

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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SENATE DRS85004-SWz-11A\* (12/20)

Short Title: Home Care Changes.

(Public)

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Sponsors: Senators Swindell, Dannelly and Allran.

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Referred to:

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A BILL TO BE ENTITLED

1 AN ACT TO MAKE CHANGES TO THE HOME CARE AGENCY LICENSURE  
2 ACT, TO ESTABLISH HOME CARE CLIENTS' RIGHTS, AND TO  
3 APPROPRIATE FUNDS TO INCREASE THE SURVEY CYCLE FOR  
4 LICENSED IN-HOME AGENCIES, AS RECOMMENDED BY THE NORTH  
5 CAROLINA STUDY COMMISSION ON AGING.  
6

7 The General Assembly of North Carolina enacts:

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

9 **"§ 131E-140. Rules and enforcement.**

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

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

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

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

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

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

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

4 **"§ 131E-136. Definitions.**

5 As used in this Part, unless otherwise specified:

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

7 (1a) "Geographic service area" means the geographic area in which a  
8 licensed agency provides home care services.

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

11 (2a) "Home care agency director" means the person having administrative  
12 responsibility for the operation of the agency.

13 (2b) "Home care client" means an individual who receives home care  
14 services.

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

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

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

25 c. Medical social services;

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

28 e. Infusion nursing services; and

29 f. Assistance with pulmonary care, pulmonary rehabilitation or  
30 ventilation.

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

1 under Article 10 of Chapter 131E of the General Statutes when  
2 providing care to a hospice patient; an individual who engages solely  
3 in providing his own services to other individuals; incidental health  
4 care provided by an employee of a physician licensed to practice  
5 medicine in North Carolina in the normal course of the physician's  
6 practice; or nursing registries if the registry discloses to a client or the  
7 client's responsible party, before providing any services, that (i) it is  
8 not a licensed home care agency, and (ii) it does not make any  
9 representations or guarantees concerning the training, supervision, or  
10 competence of the personnel provided.

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

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

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

19 **"§ 131E-144.1. Legislative intent.**

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

22 **"§ 131E-144.2. Definitions.**

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

25 **"§ 131E-144.3. Declaration of home care clients' rights.**

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

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

1           (12) To be advised of the agency's procedures for discharge.

2           (13) To receive a reasonable response to his or her requests of the agency.

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

6 **"§ 131E-144.4. Notice to client.**

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

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

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

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

15          (4) The address and telephone number of the county social services  
16 department.

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

20 **"§ 131E-144.5. Implementation.**

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

23 **"§ 131E-144.6. Enforcement and investigation.**

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

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

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

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

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

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

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

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

44 **"§ 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.