

Article 6.

Health Care Facility Licensure Act.

Part 1. Nursing Home Licensure Act.

§ 131E-100. Title; purpose.

- (a) This Part shall be known as the "Nursing Home Licensure Act."
- (b) The purpose of the Nursing Home Licensure Act is to establish authority and duty for the Department to inspect and license private nursing homes. (1983, c. 775, s. 1.)

§ 131E-101. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Adult care home", as distinguished from a nursing home, means a facility operated as a part of a nursing home and which provides residential care for aged or disabled persons whose principal need is a home with the shelter or personal care their age or disability requires. Medical care in an adult care home is usually occasional or incidental, such as may be required in the home of any individual or family, but the administration of medication is supervised. Continuing planned medical and nursing care to meet the resident's needs may be provided under the direct supervision of a physician, nurse, or home health agency. Adult care homes are to be distinguished from nursing homes subject to licensure under this Part.
- (1a) "Combination home" means a nursing home offering one or more levels of care, including any combination of skilled nursing, intermediate care, and adult care home.
- (2) "Commission" means the North Carolina Medical Care Commission.
- (3) "Community advisory committee" means a nursing home advisory committee established for the statutory purpose of working to carry out the intent of the Nursing Home Patients' Bill of Rights (Chapter 131E, Article 6, Part 2) in accordance with G.S. 143B-181.1.
- (4) Repealed by Session Laws 1995, c. 535, s. 21.
- (5) "Medical review committee" means a committee of a State or local professional society, of a medical staff of a licensed hospital, of physicians having privileges within the nursing home or of a peer review corporation or organization which is formed for the purpose of evaluating the quality, cost of or necessity for health care services under applicable federal statutes.
- (6) "Nursing home" means a facility, however named, which is advertised, announced, or maintained for the express or implied purpose of providing nursing or convalescent care for three or more persons unrelated to the licensee. A "nursing home" is a home for chronic or convalescent patients, who, on admission, are not as a rule, acutely ill and who do not usually require special facilities such as an operating room, X-ray facilities, laboratory facilities, and obstetrical facilities. A "nursing home" provides care for persons who have remedial ailments or other ailments, for which medical and nursing care are indicated; who, however, are not sick enough to require general hospital care. Nursing care is their primary need, but they will require continuing medical supervision.

- (7) "Peer review committee" means any committee appointed in accordance with G.S. 131E-108, "Peer review."
- (8) "Quality assurance committee" means a committee, agency, or department of a state or local professional organization, of a medical staff of a licensed hospital, nursing home, of nurses or aides on the staff of a nursing home, or adult care home, of physicians having privileges within the nursing home, or adult care home, or of a peer review corporation or organization that is formed for the purpose of evaluating the quality, cost of, or necessity for health care services under applicable federal and State statutes, regulations, and rules. (1961, c. 51, s. 3; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 21; 2004-149, s. 2.1.)

§ 131E-102. Licensure requirements.

(a) No person shall operate a nursing home without a license obtained from the Department. Any person may operate a nursing home or a combination home, as defined in this Part, in the same building or in two or more buildings adjoining or next to each other on the same site. Both a nursing home and a combination home must be licensed by the Department under this Part.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of four hundred twenty dollars (\$420.00) plus a nonrefundable annual per-bed fee of seventeen dollars and fifty cents (\$17.50).

(c) A license to operate a nursing home shall be annually renewed upon the filing and the Department's approval of the renewal application. A license shall not be renewed if outstanding fees and penalties imposed by the State against the home have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) In order for a nursing home to maintain its license it shall not intentionally impede the proper performance of the duties of a lawfully appointed community advisory committee as set forth in G.S. 131E-128(h). (1961, c. 51, s. 3; 1963, c. 859; 1983, c. 775, s. 1; 1993, c. 530, s. 1; 2003-284, s. 34.3(a); 2005-276, s. 41.2(c); 2009-451, s. 10.76(g).)

§ 131E-103. Adverse action on a license.

(a) Subject to subsection (b), the Department shall have the authority to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). A petition for a contested case shall

be filed within 20 days after the Department mails the licensee a notice of its decision to deny a renewal application, or to recall, suspend, or revoke an existing license. (1961, c. 51, s. 3; 1983, c. 775, s. 1; 1987, c. 827, s. 1; 1991, c. 143, s. 2, c. 761, s. 24.)

§ 131E-104. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part.

(b) The Commission shall adopt rules for the operation of the adult care portion of a combination home. The rules shall provide that for each requirement applicable to freestanding adult care homes or freestanding nursing homes, the combination home may choose to operate the adult care portion of the home in compliance with either the requirement applicable to freestanding adult care homes or the higher standard applicable to freestanding nursing homes.

(c) The Department shall enforce the rules adopted or amended by the Commission with respect to nursing homes. (1961, c. 51, s. 3; 1973, c. 476, s. 128; 1981, c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 22; 2000-154, s. 6.1.)

§ 131E-105. Inspections.

(a) The Department shall inspect any nursing home and any adult care home operated as a part of a nursing home in accordance with rules adopted by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department, when necessary for investigating compliance with this Part or rules promulgated by the Commission, may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communications between physician and patient," or any other rules of law, if the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information which is provided without malice or fraud to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this subsection, the patient must upon admission be advised in writing by the facility that the patient has the right to object in writing to the release of information or review of the records and that by an objection in writing the patient may prohibit the inspection or release of the records.

(c) Authorized representatives of the Department with identification to this effect shall have at all times the right of proper entry upon any and all parts of the premises of any place in which entry is necessary to carry out the provisions of this Part or the rules adopted by the Commission. It shall be unlawful for any person to resist a proper entry by an authorized representative upon any premises other than a private dwelling. (1981, c. 586, s. 1; c. 614, s. 1; 1983, c. 775, s. 1; 1995, c. 535, s. 23.)

§ 131E-106. Evaluation of residents in adult care homes.

The Department shall prescribe the method of evaluation of residents in the adult care portion of a combination home in order to determine when any of these residents is in need of professional medical and nursing care as provided in licensed nursing homes. (1963, c. 859; 1981, c. 833; 1983, c. 775, s. 1; 1995, c. 535, s. 24.)

§ 131E-107. Quality assurance, medical, or peer review committees.

(a) A member of a duly appointed quality assurance, medical or peer review committee shall not be subject to liability for damages in any civil action on account of any act, statement or proceeding undertaken, made, or performed within the scope of the functions of the committee, if the committee member acts without malice or fraud, and if such peer review committee is approved and operates in accordance with G.S. 131E-108.

(b) The proceedings of a quality assurance, medical, or peer review committee, the records and materials it produces and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined", and shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services that results from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may testify in a civil action but cannot be asked about the person's testimony before the committee or any opinions formed as a result of the committee hearings. (1983, c. 775, s. 1; 2004-149, s. 2.2.)

§ 131E-108. Peer review.

It is not a violation of G.S. 131E-117(5) for medical records to be disclosed to a private peer review committee if:

- (1) The peer review committee has been approved by the Department;
- (2) The purposes of the peer review committee are to:
 - a. Survey facilities to verify a high level of quality care through evaluation and peer assistance;
 - b. Resolve written complaints in a responsible and professional manner; and
 - c. Develop a basic core of knowledge and standards useful in

- establishing a means of measuring quality of care; and
- (3) The peer review committee keeps such records confidential. (1979, c. 707; 1983, c. 775, s. 1; 1997-456, s. 27.)

§ 131E-109. Penalties.

(a) Any person establishing, conducting, managing, or operating any nursing home without a license is guilty of a Class 3 misdemeanor, and upon conviction is only liable for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of a continuing violation after conviction is a separate offense.

(b) Any person acting under the authority of the Department that gives advance notice to an operator of a nursing home of the date or time that the nursing home is to be inspected is guilty of a Class 3 misdemeanor. The inspection of a nursing home for initial licensure is exempt from the prohibition of prior notice. All subsequent inspections shall comply with this subsection.

(c) The Secretary or a designee of the Secretary may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. This suspension remains in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection is in addition to the authority to suspend or revoke the license of the home. Any facility wishing to contest a suspension of admissions is entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. The petition for a contested case shall be filed in the Office of Administrative Hearings within 20 days after the Department mails a written notice of suspension of admissions to the facility.

(d) Except as otherwise provided in this Part, any person that violates any provision of this Part, willfully fails to perform any act required by this Part, or willfully performs any act prohibited by this Part is guilty of a Class 1 misdemeanor.

(e) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1977, c. 656, ss. 1, 2; 1981, c. 667, ss. 1, 2; 1983, c. 775, s. 1; 1991, c. 143, s. 3; c. 761, s. 25; 1993, c. 539, s. 960; 1994, Ex. Sess., c. 24, s. 14(c); 1998-215, s. 78(c); 2021-84, s. 11.)

§131E-110. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person to restrain or prevent the establishment, conduct, management or operation of a nursing home without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1983, c. 775, s. 1.)

§ 131E-111: Recodified as § 131E-255 by Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3(a), as amended by Session Laws 1995 (Reg. Sess., 1996), c. 713, s. 3(b).

§ 131E-112. Waiver of rules and increase in bed capacity during an emergency.

(a) The Division of Health Service Regulation may temporarily waive, during disasters or emergencies declared in accordance with Article 1A of Chapter 166A of the General Statutes, any rules of the Commission pertaining to facilities or home care agencies to the extent necessary to allow the facility or home care agency to provide temporary shelter and temporary services requested by the emergency management agency. The Division may identify, in advance of a declared disaster or emergency, rules that may be waived, and the extent the rules may be waived, upon a disaster or emergency being declared in accordance with Article 1A of Chapter 166A of the General Statutes. The Division may also waive rules under this subsection during a declared disaster or emergency upon the request of an emergency management agency and may rescind the waiver if, after investigation, the Division determines the waiver poses an unreasonable risk to the health, safety, or welfare of any of the persons occupying the facility. The emergency management agency requesting temporary shelter or temporary services shall notify the Division within 72 hours of the time the preapproved waivers are deemed by the emergency management agency to apply.

(a1) 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 facilities or home care agencies.
- (2) Allow a facility or nursing home to temporarily increase its bed capacity.

(b) As used in this section, "emergency management agency" is as defined in G.S. 166A-19.3. (1999-307, s. 1; 2007-182, s. 1; 2012-12, s. 2(u); 2022-74, s. 9E.2(d).)

§ 131E-112.5. Secretary to establish visitation protocols during declared disasters and emergencies.

(a) As used in this section and G.S. 131E-112.6, the following terms have the following meanings:

- (1) Disaster declaration. – As defined in G.S. 166A-19.3(3).
- (2) Emergency. – As defined in G.S. 166A-19.3(6).
- (3) Facility. – A nursing home or combination home licensed under this Part.
- (4) Normal visitation policy. – The visitation policy that was in effect at a facility on January 1, 2020.

