

# VIRGINIA ACTS OF ASSEMBLY -- 2014 SESSION

## CHAPTER 497

*An Act to amend and reenact §§ 37.2-403, 37.2-410, 37.2-415, 37.2-418, and 37.2-419 of the Code of Virginia, relating to licensure of private behavioral health services providers.*

[H 540]

Approved April 3, 2014

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 37.2-403, 37.2-410, 37.2-415, 37.2-418, and 37.2-419 of the Code of Virginia are amended and reenacted as follows:**

**§ 37.2-403. Definitions.**

As used in this article, unless the context requires a different meaning:

"Brain injury" is any injury to the brain that occurs after birth, but before age 65, that is acquired through traumatic or non-traumatic insults. Non-traumatic insults may include, but are not limited to anoxia, hypoxia, aneurysm, toxic exposure, encephalopathy, surgical interventions, tumor and stroke. Brain injury does not include hereditary, congenital or degenerative brain disorders, or injuries induced by birth trauma.

"Conditional license" means a license issued in accordance with the requirements of § 37.2-415 to a provider for a new service for a period of time sufficient to allow the provider to demonstrate compliance with regulations of the Board governing licensure of providers.

"Full license" means a license issued in accordance with the requirements of § 37.2-404 to a provider who demonstrates full compliance with the regulations of the Board governing licensure of providers.

"Provider" means any person, entity, or organization, excluding an agency of the federal government by whatever name or designation, that delivers (i) services to individuals with mental illness, intellectual disability, or substance abuse, (ii) services to individuals who receive day support, in-home support, or crisis stabilization services funded through the Individual and Families Developmental Disabilities Support Waiver, or (iii) residential services for persons with brain injury. The person, entity, or organization shall include a hospital as defined in § 32.1-123, community services board, behavioral health authority, private provider, and any other similar or related person, entity, or organization. It shall not include any individual practitioner who holds a license issued by a health regulatory board of the Department of Health Professions or who is exempt from licensing pursuant to § 54.1-3501, 54.1-3601, or 54.1-3701.

"Provisional license" means a license issued to a provider previously issued a full license that has demonstrated a temporary inability to maintain compliance with licensing or human rights regulations or that has failed to comply with a previous corrective action plan, and that allows the provider to continue operating for a limited time while addressing the inability or failure to comply with regulations.

"Service or services" means:

1. Planned individualized interventions intended to reduce or ameliorate mental illness, intellectual disability, or substance abuse through care, treatment, training, habilitation, or other supports that are delivered by a provider to persons with mental illness, intellectual disability, or substance abuse. Services include outpatient services, intensive in-home services, opioid treatment services, inpatient psychiatric hospitalization, community gero-psychiatric residential services, assertive community treatment, and other clinical services; day support, day treatment, partial hospitalization, psychosocial rehabilitation, and habilitation services; case management services; and supportive residential, special school, halfway house, and other residential services;

2. Day support, in-home support, and crisis stabilization services provided to individuals under the Individual and Families Developmental Disabilities Support Waiver; and

3. Planned individualized interventions intended to reduce or ameliorate the effects of brain injury through care, treatment, or other supports provided in residential services for persons with brain injury.

**§ 37.2-410. Expiration of license; renewal; license fees.**

~~Licenses~~ Full licenses granted under this article may be issued for ~~periods of up to~~ a period of one year or three successive years from the date of issuance and may be renewed by the Commissioner. The Commissioner shall issue a triennial license to a provider that has demonstrated full compliance with all applicable regulations of the Board related to health and safety of individuals receiving services during the previous licensing period and has demonstrated consistent compliance with all regulations of the Board during the previous 12-month period and the provider has taken steps satisfactory to the Department to prevent future violations and maintain full compliance with all applicable regulations during the three-year period. The Board may fix a reasonable fee for each license so issued and for any

renewal thereof. All funds received by the Department under this article shall be paid into the general fund in the state treasury.

**§ 37.2-415. Provisional and conditional licenses.**

The Commissioner may issue a provisional license *at any time* to a provider that has previously been fully licensed when the provider is temporarily unable to comply with all licensing standards. The maximum term of a provisional license shall be six months. ~~The A provisional license may be renewed, but in for a period not to exceed six months if the provider is not able to demonstrate compliance with all licensing regulations but demonstrates progress towards compliance. However, in no case, whether renewed or not,~~ shall the total period of provisional licensing be longer than licensure exceed 12 successive months. A provisional license shall be prominently displayed by the provider *in a format determined by the Commissioner* at the site of the affected service and shall indicate thereon the violations of licensing standards to be corrected and the expiration date of the license. *Whenever the Commissioner issues a provisional license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to issue a provisional license shall be entitled to judicial review of such decision in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).*

The Commissioner may issue a conditional license to a provider to operate a new service in order to permit the provider to demonstrate compliance with all licensing standards. The maximum term of a conditional license shall be six months. A conditional license may be renewed, but in no case, whether renewed or not, shall the total period of conditional licensing be longer than 12 successive months.

**§ 37.2-418. Revocation, suspension, or refusal of licenses; resumption of operation; summary suspension under certain circumstances; penalty.**

A. The Commissioner is authorized to revoke or suspend any license issued hereunder or refuse issuance of a license on any of the following grounds: (i) violation of any provision of this article or of any applicable regulation made pursuant to such provisions; (ii) permitting, aiding, or abetting the commission of an illegal act in services delivered by the provider; or (iii) conduct or practices detrimental to the welfare of any individual receiving services from the provider.

