

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

**H**

**4**

**HOUSE BILL 381\*  
Committee Substitute Favorable 7/11/01  
Committee Substitute #2 Favorable 7/19/01  
Fourth Edition Engrossed 7/26/01**

Short Title: Mental Health System Reform.

(Public)

---

Sponsors:

---

Referred to:

---

March 1, 2001

A BILL TO BE ENTITLED

1  
2 AN ACT TO PHASE IN IMPLEMENTATION OF MENTAL HEALTH SYSTEM  
3 REFORM AT THE STATE AND LOCAL LEVEL.

4       Whereas, the 1999 General Assembly, Regular Session 2000, established the  
5 Joint Legislative Oversight Committee ("Committee") on Mental Health,  
6 Developmental Disabilities, and Substance Abuse Services; and

7       Whereas, the Committee was directed to develop a Plan for Mental Health  
8 System Reform; and

9       Whereas, the General Assembly expressed the intent that the Plan be fully  
10 implemented not later than July 1, 2005; and

11       Whereas, the General Assembly directed the Committee to "Report to the  
12 2001 General Assembly upon its convening the changes that should be made to the  
13 governance, structure, and financing of the State's mental health system at the State and  
14 local levels"; and

15       Whereas, the Committee reviewed the governance, structure, and financing of  
16 the current mental health system and reported its findings and recommendations to the  
17 2001 General Assembly for legislative action; Now, therefore,  
18 The General Assembly of North Carolina enacts:

19  
20 **PART 1. MENTAL HEALTH SYSTEM GOVERNANCE CHANGES**

21  
22       **SECTION 1.1.** G.S. 122C-2 reads as rewritten:

23 **"§ 122C-2. Policy.**

24       The policy of the State is to assist individuals with needs for mental illness, health,  
25 developmental disabilities, and substance abuse problems services in ways consistent  
26 with the dignity, rights, and responsibilities of all North Carolina citizens. Within  
27 available resources it is the obligation of State and local government to provide mental

1 health, developmental disabilities, and substance abuse services to eliminate, reduce, or  
2 prevent the disabling effects of mental illness, developmental disabilities, and substance  
3 abuse through a service delivery system designed to meet the needs of clients in the  
4 least restrictive available setting, if the least restrictive setting is therapeutically most  
5 appropriate, restrictive, therapeutically most appropriate setting available and to  
6 maximize their quality of life. It is further the obligation of the State and local  
7 government to provide community-based services when such services are appropriate,  
8 unopposed by the affected individuals, and can be reasonably accommodated within  
9 available resources and taking into account the needs of other persons for mental health,  
10 developmental disabilities, and substance abuse services.

11 State and local governments shall develop and maintain a unified system of services  
12 centered in area authorities or county programs. The public service system will strive to  
13 provide a continuum of services for clients while considering the availability of services  
14 in the private sector. Within available resources, State and local government shall  
15 ensure that the following core services are available:

- 16 (1) Screening, assessment, and referral.
- 17 (2) Emergency services.
- 18 (3) Service coordination.
- 19 (4) Consultation, prevention, and education.

20 Within available resources, the State shall provide funding to support services to  
21 targeted populations, except that the State and counties shall provide matching funds for  
22 entitlement program services as required by law.

23 The furnishing of services to implement the policy of this section requires the  
24 cooperation and financial assistance of counties, the State, and the federal government."

25 **SECTION 1.2.(a)** G.S. 122C-3 is amended by adding the following new  
26 subdivisions in alphabetical order to read:

- 27 "(1) 'Area director' means the administrative head of the area authority  
28 program appointed pursuant to G.S. 122C-121.
- 29 (2) 'Board of county commissioners' includes the participating boards of  
30 county commissioners for multicounty area authorities and  
31 multicounty programs.
- 32 (3) 'Core services' are those services that are basic, essential, and  
33 universally available to all individuals.
- 34 (4) 'County program' means a mental health, developmental disabilities,  
35 and substance abuse services program established, operated, and  
36 governed by a county pursuant to G.S. 122C-115.1.
- 37 (5) 'Program director' means the director of a county program established  
38 pursuant to G.S. 122C-115.1.
- 39 (6) 'Public services' means publicly funded mental health, developmental  
40 disabilities, and substance abuse services, whether provided by public  
41 or private providers.

1           (7) 'Specialty services' means services that are provided to consumers  
2           from low incidence populations.

3           (8) 'State' or 'Local' Ombudsman means the individual carrying out the  
4           duties of the State or Local Quality of Care Ombudsman Office in  
5           accordance with Article 1A of this Chapter.

6           (9) 'State Plan' means the State Plan for Mental Health, Developmental  
7           Disabilities, and Substance Abuse Services.

8           (10) 'Targeted population' means those individuals who are given service  
9           priority under the State Plan.

10          (11) 'Uniform portal process' means a standardized process and procedures  
11          used to ensure consumer access to, and exit from, public services in  
12          accordance with the State Plan."

13          **SECTION 1.2.(b)** G.S. 122C-3(5) reads as rewritten:

14          "(5) 'Catchment area' means the geographic part of the State served by a  
15          specific area ~~authority.~~ authority or county program."

16          **SECTION 1.2.(c)** G.S. 122C-3(34) and G.S. 122C-3(35) are repealed.

17          **SECTION 1.3.** G.S. 122C-64 reads as rewritten:

18          "**§ 122C-64. Human rights committees.**

19          Human rights committees responsible for protecting the rights of clients shall be  
20          established at each State facility ~~and may be established for area authorities.~~ The  
21          ~~Commission shall adopt rules for the establishment of committees. These rules shall~~  
22          ~~include the composition and duties of the committees and procedures for appointment of~~  
23          ~~the members by the Secretary for State facilities and by the area board for area~~  
24          ~~authorities.~~ facility and for each area authority and county program. The Commission  
25          shall adopt rules for the establishment, composition, and duties of the committees and  
26          procedures for appointment and coordination with the State and Local Ombudsman  
27          programs. In multicounty area authorities and multicounty programs, the membership of  
28          the human rights committee shall include a representative from each of the participating  
29          counties."

