Article 2.

Licensure of Facilities for Individuals With Mental Health Disorders, Developmental Disabilities, and Substance Use Disorders.

§ 122C-21. Purpose.

The purpose of this Article is to provide for licensure of facilities for the individuals with mental health disorders, developmental disabilities, and substance use disorders by the development, establishment, and enforcement of basic rules governing both of the following:

(1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter.

(2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals. The Department shall ensure that licensable facilities are inspected every two years to determine compliance with physical plant and life-safety requirements. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1989, c. 625, s. 4; 2005-276, s. 10.40A(c); 2021-77, s. 7.4(b).)

§ 122C-22. Exclusions from licensure; deemed status.

(a) All of the following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

(1) Physicians and psychologists engaged in private office practice.

(2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for patients with a mental health disorder diagnosis, one or more developmental disabilities, or a substance use disorder.

(3) State and federally operated facilities.

(4) Adult care homes licensed under Chapter 131D of the General Statutes.

(5) Developmental child care centers licensed under Article 7 of Chapter 110 of the General Statutes.

(6) Persons subject to licensure under rules of the Social Services Commission.

(7) Persons subject to rules and regulations of the Division of Employment and Independence for People with Disabilities.

(8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14).

(9) Twenty-four-hour nonprofit facilities established for the purposes of shelter care and recovery from alcohol or other substance use disorder through a 12-step, self-help, peer role modeling, and self-governance approach.

(10) Inpatient chemical dependency or substance abuse facilities that provide services exclusively to inmates of the Department of Adult Correction, as described in G.S. 148-19.1.

(11) A charitable, nonprofit, faith-based, adult residential treatment facility that does not receive any federal or State funding and is a religious organization exempt from federal income tax under section 501(a) of the Internal Revenue Code.

(12) A home in which up to three adults, two or more having a disability, co-own or co-rent a home in which the persons with disabilities are receiving three or more hours of day services in the home or up to 24 hours of residential services in the

home. The individuals who have disabilities cannot be required to move if the individuals change services, change service providers, or discontinue services.

(b) The Commission may adopt rules establishing a procedure whereby a facility that would otherwise require licensure under this Article that is certified by a nationally recognized agency, such as the Joint Commission on Accreditation of Hospitals, may be deemed licensed under this Article by the Secretary. Any facility licensed under the provisions of this subsection shall continue to be subject to inspection by the Secretary. The Secretary shall collaborate with relevant agencies to ensure that any facilities deemed licensed under this Article maintain the required certification. (1983, c. 718, s. 1; 1983 (Reg. Sess., 1984), c. 1110, s. 5; 1985, c. 589, s. 2; c. 695, s. 13; 1987, c. 345, s. 2; 1989, c. 625, s. 5; 1995, c. 535, s. 7; 1997-506, s. 43; 2000-67, s. 11.25A; 2001-424, s. 25.19(b); 2004-199, s. 32; 2011-145, s. 19.1(h); 2011-202, s. 1; 2012-15, s. 1; 2013-410, s. 11; 2017-186, s. 2(jjjjj); 2021-77, s. 7.3(a); 2021-180, s. 19C.9(ooo); 2023-65, s. 8.3.)

§ 122C-23. Licensure.

(a) No person shall establish, maintain, or operate a licensable facility for individuals with mental illnesses, individuals with intellectual or other developmental disabilities, or substance abusers without a current license issued by the Secretary.

(b) Each license is issued to the person only for the premises named in the application and is not transferrable or assignable except with prior written approval of the Secretary.

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

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

(e) Initial licenses issued under this section are valid for not more than 15 months. Licenses shall be renewed annually thereafter and shall expire at the end of the calendar year. The expiration date of a license shall be specified on the license when issued. Renewal of a regular license is contingent upon receipt of information required by the Secretary for renewal and continued compliance with this Article and the rules of the Commission and the Secretary. Licenses for facilities that have not served any clients during the previous 12 months are not eligible for renewal.

The Secretary may issue a provisional license for a period up to six months to a person obtaining the initial license for a facility. The licensee must demonstrate substantial compliance prior to being issued a full license.

A provisional license for a period not to exceed six months may be granted by the Secretary to a person that is temporarily unable to comply with a rule when the noncompliance does not present an immediate threat to the health and safety of the individuals in the licensable facility. During this period the licensable facility shall correct the noncompliance based on a plan submitted to and approved by the Secretary. A provisional license for an additional period of time to meet the noncompliance shall not be issued.

(e1) Except as provided in subsection (e2) of this section, the Secretary shall not (i) enroll as a new provider in the North Carolina Medicaid program, (ii) revalidate as an enrolled provider in the Medicaid program during the period of the license revocation or suspension, or (iii) issue a license for a new facility or a new service to any applicant meeting any of the following criteria:

(1) The applicant was the owner, principal, or affiliate of a licensable facility under Chapter 122C, Chapter 131D, or Article 7 of Chapter 110 of the General

Statutes that had its license revoked until 60 months after the date of the revocation.

(2) The applicant is the owner, principal, or affiliate of a licensable facility that was assessed a penalty for a Type A or Type B violation under Article 3 of this Chapter, or any combination thereof, and any one of the following conditions exist:

a. A single violation has been assessed in the six months prior to the application.

b. Two violations have been assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.

c. Three violations have been assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.

d. Four or more violations have been assessed in the 60 months prior to application and 60 months have not passed from the date of the most recent violation.

