

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 831
Committee Substitute Favorable 6/19/13
Committee Substitute #2 Favorable 7/23/13

Short Title: Ed. Services for Children in PRTFs.

(Public)

Sponsors:

Referred to:

April 11, 2013

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EDUCATION OF CHILDREN IN PRIVATE
3 PSYCHIATRIC RESIDENTIAL TREATMENT FACILITIES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. G.S. 108A-80 reads as rewritten:

6 "§ 108A-80. Confidentiality of records.

7 (a) Except as provided in subsections (b) below, and (b1) of this section, it shall be
8 unlawful for any person to obtain, disclose or use, or to authorize, permit, or acquiesce in the
9 use of any list of names or other information concerning persons applying for or receiving
10 public assistance or social services that may be directly or indirectly derived from the records,
11 files or communications of the Department or the county boards of social services, or county
12 departments of social services or acquired in the course of performing official duties except for
13 the purposes directly connected with the administration of the programs of public assistance
14 and social services in accordance with federal law, rules and regulations, and the rules of the
15 Social Services Commission or the Department.

16 (b) The Department shall furnish a copy of the recipient check register monthly to each
17 county auditor showing a complete list of all recipients of Work First Family Assistance in
18 Standard Program Counties and State-County Special Assistance, their addresses, and the
19 amounts of the monthly grants. An Electing County whose checks are not being issued by the
20 State shall furnish a copy of the recipient check register monthly to its county auditor showing
21 a complete list of all recipients of Work First Family Assistance in the Electing County, their
22 addresses, and the amounts of the monthly payments. These registers shall be public records
23 open to public inspection during the regular office hours of the county auditor, but the registers
24 or the information contained therein may not be used for any commercial or political purpose.
25 Any violation of this section shall constitute a Class 1 misdemeanor.

26 (b1) The Department may share confidential information concerning a person receiving
27 public assistance or social services with a local school administrative unit and with the
28 Department of Public Instruction. Disclosure is limited to that information necessary to
29 establish, coordinate, or maintain appropriate educational services for the person receiving
30 public assistance or social services.

31 (c) Any listing of recipients of benefits under any public assistance or social services
32 program compiled by or used for official purposes by a county board of social services or a
33 county department of social services shall not be used as a mailing list for political purposes.
34 This prohibition shall apply to any list of recipients of benefits of any federal, State, county or
35 mixed public assistance or social services program. Further, this prohibition shall apply to the



1 use of such listing by any person, organization, corporation, or business, including but not
2 limited to public officers or employees of federal, State, county, or other local governments, as
3 a mailing list for political purposes. Any violation of this section shall be punishable as a Class
4 1 misdemeanor.

5 (d) The Social Services Commission may adopt rules governing access to case files for
6 social services and public assistance programs, except the Medical Assistance Program. The
7 Secretary of the Department of Health and Human Services shall have the authority to adopt
8 rules governing access to medical assistance case files."

9 **SECTION 2.** G.S. 115C-12 is amended by adding a new subdivision to read:

10 "(41) Duty To Ensure Educational Services In Private Psychiatric Residential
11 Treatment Facilities (PRTFs). – The Board shall collaborate with the
12 Department of Health and Human Services to ensure that educational
13 services are provided to all students in PRTFs as required under Part 4 of
14 Article 6 of Chapter 122C of the General Statutes. The Board shall ensure
15 that all students in PRTFs receive the procedural safeguards provided in Part
16 1D of Article 9 of this Chapter, including students who do not meet the
17 definition of a "child with a disability" under G.S. 115C-106.3(1)."

18 **SECTION 3.** G.S. 122C-23.1 reads as rewritten:

19 **"§ 122C-23.1. Licensure of residential treatment facilities.**

20 (a) The General Assembly finds:

- 21 (1) That much of the care for residential treatment facility residents is paid by
22 the State and the counties;
- 23 (2) That the cost to the State for care for residents of residential treatment
24 facilities is substantial, and high vacancy rates in residential treatment
25 facilities further increase the cost of care;
- 26 (3) That the proliferation of residential treatment facilities results in costly
27 duplication and underuse of facilities and may result in lower quality
28 service;
- 29 (4) There is currently no ongoing relationship between some applicants for
30 licensure and local management entities (LMEs) that are responsible for the
31 placement of children and adults in residential treatment facilities; and
- 32 (5) That it is necessary to protect the general welfare and lives, health, and
33 property of the people of the State for the local management entity (LME) to
34 verify that additional beds are needed in the LME's catchment area before
35 new residential treatment facilities are licensed. This process is established
36 to ensure that unnecessary costs to the State do not result, residential
37 treatment facility beds are available where needed, and that individuals who
38 need care in residential treatment facilities may have access to quality care.