(b) The Secretary shall, in consultation with licensed operators of nursing homes and combination homes, and any other stakeholders the Secretary deems relevant, establish visitation protocols for residents of these facilities that will become effective during a disaster declaration or emergency that results in the suspension or curtailment of a facility's normal visitation policy for any reason. The visitation protocols shall provide for at least the following:

- (1) Each resident shall have the right to designate one preapproved visitor and one preapproved alternate visitor. The preapproved visitor, or if the preapproved visitor is unavailable, the preapproved alternate visitor, shall be allowed to visit the resident at least twice per month during any period of time during which the facility's normal visitation policy is suspended or curtailed for any reason during the declared disaster or emergency.
- (2) Prior to admission, each facility shall explain and provide to each resident written notification of the visitation protocols established by the Secretary under this section.
- (3) Visitation under these protocols shall be subject to Centers for Medicare and Medicaid Services directives and to the guidelines, conditions, and limitations established by the facility as part of its normal visitation policy. (2021-145, s. 2(a).)

§ 131E-112.6. Patient visitation rights for nursing home residents and combination home residents during a disaster declaration or emergency.

Notwithstanding any provision of this Part, Chapter 166A of the General Statutes, or any other provision of law to the contrary, the visitation protocols established by the Secretary under G.S. 131E-112.5 shall be in effect during any period of time when (i) there is a declared disaster or emergency and (ii) a nursing home or combination home licensed under this Part suspends or restricts the normal visitation policy for any reason. (2021-145, s. 2(a).)

§ 131E-112.7. Patient visitation rights for nursing home residents and combination home residents.

(a) Each nursing or combination home licensed under this Part shall permit patients and residents 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 nursing or combination home has violated any rule, regulation, guidance, or federal law relating to a patient's or resident's visitation rights, the Department may issue a warning to the nursing or combination home about the violation and give the nursing or combination home 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 nursing or combination home 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 nursing or combination home to visitors, the nursing or combination home 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 or resident'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 nursing

or combination home 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 nursing or combination home shall provide notice of the patient and resident visitation rights in this act to patients and residents and, when possible, family members of patients and residents. The required notice shall also include the contact information for the agency or individuals tasked with investigating violations of nursing or combination home patient and resident 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 nursing or combination home shall allow compassionate care visits. A nursing or combination home 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 nursing or combination home may restrict a compassionate care visitor who does not pass a health screening requirement or who has tested positive for an infectious disease. A nursing or combination home 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 resident 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 resident who is grieving after a friend or family member recently passed away.
- (4) A resident who needs cueing and encouragement with eating or drinking, previously provided by family or caregivers, is experiencing weight loss or dehydration.
- (5) A resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently when the resident had rarely cried in the past. (2021-171, s. 3; 2021-181, s. 2(b).)

§ 131E-113. Immunization of employees and residents.

(a) Except as provided in subsection (e) of this section, a nursing home licensed under this Part shall require residents and employees to be immunized against influenza virus and shall require residents to also be immunized against pneumococcal disease.

(b) Upon admission, a nursing home shall notify the resident of the immunization requirements of this section and shall request that the resident agree to be immunized against influenza virus and pneumococcal disease.

(b1) A nursing home shall notify every employee of the immunization requirements of this section and shall request that the employee agree to be immunized against influenza virus.

(c) A nursing home shall document the annual immunization against influenza virus and the immunization against pneumococcal disease for each resident and each employee, as required under this section. Upon finding that a resident is lacking one or both of these immunizations or that an employee has not been immunized against influenza virus, or if the nursing home is unable to verify that the individual has received the required immunization, the

nursing home shall provide or arrange for immunization. The immunization and documentation required shall occur not later than November 30 of each year.

(d) For an individual who becomes a resident of or who is newly employed by the nursing home after November 30 but before March 30 of the following year, the nursing home shall determine the individual's status for the immunizations required under this section, and if found to be deficient, the nursing home shall provide the immunization.

(e) No individual shall be required to receive vaccine under this section if the vaccine is medically contraindicated, or if the vaccine is against the individual's religious beliefs, or if the individual refuses the vaccine after being fully informed of the health risks of not being immunized.

(f) Notwithstanding any other provision of law to the contrary, the Commission for Public Health shall have the authority to adopt rules to implement the immunization requirements of this section.

(g) As used in this section, "employee" means an individual who is a part-time or full-time employee of the nursing home. (2000-112, ss. 3, 4; 2007-182, s. 1.3.)

§ 131E-114. Special care units; disclosure of information required.

(a) A nursing home or combination home licensed under this Part that provides special care for persons with Alzheimer's disease or other dementias in a special care unit shall make the following disclosures pertaining to the special care provided that distinguishes the special care unit as being especially designed for residents with Alzheimer's disease or other dementias. The disclosure shall be made annually, in writing, to all of the following:

- (1) The Department, as part of its licensing procedures.
- (2) Each person seeking placement within a special care unit, or the person's authorized representative, prior to entering into an agreement with the person to provide special care.

(b) Information that must be disclosed in writing shall include, but is not limited to, all of the following:

- (1) A statement of the overall philosophy and mission of the licensed facility and how it reflects the special needs of residents with dementia.
- (2) The process and criteria for placement, transfer, or discharge to or from the special care unit.
- (3) The process used for assessment and establishment of the plan of care and its implementation, as required under State and federal law.
- (4) Typical staffing patterns and how the patterns reflect the resident's need for increased care and supervision.
- (5) Dementia-specific staff training.
- (6) Physical environment features designed specifically for the special care unit.
- (7) Alzheimer's disease and other dementia-specific programming.
- (8) Opportunities for family involvement.
- (9) Additional costs or fees to the resident for special care.

(c) As part of its license renewal procedures and inspections, the Department shall examine for accuracy the written disclosures made by each licensed facility subject to this section.

(d) Nothing in this section shall be construed as prohibiting a nursing home or combination home that does not offer a special care unit from admitting a person with

Alzheimer's disease or other dementias. The disclosures required by this section apply only to a nursing home or combination home that advertises, markets, or otherwise promotes itself as providing a special care unit for persons with Alzheimer's disease or other dementias.

(e) As used in this section, the term "special care unit" means a wing or hallway within a nursing home, or a program provided by a nursing home, that is designated especially for residents with Alzheimer's disease or other dementias, or other special needs disease or condition, as determined by the Medical Care Commission, which may include mental disabilities. (2000-154, s. 6.)

§ 131E-114.1. Posting of information indicating number of staff on duty.

Every nursing home subject to licensure under this Part shall post in a conspicuous place in the nursing home information about required staffing that enables residents and their families to readily ascertain each day the number of direct care staff and supervisors that are required by law to be on duty for that day. (2001-85, s. 2; 2001-487, s. 85(b).)

§ 131E-114.2. Use of medication aides to perform technical aspects of medication administration.

(a) Facilities licensed and medication administration services provided under this Part may utilize medication aides to perform the technical aspects of medication administration consistent with G.S. 90-171.20(7) and (8), and G.S. 90-171.43.

- (1) A medication aide who is employed in a facility licensed under Article 5 and Article 6, Part 1 of this Chapter shall be listed as a Nurse Aide I on the Nurse Aide I Registry in addition to being listed on the Medication Aide Registry.
- (2) Medication administration as used in Article 5 and Article 6, Part 1 of this Chapter shall not include intravenous or injectable medication services.

(b) The Commission shall adopt rules to implement this section. Rules adopted by the Commission shall include:

- (1) Training and competency evaluation of medication aides as provided for under this section.
- (2) Requirements for listing under the Medication Aide Registry as provided for under G.S. 131E-270.
- (3) Requirements for supervision of medication aides by licensed health professionals or appropriately qualified supervisory personnel consistent with this Part. (2005-276, s. 10.40C(a); 2007-444, s. 4(a).)

§ 131E-114.3. Smoking prohibited inside long-term care facilities; penalty.

(a) Except to the extent otherwise provided by federal law, smoking is prohibited inside long-term care facilities. As used in this section:

- (1) "Long-term care facilities" include adult care homes, nursing homes, skilled nursing facilities, facilities licensed under Chapter 122C of the General Statutes, and other licensed facilities that provide long-term care services.
- (2) "Smoking" means the use or possession of any lighted cigar, cigarette, pipe, or other lighted smoking product.
- (3) "Inside" means a fully enclosed area.

(b) The person who owns, manages, operates, or otherwise controls a long-term care facility where smoking is prohibited under this section shall:

- (1) Conspicuously post signs clearly stating that smoking is prohibited inside the facility. The signs may include the international "No Smoking" symbol, which consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.
- (2) Direct any person who is smoking inside the facility to extinguish the lighted smoking product.
- (3) Provide written notice to individuals upon admittance that smoking is prohibited inside the facility and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c) The Department may impose an administrative penalty not to exceed two hundred dollars (\$200.00) for each violation on any person who owns, manages, operates, or otherwise controls the long-term care facility and fails to comply with subsection (b) of this section. A violation of this section constitutes a civil offense only and is not a crime. (2007-459, s. 2.)

§ 131E-114.4. Examination and screening for the presence of controlled substances required for applicants for employment in nursing homes.

(a) An offer of employment by a nursing home licensed under this Part to an applicant is conditioned on the applicant's consent to an examination and screening for controlled substances. The examination and screening shall be conducted in accordance with Article 20 of Chapter 95 of the General Statutes. A screening procedure that utilizes a single-use test device may be used for the examination and screening of applicants and may be administered on-site. If the results of the applicant's examination and screening indicate the presence of a controlled substance, the nursing home shall not employ the applicant unless and until the applicant provides to the nursing home written verification from the applicant's prescribing physician that every controlled substance identified by the examination and screening is prescribed by that physician to treat the applicant's medical or psychological condition. The verification from the physician shall include the name of the controlled substance, the prescribed dosage and frequency, and the condition for which the substance is prescribed. If the result of an applicant's or employee's examination and screening indicates the presence of a controlled substance, the nursing home may require a second examination and screening to verify the results of the prior examination and screening.

(b) A nursing home may require random examination and screening for controlled substances as a condition of continued employment. If the nursing home has reasonable grounds to believe that an employee is an abuser of a controlled substance, the nursing home may require that employee to undergo examination and screening for controlled substances as a condition of continued employment.

(c) A nursing home and an officer or employee of a nursing home that, in good faith, comply with this section are not liable for the failure of the nursing home to employ or continue the employment of an individual on the basis of the results of an examination and screening of the applicant or employee for controlled substances.

(d) An entity and officers and employees of an entity that perform controlled substance examination and screening in accordance with Article 20 of Chapter 95 of the General Statutes shall be immune from civil liability for conducting or failing to conduct the examination and screening if the examination and screening are requested and received in compliance with this section and with Article 20 of Chapter 95 of the General Statutes.

