

SENATE BILL 2225

By Norris

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 33, relative to licensing of facilities and personal support services agencies for persons with intellectual and developmental disabilities.

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

SECTION 1. Tennessee Code Annotated, Section 4-3-2703, is amended by deleting subsections (a) and (c) in their entirety and by substituting instead the following:

(a) The department of intellectual and developmental disabilities has jurisdiction and control over the intellectual and developmental disabilities facilities of the state, regardless of the names by which the facilities are known.

(b) Licensing of these facilities shall be the responsibility of the department of intellectual and developmental disabilities under title 33, chapter 2, part 4.

SECTION 2. The heading of Tennessee Code Annotated title 33, chapter 2, part 4, is amended by striking the existing language in its entirety and substituting the following:

“Mental Health, Alcohol and Drug Abuse Prevention and/or Treatment, Intellectual and Developmental Disabilities, and Personal Support Services Licensure Law.”

SECTION 3. Tennessee Code Annotated, Section 33-2-402, is amended by deleting subsections (4), (5), (6) and (12) in their entirety and by substituting instead the following:

(4) “Commissioner” means the commissioner of mental health, or, when applicable, the commissioner of intellectual and developmental disabilities, the commissioner’s authorized representative, or in the event of the commissioner’s absence or a vacancy in the office of commissioner, the deputy commissioner of mental

health or, when applicable, the deputy commissioner of intellectual and developmental disabilities;

(5) "Department" means the department of mental health or, when applicable, the department of intellectual and developmental disabilities;

(6) "Facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, group home, halfway house or any other entity that provides a mental health, intellectual or developmental disability service or an alcohol and drug abuse prevention and/or treatment facility;

(12) "Service" includes any activity to prevent, treat, or ameliorate mental illness, serious emotional disturbance, alcohol and drug use, intellectual or developmental disabilities, which includes diagnosis, evaluation, residential assistance, training, habilitation, rehabilitation, prevention, treatment, counseling, case coordination, or supervision of persons with mental illness, alcohol and drug abuse issues, serious emotional disturbances and intellectual or developmental disabilities.

SECTION 4. Tennessee Code Annotated, Section 33-2-403, is further amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) A department has the authority to license services and facilities operated for the provision of mental health, alcohol and drug abuse prevention and/or treatment of intellectual and developmental disabilities, and personal support services. A department of mental health shall license services and facilities operated for persons with mental illness and/or serious emotional disturbance or in need of alcohol and drug abuse prevention and/or treatment services. The department of mental health shall also license personal support services for the aged as well as persons with mental illness. Services and facilities operated for persons with intellectual or developmental disabilities

and personal support services for persons with intellectual or developmental disabilities shall be licensed by the department of intellectual and developmental disabilities.

Notwithstanding any references in this part to the licensing of “facilities” or “services,” only proprietorships, partnerships, associations, governmental agencies, or corporations may be listed on license applications or licenses as the licensed entity.

SECTION 5. Tennessee Code Annotated, Section 33-2-403, is further amended by deleting subdivision (b) (9) in its entirety and by substituting instead the following:

(b)

(9) Facilities that are operated by state, county, or municipal departments of education, the department of correction, the department of human services, or the department of children’s services and that affirmatively state that the primary purpose of the facility is other than the provision of mental health, alcohol and drug abuse prevention and/or treatment services or intellectual or developmental disabilities services.

SECTION 6. Tennessee Code Annotated, Section 33-2-403, is further amended by deleting subdivision (d) (2) in its entirety and by substituting instead the following:

(2) The panel’s membership shall be:

(A) The commissioner or the commissioner’s designee;

(B) For the mental health panel, a representative of licensed community mental health services and a representative of licensed alcohol and drug abuse prevention and/or treatment services;

(C) For the intellectual and developmental disabilities panel, a representative of licensed intellectual disability community services and a representative of licensed developmental disability community services;

(D) For the mental health panel, a representative of a licensed residential facility for persons with mental illness or serious emotional disturbance and a representative of a licensed residential facility for alcohol and drug abuse prevention and/or treatment services;

(E) For the intellectual and developmental disabilities panel, a representative of a licensed residential facility for persons with intellectual and developmental disabilities;

(F) For the mental health panel, a representative of a licensed residential mental health facility for children and youth;

(G) Five (5) service recipient representatives; and

(H) A representative of a personal support services agency.

