



State of Tennessee

PUBLIC CHAPTER NO. 466

SENATE BILL NO. 858

By Reeves, Jackson

Substituted for: House Bill No. 952

By Boyd, Gant, Ragan

AN ACT to amend Tennessee Code Annotated, Title 4; Title 33; Title 68 and Title 71, relative to the regulation of healthcare facilities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 68-11-202, is amended by adding the following as new subsections:

(i)(1) The commission may license, for purposes of providing acute care services, a facility that is additionally licensed by the department of mental health and substance abuse services.

(2) The commission may promulgate rules to govern the process of licensing, for purposes of providing acute care services, a facility that is or may become additionally licensed by the department of mental health and substance abuse services and that is not otherwise exempt from licensing under the laws of this state or federal law. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(3) The commission shall consult with the department of mental health and substance abuse services when promulgating rules described in subdivision (i)(2).

(4) This subsection (i) does not alter or preclude the requirement of title 33, chapter 2, part 4, that a facility, not otherwise exempt, obtain licensure from the department of mental health and substance abuse services.

(j) The board is authorized to promulgate rules governing the designation of rural emergency hospitals in a manner consistent with the federal regulations of the federal centers for medicare and medicaid services. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

SECTION 2. Tennessee Code Annotated, Section 68-11-203, is amended by deleting subdivision (b)(4) and substituting:

(4) A majority of members, not including vacant positions on the board, constitutes a quorum for the transaction of all business. For purposes of contested case hearings and disciplinary matters, three (3) or more members constitute a quorum, and the board chairperson is authorized, when it is deemed necessary, to split the board into panels of three (3) or more members each to conduct contested case hearings or disciplinary matters. A majority vote of the members present on a duly constituted panel is required to authorize board action in disciplinary matters and contested case hearings. The board chairperson has the authority to appoint board members to serve, as necessary, on the panels regardless of the professional category from which the appointed member was chosen or the member's status as a physician, administrator, or citizen member. The existence of a non-physician or non-administrator board member creates no rights in any individual concerning the composition of a panel in any disciplinary matter or contested case hearing. Notwithstanding § 4-5-314(e) to the contrary, the unavailability of a member of a panel before rendition of a final order shall not require the substitution of another member unless the unavailability results in there being less than the quorum required by this subdivision (b)(4) for contested

case hearings or disciplinary matters. A substitute shall use any existing record and may conduct further proceedings as is necessary in the interest of justice.

SECTION 3. Tennessee Code Annotated, Section 68-11-206, is amended by adding the following as a new subsection:

(d)(1) This subsection (d) controls the recovery and collection of civil monetary penalties for which a facility or individual is liable under this part.

(2) An action to recover or collect a civil monetary penalty owed pursuant to this part shall not be taken until:

(A) The facility or individual has waived the right to a contested case hearing pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, part 3;

(B) The time allowed for the facility or individual to demand a contested case hearing has expired without a demand being made or a denial filed; or

(C) A final administrative order has been entered pursuant to § 4-5-314.

(3) If the full amount of the civil monetary penalty owed pursuant to this part has not been received in full within sixty (60) days from the occurrence of an event described in subdivision (d)(2), or received by the due date specified by order, then the executive director of the health facilities commission shall immediately proceed to recover such amount, plus interest computed at the applicable formula rate as defined in § 47-14-102, retroactive to the earliest date of occurrence of an event described in subdivision (d)(2), by one (1) or more of the following means:

(A) Directing the reduction of the amount owed from any balance otherwise due from the state to the facility and directing a remittance of the amount to the health facilities commission;

(B) Adding such amounts to the licensing fee, with renewal of the license pursuant to subdivision (a)(8) and § 68-11-216 contingent upon the prior payment of such costs; or

(C) Bringing an action in circuit or chancery court to recover such amounts.

SECTION 4. Tennessee Code Annotated, Section 68-11-207, is amended by deleting subdivision (f)(8) and substituting:

(8) A single period of probation for a facility shall not extend beyond twelve (12) months. If the board determines during or at the end of the probation period that the facility is not taking steps to correct noncompliance or otherwise not responding in good faith pursuant to the plan of correction, then the board may take additional action as authorized by law. The executive director may, by written order, extend the probationary period.

SECTION 5. Tennessee Code Annotated, Section 68-11-208, is amended by deleting subsection (a) and substituting:

(a)(1) The commission and each board, committee, or council established in this title that does not already have authority to utilize screening panels may utilize one (1) or more screening panels in its investigative and disciplinary process to assure that complaints filed and investigations conducted are meritorious and appropriate.

(2) The activities of a screening panel and any mediation or arbitration sessions shall not be construed as an open meeting of an agency for purposes of title 8, chapter 44, and remain confidential. The members of a screening panel, mediators, and arbitrators have a deliberative privilege and the same immunity as provided by law for the boards and are not subject to deposition or subpoena to testify regarding any matter or issue raised in any contested case, criminal prosecution, or civil lawsuit that may result from or that is incident to cases processed before the panel.

