

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1654
Committee Substitute Favorable 5/17/07

Short Title: Clarify MH/DD/SA Rule-Making Authority.

(Public)

Sponsors:

Referred to:

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THE AUTHORITY OF THE COMMISSION FOR MENTAL
HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE
SERVICES RULE-MAKING AUTHORITY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 122C-112.1(a) reads as rewritten:

"§ 122C-112.1. Powers and duties of the Secretary.

(a) The Secretary shall do all of the following:

- (1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.
- (3) ~~Establish~~ Make recommendations to the Commission regarding rules governing a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services.
- (4) ~~Adopt~~ Make recommendations to the Commission regarding rules specifying the content and format of LME business plans.
- (5) Review LME business plans and, upon approval of the plan, certify the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area.
- (6) ~~Establish~~ Make recommendations to the Commission regarding rules to establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards. The procedures shall

- 1 include the development and use of critical performance measures and
2 report cards for each area authority and county program.
- 3 (7) Conduct regularly scheduled monitoring and oversight of area
4 authority, county programs, and all providers of public services.
5 Monitoring and oversight shall be used to assess compliance with the
6 LME business plan and implementation of core LME functions.
7 Monitoring shall also include the examination of LME and provider
8 performance on outcome measures including adherence to best
9 practices, the assessment of consumer satisfaction, and the review of
10 client rights complaints.
- 11 (8) Make findings and recommendations based on information and data
12 collected pursuant to subdivision (7) of this subsection and submit
13 these findings and recommendations to the applicable area authority
14 board, county program director, board of county commissioners,
15 providers of public services, and to the Local Consumer Advocacy
16 Office.
- 17 (9) Provide ongoing and focused technical assistance to area authorities
18 and county programs in the implementation of the LME functions and
19 the establishment and operation of community-based programs. The
20 technical assistance required under this subdivision includes, but is not
21 limited to, the technical assistance required under
22 G.S. 122C-115.4(d)(2). The Secretary shall include in the State Plan a
23 mechanism for monitoring the Department's success in implementing
24 this duty and the progress of area authorities and county programs in
25 achieving these functions.
- 26 (10) ~~Operate~~ Except as provided in G.S. 122C-114(b)(3), operate State
27 facilities and adopt rules pertaining to their operation. The Secretary
28 shall make recommendations to the Commission regarding patient
29 admission and discharge procedures.
- 30 (11) Develop a unified system of services provided at the community level,
31 by State facilities, and by providers enrolled or under a contract with
32 the State and an area authority or county program.
- 33 (12) ~~Adopt~~ Except as provided in G.S. 122C-114(b)(4) and (b)(5), adopt
34 rules governing the expenditure of all funds for mental health,
35 developmental disabilities, and substance abuse programs and services.
36 The Secretary shall make recommendations to the Commission
37 regarding the criteria and process for the expenditure of funds from the
38 Trust Fund for Mental Health, Developmental Disabilities, and
39 Substance Abuse Services and Bridge Funding Needs and the criteria
40 and process for an LME to reallocate funds among broad age and
41 disability categories.
- 42 (13) Adopt rules to implement the appeal procedure authorized by
43 G.S. 122C-151.2.

- 1 (14) Make recommendations to the Commission regarding ~~Adopt~~ rules for
2 the implementation of the uniform portal process.
- 3 (15) Except as provided in G.S. 122C-26(4), adopt rules establishing
4 procedures for waiver of rules adopted by the Secretary under this
5 Chapter.
- 6 (16) Notify the clerks of superior court of changes in the designation of
7 State facility regions and of facilities designated under G.S. 122C-252.
- 8 (17) Promote public awareness and understanding of mental health, mental
9 illness, developmental disabilities, and substance abuse.
- 10 (18) Administer and enforce rules that are conditions of participation for
11 federal or State financial aid.
- 12 (19) Carry out G.S. 122C-361.
- 13 (20) Monitor the fiscal and administrative practices of area authorities and
14 county programs to ensure that the programs are accountable to the
15 State for the management and use of federal and State funds allocated
16 for mental health, developmental disabilities, and substance abuse
17 services. The Secretary shall ensure maximum accountability by area
18 authorities and county programs for rate-setting methodologies,
19 reimbursement procedures, billing procedures, provider contracting
20 procedures, record keeping, documentation, and other matters
21 pertaining to financial management and fiscal accountability. The
22 Secretary shall further ensure that the practices are consistent with
23 professionally accepted accounting and management principles.
- 24 (21) Provide technical assistance, including conflict resolution, to counties
25 in the development and implementation of area authority and county
26 program business plans and other matters, as requested by the county.
- 27 (22) Develop a methodology to be used for calculating county resources to
28 reflect cash and in-kind contributions of the county.
- 29 (23) Make recommendations to the Commission regarding ~~Adopt~~ rules
30 establishing program evaluation and management of mental health,
31 developmental disabilities, and substance abuse services.
- 32 (24) Adopt rules regarding the requirements of the federal government for
33 grants-in-aid for mental health, developmental disabilities, or
34 substance abuse programs which may be made available to area
35 authorities or county programs or the State. This section shall be
36 liberally construed in order that the State and its citizens may benefit
37 from the grants-in-aid.
- 38 (25) Make recommendations to the Commission regarding ~~Adopt~~ rules for
39 determining minimally adequate services for purposes of
40 G.S. 122C-124.1 and G.S. 122C-125.
- 41 (26) Make recommendations to the Commission regarding rules to establish
42 ~~Establish~~ a process for approving area authorities and county programs
43 to provide services directly in accordance with G.S. 122C-141.