(3) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) until 60 months after the date of reinstatement or restoration of the license.

(4) The applicant is the owner, principal, or affiliate of a licensable facility that had its license summarily suspended or downgraded to provisional status as a result of violations under Article 1A of Chapter 131D of the General Statutes until 60 months after the date of reinstatement or restoration of the license.

(e2) The Secretary may enroll a provider described in subsection (e1) of this section if any of the following circumstances apply:

(1) The applicant is an area program or county program providing services under G.S. 122C-141, and there is no other provider of the service in the catchment area.

(2) The Secretary finds that the area program or county program has shown good cause by clear and convincing evidence why the enrollment should be allowed.

(e3) Licensure or enrollment shall be denied if an applicant's history as a provider under Chapter 131D, Chapter 122C, or Article 7 of Chapter 110 of the General Statutes is such that the Secretary has concluded the applicant will likely be unable to comply with licensing or enrollment statutes, rules, or regulations. In the event the Secretary denies licensure or enrollment under this subsection, the reasons for the denial and appeal rights pursuant to Article 3 of Chapter 150B shall be given to the provider in writing.

(f) Upon written application and in accordance with rules of the Commission, the Secretary may for good cause waive any of the rules implementing this Article, so long as those rules do not affect the health, safety, or welfare of the individuals within the licensable facility. Decisions made pursuant to this subsection may be appealed by filing a contested case under Article 3 of Chapter 150B of the General Statutes.

(g) The Secretary may suspend the admission of any new clients to a facility licensed under this Article where the conditions of the facility are detrimental to the health or safety of the clients. This suspension shall be for the period determined by the Secretary and shall remain in effect until

the Secretary is satisfied that conditions or circumstances merit removal of the suspension. In suspending admissions under this subsection, the Secretary shall consider the following factors:

(1) The degree of sanctions necessary to ensure compliance with this section and rules adopted to implement this subsection.

(2) The character and degree of impact of the conditions at the facility on the health or safety of its clients.

A facility may contest a suspension of admissions under this subsection in accordance with Chapter 150B of the General Statutes. In contesting the suspension of admissions, the facility must file a petition for a contested case within 20 days after the Department mails notice of suspension of admissions to the licensee.

(h) The Department shall charge facilities licensed under this Chapter a nonrefundable annual base license fee plus a nonrefundable annual per-bed fee as follows:

Type of Facility	Number of Beds	Base Fee	Per Bed Fee
Facilities (non ICF/IID):	0 beds	$215.00	$0
	1 to 6 beds	$305.00	$0
	More than 6 beds	$475.00	$17.50
ICF/IID Only:	1 to 6 beds	$845.00	$0
	More than 6 beds	$800.00	$17.50

(i) A social setting detoxification facility or medical detoxification facility subject to licensure under this Chapter shall not deny admission or treatment to an individual based solely on the individual's inability to pay. (1899, c. 1, s. 60; Rev., s. 4600; C.S., s. 6219; 1945, c. 952, s. 41; 1957, c. 100, ss. 1, 4; 1963, c. 813, s. 1; c. 1166, s. 7; 1965, c. 1178, ss. 1-3; 1969, c. 954; 1973, c. 476, ss. 133, 152; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1983, c. 718, ss. 1, 4; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 8; 1987, c. 345, ss. 3, 4; 1989, c. 625, s. 6; 2000-55, s. 3; 2002-164, s. 4.1; 2003-284, s. 34.8(a); 2003-294, s. 2; 2003-390, s. 3; 2005-276, ss. 41.2(h), 10.40A(d); 2006-66, s. 10.23; 2009-451, s. 10.76(f); 2021-77, ss. 2, 7.1(b); 2021-88, s. 9(h); 2022-74, s. 9D.15(z); 2023-11, s. 3.2(h).)

§ 122C-23.1. Licensure of residential treatment facilities.

(a) The General Assembly finds:

(1) That much of the care for residential treatment facility residents is paid by the State and the counties;

(2) That the cost to the State for care for residents of residential treatment facilities is substantial, and high vacancy rates in residential treatment facilities further increase the cost of care;

(3) That the proliferation of residential treatment facilities results in costly duplication and underuse of facilities and may result in lower quality service;

(4) There is currently no ongoing relationship between some applicants for licensure and local management entities (LMEs) that are responsible for the placement of children and adults in residential treatment facilities; and

(5) That it is necessary to protect the general welfare and lives, health, and property of the people of the State for the local management entity (LME) to verify that additional beds are needed in the LME's catchment area before new residential

treatment facilities are licensed. This process is established to ensure that unnecessary costs to the State do not result, residential treatment facility beds are available where needed, and that individuals who need care in residential treatment facilities may have access to quality care.

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

(b) All private psychiatric residential treatment facilities (PRTFs), as defined in G.S. 122C-450(a)(3), that serve children eligible to attend the public schools in accordance with G.S. 115C-366, including a student who has been suspended or expelled but otherwise meets the requirements of that statute, shall have a facility-based school as a condition of licensure. Subject to the time limits of subsection (c) of this section, the school shall meet all the requirements of a qualified nonpublic school under Article 39 of Chapter 115C of the General Statutes and of a Nonpublic Exceptional Children's Program as defined in G.S. 122C-450(a)(2). The requirements of this subsection and subsection (c) of this section do not apply to PRTFs that are approved charter schools pursuant to Article 14A of Chapter 115C of the General Statutes.