(3) A screening panel has the authority to administer an oath to witnesses. Any documents or records produced at the screening panel are exempt from disclosure as a public record pursuant to title 10, chapter 7, until there is a filing of a

notice of charges and such documents or records form the basis for the filing of a notice of charges.

(4) Members of a screening panel may be drawn from among the membership of the relevant board, and members may be appointed by the relevant board. Non-board members must meet the requirements of membership for the relevant board and may include a consumer member. A board member serving on a panel shall not participate in a contested case involving any matter heard by the panel.

(5) Each screening panel must be instructed as to the statutes, rules, and philosophies of the relevant board as it pertains to disciplinary action and procedures that must be followed by the panel. Each screening panel must be provided a copy of Tennessee Supreme Court Rule 31 for review by members of the screening panel for general guidance as to the principles of mediation and alternative dispute resolution.

(6) A board shall not compel any party to participate in a screening panel, and no prejudice is incurred if a party chooses not to participate in a screening panel or to accept the offer of a screening panel.

SECTION 6. Tennessee Code Annotated, Section 68-11-213, is amended by deleting subsection (b) and substituting:

(b)(1) Within five (5) working days after concluding an inspection or investigation, the executive director may initiate type A civil penalty proceedings by mailing a notice to the facility, stating the executive director's decision to suspend the admissions of new patients.

(2) Within ten (10) working days after concluding an inspection or investigation, the health facilities commission shall mail to the nursing home the executive director's order, which must detail the alleged facts and pertinent law with particularity, and must also inform the nursing home of its right to contest the action.

SECTION 7. Tennessee Code Annotated, Section 68-11-814, is amended by deleting the section and substituting:

(a) Within five (5) working days after concluding an inspection or investigation, the health facilities commission may initiate type B or type C civil penalty proceedings by mailing to the nursing home a written statement citing the provisions of §§ 68-11-801 — 68-11-805 that the health facilities commission alleges to have been violated, stating the amount of the penalty being assessed, and informing the facility of its right to contest the penalty.

(b) Within ten (10) working days after concluding an inspection or investigation, the health facilities commission shall mail to the nursing home a more detailed statement describing the findings with particularity and citing the law with specificity.

SECTION 8. Tennessee Code Annotated, Section 68-11-1618, is amended by deleting subdivision (b)(2) and substituting:

(2) Subdivision (b)(1) does not prohibit change of control as described in subdivision (b)(1), if the commission determines, upon petition of the prospective owner or owners of the entity, that the prospective owner or owners demonstrate that the owner or owners will provide health care that meets appropriate quality standards, and that the transfer would not reduce access to consumers, particularly those in underserved communities; those who are uninsured or underinsured; women and racial and ethnic minorities; TennCare or medicaid recipients; and low-income groups.

SECTION 9. Tennessee Code Annotated, Section 68-1-120, is amended by deleting the section.

SECTION 10. Tennessee Code Annotated, Title 68, Chapter 11, Part 8, is amended by adding the following as a new section:

The executive director of the health facilities commission shall submit a report no later than February 1 of each year to the governor, the chief clerk of the house of representatives, and the chief clerk of the senate, regarding the commission's nursing home inspection and enforcement activities during the previous year. The report must analyze trends in compliance with nursing home standards and residents' rights by nursing homes in this state, and must be limited to identifying those trends through aggregate and quantitative data only. In preparing the report, the executive director may utilize quantitative data compiled by nursing homes pursuant to federal or state regulations. The executive director shall ensure

that the report is promptly made available to the public by dissemination via the internet and that the report is available for members of the public to copy.

SECTION 11. Tennessee Code Annotated, Section 68-11-236, is amended by deleting "department of health" wherever it appears and substituting "health facilities commission"; and by deleting "department" and substituting "commission" in subdivision (c)(3), subsection (d), subsection (e), and subdivision (f)(3).

SECTION 12. Tennessee Code Annotated, Section 68-11-237, is amended by deleting "department of health" wherever it appears and substituting "health facilities commission"; and by deleting "department" and substituting "commission" in subdivision (c)(3), subsection (d), subsection (e), and subdivision (f)(3).

SECTION 13. Tennessee Code Annotated, Section 68-11-203(a)(1), is amended by deleting the language "ex officio members, namely".

