

Regular Session, 2013

HOUSE BILL NO. 281

BY REPRESENTATIVE SIMON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

HEALTH/DHH: Creates a single license for behavioral health services providers

1 AN ACT
2 To amend and reenact R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b), to enact Part IV-A
3 of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised
4 of R.S. 40:2151 through 2161, and to repeal R.S. 28:567 through 573 and Part XIII
5 of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S.
6 40:1058.1 through 1058.10, relative to behavioral health services providers; to
7 provide for definitions; to provide for applicability; to establish a behavioral health
8 services providers license; to provide rulemaking authority; to provide for license
9 issuance and renewal; to require a licensing fee; to prohibit operating without a
10 license; to provide for penalties and remedies; to provide for opioid treatment
11 programs; to provide for right of inspection; to provide for drug-free zones; to repeal
12 provisions relative to the licensing of mental health clinics; to repeal provisions
13 relative to the licensing of substance abuse/addiction treatment facilities; to provide
14 for effective dates; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b) are hereby amended and
17 reenacted and Part IV-A of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950,
18 comprised of R.S. 40:2151 through 2161, is hereby enacted to read as follows:

1 §2006. Fees; licenses; penalties

2 A.

3 * * *

4 (2) This Subsection shall apply to any licensed:

5 * * *

6 (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
7 provider.

8 * * *

9 B.

10 * * *

11 (2) This Subsection shall apply to any licensed:

12 * * *

13 (e) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
14 provider.

15 * * *

16 E.

17 * * *

18 (2) This Subsection shall apply to any licensed:

19 * * *

20 (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
21 provider.

22 * * *

23 PART IV-A. LICENSING OF BEHAVIORAL HEALTH SERVICES PROVIDERS

24 §2151. Short title

25 This Part may be cited as the "Behavioral Health Services Provider Licensing
26 Law".

27 §2152. Purpose

28 The purpose of this Part is to authorize the Department of Health and
29 Hospitals to promulgate and publish rules and regulations to provide for integrated

1 behavioral health services under one license, to provide for the health, safety, and
2 welfare of persons receiving behavioral health services, and to provide for the safe
3 operation and maintenance of providers and facilities providing such care.

4 §2153. Definitions

5 For the purposes of this Part, and subject to the provisions of R.S. 40:2154,
6 unless the context otherwise clearly indicates, the following terms shall have the
7 following meanings:

8 (1) "Behavioral health services" means mental health services, substance
9 abuse/addiction treatment services, or a combination of such services, for adults and
10 children. Behavioral health services may be provided in a residential setting, in a
11 clinic setting on an outpatient basis, or in a home or community setting.

12 (2) "Behavioral health services provider" means a facility, agency,
13 institution, person, society, corporation, partnership, unincorporated association,
14 group, or other legal entity that provides behavioral health services and that presents
15 itself to the public as a provider of behavioral health services.

16 (3) "Client" means any person who has been accepted for treatment or
17 services, including rehabilitation services, furnished by a provider licensed pursuant
18 to this Part.

19 (4) "Department" means the Department of Health and Hospitals or any
20 office or agency thereof designated by the secretary to administer the provisions of
21 this Part.

22 (5) "Financial viability" means the provider or facility seeking licensure is
23 able to provide verification and continuous maintenance of all of the following:

24 (a) A line of credit issued from a federally insured, licensed lending
25 institution in the amount of at least fifty thousand dollars.

26 (b) General and professional liability insurance of at least five hundred
27 thousand dollars.

28 (c) Workers' compensation insurance.

1 (6) "License" means a license issued by the department to a behavioral
2 health service provider.

3 (7) "Licensed Mental Health Professional (LMHP)" means an individual
4 who is currently licensed and in good standing in the state of Louisiana to practice
5 within the scope of all applicable state laws, practice acts, and the individual's
6 professional license, as one of the following:

7 (a) Medical psychologist.

8 (b) Licensed psychologist.

9 (c) Licensed clinical social worker (LCSW).

10 (d) Licensed professional counselor (LPC).

11 (e) Licensed marriage and family therapist (LMFT).

12 (f) Licensed addiction counselor (LAC).

13 (g) Licensed Advance Practice Registered Nurse (APRN).

14 (h) Licensed rehabilitation counselor (LRC).

15 (8) "Mental health service" means a service related to the screening,
16 diagnosis, management, or treatment of a mental disorder, mental illness, or other
17 psychological or psychiatric condition or problem.