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

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

(e) As used in this section, "residential treatment facility" means a "residential facility" as defined in and licensed under this Chapter, but not subject to Certificate of Need requirements under Article 9 of Chapter 131E of the General Statutes. (2005-276, s. 10.40(a); 2007-182, s. 1; 2014-100, s. 8.39(c); 2014-101, s. 7; 2023-65, s. 5.2(b).)

§ 122C-24. Adverse action on a license.

(a) The Secretary may deny, suspend, amend, or revoke a license in any case in which the Secretary finds that there has been a substantial failure to comply with any provision of this Article or other applicable statutes or any applicable rule adopted pursuant to these statutes. Action[s] under this section and appeals of those actions shall be in accordance with rules of the Commission and Chapter 150B of the General Statutes.

(b) When an appeal is filed concerning the denial, suspension, amendment, or revocation of a license, a copy of the proposal for decision shall be sent to the Chairman of the Commission in addition to the parties specified in G.S. 150B-34. The Chairman or members of the Commission designated by the Chairman may submit for the Secretary's consideration written or oral comments concerning the proposal prior to the issuance of a final agency decision in accordance with G.S. 150B-36. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1985 (Reg. Sess., 1986), c. 863, ss. 8-10; 1987, c. 345, s. 5.)

§ 122C-24.1. Penalties; remedies.

(a) Violation Classification and Penalties. – The Department of Health and Human Services shall impose an administrative penalty in accordance with provisions of this Article on any facility licensed under this Article which is found to be in violation of Article 2 or 3 of this Chapter or applicable State and federal laws and regulations. Citations for violations shall be classified and penalties assessed according to the nature of the violation as follows:

(1) "Type A1 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in death or serious physical harm, abuse, neglect, or exploitation. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A1 Violation and the specific findings.

a1. Require a written plan of protection regarding how the facility will immediately abate the Type A1 Violation in order to protect clients from further risk or additional harm.

b. Within 15 working days of the investigation, send a report of the findings to the facility.

c. Require a plan of correction to be submitted to the Department, based on a written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) for each Type Al Violation in facilities or programs that serve six or fewer persons. The Department shall impose a civil penalty in an amount not less than one thousand dollars ($1,000) nor more than twenty thousand dollars ($20,000) for each Type A1 Violation in facilities or programs that serve seven or more persons. Where a facility has failed to correct a Type A1 Violation, the Department shall access the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the violation continues beyond the time specified for correction. The Department or its authorized representative shall determine whether the violation has been corrected.

(1a) "Type A2 Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which results in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type A2 Violation and the specific findings.
b. Require a written plan of protection regarding how the facility will immediately abate the Type A2 Violation in order to protect clients or residents from further risk or additional harm.
c. Within 15 working days of the investigation, send a report of the findings to the facility.
d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

The violation or violations shall be corrected within the time specified for correction by the Department or its authorized representative. The Department may or may not assess a penalty taking into consideration the compliance history, preventative measures, and response to previous violations by the facility. Where a facility has failed to correct a Type A2 Violation, the Department shall assess the facility a civil penalty in the amount of up to one thousand dollars ($1,000) for each day that the deficiency continues beyond the time specified for correction by the Department or its authorized representative. The Department or its authorized representative shall determine whether the violation has been corrected.

(1b) Repealed by Session Laws 2016-50, s. 1, effective June 30, 2016.

(2) "Type B Violation" means a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility which is detrimental to the health, safety, or welfare of any client or patient, but which does not result in substantial risk that death or serious physical harm, abuse, neglect, or exploitation will occur. The person making the findings shall do the following:

a. Orally and immediately inform the facility of the Type B Violation and the specific findings.
b. Require a written plan of protection regarding how the facility will immediately abate the Type B Violation in order to protect clients or residents from further risk or additional harm.
c. Within 15 working days of the investigation, send a report of the findings to the facility.
d. Require a plan of correction to be submitted to the Department, based on the written report of the findings, that describes steps the facility will take to achieve and maintain compliance.

Where a facility has failed to correct a Type B Violation within the time specified for correction by the Department or its authorized representative, the

Department shall assess the facility a civil penalty in the amount of up to four hundred dollars ($400.00) for each day that the violation continues beyond the date specified for correction without just reason for the failure. The Department or its authorized representative shall ensure that the violation has been corrected.

(2a) A Type A1, Type A2, or Type B Violation as defined above shall not include a violation by a facility of the regulations, standards, and requirements set forth in Article 2 or 3 of this Chapter or applicable State or federal laws and regulations governing the licensure or certification of a facility if all of the following criteria are met:

a. The violation was discovered by the facility.
b. The Department determines that the violation was abated immediately.
c. The violation was corrected prior to inspection by the Department.
d. The Department determines that reasonable preventative measures were in place prior to the violation.
e. The Department determines that subsequent to the violation, the facility implemented corrective measures to achieve and maintain compliance.

(2b) As used in this section, "substantial risk" shall mean the risk of an outcome that is substantially certain to materialize if immediate action is not taken.