(e) The results of an examination and screening conducted at the request of a nursing home in accordance with this section are confidential and not a public record under Chapter 132

of the General Statutes. The nursing home shall maintain the confidentiality of all information related to the examination and screening of an applicant for employment or an individual currently employed by the nursing home.

(f) The nursing home shall pay expenses related to controlled substance examination and screening pursuant to this section, except examinee-requested retests. The examinee shall pay all reasonable expenses for retests of confirmed positive results. (2013-167, s. 2.)

Part 2. Nursing Home Patients' Bill of Rights.

§ 131E-115. Legislative intent.

It is the intent of the General Assembly to promote the interests and well-being of the patients in nursing homes and adult care homes licensed pursuant to G.S. 131E-102, and patients in a nursing home operated by a hospital which is licensed under Article 5 of Chapter 131E of the General Statutes. It is the intent of the General Assembly that every patient's civil and religious liberties, including the right to independent personal decisions and knowledge of available choices, shall not be infringed and that the facility shall encourage and assist the patient in the fullest possible exercise of these rights. (1977, c. 897, s. 1; 1983, c. 143, s. 2; c. 775, s. 1; 1995, c. 509, s. 72; c. 535, s. 25.)

§ 131E-116. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Administrator" means an administrator of a facility.
- (1a) "Commission" means the North Carolina Medical Care Commission.
- (2) "Facility" means a nursing home and a home for the aged or disabled licensed pursuant to G.S. 131E-102, and also means a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E.
- (3) "Patient" means a person who has been admitted to a facility.
- (4) "Representative payee" means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance. (1977, c. 897, s. 1; 1983, c. 143, s. 1, c. 775, s. 1; 1993, c. 499, s. 1.)

§ 131E-117. Declaration of patient's rights.

All facilities shall treat their patients in accordance with the provisions of this Part. Every patient shall have the following rights:

- (1) To be treated with consideration, respect, and full recognition of personal dignity and individuality;
- (2) To receive care, treatment and services which are adequate, appropriate, and in compliance with relevant federal and State statutes and rules;
- (3) To receive at the time of admission and during the stay, a written statement of the services provided by the facility, including those required to be offered on an as-needed basis, and of related charges. Charges for services not covered under Medicare or Medicaid shall be specified. Upon receiving this statement, the patient shall sign a written receipt which must be on file in the facility and available for inspection;
- (4) To have on file in the patient's record a written or verbal order of the attending physician containing any information as the attending physician deems appropriate or necessary, together with the proposed schedule of medical

treatment. The patient shall give prior informed consent to participation in experimental research. Written evidence of compliance with this subdivision, including signed acknowledgements by the patient, shall be retained by the facility in the patient's file;

- (5) To receive respect and privacy in the patient's medical care program. Case discussion, consultation, examination, and treatment shall remain confidential and shall be conducted discreetly. Personal and medical records shall be confidential and the written consent of the patient shall be obtained for their release to any individual, other than family members, except as needed in case of the patient's transfer to another health care institution or as required by law or third party payment contract;
- (6) To be free from mental and physical abuse and, except in emergencies, to be free from chemical and physical restraints unless authorized for a specified period of time by a physician according to clear and indicated medical need;
- (7) To receive from the administrator or staff of the facility a reasonable response to all requests;
- (8) To associate and communicate privately and without restriction with persons and groups of the patient's choice on the patient's initiative or that of the persons or groups at any reasonable hour; to send and receive mail promptly and unopened, unless the patient is unable to open and read personal mail; to have access at any reasonable hour to a telephone where the patient may speak privately; and to have access to writing instruments, stationery, and postage;
- (9) To manage the patient's financial affairs unless authority has been delegated to another pursuant to a power of attorney, or written agreement, or some other person or agency has been appointed for this purpose pursuant to law. Nothing shall prevent the patient and facility from entering a written agreement for the facility to manage the patient's financial affairs. In the event that the facility manages the patient's financial affairs, it shall have an accounting available for inspection and shall furnish the patient with a quarterly statement of the patient's account. The patient shall have reasonable access to this account at reasonable hours; the patient or facility may terminate the agreement for the facility to manage the patient's financial affairs at any time upon five days' notice.
- (10) To enjoy privacy in visits by the patient's spouse, and, if both are inpatients of the facility, they shall be afforded the opportunity where feasible to share a room;
- (11) To enjoy privacy in the patient's room;
- (12) To present grievances and recommend changes in policies and services, personally or through other persons or in combination with others, on the patient's personal behalf or that of others to the facility's staff, the community advisory committee, the administrator, the Department, or other persons or groups without fear of reprisal, restraint, interference, coercion, or discrimination;
- (13) To not be required to perform services for the facility without personal consent and the written approval of the attending physician;

- (14) To retain, to secure storage for, and to use personal clothing and possessions, where reasonable;
- (15) To not be transferred or discharged from a facility except for medical reasons, the patient's own or other patients' welfare, nonpayment for the stay, or when the transfer or discharge is mandated under Title XVIII (Medicare) or Title XIX (Medicaid) of the Social Security Act. The patient shall be given at least five days' advance notice to ensure orderly transfer or discharge, unless the attending physician orders immediate transfer, and these actions, and the reasons for them, shall be documented in the patient's medical record;
- (16) To be notified within 10 days after the facility has been issued a provisional license because of violation of licensure regulations or received notice of revocation of license by the North Carolina Department of Health and Human Services and the basis on which the provisional license or notice of revocation of license was issued. The patient's responsible family member or guardian shall also be notified. (1977, c. 897, s. 1; 1983, c. 775, s. 1; 1989, c. 75; 1997-443, s. 11A.118(a).)

§ 131E-118. Transfer of management responsibilities.

The patient's representative who has been given the power in writing by the patient to manage the patient's financial affairs or the patient's legal guardian as appointed by a court or the patient's attorney-in-fact as specified in the power of attorney agreement may sign any documents required by the provisions of this Part, may perform any other act, and may receive or furnish any information required by this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-119. No waiver of rights.

No facility may require a patient to waive the rights specified in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-120. Notice to patient.

(a) A copy of G.S. 131E-115 through G.S. 131E-127 shall be posted conspicuously in a public place in all facilities. Copies of G.S. 131E-115 through G.S. 131E-127 shall be furnished to the patient upon admittance to the facility, to all patients currently residing in the facility, to the sponsoring agency, to a representative payee of the patient, or to any person designated in G.S. 131E-118, and to the patient's next of kin, if requested. Receipts for the statement signed by these persons shall be retained in the facility's files.

(b) The address and telephone number of the section in the Department responsible for the enforcement of the provisions of this Part shall be posted and distributed with copies of the Part. The address and telephone number of the county social services department shall also be posted and distributed. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-121. Responsibility of administrator.

Responsibility for implementing the provisions of this Part shall rest on the administrator of the facility. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-121.1: Reserved for future codification purposes.

§ 131E-121.2: Reserved for future codification purposes.

§ 131E-121.3: Reserved for future codification purposes.

§ 131E-121.4: Reserved for future codification purposes.

§ 131E-122. Staff training.

Each facility shall provide appropriate staff training to implement each patient's rights included in this Part. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-123. Civil action.

Every patient shall have the right to institute a civil action for injunctive relief to enforce the provisions of this Part. The Department, a general guardian, or any person appointed as guardian ad litem pursuant to law, may institute an action pursuant to this section on behalf of the patient or patients. Any agency or person named above may enforce the rights of the patient specified in this Part which the patient is unable to personally enforce. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-124. Enforcement and investigation; confidentiality.

(a) The Department shall be responsible for the enforcement of the provisions of this Part. The Department shall investigate complaints made to it and reply within a reasonable time, not to exceed 60 days, upon receipt of a complaint.

(a1) When the Department receives a complaint alleging a violation of the provisions of this Part pertaining to patient care or patient safety, the Department shall initiate an investigation as follows:

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a resident as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a resident as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

The investigation shall be completed within 30 days. The requirements of this section are in addition to and not in lieu of any investigatory requirements for adult protective services pursuant to Article 6 of Chapter 108A of the General Statutes.

(b) The Department is authorized to inspect patients' medical records maintained at the facility when necessary to investigate any alleged violation of this Part.

(c) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. A person who has filed a complaint shall have access to information about a complaint investigation involving a specific resident if written authorization is obtained from the resident, legal representative, or responsible party. The designation of the responsible party shall be maintained by the nursing facility in the resident's medical record.

(d) Pursuant to 42 U.S.C. § 1395 and G.S. 131E-127, a nursing home as defined in G.S. 131E-101(6), is not in violation of any applicable statute, rule, or regulation for any action taken pursuant to a physician's order when the physician has determined that the action is medically

necessary. (1977, c. 897, s. 1; 1983, c. 775, s. 1; 1999-113, s. 3; 1999-334, s. 1.9.)

§ 131E-125. Revocation of a license.

(a) The Department shall have the authority to revoke a license issued pursuant to G.S. 131E-102 in any case where it finds that there has been a substantial failure to comply with the provisions of this Part or any failure that endangers the health, safety or welfare of patients.

A revocation shall be effected by mailing to the licensee by registered mail, or by personal service of, a notice setting forth the particular reasons for such action. Such revocation shall become effective 20 days after the mailing or service of the notice, unless the applicant or licensee, within such 20-day period, files a petition for a contested case, in which case the notice shall be deemed to be suspended. At any time at or prior to the hearing, the Department may rescind the notice of revocation upon being satisfied that the reasons for the revocation have been or will be removed.

(b) In the case of a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E, when the Department of Health and Human Services finds that there has been a substantial failure to comply with the provisions of this Part, it may issue an order preventing the continued operation of the home.

Such order shall be effected by mailing to the hospital by registered or certified mail, or by personal service of, a notice setting forth the particular reasons for such action. Such order shall become effective 20 days after the mailing of the notice, unless the hospital, within such 20-day period, files a petition for a contested case, in which case the order shall be deemed to be suspended. At any time at or prior to the hearing, the Department of Health and Human Services may rescind the order upon being satisfied that the reasons for the order have been or will be removed. (1977, c. 897, s. 1; 1983, c. 143, s. 3; c. 775, s. 1; 1987, c. 827, s. 251; 1997-443, s. 11A.118(a).)

§ 131E-126: Repealed by Session Laws 1987, c. 600, s. 1.

§ 131E-127. No interference with practice of medicine or physician-patient relationship.

Nothing in this Part shall be construed to interfere with the practice of medicine or the physician-patient relationship. (1977, c. 897, s. 1; 1983, c. 775, s. 1.)

§ 131E-128. Nursing home advisory committees.