18 (9) "Outpatient services" means behavioral health services offered in an
19 accessible nonresidential setting to clients whose physical and emotional status
20 allows them to function in their usual environment.

21 (10) "Physician" means an individual who is currently licensed and in good
22 standing in the state of Louisiana to practice medicine in Louisiana and who is acting
23 within the scope of all applicable state laws and the individual's professional license.

24 (11) "Physician assistant" means an individual who is currently approved and
25 licensed by and in good standing with the Louisiana State Board of Medical
26 Examiners to perform medical services under the supervision of a physician or group
27 of physicians who are licensed by and registered with the Louisiana State Board of
28 Medical Examiners to supervise a physician assistant, and who is acting within the
29 scope of all applicable state laws and the individual's professional license.

1 (12) "Secretary" means the secretary of the Department of Health and
2 Hospitals or his designee.

3 (13) "Standards" means policies, procedures, rules, and other guidelines or
4 standards of current practice contained in this Part, in addition to those rules and
5 standards promulgated by the department for the licensing and operation of
6 behavioral health service providers.

7 (14) "Substance abuse/addiction treatment service" means a service related
8 to the screening, diagnosis, management, or treatment for the abuse of or addiction
9 to controlled dangerous substances, drugs or inhalants, alcohol, problem gambling,
10 or a combination thereof.

11 §2154. Applicability

12 The provisions of this Part shall not apply to the licensing of any of the
13 following facilities or persons and shall not be construed as requiring any of the
14 following facilities or persons to seek licensure as a behavioral health service
15 provider:

16 (1) Hospitals licensed under R.S. 40:2100 et seq.

17 (2) Crisis receiving centers licensed under R.S. 40:2180.11 et seq.

18 (3) Nursing homes licensed under R.S. 40:2009.3 et seq.

19 (4) Psychiatric residential treatment facilities or therapeutic group homes
20 licensed under R.S. 40:2009.

21 (5) Facilities or services operated by the federal government.

22 (6) Federally qualified health care centers certified by the federal
23 government.

24 (7) Community mental health centers certified by the federal government.

25 (8) Home- and community-based service providers licensed under R.S.
26 40:2120.1 et seq.

27 (9) An individual Licensed Mental Health Professional (LMHP), whether
28 incorporated or unincorporated, or a group practice of LMHPs, providing services

1 under the auspices of and pursuant to the scope of the individual's license or group's
2 licenses.

3 (10) An individual licensed physician, or a group of licensed physicians,
4 providing services under the auspices of and pursuant to the scope of the individual's
5 license or group's licenses.

6 (11) An individual licensed physician assistant, or a group practice of
7 licensed physician assistants, providing services under the auspices of and pursuant
8 to the scope of the individual's license or group's licenses.

9 (12) School-based health clinics/centers that are certified by the Department
10 of Health and Hospitals, office of public health, and enrolled in the Louisiana
11 Medicaid Program.

12 (13) A health care provider or entity solely providing case management or
13 peer support services, or a combination thereof.

14 (14) A health care provider that meets all of the following criteria:

15 (a) Was an accredited mental health rehabilitation provider enrolled in the
16 Louisiana Medicaid Program as of February 28, 2012.

17 (b) Was enrolled with the statewide management organization for the
18 Louisiana Behavioral Health Partnership as of March 1, 2012.

19 (c) Maintains continuous, uninterrupted accreditation through an approved
20 accreditation organization.

21 (d) Maintains continuous, uninterrupted enrollment with the statewide
22 management organization for the Louisiana Behavioral Health Partnership.

23 (15) An individual licensed advanced practice registered nurse, or a group
24 practice of licensed advanced practice registered nurses, providing services under the
25 auspices of and pursuant to the scope of the individual's license or group's licenses.

26 (16) Rural health clinics licensed under R.S. 40:2197.

27 (17) Facilities or services operated by the Department of Public Safety and
28 Corrections, corrections services.

1 §2155. Licensure of behavioral health services providers

2 A. All behavioral health services providers shall be licensed. No facility,
3 agency, institution, person, society, corporation, partnership, unincorporated
4 association, group, or other legal entity providing behavioral health services may be
5 established, operated, or reimbursed under the Medicaid program unless licensed as
6 a behavioral health services provider to perform such care by the department.

7 B. A license issued to a behavioral health services provider shall be valid for
8 only one geographic location and shall be issued only for the person and premises
9 named in the license application.