(3) Repeat Violations. – The Department shall impose a civil penalty which is treble the amount assessed under this subsection when a facility under the same management or ownership has received a citation during the previous 12 months for which the appeal rights are exhausted and penalty payment is expected or has occurred, and the current violation is for the same specific provision of a statute or regulation for which it received a violation during the previous 12 months.

(b) Repealed by Session Laws 2011-249, s. 1, effective June 23, 2011.

(c) Factors to Be Considered in Determining Amount of Initial Penalty. – In determining the amount of the initial penalty to be imposed under this section, the Department shall consider the following factors:

(1) There is substantial risk that serious physical harm, abuse, neglect, or exploitation will occur, and this has not been corrected within the time specified by the Department or its authorized representative;
(2) Serious physical harm, abuse, neglect, or exploitation, without substantial risk for client death, did occur;
(3) Serious physical harm, abuse, neglect, or exploitation, with substantial risk for client death, did occur;
(3a) A client died;
(3b) A client died and there is substantial risk to others for serious physical harm, abuse, neglect, or exploitation;
(3c) A client died and there is substantial risk for further client death;
(4) The reasonable diligence exercised by the licensee to comply with G.S. 131E-256 and other applicable State and federal laws and regulations;
(5) Efforts by the licensee to correct violations;
(6) The number and type of previous violations committed by the licensee within the past 36 months; and

(7) Repealed by Session Laws 2011-249, s. 1, effective June 23, 2011.

(8) The number of clients or patients put at risk by the violation.

(d) The facts found to support the factors in subsection (c) of this section shall be the basis in determining the amount of the penalty. The Department shall document the findings in written record and shall make the written record available to all affected parties including:

(1) The licensee involved;

(2) The clients or patients affected; and

(3) The family members or guardians of the clients or patients affected.

(e) The Department shall impose a civil penalty of fifty dollars ($50.00) per day on any facility which refuses to allow an authorized representative of the Department to inspect the premises and records of the facility.

(f) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. At least the following specific issues shall be addressed at the administrative hearing:

(1) The reasonableness of the amount of any civil penalty assessed, and

(2) The degree to which each factor has been evaluated pursuant to subsection (c) of this section to be considered in determining the amount of an initial penalty.

If a civil penalty is found to be unreasonable or if the evaluation of each factor is found to be incomplete, the hearing officer may recommend that the penalty be adjusted accordingly.

(g) Any penalty imposed by the Department of Health and Human Services under this section shall commence on the date of the letter of notification of the penalty amount.

(h) The Secretary may bring a civil action in the superior court of the county wherein the violation occurred to recover the amount of the administrative penalty whenever a facility:

(1) Which has not requested an administrative hearing fails to pay the penalty within 60 days after being notified of the penalty, or

(2) Which has requested an administrative hearing fails to pay the penalty within 60 days after receipt of a written copy of the decision as provided in G.S. 150B-37.

(i) In lieu of assessing all or some of the administrative penalty, the Secretary may order a facility to provide staff training, or consider the approval of training completed by the facility after the violation, if all of the following criteria are met:

(1) The training is determined by the Department to be specific to the violation.

(2) The training is approved by the Department.

(3) The training is taught by someone approved by the Department.

(4) The facility has corrected the violation and continues to remain in compliance with the regulation.

(j) The clear proceeds of civil penalties provided for in this section shall be remitted to the State Treasurer for deposit in accordance with State law.

(k) In considering renewal of a license, the Department shall not renew a license if outstanding fines and penalties imposed by the Department against the facility or program have not been paid. Fines and penalties for which an appeal is pending are exempt from consideration for nonrenewal under this subsection. (2000-55, s. 4; 2005-276, ss. 10.40A(e), 10.40A(f); 2011-249, s. 1; 2011-398, s. 39; 2016-50, s. 1.)

§ 122C-24.2. Regulatory oversight reporting.

(a) The Division of Health Service Regulation (DHSR) shall establish a quality dashboard that addresses mental health, intellectual and developmental disabilities, and substance use services (MH/IDD/SUS) agency performance and identifies trends and outcomes of DHSR reviews.

(b) DHSR shall post the following data to its website on a monthly basis beginning January 31, 2024:

(1) The number of MH/IDD/SUS facility licenses granted by licensure type or licensure category, whichever shall apply.
(2) Any identified trends regarding violations of review.
(3) The 10 most frequently violated rules.
(4) The 10 most frequently violated rules for each program type.
(5) Top core cited rule areas.
(6) The number of general citations issued requiring a corrective action plan.
(7) The number of Type B violations cited.
(8) The number of Type A2 violations cited.
(9) The number of Type A1 violations cited.
(10) The number of suspensions of admissions issued.
(11) The number of revocations issued.
(12) The number of summary suspensions issued.
(13) The number and amount of monetary penalties issued.

(c) DHSR shall post the following data to its website on a quarterly basis beginning January 31, 2024:

(1) A statement on how well it is complying with the statutory requirement of G.S. 122C-24.1 that reports of violations be sent to facilities within 15 working days of the investigation.
(2) The number of informal appeals and number of contested cases filed pursuant to the provisions of Chapter 150B of the General Statutes.
(3) The number of contested cases dismissed, number of contested cases upholding agency action, number of contested cases overturning agency action, and number of contested cases where agency action was upheld in part and overturned in part.