30          **SECTION 1.4.** G.S. 122C-101 reads as rewritten:

31          "**§ 122C-101. Policy.**

32          Within the public system of mental health, developmental disabilities, and substance  
33          abuse services, there are ~~both area~~ area, county, and State facilities. An area authority or  
34          county program is the locus of coordination among public services for clients of its  
35          catchment area. ~~To assure the most appropriate and efficient care of clients within the~~  
36          ~~publicly supported service system, area authorities are encouraged to develop and~~  
37          ~~secure approval for a single portal of entry and exit policy for their catchment areas for~~  
38          ~~mental health and substance abuse authorities. Effective January 1, 1994, an area~~  
39          ~~authority shall develop and secure approval for a single portal of entry and exit policy~~  
40          ~~for public and private services for individuals with developmental disabilities."~~

41          **SECTION 1.5.** Part 1 of Article 4 of Chapter 122C of the General Statutes is  
42          amended by adding the following new section to read:

1 **"§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and**  
2 **Substance Abuse Services.**

3 The Department shall develop and implement a State Plan for Mental Health,  
4 Developmental Disabilities, and Substance Abuse Services. The State Plan shall include  
5 the following:

- 6 (1) Vision and mission of the State Mental Health, Developmental  
7 Disabilities, and Substance Abuse Services system.
- 8 (2) Organizational structure of the Department and the Divisions of the  
9 Department responsible for managing and monitoring mental health,  
10 developmental disabilities, and substance abuse services.
- 11 (3) Protection of client rights and consumer involvement in planning and  
12 management of system services.
- 13 (4) Provision of services to targeted populations, including criteria for  
14 identifying targeted populations.
- 15 (5) Compliance with federal mandates in establishing service priorities in  
16 mental health, developmental disabilities, and substance abuse.
- 17 (6) Description of the core services that are available to all individuals in  
18 order to improve consumer access to mental health, developmental  
19 disabilities, and substance abuse services at the local level.
- 20 (7) Service standards for the mental health, developmental disabilities, and  
21 substance abuse services system.
- 22 (8) Implementation of the uniform portal process.
- 23 (9) Strategies and schedules for implementing the service plan, including  
24 engagement of stakeholders in planning coordinated Medicaid policy  
25 development, intersystem collaboration, promotion of best practices,  
26 technical assistance, outcome-based monitoring, and evaluation.
- 27 (10) A business plan to demonstrate efficient and effective resource  
28 management of the mental health, developmental disabilities, and  
29 substance abuse services system, including strategies for  
30 accountability for non-Medicaid and Medicaid services."
- 31 (11) Strategies and schedules for implementing a phased-in plan to  
32 eliminate disparities in the allocation of State funding across county  
33 programs and area authorities by January 1, 2007, including methods  
34 to identify service gaps and to ensure equitable use of State funds to  
35 fill those gaps among all counties.

36 **SECTION 1.6.** G.S. 122C-111 reads as rewritten:

37 **"§ 122C-111. Administration.**

38 The Secretary shall administer and enforce the provisions of this Chapter and the  
39 rules of the Commission and shall operate State facilities. An area director or program  
40 director shall administer the programs of the area authority or county program, as  
41 applicable, and enforce the rules of the area board, applicable State laws, rules of the  
42 Commission, and rules of the Secretary. The Secretary in cooperation with area and

1 county program directors and State facility directors shall provide for the coordination  
2 of public services between area ~~authorities~~ authorities, county programs, and State  
3 facilities."

4 **SECTION 1.7.(a)** G.S. 122C-112 is repealed.

5 **SECTION 1.7.(b)** Part 2 of Article 4 of Chapter 122C of the General  
6 Statutes is amended by adding the following new section to read:

7 "**§ 122C-112.1. Powers and duties of the Secretary.**

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

- 9 (1) Oversee development of the State Plan for Mental Health,  
10 Developmental Disabilities, and Substance Abuse Services.
- 11 (2) Enforce the provisions of this Chapter and the rules of the Commission  
12 and the Secretary.
- 13 (3) Establish a process and criteria for the submission, review, and  
14 approval or disapproval of business plans submitted by area authorities  
15 and counties for the management and provision of mental health,  
16 developmental disabilities, and substance abuse services.
- 17 (4) Adopt rules specifying the content and format of business plans.
- 18 (5) Review business plans and upon approval of the business plan, certify  
19 the submitting area authority or county program to provide mental  
20 health, developmental disabilities, and substance abuse services.
- 21 (6) Establish comprehensive, cohesive oversight and monitoring  
22 procedures and processes to ensure continuous compliance by area  
23 authorities, county programs, and all providers of public services with  
24 State and federal policy, law, and standards. Procedures shall include  
25 performance measures and report cards for each area authority and  
26 county program.
- 27 (7) Conduct regularly scheduled monitoring and oversight of area  
28 authority, county programs, and all providers of public services.  
29 Monitoring and oversight shall include compliance with the program  
30 business plan, core administrative functions, and fiscal and  
31 administrative practices and shall also address outcome measures,  
32 consumer satisfaction, client rights complaints, and adherence to best  
33 practices.
- 34 (8) Make findings and recommendations based on information and data  
35 collected pursuant to subdivision (7) of this subsection and submit  
36 these findings and recommendations to the applicable area authority  
37 board, county program director, board of county commissioners,  
38 providers of public services, and to the Local Ombudsman Office.
- 39 (9) Assist area authorities and county programs in the establishment and  
40 operation of community-based programs.
- 41 (10) Operate State facilities and adopt rules pertaining to their operation.

- 1           (11) Develop a unified system of services provided in area, county, and  
2           State facilities, and by providers enrolled or under a contract with the  
3           State.
- 4           (12) Adopt rules governing the expenditure of all funds for mental health,  
5           developmental disabilities, and substance abuse programs and services.
- 6           (13) Adopt rules to implement the appeal procedure authorized by G.S.  
7           122C-151.2.
- 8           (14) Adopt rules for the implementation of the uniform portal process.
- 9           (15) Except as provided in G.S. 122C-26(4), adopt rules establishing  
10          procedures for waiver of rules adopted by the Secretary under this  
11          Chapter.
- 12          (16) Notify the clerks of superior court of changes in the designation of  
13          State facility regions and of facilities designated under G.S. 122C-252.
- 14          (17) Promote public awareness and understanding of mental health, mental  
15          illness, developmental disabilities, and substance abuse.
- 16          (18) Administer and enforce rules that are conditions of participation for  
17          federal or State financial aid.
- 18          (19) Carry out G.S. 122C-361.
- 19          (20) Monitor the fiscal and administrative practices of area authorities and  
20          county programs to ensure that the programs are accountable to the  
21          State for the management and use of federal and State funds allocated  
22          for mental health, developmental disabilities, and substance abuse  
23          services. The Secretary shall ensure maximum accountability by area  
24          authorities and county programs for rate-setting methodologies,  
25          reimbursement procedures, billing procedures, provider contracting  
26          procedures, record keeping, documentation, and other matters  
27          pertaining to financial management and fiscal accountability. The  
28          Secretary shall further ensure that the practices are consistent with  
29          professionally accepted accounting and management principles.
- 30          (21) Provide technical assistance, including conflict resolution, to counties  
31          in the development and implementation of area authority and county  
32          program business plans and other matters, as requested by the county.
- 33          (22) Develop a methodology to be used for calculating county resources to  
34          reflect cash and in-kind contributions of the county.
- 35          (23) Adopt rules establishing program evaluation and management of  
36          mental health, developmental disabilities, and substance abuse  
37          services.
- 38          (24) Adopt rules regarding the requirements of the federal government for  
39          grants-in-aid for mental health, developmental disabilities, or  
40          substance abuse programs which may be made available to area  
41          authorities or county programs or the State. This section shall be

