House Bill 1069 (AS PASSED HOUSE AND SENATE)
By: Representatives Williamson of the 115th, Cooper of the 43rd, Hatchett of the 150th, Oliver of the 82nd, Parrish of the 158th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination, treatment, etc., for mental illness, so as to provide for the licensure of adult residential mental health programs; to provide for a short title; to provide for the purpose; to provide for definitions; to provide for classification; to provide for minimum standards of quality and services; to provide for rules and regulations; to provide for enforcement; to provide for licensure; to provide for contingent effectiveness; to provide for applications; to provide for provisional licenses; to provide for provisional licensure of existing personal care homes that meet the requirements of this article; to provide for meeting certain requirements based on proof of accreditation; to provide that licenses are nontransferable; to provide for denial, suspension, or revocation of license; to provide for notice and hearings; to provide for confidentiality of records; to provide for criminal and civil penalties for operating unauthorized adult residential mental health programs; to provide for inspection by the Department of Community Health; to provide for oversight by the disability services ombudsman; to amend Code Section 31-7-351 of the Official Code of Georgia Annotated, relating to definitions relative to the "Georgia Long-term Care Background Check Program," so as to provide for background checks for applicants, employees, and owners of adult residential mental health programs; to provide for related matters; to repeal conflicting laws; and for other purposes.

H. B. 1069
- 1 -
BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 3 of Title 37 of the Official Code of Georgia Annotated, relating to examination, treatment, etc., for mental illness, is amended by adding a new article to read as follows:

"ARTICLE 7

37-3-200.
This article shall be known and may be cited as the 'Adult Residential Mental Health Services Licensing Act.'

37-3-201.
The purpose of this article is to provide for the classification and systematic evaluation, licensure, and monitoring of residential programs designed for the treatment and therapeutic recovery of adult persons with a primary diagnosis or assessment of a psychotic disorder, mood disorder, anxiety disorder, dissociative disorder, obsessive-compulsive disorder, adjustment disorder, personality disorder, or trauma and stress related disorder; to ensure that every governing body which operates an adult residential mental health program is licensed to do so; and to meet the rehabilitative and recovery needs and supports of persons who have mental illnesses while safeguarding their individual liberties as well as public safety.

37-3-202.
As used in this article, the term:

(1) 'Adult residential mental health program' means a subacute residential alternative service of four or more residential beds authorized to provide psychiatric services for
mentally ill persons 18 years of age or older that operates 24 hours per day, 7 days per week to provide intensive short-term noninstitutional treatment to individuals who are temporarily in need of a 24-hour-per-day supportive therapeutic setting for prevention of or transition from or after acute psychiatric hospitalization. Such term shall not include crisis stabilization units, as defined in Code Section 37-1-29; community living arrangements, as defined by the Department of Behavioral Health and Developmental Disabilities; mental health programs conducted by accountability courts; or residential beds operated by a state or local public entity.

(2) 'Applicant' means any individual affiliated with a partnership, corporation, association, or individuals or groups of individuals submitting an application to operate an adult residential mental health program under this article.

(3) 'Department' means the Department of Community Health.

(4) 'Governing body' means the partnership, corporation, limited liability company, association, or person or group of persons who maintains and controls the adult residential mental health program and who is legally responsible for its operation.

(5) 'License' means the official permit issued by the department which authorizes the holder to operate an adult residential mental health program.

(6) 'Licensee' means any person holding a license issued by the department under this article.

(7) 'Mentally ill person' means a person who has significant deficits in functioning affecting social and family relationships, work, self-care, educational goals, or legal involvements due to his or her primary diagnosis or assessment of a psychotic disorder, mood disorder, anxiety disorder, dissociative disorder, obsessive-compulsive disorder, adjustment disorder, personality disorder, or trauma and stress related disorder as listed in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM-5) or the World Health Organization's International Classification of
Diseases, in effect as of July 1, 2022, or as the department may further define such term by rule and regulation.

37-3-203.
The department is authorized to classify all adult residential mental health programs within the state according to the character and range of services provided.

37-3-204.
The department shall create and promulgate minimum standards of quality and services for each designated class of programs. At least the following areas shall be covered in the rules and regulations:

(1) Admission criteria which at a minimum must require a referral from either an inpatient psychiatric hospital that is discharging a patient to an adult residential mental health program or a determination by a qualified psychiatrist that admission is required to provide stabilization, treatment, and care of the condition but an inpatient admission to a psychiatric hospital is not required; and length of stay criteria which at a minimum shall be redetermined on a periodic basis through a mental health evaluation to include treatment goals and progress from the initial admission. Such mental health evaluation shall determine medical necessity for continued stay in the residential program with a maximum length of stay of six months unless an individual case waiver is approved by the department;

