

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

H

2

HOUSE BILL 95*
Committee Substitute Favorable 3/19/07

Short Title: Health Care Personnel Registry/Funds.

(Public)

Sponsors:

Referred to:

February 8, 2007

A BILL TO BE ENTITLED

1 AN ACT TO EXPAND THE HEALTH CARE PERSONNEL REGISTRY BY
2 AMENDING THE DEFINITIONS OF HEALTH CARE FACILITIES AND
3 HEALTH CARE PERSONNEL, TO PROHIBIT THE EMPLOYMENT BY
4 HEALTH CARE FACILITIES OF ANY PERSON WHO HAS A
5 SUBSTANTIATED FINDING ON THE HEALTH CARE PERSONNEL
6 REGISTRY, AND TO APPROPRIATE FUNDS TO THE DIVISION OF
7 FACILITY SERVICES FOR ADDITIONAL STAFFING, AS RECOMMENDED
8 BY THE NORTH CAROLINA STUDY COMMISSION ON AGING.
9

10 The General Assembly of North Carolina enacts:

11 **SECTION 1.** G.S. 131E-256 reads as rewritten:

12 **"§ 131E-256. Health Care Personnel Registry.**

13 (a) The Department shall establish and maintain a health care personnel registry
14 containing the names of all health care personnel working in health care facilities in
15 North Carolina who have:

16 (1) Been subject to findings by the Department of:

- 17 a. Neglect or abuse of a resident in a health care facility or a
18 person to whom home care services as defined by
19 G.S. 131E-136 or hospice services as defined by G.S. 131E-201
20 are being provided.
21 b. Misappropriation of the property of a resident in a health care
22 facility, as defined in subsection (b) of this section including
23 places where home care services as defined by G.S. 131E-136
24 or hospice services as defined by G.S. 131E-201 are being
25 provided.
26 c. Misappropriation of the property of a health care facility.
27 d. Diversion of drugs belonging to a health care facility or to a
28 patient or client.

1 e. Fraud against a health care facility or against a patient or client
2 for whom the employee is providing services.

- 3 (2) Been accused of any of the acts listed in subdivision (1) of this
4 subsection, but only after the Department has screened the allegation
5 and determined that an investigation is required.

6 The Health Care Personnel Registry shall also contain all findings by the
7 Department of neglect of a resident in a nursing facility or abuse of a resident in a
8 nursing facility or misappropriation of the property of a resident in a nursing facility by
9 a nurse aide that are contained in the nurse aide registry under G.S. 131E-255.

10 (a1) The Department shall include in the registry a brief statement of any
11 individual disputing the finding entered against the individual in the health care
12 personnel registry pursuant to subdivision (1) of subsection (a) of this section.

13 (b) For the purpose of this section, the following are considered to be "health care
14 facilities":

- 15 (1) Adult Care Homes as defined in G.S. 131D-2.
16 (2) Hospitals as defined in G.S. 131E-76.
17 (3) Home Care Agencies as defined in G.S. 131E-136.
18 (4) Nursing Pools as defined by G.S. 131E-154.2.
19 (5) Hospices as defined by G.S. 131E-201.
20 (6) Nursing Facilities as defined by G.S. 131E-255.
21 (7) State-Operated Facilities as defined in G.S. 122C-3(14)f.
22 (8) Residential Facilities as defined in G.S. 122C-3(14)e.
23 (9) 24-Hour Facilities as defined in G.S. 122C-3(14)g.
24 (10) Licensable Facilities as defined in G.S. 122C-3(14)b.
25 (11) Multiunit Assisted Housing with Services as defined in G.S. 131D-2.
26 (12) Community-Based Providers of Services for the Mentally Ill, the
27 Developmentally Disabled, and Substance Abusers that are not
28 required to be licensed under Article 2 of Chapter 122C of the General
29 Statutes.
30 (13) Agencies providing in-home aide services funded through the Home
31 and Community Care Block Grant Program in accordance with
32 G.S. 143B-181.1(a)11.

