

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS45238-MRa-91

Short Title: MH Lic. Fair Practice & Efficiency Standards. (Public)

Sponsors: Senators Krawiec, Burgin, and Corbin (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE REGULATORY CHANGES RELATED TO, AND TO CREATE
3 OVERSIGHT REQUIREMENTS FOR, THE MENTAL HEALTH LICENSURE AND
4 CERTIFICATION SECTION OF THE DIVISION OF HEALTH SERVICE REGULATION
5 WITHIN THE DEPARTMENT OF HEALTH AND HUMAN SERVICES.

6 Whereas, the Mental Health Licensure and Certification Section of the Division of
7 Health Service Regulation within the North Carolina Department of Health and Human Services
8 has a pivotal role in supporting access to behavioral health services to children and adults in
9 North Carolina; and

10 Whereas, there continues to be a growing need for behavioral health, intellectual and
11 developmental disabilities, and substance use disorder services in North Carolina; Now,
12 therefore,

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** The following regulatory changes shall be implemented by the
15 Department of Health and Human Services, Division of Health Service Regulation (DHSR), to
16 support and improve the provision of licensable services by mental health, intellectual and
17 developmental disabilities, and substance use disorder facilities:

- 18 (1) DHSR shall issue approval of licensure or provisional licensure when DHSR
19 is provided a staffing plan by the mental health, intellectual and
20 developmental disabilities, and substance use services (MH/IDD/SUS)
21 provider agency seeking licensure. This change will permit a MH/IDD/SUS
22 provider agency to meet all other licensure requirements to provide services
23 while staff is being hired.
24 (2) Any denial of the provisional licensure required by subdivision (1) of this
25 section shall be subject to the contested case provisions set forth in Chapter
26 150B of the General Statutes.

27 DHSR is granted the emergency rulemaking authority necessary to immediately
28 implement changes required by this section and shall involve MH/IDD/SUS provider agencies
29 in the rulemaking process for these rules. Emergency rules should be filed within 60 days of the
30 date that this act becomes law.

31 **SECTION 2.(a)** DHSR, in collaboration with MH/IDD/SUS provider associations,
32 shall establish a quality dashboard that addresses MH/IDD/SUS agency performance and
33 identifies trends and outcomes of DHSR reviews, including all penalties assessed by DHSR and
34 requests for corrective action made by DHSR. The following shall apply to the quality dashboard
35 required to be established by this section:



- 1 (1) The dashboard shall be published monthly within five calendar days of the
2 end of the month, posted by the tenth of each month on the DHSR website,
3 and distributed to interested parties, including statewide MH/IDD/SUS
4 provider associations.
- 5 (2) All of the following information shall be available on the dashboard:
 - 6 a. The number of MH/IDD/SUS facility licenses granted by licensure
7 type or licensure category, whichever shall apply.
 - 8 b. The timeliness of the granting of provisional and permanent licenses
9 by DHSR from date of submission to date of approval.
 - 10 c. Any identified trends regarding violations of review.
 - 11 d. The number of general citations issued requiring a corrective action
12 plan.
 - 13 e. The number of Type B violations cited.
 - 14 f. The number of Type A2 violations cited.
 - 15 g. The number of Type A1 violations cited.
 - 16 h. The number of corrective actions accepted and denied.
 - 17 i. The number of suspensions of admissions issued.
 - 18 j. The number of revocations issued.
 - 19 k. The number of summary suspensions issued.
 - 20 l. The number and amount of monetary penalties issued.
 - 21 m. The number of informal and formal appeals.
 - 22 n. The number of appeals supported or overturned by the Office of
23 Administrative Hearings (OAH). For any overturned causes, all results
24 shall be analyzed by DHSR.
 - 25 o. Other relevant information deemed necessary for improving the
26 quality and fairness of DHSR actions toward MH/IDD/SUS providers.
- 27 (3) DHSR shall submit a quarterly report to the Joint Legislative Oversight
28 Committee on Health and Human Services that provides the monthly
29 reporting of information contained on the dashboard required to be established
30 under this section and that outlines critical steps identified for improvements
31 in the MH/IDD/SUS licensure process.

32 **SECTION 2.(b)** DHSR shall review findings, trends, and actions of the office of
33 competent jurisdiction, the NC DHHS Hearing Office, and OAH as a component in the dashboard
34 required to be established under subsection (a) of this section. The following shall apply to this
35 review conducted by DHSR:

- 36 (1) DHSR shall convene an annual meeting with the stakeholders to discuss
37 actions taken by the agency within the quarter.
- 38 (2) Provider confidentiality shall be maintained at all times and no provider
39 agency shall be named in meetings.
- 40 (3) If at least twenty-five percent (25%) of MH/IDD/SUS cases related to DHSR
41 and MH/IDD/SUS providers filed in OAH are overturned within any quarter,
42 then all supervisors within the Mental Health Licensure and Certification
43 Section of DHSR shall receive additional training related to these findings and
44 trends and DHSR shall conduct a root cause analysis of the overturned cases.
45 DSHR shall identify strategies to address the issues found in the root cause
46 analysis, including remediation training and requiring staff to demonstrate a
47 competency in understanding the related rules and policies.

