

Regular Session, 2013

ACT No. 308

HOUSE BILL NO. 281

BY REPRESENTATIVE SIMON

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

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AN ACT

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

Be it enacted by the Legislature of Louisiana:

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

§2006. Fees; licenses; penalties

A.

* * *

(2) This Subsection shall apply to any licensed:

* * *

1 (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
2 provider.

3 * * *

4 B.

5 * * *

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

7 * * *

8 (e) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
9 provider.

10 * * *

11 E.

12 * * *

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

14 * * *

15 (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services
16 provider.

17 * * *

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

19 §2151. Short title

20 This Part may be cited as the "Behavioral Health Services Provider Licensing
21 Law".

22 §2152. Purpose

23 The purpose of this Part is to authorize the Department of Health and
24 Hospitals to promulgate and publish rules and regulations to provide for integrated
25 behavioral health services under one license, to provide for the health, safety, and
26 welfare of persons receiving behavioral health services, and to provide for the safe
27 operation and maintenance of providers and facilities providing such care.

1 §2153. Definitions

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

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

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

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

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

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

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

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

25 (c) Workers' compensation insurance.

26 (6) "License" means a license issued by the department to a behavioral
27 health services provider.

28 (7) "Licensed Mental Health Professional (LMHP)" means an individual
29 who is currently licensed and in good standing in the state of Louisiana to practice

1 within the scope of all applicable state laws, practice acts, and the individual's
 2 professional license, as one of the following:

- 3 (a) Medical psychologist.
- 4 (b) Licensed psychologist.
- 5 (c) Licensed clinical social worker (LCSW).
- 6 (d) Licensed professional counselor (LPC).
- 7 (e) Licensed marriage and family therapist (LMFT).
- 8 (f) Licensed addiction counselor (LAC).
- 9 (g) Licensed Advanced Practice Registered Nurse (APRN).
- 10 (h) Licensed rehabilitation counselor (LRC).

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

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

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

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

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

28 (13) "Standards" means policies, procedures, rules, and other guidelines or
 29 standards of current practice contained in this Part, in addition to those rules and

1 standards promulgated by the department for the licensing and operation of
2 behavioral health service providers.

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

7 §2154. Applicability

8 The provisions of this Part shall not apply to the licensing of any of the
9 following facilities or persons and shall not be construed as requiring any of the
10 following facilities or persons to seek licensure as a behavioral health services
11 provider:

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

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

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

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

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

18 (6) Federally qualified health care centers certified by the federal
19 government.

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

21 (8) Home- and community-based service providers licensed under R.S.
22 40:2120.1 et seq.

23 (9) An individual Licensed Mental Health Professional (LMHP), whether
24 incorporated or unincorporated, or a group practice of LMHPs, providing services
25 under the auspices of and pursuant to the scope of the individual's license or group's
26 licenses.

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

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

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

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

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

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

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

14 (c) Maintains continuous, uninterrupted accreditation through an approved
15 accreditation organization.

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

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

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

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

24 §2155. Licensure of behavioral health services providers

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

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

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

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

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

9 F. A license issued to a behavioral health services provider shall be posted
10 in a conspicuous place on the licensed premises.

11 G. A license issued to a behavioral health services provider shall list the
12 types or modules of behavioral health services that the provider is licensed to
13 provide.

14 §2156. Rules and regulations; licensing standards; fees

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

23 B. The department shall prescribe, promulgate, and publish rules,
24 regulations, and licensing standards. The rules, regulations, and licensing standards
25 shall include but are not limited to the following:

26 (1) Licensure application and renewal application forms, procedures, and
27 requirements.

28 (2) Operational and personnel requirements.

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

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

3 (5) Confidentiality of clients' records.

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

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

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

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

13 (10) Provisional licenses.

14 (11) Denial, revocation, suspension, and nonrenewal of licenses, and the
 15 appeals therefrom.

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

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

21 (a) Mental Health Services Module.

22 (b) Substance Abuse/Addiction Treatment Module.

23 (14) Requirements for offsite or branch locations.