(d) DHSR shall make the following regulatory changes to promote transparency and enhanced communication with providers:

(1) DHSR shall establish a workgroup in collaboration with providers to address ongoing concerns identified by DHSR and providers. These discussions may include clarification of clear rules of engagement and standard operating procedures.
(2) DHSR shall make available annual training to providers and shall solicit feedback from providers and provider associations regarding topics and the scheduling of the annual training as identified by the workgroup.
(3) DHSR shall align its review processes to reflect technology in electronic health records and accept documentation presented through the electronic health record. DHSR may also request that it be provided with a printed copy of portions of the electronic health record or that it be provided with electronic copies of the electronic health record. Both shall be provided as requested. (2023-80, ss. 1, 2.)

§ 122C-25. Inspections; confidentiality.

(a) The Secretary shall make or cause to be made inspections that the Secretary considers necessary. Facilities licensed under this Article shall be subject to inspection at all times by the Secretary. All residential facilities as defined in G.S. 122C-3(14)e. shall be inspected on an annual basis.

(b) Notwithstanding G.S. 8-53, G.S. 8-53.3 or any other law relating to confidentiality of communications involving a patient or client, in the course of an inspection conducted under this section, representatives of the Secretary 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 patient, resident, or client of a licensable facility and the personnel records of those individuals employed by the licensable facility.

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

Except as required by law, it is unlawful for the Secretary or an employee of the Department to disclose the following information to someone not authorized to receive the information:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or
(2) The name of anyone who has furnished information concerning a licensable facility without the individual's consent.

Violation of this subsection is a Class 3 misdemeanor punishable only by a fine, not to exceed five hundred dollars ($500.00).

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

(c) The Secretary shall adopt rules regarding inspections, that, at a minimum, 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.

(d) All residential facilities, as defined in G.S. 122C-3(14)e., shall ensure that the Division of Health Service Regulation complaint hotline number is posted conspicuously in a public place in the facility. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1993, c. 539, s. 918; 1994, Ex. Sess., c. 24, s. 14(c); 2005-276, ss. 10.40A(g), 10.40A(h); 2007-182, s. 1.)

§ 122C-26. Powers of the Commission.

In addition to other powers and duties, the Commission shall exercise the following powers and duties:

(1) 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;
(2) Issue declaratory rulings needed to implement the provisions and purposes of this Article;
(3) Adopt rules governing appeals of decisions to approve or deny licensure under this Article;
(4) Adopt rules for the waiver of rules adopted under this Article; and

(5) Adopt rules applicable to facilities licensed under this Article that do the following:
   a. Establishing personnel requirements of staff employed in facilities.
   b. Establishing qualifications of facility administrators or directors.
   c. Establishing requirements for death reporting including confidentiality provisions related to death reporting.
   d. Establishing requirements for patient advocates.
   e. Requiring facility personnel who refer clients to provider agencies to disclose any pecuniary interest the referring person has in the provider agency, or other interest that may give rise to the appearance of impropriety.
   f. Establishing standardized procedures for facilities in training and record keeping of the measures taken to inform employees and volunteers of the duties imposed by G.S. 122C-66.

(6) Adopt rules providing for the licensure and accreditation of residential treatment facilities that provide services to persons with traumatic brain injury. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 2000-55, s. 5; 2005-276, s. 10.33; 2009-361, s. 1; 2015-36, s. 1.)

§ 122C-27. Powers of the Secretary.

The Secretary shall have the power to do all of the following:

(1) Administer and enforce the provisions, rules, and decisions pursuant to this Article.
(2) Appoint hearing officers to conduct appeals under this Article.
(3) Prescribe by rule the contents of the application for licensure and renewal.
(4) Inspect facilities and records of each facility to be licensed under this Article under the rules and decisions pursuant to this Article.
(5) 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 the Secretary.
(6) Define by rule procedures for submission of periodic reports by facilities licensed under this Article.
(7) Grant, deny, suspend, or revoke a license under this Article.
(7a) Issue orders directing facilities not licensed under this Article that are providing services requiring a license under this Article to cease and desist from engaging in any act or practice in violation of the provisions of this Article.
(8) In accordance with rules of the Commission, make final agency decisions for appeals from the denial, suspension, or revocation of a license in accordance with G.S. 122C-24.
(9) In accordance with rules of the Commission, grant waiver for good cause of any rules implementing this Article that do not affect the health, safety, or welfare of individuals within a licensable facility. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 2021-77, s. 7.1(c).)

§ 122C-27.5. Waiver of rules and increase in bed capacity during an emergency.

In the event of a declaration of a state of emergency by the Governor in accordance with Article 1A of Chapter 166A of the General Statutes, a declaration of a national emergency by the President

of the United States, a declaration of a public health emergency by the Secretary of the United States Department of Health and Human Services; or to the extent necessary to allow for consistency with any temporary waiver or modification issued by the Secretary of the United States Department of Health and Human Services or the Centers for Medicare and Medicaid Services under section 1135 or 1812(f) of the Social Security Act; or when the Division of Health Service Regulation determines the existence of an emergency that poses a risk to the health or safety of clients, the Division of Health Service Regulation may do either or both of the following:

(1) Temporarily waive any rules adopted to implement this Article.