48 **SECTION 3.** DHSR shall make the following changes in order to permit
49 MH/IDD/SUS providers adequate notice of annual site visits, inspections, and provider reviews
50 and to provide transparency in the findings arising from those visits, inspections, and provider
51 reviews:

- 1 (1) In the event a complaint is filed against a MH/IDD/SUS provider and an
2 investigation is assigned, DHSR shall limit the focus of the investigation to
3 the issue identified in the complaint unless, during the investigation, the
4 surveyors visibly identify any health and safety issues not identified in the
5 complaint.
- 6 (2) DHSR shall limit their scope of any document request to the type of
7 documents required for the licensed service.
- 8 (3) DHSR shall issue to the provider a summary of all records and documentation
9 that will need to be made available for the visit, inspection, or provider review
10 in advance of initiating the visit, inspection, or provider review.
- 11 (4) DHSR shall include a summary to the provider of any concerns or any issues
12 regarding document reviews no later than the time of exit after a completed
13 visit, inspection, or provider review.
- 14 (5) A written report shall be provided within five business days of the visit,
15 inspection, or provider review and shall include notice of due process rights.
- 16 (6) In the event a notice of revocation or suspension of admissions is issued by
17 DHSR, in addition to, and without waiving, any other administrative or legal
18 rights, the provider may request a reconsideration review with the Department
19 of Health and Human Services' Hearing Office. The reconsideration review
20 shall occur within 10 days of the request for reconsideration review.
- 21 (7) DHSR shall adopt rules defining the following terms: serious physical harm,
22 neglect, exploitation, imminent harm, and substantial risk and scope. No other
23 definitions shall be used for the purpose of annual site visits, inspections,
24 provider reviews, or investigations.
- 25 (8) DHSR shall, in collaboration with providers, establish clear rules of
26 engagement and standard operating procedures for DHSR interviews with
27 clients and agency staff. These rules of MH/IDD/SUS provider engagement
28 and all standard operating procedures shall be posted for public comment.
- 29 (9) All staff conducting interviews with individuals served by the MH/IDD/SUS
30 provider shall be properly trained and certified in forensic interviewing
31 techniques, including, but not limited to, training on skills such as those
32 demonstrated by the Children's Advocacy Center when interviewing
33 individuals who are experiencing, or have experienced, trauma. On at least an
34 annual basis, DHSR staff conducting interviews shall be required to undergo
35 inter-rater reliability training by a neutral third-party entity.
- 36 (10) DHSR shall send a formal notice prior to individuals served by an
37 MH/IDD/SUS provider or MH/IDD/SUS provider agency staff selected to be
38 interviewed. This notice shall include the rights of the provider, the
39 individuals, and the staff participating in the interviews. In the event the
40 interview is scheduled due to a complaint investigation, appropriate notice
41 shall be given to the provider agency in order for clinical staff to prepare for
42 the interview and to assist in minimizing any potential trauma to clients or
43 staff.
- 44 (11) DHSR shall train all staff and providers on the requirements for interviews
45 and shall not change or alter the operating procedure in any manner. To the
46 extent possible, trainings shall occur in joint training sessions where both
47 MH/IDD/SUS providers and DHSR staff are in attendance.
- 48 (12) DHSR shall align all review processes to account for modern technology and
49 electronic health records. DHSR shall accept documentation presented
50 through the electronic health record during the visit, inspection, or provider
51 review, as well as throughout the disposition process and due process

1 proceedings. Documentation and audit logs utilizing electronic health records
2 may be presented as evidence of date/stamp of documentation presented.

- 3 (13) At no point may any ombudsman for the Medicaid program, including for a
4 prepaid health plan, serve as mediator between any licensed MH/IDD/SUS
5 facility and DHSR.

6 **SECTION 4.** DHSR shall make the following changes to create an interim step of
7 due process before proceeding to OAH, allowing for the addition of an informal process
8 involving individuals not involved in the underlying visit, inspection, or provider review and its
9 corresponding administrative action, resulting in considerable cost-savings in terms of staff time,
10 attorney fees, and other associated expenses related to formal litigation:

- 11 (1) Any notice of adverse action issued by DHSR to a provider shall include the
12 non-exclusive right to request reconsideration review with the Department of
13 Health and Human Services within 30 days of receipt of notice of the adverse
14 action.
15 (2) The assigned Hearing Officer shall conduct a reconsideration review hearing
16 as soon as is practicable but no later than 15 days after receipt of the
17 reconsideration request, unless DHSR and the provider requesting the
18 reconsideration review mutually agree to postponing the reconsideration
19 review.
20 (3) A provider may choose for the reconsideration review hearing to occur in
21 person, by telephone, or through the submission of documents and written
22 arguments.
23 (4) The assigned Hearing Officer shall issue a reconsideration review decision
24 within 30 days of the reconsideration review hearing. If no decision is issued
25 within 30 days of the hearing, then the reconsideration review decision
26 becomes the final agency decision and DHSR is bound by it.
27 (5) If the provider is dissatisfied with the reconsideration review decision, the
28 provider may file a petition for contested case hearing with OAH.

29 Further, DHSR shall amend its existing rules so that DHSR shall be responsible for
30 all legal fees and costs related to any proceedings if a provider agency contests a decision by
31 DHSR and is successful.

32 **SECTION 5.** The Department of Health and Human Services has the authority to
33 adopt or amend any rules necessary to implement the provisions of this act.

34 **SECTION 6.** There is appropriated from the General Fund to the Department of
35 Health and Human Services, Division of Health Service Regulation, the sum of one hundred
36 thousand dollars (\$100,000) in nonrecurring funds to assist in implementing the changes required
37 by this act.

38 **SECTION 7.** This act is effective October 1, 2023.