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

28 C. The department shall have the authority to monitor, survey, and regulate
 29 mental health clinics and substance abuse/addiction treatment facilities under the
 30 existing licensing regulations for the programs until the department publishes

1 minimum licensing standards for behavioral health services providers and the time
2 for all existing licensed mental health clinics and substance abuse/addiction
3 treatment facilities to apply for the behavioral health services provider license has
4 expired.

5 §2157. License issuance; application; onsite inspection

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

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

13 C. Following receipt of the completed initial licensing application and
14 licensing fee, the department shall perform an onsite survey and inspection. If, after
15 the onsite survey and inspection, the department finds that the provider meets the
16 requirements established under this Part and under the licensing standards adopted
17 pursuant to this Part, a license shall be issued.

18 D. As a condition for renewal of license, the licensee shall submit to the
19 department a completed annual renewal application on the forms prescribed by the
20 department, which shall contain all information required by the department.
21 Additionally, the annual renewal licensing fee shall be submitted with the annual
22 renewal application. Upon receipt of the completed annual renewal application and
23 the annual renewal licensing fee, the department shall determine if the facility
24 continues to meet the requirements established under this Part and under the
25 licensing standards adopted pursuant to this Part. The department may perform an
26 onsite survey and inspection upon annual renewal. If the provider continues to meet
27 the requirements established under this Part and under the licensing standards
28 adopted pursuant to this Part, a license shall be issued which shall be valid for up to
29 one year, unless otherwise revoked or suspended.

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

3 §2158. Operation without license; penalty

4 A. A behavioral health services provider shall not operate without a license
 5 issued by the department. Any provider or facility operating without a license shall
 6 be guilty of a misdemeanor and upon conviction shall be fined no less than two
 7 hundred fifty dollars nor more than one thousand dollars. Each day of violation shall
 8 constitute a separate offense. It shall be the responsibility of the department to
 9 inform the appropriate district attorney of the alleged violation to assure
 10 enforcement.

11 B. If a behavioral health services provider is operating without a license
 12 issued by the department, the department shall have the authority to issue an
 13 immediate cease and desist order to that provider. Any such provider receiving such
 14 a cease and desist order from the department shall immediately cease operations until
 15 such time as that provider is issued a license by the department.

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

21 §2159. Opioid treatment programs

22 The department shall not license any opioid treatment programs under the
 23 behavioral health services provider license unless the department, in its discretion,
 24 determines that there is a need for another opioid treatment program in a certain
 25 geographic location. The department has promulgated and adopted rules and
 26 regulations in accordance with the Administrative Procedure Act to provide for the
 27 criteria and processes for determining whether such a need exists and the procedures
 28 for selecting an opioid treatment program to be licensed once a need has been
 29 determined.

1 §2160. Right of inspection by department; records; reports

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

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

9 §2161. Drug free zone; notice, signs

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

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

19 C.(1) The secretary of the Department of Health and Hospitals shall develop
 20 a method by which to mark drug free zones, including the use of signs or other
 21 markings suitable to the situation. Signs or other markings shall be located in a
 22 visible manner on or near each behavioral health services provider that has a
 23 substance abuse/addiction treatment module, indicating that the area is a drug free
 24 zone, that the zone extends for a distance of two thousand feet, and that a felony
 25 violation of the Uniform Controlled Dangerous Substances Law will subject the
 26 offender to severe penalties under law. The posting required in this Subsection is
 27 the responsibility and at the expense of the licensed provider.

28 (2) The Department of Public Safety and Corrections shall coordinate and
 29 provide rules for the establishment of toll free telephone numbers for use in
 30 submitting anonymous information regarding drug activity to local law enforcement

1 agencies. The telephone numbers shall be displayed on the drug free zone signs that
2 shall be manufactured in correctional institutions subject to the office of corrections
3 in the Department of Public Safety and Corrections.

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

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

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

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

16 Section 4. The provisions of R.S. 40:2151 through 2161 as enacted under the
17 provisions of this Act and Sections 3 and 4 of this Act shall become effective upon signature
18 by the governor or, if not signed by the governor, upon expiration of the time for bills to
19 become law without signature by the governor, as provided by Article III, Section 18 of the
20 Constitution of Louisiana. If vetoed by the governor and subsequently approved by the
21 legislature, this Act shall become effective on the day following such approval.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____