(2) Adequate and safe buildings or housing facilities where programs are offered and standards for emergency conditions relating to them;

(3) Adequate equipment for the delivery of adult residential mental health programs;

(4) Standards for sufficient trained staff or staff with prior experience who are competent in the duties they are to perform which, at a minimum, shall include a psychiatrist or other physician when the psychiatrist is unavailable, a registered professional nurse or
advanced practice registered nurse, appropriately trained clinical case management staff
to facilitate care and safe discharge planning, and mental health technicians or other
similarly trained paraprofessionals or certified peer specialists at a ratio of not less than
one to 12 patients or greater as assessed needs and history of the patient population
indicates:

(5) The content and quality of services to be provided;
(6) Requirements for intake, discharge, and aftercare of mentally ill persons; financial
relationships or arrangements with patients of the program; and visitation of patients;
(7) Referral arrangements to other appropriate agencies or facilities, including a process
and adequate staff to facilitate transfer of a patient to a licensed general or specialty
hospital authorized to provide inpatient medical or psychiatric services;
(8) Maintenance of adequate records on each mentally ill person treated or advised;
(9) Standards for the storage, administration, and dispensing of prescribed medications
to patients in programs licensed under this article, in accordance with guidelines
established by the United States Drug Enforcement Administration and the Georgia
Board of Pharmacy;
(10) Permission for the use of therapeutic modalities and complementary services
beneficial to the treatment of and supports for adult mentally ill persons;
(11) Permission and standards for the regulation or control and provision of food and
other nutrition in each setting or classification of an adult residential mental health
program;
(12) Standards for protection of patient rights while resident in a program and internal
grievance procedures;
(13) Standards for the ethics and integrity of the staff, owners, and governing body of the
program;
(14) Standards to ensure protection of the resident and the community at large in the
event a resident poses a risk of potential harm to self or others; and
(15) Standards and procedures for incident reports to the department in the event of the occurrence of major incidents and provision for appropriate departmental actions and appeal thereof.

37-3-205.
(a) The department is authorized and directed to create and promulgate all rules and regulations necessary for the implementation of this article no later than July 1, 2023.
(b) The department is further authorized to issue, deny, suspend, or revoke licenses or take other enforcement actions against licensees or applicants as provided in Code Section 31-2-8.
(c) All rules and regulations and any enforcement actions initiated by the department shall comply with the requirements of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

37-3-206.
(a) On and after January 1, 2024, no governing body shall operate an adult residential mental health program without having a valid license or provisional license issued pursuant to this article; provided, however, that hospitals licensed in accordance with Chapter 7 of Title 31 are exempt from this article unless the hospital is operating an adult residential mental health program that is separate and distinct from the licensed hospital.
(b) This Code section shall become effective only upon the effective date of a specific appropriation of funds for purposes of this article, as expressed in a line item making specific reference to this article in a General Appropriations Act enacted by the General Assembly.
37-3-207.
(a) Application for a license to operate an adult residential mental health program shall be submitted by the governing body to the department in the manner prescribed in the department's rules and regulations and shall contain a comprehensive outline of the program to be offered by the applicant.
(b) Proof of compliance with all applicable federal and state laws for the handling and dispensing of medications, and all state and local health, safety, sanitation, building, and zoning codes shall be attached to the application submitted to the department.

37-3-208.
(a) The department may issue a provisional license effective for a period not to exceed 90 days to each applicant who has substantially complied with all requirements for a regular license. Provisional licenses shall be renewed in the discretion of the department only in cases of extreme hardship and in no case for longer than 90 days.
(b) The obligations and conditions of a provisional license shall be the same as those of a regular license except as otherwise provided for in this article.
(c) The duration limits included in subsection (a) of this Code section shall not apply to one-time provisional licenses issued by the department pursuant to Code Section 37-3-208.1.

37-3-208.1.
Between July 1, 2022, and December 31, 2023, the department shall be authorized to grant a one-time provisional license for an adult residential mental health program to an existing licensed personal care home that substantially complies with the requirements of this article for a period not to extend beyond December 31, 2023.
The department may accept proof of accreditation by a nationally recognized healthcare accreditation body, in accordance with specific standards, as evidence of compliance with one or more departmental requirements for issuance or renewal of a license or provisional license.

The department shall issue a license to a governing body for any adult residential mental health program which meets all the rules and regulations for the class of license applied for. The license shall be nontransferable for a change of location or governing body.

(a) The department is authorized to deny, suspend, or revoke a license issued under this chapter for a violation of this chapter or a rule or regulation adopted under this chapter or to take other disciplinary actions against licensees as provided in Code Section 31-2-8.

