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2 94th General Assembly

A Bill

3 Regular Session, 2023

HOUSE BILL 1446

4

5 By: Representatives Cavanaugh, Vaught

6 By: Senator K. Hammer

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For An Act To Be Entitled

9 AN ACT TO PROVIDE STATE OVERSIGHT OF QUALITY OF CARE
10 PROVIDED TO CHILDREN IN PSYCHIATRIC RESIDENTIAL
11 TREATMENT FACILITIES AND OTHER REGULATED FACILITIES;
12 AND FOR OTHER PURPOSES.

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Subtitle

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TO PROVIDE STATE OVERSIGHT OF QUALITY OF
17 CARE PROVIDED TO CHILDREN IN PSYCHIATRIC
18 RESIDENTIAL TREATMENT FACILITIES AND
19 OTHER REGULATED FACILITIES.

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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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24 SECTION 1. Arkansas Code Title 9, Chapter 28, Subchapter 4, is amended
25 to add a new section to read as follows:

26 9-28-416. Admission of children to psychiatric residential treatment
27 facilities.

28 (a) A psychiatric residential treatment facility licensed under this
29 subchapter and holding a permit from the Health Services Permit Agency or the
30 Health Services Permit Commission shall not admit a child for psychiatric
31 residential treatment unless the child is:

32 (1) An Arkansas resident;

33 (2) A child of a parent who is an Arkansas resident;

34 (3) A child placed by or on behalf of another state's child
35 welfare agency;

36 (4) A child for whom the facility is being paid by another



1 state's Medicaid program;

2 (5) A child of an active-duty member or veteran of the uniformed
3 services as defined in § 6-4-302; or

4 (6) A nonresident child victim of human trafficking when the
5 regulated facility maintains responsibility for the return of the child to
6 the out-of-state custodian.

7 (b) The Department of Human Services may promulgate rules to enforce
8 this section.

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10 SECTION 2. Arkansas Code Title 9, Chapter 28, is amended to add an
11 additional subchapter to read as follows:

12 Subchapter 13 – Psychiatric Residential Treatment Facilities and Other
13 Regulated Facilities

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15 9-28-1301. Definitions.

16 As used in this subchapter:

17 (1) “Psychiatric residential treatment facility” means the same
18 as defined in § 9-28-402; and

19 (2) “Regulated facility” means:

20 (A) A psychiatric residential treatment facility licensed
21 under § 9-28-401 et seq.; and

22 (B) A psychiatric hospital licensed under the Child
23 Welfare Agency Licensing Act, § 20-9-201 et seq., that admits a child for the
24 purpose of providing behavioral health treatment, regardless of whether the
25 child is placed in an acute, subacute, or otherwise unlicensed bed.

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27 9-28-1302. Quality of care – Quality assurance reviews.

28 (a) The Department of Human Services shall promulgate rules setting
29 minimum standards and metrics governing the quality of care provided by a
30 regulated facility to a child.

31 (b) Quality of care standards shall include that a regulated facility
32 shall provide:

33 (1) Trauma-informed programming and clinical services and, when
34 applicable, evidence-based treatments;

35 (2) Services that will be short-term, target treatment episodes
36 to reduce the likelihood of re-entry into residential treatment settings;

1 (3) Services that are family-driven and youth-guided;

2 (4) Mental health services and clinical services provided by
3 clinical staff as appropriate for the child's needs;

4 (5) Educational services in compliance with state and federal law
5 and rules of the Department of Education;

6 (6) Coordination of all needs including medical, dental, and
7 other needs; and

8 (7) Clinical discharge planning throughout the child's stay that
9 includes the custodian and child involvement.

10 (c)(1) The Department of Human Services and its designees may inspect
11 and investigate the quality of care for behavioral health provided to any
12 child admitted to a regulated facility, whether or not the child is an
13 Arkansas resident.

