

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 831
Committee Substitute Favorable 6/19/13

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 an appropriate educational program 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
36 use of such listing by any person, organization, corporation, or business, including but not



1 limited to public officers or employees of federal, State, county, or other local governments, as
2 a mailing list for political purposes. Any violation of this section shall be punishable as a Class
3 1 misdemeanor.

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

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

9 "(40) Duty to Ensure Educational Services in Private Psychiatric Residential Treatment
10 Facilities. – The Board shall develop and implement rules for the provision and monitoring of
11 educational services provided to students in private psychiatric residential treatment facilities as
12 provided under Part 4 of Article 6 of Chapter 122C of the General Statutes."

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

14 **"§ 122C-23.1. Licensure of residential treatment facilities.**

15 (a) The General Assembly finds:

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

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

42 (b) All private psychiatric residential treatment facilities (PRTFs), as defined in
43 G.S. 122C-450(a)(3), that serve children eligible to attend the public schools in accordance
44 with G.S. 115C-366, including a student who has been suspended or expelled but otherwise
45 meets the requirements of that statute, shall have a facility-based school as a condition of
46 licensure. Subject to the time limits of subsection (c) of this section, the school shall meet all
47 the requirements of a qualified nonpublic school under Article 39 of Chapter 115C of the
48 General Statutes and of a Nonpublic Exceptional Children's Program as defined in
49 G.S. 122C-450(a)(2). This requirement shall be deemed to be met upon receipt of the approval
50 of the Department of Public Instruction. The requirements of this subsection and subsection (c)

1 of this section do not apply to PRTFs that are approved charter schools pursuant to Part 6A of
2 Article 16 of Chapter 115C of the General Statutes.

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

13 (d) At any time upon receipt of a written notice from the Department of Public
14 Instruction that a PRTF has not provided educational services, the Department of Health and
15 Human Services shall review the PRTF's license for appropriate action.

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

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

20 "(g2) Whenever there is reason to believe that the client is eligible for educational
21 services through a governmental agency, a facility shall disclose client identifying information
22 to the local school administrative unit responsible for the client and to the Department of Public
23 Instruction. Disclosure is limited to that information necessary to establish, coordinate, or
24 maintain educational services. The Department of Public Instruction may further disclose client
25 identifying information to any other local school administrative unit that it may designate as the
26 client's local educational agency while the client is residing in the facility as necessary."

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

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

30 "**§ 122C-450. Definitions.**

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

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

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

42 (3) "Private psychiatric residential treatment facility" (PRTF) means a facility,
43 other than a hospital, that is not solely funded by the State that provides
44 psychiatric services as described in Subpart D of C.F.R. Part 441 of Chapter
45 42 to individuals under age 21 in an inpatient setting licensed by the
46 Department of Health and Human Services as provided under Chapter 122C
47 of the General Statutes. A PRTF does not include a State-operated facility.

48 "**§ 122C-450.1. Eligibility and allocations.**

49 (a) A child who is receiving behavioral health services in a PRTF shall also receive
50 educational services in accordance with federal and State law if the child is eligible to enroll in
51 public schools as provided in G.S. 115C-366, including a student who has been suspended or

1 expelled but otherwise meets the requirements of that statute. For a child with a disability, as
2 defined in G.S. 115C-106.3(1), a PRTF shall ensure that all educational services meet
3 applicable standards as required under Article 9 of Chapter 115C of the General Statutes. A
4 PRTF shall be considered a local education agency and therefore be subject to the jurisdiction
5 of the Office of Administrative Hearings for the resolution of any dispute arising under Part 1D
6 of Article 9 of Chapter 115C of the General Statutes.

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

9 (1) The PRTF is licensed by the Department of Health and Human Services
10 pursuant to Chapter 122C of the General Statutes and has a facility-based
11 school approved by the Department of Public Instruction as a Nonpublic
12 Exceptional Children's Program.

13 (2) The PRTF documents deviations from educational and other programmatic
14 requirements when it is medically necessary for a resident in accordance
15 with G.S. 122C-62(e).

16 (c) Funds to be Held in Statewide Reserve. – Funds transferred to the Department of
17 Health and Human Services, Division of Mental Health Developmental Disabilities and
18 Substance Abuse Services (DMHDDSAS), for the purchase of educational services within the
19 PRTF shall not be allocated to LME/MCOs but shall be held in a statewide reserve at the
20 Division of Mental Health Developmental Disabilities and Substance Abuse Services.
21 DMHDDSAS shall use the reserve funds to pay for educational services authorized by the
22 Department of Public Instruction and billed by the PRTFs in a process established by the
23 DMHDDSAS.

24 (d) The Department of Health and Human Services shall cease disbursement of
25 educational funding to a PRTF upon receipt of a written notice from the Department of Public
26 Instruction that educational services have not been provided. Educational funding disbursement
27 shall be reinstated by the Department of Health and Human Services upon written notice from
28 the Department of Public Instruction that the PRTF is providing educational services.

