

GENERAL ASSEMBLY OF NORTH CAROLINA
1983 SESSION

CHAPTER 718
HOUSE BILL 733

AN ACT TO PROVIDE FOR THE LICENSING OF FACILITIES FOR THE
MENTALLY ILL, THE MENTALLY RETARDED AND SUBSTANCE
ABUSERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 122 of the General Statutes is amended by adding a new Article to read:

"Article 1A.

"Licensure of Facilities for the Mentally Ill, the Mentally Retarded and Substance Abusers.

"§ 122-23.1. **Purpose.** – The purpose of this Article is to provide for licensure of facilities for the mentally ill, mentally retarded and substance abusers by the development, establishment and enforcement of basic regulations governing:

- (1) the provision of services to individuals who receive services from facilities as defined by this Article; and
- (2) the construction, maintenance and operation of these facilities, which in the light of existing knowledge will ensure safe and adequate treatment of these individuals.

"§ 122-23.2. **Definitions.** – As used in this Article: (a) 'Area authority' means the governing unit authorized by the Commission for Mental Health, Mental Retardation and Substance Abuse Services and delegated the authority to serve as the comprehensive planning, budgeting, implementing, and monitoring group for community-based mental health, mental retardation, and substance abuse programs. An area authority is a local political subdivision of the State except that a single-county area authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

(b) 'Commission' means the Commission for Mental Health, Mental Retardation and Substance Abuse Services.

(c) 'Department' means the Department of Human Resources.

(d) 'Facility' means any person at one location whose primary purpose is to provide services for one or more minors or for two or more adults for the care, treatment, habilitation or rehabilitation of the mentally ill, the mentally retarded or substance abuser. No one receiving services from a facility shall be related to the operator. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 hours or more.

(e) 'Operator' means the individual who is responsible for the management of a facility.

(f) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency or area authority.

(g) 'Provisional license' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.

(h) 'Secretary' means the Secretary of the Department of Human Resources.

"§ 122-23.3. Exclusions from licensure; deemed status. – (a) The following shall be excluded from the provisions of this Article and shall not be required to obtain licensure under this Article:

- (1) Physicians and psychologists duly licensed under Chapter 90 of the General Statutes and engaged in private office practice;
- (2) General hospitals licensed under Chapter 131, Article 13A, of the General Statutes, which operate psychiatric services;
- (3) State and federally operated facilities;
- (4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;
- (5) Developmental child day-care centers licensed under Chapter 110, Article 7, of the General Statutes;
- (6) Persons subject to licensure under standards, rules and regulations of the Social Services Commission; and
- (7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services.

(b) If a facility is certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, then the Commission may by rule deem the facility licensed under this Article. Any facility licensed under deemed status shall continue to be subject to inspection by the Department.

"§ 122-23.4. Licensure. – (a) No person shall establish, maintain, or operate a facility for the mentally ill, mentally retarded or substance abusers without a current license issued by the Department.

(b) Each license shall be issued only for the premises named in the application and for the operator named in the application and shall not be transferable or assignable, except with prior written approval from the Department.

(c) Any person who intends to establish, maintain or operate a facility shall apply to the Department for a license. The Department shall prescribe by rule the contents of the application forms.

(d) The Department shall issue a license if it finds that the operator complies with this Article and the rules of the Commission and Department.

(e) Unless a license is provisional or has been suspended or revoked, it shall be valid for up to two years from the date of issue. Renewal of a regular license is contingent upon receipt of information required by the Department for renewal and continued compliance with this Article and the rules of the Commission and Department.

A provisional license shall be in force for a period not to exceed six months during which time the facility shall correct the noncompliance based on a plan submitted to and approved by the Department. The noncompliance shall not present an immediate threat to the health and safety of the individuals in the facility. A provisional license for an additional period of time to meet the noncompliance shall not be issued.

(f) Upon written application, the Department may for good cause waive any of the rules implementing this Article, provided those rules do not affect the health, safety, or welfare of the individuals within the facility. Decisions made pursuant to this subsection may be appealed to the Commission for a hearing in accordance with Chapter 150A of the General Statutes, the Administrative Procedure Act.

"§ 122-23.5. Adverse action on a license. – (a) The Department may deny, suspend, amend or revoke a license in any case where it finds that there has been a substantial failure to comply with any provision of this Article or any rule adopted thereunder. Actions under this section shall be in accordance with Department rules and Chapter 150A of the General Statutes, the Administrative Procedure Act.

(b) For each case, the Secretary or a designee shall appoint a hearing officer, who shall issue a proposal for decision in accordance with G.S. 150A-34. In addition to the parties to the hearing, the Commission or members designated by the Chairman shall receive a copy of the proposal for decision and shall be entitled to submit written or oral comments to the Department on the proposal for decision.

(c) Any applicant or licensee who is dissatisfied with the final agency decision of the Department as a result of this hearing may, within 30 days after receipt of a written copy of the final agency decision, request judicial review under Chapter 150A of the General Statutes.

"§ 122-23.6. Inspections; confidentiality. – (a) The Department shall make or cause to be made inspections that it may deem necessary, and facilities licensed under this Article shall at all times be subject to inspection by the Department.