39 Based on these findings, the Department of Health and Human Services may license new
40 residential treatment facilities if the applicant for licensure submits with the application a letter
41 of support obtained from the local management entity in whose catchment area the facility will
42 be located. The letter of support shall be submitted to the Department of Health and Human
43 Services, Division of Health Service Regulation and Division of Mental Health, Developmental
44 Disabilities, and Substance Abuse Services, and shall specify the number of existing beds in the
45 same type of facility in the catchment area and the projected need for additional beds of the
46 same type of facility.

47 (b) All private psychiatric residential treatment facilities (PRTFs), as defined in
48 G.S. 122C-450(a)(3), that serve children eligible to attend the public schools in accordance
49 with G.S. 115C-366, including a student who has been suspended or expelled but otherwise
50 meets the requirements of that statute, shall have a facility-based school as a condition of
51 licensure. Subject to the time limits of subsection (c) of this section, the school shall meet all

1 the requirements of a qualified nonpublic school under Article 39 of Chapter 115C of the
2 General Statutes and of a Nonpublic Exceptional Children's Program as defined in
3 G.S. 122C-450(a)(2). The requirements of this subsection and subsection (c) of this section do
4 not apply to PRTFs that are approved charter schools pursuant to Part 6A of Article 16 of
5 Chapter 115C of the General Statutes.

6 (c) The Department of Health and Human Services may issue an initial license to a
7 PRTF that meets all licensure requirements except for the approval of the facility-based school
8 as a Nonpublic Exceptional Children's Program by the Department of Public Instruction. This
9 initial license is valid for a period of six months, during which time the PRTF shall obtain
10 approval of its facility-based school as a Nonpublic Exceptional Children's Program by the
11 Department of Public Instruction. If such approval is not obtained before the expiration of the
12 initial license, the Department of Health and Human Services shall review the PRTF's license
13 for appropriate action. If the PRTF obtains approval as a Nonpublic Exceptional Children's
14 Program, the Department of Health and Human Services may issue a license for the remainder
15 of the calendar year, and the facility is eligible for annual renewal thereafter.

16 (d) At any time upon receipt of a written notice from the Department of Public
17 Instruction that a PRTF has not provided or is not providing educational services, or is not
18 reasonably cooperating with the Department of Public Instruction to ensure those services are
19 provided and that compliance with State and federal law is assured, the Department of Health
20 and Human Services shall review the PRTF's license for appropriate action. The Department of
21 Health and Human Services may issue sanctions including (i) requiring a refund of all State
22 funds disbursed for the provision of educational services for the current fiscal year, (ii) barring
23 future funding for the provision of educational services for the current or following year, or (iii)
24 suspending or revoking the PRTF's license.

25 (e) As used in this ~~subsection~~,section, "residential treatment facility" means a
26 "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate
27 of Need requirements under Article 9 of Chapter 131E of the General Statutes."

28 **SECTION 4.** G.S. 122C-55 is amended by adding a new subsection to read:

29 "(g2) Whenever there is reason to believe that the client is eligible for educational
30 services through a governmental agency, a facility shall disclose client identifying information
31 to the Department of Public Instruction. Disclosure is limited to that information necessary to
32 establish, coordinate, or maintain educational services. The Department of Public Instruction
33 may further disclose client identifying information to a local school administrative unit as
34 necessary."

35 **SECTION 5.** Article 6 of Chapter 122C of the General Statutes is amended by
36 adding a new Part to read:

37 "Part 4. Educational Services in Private Psychiatric Residential Treatment Facilities.

38 "**§ 122C-450. Definitions.**

39 (a) The following definitions apply in this Part:

40 (1) "Educational services" means appropriate education-related assessment and
41 instruction provided to any child residing in a private psychiatric residential
42 treatment facility, including special education and related services to a child
43 with a disability as defined in G.S. 115C-106.3(1).