- 1 liberally construed in order that the State and its citizens may benefit  
2 from the grants-in-aid.
- 3 (25) Adopt rules for determining minimally adequate services for purposes  
4 of G.S. 122C-124.1 and G.S. 122C-125.
- 5 (26) Establish a process for approving area authorities and county programs  
6 to provide services directly in accordance with G.S. 122C-141.
- 7 (27) Sponsor training opportunities in the fields of mental health,  
8 developmental disabilities, and substance abuse.
- 9 (28) Enforce the protection of the rights of clients served by State facilities,  
10 area authorities, county programs, and providers of public services.
- 11 (29) Adopt rules for the enforcement of the protection of the rights of  
12 clients being served by State facilities, area authorities, county  
13 programs, and providers of public services.
- 14 (b) The Secretary may do the following:
- 15 (1) Acquire, by purchase or otherwise in the name of the Department,  
16 equipment, supplies, and other personal property necessary to carry out  
17 the mental health, developmental disabilities, and substance abuse  
18 programs.
- 19 (2) Promote and conduct research in the fields of mental health,  
20 developmental disabilities, and substance abuse; promote best  
21 practices.
- 22 (3) Receive donations of money, securities, equipment, supplies, or any  
23 other personal property of any kind or description that shall be used by  
24 the Secretary for the purpose of carrying out mental health,  
25 developmental disabilities, and substance abuse programs. Any  
26 donations shall be reported to the Office of State Budget and  
27 Management as determined by that office.
- 28 (4) Accept, allocate, and spend any federal funds for mental health,  
29 developmental disabilities, and substance abuse activities that may be  
30 made available to the State by the federal government. This Chapter  
31 shall be liberally construed in order that the State and its citizens may  
32 benefit fully from these funds. Any federal funds received shall be  
33 deposited with the Department of State Treasurer and shall be  
34 appropriated by the General Assembly for the mental health,  
35 developmental disabilities, or substance abuse purposes specified.
- 36 (5) Enter agreements authorized by G.S. 122C-346.
- 37 (6) Notwithstanding G.S. 126-18, authorize funds for contracting with a  
38 person, firm, or corporation for aid or assistance in locating, recruiting,  
39 or arranging employment of health care professionals in any facility  
40 listed in G.S. 122C-181.
- 41 (7) Contract with one or more private providers or other public service  
42 agencies to serve clients of an area authority or county program and

1 reallocate program funds to pay for services under the contract if the  
2 Secretary finds all of the following:

3 a. The area authority or county program refuses or has failed to  
4 provide the services to clients within its catchment area, or  
5 provide specialty services in another catchment area, in a  
6 manner that is at least adequate.

7 b. Clients within the area authority or county program catchment  
8 area will either not be served or will suffer an unreasonable  
9 hardship if required to obtain the services from another area  
10 authority or county program.

11 c. There is at least one private provider or public service agency  
12 within the area authority or county program catchment area, or  
13 within reasonable proximity to the catchment area, willing and  
14 able to provide services under contract.

15 Before contracting with a private provider as authorized under this  
16 subdivision, the Secretary shall provide written notification to the area  
17 authority or county program and to the applicable participating boards of  
18 county commissioners of the Secretary's intent to contract and shall provide  
19 the area authority or county program and the applicable participating boards  
20 of county commissioners an opportunity to be heard.

21 (8) Contract with one or more private providers or other public service  
22 agencies to serve clients from more than one area authority or county  
23 program and reallocate the funds of the applicable programs to pay for  
24 services under the contract if the Secretary finds either that there is no  
25 other area authority or county program available to act as the  
26 administrative entity under contract with the provider or that the area  
27 authority or county program refuses or has failed to properly manage  
28 and administer the contract with the contract provider, and clients will  
29 either not be served or will suffer unreasonable hardship if services are  
30 not provided under the contract. Before contracting with a private  
31 provider as authorized under this subdivision, the Secretary shall  
32 provide written notification to the area authority or county program  
33 and the applicable participating boards of county commissioners of the  
34 Secretary's intent to contract and shall provide the area authority or  
35 county program and the applicable participating boards of county  
36 commissioners an opportunity to be heard.

37 (9) Require reports of client characteristics, staffing patterns, agency  
38 policies or activities, services, or specific financial data of the area  
39 authority, county program, and providers of public services. The  
40 reports shall not identify individual clients of the area authority or  
41 county program unless specifically required by State law or by federal



1 law or regulation or unless valid consent for the release has been given  
2 by the client or legally responsible person."

3 SECTION 1.8. G.S. 122C-115 reads as rewritten:

4 "**§ 122C-115. Powers and duties of counties and cities. Duties of counties;**  
5 **appropriation and allocation of funds by counties and cities.**

6 (a) ~~Except as provided in G.S. 153A-77, a county shall provide mental health,~~  
7 ~~developmental disabilities, and substance abuse services through an area authority. A~~  
8 ~~county shall provide mental health, developmental disabilities, and substance abuse~~  
9 ~~services through an area authority or through a county program established pursuant to~~  
10 ~~G.S. 122C-115.1. To the extent this section conflicts with G.S. 153A-77(a), the~~  
11 ~~provisions of G.S. 153A-77(a) control.~~

12 (b) Counties shall and cities may appropriate funds for the support of programs  
13 that serve the catchment area, whether the programs are physically located within a  
14 single county or whether any facility housing a program is owned and operated by the  
15 city or county. Counties and cities may make appropriations for the purposes of this  
16 Chapter and may allocate for these purposes other revenues not restricted by law, and  
17 counties may fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22).

18 (c) ~~Within~~ Except as authorized in G.S. 122C-115.1, within a catchment area  
19 ~~designated by the Commission in the business plan pursuant to G.S. 122C-115.2, a~~  
20 ~~board of county commissioners or two or more boards of county commissioners jointly~~  
21 ~~shall establish an area authority with the approval of the Secretary.~~

22 (d) Except as otherwise provided in this subsection, counties shall not reduce  
23 county appropriations and expenditures for current operations and ongoing programs  
24 and services of area authorities or county programs because of the availability of  
25 State-allocated funds, fees, capitation amounts, or fund balance to the area ~~authority-~~  
26 authority or county program. Counties may reduce county appropriations by the amount  
27 previously appropriated by the county for one-time, nonrecurring special needs of the  
28 area ~~authority-~~ authority or county program."

29 SECTION 1.9. Part 2 of Article 4 of Chapter 122C of the General Statutes is  
30 amended by adding the following new sections to read:

31 "**§ 122C-115.1. County governance and operation of mental health, developmental**  
32 **disabilities, and substance abuse services program.**

33 (a) A county may operate a county program for mental health, developmental  
34 disabilities, and substance abuse services as a single county, or, pursuant to Article 20  
35 of Chapter 160A of the General Statutes, may enter into an interlocal agreement with  
36 one or more other counties for the operation of a multicounty program. An interlocal  
37 agreement shall provide for the following:

38 (1) Adoption and administration of the program budget in accordance with  
39 Chapter 159 of the General Statutes.

