

§ 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).)