44 (2) "Nonpublic Exceptional Children's Program" means a facility-based school
45 that has registered with the Department of Administration, Division of
46 Nonpublic Schools, under Article 39 of Chapter 115C of the General
47 Statutes and has been approved by the Department of Public Instruction to
48 provide educational services as promulgated by the rules of the State Board
49 of Education.

50 (3) "Private psychiatric residential treatment facility" (PRTF) means a facility,
51 other than a hospital, that provides psychiatric and other behavioral health

1 services as described in Subpart D of C.F.R. Part 441 of Chapter 42 to
2 individuals under age 21 in an inpatient setting licensed by the Department
3 of Health and Human Services as provided under Chapter 122C of the
4 General Statutes. A PRTF does not include a State-operated facility.

5 **§ 122C-450.1. Eligibility and allocations.**

6 (a) A child who is receiving psychiatric and other behavioral health services in a PRTF
7 shall also receive educational services in accordance with federal and State law if the child is
8 eligible to enroll in public schools as provided in G.S. 115C-366, including a student who has
9 been suspended or expelled but otherwise meets the requirements of that statute. For a child
10 with a disability, as defined in G.S. 115C-106.3(1), who has been placed in a PRTF, all
11 educational services shall meet applicable standards as required under Article 9 of Chapter
12 115C of the General Statutes. A PRTF shall be subject to the jurisdiction of the Office of
13 Administrative Hearings for the resolution of any dispute arising under Part 1D of Article 9 of
14 Chapter 115C of the General Statutes, including for students who do not meet the definition of
15 a "child with a disability" under G.S. 115C-106.3(1).

16 (b) A PRTF shall be qualified to receive a funding allocation from the Department of
17 Health and Human Services to provide educational services if the following conditions are met:

- 18 (1) The PRTF is licensed by the Department of Health and Human Services
19 pursuant to Chapter 122C of the General Statutes and has a facility-based
20 school approved by the Department of Public Instruction as a Nonpublic
21 Exceptional Children's Program.
22 (2) The PRTF documents deviations from educational and other programmatic
23 requirements when it is medically necessary for a resident in accordance
24 with G.S. 122C-62(e).

25 (c) A PRTF that meets the qualification standards required in subsection (b) of this
26 section may enter into an educational services contract with a local school administrative unit
27 to assist in the delivery of educational services to the children in the PRTF. The contract shall
28 clearly define the education-related assessment, instruction, and legal responsibilities of both
29 parties engaging in the educational services contract. A PRTF entering into an educational
30 services contract with a local school administrative unit shall submit the educational services
31 contract to both the Department of Public Instruction and to the Department of Health and
32 Human Services for inclusion in any required reports to the General Assembly regarding the
33 provision of educational services to children in PRTFs.

34 (d) Funds to Be Held in Statewide Reserve. – Funds transferred to the Department of
35 Health and Human Services, Division of Mental Health, Developmental Disabilities, and
36 Substance Abuse Services (DMH/DD/SAS), for the purchase of educational services within the
37 PRTF shall not be allocated to LME/MCOs but shall be held in a statewide reserve at the
38 DMH/DD/SAS. The DMH/DD/SAS shall use the reserve funds to pay for educational services
39 authorized by the Department of Public Instruction and billed by the PRTFs in a process
40 established by the DMH/DD/SAS. The funds transferred to the DMH/DD/SAS pursuant to this
41 section shall be allocated to the PRTFs for educational services in a manner determined by the
42 Department of Health and Human Services and the Department of Public Instruction in a
43 Memorandum of Understanding or a Memorandum of Agreement. The Department of Health
44 and Human Services shall disburse for these purposes only those funds transferred from the
45 Department of Public Instruction.

46 (e) The Department of Health and Human Services shall cease disbursement of
47 educational funding to a PRTF upon receipt of a written notice from the Department of Public
48 Instruction that educational services have not been provided. Educational funding disbursement
49 shall be reinstated by the Department of Health and Human Services upon written notice from
50 the Department of Public Instruction that the PRTF is providing educational services.

1 (f) A PRTF that receives educational funding shall comply with all audit and
2 accounting policies applicable to other public and private entities receiving public funding.