(a) It is the purpose of the General Assembly that community advisory committee members function as representatives of the Office of the State Long-Term Care Ombudsman and through their designation work to maintain the intent of the Nursing Home Resident's Bill of Rights within the nursing homes in this State, including nursing homes operated by hospitals licensed under Article 5 of G.S. Chapter 131E. It is the further purpose of the General Assembly that the committees promote community involvement and cooperation with nursing homes and an integration of these homes into a system of care for the elderly.

(b) (1) A community advisory committee shall be established in each county which has a nursing home, including a nursing home operated by a hospital licensed under Article 5 of G.S. Chapter 131E, shall serve all the homes in the county, and shall work with each home in the best interest of the persons residing in each home. In a county which has one, two, or three nursing homes, the committee shall have five members. In a county with four or more nursing

homes, the committee shall have one additional member for each nursing home in excess of three, and may have up to five additional members per committee at the discretion of the county commissioners.

- (2) In each county with four or more nursing homes, the committee shall establish a subcommittee of no more than five members and no fewer than three members from the committee for each nursing home in the county. Each member must serve on at least one subcommittee.
- (3) Boards of county commissioners are encouraged to appoint the Nursing Home Community Advisory Committees. Of the members, a minority (not less than one-third, but as close to one-third as possible) must be chosen from among persons nominated by a majority of the chief administrators of nursing homes in the county and of the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes. If the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to make a nomination within 45 days after written notification has been sent to them by the board of county commissioners requesting a nomination, these appointments may be made by the board of county commissioners without nominations.
- (4) Notwithstanding any other provision of this Article, appointment to a nursing home community advisory committee is contingent upon designation of the appointee by the Office of the State Long-Term Care Ombudsman in accordance with G.S. 143B-181.18. A designated appointee is directly accountable to the State Long-Term Care Ombudsman Program in order to perform the duties as a representative of the Office of the State Long-Term Care Ombudsman. Removal of the appointee's designation by the Office of the State Long-Term Care Ombudsman automatically rescinds the appointment to the nursing home community advisory committee.
- (5) Any individual who serves as a community advisory committee member must go through the Office of the State Long-Term Care Ombudsman's certification and designation process and meet the certification and designation requirements in accordance with the State Long-Term Care Ombudsman Program Policies and Procedures.

(c) Each committee member shall serve an initial term of one year. Any person reappointed to a second or subsequent term in the same county shall serve a three-year term. Persons who were originally nominees of nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, or who were appointed by the board of county commissioners when the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make nominations, may not be reappointed without the consent of a majority of the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes within the county. If the nursing home chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes fail to approve or reject the reappointment within 45 days of being requested by the board of county commissioners, the commissioners may reappoint the member if they so choose.

(d) Any vacancy shall be filled by appointment of a person for a one-year term. Any person replacing a member nominated by the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes or a person appointed when the chief administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes failed to make a nomination shall be selected from among persons nominated by the administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes, as provided in subsection (b). If the county commissioners fail to appoint members to a committee, or fail to fill a vacancy, the appointment shall be made or vacancy filled by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after the commissioners have been notified of the appointment or vacancy if nomination or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is not required. If nominations or approval of the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes is required, the appointment shall be made or vacancy filled by the Office of the State Long-Term Care Ombudsman no sooner than 45 days after the commissioners have received the nomination or approval, or no sooner than 45 days after the 45-day period for action by the nursing home administrators and the governing bodies of the hospitals licensed under Article 5 of G.S. Chapter 131E, which operate nursing homes.

(e) The committee shall elect from its members a chair, to serve a one-year term.

(f) Each member must be a resident of the county which the committee serves. No person or immediate family member of a person with a financial interest in a home served by a committee, or employee or governing board member or immediate family member of an employee or governing board member of a home served by a committee, or immediate family member of a patient in a home served by a committee may be a member of a committee. Membership on a committee shall not be considered an office as defined in G.S. 128-1 or G.S. 128-1.1. Any county commissioner who is appointed to the committee shall be deemed to be serving on the committee in an ex officio capacity. Members of the committee shall serve without compensation, but may be reimbursed for the amount of actual expenses incurred by them in the performance of their duties. The names of the committee members and the date of expiration of their terms shall be filed with the Office of the State Long-Term Care Ombudsman, which shall supply a copy to the Division of Health Service Regulation.

(g) The Office of the State Long-Term Care Ombudsman shall develop training requirements for certification and designation in accordance with 45 C.F.R. § 1324.13(c)(2). Each committee member must receive certification training as specified by the State Long-Term Care Ombudsman Program Policies and Procedures and be designated as representatives of the State Long-Term Care Ombudsman Program prior to exercising any power under subsection (h) of this section. The State Long-Term Care Ombudsman Program shall provide the committees with information, guidelines, training, and consultation to direct them in the performance of their duties.

(h) (1) Each committee shall apprise itself of the general conditions under which the persons are residing in the homes, and shall work for the best interests of the persons in the homes. This may include assisting persons who have grievances with the home and facilitating the resolution of grievances at the local level.

- (2) Each committee shall quarterly visit the nursing home it serves. For each official quarterly visit, a majority of the committee members shall be present. In addition, each committee may visit the nursing home it serves whenever it deems it necessary to carry out its duties. In counties with four or more nursing homes, the subcommittee assigned to a home shall perform the duties of the committee under this subdivision, and a majority of the subcommittee members must be present for any visit.
- (3) Each member of a committee shall have the right to enter into the facility the committee serves in order to carry out the members' responsibilities. In a county where subcommittees have been established, this right of access shall be limited to homes served by those subcommittees to which the member has been appointed.
- (4) The committee or subcommittee may communicate through its chair with the Department or any other agency in relation to the interest of any patient. The identity of any complainant or resident involved in a complaint shall not be disclosed except as permitted under the Older Americans Act of 1965, as amended, 42 U.S.C. § 3001 et seq.
- (5) Each home shall cooperate with the committee as it carries out its duties.
- (6) Before entering into any nursing home, the committee, subcommittee, or member shall identify itself to the person present at the facility who is in charge of the facility at that time.

(i) Any written communication made by a member of a nursing home advisory committee within the course and scope of the member's duties, as specified in G.S. 131E-128, shall be privileged to the extent provided in this subsection. All communication shall be considered the property of the Office of the State Long-Term Care Ombudsman and subject to the Office's disclosure policies. This privilege shall be a defense in a cause of action for libel if the member was acting in good faith and the statements or communications do not amount to intentional wrongdoing.

To the extent that any nursing home advisory committee or any member thereof is covered by liability insurance, that committee or member shall be deemed to have waived the qualified immunity herein to the extent of indemnification by insurance. (1977, c. 897, s. 2; 1977, 2nd Sess., c. 1192, s. 1; 1983, c. 143, ss. 4-9; c. 775, ss. 1, 6; 1987, c. 682, s. 1; 1995, c. 254, s. 7; 1997-176, s. 1; 1997-443, s. 11A.118(a); 2007-182, s. 1; 2017-103, s. 1(b).)

§ 131E-128.1. Nursing home medication management advisory committee.

- (a) Definitions. – As used in this section, unless the context requires otherwise, the term:
 - (1) "Advisory committee" means a medication management committee established under this section to advise the quality assurance committee.
 - (2) "Medication-related error" means any preventable medication-related event that adversely affects a patient in a nursing home and that is related to professional practice, or health care products, procedures, and systems, including prescribing, prescription order communications, product labeling, packaging and nomenclature, compounding, dispensing, distribution, administration, education, monitoring, and use.
 - (3) "Nursing home" means a nursing home licensed under this Chapter and includes an adult care home operated as part of a nursing home.

- (4) "Potential medication-related error" means a medication-related error that has not yet adversely affected a patient in a nursing home, but that has the potential to if not anticipated or prevented or if left unnoticed.
- (5) "Quality assurance committee" means a committee established in a nursing home in accordance with federal and State regulations to identify circumstances requiring quality assessment and assurance activities and to develop and implement appropriate plans of action to correct deficiencies in quality of care.

(b) Purpose. – It is the purpose of the General Assembly to enhance compliance with this Part through the establishment of medication management advisory committees in nursing homes. The purpose of these committees is to assist nursing homes to identify medication-related errors, evaluate the causes of those errors, and take appropriate actions to ensure the safe prescribing, dispensing, and administration of medications to nursing home patients.

(c) Advisory Committee Established; Membership. – Every nursing home shall establish a medication management advisory committee to advise the quality assurance committee on quality of care issues related to pharmaceutical and medication management and use in the nursing home. The nursing home shall maintain the advisory committee as part of its administrative duties. The advisory committee shall be interdisciplinary and consist of the nursing home administrator and at least the following members appointed by the nursing home administrator:

- (1) The director of nursing.
- (2) The consultant pharmacist.
- (3) A physician designated by the nursing home administrator.
- (4) At least three other members of the nursing home staff.

(d) Meetings. – The advisory committee shall meet as needed but not less frequently than quarterly. The Director of Nursing or Staff Development Coordinator shall chair the advisory committee. The nursing home administrator shall ensure that a record is maintained of each meeting.

(e) Confidentiality. – The meetings or proceedings of the advisory committee, the records and materials it produces, and the materials it considers, including analyses and reports pertaining to medication-related error reporting under G.S. 131E-128.2 and pharmacy reports on drug defects and adverse reactions under G.S. 131E-128.4, shall be confidential and not be considered public records within the meaning of G.S. 132-1. The meetings or proceedings and records and materials also shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services resulting from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall testify in any civil action as to any evidence or other matters produced or presented during the meetings or proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. Notwithstanding the foregoing:

- (1) Information, documents, or records otherwise available, including any deficiencies found in the course of an inspection conducted under G.S. 131E-105, shall not be immune from discovery or use in a civil action merely because they were presented during meetings or proceedings of the advisory committee. A member of the advisory committee or a person who testifies before the committee may testify in a civil action but cannot be asked about

that person's testimony before the committee or any opinion formed as a result of the committee meetings or proceedings.