(2) Allow a facility licensed under this Article to temporarily increase its bed capacity. (2022-74, s. 9E.2(a).)

§ 122C-28. Penalties.

Operating a licensable facility without a license is a Class H felony, including a fine of one thousand dollars ($1,000) per day that the facility is in operation in violation of this Article. (1983, c. 718, s. 1; 1985, c. 589, s. 2; 1993, c. 539, s. 919; 1994, Ex. Sess., c. 24, s. 14(c); 2021-77, s. 7.2(a).)

§ 122C-28.1. Facilities in violation of this Article.

(a) If the Department has directed a facility not licensed under this Article that is providing services requiring a license under this Article to cease and desist from engaging in any act or practice in violation of this Article, then the Department shall conduct a follow-up visit to determine if the Secretary may issue a cease and desist order pursuant to G.S. 122C-27, unless a cease and desist order has already been issued.

(b) The district attorney's office with jurisdiction over the facility shall collect information on the total amount of fines collected pursuant to G.S. 122C-28 and report that information to the Department. (2021-77, s. 7.1(a).)

§ 122C-29. Injunction.

(a) Notwithstanding the existence or pursuit of any other remedy, the Secretary may, in the way 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 licensable facility operating without a license or in a way that threatens the health, safety, or welfare of the individuals in the licensable facility.

(b) If any individual interferes with the proper performance or duty of the Secretary in carrying out this Article, the Secretary 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. (1983, c. 718, s. 1; 1985, c. 589, s. 2.)

§ 122C-30. Peer review committee; immunity from liability; confidentiality.

For purposes of peer review functions of a facility licensed under the provisions of this Chapter:

(1) A member of a duly appointed peer review committee or quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee; and

(2) Proceedings of a peer review or quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, "Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review or quality assurance process, but cannot be asked about the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings. (1989 (Reg. Sess., 1990), c. 1053, s. 2; 2004-149, s. 2.8.)

§ 122C-31. Report required upon death of client.

(a) A facility shall notify the Secretary immediately upon the death of any client of the facility that occurs within seven days of physical restraint or seclusion of the client, and shall notify the Secretary within three days of the death of any client of the facility resulting from violence, accident, suicide, or homicide. The Secretary may assess a civil penalty of not less than five hundred dollars ($500.00) and not more than one thousand dollars ($1,000) against a facility that fails to notify the Secretary of a death and the circumstances surrounding the death known to the facility. Chapter 150B of the General Statutes governs the assessment of a penalty under this section. A civil penalty owed under this section may be recovered in a civil action brought by the Secretary or the Attorney General. The clear proceeds of the penalty shall be remitted to the State Treasurer for deposit in accordance with State law.

(b) Upon receipt of notification from a facility in accordance with subsection (a) of this section, the Secretary shall notify the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, 42 U.S.C. § 15001, et seq., that a person with a disability has died. The Secretary shall provide the agency access to the information about each death reported pursuant to subsection (a) of this section, including information resulting from any investigation of the death by the Department and from reports received from the Chief Medical Examiner pursuant to G.S. 130A-385. The agency shall use the

information in accordance with its powers and duties under applicable State and federal law and regulations.

(c) If the death of a client of a facility occurs within seven days of the use of physical restraint or seclusion, then the Secretary shall initiate immediately an investigation of the death.

(d) An inpatient psychiatric unit of a hospital licensed under Chapter 131E of the General Statutes shall comply with this section.

(e) Nothing in this section abrogates State or federal law or requirements pertaining to the confidentiality, privilege, or other prohibition against disclosure of information provided to the Secretary or the agency. In carrying out the requirements of this section, the Secretary and the agency shall adhere to State and federal requirements of confidentiality, privilege, and other prohibitions against disclosure and release applicable to the information received under this section. A facility or provider that makes available confidential information in accordance with this section and with State and federal law is not liable for the release of the information.

(f) The Secretary shall establish a standard reporting format for reporting deaths pursuant to this section and shall provide to facilities subject to this section a form for the facility's use in complying with this section.

(g) In addition to the reporting requirements specified in subsections (a) through (e) of this section, and pursuant to G.S. 130A-383, every State facility shall report, without redactions other than to protect confidential personnel information, the death of any client of the facility, and, if known, the death of any former client of a facility who dies within 14 days of release from the facility, regardless of the manner of death:

(1) To the medical examiner of the county in which the body of the deceased is found; and

(2) To the State protection and advocacy agency designated under the Developmental Disabilities Assistance and Bill of Rights Act 2000, 42 U.S.C. § 15001, et seq. The State protection and advocacy agency shall use the information in accordance with its powers and duties under applicable State or federal law and regulations.

(h) Notwithstanding G.S. 122C-52, and unless otherwise prohibited by State or federal law or requirements, in order to provide for greater transparency in connection with the reporting requirements specified in subsections (a) through (g) of this section, the following information in reports made pursuant to this section shall be public records within the meaning of G.S. 132-1 when reported by a State facility:

(1) The name, sex, age, and date of birth of the deceased.

(2) The name of the facility providing the report.

(3) The date, time, and location of the death.

(4) A brief description of the circumstances of death, including the manner of death, if known.

