

Regular Session, 2013

HOUSE BILL NO. 281

BY REPRESENTATIVE SIMON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

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AN ACT

To amend and reenact R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b), to enact Part IV-A of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, to be comprised of R.S. 40:2151 through 2161, and to repeal R.S. 28:567 through 573 and Part XIII of Chapter 4 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:1058.1 through 1058.10, relative to behavioral health services providers; to provide for definitions; to provide for applicability; to establish a behavioral health services providers license; to provide rulemaking authority; to provide for license issuance and renewal; to require a licensing fee; to prohibit operating without a license; to provide for penalties and remedies; to provide for opioid treatment programs; to provide for right of inspection; to provide for drug-free zones; to repeal provisions relative to the licensing of mental health clinics; to repeal provisions relative to the licensing of substance abuse/addiction treatment facilities; to provide for effective dates; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b) are hereby amended and reenacted and Part IV-A of Chapter 11 of Title 40 of the Louisiana Revised Statutes of 1950, comprised of R.S. 40:2151 through 2161, is hereby enacted to read as follows:

§2006. Fees; licenses; penalties

A.

\* \* \*

(2) This Subsection shall apply to any licensed:

\* \* \*

1                   (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services  
 2                   provider.

3   \*        \*        \*

4                   B.

5   \*        \*        \*

6                   (2) This Subsection shall apply to any licensed:

7   \*        \*        \*

8                   (e) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services  
 9                   provider.

10    \*        \*        \*

11                   E.

12    \*        \*        \*

13                   (2) This Subsection shall apply to any licensed:

14    \*        \*        \*

15                   (b) ~~Substance abuse/addiction treatment facility.~~ Behavioral health services  
 16                   provider.

17    \*        \*        \*

18                   PART IV-A. LICENSING OF BEHAVIORAL HEALTH SERVICES PROVIDERS

19                   §2151. Short title

20                                   This Part may be cited as the "Behavioral Health Services Provider Licensing  
 21                   Law".

22                   §2152. Purpose

23                                   The purpose of this Part is to authorize the Department of Health and  
 24                   Hospitals to promulgate and publish rules and regulations to provide for integrated  
 25                   behavioral health services under one license, to provide for the health, safety, and  
 26                   welfare of persons receiving behavioral health services, and to provide for the safe  
 27                   operation and maintenance of providers and facilities providing such care.

1            §2153. Definitions

2                    For the purposes of this Part, and subject to the provisions of R.S. 40:2154,  
3                    unless the context otherwise clearly indicates, the following terms shall have the  
4                    following meanings:

5                    (1) "Behavioral health services" means mental health services, substance  
6                    abuse/addiction treatment services, or a combination of such services, for adults and  
7                    children. Behavioral health services may be provided in a residential setting, in a  
8                    clinic setting on an outpatient basis, or in a home or community setting.

9                    (2) "Behavioral health services provider" means a facility, agency,  
10                    institution, person, society, corporation, partnership, unincorporated association,  
11                    group, or other legal entity that provides behavioral health services and that presents  
12                    itself to the public as a provider of behavioral health services.

13                    (3) "Client" means any person who has been accepted for treatment or  
14                    services, including rehabilitation services, furnished by a provider licensed pursuant  
15                    to this Part.

16                    (4) "Department" means the Department of Health and Hospitals or any  
17                    office or agency thereof designated by the secretary to administer the provisions of  
18                    this Part.

19                    (5) "Financial viability" means the provider or facility seeking licensure is  
20                    able to provide verification and continuous maintenance of all of the following:

21                    (a) A line of credit issued from a federally insured, licensed lending  
22                    institution in the amount of at least fifty thousand dollars.

23                    (b) General and professional liability insurance of at least five hundred  
24                    thousand dollars.

25                    (c) Workers' compensation insurance.

26                    (6) "License" means a license issued by the department to a behavioral  
27                    health services provider.