40 (2) Appointment of a program director to carry out the provisions of G.S.  
41 122C-111 and duties and responsibilities delegated by the county.

1 Except when specifically waived by the Secretary, the program  
2 director shall meet the following minimum qualifications:

- 3 a. Masters degree,  
4 b. Related experience, and  
5 c. Management experience.

6 (3) A targeted minimum population of 200,000 or a targeted minimum  
7 number of five counties served by the program.

8 (4) Compliance with the provisions of this Chapter and the rules of the  
9 Commission and the Secretary.

10 (5) Written notification to the Secretary prior to the termination of the  
11 interlocal agreement.

12 (6) Appointment of an advisory committee. The interlocal agreement shall  
13 designate a county manager to whom the advisory committee shall  
14 report. The interlocal agreement shall also designate the appointing  
15 authorities. The appointing authorities shall make appointments that  
16 take into account sufficient citizen participation, equitable  
17 representation of the disability groups, and equitable representation of  
18 participating counties. At least fifty percent (50%) of the membership  
19 shall conform to the requirements provided in G.S. 122C-118.1(b)(1)-  
20 (4).

21 (b) Before establishing a county program pursuant to this section, a county board  
22 of commissioners shall hold a public hearing with notice published at least 10 days  
23 before the hearing.

24 (c) A county shall ensure that the county program and the services provided  
25 through the county program comply with the provisions of this Chapter and the rules  
26 adopted by the Commission and the Secretary.

27 (d) A county program shall submit on a quarterly basis to the Secretary and the  
28 board of county commissioners service delivery reports that assess the quality and  
29 availability of public services within the county program's catchment area. The service  
30 delivery reports shall include the types of services delivered, number of recipients  
31 served, and services requested but not delivered due to staffing, financial, or other  
32 constraints. In addition, at least annually, a progress report shall be submitted to the  
33 Secretary and the board of county commissioners. The progress report shall include an  
34 assessment of the progress in implementing local service plans, goals, and outcomes.  
35 All reports shall be in a format and shall contain any additional information required by  
36 the Secretary or board of county commissioners.

37 (e) Within 30 days of the end of each quarter of the fiscal year, the program  
38 director and finance officer of the county program shall present to each member of the  
39 board of county commissioners a budgetary statement and balance sheet that details the  
40 assets, liabilities, and fund balance of the county program. This information shall be  
41 read into the minutes of the meeting at which it is presented. The program director or

1 finance officer of the county program shall provide to the board of county  
2 commissioners ad hoc reports as requested by the board of county commissioners.

3 (f) In a single-county program, the program director shall be appointed by the  
4 county manager. In a multicounty program, the program director shall be appointed in  
5 accordance with the terms of the interlocal agreement.

6 (g) In a single-county program, an advisory committee shall be appointed by the  
7 board of county commissioners and shall report to the county manager. The  
8 appointments shall take into account sufficient citizen participation, equitable  
9 representation of the disability groups, and equitable representation of participating  
10 counties. At least fifty percent (50%) of the membership shall conform to the  
11 requirements in G.S. 122C-118.1(b)(1)-(4). In a multicounty program, the advisory  
12 committee shall be appointed in accordance with the terms of the interlocal agreement.

13 (h) The county program may contract to provide services to governmental or  
14 private entities, including Employee Assistance Programs.

15 (i) Except as otherwise specifically provided, this Chapter applies to counties  
16 that provide mental health, developmental disabilities, and substance abuse services  
17 through a county program. As used in the applicable sections of this Article, the terms  
18 'area authority', 'area program', and 'area facility' shall be construed to include 'county  
19 program'. The following sections of this Article do not apply to county programs:

20 (1) G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.

21 (2) G.S. 122C-119 and G.S. 122C-119.1.

22 (3) G.S. 122C-120 and G.S. 122C-121.

23 (4) G.S. 122C-127.

24 (5) G.S. 122C-147.

25 (6) G.S. 122C-152 and G.S. 122C-153.

26 (7) G.S. 122C-156.

27 (8) G.S. 122C-158.

28 **"§ 122C-115.2. Business plan required; content, process, certification.**

29 (a) Every county, through an area authority or county program, shall provide for  
30 development, review, and approval of a business plan for the management and delivery  
31 of mental health, developmental disabilities, and substance abuse services. A business  
32 plan shall provide detailed information on how the area authority or county program  
33 will meet State standards, laws, and rules for ensuring quality mental health,  
34 developmental disabilities, and substance abuse services, including outcome measures  
35 for evaluating program effectiveness. The business plan shall be in effect for at least  
36 three State fiscal years.

37 (b) Business plans shall include the following:

38 (1) Description of how the following core administrative functions will be  
39 carried out:

40 a. Planning. – Local services plans that identify service gaps and  
41 methods for filling the gaps, ensure the availability of an array  
42 of services based on consumer needs, provision of core

- 1 services, equitable service delivery among member counties,  
2 and prescribing the efficient and effective use of all funds for  
3 targeted services. Local planning shall be an open process  
4 involving key stakeholders.
- 5 b. Provider network development. – Ensuring available, qualified  
6 providers to deliver services based on the business plan.  
7 Development of new providers and monitoring provider  
8 performance and service outcomes. Provider network  
9 development shall address consumer choice and fair  
10 competition. For the purposes of this section, a 'qualified  
11 provider' means a provider who meets the provider  
12 qualifications as defined by rules adopted by the Secretary.
- 13 c. Service management. – Implementation of uniform portal  
14 process. Service management shall include appropriate level  
15 and intensity of services, management of State  
16 hospitals/facilities bed days, utilization management, case  
17 management, and quality management. If services are provided  
18 directly by the area authority or county program, then the plan  
19 shall indicate how consumer choice and fair competition in the  
20 marketplace is ensured.
- 21 d. Financial management and accountability. – Carrying out  
22 business functions in an efficient and effective manner, cost-  
23 sharing, and managing resources dedicated to the public system.
- 24 e. Service monitoring and oversight. – Ensuring that services  
25 provided to consumers and families meet State outcome  
26 standards and ensure quality performance by providers in the  
27 network.
- 28 f. Evaluation. – Self-evaluation based on statewide outcome  
29 standards and participation in independent evaluation studies.
- 30 g. Collaboration. – Collaborating with other local service systems  
31 in ensuring access and coordination of services at the local  
32 level. Collaborating with other area authorities and county  
33 programs and the State in planning and delivering services.
- 34 h. Access. – Ensuring access to core and targeted services.
- 35 (2) Description of how the following will be addressed:
- 36 a. Reasonable administrative costs based on uniform State criteria  
37 for calculating administrative costs and costs or savings  
38 anticipated from consolidation.
- 39 b. Proposed reinvestment of savings toward direct services.
- 40 c. Compliance with the catchment area consolidation plan adopted  
41 by the Secretary.

