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SENATE BILL DRS35208-MR-104

Short Title: Prevent Unlicensed Mental Health Facilities. (Public)

Sponsors: Senators Batch, Chaudhuri, and Crawford (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROTECT NORTH CAROLINA CITIZENS FROM THE UNLICENSED
3 OPERATION OF MENTAL HEALTH FACILITIES OR PROGRAMS PROVIDING
4 SERVICES REQUIRING A LICENSE UNDER ARTICLE 2 OF CHAPTER 122C OF THE
5 GENERAL STATUTES.

6 Whereas, it is imperative that the North Carolina Department of Health and Human
7 Services protect individuals with a developmental disability or mental health or substance use
8 disorder diagnosis from illegal and unlicensed mental health programs that provide partial
9 hospitalization and intensive mental health therapies, or other mental health or developmental
10 disability services; Now, therefore,

11 The General Assembly of North Carolina enacts:

12 SECTION 1.(a) Article 2 of Chapter 122C of the General Statutes is amended by
13 adding a new section to read:

14 "**§ 122C-28.1. Facilities in violation of this Article.**

15 (a) If the Department has sent an order directing a facility not licensed under this Article
16 that is providing services requiring a license under this Article to cease and desist from engaging
17 in any act or practice in violation of this Article, then the Department shall conduct follow-up
18 visits, to the extent necessary, of those unlicensed programs to ensure compliance with any of
19 the following:

20 (1) The provision of services that require a license under this Article is no longer
21 available or conducted at the site.

22 (2) Application for, or receipt of, the required license under this Article has been
23 submitted or obtained by that facility.

24 (3) The receipt of certification by a nationally recognized agency, such as the
25 Joint Commission on Accreditation of Hospitals, that allows the facility to be
26 deemed licensed under this Article in accordance with G.S. 122C-22(b).

27 (4) The facility or program is no longer in operation.

28 (b) The Department shall collect information on the total amount of fines collected
29 pursuant to G.S. 122C-28."

30 SECTION 1.(b) G.S. 122C-23(e1) reads as rewritten:

31 "(e1) Except as provided in subsection (e2) of this section, the Secretary shall not (i) enroll
32 any as a new provider for Medicaid Home or Community Based services or other Medicaid
33 services, as defined in 42 C.F.R. 440.90, 42 C.F.R. 440.130(d), and 42 C.F.R. 440.180, in the
34 North Carolina Medicaid or North Carolina Health Choice programs, (ii) revalidate as an enrolled
35 provider in the Medicaid or NC Health Choice programs, or (iii) issue a license for a new facility
36 or a new service to any applicant meeting any of the following criteria:



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- 1 (1) The applicant was the owner, principal, or affiliate of a licensable facility
 2 under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 that had its
 3 license revoked until 60 months after the date of the revocation.
- 4 (2) The applicant is the owner, principal, or affiliate of a licensable facility that
 5 was assessed a penalty for a Type A or Type B violation under Article 3 of
 6 this Chapter, or any combination thereof, and any one of the following
 7 conditions exist:
- 8 a. A single violation has been assessed in the six months prior to the
 9 application.
- 10 b. Two violations have been assessed in the 18 months prior to the
 11 application and 18 months have not passed from the date of the most
 12 recent violation.
- 13 c. Three violations have been assessed in the 36 months prior to the
 14 application and 36 months have not passed from the date of the most
 15 recent violation.
- 16 d. Four or more violations have been assessed in the 60 months prior to
 17 application and 60 months have not passed from the date of the most
 18 recent violation.
- 19 (3) The applicant is the owner, principal, or affiliate of a licensable facility that
 20 had its license summarily suspended or downgraded to provisional status as a
 21 result of violations under G.S. 122C 24.1(a) until 60 months after the date of
 22 reinstatement or restoration of the license.
- 23 (4) The applicant is the owner, principal, or affiliate of a licensable facility that
 24 had its license summarily suspended or downgraded to provisional status as a
 25 result of violations under Article 1A of Chapter 131D until 60 months after
 26 the date of reinstatement or restoration of the license."

27 **SECTION 1.(c)** G.S. 122C-27 reads as rewritten:

28 "**§ 122C-27. Powers of the Secretary.**

29 The Secretary ~~shall~~shall have the power to do all of the following:

- 30 (1) Administer and enforce the provisions, rules, and decisions pursuant to this
 31 ~~Article;~~Article.
- 32 (2) Appoint hearing officers to conduct appeals under this ~~Article;~~Article.
- 33 (3) Prescribe by rule the contents of the application for licensure and
 34 ~~renewal;~~renewal.
- 35 (4) Inspect facilities and records of each facility to be licensed under this Article
 36 under the rules and decisions pursuant to this ~~Article;~~Article.
- 37 (5) Issue a license upon a finding that the applicant and facility comply with the
 38 provisions of this Article and the rules of the Commission and the
 39 ~~Secretary;~~Secretary.
- 40 (6) Define by rule procedures for submission of periodic reports by facilities
 41 licensed under this ~~Article;~~Article.
- 42 (7) Grant, deny, suspend, or revoke a license under this ~~Article;~~Article.
- 43 ~~(8)~~(8) Issue orders directing facilities not licensed under this Article that are
 44 providing services requiring a license under this Article to cease and desist
 45 from engaging in any act or practice in violation of the provisions of this
 46 Article.
- 47 ~~(8)(9)~~(9) In accordance with rules of the Commission, make final agency decisions for
 48 appeals from the denial, suspension, or revocation of a license in accordance
 49 with ~~G.S. 122C-24;~~ and G.S. 122C-24.