10 C. A license pursuant to this Part shall be valid for twelve months, beginning
11 the month of issuance, unless revoked or otherwise suspended prior to that date.

12 D. A license issued pursuant to this Part shall be on a form prescribed by the
13 department.

14 E. A license pursuant to this Part shall not be transferrable or assignable.

15 F. A license issued to a behavioral health service provider shall be posted in
16 a conspicuous place on the licensed premises.

17 G. A license issued to a behavioral health services provider shall list the
18 types or modules of behavioral health services that the provider is licensed to
19 provide.

20 §2156. Rules and regulations; licensing standards; fees

21 A. The department shall promulgate and publish rules, regulations, and
22 licensing standards, in accordance with the Administrative Procedure Act, to provide
23 for the licensure of behavioral health services providers, to provide for the health,
24 safety, and welfare of persons receiving care and services from providers, and to
25 provide for the safe operation and maintenance of providers. The rules, regulations,
26 and licensing standards shall become effective upon approval of the secretary of the
27 department in accordance with the Administrative Procedure Act. The rules,
28 regulations, and licensing standards shall have the effect of law.

1 B. The department shall prescribe, promulgate, and publish rules,
2 regulations, and licensing standards. The rules, regulations, and licensing standards
3 shall include but are not limited to the following:

4 (1) Licensure application and renewal application forms, procedures, and
5 requirements.

6 (2) Operational and personnel requirements.

7 (3) Practice standards to assure quality of care.

8 (4) Practice standards to assure the health, safety, welfare, and comfort of
9 persons receiving care and services.

10 (5) Confidentiality of clients' records.

11 (6) Treatment priorities, as well as residential and outpatient criteria.

12 (7) Criteria and protocols to assure uniform and quality assessment,
13 diagnosis, evaluation, and referral to appropriate level of care.

14 (8) Survey and complaint investigations, including investigations into
15 allegations that a provider is operating without a license.

16 (9) Initial and annual renewal of license, including the requirement of
17 providing verification and continuous maintenance of financial viability for all
18 behavioral health services providers other than those owned by governmental
19 entities.

20 (10) Provisional licenses.

21 (11) Denial, revocation, suspension, and nonrenewal of licenses, and the
22 appeals therefrom.

23 (12) Planning, construction, and design of the facility or provider to ensure
24 the health, safety, welfare, and comfort of persons receiving care and services.

25 (13) Modules of behavioral health services providers with varying levels or
26 types of services. The modules for behavioral health services providers shall
27 include at a minimum:

28 (a) Mental Health Services Module.

29 (b) Substance Abuse/Addiction Treatment Module.

1 (14) Requirements for offsite or branch locations.

2 (15) Other regulations or standards as will ensure proper care and treatment
3 of persons receiving care and services, including provisions relative to civil
4 monetary penalties, as may be deemed necessary for an effective administration of
5 this Part.

6 C. The department shall have the authority to monitor, survey, and regulate
7 mental health clinics and substance abuse/addiction treatment facilities under the
8 existing licensing regulations for the programs until the department publishes
9 minimum licensing standards for behavioral health services providers and the time
10 for all existing licensed mental health clinics and substance abuse/addiction
11 treatment facilities to apply for the behavioral health services provider license has
12 expired.

13 §2157. License issuance; application; onsite inspection

14 A. Each application for licensure of a behavioral health services provider
15 shall be submitted to the department on forms prescribed by the department and shall
16 contain such information as the department may require. Additional information
17 required by the department shall be provided by the applicant as requested.

18 B. Each application for licensure and each license renewal application shall
19 be accompanied by a nonrefundable license fee in the amount required pursuant to
20 R.S. 40:2006.

21 C. Following receipt of the completed initial licensing application and
22 licensing fee, the department shall perform an onsite survey and inspection. If, after
23 the onsite survey and inspection, the department finds that the provider meets the
24 requirements established under this Part and under the licensing standards adopted
25 pursuant to this Part, a license shall be issued.

26 D. As a condition for renewal of license, the licensee shall submit to the
27 department a completed annual renewal application on the forms prescribed by the
28 department, which shall contain all information required by the department.
29 Additionally, the annual renewal licensing fee shall be submitted with the annual

1 renewal application. Upon receipt of the completed annual renewal application and
2 the annual renewal licensing fee, the department shall determine if the facility
3 continues to meet the requirements established under this Part and under the
4 licensing standards adopted pursuant to this Part. The department may perform an
5 onsite survey and inspection upon annual renewal. If the provider continues to meet
6 the requirements established under this Part and under the licensing standards
7 adopted pursuant to this Part, a license shall be issued which shall be valid for up to
8 one year, unless otherwise revoked or suspended.