(b) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under this section, Department representatives may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of any individual who is or has been a facility patient, resident or client and the personnel records of those individuals employed by the facility.

A facility, its employees and any other individual interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

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 facility without that individual's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. Any Department employee who willfully

discloses such information without appropriate authorization or court order shall be guilty of a misdemeanor and upon conviction fined at the discretion of the court but not to exceed five hundred dollars (\$500.00).

All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes.

(c) The Department shall adopt rules regarding inspections, which, at a minimum, shall provide for:

- (1) a general administrative schedule for inspections; and
- (2) an unscheduled inspection without notice, if there is a complaint alleging the violation of any licensing rule adopted under this Article.

"§ 122-23.7. Powers of the Commission. – In addition to other powers and duties prescribed by law, the Commission shall exercise the following powers and duties:

(a) Adopt, amend and repeal rules consistent with the laws of this State and the laws and regulations of the federal government to implement the provisions and purposes of this Article;

(b) Issue declaratory rulings as may be needed to implement the provisions and purposes of this Article;

(c) Develop procedures for appeals of decisions to approve or deny licensure under this Article; and

(d) Develop procedures for waiver of rules adopted under this Article.

"§ 122-23.8. Powers of the Department. – The Department shall exercise the following powers and duties:

(a) Administer and enforce the provisions, rules and decisions pursuant to this Article;

(b) Appoint hearing officers to conduct appeals under this Article;

(c) Prescribe by rule the contents of the application for licensure and renewal;

(d) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article;

(e) Issue a license upon a finding that the applicant and facility comply with the provisions of this Article and the rules of the Commission and Department;

(f) Define by rule procedures for submission of periodic reports by facilities licensed under this Article;

(g) Solicit, accept, hold and administer on behalf of the State any grants or bequests of money, securities or property to the Department for use in the administration of this Article;

(h) Grant, deny, suspend or revoke a license under this Article;

(i) Make final agency decisions for appeals from the denial, suspension or revocation of a license in accordance with G.S. 122-23.5;

(j) Grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a facility.

"§ 122-23.9. Penalties. – Any operator who establishes, conducts, manages or operates a facility without a license shall be guilty of a misdemeanor, and upon conviction shall be punishable by 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 a continuing violation after conviction shall be considered a separate offense.

"§ 122-23.10. 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 facility operating without a license or in a manner that threatens the health, safety or welfare of the individuals in the facility.

(b) If any individual shall interfere with the proper performance or duty of the Department in carrying out this Article, the Department may institute an action in the superior court of the county in which the interference occurred for injunctive relief against the continued interference, irrespective of all other remedies at law."

Sec. 2. G.S. 90-109 is rewritten to read:

"§ 90-109. Licensing required. – A facility for drug treatment as defined in G.S. 122-23.2 shall obtain the license required by Article 1A of Chapter 122 of the General Statutes permitting operation. Subject to rules governing the operation and licensing of these facilities set by the Commission for Mental Health, Mental Retardation, and Substance Abuse Services, the Department of Human Resources shall be responsible for issuing licenses. These licensing rules shall be consistent with the licensing rules adopted under Article 1A of Chapter 122 of the General Statutes."

Sec. 3. G.S. 122-35.51 and 122-35.52 are rewritten to read:

"§ 122-35.51. Licensing required. – Any facility as defined in G.S. 122-23.2 of an area mental health, mental retardation and substance abuse authority operated under the provisions of Chapter 122 of the General Statutes shall obtain a license as required by Article 1A of Chapter 122 of the General Statutes permitting operation. Subject to rules governing the operation and licensing of these facilities set by the Commission, the Department shall be responsible for issuing licenses. These licensing rules shall be consistent with the licensing rules adopted under Article 1A of Chapter 122 of the General Statutes.

"§ 122-35.52. Appeal from the denial or revocation of a license. – A facility as defined in G.S. 122-23.2 of an area mental health, mental retardation and substance abuse authority whose license is revoked or whose license application is denied by the Department shall first be given 60 day's written notice specifying the grounds for such revocation or denial. The area mental health, mental retardation, and substance abuse authority is entitled, by written request to the Department within the 60- day period of notification, to a hearing before the Secretary or a designee. The hearing shall be held in accordance with Article 1A of Chapter 122 of the General Statutes. Any area facility whose license is revoked shall be allowed to continue to operate until the appeal provided by this section is concluded."

Sec. 4. G.S. 122-72 is rewritten to read:

"§ 122-72. Licensing of private facilities for mentally ill, mentally retarded or inebriates required. – It shall be unlawful for any person or corporation to establish or maintain a private hospital, home, or school for the cure, treatment or rehabilitation of mentally ill persons, mentally retarded, or inebriates without having a license therefor

from the Department of Human Resources as required in Article 1A of Chapter 122 of the General Statutes."

Sec. 5. G.S. 143B-147(a)(2) is rewritten to read:

"(2) To adopt rules and regulations for the inspection, registration and licensing of facilities for the mentally ill, mentally retarded and substance abusers, under Article 1A of Chapter 122 of the General Statutes."

Sec. 6. Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 7. This act shall become effective July 1, 1984.

In the General Assembly read three times and ratified, this the 11th day of July, 1983.