28                    (7) "Licensed Mental Health Professional (LMHP)" means an individual  
29                    who is currently licensed and in good standing in the state of Louisiana to practice

1           within the scope of all applicable state laws, practice acts, and the individual's  
 2           professional license, as one of the following:

- 3                   (a) Medical psychologist.
- 4                   (b) Licensed psychologist.
- 5                   (c) Licensed clinical social worker (LCSW).
- 6                   (d) Licensed professional counselor (LPC).
- 7                   (e) Licensed marriage and family therapist (LMFT).
- 8                   (f) Licensed addiction counselor (LAC).
- 9                   (g) Licensed Advanced Practice Registered Nurse (APRN).
- 10                  (h) Licensed rehabilitation counselor (LRC).

11           (8) "Mental health service" means a service related to the screening,  
 12           diagnosis, management, or treatment of a mental disorder, mental illness, or other  
 13           psychological or psychiatric condition or problem.

14           (9) "Outpatient services" means behavioral health services offered in an  
 15           accessible nonresidential setting to clients whose physical and emotional status  
 16           allows them to function in their usual environment.

17           (10) "Physician" means an individual who is currently licensed and in good  
 18           standing in the state of Louisiana to practice medicine in Louisiana and who is acting  
 19           within the scope of all applicable state laws and the individual's professional license.

20           (11) "Physician assistant" means an individual who is currently approved and  
 21           licensed by and in good standing with the Louisiana State Board of Medical  
 22           Examiners to perform medical services under the supervision of a physician or group  
 23           of physicians who are licensed by and registered with the Louisiana State Board of  
 24           Medical Examiners to supervise a physician assistant, and who is acting within the  
 25           scope of all applicable state laws and the individual's professional license.

26           (12) "Secretary" means the secretary of the Department of Health and  
 27           Hospitals or his designee.

28           (13) "Standards" means policies, procedures, rules, and other guidelines or  
 29           standards of current practice contained in this Part, in addition to those rules and

1           standards promulgated by the department for the licensing and operation of  
2           behavioral health service providers.

3           (14) "Substance abuse/addiction treatment service" means a service related  
4           to the screening, diagnosis, management, or treatment for the abuse of or addiction  
5           to controlled dangerous substances, drugs or inhalants, alcohol, problem gambling,  
6           or a combination thereof.

7           §2154. Applicability

8           The provisions of this Part shall not apply to the licensing of any of the  
9           following facilities or persons and shall not be construed as requiring any of the  
10          following facilities or persons to seek licensure as a behavioral health services  
11          provider:

12           (1) Hospitals licensed under R.S. 40:2100 et seq.

13           (2) Crisis receiving centers licensed under R.S. 40:2180.11 et seq.

14           (3) Nursing homes licensed under R.S. 40:2009.3 et seq.

15           (4) Psychiatric residential treatment facilities or therapeutic group homes  
16          licensed under R.S. 40:2009.

17           (5) Facilities or services operated by the federal government.

18           (6) Federally qualified health care centers certified by the federal  
19          government.

20           (7) Community mental health centers certified by the federal government.

21           (8) Home- and community-based service providers licensed under R.S.  
22          40:2120.1 et seq.

23           (9) An individual Licensed Mental Health Professional (LMHP), whether  
24          incorporated or unincorporated, or a group practice of LMHPs, providing services  
25          under the auspices of and pursuant to the scope of the individual's license or group's  
26          licenses.

27           (10) An individual licensed physician, or a group of licensed physicians,  
28          providing services under the auspices of and pursuant to the scope of the individual's  
29          license or group's licenses.

1           (11) An individual licensed physician assistant, or a group practice of  
2           licensed physician assistants, providing services under the auspices of and pursuant  
3           to the scope of the individual's license or group's licenses.

4           (12) School-based health clinics/centers that are certified by the Department  
5           of Health and Hospitals, office of public health, and enrolled in the Louisiana  
6           Medicaid Program.

7           (13) A health care provider or entity solely providing case management or  
8           peer support services, or a combination thereof.