SECTION 14. Tennessee Code Annotated, Section 68-140-319, is amended by deleting subdivisions (1)(C) and (1)(D) and substituting:

(C) Notwithstanding another law to the contrary, an ambulance service provider shall furnish to a patient or a patient's authorized representative a copy of the patient's run record or records within five (5) business days upon request in writing by the patient or the representative, and shall furnish a copy of a patient's run record or records to a surveyor employed by the health facilities commission within five (5) business days upon request in writing by the surveyor or health facilities commission staff; and

(D) Except as otherwise provided by law, such patient's run record or records are not a public record, and this part does not impair any privilege of confidentiality conferred by law on patients, their personal representatives, or heirs. This subdivision (1)(D) does not impair or abridge the right of the patient or the patient's authorized representative to obtain copies of the patient's hospital records in the manner provided in § 68-11-304. This subdivision (1)(D) does not prohibit a health facilities commission surveyor investigating an incident in a certified or licensed healthcare facility from obtaining a copy of this record without a subpoena incident to a health facility investigation. This subdivision (1)(D) does not prohibit a patient's run record or records from being subpoenaed by a court of competent jurisdiction. As used in this subdivision (1), "run record" includes any list of patients that is compiled or maintained by or for such patient's ambulance service provider, but does not include the dispatch log; and

SECTION 15. Tennessee Code Annotated, Section 71-2-116, is amended by deleting subsection (d) and substituting:

The executive director shall appoint the council membership after consulting with the Tennessee Hospice Association, Tennessee Hospital Association, Tennessee Medical Association, Tennessee Nursing Association, Tennessee Health Care Association, Tennessee Association of Home Care, and the Tennessee Chapter of the American Cancer Society and shall include interdisciplinary palliative care medical, nursing, social work, pharmacy, and spiritual professional expertise; patient and family caregiver advocate representation; and any other relevant appointees the executive director determines appropriate. The council consists of no more than twelve (12) members. The executive director shall consider the racial, geographic, urban/rural, and economic diversity of the state when appointing members. Membership must specifically include health professionals having palliative care work experience or expertise in palliative care delivery models in a variety of inpatient, outpatient, and community settings such as acute care, long-term care, and hospice, and with a variety of populations, including pediatric, youth, and adult. At least one (1) council member must be a board-certified hospice and palliative medicine physician; at least one (1) council member must be a licensed certified registered nurse practitioner with expertise in palliative care; one (1) council member must be the executive director of the health facilities commission, or the executive director's designated representative; and one (1) council member must be from the department of health. Council members are appointed for a term of three (3) years. The members shall elect a chair and vice chair, whose duties are established by the council. The council shall fix a time and place for regular meetings and shall meet no less than twice yearly.

SECTION 16. Tennessee Code Annotated, Section 71-2-117, is amended by deleting from subdivision (c)(1) the language "sixteen (16) members" and substituting "seventeen (17) members"; and by inserting the following as a new subdivision immediately preceding subdivision (c)(1)(N) and redesignating the remaining subdivisions accordingly:

() The executive director of the Tennessee health facilities commission;

SECTION 17. Tennessee Code Annotated, Section 68-11-201(1), is amended by deleting "by the board" and substituting "by the commission".

SECTION 18. Tennessee Code Annotated, Section 68-11-201(2), is amended by deleting "by the board" and substituting "by the commission".

SECTION 19. Tennessee Code Annotated, Section 68-11-201(4)(C)(iii), is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 20. Tennessee Code Annotated, Section 68-11-201(4)(C)(v), is amended by deleting "the board" wherever it appears and substituting "the commission".

SECTION 21. Tennessee Code Annotated, Section 68-11-201(4)(C)(vi), is amended by deleting "The board shall" and substituting "The commission shall".

SECTION 22. Tennessee Code Annotated, Section 68-11-201(5)(A), is amended by deleting "authority of the board or the commission" and substituting "authority of the commission".

SECTION 23. Tennessee Code Annotated, Section 68-11-201(5)(D), is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 24. Tennessee Code Annotated, Section 68-11-201(5)(F), is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 25. Tennessee Code Annotated, Section 68-11-201(17), is amended by deleting "created by § 68-11-1604" and substituting "created by this part".

SECTION 26. Tennessee Code Annotated, Section 68-11-201(19)(D), is amended by deleting "The board shall" and substituting "The commission shall"; and by deleting "authorized by the board" and substituting "authorized by the commission".

SECTION 27. Tennessee Code Annotated, Section 68-11-201(20)(B), is amended by deleting "the board" wherever it appears and substituting "the commission"; by deleting "The board" wherever it appears and substituting "The commission"; and by deleting "the board's" and substituting "the commission's".

SECTION 28. Tennessee Code Annotated, Section 68-11-201(28)(D), is amended by deleting "The board has" and substituting "The commission has".

SECTION 29. Tennessee Code Annotated, Section 68-11-201(40)(C), is amended by deleting "purview of the board" and substituting "purview of the commission".

SECTION 30. Tennessee Code Annotated, Section 68-11-201(42), is amended by deleting "in regulations promulgated by the board" and substituting "in rules promulgated by the commission".

SECTION 31. Tennessee Code Annotated, Section 68-11-201(44), is amended by deleting "The board shall establish, by rules and regulations" and substituting "The commission shall establish by rule".

SECTION 32. Tennessee Code Annotated, Section 68-11-201(45), is amended by deleting "in regulations promulgated by the board" and substituting "in rules promulgated by the commission".