(b) The denial, suspension, or revocation of a license by the department shall be a contested case for purposes of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

For the purpose of providing more effective treatment and rehabilitation, the records and name of any mentally ill person who seeks or obtains treatment, therapeutic advice, or counsel from any adult residential mental health program licensed under this article shall be confidential and shall not be revealed except to the extent authorized in writing by the mentally ill person affected or his or her guardian or custodian; furthermore, any communication by such mentally ill person to an authorized employee of any holder of a license shall be deemed confidential; provided, however, that, except for matters privileged
under other laws of this state, the records of such person and information about such person
shall be produced in response to a valid court order of any court of competent jurisdiction
after a full and fair show-cause hearing and in response to a departmental request for access
for licensing purposes when such request is accompanied by a written statement that no
record of patient identifying information will be made. The protections in this Code
section and other provisions of state or federal law of an individual client's identity or
communications to the clinical staff of any adult residential mental health program licensed
under this article shall not prohibit the use of de-identified data relating to such clients for
clinical or programmatic research or education or in presentations about the programs
offered by a licensee under this article. Subject to and in compliance with the limitations
of any state or federal privacy laws, the department may require at reasonable intervals, and
each licensee shall furnish, copies of summary records of each mentally ill person treated
or advised pursuant to an adult residential mental health program.

37-3-213.
The department shall conduct periodic on-site inspection of each adult residential mental
health program licensed in this state. Such inspection shall include, but shall not be limited
to, the premises, staff, persons in care, and documents pertinent to the continued licensing
of such adult residential mental health program so that the department may determine
whether a provider is operating in compliance with licensing requirements. Each licensee
shall permit authorized department representatives to enter upon and inspect any and all
premises upon or in which a program is to be conducted, for which a license has been
applied, or for which a license has been issued so that verification of compliance with all
relevant laws or regulations can be made.
37-3-214. The powers of the disability services ombudsman established in Part 1 of Article 2 of Chapter 2 of this title shall include oversight of patients of adult residential mental health programs established by this article, with all attendant powers and functions specified by law for such ombudsman.

37-3-215. (a) On and after January 1, 2024, a facility shall be deemed to be an 'unlicensed adult residential mental health program' if it is unlicensed and not exempt from licensure under this article and:

(1) The facility is providing services and is operating as an adult residential mental health program;

(2) The facility is held out as or represented as providing services and operating as an adult residential mental health program; or

(3) The facility represents itself as a licensed adult residential mental health program.

(b) Any unlicensed adult residential mental health program may be assessed by the department, after opportunity for hearing in accordance with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' a civil penalty in the amount of $100.00 per bed per day for each day of violation. The department shall send a notice by certified mail or statutory overnight delivery stating that licensure is required and the department's intent to impose a civil penalty. Such notice shall be deemed to be constructively received on the date of the first attempt to deliver such notice by the United States Postal Service. The department shall take no action to collect such civil penalty until after opportunity for a hearing.

(c) In addition to other remedies available to the department, the civil penalty authorized by subsection (b) of this Code section shall be doubled if the owner or operator continues
to operate the unlicensed adult residential mental health program, after receipt of notice
pursuant to subsection (b) of this Code section.

(d) The owner or operator of an unlicensed adult residential mental health program who
is assessed a civil penalty in accordance with this Code section may have review of such
civil penalty by appeal to the superior court in the county in which the action arose or to
the Superior Court of Fulton County.

(e) Any person who owns or operates an adult residential mental health program in
violation of this Code section shall be guilty of a misdemeanor for a first violation, unless
such violation is in conjunction with a violation of Article 8 of Chapter 5 of Title 16, in
which case such person shall be guilty of a felony and, upon conviction, shall be punished
by imprisonment for not less than one nor more than five years. Upon conviction for a
second or subsequent such violation, such person shall be guilty of a felony and, upon
conviction, shall be punished by imprisonment for not less than one nor more than ten
years."

SECTION 2.

Code Section 31-7-351 of the Official Code of Georgia Annotated, relating to definitions
relative to the "Georgia Long-term Care Background Check Program," is amended by
revising paragraph (8) as follows:

"(8) 'Facility' means:

(A) A personal care home required to be licensed or permitted under Code Section
31-7-12;

(B) An assisted living community required to be licensed under Code Section
31-7-12.2;

(C) A private home care provider required to be licensed under Article 13 of this
chapter;

(D) A home health agency as licensed pursuant to Code Section 31-7-151;
(E) A provider of hospice care as licensed pursuant to Code Section 31-7-173;
(F) A nursing home, skilled nursing facility, or intermediate care home licensed pursuant to rules of the department; or
(G) An adult day care facility licensed pursuant to rules of the department; or
(H) An adult residential mental health program licensed pursuant to Article 7 of Chapter 3 of Title 37.”

SECTION 3.

All laws and parts of laws in conflict with this Act are repealed.