(5) A list of all entities to whom the event was reported.

(i) Notwithstanding G.S. 122C-22, all facilities, as defined in G.S. 122C-3(14), shall comply with this section. (2000-129, s. 3(a); 2007-323, ss. 19.1(e), (f); 2008-131, s. 1; 2009-299, ss. 1-4.)

§ 122C-32. Patient visitation rights for residents of residential treatment facilities.

(a) Any facility licensed under this Chapter shall allow clients to receive visitors of their choice to the fullest extent permitted under the infection and prevention control program of the

facility and applicable guidelines or orders issued by the Centers for Disease Control and Prevention, the Department, local health departments, or any other government public health agency.

(b) In the event the Department finds a facility has violated any rule, regulation, guidance, directive, or law relating to a client's visitation rights, the Department may issue a warning to the facility about the violation and give the facility not more than 24 hours to allow visitation. If visitation is not allowed after the 24-hour warning period, the Department shall impose a civil penalty in an amount not less than five hundred dollars ($500.00) for each instance on each day the facility was found to have a violation. This civil penalty shall be in addition to any licensure action, fine, or civil penalty that the Department may impose pursuant to this Chapter.

(c) Notwithstanding the provisions of subsection (b) of this section, in the event that circumstances require the complete closure of a facility to visitors, the facility shall use its best efforts to develop alternate visitation protocols that would allow visitation to the greatest extent safely possible. If those alternate protocols are found by the Department, the local health departments, or any other government public health agency to violate any rule, regulation, guidance, or federal law relating to a client's visitation rights, the Department may impose a civil penalty in an amount not less than five hundred dollars ($500.00) for each instance on each day the facility was found to have a violation. This civil penalty shall be in addition to any fine or civil penalty that the Centers for Medicare and Medicaid Services or other federal agency may choose to impose and any licensure action, fine, or civil penalty that the Department may impose pursuant to this Chapter.

(d) Each facility shall provide notice of the client visitation rights in this act to clients and, when possible, family members of clients. The required notice shall also include the contact information for the agency or individuals tasked with investigating violations of facility client visitation.

(e) Subject to, and to the fullest extent permitted by, any rules, regulations, or guidelines adopted by either the Centers for Medicare and Medicaid Services or the Centers for Disease Control and Prevention or any federal law, each facility shall allow compassionate care visits. The facility may require compassionate care visitors to submit to health screenings necessary to prevent the spread of infectious diseases, and, notwithstanding anything to the contrary in this section, the facility may restrict a compassionate care visitor who does not pass a health screening requirement or who has tested positive for an infectious disease. The facility may require compassionate care visitors to adhere to infection control procedures, including wearing personal protective equipment. Compassionate care situations that require visits include, but are not limited to, the following:

(1) End-of-life situations.

(2) A resident who was living with his or her family before recently being admitted to the facility is struggling with the change in environment and lack of physical family support.

(3) A resident who is grieving after a friend or family member recently passed away.

(4) A resident who needs cueing and encouragement with eating or drinking, previously provided by family or caregivers, is experiencing weight loss or dehydration.

(5) A resident, who used to talk and interact with others, is experiencing emotional distress, seldom speaking, or crying more frequently when the resident had rarely cried in the past. (2021-171, s. 6; 2021-181, s. 2(f).)

§ 122C-33: Reserved for future codification purposes.

§ 122C-34: Reserved for future codification purposes.

§ 122C-35. (Effective once contingency met – see note) Licensure of opioid treatment program medication units and opioid treatment program mobile units.

(a) Any licensed opioid treatment program facility that intends to establish, maintain, or operate an opioid treatment program medication unit or opioid treatment program mobile unit shall apply to the Division of Health Service Regulation on forms prescribed by the Department for certified services provided from an opioid treatment program medication unit or opioid treatment program mobile unit to be added to its license. The Commission shall adopt rules establishing the requirements for obtaining such licensure, which shall include a requirement that each opioid treatment program medication unit and each opioid treatment program mobile unit seeking to operate in this State must demonstrate satisfactory proof to the Secretary that it has (i) obtained approval from the State Opioid Treatment Authority and (ii) registered with the Department's Drug Control Unit and the federal Drug Enforcement Agency.

(b) An opioid treatment program facility shall not submit a license application to the Division of Health Service Regulation to provide certified services at an opioid treatment program facility medication unit or opioid treatment program mobile unit prior to receiving approval from the State Opioid Treatment Authority or prior to receiving confirmation of registration with the Department's Drug Control Unit and the federal Drug Enforcement Agency.

(c) The Department may issue a license to an opioid treatment program facility to provide certified services at an opioid treatment program medication unit or an opioid treatment program mobile unit if the Secretary finds that the program is in compliance with all rules adopted by the Commission regarding opioid treatment programs. The Secretary may approve or deny an application for a license to provide certified services based upon consideration of all of the following criteria:

(1) The applicant's capacity, qualifications, and experience with regard to providing treatment and operating an opioid treatment program medication unit in compliance with applicable federal and State laws, regulations, and accepted clinical standards of practice.

(2) Any history of adverse regulatory actions involving the applicant in North Carolina or another state.

