who was living with his or her family before recently being admitted to the facility is struggling with the change in environment and lack of physical family support.
(3) A patient who is grieving after a friend or family member recently passed away.
(4) A patient who needs cueing and encouragement with eating or drinking, previously provided by family or caregivers, is experiencing weight loss or dehydration.
(5) A patient, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently when the patient had rarely cried in the past. (2021-171, s. 4; 2021-181, s. 2(c).)

§ 131E-208. Waiver of rules and increase in bed capacity during an emergency.

In the event of a declaration of a state of emergency by the Governor in accordance with Article 1A of Chapter 166A of the General Statutes, a declaration of a national emergency by the President of the United States, a declaration of a public health emergency by the Secretary of the United States Department of Health and Human Services; or to the extent necessary to allow for consistency with any temporary waiver or modification issued by the Secretary of the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services under section 1135 or 1812(f) of the Social Security Act; or when the Division of Health Service Regulation determines the existence of an emergency that poses a risk to the health or safety of patients or residents, the Division of Health Service Regulation may do either or both of the following:

(1) Temporarily waive any rules of the Commission pertaining to hospices, hospice inpatient facilities, and hospice residential care facilities.
(2) Allow a hospice inpatient facility or hospice residential care facility to temporarily increase its bed capacity. (2022-74, s. 9E.2(g).)

§ 131E-209. Reserved for future codification purposes.