- (2) Information that is confidential and not subject to discovery or use in civil actions under this subsection may be released to a professional standards review organization that performs any accreditation or certification function. Information released to the professional standards review organization shall be limited to information reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released to the standards review organization retains its confidentiality and is not subject to discovery or use in any civil action as provided under this subsection. The standards review organization shall keep the information confidential subject to this subsection.
 - (3) Information that is confidential and not subject to discovery or use in civil actions under this subsection may be released to the Department of Health and Human Services pursuant to its investigative authority under G.S. 131E-105. Information released to the Department shall be limited to information reasonably necessary and relevant to the Department's investigation of compliance with Part 1 of Article 6 of this Chapter. Information released to the Department retains its confidentiality and is not subject to discovery or use in any civil action as provided in this subsection. The Department shall keep the information confidential subject to this subsection.
 - (4) Information that is confidential and is not subject to discovery or use in civil actions under this subsection may be released to an occupational licensing board having jurisdiction over the license of an individual involved in an incident that is under review or investigation by the advisory committee. Information released to the occupational licensing board shall be limited to information reasonably necessary and relevant to an investigation being conducted by the licensing board pertaining to the individual's involvement in the incident under review by the advisory committee. Information released to an occupational licensing board retains its confidentiality and is not subject to discovery or use in any civil action as provided in this subsection. The occupational licensing board shall keep the information confidential subject to this subsection.
- (f) Duties. – The advisory committee shall do the following:
- (1) Assess the nursing home's pharmaceutical management system, including its prescribing, distribution, administration policies, procedures, and practices and identify areas at high risk for medication-related errors.
 - (2) Review the nursing home's pharmaceutical management goals and respond accordingly to ensure that these goals are being met.
 - (3) Review, investigate, and respond to nursing home incident reports, deficiencies cited by licensing or credentialing agencies, and resident grievances that involve actual or potential medication-related errors.
 - (4) Identify goals and recommendations to implement best practices and procedures, including risk reduction technology, to improve patient safety by reducing the risk of medication-related errors.
 - (5) Develop recommendations to establish a mandatory, nonpunitive, confidential

reporting system within the nursing home of actual and potential medication-related errors.

- (6) Develop specifications for drug dispensing and administration documentation procedures to ensure compliance with federal and State law, including the North Carolina Nursing Practice Act.
- (7) Develop specifications for self-administration of drugs by qualified patients in accordance with law, including recommendations for assessment procedures that identify patients who may be qualified to self-administer their medications.

(g) Penalty. – The Department may take adverse action against the license of a nursing home upon a finding that the nursing home has failed to comply with this section, G.S. 131E-128.2, 131E-128.3, or 131E-128.4. (2003-393, s. 1; 2013-360, s. 12G.2(a), (b).)

§ 131E-128.2. Nursing home quality assurance committee; duties related to medication error prevention.

Every nursing home administrator shall ensure that the nursing home quality assurance committee develops and implements appropriate measures to minimize the risk of actual and potential medication-related errors, including the measures listed in this section. The design and implementation of the measures shall be based upon recommendations of the medication management advisory committee and shall:

- (1) Increase awareness and education of the patient and family members about all medications that the patient is using, both prescription and over-the-counter, including dietary supplements.
- (2) Increase prescription legibility.
- (3) Minimize confusion in prescription drug labeling and packaging, including unit dose packaging.
- (4) Develop a confidential and nonpunitive process for internal reporting of actual and potential medication-related errors.
- (5) To the extent practicable, implement proven medication safety practices, including the use of automated drug ordering and dispensing systems.
- (6) Educate facility staff engaged in medication administration activities on similar-sounding drug names.
- (7) Implement a system to accurately identify recipients before any drug is administered.
- (8) Implement policies and procedures designed to improve accuracy in medication administration and in documentation by properly authorized individuals, in accordance with prescribed orders and stop order policies.
- (9) Implement policies and procedures for patient self-administration of medication.
- (10) Investigate and analyze the frequency and root causes of general categories and specific types of actual or potential medication-related errors.
- (11) Develop recommendations for plans of action to correct identified deficiencies in the facility's pharmaceutical management practices. (2003-393, s. 1.)

§ 131E-128.3. Staff orientation on medication error prevention.

The nursing home administrator shall ensure that the nursing home provide a minimum of one hour of education and training in the prevention of actual or potential medication-related errors. This training shall be provided upon orientation and annually thereafter to all nonphysician personnel involved in direct patient care. The content of the training shall include at least the following:

- (1) General information relevant to the administration of medications including terminology, procedures, routes of medication administration, potential side effects, and adverse reactions.
- (2) Additional instruction on categories of medication pertaining to the specific needs of the patient receiving the medication.
- (3) The facility's policy and procedures regarding its medication administration system.
- (4) How to assist patients with safe and accurate self-administration of medication, where appropriate.
- (5) Identifying and reporting actual and potential medication-related errors. (2003-393, s. 1.)

§ 131E-128.4. Nursing home pharmacy reports; duties of consultant pharmacist.

(a) The consultant pharmacist for a nursing home shall conduct a drug regimen review for actual and potential drug therapy problems in the nursing home and make remedial or preventive clinical recommendations into the medical record of every patient receiving medication. The consultant pharmacist shall conduct the review at least monthly in accordance with the nursing home's policies and procedures.

(b) The consultant pharmacist shall report and document any drug irregularities and clinical recommendations promptly to the attending physician or nurse-in-charge and the nursing home administrator. The reports shall include problems identified and recommendations concerning:

- (1) Drug therapy that may be affected by biological agents, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medication to the same recipient.
- (2) Monitoring for potential adverse effects.
- (3) Allergies.
- (4) Drug interactions, including interactions between prescription drugs and over-the-counter drugs, drugs and disease, and interactions between drugs and nutrients.
- (5) Contraindications and precautions.
- (6) Potential therapeutic duplication.
- (7) Overextended length of treatment of certain drugs typically prescribed for a short period of time.
- (8) Beer's listed drugs that are potentially inappropriate for use by elderly persons.
- (9) Undertreatment or medical conditions that are suboptimally treated or not treated at all that warrant additional drug therapy to ensure quality of care.
- (10) Other identified problems and recommendations.

(c) The consultant pharmacist shall report drug product defects and adverse drug reactions in accordance with the ASHSP-USP-FDA Drug Product Defect Reporting System and

the USP Adverse Drug Reaction Reporting System. The term "ASHSP-USP-FDA" means American Society of Health System Pharmacists-United States Pharmacopoeia-Food and Drug Administration. Information released to the ASHSP-USP-FDA retains its confidentiality and is not subject to discovery or use in any civil action as provided under G.S. 131E-128.1.

(d) The consultant pharmacist shall ensure that all known allergies and adverse effects are documented in plain view in the patient's medical record, including the medication administration records, and communicated to the dispensing pharmacy. The specific medications and the type of allergy or adverse reaction shall be specified in the documentation.

(e) The consultant pharmacist shall ensure that drugs that are not specifically limited as to duration of use or number of doses shall be controlled by automatic stop orders. The consultant pharmacist shall further ensure that the prescribing provider is notified of the automatic stop order prior to the dispensing of the last dose so that the provider may decide whether to continue to use the drug.

(f) The consultant pharmacist shall, on a quarterly basis, submit a summary of the reports submitted under subsections (a) and (b) of this section to the medication management advisory committee established under G.S. 131E-128.1. The summary shall not include any information that would identify a patient, a family member, or an employee of the nursing home. The purpose of the summary shall be to facilitate the identification and analysis of weaknesses in the nursing home's pharmaceutical care system that have an adverse impact on patient safety. (2003-393, s. 1.)

§ 131E-128.5: Repealed by Session Laws 2013-360, s. 12G.2(c), effective July 1, 2013.

§ 131E-129. Penalties; remedies.

(a) Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility which is found to be in violation of the requirements of G.S. 131E-117 or applicable State and federal laws and regulations. Citations for violations shall be classified and penalties assessed according to the nature of the violation as follows:

- (1) "Type A1 Violation" means a violation by a facility of the regulations and requirements set forth in G.S. 131E-117, or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm. The person making the findings shall do the following:
 - a. Orally and immediately inform the facility of the Type A1 Violation and the specific findings.
 - b., c. Repealed by Session Laws 2011-249, s. 3, effective June 23, 2011.
 - d. Require a written, credible allegation regarding how the facility will immediately remove the Type A1 Violation in order to protect residents from further risk or additional harm.
 - e. Within 15 working days of the investigation, send a report of the findings to the facility.
 - f. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance by the date specified by the Department.

The Department shall impose a civil penalty in an amount not less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000) for each Type A1 Violation. Where a facility has failed to correct a Type A1 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the violation continues beyond the date specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

- (1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm will occur. The person making the findings shall do the following:
- a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.
 - b. Require a credible allegation regarding how the facility will immediately remove the Type A2 Violation in order to protect residents from further risk or additional harm.
 - c. Within 10 working days of the investigation, send a report of the findings to the facility.
 - d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance by the date specified by the Department.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars (\$1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

- (1b) "Past Corrected Type A1 or Type A2 Violation" means either (i) the violation was not previously identified by the Department or its authorized representative or (ii) the violation was discovered by the facility and was self-reported, but in either case the violation has been corrected. In determining whether a penalty should be assessed under this section, the Department shall consider the following factors:
- a. Preventive systems in place prior to the violation.
 - b. Whether the violation or violations were abated immediately.
 - c. Whether the facility implemented corrective measures to achieve and maintain compliance.
 - d. Whether the facility's system to ensure compliance is maintained and continues to be implemented.

- e. Whether the regulatory area remains in compliance.
- (2) "Type B Violation" means a violation by a facility's licensee of the regulations, standards and requirements set forth in G.S. 131E-117 or applicable State or federal laws and regulations governing the licensure or certification of a facility which is detrimental to the health, safety, or welfare of any resident, but which does not result in substantial risk that death or serious physical harm will occur. The person making the findings shall do the following:
 - a. Orally and immediately inform the facility of the Type B Violation and the specific findings.
 - b. Require a written plan regarding how the facility will immediately remove the Type B Violation in order to protect residents from further risk or additional harm.
 - c. Within 10 working days of the investigation, send a report of the findings to the facility.
 - d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance by the date specified by the Department.

Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the Department shall assess the facility a civil penalty in the amount of up to four hundred dollars (\$400.00) for each day that the violation continues beyond the date specified for correction without just reason for such failure. The Department or its authorized representative shall ensure that the violation has been corrected.

- (3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under subsection (a) of this section when a facility under the same management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and the current violation is for the same specific provision of a statute or regulation for which it received a violation during the previous 12 months. The counting of the 12-month period shall be tolled during any time when the facility is being operated by a court-appointed temporary manager pursuant to law.

(b) Repealed by Session Laws 2011-249, s. 3, effective June 23, 2011.

(c) Factors to be considered in determining amount of initial penalty. In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

- (1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur.
- (2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for resident death, did occur.
- (3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for resident death, did occur.
- (4) A resident died.

- (5) A resident died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation.
- (6) A resident died and there is substantial risk for further resident death.
- (7) Reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and G.S. 131E-265 did occur.
- (8) Efforts by the licensee to correct violations.
- (9) The number and type of previous violations committed by the licensee within the past 36 months.
- (10) The number of residents put at risk by the violations.

(c1) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Secretary shall document the findings in written record and shall make the written record available to all affected parties including:

- (1) The penalty review committee;
- (2) The local department of social services who is responsible for oversight of the facility involved;
- (3) The licensee involved;
- (4) The residents affected; and
- (5) The family member who serves as a responsible party or those who have legal authority on behalf of the affected resident.