(3) Any history of suspension or revocation of, or other adverse regulatory action against, any professional licenses or narcotic licenses of persons proposed to be employed in the opioid treatment program medication unit or opioid treatment program mobile unit, in North Carolina or in another state, or any adverse regulatory action against the license of the opioid treatment program facility within the 12-month period preceding the application for licensure.

(4) Any additional criteria or standards established in rules adopted by the Commission regarding opioid treatment programs.

(d) An opioid treatment program facility shall not establish, maintain, or operate an opioid treatment program medication unit or opioid treatment program mobile unit without a current license from the Secretary that includes and covers that specific medication unit or mobile unit and without first obtaining certification from the Substance Abuse and Mental Health Services Administration.

(e) An opioid treatment program mobile unit or opioid treatment program medication unit added to an opioid treatment program facility license shall be deemed part of the opioid treatment program facility license and may be subject to inspections the Department deems necessary to validate compliance with the requirements set forth in this section, applicable rules adopted by the Commission, and all applicable federal laws and regulations, including, without limitation, Substance Abuse and Mental Health Services Administration regulations in Parts 8 and 21 of Title 42 of the Code of Federal Regulations governing opioid treatment programs, and federal Drug Enforcement Agency regulations in Parts 1300, 1301, and 1304 of Title 21 of the Code of Federal Regulations, including 21 C.F.R. § 1301.13(e), governing controlled substances, dispensers of controlled substances, mobile narcotic treatment programs, and federal Drug Enforcement Agency restraints. Substantial failure to comply with the requirements of this section, applicable rules adopted by the Commission, and applicable federal laws and regulations may result in an adverse action on a license under G.S. 122C-24 and administrative penalties under G.S. 122C-24.1. Any required services not provided in an opioid treatment program mobile unit or opioid treatment program medication unit must be conducted at the opioid treatment program facility, including medical, counseling, vocational, educational, and other assessment and treatment services.

(f) Each license issued under this section to an opioid treatment program facility to provide certified services at an opioid treatment program mobile unit or an opioid treatment program medication unit shall expire on December 31 of the year for which it was issued and shall be renewed annually by filing with the Division of Health Service Regulation on or after December 1 an application for license renewal on forms prescribed by the Department, accompanied by the required fee. License renewal shall be contingent upon (i) the applicant providing all information required by the Secretary for renewal and (ii) continued compliance with this Article and any applicable rules adopted by the Commission regarding opioid treatment programs. The Department shall charge an opioid treatment program facility a nonrefundable annual license fee plus a nonrefundable annual per-unit fee of two hundred sixty-five dollars ($265.00) for each opioid treatment program medication unit or opioid treatment program mobile unit.

(g) The opioid treatment program facility is responsible for ensuring that opioid treatment program medication units and opioid treatment program mobile medication units adhere to all State and federal requirements for opioid treatment programs.

(h) Notwithstanding G.S. 122C-25(a), an opioid treatment program facility with no previous violations of State or federal requirements for opioid treatment programs may be subject to inspection once every other year, excluding any complaint investigation. An opioid treatment program facility with either an opioid treatment program medication unit or an opioid treatment program mobile unit may be subject to annual inspections.

(i) The Commission shall adopt emergency, temporary, or permanent rules for the licensure, inspection, and operation of opioid treatment program medication units and opioid treatment program mobile units, including rules concerning any of the following:

(1) Compliance with all applicable Substance Abuse and Mental Health Services Administration and federal Drug Enforcement Agency regulations governing

opioid treatment program mobile units and opioid treatment program medication units.

(2) Identification of the location of opioid treatment program medication units and opioid treatment program mobile units.

(3) Schedules for the days and hours of operation to meet client needs.

(4) Maintenance and location of records.

(5) Requisite clinical staff and staffing ratios to meet immediate client needs at each opioid treatment program medication unit or opioid treatment program mobile unit, including client needs for nursing, counseling, and medical care.

(6) Emergency staffing requirements to ensure service delivery.

(7) Criteria for policies and procedures for a clinical and individualized assessment of individuals to receive services at an opioid treatment medication unit or opioid treatment mobile unit that consider medical and clinical appropriateness and accessibility to individuals served.

(8) Number of clients allowed per opioid treatment program medication unit and opioid treatment program mobile unit, based on staffing ratios.

(9) Criteria to ensure the opioid treatment program facility is providing the required counseling to individuals receiving services at an opioid treatment program medication unit or opioid treatment program mobile unit.

(10) Criteria for the opioid treatment program facility to ensure that individuals receiving services at an opioid treatment program medication unit or opioid treatment program mobile unit receive medical interventions when necessary. (2023-65, s. 10.2.)

§ 122C-36: Reserved for future codification purposes.

§ 122C-37: Reserved for future codification purposes.

§ 122C-38: Reserved for future codification purposes.

§ 122C-39: Reserved for future codification purposes.

§ 122C-40: Reserved for future codification purposes.

§ 122C-41: Reserved for future codification purposes.

§ 122C-42: Reserved for future codification purposes.

§ 122C-43: Reserved for future codification purposes.

§ 122C-44: Reserved for future codification purposes.

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§ 122C-46: Reserved for future codification purposes.

§ 122C-47: Reserved for future codification purposes.

§ 122C-48: Reserved for future codification purposes.

§ 122C-49: Reserved for future codification purposes.

§ 122C-50: Reserved for future codification purposes.