9           (14) A health care provider that meets all of the following criteria:

10          (a) Was an accredited mental health rehabilitation provider enrolled in the  
11          Louisiana Medicaid Program as of February 28, 2012.

12          (b) Was enrolled with the statewide management organization for the  
13          Louisiana Behavioral Health Partnership as of March 1, 2012.

14          (c) Maintains continuous, uninterrupted accreditation through an approved  
15          accreditation organization.

16          (d) Maintains continuous, uninterrupted enrollment with the statewide  
17          management organization for the Louisiana Behavioral Health Partnership.

18          (15) An individual licensed advanced practice registered nurse, or a group  
19          practice of licensed advanced practice registered nurses, providing services under the  
20          auspices of and pursuant to the scope of the individual's license or group's licenses.

21          (16) Rural health clinics licensed under R.S. 40:2197.

22          (17) Facilities or services operated by the Department of Public Safety and  
23          Corrections, corrections services.

24          §2155. Licensure of behavioral health services providers

25          A. All behavioral health services providers shall be licensed. No facility,  
26          agency, institution, person, society, corporation, partnership, unincorporated  
27          association, group, or other legal entity providing behavioral health services may be  
28          established, operated, or reimbursed under the Medicaid program unless licensed as  
29          a behavioral health services provider to perform such care by the department.

1           B. A license issued to a behavioral health services provider shall be valid for  
2           only one geographic location and shall be issued only for the person and premises  
3           named in the license application.

4           C. A license pursuant to this Part shall be valid for twelve months, beginning  
5           the month of issuance, unless revoked or otherwise suspended prior to that date.

6           D. A license issued pursuant to this Part shall be on a form prescribed by the  
7           department.

8           E. A license pursuant to this Part shall not be transferrable or assignable.

9           F. A license issued to a behavioral health services provider shall be posted  
10          in a conspicuous place on the licensed premises.

11          G. A license issued to a behavioral health services provider shall list the  
12          types or modules of behavioral health services that the provider is licensed to  
13          provide.

14          §2156. Rules and regulations; licensing standards; fees

15          A. The department shall promulgate and publish rules, regulations, and  
16          licensing standards, in accordance with the Administrative Procedure Act, to provide  
17          for the licensure of behavioral health services providers, to provide for the health,  
18          safety, and welfare of persons receiving care and services from providers, and to  
19          provide for the safe operation and maintenance of providers. The rules, regulations,  
20          and licensing standards shall become effective upon approval of the secretary of the  
21          department in accordance with the Administrative Procedure Act. The rules,  
22          regulations, and licensing standards shall have the effect of law.

23          B. The department shall prescribe, promulgate, and publish rules,  
24          regulations, and licensing standards. The rules, regulations, and licensing standards  
25          shall include but are not limited to the following:

26                  (1) Licensure application and renewal application forms, procedures, and  
27                  requirements.

28                  (2) Operational and personnel requirements.

29                  (3) Practice standards to assure quality of care.

1                   (4) Practice standards to assure the health, safety, welfare, and comfort of  
2                   persons receiving care and services.

3                   (5) Confidentiality of clients' records.

4                   (6) Treatment priorities, as well as residential and outpatient criteria.

5                   (7) Criteria and protocols to assure uniform and quality assessment,  
6                   diagnosis, evaluation, and referral to appropriate level of care.

7                   (8) Survey and complaint investigations, including investigations into  
8                   allegations that a provider is operating without a license.

9                   (9) Initial and annual renewal of license, including the requirement of  
10                  providing verification and continuous maintenance of financial viability for all  
11                  behavioral health services providers other than those owned by governmental  
12                  entities.

13                  (10) Provisional licenses.

14                  (11) Denial, revocation, suspension, and nonrenewal of licenses, and the  
15                  appeals therefrom.

16                  (12) Planning, construction, and design of the facility or provider to ensure  
17                  the health, safety, welfare, and comfort of persons receiving care and services.