(c2) Local county departments of social services and Division of Health Service Regulation personnel shall submit proposed penalty recommendations to the Department within 45 days of the citation of a violation.

(d) The Department shall impose a civil penalty of fifty dollars (\$50.00) per day on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

- (1) The reasonableness of the amount of any civil penalty assessed, and
- (2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(e1) Notwithstanding the notice requirements of G.S. 131E-24, any penalty imposed by the Department of Health and Human Services under this section shall commence on the day the citation is imposed.

(f) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

- (1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty; or
- (2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-36.

(g) The penalty review committee established pursuant to G.S. 131D-34(h) shall review administrative penalties assessed pursuant to this section.

(g1) In lieu of assessing all or some of the administrative penalty, the Secretary may order a facility to provide staff training if the training is:

- (1) Specific to the violation;
- (2) Approved by the Department of Health and Human Services; and
- (3) Taught by an individual approved by the Department.

(h) The Department shall not assess an administrative penalty against a facility under this section if a civil monetary penalty has been assessed for the same violation under federal enforcement laws and regulations.

(i) The clear proceeds of civil penalties provided for in this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. (1987, c. 600, s. 2; 1989, c. 556, s. 2; 1993, c. 390, s. 2; 1995, c. 396, s. 1; 1995 (Reg. Sess., 1996), c. 602, s. 2; 1997-431, s. 2; 1997-443, s. 11A.122; 1998-215, s. 78(b); 2007-182, s. 1.1; 2011-249, s. 3; 2012-194, s. 29.)

§ 131E-130. First available bed priority for certain nursing home patients.

(a) If a patient is temporarily absent, for no more than 15 days, from a nursing home to obtain medical treatment at a hospital other than a State mental hospital, the nursing home; (i) shall provide the patient with the first bed available at or after the time the nursing home receives written notification of the specific date of discharge from the hospital; and (ii) shall grant the patient priority of admission over applicants for admission to the nursing home.

The duration of the temporary absence shall be calculated from the day of the patient's admission to a hospital until the date the nursing home receives written notice of the specific date of discharge.

This subsection shall not apply in instances in which the patient's treatment can no longer be provided by the nursing home upon re-admission.

(b) If the Department finds that a nursing home has violated the provisions of subsection (a) of this section, the Department may assess a civil penalty of fifty dollars (\$50.00) a day, up to a maximum of one thousand five hundred dollars (\$1,500), against the nursing home, for each violation.

The clear proceeds of penalties provided for in this subsection shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

(c) The provisions of Chapter 150B of the General Statutes that govern contested cases apply to appeals from Department action pursuant to this section. (1987 (Reg. Sess., 1988), c. 1080, s. 1; 1998-215, s. 79.)

§ 131E-131. Rule-making authority; enforcement.

The Commission shall adopt rules necessary for the implementation of this Part.

The Department shall enforce the rules adopted by the Commission to implement this Part. (1993, c. 499, s. 2.)

§ 131E-132. Reserved for future codification purposes.

§ 131E-133. Reserved for future codification purposes.

§ 131E-134. Reserved for future codification purposes.

Part 3. Home Care Agency Licensure Act.

§ 131E-135. Title; purpose.

- (a) This Part shall be known as "Home Care Agency Licensure Act."
- (b) The purpose of this Part is to establish licensing requirements for home care agencies. (1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34.)

§ 131E-136. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Commission" means the North Carolina Medical Care Commission.
- (1a) "Geographic service area" means the geographic area in which a licensed agency provides home care services.
- (2) "Home care agency" means a private or public organization that provides home care services.
- (2a) "Home care agency director" means the person having administrative responsibility for the operation of the licensed agency site.
- (2b) "Home care client" means an individual who receives home care services.
- (3) "Home care services" means any of the following services and directly related medical supplies and appliances, which are provided to an individual in a place of temporary or permanent residence used as an individual's home:
 - a. Nursing care provided by or under the supervision of a registered nurse.
 - b. Physical, occupational, or speech therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home.
 - c. Medical social services.
 - d. In-home aide services that involve hands-on care to an individual.
 - e. Infusion nursing services.
 - f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.
 - g. In-home companion, sitter, and respite care services provided to an individual.
 - h. Homemaker services provided in combination with in-home companion, sitter, respite, or other home care services.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Health and Human Services under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Health and Human Services to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter

115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided. The term sitter does not include child care facilities licensed in accordance with Chapter 110 of the General Statutes. The term respite care does not include facilities or services licensed in accordance with Chapter 122C of the General Statutes. The terms in-home companion, sitter, homemaker, and respite care services do not include (i) services certified or otherwise overseen by the Department as not providing personal care or (ii) services administered on a voluntary basis for which there is not reimbursement from the recipient or anyone acting on the recipient's behalf.

- (4) "Home health agency" means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E. (1971, c. 539, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1022, s. 4; 1987, c. 34, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.90; 2005-276, s. 10.40A(m); 2008-127, s. 1.)

§ 131E-137. Services to be provided in all counties.

(a) Every county shall provide part-time, intermittent home care nursing services, and at least one of the following home care services: part-time, intermittent physical therapy, occupational therapy, speech therapy, medical social work, or home health aide services.

(b) Repealed by Session Laws 1991, c. 59, s. 1.

(c) These services shall be provided by a home care agency licensed under this Part. The county may provide these services by contract with another home care agency in another county.

(d) Repealed by Session Laws 1985, c. 8, s. 1. (1977, 2nd Sess., c. 1184; 1979, c. 754, s. 1; 1983, c. 775, s. 1; 1985, c. 8; 1991, c. 59, s. 1, c. 761, s. 34.)

§ 131E-138. Licensure requirements.

(a) No person or governmental unit shall operate a home care agency without a license obtained from the Department. Nothing in this Part shall be construed to extend or modify the licensing of individual health professionals by the licensing boards for their professions or to create any new professional license category.

(b) Repealed by Session Laws 1991, c. 59, s. 1.

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the

applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual license fee in the amount of five hundred ten dollars (\$510.00).

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises.

(g) The Commission shall adopt rules to ensure that a home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if: (i) the agency is already certified or accredited by the Joint Commission on Accreditation of Health Care Organizations, National League for Nursing, National Home Caring Council, North Carolina Accreditation Commission for In-Home Aide Services, or other entities recognized by the Commission and (ii) the agency is certified or accredited for all of the home care services that it provides; or (iii) in the case of continuing care retirement communities licensed by the North Carolina Department of Insurance under Article 64 of Chapter 58 which also have nursing beds licensed by the Department of Health and Human Services under Article 6 of Chapter 131E, the Department certifies, as part of its licensure review or survey of the nursing beds, that the facility also meets all of the rules and regulations adopted by the Commission pursuant to this Part. The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1997-443, s. 11A.118(a); 2003-284, s. 34.4(a); 2005-276, s. 41.2(d); 2008-127, s. 2; 2009-451, s. 10.76(d).)

§ 131E-138.1. Licensure fees for nursing beds and adult care home beds in continuing care retirement communities.

The Department shall charge continuing care retirement communities licensed under Article 64 of Chapter 58 of the General Statutes that have nursing home beds or adult care home beds licensed by the Department a nonrefundable annual base license fee in the amount of four hundred fifty dollars (\$450.00) plus a nonrefundable annual per-bed fee in the amount of twelve dollars and fifty cents (\$12.50). (2003-284, s. 34.9(a); 2005-276, s. 41.2(i).)

§ 131E-139. Adverse action on a license.

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel or amend a license when there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150B of the General Statutes, The Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1; 1987, c. 827, s. 1; 1991, c. 59, s. 1, c. 761, s. 34.)

§ 131E-140. Rules and enforcement.

(a) The Commission may adopt, amend and repeal all rules necessary for the implementation of this 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. Rules authorized under this section include rules:

- (1) That recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care service.
- (2) To establish staff qualifications, including professional requirements for home care agency staff. The rules may require that one or more staff of an agency be either licensed or certified. The rules may establish minimum training and education qualifications for staff and may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the North Carolina General Statutes provided that the professional board evaluates applicants on a basis that protects the public health, safety, or welfare.
- (3) For the purpose of ensuring effective supervision of in-home aide staff and timely provision of services, the Commission shall adopt rules defining geographic service areas for in-home aide services and staffing qualifications for licensed home care agencies.
- (4) Prohibiting licensed home care agencies from hiring individuals listed on the Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).
- (5) 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.

(a1) The Commission shall adopt rules defining the scope of permissible advertising and promotional practice by home care agencies.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home care agencies and shall conduct an inspection of each agency at least every three years. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 2005-276, ss. 10.40A(a), 10.40A(o).)

§ 131E-141. Inspection.

(a) The Department shall inspect home care agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or

interviews, except as noted in G.S. 131E-124(c), shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, " 'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency that the client has the right to object in writing to release of information or review of the client's records and that by an objection in writing the client may prohibit the inspection or release of the records.

(c) An agency must provide each client with a written notice of the Division of Health Service Regulation hotline number in advance of furnishing care to the client or during the initial evaluation visit before the initiation of services. (1971, c. 539, s. 1; 1973, c. 476, s. 128; 1981, c. 586, s. 2; 1983, c. 775, s. 1; 1991, c. 59, s. 1; c. 761, s. 34; 1999-113, s. 4; 2005-276, s. 10.40A(b); 2007-182, s. 1.)

§ 131E-141.1. Penalties for violation.

Any person who knowingly and willfully establishes, conducts, manages or operates any home care agency without a license is guilty of a Class 3 misdemeanor and upon conviction is liable only for a fine of not more than five hundred dollars (\$500.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. (1991, c. 59, s. 1, c. 761, s. 34; 1993, c. 539, s. 961; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 131E-142. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department shall, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home care agency without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1983, c. 775, s. 1; 1991, c. 59, s. 1, c. 761, s. 34.)

§ 131E-143. Smoking prohibited; penalty.

(a) A home care agency shall prohibit its employees from smoking while providing services to an individual in the individual's home. The home care agency shall inform its clients that employees of the agency are prohibited from smoking in a client's home. As used in this section:

- (1) "Employee" includes an individual under contract with the home care agency to provide home care services.
- (2) "Smoking" means the use or possession of any lighted cigar, cigarette, pipe, or

other lighted smoking product.

(b) The Department may impose an administrative penalty not to exceed two hundred dollars (\$200.00) for each violation on any person who owns, manages, operates, or otherwise controls the home care agency and fails to comply with this section. A violation of this section constitutes a civil offense only and is not a crime. (2007-459, s. 4.)

§ 131E-144. Reserved for future codification purposes.

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

§ 131E-144.1. Legislative intent.

