

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

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

H. B. 1069

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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

20 SECTION 1.

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

23 "ARTICLE 7

24 37-3-200.

25 This article shall be known and may be cited as the 'Adult Residential Mental Health
26 Services Licensing Act.'

27 37-3-201.

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

37 37-3-202.

38 As used in this article, the term:

39 (1) 'Adult residential mental health program' means a subacute residential alternative
40 service of four or more residential beds authorized to provide psychiatric services for

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

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

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

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

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

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

60 (7) 'Mentally ill person' means a person who has significant deficits in functioning
61 affecting social and family relationships, work, self-care, educational goals, or legal
62 involvements due to his or her primary diagnosis or assessment of a psychotic disorder,
63 mood disorder, anxiety disorder, dissociative disorder, obsessive-compulsive disorder,
64 adjustment disorder, personality disorder, or trauma and stress related disorder as listed
65 in the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental*
66 *Disorders* (DSM-5) or the World Health Organization's *International Classification of*

67 Diseases, in effect as of July 1, 2022, or as the department may further define such term
68 by rule and regulation.

69 37-3-203.

70 The department is authorized to classify all adult residential mental health programs within
71 the state according to the character and range of services provided.

72 37-3-204.

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

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

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

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

89 (4) Standards for sufficient trained staff or staff with prior experience who are competent
90 in the duties they are to perform which, at a minimum, shall include a psychiatrist or
91 other physician when the psychiatrist is unavailable, a registered professional nurse or

92 advanced practice registered nurse, appropriately trained clinical case management staff
93 to facilitate care and safe discharge planning, and mental health technicians or other
94 similarly trained paraprofessionals or certified peer specialists at a ratio of not less than
95 one to 12 patients or greater as assessed needs and history of the patient population
96 indicates;

97 (5) The content and quality of services to be provided;

98 (6) Requirements for intake, discharge, and aftercare of mentally ill persons; financial
99 relationships or arrangements with patients of the program; and visitation of patients;

100 (7) Referral arrangements to other appropriate agencies or facilities, including a process
101 and adequate staff to facilitate transfer of a patient to a licensed general or specialty
102 hospital authorized to provide inpatient medical or psychiatric services;

103 (8) Maintenance of adequate records on each mentally ill person treated or advised;

104 (9) Standards for the storage, administration, and dispensing of prescribed medications
105 to patients in programs licensed under this article, in accordance with guidelines
106 established by the United States Drug Enforcement Administration and the Georgia
107 Board of Pharmacy;

108 (10) Permission for the use of therapeutic modalities and complementary services
109 beneficial to the treatment of and supports for adult mentally ill persons;

110 (11) Permission and standards for the regulation or control and provision of food and
111 other nutrition in each setting or classification of an adult residential mental health
112 program;

113 (12) Standards for protection of patient rights while resident in a program and internal
114 grievance procedures;

115 (13) Standards for the ethics and integrity of the staff, owners, and governing body of the
116 program;

117 (14) Standards to ensure protection of the resident and the community at large in the
118 event a resident poses a risk of potential harm to self or others; and

119 (15) Standards and procedures for incident reports to the department in the event of the
120 occurrence of major incidents and provision for appropriate departmental actions and
121 appeal thereof.

122 37-3-205.

123 (a) The department is authorized and directed to create and promulgate all rules and
124 regulations necessary for the implementation of this article no later than July 1, 2023.

125 (b) The department is further authorized to issue, deny, suspend, or revoke licenses or take
126 other enforcement actions against licensees or applicants as provided in Code Section
127 31-2-8.

128 (c) All rules and regulations and any enforcement actions initiated by the department shall
129 comply with the requirements of Chapter 13 of Title 50, the 'Georgia Administrative
130 Procedure Act.'

131 37-3-206.

132 (a) On and after January 1, 2024, no governing body shall operate an adult residential
133 mental health program without having a valid license or provisional license issued pursuant
134 to this article; provided, however, that hospitals licensed in accordance with Chapter 7 of
135 Title 31 are exempt from this article unless the hospital is operating an adult residential
136 mental health program that is separate and distinct from the licensed hospital.

137 (b) This Code section shall become effective only upon the effective date of a specific
138 appropriation of funds for purposes of this article, as expressed in a line item making
139 specific reference to this article in a General Appropriations Act enacted by the General
140 Assembly.

141 37-3-207.

142 (a) Application for a license to operate an adult residential mental health program shall be
143 submitted by the governing body to the department in the manner prescribed in the
144 department's rules and regulations and shall contain a comprehensive outline of the
145 program to be offered by the applicant.

146 (b) Proof of compliance with all applicable federal and state laws for the handling and
147 dispensing of medications, and all state and local health, safety, sanitation, building, and
148 zoning codes shall be attached to the application submitted to the department.