- 1           d. Based on rules adopted by the Secretary, method for calculating  
2           county resources to reflect cash and in-kind contributions of the  
3           county.  
4           e. Financial and services accountability and oversight in  
5           accordance with State and federal law.  
6           f. The composition and appointment of the area authority board.  
7           g. The population base of the catchment area to be served.  
8           h. Use of local funds for the alteration, improvement, and  
9           rehabilitation of real property as authorized by and in  
10           accordance with G.S. 122C-147.

- 11           (3) Other matters determined by the Secretary to be necessary to  
12           effectively and efficiently provide mental health, developmental  
13           disabilities, and substance abuse services through an area authority or  
14           county program.

15           (c) The county program or area authority proposing the business plan shall  
16           submit the proposed plan as approved by the board of county commissioners to the  
17           Secretary for review and certification. The Secretary shall review the business plan  
18           within 30 days of receipt of the plan. If the business plan meets all of the requirements  
19           of State law and standards adopted by the Secretary, then the Secretary shall certify the  
20           area authority or county program as a single-county area authority, a single-county  
21           program, a multicounty area authority, or a multicounty program. Implementation of the  
22           certified plan shall begin within 30 days of certification. If the Secretary determines that  
23           changes to the plan are necessary, then the Secretary shall so notify the submitting  
24           county program or area authority and the applicable participating boards of county  
25           commissioners and shall indicate in the notification the changes that need to be made in  
26           order for the proposed program to be certified. The submitting county program or area  
27           authority shall have 30 days from receipt of the Secretary's notice to make the requested  
28           changes and resubmit the amended plan to the Secretary for review. The Secretary shall  
29           provide whatever assistance is necessary to resolve outstanding issues. Amendments to  
30           the business plan shall be subject to the approval of the participating boards of county  
31           commissioners.

32           (d) Annually, in accordance with procedures established by the Secretary, each  
33           area authority and county program submitting a business plan shall enter into a  
34           memorandum of agreement with the Secretary for the purpose of ensuring that State  
35           funds are used in accordance with priorities expressed in the business plan.

36           **"§ 122C-115.3. Dissolution of area authority.**

37           (a) Whenever the board of commissioners of each county constituting an area  
38           authority determines that the area authority is not operating in the best interests of  
39           consumers, it may direct that the area authority be dissolved. In addition, whenever a  
40           board of commissioners of a county that is a member of an area authority determines  
41           that the area authority is not operating in the best interests of consumers of that county,  
42           it may withdraw from the area authority. Dissolution of an area authority or withdrawal

1 from the area authority by a county shall be effective only at the end of the fiscal year in  
2 which the action of dissolution or withdrawal transpired.

3 (b) Notwithstanding the provisions of subsection (a) of this section, no county  
4 shall withdraw from an area authority nor shall an area authority be dissolved without  
5 first demonstrating that continuity of services will be assured and without prior approval  
6 of the Secretary.

7 (c) Prior to withdrawal of a county from an area authority, the county board of  
8 commissioners shall hold a public hearing with notice published at least 10 days before  
9 the hearing.

10 (d) Prior to dissolution of an area authority, the area authority shall hold a public  
11 hearing with notice published in every participating county at least 10 days before the  
12 hearing.

13 (e) Any budgetary surplus available to an area authority at the time of its  
14 dissolution shall be distributed to those counties comprising the area authority on the  
15 same pro rata basis that the counties appropriated and contributed funds to the area  
16 authority's budget during the current fiscal year. Distribution to the counties shall be  
17 determined on the basis of an audit of the financial record of the area authority. The area  
18 authority board shall select a certified public accountant or an accountant who is  
19 subsequently certified by the Local Government Commission to conduct the audit. The  
20 audit shall be performed in accordance with G.S. 159-34. The same method of  
21 distribution of funds described in this subsection shall apply when one or more counties  
22 of an area authority withdraw from the area authority.

23 (f) Funds distributed to counties pursuant to subsection (e) of this section shall  
24 be placed in the fund balance of the county program or area authority subsequently  
25 established or joined pursuant to G.S. 122C-115.

26 (g) Any liabilities at the time of its dissolution shall be paid from unobligated  
27 surplus funds available to the area authority. If unobligated surplus funds are not  
28 sufficient to satisfy the total indebtedness of the area authority, then the remaining  
29 unsatisfied indebtedness shall be apportioned on the same pro rata basis that the  
30 counties appropriated and contributed funds to the area authority's budget during the  
31 current fiscal year."

32 **"§ 122C-116.1. Area Authority Oversight Committee.**

33 An area authority oversight committee may be established in each multicounty area  
34 authority. Each board of county commissioners comprising the area authority shall  
35 appoint two persons to the committee, one of whom shall be a county commissioner and  
36 one of whom shall be a county commissioner or a designee from the county's finance  
37 office. The duties of the oversight committee shall consist of the approval of the  
38 appointment and the termination of the director of the area authority board and the  
39 approval of the area authority budget."

40 **SECTION 1.10.** G.S. 122C-117 reads as rewritten:

41 **"§ 122C-117. Powers and duties of the area authority.**

42 (a) The area authority shall: shall do all of the following:

- 1 (1) Engage in comprehensive planning, budgeting, implementing, and  
2 monitoring of community-based mental health, developmental  
3 disabilities, and substance abuse ~~services;~~ services.
- 4 (2) Provide services to clients in the catchment area, including clients  
5 committed to the custody of the Department of Juvenile Justice and  
6 Delinquency ~~Prevention;~~ Prevention.
- 7 (3) Determine the needs of the area authority's clients and coordinate with  
8 the Secretary and with the Department of Juvenile Justice and  
9 Delinquency Prevention the provision of services to clients through  
10 area and State ~~facilities;~~ facilities.
- 11 (4) Develop plans and budgets for the area authority subject to the  
12 approval of the ~~Secretary;~~ Secretary and, where applicable, the Area  
13 Authority Oversight Committee in accordance with G.S. 122C-116.1.  
14 The area authority shall submit the approved budget to the board of  
15 county commissioners and the county manager and provide quarterly  
16 reports on financial status of the program in accordance with  
17 subsection (c) of this section.
- 18 (5) Assure that the services provided by the county through the area  
19 authority meet the rules of the Commission and ~~Secretary;~~ Secretary.
- 20 (6) Comply with federal requirements as a condition of receipt of federal  
21 ~~grants; and grants.~~
- 22 (7) ~~Appoint an area director, chosen through a search committee on which~~  
23 ~~the Secretary of the Department of Health and Human Services or the~~  
24 ~~Secretary's designee serves as a nonvoting member. Appoint an area~~  
25 director in accordance with G.S. 122C-121. The appointment is subject  
26 to the approval of the board of county commissioners. The  
27 appointment shall be based on a selection by a search committee of the  
28 area authority board. The search committee shall include consumer  
29 board members, a county manager, a member appointed by the  
30 Secretary, and one or more county commissioners.
- 31 (8) Develop and submit to the board of county commissioners for  
32 approval the business plan required under G.S. 122C-115.2. A  
33 multicounty area authority shall submit the business plan to each  
34 participating board of county commissioners for its approval. The  
35 boards of county commissioners of a multicounty area authority shall  
36 jointly submit one approved business plan to the Secretary for  
37 approval and certification.
- 38 (9) Perform public relations and community advocacy functions.
- 39 (10) Recommend to the board of county commissioners the creation of  
40 local program services.
- 41 (11) Submit to the Secretary and the board of county commissioners or,  
42 where applicable, the Area Authority Oversight Committee in