B. Whenever the Commissioner revokes, suspends, or denies a license, the provisions of the Administrative Process Act (§ 2.2-4000 et seq.) shall apply. Any person aggrieved by the final decision of the Commissioner to refuse to issue a license or by his revocation or suspension of a license is entitled to judicial review in accordance with the provisions of the Administrative Process Act.

C. If a license is revoked or refused as herein provided, a new application for license may be considered by the Commissioner when the conditions upon which the action was based have been corrected and satisfactory evidence of this fact has been furnished. In no event may an applicant reapply for a license after the Commissioner has refused or revoked a license until a period of six months from the effective date of that action has elapsed, unless the Commissioner in his sole discretion believes that there has been such a change in the conditions causing refusal of the prior application or revocation of the license as to justify considering the new application. When an appeal is taken by the applicant pursuant to this section, the six-month period shall be extended until a final decision has been rendered on appeal. A new license may then be granted after proper inspection has been made and all provisions of this article and applicable regulations made thereunder have been complied with and recommendations to that effect have been made to the Commissioner upon the basis of an inspection by any authorized inspector or agent of the Department.

D. Suspension of a license shall in all cases be for an indefinite time and the suspension may be lifted and rights under the license fully or partially restored at such time as the Commissioner determines, based on an inspection, that the rights of the licensee appear to so require and the interests of the public will not be jeopardized by resumption of operation.

E. Pursuant to the procedures set forth in subsection F and in addition to the authority provided in subsections A through D, the Commissioner may issue a summary order of suspension of the license of a group home or residential facility for children, in conjunction with any proceeding for revocation, denial, or other action, when conditions or practices exist in the home or facility that pose an immediate and substantial threat to the health, safety, and welfare of the children who are residents and the Commissioner believes the operation should be suspended during the pendency of such proceeding.

F. The summary order of suspension shall take effect upon its issuance and shall be served on the licensee or its designee as soon as practicable thereafter by personal service and certified mail, return receipt requested, to the address of record of the licensee. The order shall state the time, date, and location of a hearing to determine whether the suspension is appropriate. Such hearing shall be held no later than three business days after the issuance of the summary order of suspension and shall be convened by the Commissioner or his designee.

After such hearing, the Commissioner may issue a final order of summary suspension or may find that such summary suspension is not warranted by the facts and circumstances presented. A final order of summary suspension shall include notice that the licensee may appeal the Commissioner's decision to the appropriate circuit court no later than 10 days following issuance of the order. The sole issue before the court shall be whether the Commissioner had reasonable grounds to require the licensee to cease

operations during the pendency of the concurrent revocation, denial, or other proceeding. The concurrent revocation, denial, or other proceeding shall not be affected by the outcome of any hearing on the appropriateness of the summary suspension.

The willful and material failure to comply with the summary order of suspension or final order of summary suspension shall be punishable as a Class 2 misdemeanor. The Commissioner may require the cooperation of any other agency or subdivision of the Commonwealth in the relocation of children who are residents of a home or facility whose license has been summarily suspended pursuant to this section and in any other actions necessary to reduce the risk of further harm to children.

*G. The Commissioner shall inform other public agencies that provide funds to a provider, including the Departments of Social Services and Medical Assistance Services, when a provider's license is suspended, revoked, or denied in accordance with this section.*

**§ 37.2-419. Human rights and licensing enforcement and sanctions; notice.**

A. As used in this section, "special order" means an administrative order issued to any party licensed or funded by the Department that has a stated duration of not more than 12 months and that may include a civil penalty that shall not exceed \$500 per violation per day, prohibition of new admissions, or reduction of licensed capacity for violations of § 37.2-400, the licensing or human rights regulations, or this article.

B. Notwithstanding any other provision of law, following a proceeding as provided in § 2.2-4019, the Commissioner may issue a special order for a violation of any of the provisions of § 37.2-400 or any regulation adopted under any provision of § 37.2-400 or of this article that adversely affects the human rights of individuals receiving services or poses an imminent and substantial threat to the health, safety, or welfare of individuals receiving services. The issuance of a special order shall be considered a case decision as defined in § 2.2-4001. The Commissioner shall not delegate his authority to impose civil penalties in conjunction with the issuance of special orders. The Commissioner may take the following actions to sanction public and private providers licensed or funded by the Department for noncompliance with § 37.2-400, the human rights regulations, or this article *that are the subject of a special order*:

1. Place any service of any such provider on probation upon finding that it is substantially out of compliance with the licensing or human rights regulations and that the health or safety of individuals receiving services is at risk.

2. Reduce licensed capacity or prohibit new admissions when he concludes that the provider cannot or will not make necessary corrections to achieve compliance with licensing or human rights regulations except by a temporary restriction of its scope of service.

3. Require that probationary status announcements, ~~provisional licenses~~, and denial or revocation notices be of sufficient size and distinction and be posted in a prominent place at each public entrance of the affected service.

4. Mandate training for the provider's employees, with any costs to be borne by the provider, when he concludes that the lack of training has led directly to violations of licensing or human rights regulations.

5. Assess civil penalties of not more than \$500 per violation per day upon finding that the licensed or funded provider is substantially out of compliance with the licensing or human rights regulations and that the health or safety of individuals receiving services is at risk.

6. Withhold funds from ~~licensees or programs~~ *licensed or funded providers* receiving public funds that are in violation of the licensing or human rights regulations *upon finding that the licensed or funded provider is substantially out of compliance and that the health or safety of individuals receiving services is at risk.*

C. The Commissioner shall inform other public agencies that provide funds to ~~the licensee or the program~~ *a provider*, including the Departments of Social Services and Medical Assistance Services, ~~of any licensee or program that is in violation of the licensing or human rights regulations that a special order has been issued in accordance with this section.~~

D. The Board shall adopt regulations to implement the provisions of this section.