It is the intent of the General Assembly to support an individual's desire to live at home and receive home care services. (2005-276, s. 10.40A(n).)

§ 131E-144.2. Definitions.

Unless otherwise specified, the definitions that are provided in Part 3 of Article 6 of this Chapter apply in this Part. (2005-276, s. 10.40A(n).)

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

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

- (1) To be informed and participate in his or her plan of care.
- (2) To be treated with respect, consideration, dignity, and full recognition of his or her individuality and right to privacy.
- (3) To receive care and services that are adequate, appropriate, and in compliance with relevant federal and State laws and rules and regulations.
- (4) To voice grievances about care and not be subjected to discrimination or reprisal for doing so.
- (5) To have his or her personal and medical records kept confidential and not be disclosed except as permitted or required by applicable State or federal law.
- (6) To be free of mental and physical abuse, neglect, and exploitation.
- (7) To receive a written statement of services provided by the agency and the charges the client is liable for paying.
- (8) To be informed of the process for acceptance and continuance of service and eligibility determination.
- (9) To accept or refuse services.
- (10) To be informed of the agency's on-call service.
- (11) To be informed of supervisory accessibility and availability.
- (12) To be advised of the agency's procedures for discharge.
- (13) To receive a reasonable response to his or her requests of the agency.
- (14) To be notified within 10 days when the agency's license has been revoked, suspended, canceled, annulled, withdrawn, recalled, or amended.
- (15) To be advised of the agency's policies regarding patient responsibilities. (2005-276, s. 10.40A(n); 2011-314, s. 6.)

§ 131E-144.4. Notice to client.

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

- (1) A copy of the declaration of home care clients' rights.
- (2) A copy of the agency's policies regarding client responsibilities as it relates to safety and care plan compliance.
- (3) The address and telephone number for information, questions, or complaints about services provided by the agency.
- (4) The address and telephone number of the section of the Department of Health and Human Services responsible for the enforcement of the provisions of this Part.

(b) Receipts for the declaration of home care clients' rights and contact information required in this section shall be signed by the client and shall be retained in the agency's files. (2005-276, s. 10.40A(n).)

§ 131E-144.5. Implementation.

Responsibility for implementing the provisions of this Part shall rest with the home care agency director. Each agency shall provide appropriate training to implement this Part. (2005-276, s. 10.40A(n).)

§ 131E-144.6. Enforcement and investigation.

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

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

- (1) Immediately upon receipt of the complaint if the complaint alleges a life-threatening situation.
- (2) Within 24 hours if the complaint alleges abuse of a client as defined by G.S. 131D-20(1).
- (3) Within 48 hours if the complaint alleges neglect of a client as defined by G.S. 131D-20(8).
- (4) Within two weeks in all other situations.

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

(b) A home care agency shall investigate, within 72 hours, complaints made to the agency by a home care client or the client's family and must document both the existence of the complaint and the resolution of the complaint. (2005-276, s. 10.40A(n).)

§ 131E-144.7. Confidentiality.

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

(b) The Department shall maintain the confidentiality of all persons who register complaints with the Department and of all medical records inspected by the Department. A person who has filed a complaint shall have access to information about a complaint

investigation involving a specific home care client if written authorization is obtained from the client or legal representative. (2005-276, s. 10.40A(n).)

Part 4. Ambulatory Surgical Facility Licensure.

§ 131E-145. Title; purpose.

- (a) This Part shall be known as the "Ambulatory Surgical Facility Licensure Act."
- (b) The purpose of this Part is to provide for the development, establishment and enforcement of basic standards:
 - (1) For the care and treatment of individuals in ambulatory surgical facilities; and
 - (2) For the maintenance and operation of ambulatory surgical facilities so as to ensure safe and adequate treatment of such individuals in ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

§ 131E-146. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Ambulatory surgical facility" means a facility designed for the provision of a specialty ambulatory surgical program or a multispecialty ambulatory surgical program. An ambulatory surgical facility serves patients who require local, regional or general anesthesia and a period of post-operative observation. An ambulatory surgical facility may only admit patients for a period of less than 24 hours and must provide at least one designated operating room as defined in subdivision (1c) of this section or at least one gastrointestinal endoscopy room as defined in subdivision (1b) of this section and at least one designated recovery room, have available the necessary equipment and trained personnel to handle emergencies, provide adequate quality assurance and assessment by an evaluation and review committee, and maintain adequate medical records for each patient. An ambulatory surgical facility may be operated as a part of a physician or dentist's office, provided the facility is licensed under G.S. Chapter 131E, Article 6, Part 4, but the performance of incidental, limited ambulatory surgical procedures which do not constitute an ambulatory surgical program as defined in subdivision (1a) and which are performed in a physician or dentist's office does not make that office an ambulatory surgical facility.
- (1a) "Ambulatory surgical program" means a formal program for providing on a same-day basis those surgical procedures which require local, regional or general anesthesia and a period of post-operative observation to patients whose admission for more than 24 hours is determined, prior to surgery or gastrointestinal endoscopy, to be medically unnecessary.
- (1b) "Gastrointestinal endoscopy room" means a room used for the performance of procedures that require the insertion of a flexible endoscope into a gastrointestinal orifice to visualize the gastrointestinal lining and adjacent organs for diagnostic or therapeutic purposes.
- (1c) "Operating room" means a room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room.
- (2) "Commission" means the North Carolina Medical Care Commission.

- (3) **(Contingent effective date and expiration – see note)** "Qualified urban ambulatory surgical facility" means an ambulatory surgical facility that meets the definition of G.S. 131E-176(21a). (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1; 1983 (Reg. Sess., 1984), c. 1064, s. 1; 1997-456, s. 49(a); 2001-242, s. 1; 2005-346, s. 4; 2023-7, s. 3.2(b).)

§ 131E-147. Licensure requirement.

(a) No person shall operate an ambulatory surgical facility without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an ambulatory surgical facility shall be annually renewed upon the filing and the department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1; 2003-284, s. 34.5(a); 2005-276, s. 41.2(e); 2009-451, s. 10.76(b).)

§ 131E-147.1. Fair billing and collections practices for ambulatory surgical facilities.

All ambulatory surgical facilities licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91. (2013-382, s. 13.3.)

§ 131E-147.5. (Contingent effective date – see note) Charity care requirement for qualified urban ambulatory surgical facilities; annual report.

(a) The percentage of each qualified urban ambulatory surgical facility's total earned revenue that is attributed to self-pay and Medicaid revenue shall be equivalent to at least four percent (4%), calculated as follows: the Medicare allowable amount for self-pay and Medicaid surgical cases minus all revenue earned from self-pay and Medicaid cases, divided by the total earned revenues for all surgical cases, divided by the total earned revenues for all surgical cases performed in the facility for procedures for which there is a Medicare allowable fee.

(b) Each qualified urban ambulatory surgical facility shall annually report to the Department in the manner prescribed by the Department the percentage of the facility's earned revenue that is attributed to self-pay and Medicaid revenue, as calculated in accordance with subsection (a) of this section. (2023-7, s. 3.2(c).)

§ 131E-148. Adverse action on a license.

(a) Subject to subsection (b), the Department is authorized to deny a new or renewal application for a license, and to amend, recall, suspend or revoke an existing license upon a

determination that there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter 150A of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

§ 131E-149. Rules and enforcement.

(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Hospital Licensing Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to ambulatory surgical facilities. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

§ 131E-150. Inspections.

(a) The Department shall make or cause to be made inspections of ambulatory surgical facilities as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53, "Communications between physician and patient," or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been patients of the facility being inspected unless that patient objects in writing to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, "Communication between physician and patient," or any other rule of law; Provided the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1, "'Public records' defined." Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object in writing to this release of information or review of the records and that by objecting in writing, the patient may prohibit the inspection or release of the records. (1977, 2nd

Sess., c. 1214, s. 1; 1981, c. 586, s. 5; 1983, c. 775, s. 1.)

§ 131E-151. Penalties.

A person who owns in whole or in part or operates an ambulatory surgical facility without a license is guilty of a Class 3 misdemeanor, and upon conviction will be subject only to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1; 1993, c. 539, s. 962; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 131E-152. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of an ambulatory surgical facility without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (1977, 2nd Sess., c. 1214, s. 1; 1983, c. 775, s. 1.)

Part 4A. Abortion Clinic Licensure.

§ 131E-153. Title; purpose.

(a) This Part shall be known as the "Abortion Clinic Licensure Act."

(b) The purpose of this Part is to provide for the development, establishment, and enforcement of basic standards:

- (1) For the care and treatment of individuals in abortion clinics; and
- (2) For the maintenance and operation of abortion clinics so as to ensure safe and adequate treatment of such individuals in abortion clinics. (2023-14, s. 2.2.)

§ 131E-153.1. Definitions.

The following definitions apply in this Part, unless otherwise specified:

- (1) Abortion clinic. – A freestanding facility, that is neither physically attached nor operated by a hospital, for the performance of abortions during the first 12 weeks of pregnancy.
- (2) Commission. – The North Carolina Medical Care Commission.
- (3) Operating room. – A room used for the performance of surgical procedures requiring one or more incisions and that is required to comply with all applicable licensure codes and standards for an operating room. (2023-14, s. 2.2.)

§ 131E-153.2. Licensure requirement.

(a) No person shall operate an abortion clinic without a license obtained from the Department.

(b) Applications shall be available from the Department, and each application filed with the Department shall contain all necessary and reasonable information that the Department may by rule require. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules adopted by the Commission under this Part. The Department shall charge the applicant a nonrefundable annual base license fee in the amount of eight hundred fifty dollars (\$850.00) plus a nonrefundable annual per-operating room fee in the amount of seventy-five dollars (\$75.00).

(c) A license to operate an abortion clinic shall be annually renewed upon the filing and the Department's approval of a renewal application. The renewal application shall be available from the Department and shall contain all necessary and reasonable information that the Department may by rule require.

(d) Each license shall be issued only for the premises and persons named in the application and shall not be transferable or assignable except with the written approval of the Department.

(e) Licenses shall be posted in a conspicuous place on the licensed premises. (2023-14, s. 2.2.)

§ 131E-153.3. Fair billing and collections practices for abortion clinics.

All abortion clinics licensed under this Part shall be subject to the fair billing and collections practices set out in G.S. 131E-91. (2023-14, s. 2.2.)

§ 131E-153.4. Adverse action on a license.

(a) Subject to subsection (b) of this section, the Department is authorized to deny a new or renewal application for a license and to amend, recall, suspend, or revoke an existing license upon a determination that there has been a substantial failure to comply with the provisions of this Part or the rules adopted under this Part.

(b) Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a) of this section. (2023-14, s. 2.2.)

§ 131E-153.5. Rules and enforcement.

