

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE BILL 1654  
Committee Substitute Favorable 5/17/07  
Third Edition Engrossed 5/23/07

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 5.1.** There is appropriated from the General Fund to the  
4 Department of Health and Human Services the sum of \$100,000 for the 2007-2008  
5 fiscal year and the sum of \$100,000 for the 2008-2009 fiscal year. These funds shall be  
6 allocated to the Commission for Mental Health, Developmental Disabilities, and  
7 Substance Abuse Services for retention of permanent staff to assist the Commission  
8 with its duties under Part 4 of Article 3 of Chapter 143B of the General Statutes and  
9 other State law conferring specific duties and responsibilities on the Commission.

10               **SECTION 6.** Section 5.1 of this act becomes effective July 1, 2007. The  
11 remainder of this act becomes effective October 1, 2007.