SECTION 33. Tennessee Code Annotated, Section 68-11-201, is amended by deleting subdivisions (9) and (13).

SECTION 34. Tennessee Code Annotated, Section 68-11-201, is amended by inserting the following as new subdivisions:

() "Conflict of interest" means a matter before the commission in which the member or employee of the commission has a direct interest or indirect interest that is in conflict or gives the appearance of conflict with the discharge of the member's or employee's duties;

() "Direct interest" means a pecuniary interest in the persons involved in a matter before the commission, and applies to the commission member or employee, the commission member's or employee's relatives, or an individual with whom or business in which the member or employee has a pecuniary interest. As used in this subdivision (), "relative" means a spouse, parent, child, stepparent, stepchild, grandparent, grandchild,

brother, sister, half-brother, half-sister, aunt, uncle, niece, or nephew by blood, marriage, or adoption;

() "Ex parte communications" means communications in violation of § 4-5-304 or § 68-11-1607(d);

() "Indirect interest" means a personal interest in the persons involved in a matter before the commission that is in conflict with the discharge of the commission member's or employee's duties;

() "Needs assessment" means an annual report that measures access to health care in this state, particularly as to emergency and primary care; identifies access gaps; and serves to inform the criteria and standards for the issuance of certificates of need;

() "Nonresidential substitution-based treatment center for opiate addiction" includes, but is not limited to, stand-alone clinics that offer:

(A) Methadone;

(B) Products containing buprenorphine, such as Subutex and Suboxone; or

(C) Products containing another formulation designed to treat opiate addiction by preventing symptoms of withdrawal;

() "Nursing home bed" means:

(A) A licensed bed within a nursing home, regardless of whether the bed is certified for medicare or medicaid services; and

(B) A bed at a healthcare institution that is used as a swing bed under 42 C.F.R. § 485.645;

() "Rehabilitation facility" means an inpatient or residential facility that is operated for the primary purpose of assisting in the rehabilitation of physically disabled persons through an integrated program of medical and other services that are provided under professional supervision;

SECTION 35. Tennessee Code Annotated, Section 68-11-202, is amended by deleting subdivision (a)(2).

SECTION 36. Tennessee Code Annotated, Section 68-11-202, is amended by deleting "the board" wherever it appears and substituting "the commission"; by deleting "The board" wherever it appears and substituting "The commission"; by deleting "the board's" wherever it appears and substituting "the commission's"; and by deleting "board-regulated facility" wherever it appears and substituting "commission-regulated facility".

SECTION 37. Tennessee Code Annotated, Section 68-11-203, is amended by deleting the section and substituting:

(a) There is created a health facilities commission that has jurisdiction and powers relating to the licensing and regulation of healthcare facilities, as described in § 68-11-202; the certificate of need program described in part 16 of this chapter; the development of the criteria and standards to guide the commission when issuing certificates of need; conducting of studies related to health care, which must include a needs assessment; and related reporting of healthcare institutions subject to this chapter.

(b)(1) The commission consists of fifteen (15) members, including:

(A) The comptroller of the treasury, or an employee of the office of the comptroller of the treasury, designated by the comptroller;

(B) The executive director of the commission on aging and disability, or an employee of the commission on aging and disability, designated by the director;

(C) The director of TennCare, or an employee of the division of TennCare, designated by the director;

(D) Four (4) members appointed by the speaker of the senate, to include:

(i) One (1) consumer member;

(ii) One (1) individual who has recent experience as an executive officer of a hospital or hospital system who may be appointed from lists of qualified persons submitted by interested hospital groups, including, but not limited to, the Tennessee Hospital Association;

(iii) One (1) representative of the nursing home industry who may be appointed from lists of qualified persons submitted by interested healthcare groups, including, but not limited to, the Tennessee Health Care Association; and

(iv) One (1) duly licensed physician who may be appointed from lists of qualified persons submitted by interested medical groups, including, but not limited to, the Tennessee Medical Association;

(E) Four (4) members appointed by the speaker of the house of representatives, to include:

(i) One (1) consumer member;

(ii) One (1) individual who has recent experience as an executive officer of a hospital or hospital system who may be appointed from lists of qualified persons submitted by interested hospital groups, including, but not limited to, the Tennessee Hospital Association;

(iii) One (1) representative of the nursing home industry who may be appointed from lists of qualified persons submitted by interested healthcare groups, including, but not limited to, the Tennessee Health Care Association; and

(iv) One (1) duly licensed physician who may be appointed from lists of qualified persons submitted by interested medical groups, including, but not limited to, the Tennessee Medical Association; and

(F) Four (4) members appointed by the governor, to include:

(i) One (1) registered nurse, who may be appointed from lists of qualified persons submitted by interested groups, including, but not limited to, the Tennessee Nurses Association;

(ii) One (1) representative of the home care industry who may be appointed from lists of qualified persons submitted by interested home care groups, including, but not limited to, the Tennessee Association for Home Care. The initial term for the home care industry representative is two (2) years. Upon the expiration of that term, the home care industry representative is appointed for a three-year term pursuant to subsection (c);

(iii) One (1) representative of the assisted-care living facility industry; and

(iv) One (1) representative of the ambulatory surgical treatment center industry.