1 ~~(9)~~(10) In accordance with rules of the Commission, grant waiver for good cause of
2 any rules implementing this Article that do not affect the health, safety, or
3 welfare of individuals within a licensable facility."

4 **SECTION 1.(d)** This section is effective when it becomes law and shall apply to
5 cease and desist letters sent by the Department of Health and Human Services on or after that
6 date.

7 **SECTION 2.(a)** G.S. 122C-28 reads as rewritten:

8 "**§ 122C-28. Penalties.**

9 Operating a licensable facility without a license is a ~~Class 3 misdemeanor and is punishable~~
10 ~~only by a fine not to exceed fifty dollars (\$50.00), for the first offense and a fine, not to exceed~~
11 ~~five hundred dollars (\$500.00), for each subsequent offense. Each day's operation of a licensable~~
12 ~~facility without a license is a separate offense.~~Class H felony, including a fine of one thousand
13 dollars (\$1,000) per day that the facility is in operation in violation of this Article."

14 **SECTION 2.(b)** This act becomes effective December 1, 2021, and applies to
15 offenses committed on or after that date.

16 **SECTION 3.(a)** G.S. 122C-22 reads rewritten:

17 "**§ 122C-22. Exclusions from licensure; deemed status.**

18 (a) All of the following are excluded from the provisions of this Article and are not
19 required to obtain licensure under this Article:

20 (1) Physicians and psychologists engaged in private office ~~practice~~practice, so
21 long as that physician or psychologist does not receive reimbursement under
22 the Medicare program or the North Carolina Medicaid or the NC Health
23 Choice program.

24 (2) General hospitals licensed under Article 5 of Chapter 131E of the General
25 Statutes, that operate special units for ~~the mentally ill, developmentally~~
26 ~~disabled, or substance abusers.~~patients with a mental health disorder
27 diagnosis, one or more developmental disabilities, or a substance use disorder.

28 ...

29 (9) Twenty-four-hour nonprofit facilities established for the purposes of shelter
30 care and recovery from alcohol or other ~~drug addiction~~substance use disorder
31 through a 12-step, self-help, peer role modeling, and self-governance
32 approach.

33 ...

34 (b) The Commission may adopt rules establishing a procedure whereby a ~~licensable~~
35 facility that would otherwise require licensure under this Article that is certified by a nationally
36 recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed
37 licensed under this Article by the Secretary. Any facility licensed under the provisions of this
38 subsection shall continue to be subject to inspection by the Secretary. The Secretary shall
39 collaborate with relevant agencies to ensure that any facilities deemed licensed under this Article
40 maintain the required certification."

41 **SECTION 3.(b)** The Department of Health and Human Services, Division of Mental
42 Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall
43 establish a database or expand upon a currently existing database that makes publicly available
44 the status of any ongoing investigations of reported operation of a program or facility in violation
45 of Article 2 of Chapter 122C of the General Statutes. The database should include information
46 on any penalties imposed and collected. The database shall be available to the public and include
47 a searchable listing of all applicable facilities and programs with all of the following information:

48 (1) The facility or program name.

49 (2) The location, including street and mailing addresses, city, and county, for the
50 facility or program.

- 1 (3) The contact information for the owners, director, or other individual in charge
- 2 of the facility or program.
- 3 (4) The dates and types of visits conducted by DMH/DD/SAS or other division
- 4 of the Department of Health and Human Services.
- 5 (5) The amount of any fines imposed, and the amount actually collected.
- 6 (6) Any action taken under G.S. 122C-28.1 by DMH/DD/SAS or by a facility to
- 7 comply with Article 2 of Chapter 122C of the General Statutes.

8 **SECTION 3.(c)** The Department of Health and Human Services, Division of Mental
 9 Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall
 10 coordinate with the Department of Insurance to establish a toll-free number or website for
 11 individuals, providers, and insurers to use in verifying the operational and licensure status of a
 12 facility providing mental health, behavioral health, and substance use disorder services.

13 **SECTION 3.(d)** The Department of Health and Human Services, Division of Mental
 14 Health, Developmental Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall
 15 collaborate with community organizations, such as the National Alliance for Mental Illness
 16 (NAMI), for a public information campaign about the appropriate types of care for individuals
 17 with mental health disorders that, at a minimum, includes information on the importance of
 18 receiving care from a licensed facility or program with medical personnel licensed by the North
 19 Carolina Medical Board.

20 **SECTION 3.(e)** This section becomes effective January 1, 2022.

21 **SECTION 4.(a)** The title of Article 2 of Chapter 122C of the General Statutes reads
 22 as rewritten:

23 "Article 2.

24 "Licensure of Facilities for the Mentally Ill, the Developmentally Disabled, Individuals With
 25 Health Disorders, Developmental Disabilities, and Substance Abusers Use Disorders."

26 **SECTION 4.(b)** G.S. 122C-21 reads as rewritten:

27 "**§ 122C-21. Purpose.**

28 The purpose of this Article is to provide for licensure of facilities for the ~~mentally ill,~~
 29 ~~developmentally disabled,~~ individuals with mental health disorders, developmental disabilities,
 30 and substance abusers-use disorders by the development, establishment, and enforcement of basic
 31 rules ~~governing~~ governing both of the following:

- 32 (1) The provision of services to individuals who receive services from licensable
- 33 facilities as defined by this ~~Chapter,~~ Chapter.
- 34 (2) The construction, maintenance, and operation of these licensable facilities that
- 35 in the light of existing knowledge will ensure safe and adequate treatment of
- 36 these individuals. The Department shall ensure that licensable facilities are
- 37 inspected every two years to determine compliance with physical plant and
- 38 life-safety requirements."

39 **SECTION 5.** Except as otherwise provided, this act is effective when it becomes
 40 law.