- 1 (27) Sponsor training opportunities in the fields of mental health,
2 developmental disabilities, and substance abuse.
- 3 (28) Enforce the protection of the rights of clients served by State facilities,
4 area authorities, county programs, and providers of public services.
- 5 (29) Make recommendations to the Commission regarding ~~Adopt~~ rules for
6 the enforcement of the protection of the rights of clients being served
7 by State facilities, area authorities, county programs, and providers of
8 public services.
- 9 (30) Prior to requesting approval to close a State facility under
10 G.S. 122C-181(b):
- 11 a. Notify the Joint Legislative Commission on Governmental
12 Operations, the Joint Legislative Committee on Mental Health,
13 Developmental Disabilities, and Substance Abuse Services, and
14 members of the General Assembly who represent catchment
15 areas affected by the closure; and
- 16 b. Present a plan for the closure to the members of the Joint
17 Legislative Committee on Mental Health, Developmental
18 Disabilities, and Substance Abuse Services, the House of
19 Representatives Appropriations Subcommittee on Health and
20 Human Services, and the Senate Appropriations Committee on
21 Health and Human Services for their review, advice, and
22 recommendations. The plan shall address specifically how
23 patients will be cared for after closure, how support services to
24 community-based agencies and outreach services will be
25 continued, and the impact on remaining State facilities. In
26 implementing the plan, the Secretary shall take into
27 consideration the comments and recommendations of the
28 committees to which the plan is presented under this
29 subdivision.
- 30 (31) Ensure that the State Plan for Mental Health, Developmental
31 Disabilities, and Substance Abuse Services is coordinated with the
32 Medicaid State Plan and NC Health Choice.
- 33 (32) Implement standard forms, quality measures, contracts, processes, and
34 procedures to be used by all area authorities and county programs with
35 other public and private service providers. The Secretary shall consult
36 with LMEs, CFACs, counties, and qualified providers regarding the
37 development of any forms, processes, and procedures required under
38 this subdivision. Any document, process, or procedure developed
39 under this subdivision shall place an obligation upon providers to
40 transmit to LMEs timely client information and outcome data. The
41 Secretary shall also adopt rules regarding what constitutes a clean
42 claim for purposes of billing.
- 43 When implementing this subdivision, the Secretary shall balance
44 the need for LMEs to exercise discretion in the discharge of their LME

1 functions with the need of qualified providers for a uniform system of
2 doing business with public entities.

- 3 (33) Develop and implement critical performance indicators to be used to
4 hold LMEs accountable for managing the mental health,
5 developmental disabilities, and substance abuse services system. The
6 performance system indicators shall be implemented no later than July
7 1, 2007."

8 **SECTION 2.** G.S. 122C-125 reads as rewritten:

9 "**§ 122C-125. Area Authority financial failure; State assumption of financial**
10 **control.**

11 At any time that the Secretary of the Department of Health and Human Services
12 determines that an area authority is in imminent danger of failing financially and of
13 failing to provide direct services to clients, the Secretary, after providing written
14 notification of the Secretary's intent to the area board and after providing the area
15 authority an opportunity to be heard, may assume control of the financial affairs of the
16 area authority and appoint an administrator to exercise the powers assumed. This
17 assumption of control shall have the effect of divesting the area authority of its powers
18 as to the adoption of budgets, expenditures of money, and all other financial powers
19 conferred in the area authority by law. County funding of the area authority shall
20 continue when the State has assumed control of the financial affairs of the area
21 authority. At no time after the State has assumed this control shall a county withdraw
22 funds previously obligated or appropriated to the area authority. The Secretary shall
23 make recommendations to the Commission, and the Commission shall adopt rules to
24 define imminent danger of failing financially and of failing to provide direct services to
25 clients.