(2) The governor and each speaker shall consult with interested groups, including, but not limited to, the organizations listed in subdivision (b)(1) to determine qualified persons to fill positions with the commission.

(3) In making appointments to the health facilities commission, the governor and the speakers shall strive to ensure that racial minorities, females, persons sixty (60) years of age and older, and the three (3) grand divisions are represented.

(4) The consumer members must be persons who are knowledgeable of health needs and services and who are further knowledgeable by training or experience in healthcare facility design or construction, financing of healthcare services or construction, reimbursement of healthcare services, or general healthcare

economics. The consumer members shall not be a direct provider of healthcare goods or services.

(c)(1) A member of the commission shall not serve beyond the expiration of the member's term, whether or not a successor has been appointed by the governor or the speakers of the senate and the house of representatives.

(2)(A) Except as otherwise provided in subdivisions (c)(2)(B) and (C), commission members are appointed for three-year terms. A commission member may serve consecutive terms, and there is no limit upon the number of consecutive or non-consecutive terms that a member may serve.

(B) The comptroller of the treasury, the executive director of the commission on aging and disability, and the director of TennCare, or their respective designees, are not limited to a term of years.

(C) In order to stagger the initial terms of the consumer members of the commission, the following initial terms apply:

(i) The initial term for the consumer member appointed pursuant to subdivision (b)(1)(D)(i) is three (3) years; and

(ii) The initial term for the consumer member appointed pursuant to subdivision (b)(1)(E)(i) is two (2) years.

(3) If a member is absent from three (3) consecutive, regularly scheduled public meetings of the commission, then the individual's membership is automatically terminated, and the position is considered vacant.

(d)(1) Each member of the commission shall be reimbursed for all travel and other necessary expenses.

(2) Expenditures must be claimed and paid in accordance with the comprehensive travel regulations as promulgated by the department of finance and administration, and approved by the attorney general and reporter.

(e)(1) At the first meeting in each even-numbered year, the commission shall elect officers. The chair of the commission must be a consumer member to serve a term as chair for two (2) years. A member shall not serve more than two (2) consecutive terms as chair. A member of the commission may serve as vice chair, which is a term of two (2) years. A member shall not serve more than two (2) consecutive terms as vice chair.

(2) Meetings of the commission must be held as frequently as its duties may require, and no less frequently than eight (8) times each fiscal year.

(3) A majority of appointed members, not including vacant positions, constitutes a quorum.

(4) An action of the commission is not effective unless the action is concurred in by a majority of commission members present and voting.

(5) The chair may only vote if there is a tie among the other members present and voting.

(6) The commission shall record by name the votes taken on all actions of the commission.

(7)(A) All commission members shall annually review and sign a statement acknowledging the statute, rules, and policies concerning conflicts of interest.

(B)(i) A member, upon determining that a matter scheduled for consideration by the commission results in a conflict with a direct interest, shall immediately notify the executive director and is recused from any deliberation of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter. The member shall join the public during the proceedings.

(ii) A member with an indirect interest shall publicly acknowledge such interest, unless the member is recused from

deliberation on, making a recommendation regarding, testifying concerning, or voting on the matter.

(iii) All members shall make every reasonable effort to avoid even the appearance of a conflict of interest. If a member is uncertain whether the relationship justifies recusal, then the member shall follow the determination by the legal counsel for the commission.

(iv) A determination by the commission or a court that a member of the commission with a direct interest failed to provide notice and be recused from deliberations of the matter, from making any recommendation, from testifying concerning the matter, or from voting on the matter, results in the member's automatic termination from the commission and the position is considered vacant. The member is not eligible for appointment to any commission, board, or commission of this state for a period of two (2) years.

(v) The executive director, upon determining that a conflict exists for the executive director or a member of the staff, shall notify the chair of the commission and take such action as the chair prescribes and pursuant to this part.

(f) In addition to the powers granted elsewhere in this part, the commission has the duty and responsibility to:

(1) Promulgate rules and policies deemed necessary by the commission for the fulfillment of its duties and responsibilities under this part;

(2) Promulgate rules and policies deemed necessary by the commission for the fulfillment of its duties and responsibilities under part 16 of this chapter, including, but not limited to, criteria to guide the commission in the issuance of certificates of need;

(3) Conduct studies related to health care, including a needs assessment that must be updated at least annually; and

(4) Contract when necessary for the development of criteria and standards to guide the commission when issuing certificates of need and for the implementation of the certificate of need program described in this part.

SECTION 38. Tennessee Code Annotated, Section 68-11-204, is amended by deleting subsection (c) and substituting:

(c) The commission, in its discretion, is authorized to issue licenses to several licensees in such form as it may deem necessary to distinguish between and identify any of the facilities required to be licensed by the commission.

