



# HOUSE BILL 734: Dept. of Health & Human Services Revisions.

2021-2022 General Assembly

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<b>Committee:</b>		<b>Date:</b>	February 25, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Jessica Boney Staff Attorney
<b>Analysis of:</b>	S.L. 2021-77		

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**OVERVIEW:** *S.L. 2021-77 makes the following changes to the laws pertaining to programs and services under the authority of the Department of Health and Human Services (DHHS):*

- *Amends the definition of developmental disability (G.S. 122C-3).*
- *Amends the law (G.S. 122C-23) providing that decisions on the waiver of any of the rules on the licensure of facilities for patients with mental health disorders, developmental disabilities, or substance use disorders may be appealed by filing a contested case (under Article 3 of GS Chapter 150B).*
- *Requires the Secretary of DHHS to adopt a copayment schedule for behavioral health services, intellectual and developmental disabilities services, and substance use disorder services based on the Medicaid copayments for those services be used by LMEs and by contractual provider agencies (G.S. 122C-112.1(a)(34)).*
- *Amends the membership of the State Consumer and Family Advisory Committee (G.S. 122C-171).*
- *Adds various requirements to the involuntary commitment report to require transportation data (G.S. 122C-255).*
- *Amends the law (G.S. 122C-263) governing the first exam for involuntary commitment due to mental health or substance abuse to allow the use of "telehealth," previously referred to as "telemedicine" and makes conforming changes to other statutes.*
- *Allows the second examination for involuntary commitment due to mental illness or substance abuse to be conducted using telehealth equipment and procedures (G.S. 122C-266).*
- *Makes technical changes to the law governing transitional permits for food establishments (G.S. 130A-248).*

*The act also makes the following changes to the laws (Article 2 of Chapter 122C) governing the licensure of facilities for the mentally ill, the developmentally disabled, and substance abusers:*

- *Requires DHHS to conduct follow-up visits to ensure compliance with specified criteria following the issuance of a cease and desist order to facilities providing services without a required license.*
- *Prohibits the Secretary of DHHS from enrolling a new provider in the NC Medicaid or NC Health Choice programs or revalidating an enrolled provider in the Medicaid or NC Health Choice programs for any applicant meeting specified criteria.*

Jeffrey Hudson  
Director



Legislative Analysis  
Division  
919-733-2578

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- *Gives the Secretary of DHHS the power to issue orders directing facilities not licensed under Article 2 that are providing services requiring a license to cease and desist.*
- *Increases the penalty for operating a licensable facility without a license to a Class H felony, including a fine of \$1,000 per day that the facility is in violation.*
- *Directs DHHS to establish a database with specified, publicly available information on the status of any ongoing investigations of reported operation of a program or facility in violation.*
- *Retitles Article 2 of Chapter 122C of the General Statutes as "Licensure of Facilities for Individuals with Mental Health, Developmental Disabilities, and Substance Use Disorders" and makes various conforming changes, including conforming changes to the Local Consumer and Family Advisory Committee.*

*Additionally, the act adds spas operating for display at temporary events to the definition of "public swimming pool" for purposes of regulation. This provision became effective July 1, 2020.*

*The remainder of this act became effective July 2, 2021.*

## **BILL ANALYSIS:**

**Section 1** amends the definition of developmental disability to state a severe, chronic disability attributable to a mental or physical impairment or a combination of mental and physical impairments.

**Section 2** provides that decisions on the waiver of any of the rules on the licensure of facilities for patients with mental health disorders, development disabilities, or substance use disorders may be appealed by filing a contested case under Article 3 of GS Chapter 150B, previously was appealable to the Commission for a hearing under Article 3 of GS Chapter 150B.

**Section 3** requires the Secretary of DHHS to adopt a copayment schedule for behavioral health services, intellectual and developmental disabilities services, and substance use disorder services based on the Medicaid copayments for those services be used by LMEs and by contractual provider agencies.

**Section 4** amends the membership of the State Consumer and Family Advisory Committee.

**Section 5** adds the transportation method used by individuals admitted under a petition of involuntary commitment to the 24-hour facility and the number of individuals moved to voluntary status at any time between arrival at the 24-hour facility and completion of the required 24-hour examination to the report required by G.S. 122C-255.

**Section 6** amends the statutes governing the first exam for involuntary commitment due to mental health or substance abuse to allow the use of telehealth, previously was telemedicine. Telehealth is defined as the use of two-way, real-time interactive audio and video where the respondent and commitment examiner can hear and see each other. It provides further detail of the first exam procedure for involuntary commitment due to substance abuse.

The second examination for involuntary commitment due to mental illness or substance abuse may be conducted using telehealth equipment and procedures. The physician who examines the respondent by telehealth has to be satisfied to a reasonable medical certainty that the determinations made in accordance with the statute would not be different if the exam had been done in person. When an examining physician is not so satisfied, the physician must note that the exam was not satisfactorily accomplished, and the respondent must be taken for a face-to-face exam.

**Section 7** makes technical changes to the law governing transitional permits for food establishments.

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**Section 7.1, Section 7.2, Section 7.3, Section 7.4** make the following changes to Article 2 of Chapter 122C of the General Statutes, which governs licensure of facilities for the mentally ill, the developmentally disabled, and substance abusers:

**Section 7.1(a)** requires DHHS to conduct follow-up visits to ensure compliance with specified criteria following the issuance of a cease and desist order to facilities providing services without a required license. **Section 7.1(b)** prohibits the Secretary of DHHS from enrolling a new provider in the N.C. Medicaid or N.C. Health Choice programs or revalidating an enrolled provider in the Medicaid or NC Health Choice programs for any applicant meeting specified criteria. **Section 7.1(c)** gives the Secretary of DHHS the power to issue cease and desist orders to facilities not licensed under Article 2 that are providing services requiring a license.

**Section 7.2** increases the penalty for operating a licensable facility without a license to a Class H felony, including a fine of \$1,000 per day that the facility is in violation.

**Section 7.3(a)** authorizes the Commission on Public Health to adopt rules establishing a procedure for facilities that would otherwise require licensure under Article 2 that are certified by a nationally recognized agency to be deemed licensed. **Section 7.3(b)** directs DHHS to establish a database with specified, publicly available information on the status of any ongoing investigations of reported operation of a program or facility in violation of Article 2. **Section 7.3(c)** directs DHHS to collaborate with the Department of Insurance to establish a toll-free number or website to be used to verify the licensure status of a facility. **Section 7.3(d)** directs DHHS to collaborate with community organizations for a public information campaign about the appropriate type of care for individuals with mental health disorders and the importance of receiving care from a licensed facility or licensed professional.

**Section 7.4(a)** retitles Article 2 as "Licensure of Facilities for Individuals with Mental Health, Developmental Disabilities, and Substance Use Disorders" and makes various conforming changes.

**Section 8** adds spas operating for display at temporary events to the definition of public swimming pool. It became effective July 1, 2020.

**Section 8.1** makes conforming changes to the Local Consumer and Family Advisory Committee.

**EFFECTIVE DATE:** Unless otherwise provided, this act became effective when it became law (July 2, 2021).