26 Upon assumption of financial control, the Department shall, in conjunction with the
27 area authority, develop and implement a corrective plan of action and provide
28 notification to the area authority's board of directors of the plan. The Department shall
29 also keep the county board of commissioners and the area authority's board of directors
30 informed of any ongoing concerns or problems with the area authority's finances."

31 **SECTION 3.** G.S. 122C-141(a) reads as rewritten:

32 "(a) The area authority or county program shall contract with other qualified
33 public or private providers, agencies, institutions, or resources for the provision of
34 services, and, subject to the approval of the Secretary, is authorized to provide services
35 directly. The area authority or county program shall indicate in its local business plan
36 how services will be provided and how the provision of services will address issues of
37 access, availability of qualified public or private providers, consumer choice, and fair
38 competition. The Secretary shall take into account these issues when reviewing the local
39 business plan and considering approval of the direct provision of services. The
40 Secretary shall develop criteria for the approval of direct service provision by area
41 authorities and county programs in accordance with this section and as evidenced by
42 compliance with the local business plan. For the purposes of this section, a qualified
43 public or private provider is a provider that meets the provider qualifications as defined
44 by rules adopted by the Secretary-Commission."

1 **SECTION 4.** G.S. 122C-141(d) reads as rewritten:

2 "(d) If two or more counties enter into an interlocal agreement under Article 20 of
3 Chapter 160A of the General Statutes to be a public provider of mental health,
4 developmental disabilities, or substance abuse services ("public provider"), before an
5 LME may enter into a contract with the public provider, all of the following must apply:

- 6 (1) The public provider must meet all the provider qualifications as
7 defined by rules adopted by the ~~Secretary~~. Commission. A county that
8 satisfies its duties under G.S. 122C-115(a) through a consolidated
9 human services agency may not be considered a qualified provider for
10 purposes of this subdivision.
11 (2) The LME must adopt a conflict of interest policy that applies to all
12 provider contracts.
13 (3) The interlocal agreement must provide that any liabilities of the public
14 provider shall be paid from its unobligated surplus funds and that if
15 those funds are not sufficient to satisfy the indebtedness, the remaining
16 indebtedness shall be apportioned to the participating counties."

17 **SECTION 5.** G.S. 122C-114 reads as rewritten:

18 **"§ 122C-114. Powers and duties of the Commission.**

19 (a) The Commission shall have authority as provided by this Chapter, Chapters
20 90 and 148 of the General Statutes, and by G.S. 143B-147.

21 (b) The Commission shall adopt rules regarding all of the following:

- 22 (1) The process and criteria for the submission, review, and approval or
23 disapproval by the Secretary of LME business plans submitted by area
24 authorities and county programs for the management of mental health,
25 developmental disabilities, and substance abuse services.
26 (2) The content and format of LME business plans.
27 (3) The admission and discharge of patients to State facilities.
28 (4) Subject to the requirements of G.S. 143C-9-2, standardized criteria and
29 processes for the expenditure of all funds from the Trust Fund for
30 Mental Health, Developmental Disabilities, and Substance Abuse
31 Services and Bridge Funding Needs.
32 (5) Standardized criteria and procedures to allow an LME to reallocate
33 funds between broad age and disability categories.
34 (6) The implementation of the uniform portal process.
35 (7) LME monitoring and endorsement of providers of mental health,
36 developmental disabilities, and substance abuse services.
37 (8) LME provision of technical assistance to providers of mental health,
38 developmental disabilities, and substance abuse services.
39 (9) Define 'imminent danger of failing financially' and 'failing to provide
40 direct services to clients' as those terms are used in G.S. 122C-125.
41 (10) Determine the requirements of a qualified public or private provider as
42 that term is used in G.S. 122C-141.
43 (11) All other matters governed by this Chapter that are not specifically
44 reserved for the Secretary.

- 1 (c) Rules previously adopted by the Secretary shall be effective unless amended
2 or repealed by the Commission."
3 **SECTION 6.** This act becomes effective October 1, 2007.