

TPA UNLICENSED PRACTICE BILL AS AMENDED

SB 2040 by Lundberg HB 2026 by Farmer

Amendment No. 1

AMEND Senate Bill No.2040 House Bill No. 2026

By deleting all the language following the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 29, Chapter 34, Part 2, is amended by adding the following as a new section:

- (a) For the purposes of this section, a mental health disorder means a serious psychological condition including but not limited to major depression, anxiety disorder, bipolar disorder, personality disorder, and post-traumatic stress disorder.
- (b)
 - (1) A consumer is entitled to care from a competently qualified person when receiving care for a mental health disorder.
 - (2) A license is required under Title 63 for a person to competently treat mental health disorders. An unlicensed person is not competent to provide counseling or therapy to treat mental health disorders.
 - (3) An unlicensed person who provides mental health counseling services shall provide to the client notice of unlicensed status and shall obtain from the client a signed client statement acknowledging the unlicensed status of the provider.
- (c)
 - (1) An unlicensed person may be civilly liable to the consumer if the unlicensed person knowingly offered mental health counseling or psychotherapy to treat a mental health disorder without being licensed as a mental health provider.
 - (2) The consumer may maintain an action to recover damages, the consideration paid to the unlicensed provider, costs in recovering consideration paid, and three times reasonable attorney's fees determined by the court.

(3) A unlicensed person acting as a licensed mental health professional or treating a mental health disorder for direct or indirect compensation is held to the ethical and professional standard of care of a licensed mental health professional.

(d) The following persons are exempt from this section:

(1) Clergy who are not being compensated on a fee-for-service basis;

(2) Students and practitioners in training when the student or practitioner is under the lawful supervision of a licensed healthcare professional; and

(3) Persons holding a license under Title 63 when acting within their lawful scope of practice.

(e) This section does not expand or restrict the scope of practice for any person holding a license under Title 63.

(f) Any non-licensed person offering mental health counseling or psychotherapy on a fee-for service basis shall have a rebuttable presumption that the services were not to treat a mental health disorder if the non-licensed person can produce a copy of the client statement for unlicensed therapist signed by the client.

(g) Any non-licensed person offering mental health counseling or psychotherapy on a fee-for-service basis shall have a rebuttable presumption that the services were to treat a mental health disorder if the non-licensed person cannot produce a copy of the signed client statement for unlicensed therapist signed by the client.

(h) The client statement provided for in subdivision (b)(3) shall contain the following language:

CLIENT STATEMENT FOR UNLICENSED THERAPIST

I know that _____ (unlicensed counselor) providing counseling services to me is NOT authorized by the State of Tennessee to diagnose, prevent, or treat a mental condition that requires a license to diagnose and treat. Because the above provider is not licensed, I know:

- The provider is not authorized to diagnose or treat a condition that requires a license to treat including Major Depression, Bipolar Disorder, Anxiety Disorder, Personality Disorders, and other mental health disorders;

- The provider has not undergone a background check by state authorities regarding criminal histories;
- The provider has no legal requirements to maintain ongoing professional education to ensure competence;
- The provider can be subpoenaed to testify about me in a court of law without my permission;
- The provider's records may be used against me in a court of law;
- The provider may be able to talk about my treatment with others without my consent and with no consequences;
- An employer may be able to request, demand, or obtain a copy of my records without my consent; and
- A prosecuting attorney or grand jury may be able to obtain a copy of my records as part of a criminal investigation.

Having been informed of the information herein, I agree to be counseled by the above provider.

Client Name

Today's Date

SECTION 2. This act shall take effect July 1, 2018, the public welfare requiring it.