(a) The Commission is authorized to adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall be no stricter than those issued by the Commission under G.S. 131E-79 of the Ambulatory Surgical Facility Licensure Act.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to abortion clinics. (2023-14, s. 2.2.)

§ 131E-153.6. Inspections.

(a) The Department shall make or cause to be made inspections of abortion clinics as necessary. The Department is authorized to delegate to a State officer, agent, board, bureau, or division of State government the authority to make inspections according to the rules adopted by the Commission. The Department may revoke this delegated authority in its discretion.

(b) Notwithstanding the provisions of G.S. 8-53 or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium that pertains to the admission, discharge, medication, treatment, medical condition, or

history of persons who are or have been patients of the facility being inspected unless that patient objects, in writing, to review of that patient's records. Physicians, psychologists, psychiatrists, nurses, and anyone else involved in giving treatment at or through a facility who may be interviewed by representatives of the Department may disclose to these representatives information related to an inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53 or any other rule of law; provided, however, that the patient has not made written objection to this disclosure. The facility, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the patient or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information is not disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning a facility without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered "public records" within the meaning of G.S. 132-1. Prior to releasing any information or allowing any inspections referred to in this section, the patient must be advised in writing by the facility that the patient has the right to object, in writing, to this release of information or review of the records and that by objecting, in writing, the patient may prohibit the inspection or release of the records. (2023-14, s. 2.2.)

§ 131E-153.7. Penalties.

A person who owns in whole or in part or operates an abortion clinic without a license is guilty of a Class 3 misdemeanor and upon conviction will be subject only to a fine of not more than fifty dollars (\$50.00) for the first offense and not more than five hundred dollars (\$500.00) for each subsequent offense. Each day of continuing violation after conviction is considered a separate offense. (2023-14, s. 2.2.)

§ 131E-153.8. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Department may, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an abortion clinic without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance, irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure. (2023-14, s. 2.2.)

§ 131E-154. Reserved for future codification purposes.

Part 5. Nursing Pool Licensure Act.

§ 131E-154.1. Title; purpose.

(a) This Part shall be known as "Nursing Pool Licensure Act".

(b) The purpose of this Part is to establish licensing requirements for nursing pools. (1989, c. 744, s. 1.)

§ 131E-154.2. Definitions.

The following definitions apply in this Part:

- (1) Commission. – The North Carolina Medical Care Commission.
- (2) Department. – The Department of Health and Human Services.
- (3) Health care facility. – A hospital; psychiatric facility; rehabilitation facility; long-term care facility; home health agency; intermediate care facility for individuals with intellectual disabilities; chemical dependency treatment facility; and ambulatory surgical facility.
- (4) Nursing pool. – Any person, firm, corporation, partnership, or association engaged for hire in the business of providing or procuring temporary employment in health care facilities for nursing personnel, including nurses, nursing assistants, nurses aides, and orderlies. "Nursing pool" does not include an individual who engages solely in providing the individual's own services on a temporary basis to health care facilities.
- (5) Trauma. – Acute physical injury to the human body that is judged, by the use of standardized field triage criteria (anatomic, physiologic, or mechanism of injury), to create a significant risk of mortality or major morbidity. (1989, c. 744, s. 1; 1993, c. 336, s. 2; 1997-443, s. 11A.118(a); 2019-76, s. 18.)

§ 131E-154.3. Licensing.

(a) No person shall operate or represent himself to the public as operating a nursing pool without obtaining a license from the Department.

(b) The Department shall provide applications for nursing pool licensure. Each application filed with the Department shall contain all information requested. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and with the rules adopted by the Commission. Each license shall be issued only for the premises and persons named, shall not be transferrable or assignable except with the written approval of the Department, and shall be posted in a conspicuous place on the licensed premises.

(c) The Department shall renew the license in accordance with this Part and with rules adopted pursuant to it.

(d) Nursing pools administered by 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 as a nursing pool under this subsection shall be subject to rules adopted pursuant to this Article. (1989, c. 744, s. 1.)

§ 131E-154.4. Rules and enforcement.

(a) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this Part. These rules shall include the following requirements:

- (1) The nursing pool shall document that each employee who provides care meets the minimum licensing, training, and continuing education standards for the position in which the employee will be working;
- (2) The nursing pool shall comply with all other pertinent regulations relating to

- the health and other qualifications of personnel;
- (3) The nursing pool shall carry general and professional liability insurance to insure against the loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence or malpractice in the provision of health care services by the nursing pool or its employees;
 - (4) The nursing pool shall have written administrative and personnel policies to govern the services that it provides. These policies shall include those concerning patient care, personnel, training and orientation, supervision, employee evaluation, and organizational structure; and
 - (5) Any other aspects of nursing pool services that may need to be regulated to protect the public.

(b) The Commission shall adopt no rules pertaining to the regulation of charges by the nursing pool or to wages paid by the nursing pool. (1989, c. 744, s. 1.)

§ 131E-154.5. Inspections.

The Department shall inspect all nursing pools that are subject to rules adopted pursuant to this Part in order to determine compliance with the provisions of this Part and with rules adopted pursuant to it. Inspections shall be conducted in accordance with rules adopted by the Commission. (1989, c. 744, s. 1.)

§ 131E-154.6. Adverse action on a license; appeal procedures.

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel, or amend a license when there has been a substantial failure to comply with the provisions of this Part or with the rules adopted pursuant to it.

(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases in which the Department has taken the action described in subsection (a) of this section. (1989, c. 744, s. 1.)

§ 131E-154.7. 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 nursing pool without a license or to restrain or prevent substantial noncompliance with this Part or the rules adopted pursuant to it.

(b) If any person hinders the proper performance of duty of the Department in carrying out the provisions of this Part, 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. (1989, c. 744, s. 1.)

§ 131E-154.8. Confidentiality.

(a) Notwithstanding G.S. 8-53 or any other law pertaining to confidentiality of communications between physician and patient, in the course of an inspection conducted pursuant to G.S. 131E-154.5:

- (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 nursing pool patient;

and

- (2) Any person involved in treating a patient at or through a nursing pool may disclose information to a Department representative unless the patient objects in writing to review of his records or disclosure of the information. A nursing pool 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 thus prohibit release of information or review of records pertaining to him.

A nursing pool, its employees, and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of the 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 nursing pool 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 in excess of five hundred dollars (\$500.00).

(c) All confidential or privileged information obtained under this section and the names of all persons providing this information are exempt from Chapter 132 of the General Statutes. (1989, c. 744, s. 1; 1993, c. 539, s. 963; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 131E-154.9. Reserved for future codification purposes.

§ 131E-154.10. Reserved for future codification purposes.

§ 131E-154.11. Reserved for future codification purposes.

Part 6. North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation.

§ 131E-154.12. Title; purpose.

(a) This Part shall be known as the "North Carolina New Organizational Vision Award (NC NOVA) Special Licensure Designation."

(b) The purpose of this Part is to establish special licensure designation requirements for nursing homes and home care agencies licensed pursuant to this Chapter and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes. Application for the Special Licensure Designation is voluntary. (2006-104, s. 1.)

§ 131E-154.13. Definitions.

The following definitions apply in this Part, unless otherwise specified:

- (1) Independent Review Organization. – The organization responsible for the application, review, and determination process for NC NOVA designation.

- (2) North Carolina New Organizational Vision Award (NC NOVA). – A special licensure designation for home care agencies and nursing homes licensed pursuant to this Chapter, and adult care homes licensed pursuant to Article 1 of Chapter 131D of the General Statutes, that have been determined through written and on-site review by an independent review organization to have met a comprehensive set of workplace related interventions intended to improve the recruitment and retention, quality, and job satisfaction of direct care staff and the care provided to long-term care clients and residents.
- (3) NC NOVA Partner Team. – The entity responsible for developing the criteria and protocols for the NC NOVA special licensure designation. The Partner Team is inclusive of representatives from the following organizations: Association for Home and Hospice Care of North Carolina, Direct Care Workers Association of North Carolina, Duke University Gerontological Nursing Program, Friends of Residents in Long Term Care, North Carolina Assisted Living Association, North Carolina Association of Long Term Care Facilities, LeadingAge North Carolina, North Carolina Department of Health and Human Services, North Carolina Foundation for Advanced Health Programs, North Carolina Health Care Facilities Association, The Carolinas Center for Medical Excellence, and the University of North Carolina at Chapel Hill – Institute on Aging.
- (4) NC NOVA Provider Information Manual. – The document developed by the NC NOVA Partner Team that specifies the scope of criteria for NC NOVA designation as well as information and procedures pertaining to the application, review, determination, and termination process. (2006-104, s. 1; 2015-264, s. 17.)

§ 131E-154.14. NC NOVA program established.

(a) The Department of Health and Human Services shall establish the NC NOVA program.

(b) The Department shall adopt rules to implement the NC NOVA program in accordance with the criteria and protocols established by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(c) Any information submitted by applicants or obtained by the independent review organization related to NC NOVA, as well as annual turnover data voluntarily submitted by home care agencies, adult care homes, and nursing facilities for the purposes of assessing statewide turnover trends, shall not be considered a public record under G.S. 132-1.

(d) Any licensed home care agency, adult care home, or nursing home that is determined not to have met the criteria for NC NOVA designation may reapply at intervals specified by the NC NOVA Partner Team and detailed in the NC NOVA Provider Information Manual.

(e) The Department of Health and Human Services, Division of Health Service Regulation, shall issue a NC NOVA special licensure designation document to any licensed home care agency, adult care home, or nursing home that is determined by the independent review organization to have met the criteria for NC NOVA designation. The special licensure designation document shall be in addition to the operating license issued by the Division.

(f) The Division of Health Service Regulation shall issue the NC NOVA special licensure document to successful applicants within 30 days of notification by the independent

review organization.

(g) The NC NOVA special licensure designation shall be in effect for a two-year period unless the provider has a change in ownership.

- (1) Upon a change in ownership, if the new owner wishes to continue the NC NOVA designation, the new owner must communicate the desire in writing to the independent review organization within 30 days of the effective date of the change of ownership and proceed with an expedited review in accordance with procedures detailed by the NC NOVA Partner Team and included in the NC NOVA Provider Information Manual.
 - a. If the new owner continues to meet the NC NOVA criteria, based upon the expedited review, the special licensure designation will remain in effect for the remainder of the two-year period.
 - b. If the new owner fails to meet NC NOVA criteria, the special designation document shall be immediately returned to the Division of Health Service Regulation. The new owner may reapply for NC NOVA designation under subsection (e) of this section.
- (2) Within 30 days of the effective date of the change of ownership, if the new owner fails to notify the independent review organization in writing of the desire to retain the special licensure designation by undergoing an expedited review, the designation will become null and void, and the special designation document must be immediately returned to the Division of Health Service Regulation. (2006-104, s. 1; 2007-182, s. 1.)