SECTION 39. Tennessee Code Annotated, Section 68-11-206, is amended by deleting "the board" wherever it appears and substituting "the commission"; and by deleting "The board" wherever it appears and substituting "The commission".

SECTION 40. Tennessee Code Annotated, Section 68-11-207, is amended by deleting subdivision (j)(7) and substituting:

(7) Commission administrative staff shall maintain a file of reported complaints. The file must include the name of the facility against whom the complaint is filed, the date the complaint is filed, the action taken by the commission, if any, on the complaint, and the date of the action taken.

SECTION 41. Tennessee Code Annotated, Section 68-11-207, is amended by deleting "The board" wherever it appears and substituting "The commission"; by deleting "the board" wherever it appears and substituting "the commission"; and by deleting "the board's" in subsection (g) and substituting "the commission's".

SECTION 42. Tennessee Code Annotated, Section 68-11-208, is amended by deleting the section and substituting:

(a) Any licensee, or applicant for a license, aggrieved by a decision or action of the commission pursuant to this part may request a hearing before the commission.

(b) These proceedings and judicial review of the commission's decision must be conducted in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(c) The chair of the health facilities commission may appoint a five-member ad hoc litigation committee composed of members of the commission when deemed necessary by the chair of the commission.

SECTION 43. Tennessee Code Annotated, Section 68-11-210, is amended by deleting subdivision (c)(4) and substituting:

(4) The commission, under part 1 of this chapter, the board of examiners for nursing home administrators, under title 63, chapter 16, and any hospital authority, under title 7, chapter 57, shall conduct one (1) joint inspection for each licensing period or shall accept the investigation of one (1) of such entities, under subdivision (c)(3), unless otherwise required by federal law or regulation.

SECTION 44. Tennessee Code Annotated, Section 68-11-210, is amended by deleting "The board" wherever it appears in subsections (a) and (b) and substituting "The commission"; and by deleting "the board" wherever it appears in subsections (a) and (b) and subdivision (c)(3)(E) and substituting "the commission".

SECTION 45. Tennessee Code Annotated, Section 68-11-211, is amended by deleting subdivision (a)(2) and substituting:

(2) "Commission" means the health facilities commission;

SECTION 46. Tennessee Code Annotated, Section 68-11-213, is amended by deleting "board for licensing health care facilities" from subdivision (i)(2) and substituting "health facilities commission"; by deleting "The board" wherever it appears in subsection (j) and substituting "The commission"; by deleting "the board" wherever it appears in subsections (k) and (l) and substituting "the commission"; and by deleting "the board's" from subdivision (k)(2) and substituting "the commission's".

SECTION 47. Tennessee Code Annotated, Section 68-11-214, is amended by deleting "the board" from subdivision (a)(1) and substituting "the commission".

SECTION 48. Tennessee Code Annotated, Section 68-11-215, is amended by deleting "the board" from subsection (b) and substituting "the commission".

SECTION 49. Tennessee Code Annotated, Section 68-11-216, is amended by deleting "The board" from subdivision (a)(1) and substituting "The commission"; and by deleting "the board" wherever it appears and substituting "the commission".

SECTION 50. Tennessee Code Annotated, Section 68-11-222, is amended by deleting subdivision (b)(1).

SECTION 51. Tennessee Code Annotated, Section 68-11-223, is amended by deleting "The board" from subdivision (b)(2) and substituting "The commission"; and by deleting "the board" wherever it appears in subsection (b) and substituting "the commission".

SECTION 52. Tennessee Code Annotated, Section 68-11-224, is amended by deleting "the board" from subdivision (e)(2) and substituting "the commission"; and by deleting "board for licensing health care facilities" wherever it appears and substituting "health facilities commission".

SECTION 53. Tennessee Code Annotated, Section 68-11-225, is amended by deleting "the board's" from subsection (e) and substituting "the commission's"; and by deleting "the board" wherever it appears and substituting "the commission".

SECTION 54. Tennessee Code Annotated, Section 68-11-226(a), is amended by deleting "the board's staff" and substituting "the commission's staff"; by deleting "requirements of the board" and substituting "requirements of the commission"; and by deleting "The board" wherever it appears and substituting "The commission".

SECTION 55. Tennessee Code Annotated, Section 68-11-235, is amended by deleting "the board" wherever it appears and substituting "the commission".

SECTION 56. Tennessee Code Annotated, Section 68-11-236(i), is amended by deleting "the board" and substituting "the commission".

SECTION 57. Tennessee Code Annotated, Section 68-11-237(i), is amended by deleting "the board" and substituting "the commission".

SECTION 58. Tennessee Code Annotated, Section 68-11-244(f), is amended by deleting "board for licensing healthcare facilities" and substituting "health facilities commission".