9 E. The department may perform an onsite inspection at reasonable times as
10 necessary to ensure compliance with this Part.

11 §2158. Operation without license; penalty

12 A. A behavioral health services provider shall not operate without a license
13 issued by the department. Any provider or facility operating without a license shall
14 be guilty of a misdemeanor and upon conviction shall be fined no less than two
15 hundred fifty dollars nor more than one thousand dollars. Each day of violation shall
16 constitute a separate offense. It shall be the responsibility of the department to
17 inform the appropriate district attorney of the alleged violation to assure
18 enforcement.

19 B. If a behavioral health services provider is operating without a license
20 issued by the department, the department shall have the authority to issue an
21 immediate cease and desist order to that provider. Any such provider receiving such
22 a cease and desist order from the department shall immediately cease operations until
23 such time as that provider is issued a license by the department.

24 C. The department shall seek an injunction in the Nineteenth Judicial District
25 Court against any provider who receives a cease and desist order from the
26 department under Subsection B of this Section and who does not cease operations
27 immediately. Any provider against whom an injunction is granted shall be liable to
28 the department for attorney fees, costs, and damages.

1 §2159. Opioid treatment programs

2 The department shall not license any opioid treatment programs under the
3 behavioral health services provider license unless the department, in its discretion,
4 determines that there is a need for another opioid treatment program in a certain
5 geographic location. The department has promulgated and adopted rules and
6 regulations in accordance with the Administrative Procedure Act to provide for the
7 criteria and processes for determining whether such a need exists and the procedures
8 for selecting an opioid treatment program to be licensed once a need has been
9 determined.

10 §2160. Right of inspection by department; records; reports

11 A. Every behavioral health services provider that has applied for a license
12 or that is licensed pursuant to this Part shall be open at all reasonable times for
13 inspection by the department, the state fire marshal, municipal boards of health, and
14 any other authorized governmental entity.

15 B. Every licensee shall keep all records and make all reports as the
16 department shall prescribe, and all records shall be open to inspection by the
17 department or other authorized governmental entity.

18 §2161. Drug free zone; notice, signs

19 A. A drug free zone is an area inclusive of any property used as a behavioral
20 health services provider that has a substance abuse/addiction treatment module, or
21 within two thousand feet of such property.

22 B. The local governing authority which has jurisdiction over zoning matters
23 in which each drug free zone is located shall publish a map clearly indicating the
24 boundaries of each drug free zone in accordance with the specifications in
25 Subsection A of this Section. The drug free zone map shall be made on an official
26 public document and placed with the clerk of court for the parish or parishes in
27 which the drug free zone is located.

28 C.(1) The secretary of the Department of Health and Hospitals shall develop
29 a method by which to mark drug free zones, including the use of signs or other

1 marking suitable to the situation. Signs or other markings shall be located in a
2 visible manner on or near each behavioral health services provider that has a
3 substance abuse/addiction treatment module, indicating that the area is a drug free
4 zone, that the zone extends for a distance of two thousand feet, and that a felony
5 violation of the Uniform Controlled Dangerous Substances Law will subject the
6 offender to severe penalties under law. The posting required in this Subsection is
7 the responsibility and at the expense of the licensed provider.

8 (2) The Department of Public Safety and Corrections shall coordinate and
9 provide rules for the establishment of toll free telephone numbers for use in
10 submitting anonymous information regarding drug activity to local law enforcement
11 agencies. The telephone numbers shall be displayed on the drug free zone signs that
12 shall be manufactured in correctional institutions subject to the office of corrections
13 in the Department of Public Safety and Corrections.

14 D.(1) It shall be unlawful for any person to cover, remove, deface, alter, or
15 destroy any sign or other marking identifying a drug free zone as provided in this
16 Section.

17 (2) Any violation of this Subsection shall be punishable by a fine of not more
18 than one thousand dollars or by a jail sentence of not more than six months, or both.

19 Section 2. R.S. 28:567 through 573 and Part XIII of Chapter 4 of Title 40 of the
20 Louisiana Revised Statutes of 1950, comprised of R.S. 40:1058.1 through 1058.10, are
21 hereby repealed in their entirety.