18                  (13) Modules of behavioral health services providers with varying levels or  
19                  types of services. The modules for behavioral health services providers shall  
20                  include at a minimum:

21                   (a) Mental Health Services Module.

22                   (b) Substance Abuse/Addiction Treatment Module.

23                  (14) Requirements for offsite or branch locations.

24                  (15) Other regulations or standards as will ensure proper care and treatment  
25                  of persons receiving care and services, including provisions relative to civil  
26                  monetary penalties, as may be deemed necessary for an effective administration of  
27                  this Part.

28                  C. The department shall have the authority to monitor, survey, and regulate  
29                  mental health clinics and substance abuse/addiction treatment facilities under the  
30                  existing licensing regulations for the programs until the department publishes



1 minimum licensing standards for behavioral health services providers and the time  
2 for all existing licensed mental health clinics and substance abuse/addiction  
3 treatment facilities to apply for the behavioral health services provider license has  
4 expired.

5 §2157. License issuance; application; onsite inspection

6 A. Each application for licensure of a behavioral health services provider  
7 shall be submitted to the department on forms prescribed by the department and shall  
8 contain such information as the department may require. Additional information  
9 required by the department shall be provided by the applicant as requested.

10 B. Each application for licensure and each license renewal application shall  
11 be accompanied by a nonrefundable license fee in the amount required pursuant to  
12 R.S. 40:2006.

13 C. Following receipt of the completed initial licensing application and  
14 licensing fee, the department shall perform an onsite survey and inspection. If, after  
15 the onsite survey and inspection, the department finds that the provider meets the  
16 requirements established under this Part and under the licensing standards adopted  
17 pursuant to this Part, a license shall be issued.

18 D. As a condition for renewal of license, the licensee shall submit to the  
19 department a completed annual renewal application on the forms prescribed by the  
20 department, which shall contain all information required by the department.  
21 Additionally, the annual renewal licensing fee shall be submitted with the annual  
22 renewal application. Upon receipt of the completed annual renewal application and  
23 the annual renewal licensing fee, the department shall determine if the facility  
24 continues to meet the requirements established under this Part and under the  
25 licensing standards adopted pursuant to this Part. The department may perform an  
26 onsite survey and inspection upon annual renewal. If the provider continues to meet  
27 the requirements established under this Part and under the licensing standards  
28 adopted pursuant to this Part, a license shall be issued which shall be valid for up to  
29 one year, unless otherwise revoked or suspended.

1           E. The department may perform an onsite inspection at reasonable times as  
 2           necessary to ensure compliance with this Part.

3           §2158. Operation without license; penalty

4           A. A behavioral health services provider shall not operate without a license  
 5           issued by the department. Any provider or facility operating without a license shall  
 6           be guilty of a misdemeanor and upon conviction shall be fined no less than two  
 7           hundred fifty dollars nor more than one thousand dollars. Each day of violation shall  
 8           constitute a separate offense. It shall be the responsibility of the department to  
 9           inform the appropriate district attorney of the alleged violation to assure  
 10          enforcement.

11          B. If a behavioral health services provider is operating without a license  
 12          issued by the department, the department shall have the authority to issue an  
 13          immediate cease and desist order to that provider. Any such provider receiving such  
 14          a cease and desist order from the department shall immediately cease operations until  
 15          such time as that provider is issued a license by the department.

16          C. The department shall seek an injunction in the Nineteenth Judicial District  
 17          Court against any provider who receives a cease and desist order from the  
 18          department under Subsection B of this Section and who does not cease operations  
 19          immediately. Any provider against whom an injunction is granted shall be liable to  
 20          the department for attorney fees, costs, and damages.

21          §2159. Opioid treatment programs

22          The department shall not license any opioid treatment programs under the  
 23          behavioral health services provider license unless the department, in its discretion,  
 24          determines that there is a need for another opioid treatment program in a certain  
 25          geographic location. The department has promulgated and adopted rules and  
 26          regulations in accordance with the Administrative Procedure Act to provide for the  
 27          criteria and processes for determining whether such a need exists and the procedures  
 28          for selecting an opioid treatment program to be licensed once a need has been  
 29          determined.