SECTION 59. Tennessee Code Annotated, Section 68-11-251, is amended by deleting the section and substituting:

(a) The health facilities commission shall promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to provide optimal emergency medical and surgical services for pediatric patients in facilities it licenses and has the authority, when funding is available, to obtain assistance with development and implementation of its standards and to support delivery of educational services and equipment to providers of emergency pediatric medical services in facilities it licenses. In developing, updating, and implementing rules and providing services and equipment, the commission shall use national standards as a guide and shall collaborate with the emergency medical services division and its board and the committee on pediatric emergency care created pursuant to subsection (e).

(b) It is the intent of this section that the entire spectrum of emergency pediatric medical and critical care services, including primary prevention of illness and injury, a statewide pediatric trauma system, disaster planning and management, acute care, data analysis, evaluation of potential standards of care, and rehabilitation be incorporated into the rules and into any services and equipment provided or required to be furnished pursuant to this section or any grant or contract awarded under this section.

(c) The rules authorized by this section must require adequate emergency medical care for children relative to the following, must take into account the size and location of facilities, and must require appropriate triage, stabilization, and referral of patients:

- (1) Facility equipment standards;
- (2) Qualifications of facility personnel; and
- (3) Continuing professional education of facility personnel.

(d) To assist in the implementation of the purposes of this section, the health facilities commission has the authority to solicit and receive grants, donations, and public and private funding. The funding may be used for grants or contracts with 501(c)(3) organizations, as defined in 26 U.S.C. § 501(c)(3), that are capable of providing the advice, services, and equipment necessary to assist in the provision of state-of-the-art emergency medical and critical care for ill or injured pediatric patients.

(e)(1) The committee on pediatric emergency care consists of those members who were originally jointly appointed by the board of licensing health care facilities and the emergency medical services board, and those who are chosen by the health facilities commission and the emergency medical services board to replace them, to include representatives of the following organizations:

- (A) Tennessee Hospital Association;
- (B) Tennessee chapter of the American Academy of Pediatrics;
- (C) Tennessee chapter of the American College of Surgeons;
- (D) Tennessee chapter of the American College of Emergency Physicians;
- (E) Tennessee chapter of the American Academy of Family Physicians;
- (F) Tennessee chapter of the Emergency Nurses Association;
- (G) Tennessee Ambulance Service Association;
- (H) Rural Health Association of Tennessee;
- (I) Tennessee School Nurses Association;

(J) Tennessee Congress of Parents and Teachers (PTA);

(K) Tennessee Emergency Services Education Association;

(L) Comprehensive regional pediatric centers (CRPCs); and

(M) Other persons or representatives of such other organizations, groups, or entities that the chairs of the health facilities commission and the emergency medical services board agree are necessary to accomplish the purposes of this section.

(2) In forming its recommendations to the commission, the committee shall have access to the department of health's existing raw and analyzed data regarding pediatric emergency care issues.

(f) On or before July 1 of every year, the health facilities commission and the emergency medical services board, in collaboration with the committee on pediatric emergency care, shall jointly prepare a report on the current status of emergency medical services for children and on continuing efforts to improve such services. The health facilities commission and emergency medical services board shall submit the joint report to the health and welfare committee of the senate, the health committee of the house of representatives, and the judiciary committee of the senate.

SECTION 60. Tennessee Code Annotated, Section 68-11-252, is amended by deleting "the board" wherever it appears and substituting "the commission"; and by deleting "The board" wherever it appears and substituting "The commission".

SECTION 61. Tennessee Code Annotated, Section 68-11-258, is amended by deleting "The board shall" and substituting "The health facilities commission shall".

SECTION 62. Tennessee Code Annotated, Section 68-11-259, is amended by deleting "The board" wherever it appears and substituting "The commission"; and by deleting "the board" wherever it appears and substituting "the commission".

SECTION 63. Tennessee Code Annotated, Section 68-11-270, is amended by deleting "the board" wherever it appears and substituting "the commission"; and by deleting "The board" from subsection (n) and substituting "The commission".

SECTION 64. Tennessee Code Annotated, Section 68-11-271, is amended by deleting "board for licensing health care facilities" from subsection (f) and substituting "health facilities commission".

SECTION 65. Tennessee Code Annotated, Section 68-11-273(a), is amended by deleting "the board" and substituting "the commission".

SECTION 66. Tennessee Code Annotated, Section 68-11-1604, is amended by deleting the section.

SECTION 67. Tennessee Code Annotated, Section 68-11-1606, is amended by deleting the section.

SECTION 68. Tennessee Code Annotated, Section 68-140-102(1), is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 69. Tennessee Code Annotated, Section 68-140-201, is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 70. Tennessee Code Annotated, Section 68-140-321(a), is amended by deleting "and health care facilities board".

SECTION 71. Tennessee Code Annotated, Section 68-140-321(e), is amended by deleting "board for licensing health care facilities" and substituting "health facilities commission".

SECTION 72. Tennessee Code Annotated, Title 68, Chapter 11, Part 2, is amended by adding the following as a new section:

68-11-277.