3 **"§ 122C-450.2. Information sharing.**

4 (a) Within three business days of admitting a child into a PRTF, the admitting PRTF
5 shall notify (i) the Department of Public Instruction and (ii) the local school administrative unit
6 in which the child was last enrolled, if known. The PRTF shall request a copy of the child's
7 most current individualized education program and any other available documents related to the
8 provision of appropriate educational services from the local school administrative unit. To the
9 extent practicable, the local school administrative unit shall provide this information within
10 three business days of receiving a request made pursuant to this subsection. Upon withdrawal
11 or discharge of a child, the PRTF shall notify the Department of Public Instruction within three
12 business days of such withdrawal or discharge.

13 (b) The PRTF and the receiving local school administrative unit shall work together to
14 develop a transition plan, including a revised individualized education program, if necessary, to
15 be implemented upon discharge of the child residing in a PRTF.

16 **"§ 122C-450.3. Technical assistance and monitoring.**

17 The State Board of Education and Department of Public Instruction shall (i) offer training
18 to PRTFs on compliance with special education laws and regulations, (ii) maintain a current list
19 of names of children residing in PRTFs along with the name and contact information of the
20 PRTF in which each child resides, and (iii) develop and implement rules to monitor the
21 delivery of educational services in PRTFs, including a process to inform the Department of
22 Health and Human Services when services are not being provided. The Department of Health
23 and Human Services shall appropriately enforce applicable licensing requirements as provided
24 under G.S. 122C-23.1."

25 **SECTION 6.** As of the effective date of this act, PRTFs that are licensed to serve
26 children eligible to enroll in public schools as provided in G.S. 115C-366, including a student
27 who has been suspended or expelled but otherwise meets the requirements of that statute, shall
28 have six months after their next annual renewal to obtain approval of their facility-based school
29 by the Department of Public Instruction as a Nonpublic Exceptional Children's Program. If
30 such approval is not obtained before the expiration of the additional six months, the
31 Department of Health and Human Services shall review the PRTF's license for appropriate
32 action. This section does not apply to PRTFs that are approved charter schools pursuant to Part
33 6A of Article 16 of Chapter 115C of the General Statutes.

34 **SECTION 7.** The State Board of Education shall adopt emergency rules pursuant
35 to G.S. 150B-21.1A to monitor the delivery of educational services in PRTFs, including a
36 process to inform the Department of Health and Human Services when services are not being
37 provided.

38 **SECTION 8.** The Department of Health and Human Services and the Department
39 of Public Instruction, in collaboration with other interested agencies, shall submit a joint report
40 to the Joint Legislative Education Oversight Committee and to the Joint Legislative Oversight
41 Committee on Health and Human Services by November 1, 2014, and annually thereafter,
42 including (i) the annual number of children by age residing in a PRTF both with and without an
43 individualized education plan, (ii) the average length of stay of these children, (iii) the types of
44 educational services, including number of hours each type of service has been provided, (iv) the
45 costs and outcomes of providing educational services, and (v) recommendations for improving
46 the efficiency and effectiveness of delivering educational services to children residing in
47 PRTFs.

48 **SECTION 9.(a)** Notwithstanding any other law, within 30 days of passage of
49 Senate Bill 402, 2013 Regular Session, Appropriations Act of 2013, the State Board of
50 Education shall identify recurring budget reductions within funds appropriated to the
51 Department of Public Instruction or to State Aid for Public Schools in the amount of one

1 million six hundred thousand dollars (\$1,600,000) for the 2013-2014 fiscal year and three
2 million two hundred thousand dollars (\$3,200,000) for the 2014-2015 fiscal year to ensure the
3 provision of educational services as provided in this act.

4 **SECTION 9.(b)** The Department of Public Instruction shall transfer the funds
5 identified in subsection (a) of this section to the Department of Health and Human Services,
6 Division of Mental Health, Developmental Disabilities, and Substance Abuse Services
7 (DMH/DD/SAS), for the purchase of educational services within PRTFs as provided in this act.

8 **SECTION 10.** This act is effective when it becomes law. The Department of
9 Public Instruction shall process all applications submitted by PRTFs on or before September 1,
10 2013, for approval as a Nonpublic Exceptional Children's Program no later than December 1,
11 2013.