1           §2160. Right of inspection by department; records; reports

2                   A. Every behavioral health services provider that has applied for a license  
 3                   or that is licensed pursuant to this Part shall be open at all reasonable times for  
 4                   inspection by the department, the state fire marshal, municipal boards of health, and  
 5                   any other authorized governmental entity.

6                   B. Every licensee shall keep all records and make all reports as the  
 7                   department shall prescribe, and all records shall be open to inspection by the  
 8                   department or other authorized governmental entity.

9           §2161. Drug free zone; notice, signs

10                   A. A drug free zone is an area inclusive of any property used as a behavioral  
 11                   health services provider that has a substance abuse/addiction treatment module, or  
 12                   within two thousand feet of such property.

13                   B. The local governing authority which has jurisdiction over zoning matters  
 14                   in which each drug free zone is located shall publish a map clearly indicating the  
 15                   boundaries of each drug free zone in accordance with the specifications in  
 16                   Subsection A of this Section. The drug free zone map shall be made on an official  
 17                   public document and placed with the clerk of court for the parish or parishes in  
 18                   which the drug free zone is located.

19                   C.(1) The secretary of the Department of Health and Hospitals shall develop  
 20                   a method by which to mark drug free zones, including the use of signs or other  
 21                   markings suitable to the situation. Signs or other markings shall be located in a  
 22                   visible manner on or near each behavioral health services provider that has a  
 23                   substance abuse/addiction treatment module, indicating that the area is a drug free  
 24                   zone, that the zone extends for a distance of two thousand feet, and that a felony  
 25                   violation of the Uniform Controlled Dangerous Substances Law will subject the  
 26                   offender to severe penalties under law. The posting required in this Subsection is  
 27                   the responsibility and at the expense of the licensed provider.

28                   (2) The Department of Public Safety and Corrections shall coordinate and  
 29                   provide rules for the establishment of toll free telephone numbers for use in  
 30                   submitting anonymous information regarding drug activity to local law enforcement

1            agencies. The telephone numbers shall be displayed on the drug free zone signs that  
2            shall be manufactured in correctional institutions subject to the office of corrections  
3            in the Department of Public Safety and Corrections.

4            D.(1) It shall be unlawful for any person to cover, remove, deface, alter, or  
5            destroy any sign or other marking identifying a drug free zone as provided in this  
6            Section.

7            (2) Any violation of this Subsection shall be punishable by a fine of not more  
8            than one thousand dollars or by a jail sentence of not more than six months, or both.

9            Section 2. R.S. 28:567 through 573 and Part XIII of Chapter 4 of Title 40 of the  
10          Louisiana Revised Statutes of 1950, comprised of R.S. 40:1058.1 through 1058.10, are  
11          hereby repealed in their entirety.

12          Section 3. The provisions of R.S. 40:2006(A)(2)(b), (B)(2)(e), and (E)(2)(b) as  
13          enacted under the provisions of this Act and Section 2 of this Act shall become effective  
14          upon promulgation and publication by the Department of Health and Hospitals of the final  
15          rules for the Behavioral Health Services Provider license.

16          Section 4. The provisions of R.S. 40:2151 through 2161 as enacted under the  
17          provisions of this Act and Sections 3 and 4 of this Act shall become effective upon signature  
18          by the governor or, if not signed by the governor, upon expiration of the time for bills to  
19          become law without signature by the governor, as provided by Article III, Section 18 of the  
20          Constitution of Louisiana. If vetoed by the governor and subsequently approved by the  
21          legislature, this Act shall become effective on the day following such approval.

\_\_\_\_\_  
SPEAKER OF THE HOUSE OF REPRESENTATIVES

\_\_\_\_\_  
PRESIDENT OF THE SENATE

\_\_\_\_\_  
GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: \_\_\_\_\_