1 accordance with G.S. 122C-116.1, service delivery reports, on a  
2 quarterly basis, that assess the quality and availability of public  
3 services within the area authority's catchment area. The service  
4 delivery reports shall include the types of services delivered, number  
5 of recipients served, and services requested but not delivered due to  
6 staffing, financial, or other constraints. In addition, at least annually, a  
7 progress report shall be submitted to the Secretary and the board of  
8 county commissioners. The progress report shall include an assessment  
9 of the progress in implementing local service plans, goals, and  
10 outcomes. All reports shall be in a format and shall contain any  
11 additional information required by the Secretary or board of county  
12 commissioners.

13 (12) Comply with this Article and rules adopted by the Secretary for the  
14 development and submission of and compliance with the area authority  
15 business plan.

16 (a1) The area authority may contract to provide services to governmental or  
17 private entities, including Employee Assistance Programs.

18 (b) The governing unit of the area authority is the area board. All powers, duties,  
19 functions, rights, privileges, or immunities conferred on the area authority may be  
20 exercised by the area board.

21 (c) Within 30 days of the end of each quarter of the fiscal year, the area director  
22 and finance officer of the area authority shall provide to each member of the board of  
23 county commissioners the quarterly report of the area authority. This information shall  
24 be presented in a format prescribed by the county. At least twice a year, this information  
25 shall be presented in person and shall be read into the minutes of the meeting at which it  
26 is presented. In addition, the area director or finance officer of the area authority shall  
27 provide to the board of county commissioners ad hoc reports as requested by the board  
28 of county commissioners.

29 (d) A multicounty area authority shall provide to each board of county  
30 commissioners of participating counties a copy of the area authority's annual audit. The  
31 audit findings shall be presented in a format prescribed by the county and shall be read  
32 into the minutes of the meeting at which the audit findings are presented."

33 **SECTION 1.11.(a)** G.S. 122C-118 is repealed.

34 **SECTION 1.11.(b)** Article 4 of Chapter 122C of the General Statutes is  
35 amended by adding the following new section to read:

36 "**§ 122C-118.1. Structure of area board.**

37 (a) An area board shall have no fewer than 11 and no more than 15 members. In  
38 a single county area authority, the members shall be appointed by the board of county  
39 commissioners. In a multicounty area authority, each board of county commissioners  
40 shall appoint the members of the area authority board from its county as designated in  
41 the business plan in accordance with G.S. 122C-115.2(b). These appointments shall  
42 take into account sufficient citizen participation, equitable representation of the



1 disability groups, and equitable representation of participating counties. Individuals  
2 appointed to the board shall include an individual with financial expertise or a county  
3 finance officer, an individual with expertise in management or business, and an  
4 individual representing the interests of children. A member of the board may be  
5 removed with or without cause by the initial appointing authority. Vacancies on the  
6 board shall be filled by the initial appointing authority before the end of the term of the  
7 vacated seat or within 120 days of the vacancy, whichever occurs first, and the  
8 appointments shall be for the remainder of the unexpired term.

9 (b) At least fifty percent (50%) of the members of the area board shall represent  
10 the following:

11 (1) A physician licensed under Chapter 90 of the General Statutes to  
12 practice medicine in North Carolina who, when possible, is certified as  
13 having completed a residency in psychiatry.

14 (2) A clinical professional from the fields of mental health, developmental  
15 disabilities, or substance abuse.

16 (3) A family member or an individual from citizens' organizations  
17 composed primarily of consumers or their family members,  
18 representing the interests of individuals:

19 a. With mental illness; and

20 b. In recovery from addiction; and

21 c. With developmental disabilities.

22 (4) Openly declared consumers:

23 a. With mental illness; and

24 b. With developmental disabilities; and

25 c. In recovery from addiction.

26 (c) The board of county commissioners may elect to appoint a member of the  
27 area authority board to fill concurrently more than one category of membership if the  
28 member has the qualifications or attributes of more than one category of membership.

29 (d) The terms of the members on the area authority board shall be for four years,  
30 except that upon the initial formation of a program board one-fourth shall be appointed  
31 for one year, one-fourth for two years, one-fourth for three years, and all remaining  
32 members for four years. Members shall not be appointed for more than two consecutive  
33 terms.

34 (e) Upon request, the board shall provide information pertaining to the  
35 membership of the board that is a public record under Chapter 132 of the General  
36 Statutes."

37 (f) Notwithstanding subsection (a) of this section, the participating boards of  
38 county commissioners are authorized to appoint one commissioner as a member of the  
39 area board and these commissioners may then appoint the remaining board members."

40 **SECTION 1.11.(c)** G.S. 122C-119 reads as rewritten:

41 "**§ 122C-119. Organization of area board.**

42 (a) The area board shall meet at least six times per year.

1 (b) Meetings shall be called by the area board chairman or by three or more  
2 members of the board after notifying the area board chairman in writing.

3 (c) Members of the area board elect the board's chairman. The term of office of  
4 the area board chairman shall be one year. A county commissioner area board member  
5 may serve as the area board chairman.

6 (d) The area board shall establish a finance committee that shall meet at least six  
7 times per year to review the financial strength of the area program. The finance  
8 committee shall have a minimum of three members, two of whom have expertise in  
9 budgeting and fiscal control. A county finance officer shall serve as an ex officio  
10 member. All other finance officers of participating counties in a multicounty area  
11 authority may serve as ex officio members. If the area board so chooses, the entire area  
12 board may function as the finance committee; however, its required meetings as a  
13 finance committee shall be distinct from its meetings as an area board."

14 **SECTION 1.12.** G.S. 122C-121 reads as rewritten:

15 "**§ 122C-121. Area director.**

16 (a) ~~The area director is an employee of the area board and shall serve at the~~  
17 ~~pleasure of the area board. The director is responsible for the staff appointments, for~~  
18 ~~implementation of the policies and programs of the board in compliance with rules of~~  
19 ~~the Commission and the Secretary, and for the supervision of all service programs and~~  
20 ~~staff. The area director is an employee of the area board and shall be appointed in~~  
21 ~~accordance with G.S. 122C-117(7). The area director is the administrative head of the~~  
22 area program.