SECTION 7. Tennessee Code Annotated, Section 33-2-404, is amended by deleting the section in its entirety and by substituting instead the following:

Each department shall adopt rules for licensure of services and facilities regarding adequacy of services, qualification of professional staff, and facility conditions. A department shall require for licensure satisfaction of basic quality standards set under chapter 2, part 3, of this title, as applicable, and may require higher standards. The rules shall include consideration of the adequacy of environment, life safety, treatment or habilitation services, education and training requirements of the staff, and other considerations that a department deems necessary to determine the adequacy of the provision of mental health, alcohol and drug abuse prevention and/or treatment, and intellectual and developmental disabilities services. Each department may adopt rules for the administration of the licensure program.

SECTION 8. Tennessee Code Annotated, Section 33-2-405, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) It is unlawful for a person, partnership, association or corporation to own or operate a service or facility that provides mental health, alcohol and drug abuse prevention and/or treatment or intellectual or developmental disability services, or personal support services within the meaning of this title without having obtained a license as required by this part.

SECTION 9. Tennessee Code Annotated, Section 33-2-406, is amended by deleting subsections (a) and (b) in their entirety and by substituting instead the following:

(a) A person, partnership, association, corporation, or any state, county or local governmental unit or any division, department, board or agency of government shall obtain a license from a department in order to lawfully establish, conduct, operate, or maintain a service or facility that provides mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability, or personal support services.

(b) The applicant shall submit an application on a department's form showing that the applicant is of reputable and responsible character and able to comply with the minimum standards for a service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services. The application will also show the applicant is able to comply with the department's rules adopted under this part. The application shall contain the following additional information: the name of the applicant, the type of facility or service, the location, the name of the person or persons to be in charge, and only other information as a department may require.

SECTION 10. Tennessee Code Annotated, Section 33-2-412, is amended by deleting the section in its entirety and by substituting instead the following:

(a) A department may sue to enjoin any person, partnership, association or corporation from establishing, conducting, managing or operating and service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services within the meaning of this part without having obtained a license or while its license has been suspended or revoked. Suit may be brought in the name of the state by the attorney general and reporter in the chancery court of Davidson County or by legal counsel for a department in the chancery court of the county in which all or part of the violations occurred.

(b) In charging any defendant in a complaint for injunction, it shall be sufficient to charge that the defendant did, upon a certain day and in a certain county, establish, conduct, manage or operate a service or facility providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services or that the defendant is about to do so without having a license, without averring any further or more particular facts concerning the case.

SECTION 11. Tennessee Code Annotated, Section 33-2-417, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) If a commissioner finds that a service or facility is providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services without a license, the commissioner may, without prior notice, order the service or facility immediately to cease and desist from providing mental health, alcohol and drug abuse prevention and/or treatment, intellectual or developmental disability services, or personal support services. Before issuing a cease and desist order, the commissioner shall find that entering the order is in the public interest; necessary for the protection of the health, safety, or welfare of the

service recipients of the service or facility; and consistent with the purposes fairly intended by this part.

SECTION 12. Tennessee Code Annotated, Section 33-2-418, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) Any residential facility that houses persons with intellectual or developmental disabilities and is required by law to be licensed by the department shall not receive a license if the facility houses more than four (4) such service recipients and is not licensed on June 23, 2000. All setback requirements applicable to lots where such residential facilities are located shall apply.

SECTION 13. Tennessee Code Annotated, Section 33-2-418, is further amended by deleting subdivision (b) (4) in its entirety and by substituting instead the following:

(b)

(4) Housing for persons on a temporary or transitional basis, such as boarding facilities provided by residential school or facilities providing services through a specialized court program addressing the needs of individuals both in court custody and fully diagnosed with an intellectual or developmental disability and mental illness.

SECTION 14. Tennessee Code Annotated, Section 33-2-418, is further amended by adding the following language as a new subsection (c):

(c) Notwithstanding any law or rule to the contrary, a residential facility or provider licensed by the department of intellectual and developmental disabilities to provide residential services to persons with intellectual or developmental disabilities shall not be prohibited from providing residential services to the elderly or adults with physical disabilities, so long as the services are adequate to ensure the health, safety and welfare of each resident.

SECTION 15. This act shall take effect upon amendment, the public welfare requiring it.