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

31 **§ 122C-450.2. Information sharing.**

32 (a) Within three business days of admission, the admitting PRTF shall notify (i) the
33 Department of Public Instruction and (ii) the local school administrative unit in which the child
34 was last enrolled, if known. The PRTF shall request a copy of the child's most current
35 individualized education program and any other available documents related to the provision of
36 appropriate educational services from the local school administrative unit. To the extent
37 practicable, the local school administrative unit shall provide this information within three
38 business days of receiving a request made pursuant to this subsection. Upon withdrawal or
39 discharge of a child, the PRTF shall notify the Department of Public Instruction within three
40 business days of such withdrawal or discharge.

41 (b) The PRTF shall work with the receiving local school administrative unit to develop
42 a transition plan, including a revised individualized education program, if necessary, to be
43 implemented upon discharge of the child residing in a PRTF.

44 **§ 122C-450.3. Technical assistance.**

45 The State Board of Education and Department of Public Instruction shall (i) offer training
46 to PRTFs on compliance with special education laws and regulations, (ii) maintain a current list
47 of names of children residing in PTRFs along with the name and contact information of the
48 PRTF in which each child resides, (iii) ensure that all procedural safeguards described in Part
49 1D of Article 9 in Chapter 115C of the General Statutes are implemented, and (iv) develop and
50 implement rules to monitor the delivery of educational services in PRTFs, including a process

1 to inform the Department of Health and Human Services when services are not being
2 provided."

3 **SECTION 6.** As of the effective date of this act, PRTFs that are licensed to serve
4 children eligible to enroll in public schools as provided in G.S. 115C-366, including a student
5 who has been suspended or expelled but otherwise meets the requirements of that statute, shall
6 have six months after their next annual renewal to obtain approval of their facility-based school
7 by the Department of Public Instruction as a Nonpublic Exceptional Children's Program. If
8 such approval is not obtained before the expiration of the additional six months, the
9 Department of Health and Human Services shall review the PRTF's license for appropriate
10 action. This section does not apply to PRTFs that are approved charter schools pursuant to Part
11 6A of Article 16 of Chapter 115C of the General Statutes.

12 **SECTION 7.** A PRTF that has a signed educational services agreement with a
13 local school administrative unit for the 2013-2014 and 2014-2015 school years shall be
14 qualified to receive a funding allocation from the Department of Health and Human Services
15 under this act to provide unmet educational services needs not covered in the agreement. A
16 copy of the agreement(s) shall be submitted to the Department of Health and Human Services
17 and the Department of Public Instruction and included in the joint report as required in Section
18 8 of this act.

19 **SECTION 8.** The State Board of Education shall have the authority to adopt
20 emergency rules pursuant to G.S. 150B-21.1A to monitor the delivery of educational services
21 in PRTFs, including a process to inform the Department of Health and Human Services when
22 services are not being provided. An emergency rule adopted in accordance with this section
23 expires on the earliest of the following dates:

- 24 (1) The effective date of a permanent rule adopted in accordance with
25 G.S. 150B-21.2 to replace the emergency rules.
26 (2) June 30, 2014.

27 **SECTION 9.** The Department of Health and Human Services and the Department
28 of Public Instruction, in collaboration with other interested agencies, shall submit a joint report
29 to the Joint Legislative Education Oversight Committee and to the Joint Legislative Oversight
30 Committee on Health and Human Services by November 1 of each year, including (i) the
31 annual number of children by age residing in a PRTF both with and without an individualized
32 education plan, (ii) the average length of stay of these children, (iii) the types of educational
33 services, including number of hours each type of service has been provided, (iv) the costs for
34 providing educational services, and (v) recommendations for improving the efficiency and
35 effectiveness of delivering educational services to children residing in PRTFs.

36 **SECTION 10.(a)** Within 30 days of passage of the Senate Bill 402, 2013 Regular
37 Session, Appropriations Act of 2013, the State Board of Education shall identify recurring
38 budget reductions within funds appropriated to the Department of Public Instruction or to State
39 Aid for Public Schools in the amount of one million six hundred thousand dollars (\$1,600,000)
40 for the 2013-2014 fiscal year and three million two hundred thousand dollars (\$3,200,000) for
41 the 2014-2015 fiscal year.

42 **SECTION 10.(b)** There is appropriated to the Department of Public Instruction
43 one million six hundred thousand dollars (\$1,600,000) for the 2013-2014 fiscal year and three
44 million two hundred thousand dollars (\$3,200,000) to provide educational services to children
45 in PRTFs as provided in this act.

46 **SECTION 10.(c)** The Department of Public Instruction shall transfer to the
47 Department of Health and Human Services for the payment to qualifying PRTFs one million
48 six hundred thousand dollars (\$1,600,000) for the 2013-2014 fiscal year and three million two
49 hundred thousand dollars (\$3,200,000) to provide educational services to children in PRTFs as
50 provided in this act.

1 **SECTION 11.** This act is effective when it becomes law. The Department of
2 Public Instruction shall process all applications submitted by PRTFs on or before September 1,
3 2013, for approval as a Nonpublic Exceptional Children's Program no later than December 1,
4 2013.