23 (b) The area board shall evaluate annually the area director for performance  
24 based on criteria established by the Secretary and the area board. In conducting the  
25 evaluation, the area board shall consider comments from the board of county  
26 commissioners.

27 (c) In addition to the duties under G.S. 122C-111, the area director shall:

28 (1) Appoint and supervise area program staff.

29 (2) Administer area authority services.

30 (3) Develop the budget of the area authority for review by the area board.

31 (4) Provide information and advice to the board of county commissioners  
32 through the county manager.

33 (5) Act as liaison between the area authority and the Department.

34 (d) Except when specifically waived by the Secretary, the area director shall meet  
35 the following minimum qualifications:

36 (1) Masters degree;

37 (2) Related experience; and

38 (3) Management experience."

39 **SECTION 1.13.(a)** G.S. 122C-124, 122C-125.1, and 122C-126 are repealed.

40 **SECTION 1.13.(b)** Article 4 of Chapter 122C of the General Statutes is  
41 amended by adding the following new section to read:

1 "§ 122C-124.1. Actions by the Secretary when area authority or county program is  
2 not providing minimally adequate services.

3 (a) Notice of Likelihood of Action. – When the Secretary determines that there is  
4 a likelihood of suspension of funding, assumption of service delivery or management  
5 functions, or appointment of a caretaker board under this section within the ensuing 60  
6 days, the Secretary shall so notify in writing the area authority board or the county  
7 program and the board of county commissioners of the area authority or county  
8 program. The notice shall state the particular deficiencies in program services or  
9 administration that must be remedied to avoid action by the Secretary under this section.  
10 The area authority board or county program shall have 60 days from the date it receives  
11 notice under this subsection to take remedial action to correct the deficiencies. The  
12 Secretary shall provide technical assistance to the area authority or county program in  
13 remediating deficiencies.

14 (b) Suspension of Funding; Assumption of Service Delivery or Management  
15 Functions. – If the Secretary determines that a county, through an area authority or  
16 county program, is not providing minimally adequate services, in accordance with rules  
17 adopted by the Secretary or the Commission, to persons in need in a timely manner, or  
18 fails to demonstrate reasonable efforts to do so, the Secretary, after providing written  
19 notification of the Secretary's intent to the area authority or county program and to the  
20 board of county commissioners of the area authority or county program, and after  
21 providing the area authority or county program and the boards of county commissioners  
22 of the area authority or county program an opportunity to be heard, may:

23 (1) Withhold funding for the particular service or services in question  
24 from the area authority or county program and ensure the provision of  
25 these services through contracts with public or private agencies or by  
26 direct operation by the Department.

27 Upon suspension of funding, the Department shall direct the  
28 development and oversee implementation of a corrective plan of action  
29 and provide notification to the area authority or county program and  
30 the board of county commissioners of the area authority or county  
31 program of any ongoing concerns or problems with the area authority's  
32 or county program's finances or delivery of services.

33 (2) Assume control of the particular service or management functions in  
34 question or of the area authority or county program and appoint an  
35 administrator to exercise the powers assumed. This assumption of  
36 control shall have the effect of divesting the area authority or county  
37 program of its powers in G.S. 122C-115.1 and G.S. 122C-117 and all  
38 other service delivery powers conferred on the area authority or county  
39 program by law as they pertain to this service or management function.  
40 County funding of the area authority or county program shall continue  
41 when the State has assumed control of the catchment area or of the  
42 area authority or county program. At no time after the State has

1 assumed this control shall a county withdraw funds previously  
2 obligated or appropriated to the area authority or county program.

3 Upon assumption of control of service delivery or management  
4 functions, the Department shall, in conjunction with the area authority  
5 or county program, develop and implement a corrective plan of action  
6 and provide notification to the area authority or county program and  
7 the board of county commissioners of the area authority or county  
8 program of the plan. The Department shall also keep the area authority  
9 board and the board of county commissioners informed of any ongoing  
10 concerns or problems with the delivery of services.

11 (c) Appointment of Caretaker Administrator. – In the event that a county,  
12 through an area authority or county program, fails to comply with the corrective plan of  
13 action required when funding is suspended or when the State assumes control of service  
14 delivery or management functions, the Secretary, after providing written notification of  
15 the Secretary's intent to the area authority or county program and the applicable  
16 participating boards of county commissioners of the area authority or county program,  
17 shall appoint a caretaker administrator, a caretaker board of directors, or both.

18 The Secretary may assign any of the powers and duties of the area director or  
19 program director or of the area authority board or board of county commissioners of the  
20 area authority or county program pertaining to the operation of mental health,  
21 developmental disabilities, and substance abuse services to the caretaker board or to the  
22 caretaker administrator as it deems necessary and appropriate to continue to provide  
23 direct services to clients, including the powers as to the adoption of budgets,  
24 expenditures of money, and all other financial powers conferred on the area authority or  
25 county program by law pertaining to the operation of mental health, developmental  
26 disabilities, and substance abuse services. County funding of the area authority or  
27 county program shall continue when the State has assumed control of the financial  
28 affairs of the program. At no time after the State has assumed this control shall a county  
29 withdraw funds previously obligated or appropriated to the area authority or county  
30 program. The caretaker administrator and the caretaker board shall perform all of these  
31 powers and duties. The Secretary may terminate the area director or program director  
32 when it appoints a caretaker administrator. Chapter 150B of the General Statutes shall  
33 apply to the decision to terminate the area director or program director. Neither party to  
34 any such contract shall be entitled to damages. After a caretaker board has been  
35 appointed, the General Assembly shall consider, at its next regular session, the future  
36 governance of the identified area authority or county program."

37 **SECTION 1.14.** G.S. 122C-132 and G.S. 122C-132.1 are repealed.

38 **SECTION 1.15.** G.S. 122C-141 reads as rewritten:

39 **"§ 122C-141. Provision of services.**

40 (a) The area authority or county program may provide services directly and may  
41 shall contract with other public or private agencies, institutions, or resources for the  
42 provision of services. Subject to the approval of the Secretary, an area authority or

1 county program may provide services directly when other qualified public or private  
2 providers are unavailable to meet service needs. When providing services directly, an  
3 area authority or county program shall ensure consumer choice and fair competition in  
4 accordance with rules adopted by the Secretary. For the purposes of this section, a  
5 'qualified public or private provider' is a provider who meets the provider qualifications  
6 as defined by rules adopted by the Secretary.

7 (b) All area authority or county program services provided directly or under  
8 contract shall meet the requirements of applicable State statutes and the rules of the  
9 Commission and the Secretary. The Secretary may delay payments and, with written  
10 notification of cause, may reduce or deny payment of funds if an area authority or  
11 county program fails to meet these requirements.