33 (c) For the purpose of this section, the term "health care personnel" means any
34 unlicensed staff of a health care facility that has direct access to residents, clients, or
35 their property. Direct access includes any health care facility unlicensed staff that during
36 the course of employment has the opportunity for direct contact with an individual or an
37 individual's property, when that individual is a resident or person to whom services are
38 provided.~~the following are considered to be "health care personnel":~~

- 39 ~~(1) In an adult care home, an adult care personal aide who is any person~~
40 ~~who either performs or directly supervises others who perform task~~
41 ~~functions in activities of daily living which are personal functions~~
42 ~~essential for the health and well being of residents such as bathing,~~
43 ~~dressing, personal hygiene, ambulation or locomotion, transferring,~~
44 ~~toileting, and eating.~~

1 ~~(2) A nurse aide.~~

2 ~~(3) An in-home aide or an in-home personal care aide who provides~~
3 ~~hands-on paraprofessional services.~~

4 ~~(4) Unlicensed assistant personnel who provide hands-on care, including,~~
5 ~~but not limited to, habilitative aides and health care technicians.~~

6 (d) Health care personnel who wish to contest findings under subdivision (a)(1)
7 of this section are entitled to an administrative hearing as provided by the
8 Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a
9 contested case shall be filed within 30 days of the mailing of the written notice of the
10 Department's intent to place its findings about the person in the Health Care Personnel
11 Registry.

12 (d1) Health care personnel who wish to contest the placement of information
13 under subdivision (a)(2) of this section are entitled to an administrative hearing as
14 provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A
15 petition for a contested case hearing shall be filed within 30 days of the mailing of the
16 written notice of the Department's intent to place information about the person in the
17 Health Care Personnel Registry under subdivision (a)(2) of this section. Health care
18 personnel who have filed a petition contesting the placement of information in the
19 health care personnel registry under subdivision (a)(2) of this section are deemed to
20 have challenged any findings made by the Department at the conclusion of its
21 investigation.

22 (d2) A health care facility shall not employ any person for whom a substantiated
23 finding has been entered on the Health Care Personnel Registry. Before hiring health
24 care personnel into a health care facility or service, every employer at a health care
25 facility shall access the Health Care Personnel Registry and shall note each incident of
26 access in the appropriate business files.

27 (e) The Department shall provide an employer at a health care facility or
28 potential employer at a health care facility of any person listed on the Health Care
29 Personnel Registry information concerning the nature of the finding or allegation and
30 the status of the investigation.

31 (f) No person shall be liable for providing any information for the health care
32 personnel registry if the information is provided in good faith. Neither an employer,
33 potential employer, nor the Department shall be liable for using any information from
34 the health care personnel registry if the information is used in good faith for the purpose
35 of screening prospective applicants for employment or reviewing the employment status
36 of an employee.

37 (g) Health care facilities shall ensure that the Department is notified of all
38 allegations against health care personnel, including injuries of unknown source, which
39 appear to be related to any act listed in subdivision (a)(1) of this section. Facilities must
40 have evidence that all alleged acts are investigated and must make every effort to
41 protect residents from harm while the investigation is in progress. The results of all
42 investigations must be reported to the Department within five working days of the initial
43 notification to the Department.

1 (h) The North Carolina Medical Care Commission shall adopt, amend, and repeal
2 all rules necessary for the implementation of this section.

3 (i) In the case of a finding of neglect under subdivision (1) of subsection (a) of
4 this section, the Department shall establish a procedure to permit health care personnel
5 to petition the Department to have his or her name removed from the registry upon a
6 determination that:

7 (1) The employment and personal history of the nurse aid does not reflect
8 a pattern of abusive behavior or neglect;

9 (2) The neglect involved in the original finding was a singular occurrence;
10 and

11 (3) The petition for removal is submitted after the expiration of the
12 one-year period which began on the date the petitioner's name was
13 added to the registry under subdivision (1) of subsection (a) of this
14 section."

15 **SECTION 2.** There is appropriated from the General Fund to the
16 Department of Health and Human Services, Division of Facility Services, the sum of
17 one million seven hundred thousand dollars (\$1,700,000) for the 2007-2008 fiscal year
18 and the sum of one million seven hundred thousand dollars (\$1,700,000) for the
19 2008-2009 fiscal year to establish positions to handle increases in allegations and
20 investigations resulting from this act and prior acts expanding the coverage of the
21 Health Care Personnel Registry.

22 **SECTION 3.** Section 1 of this act becomes effective January 1, 2008.
23 Section 2 of this act becomes effective July 1, 2007. The remainder of this act is
24 effective when it becomes law.