149 37-3-208.

150 (a) The department may issue a provisional license effective for a period not to exceed 90
151 days to each applicant who has substantially complied with all requirements for a regular
152 license. Provisional licenses shall be renewed in the discretion of the department only in
153 cases of extreme hardship and in no case for longer than 90 days.

154 (b) The obligations and conditions of a provisional license shall be the same as those of
155 a regular license except as otherwise provided for in this article.

156 (c) The duration limits included in subsection (a) of this Code section shall not apply to
157 one-time provisional licenses issued by the department pursuant to Code Section
158 37-3-208.1.

159 37-3-208.1.

160 Between July 1, 2022, and December 31, 2023, the department shall be authorized to grant
161 a one-time provisional license for an adult residential mental health program to an existing
162 licensed personal care home that substantially complies with the requirements of this article
163 for a period not to extend beyond December 31, 2023.

164 37-3-209.

165 The department may accept proof of accreditation by a nationally recognized healthcare
166 accreditation body, in accordance with specific standards, as evidence of compliance with
167 one or more departmental requirements for issuance or renewal of a license or provisional
168 license.

169 37-3-210.

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

173 37-3-211.

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

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

180 37-3-212.

181 For the purpose of providing more effective treatment and rehabilitation, the records and
182 name of any mentally ill person who seeks or obtains treatment, therapeutic advice, or
183 counsel from any adult residential mental health program licensed under this article shall
184 be confidential and shall not be revealed except to the extent authorized in writing by the
185 mentally ill person affected or his or her guardian or custodian; furthermore, any
186 communication by such mentally ill person to an authorized employee of any holder of a
187 license shall be deemed confidential; provided, however, that, except for matters privileged

188 under other laws of this state, the records of such person and information about such person
189 shall be produced in response to a valid court order of any court of competent jurisdiction
190 after a full and fair show-cause hearing and in response to a departmental request for access
191 for licensing purposes when such request is accompanied by a written statement that no
192 record of patient identifying information will be made. The protections in this Code
193 section and other provisions of state or federal law of an individual client's identity or
194 communications to the clinical staff of any adult residential mental health program licensed
195 under this article shall not prohibit the use of de-identified data relating to such clients for
196 clinical or programmatic research or education or in presentations about the programs
197 offered by a licensee under this article. Subject to and in compliance with the limitations
198 of any state or federal privacy laws, the department may require at reasonable intervals, and
199 each licensee shall furnish, copies of summary records of each mentally ill person treated
200 or advised pursuant to an adult residential mental health program.

201 37-3-213.

202 The department shall conduct periodic on-site inspection of each adult residential mental
203 health program licensed in this state. Such inspection shall include, but shall not be limited
204 to, the premises, staff, persons in care, and documents pertinent to the continued licensing
205 of such adult residential mental health program so that the department may determine
206 whether a provider is operating in compliance with licensing requirements. Each licensee
207 shall permit authorized department representatives to enter upon and inspect any and all
208 premises upon or in which a program is to be conducted, for which a license has been
209 applied, or for which a license has been issued so that verification of compliance with all
210 relevant laws or regulations can be made.

211 37-3-214.

212 The powers of the disability services ombudsman established in Part 1 of Article 2 of
213 Chapter 2 of this title shall include oversight of patients of adult residential mental health
214 programs established by this article, with all attendant powers and functions specified by
215 law for such ombudsman.

216 37-3-215.

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

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

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

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

225 (b) Any unlicensed adult residential mental health program may be assessed by the
226 department, after opportunity for hearing in accordance with the provisions of Chapter 13
227 of Title 50, the 'Georgia Administrative Procedure Act,' a civil penalty in the amount of
228 \$100.00 per bed per day for each day of violation. The department shall send a notice by
229 certified mail or statutory overnight delivery stating that licensure is required and the
230 department's intent to impose a civil penalty. Such notice shall be deemed to be
231 constructively received on the date of the first attempt to deliver such notice by the United
232 States Postal Service. The department shall take no action to collect such civil penalty until
233 after opportunity for a hearing.

234 (c) In addition to other remedies available to the department, the civil penalty authorized
235 by subsection (b) of this Code section shall be doubled if the owner or operator continues

236 to operate the unlicensed adult residential mental health program, after receipt of notice
 237 pursuant to subsection (b) of this Code section.

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

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

250 **SECTION 2.**

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

254 "(8) 'Facility' means:

255 (A) A personal care home required to be licensed or permitted under Code Section
 256 31-7-12;

257 (B) An assisted living community required to be licensed under Code Section
 258 31-7-12.2;

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

261 (D) A home health agency as licensed pursuant to Code Section 31-7-151;

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

268 **SECTION 3.**

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