22 Section 3. The provisions of R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b) as
23 enacted under the provisions of this Act and Section 2 of this Act shall become effective
24 upon promulgation and publication by the Department of Health and Hospitals of the final
25 rules for the Behavioral Health Services Provider license.

26 Section 4. The provisions of R.S. 40:2151 through 2161 as enacted under the
27 provisions of this Act and Sections 3 and 4 of this Act shall become effective upon signature
28 by the governor or, if not signed by the governor, upon expiration of the time for bills to
29 become law without signature by the governor, as provided by Article III, Section 18 of the

- 1 Constitution of Louisiana. If vetoed by the governor and subsequently approved by the
2 legislature, this Act shall become effective on the day following such approval.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Simon

HB No. 281

Abstract: Creates a single license for behavioral health services providers.

Proposed law defines "behavioral health services", "behavioral health services provider", "client", "department", "financial viability", "license", "Licensed Mental Health Professional (LMHP)", "mental health service", "outpatient services", "physician", "physician assistant", "secretary", "standards", and "substance abuse/addiction treatment service".

Proposed law establishes the behavioral health services provider license for providers of mental health services, substance abuse/addiction treatment services, or a combination of such services.

Proposed law requires all behavioral health services providers to be licensed.

Proposed law requires the Dept. of Health and Hospitals (DHH) to promulgate and publish rules, regulations, and licensing standards to provide for the licensure of behavioral health services providers, to provide for the health, safety, and welfare of persons receiving care and services from providers, and to provide for the safe operation and maintenance of providers.

Proposed law sets forth the procedures for application for licensure, the issuance of the license including onsite inspections, and the renewal of licenses.

Proposed law prohibits a behavioral health services provider from operating without a license issued by DHH, authorizes DHH to seek an injunction, and establishes criminal penalties.

Proposed law prohibits DHH from licensing any opioid treatment programs under the behavioral health services provider license unless DHH, in its discretion, determines that there is a need for another opioid treatment program in a certain geographic location.

Proposed law requires every behavioral health services provider which has applied for a license or which is licensed to be open at all reasonable times for inspection by DHH, the state fire marshal, municipal boards of health, and any other authorized governmental entity.

Proposed law defines a drug free zone as an area inclusive of any property used as a behavioral health services provider which has a substance abuse/addiction treatment module, or within 2,000 feet of the property and requires visible signs or other markings to indicate the drug free zone. Proposed law prohibits a person from covering, removing, defacing, altering, or destroying any sign or other marking identifying a drug free zone and provides that any violation shall be punishable by a fine of not more than \$1,000 or by a jail sentence of not more than six months, or both.

With respect to licensing fees, proposed law changes the licensing category for "substance abuse/addiction treatment facility" used in present law to "behavioral health services provider".

Present law (R.S. 28:567-573) establishes licensing criteria and procedures for the licensing of mental health clinics.

Proposed law repeals present law.

Present law (R.S. 40:1058.1-1058.10) establishes licensing criteria and procedures for the licensing of substance abuse/addiction treatment facilities.

Proposed law repeals present law.

Effective upon signature of governor or lapse of time for gubernatorial action. However, the repeal of present law and the change in terms with respect to licensing fees shall become effective upon promulgation and publication by DHH of the final rules for the Behavioral Health Services Provider license.

(Amends R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b); Adds R.S. 40:2151-2161; Repeals R.S. 28:567-573 and R.S. 40:1058.1-1058.10)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Health and Welfare to the original bill.

1. Clarified that the definitions contained in proposed law shall be construed relative to the provisions of applicability of proposed law.
2. Changed the definition of licensed mental health professional to an individual who is currently licensed and in good standing in the state of La. to practice within the scope of all applicable state laws, practice acts, and the individual's professional license.
3. Clarified that the provisions of proposed law do not apply to the licensing of any of the enumerated facilities or persons, and shall not be construed as requiring any of the enumerated facilities or persons to seek licensure as a behavioral health service provider.
4. Clarified that a licensed mental health professional is exempt from provisions of proposed law whether incorporated or unincorporated.
5. Added an exemption for the following persons and facilities: an individual licensed advanced practice registered nurse, or a group practice of licensed advanced practice registered nurses, providing services under the auspices and pursuant to the scope of the individual's license or group's licenses; licensed rural health clinics; and facilities or services operated by the Dept. of Public Safety and Corrections, corrections services.

House Floor Amendments to the engrossed bill.

1. Added licensed rehabilitation counselor to the definition of "licensed mental health professional".
2. Made technical changes.