(a) The commission shall appoint an executive director qualified by education and experience. The executive director must demonstrate knowledge and experience in the

areas of public administration and health policy development. The executive director of the commission on June 30, 2026, will remain executive director on July 1, 2026, without the need for reappointment by the commission.

(b) The executive director is the chief administrative officer of the commission, exercising general supervision over all persons employed by the commission. The commission's staff is subject to personnel rules and policies that are applicable to state employees in general, including leave, compensation, classification, and travel rules and policies. The commission shall fix the salary of the executive director; any adjustments to the executive director's salary due to administration changes to multiple employees in the executive director's job classification do not require commission approval. The commission has the sole authority to appoint, terminate, and control the work of the executive director. The executive director has the exclusive authority to appoint, terminate, and control staff employees. The commission's employees are executive service and serve at the pleasure of the executive director.

(c) The executive director has the following duties:

- (1) Administering the licensure and regulation program under this part;
- (2) Administering the certificate of need program under part 16 of this chapter;
- (3) Administering the development of criteria and standards to guide the commission when issuing certificates of need;
- (4) Conducting studies related to health care;
- (5) Representing the commission before the general assembly;
- (6) Overseeing the issuance of responses to requests for determination regarding the applicability of this part;
- (7) Issuing exemptions from the requirement that a certificate of need be obtained for the relocation of existing or certified facilities providing healthcare services and healthcare institutions under § 68-11-1607(a)(4);
- (8) Keeping a written record of proceedings and transactions of the commission, which must be open to public inspection during regular office hours;
- (9) Preparing the agenda, including consent and emergency calendars, and notice to the general public of all meetings and public hearings of the commission;
- (10) Employing personnel, within the commission's budget, to assist in carrying out this part;
- (11) Carrying out policies and rules that are promulgated by the commission and supervising the expenditure of funds; and
- (12) Submitting an annual report, no later than January 15 of each year, to the chairs of the health and welfare committee of the senate and the health committee of the house of representatives that includes, but is not limited to, a comparison of the actual payer mix and uncompensated care provided by special health services licensees with the projections the licensees submitted in the licensee's special health services license application.

(d) In addition to the duties provided in subsection (c), the commission has the authority to delegate, and it is the intent of the general assembly that the commission exercise the authority to delegate the following responsibilities and duties to the executive director:

- (1) Granting deferral of applications for certificates of need in accordance with § 68-11-1609; and
- (2) Granting approval or denial of modifications, changes of conditions or ownership, and extensions of certificates of need in accordance with part 16 of this chapter.

(e) A delegation of authority pursuant to subsection (d) continues until specifically revoked by the commission as a result of a determination that revocation is necessary to ensure the proper and orderly operation of the commission.

(f) The executive director shall notify the commission of an action taken pursuant to a delegation of authority under subsection (d) at the commission's next regularly scheduled meeting.

(g)(1) The commission shall review an action by the executive director, if:

(A) The executive director receives a written request for commission review; or

(B) A commission member requests commission review.

(2)(A) If a request for commission review pursuant to subdivision (g)(1) is received within fifteen (15) days of the date the executive director provides notice of the action pursuant to subsection (f), then the action does not become final until the commission has rendered its final decision.

(B) If a request for commission review is not received pursuant to subdivision (g)(1), then the executive director's action becomes final as if the action was taken by the commission.

(h)(1) A commission review of an action taken by the executive director must be conducted at the next regularly scheduled commission meeting that is scheduled for a date no less than two (2) weeks after the date the request for review is received pursuant to subsection (g).

(2) Commission review of an action by the executive director is de novo.

(3) The commission shall use the then-current edition of Robert's Rules of Order as the rules of parliamentary procedure applicable to a commission review of an action taken by the executive director.

SECTION 73. Tennessee Code Annotated, Section 68-11-1624, is amended by deleting "the board for licensing health care facilities in its discretion may delegate to the commission the authority to issue a new license to the successor owner. The delegation of this authority is limited to" and substituting "the health facilities commission may issue a new license to the successor owner. The use of this authority is limited to".

SECTION 74. Tennessee Code Annotated, Section 68-11-1602(9), is amended by deleting "created by this part" and substituting "created by part 2 of this chapter".

SECTION 75. Tennessee Code Annotated, Title 33, Chapter 2, Part 4, is amended by adding the following as a new section:

Mental health facilities and substance abuse facilities that are licensed under this part may additionally be licensed by other departments or agencies of this state.

SECTION 76. For the purpose of promulgating rules, this act takes effect upon becoming a law, the public welfare requiring it. For all other purposes:

(1) Sections 1-16 take effect July 1, 2023, the public welfare requiring it; and

(2) Sections 17-76 take effect July 1, 2024, the public welfare requiring it.

SENATE BILL NO. 858

PASSED: April 20, 2023



RANDY McNALLY
SPEAKER OF THE SENATE



CAMERON SEXTON, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 17th day of May 2023



BILL LEE, GOVERNOR