

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H3/13/23 H3/15/23 S4/5/23*
94th General Assembly **A Bill**
Regular Session, 2023

HOUSE BILL 1446

By: Representatives Cavanaugh, Vaught

By: Senator K. Hammer

For An Act To Be Entitled

AN ACT TO PROVIDE STATE OVERSIGHT OF QUALITY OF CARE
PROVIDED TO CHILDREN IN PSYCHIATRIC RESIDENTIAL
TREATMENT FACILITIES AND OTHER REGULATED FACILITIES;
AND FOR OTHER PURPOSES.

Subtitle

*TO PROVIDE STATE OVERSIGHT OF QUALITY OF
CARE PROVIDED TO CHILDREN IN PSYCHIATRIC
RESIDENTIAL TREATMENT FACILITIES AND
OTHER REGULATED FACILITIES.*

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

*SECTION 1. Arkansas Code Title 9, Chapter 28, Subchapter 4, is amended
to add a new section to read as follows:*

*9-28-416. Admission of children to psychiatric residential treatment
facilities.*

*(a) A psychiatric residential treatment facility licensed under this
subchapter and holding a permit from the Health Services Permit Agency or the
Health Services Permit Commission shall not admit a child for psychiatric
residential treatment unless the child is:*

(1) An Arkansas resident;

(2) A child of a parent who is an Arkansas resident;

*(3) A child placed by or on behalf of another state's child
welfare agency;*

(4) A child for whom the facility is being paid by another



state's Medicaid program;

(5) A child of an active-duty member or veteran of the uniformed services as defined in § 6-4-302; or

(6) A nonresident child victim of human trafficking when the regulated facility maintains responsibility for the return of the child to the out-of-state custodian.

(b) The Department of Human Services may promulgate rules to enforce this section.

SECTION 2. Arkansas Code Title 9, Chapter 28, is amended to add an additional subchapter to read as follows:

Subchapter 13 – Psychiatric Residential Treatment Facilities and Other Regulated Facilities

9-28-1301. Definitions.

As used in this subchapter:

(1) “Psychiatric residential treatment facility” means the same as defined in § 9-28-402; and

(2) “Regulated facility” means:

(A) A psychiatric residential treatment facility licensed under § 9-28-401 et seq.; and

(B) A psychiatric hospital licensed under the Child Welfare Agency Licensing Act, § 20-9-201 et seq., that admits a child for the purpose of providing behavioral health treatment, regardless of whether the child is placed in an acute, subacute, or otherwise unlicensed bed.

9-28-1302. Quality of care – Quality assurance reviews.

(a) The Department of Human Services shall promulgate rules setting minimum standards and metrics governing the quality of care provided by a regulated facility to a child.

(b) Quality of care standards shall include that a regulated facility shall provide:

(1) Trauma-informed programming and clinical services and, when applicable, evidence-based treatments;

(2) Services that will be short-term, target treatment episodes to reduce the likelihood of re-entry into residential treatment settings;

(3) Services that are family-driven and youth-guided;

(4) Mental health services and clinical services provided by clinical staff as appropriate for the child's needs;

(5) Educational services in compliance with state and federal law and rules of the Department of Education;

(6) Coordination of all needs including medical, dental, and other needs; and

(7) Clinical discharge planning throughout the child's stay that includes the custodian and child involvement.

(c)(1) The Department of Human Services and its designees may inspect and investigate the quality of care for behavioral health provided to any child admitted to a regulated facility, whether or not the child is an Arkansas resident.

(2) The Department of Human Services or any other public agency having authority or responsibility with respect to child maltreatment, including without limitation the Medicaid Fraud Control Unit of the Attorney General's office, may investigate any alleged or suspected child maltreatment in any regulated facility.

(d) The Department of Human Services shall conduct quality assurance reviews for each regulated facility, consisting of the following:

(1) A review of treatment structure including without limitation:

(A) Observation of paraprofessional and direct-care staff interaction with patients;

(B) Review of daily activity structure outside of school and treatment;

(C) Review of paraprofessional and direct-care staff training and personnel records;

(D) Review of staff-to-client ratios; and

(E) Completion of client interviews;

(2) An analysis of referral data, statistics, and psychotropic medication prescriptions;

(3) An on-site visit of a regulated facility's operation, to be conducted at least once per year; and

(4) Technical assistance and ongoing quality assurance and collaboration as needed.

(e) This subchapter does not require any additional licensure or certification for a regulated facility.

9-28-1303. Department enforcement authority.

(a) The Department of Human Services may initiate an adverse action against a regulated facility that:

(1) Fails to comply with the provisions of this subchapter or any rule of the department relating to quality of care;

(2) Furnishes or makes any statement or report to the department that is false or misleading;

(3) Refuses or fails to submit required reports or to make available to the department any records required by the department in making an investigation of the agency for quality of care purposes;

(4) Refuses or fails to submit to an investigation or to reasonable inspection by the department;

(5) Retaliates against an employee who in good faith reports a suspected violation of the provisions of this subchapter or the rules promulgated under this subchapter;

(6) Fails to engage in a course of professional conduct in dealing with clients being served by the regulated facility, as defined by rules promulgated under this subchapter; or

(7) Demonstrates gross negligence in carrying out the duties at the regulated facility.

(b) The department may impose an adverse action as follows:

(1) Issue letters of reprimand or caution;

(2) Require a corrective action plan; and

(3)(A) Impose civil penalties of up to two thousand five hundred dollars (\$2,500) per violation, with each day of noncompliance and each client injured as a result of noncompliance constituting a separate violation.

(B) If any person upon whom the department has levied a civil penalty fails to pay the civil penalty within sixty (60) days of the decision of the department to impose the penalty, the amount of the fine shall be considered to be a debt owed the State of Arkansas and may be collected by civil action.

(C) Civil penalties collected under this section may be

expended only for the purpose of providing technical assistance and training to regulated facilities.

(c)(1) For a regulated facility licensed under the Child Welfare Agency Licensing Act, § 9-28-401 et seq., the department may petition the Child Welfare Agency Review Board to deny, suspend, or revoke the regulated facility's license on the basis of any adverse action imposed by the department under this section.

(2) For a regulated facility licensed under § 20-9-201 et seq., the department may petition the State Board of Health to deny, suspend, or revoke the regulated facility's license on the basis of any adverse action imposed by the department under this section.

(d) The department shall notify the regulated facility of the adverse action of the department in writing and set forth the facts forming the basis for the adverse action.

(e)(1) Adverse action hearings shall comply with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(2) Within ten (10) business days after rendering a decision, the department shall forward to the regulated facility written findings of fact and conclusions of law articulating the decision of the department.

9-28-1304. Rules.

The Department of Human Services shall promulgate rules to implement this subchapter.

/s/Cavenaugh