14 (2) The Department of Human Services or any other public agency
15 having authority or responsibility with respect to child maltreatment,
16 including without limitation the Medicaid Fraud Control Unit of the Attorney
17 General's office, may investigate any alleged or suspected child maltreatment
18 in any regulated facility.

19 (d) The Department of Human Services shall conduct quality assurance
20 reviews for each regulated facility, consisting of the following:

21 (1) A review of treatment structure including without
22 limitation:

23 (A) Observation of paraprofessional and direct-care staff
24 interaction with patients;

25 (B) Review of daily activity structure outside of school
26 and treatment;

27 (C) Review of paraprofessional and direct-care staff
28 training and personnel records;

29 (D) Review of staff-to-client ratios; and

30 (E) Completion of client interviews;

31 (2) An analysis of referral data, statistics, and psychotropic
32 medication prescriptions;

33 (3) An on-site visit of a regulated facility's operation, to be
34 conducted at least once per year; and

35 (4) Technical assistance and ongoing quality assurance and
36 collaboration as needed.

1 (e) This subchapter does not require any additional licensure or
2 certification for a regulated facility.

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4 9-28-1303. Department enforcement authority.

5 (a) The Department of Human Services may initiate an adverse action
6 against a regulated facility that:

7 (1) Fails to comply with the provisions of this subchapter or
8 any rule of the department relating to quality of care;

9 (2) Furnishes or makes any statement or report to the department
10 that is false or misleading;

11 (3) Refuses or fails to submit required reports or to make
12 available to the department any records required by the department in making
13 an investigation of the agency for quality of care purposes;

14 (4) Refuses or fails to submit to an investigation or to
15 reasonable inspection by the department;

16 (5) Retaliates against an employee who in good faith reports a
17 suspected violation of the provisions of this subchapter or the rules
18 promulgated under this subchapter;

19 (6) Fails to engage in a course of professional conduct in
20 dealing with clients being served by the regulated facility, as defined by
21 rules promulgated under this subchapter; or

22 (7) Demonstrates gross negligence in carrying out the duties at
23 the regulated facility.

24 (b) The department may impose an adverse action as follows:

25 (1) Issue letters of reprimand or caution;

26 (2) Require a corrective action plan; and

27 (3)(A) Impose civil penalties of up to two thousand five hundred
28 dollars (\$2,500) per violation, with each day of noncompliance and each
29 client injured as a result of noncompliance constituting a separate
30 violation.

31 (B) If any person upon whom the department has levied a
32 civil penalty fails to pay the civil penalty within sixty (60) days of the
33 decision of the department to impose the penalty, the amount of the fine
34 shall be considered to be a debt owed the State of Arkansas and may be
35 collected by civil action.

36 (C) Civil penalties collected under this section may be

1 expended only for the purpose of providing technical assistance and training
2 to regulated facilities.

3 (c)(1) For a regulated facility licensed under the Child Welfare
4 Agency Licensing Act, § 9-28-401 et seq., the department may petition the
5 Child Welfare Agency Review Board to deny, suspend, or revoke the regulated
6 facility's license on the basis of any adverse action imposed by the
7 department under this section.

8 (2) For a regulated facility licensed under § 20-9-201 et seq.,
9 the department may petition the State Board of Health to deny, suspend, or
10 revoke the regulated facility's license on the basis of any adverse action
11 imposed by the department under this section.

12 (d) The department shall notify the regulated facility of the adverse
13 action of the department in writing and set forth the facts forming the basis
14 for the adverse action.

15 (e)(1) Adverse action hearings shall comply with the Arkansas
16 Administrative Procedure Act, § 25-15-201 et seq.

17 (2) Within ten (10) business days after rendering a decision,
18 the department shall forward to the regulated facility written findings of
19 fact and conclusions of law articulating the decision of the department.

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21 9-28-1304. Rules.

22 The Department of Human Services shall promulgate rules to implement
23 this subchapter.

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25 /s/Cavenaugh

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28 **APPROVED: 4/13/23**