12 (c) The area authority or board of county commissioners of a county program  
13 may contract with a health maintenance organization, certified and operating in  
14 accordance with the provisions of Article 67 of Chapter 58 of the General Statutes for  
15 the area ~~authority~~, authority or county program, to provide mental health, developmental  
16 disabilities, or substance abuse services to enrollees in a health care plan provided by  
17 the health maintenance organization. The terms of the contract must meet the  
18 requirements of all applicable State statutes and rules of the Commission and Secretary  
19 governing both the provision of services by an area authority or county program and the  
20 general and fiscal operation of an area authority or county program and the  
21 reimbursement rate for services rendered shall be based on the usual and customary  
22 charges paid by the health maintenance organization to similar providers. Any provision  
23 in conflict with a State statute or rule of the Commission or the Secretary shall be void;  
24 however, the presence of any void provision in that contract does not render void any  
25 other provision in that contract which is not in conflict with a State statute or rule of the  
26 Commission or the Secretary. Subject to approval by the Secretary and pending the  
27 timely reimbursement of the contractual charges, the area authority or county program  
28 may expend funds for costs which may be incurred by the area authority or county  
29 program as a result of providing the additional services under a contractual agreement  
30 with a health maintenance organization."

31 **SECTION 1.16.** G.S. 122C-143.2 is repealed.

32 **SECTION 1.17.(a)** G.S. 122C-151.2 reads as rewritten:

33 "**§ 122C-151.2. Appeal by area ~~authorities~~. authorities and county programs.**

34 (a) The area authority or county program may appeal to the Commission any  
35 action regarding rules under the jurisdiction of the Commission or rules under the joint  
36 jurisdiction of the Commission and the Secretary.

37 (b) The area authority or county program may appeal to the Secretary any action  
38 regarding rules under the jurisdiction of the Secretary.

39 (c) Appeals shall be conducted according to rules adopted by the Commission  
40 and Secretary and in accordance with Chapter 150B of the General Statutes."

41 **SECTION 1.17.(b)** G.S. 122C-151.3 reads as rewritten:

42 "**§ 122C-151.3. Dispute with area ~~authorities~~. authorities or county programs.**

1 An area authority or county program shall establish written procedures for resolving  
2 disputes over decisions of an area authority or county program that may be appealed to  
3 the ~~Area Authority~~ State MH/DD/SA Appeals Panel under G.S. 122C-151.4. The  
4 procedures shall be informal and shall provide an opportunity for those who dispute the  
5 decision to present their position."

6 **SECTION 1.17.(c)** G.S. 122C-151.4 reads as rewritten:

7 "**§ 122C-151.4. Appeal to ~~Area Authority~~ State MH/DD/SA Appeals Panel.**

8 (a) Definitions. – The following definitions apply in this section:

- 9 (1) "Contract" means a contract with an area authority or county program  
10 to provide services, other than personal services, to clients and other  
11 recipients of services.  
12 (2) "Contractor" means a person who has a contract or who had a contract  
13 during the current fiscal year.  
14 (3) "Former contractor" means a person who had a contract during the  
15 previous fiscal year.  
16 (4) "Appeals Panel" means the State MH/DD/SA Appeals Panel  
17 established under this section.  
18 (5) "Client" means an individual who is admitted to or receiving public  
19 services from an area facility. "Client" includes the client's personal  
20 representative or designee.

21 (b) Appeals Panel. – The ~~Area Authority~~ State MH/DD/SA Appeals Panel is  
22 established. The Panel shall consist of three members appointed by the Secretary. The  
23 Secretary shall determine the qualifications of the Panel members. Panel members serve  
24 at the pleasure of the Secretary.

25 (c) Who Can Appeal. – The following persons may appeal to the ~~Area Authority~~  
26 State MH/DD/SA Appeals Panel after having exhausted the appeals process at the  
27 appropriate area authority or county program:

- 28 (1) A contractor or a former contractor who claims that an area authority  
29 or county program is not acting or has not acted within applicable  
30 State law or rules in imposing a particular requirement on the  
31 contractor on fulfillment of the contract;  
32 (2) A contractor or a former contractor who claims that a requirement of  
33 the contract substantially compromises the ability of the contractor to  
34 fulfill the contract;  
35 (3) A contractor or former contractor who claims that an area authority or  
36 county program has acted arbitrarily and capriciously in reducing  
37 funding for the type of services provided or formerly provided by the  
38 contractor or former contractor;  
39 (4) A client or a person who was a client in the previous fiscal year, who  
40 claims that an area authority or county program has acted arbitrarily  
41 and capriciously in reducing funding for the type of services provided

1 or formerly provided to the client directly by the area ~~authority~~; or  
2 county program; and

- 3 (5) A person who claims that an area authority or county program did not  
4 comply with a State law or a rule adopted by the Secretary or the  
5 Commission in developing the plans and budgets of the area authority  
6 or county program and that the ~~area authority's~~ failure to comply has  
7 adversely affected the ability of the person to participate in the  
8 development of the plans and budgets.

9 (d) Hearing. – All members of the ~~Area Authority~~ State MH/DD/SA Appeals  
10 Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within  
11 the time required by the Secretary and shall be heard by the Panel within the time  
12 required by the Secretary. A hearing shall be conducted at the place determined in  
13 accordance with the rules adopted by the Secretary. A hearing before the Panel shall be  
14 informal; no sworn testimony shall be taken and the rules of evidence do not apply. The  
15 person who appeals to the Panel has the burden of proof. The Panel shall not stay a  
16 decision of an area authority during an appeal to the Panel.

17 (e) Decision. – The ~~Area Authority~~ State MH/DD/SA Appeals Panel shall make  
18 a written decision on each appeal to the Panel within the time set by the Secretary. A  
19 decision may direct a ~~contractor or~~ contractor, an area ~~authority~~ authority, or a county  
20 program to take an action or to refrain from taking an action, but it shall not require a  
21 party to the appeal to pay any amount except payment due under the contract. In making  
22 a decision, the Panel shall determine the course of action that best protects or benefits  
23 the clients of the area ~~authority~~. authority or county program. If a party to an appeal fails  
24 to comply with a decision of the Panel and the Secretary determines that the failure  
25 deprives clients of the area authority or county program of a type of needed service, the  
26 Secretary may use funds previously allocated to the area authority or county program to  
27 provide the service.

28 (f) Chapter 150B Appeal. – A person who is dissatisfied with a decision of the  
29 Panel may commence a contested case under Article 3 of Chapter 150B of the General  
30 Statutes. Notwithstanding ~~G.S. 150B-2(1)~~G.S. 150B-2(1a), an area authority or county  
31 program is considered an agency for purposes of the limited appeal authorized by this  
32 section. The Secretary shall make a final decision in the contested case."

33 **SECTION 1.18.** G.S. 122C-154 reads as rewritten:

34 "**§ 122C-154. Personnel.**

35 Employees under the direct supervision of the area ~~authority~~ director are employees  
36 of the area authority. For the purpose of personnel administration, Chapter 126 of the  
37 General Statutes applies unless otherwise provided in this Article. Employees appointed  
38 by the county program director are employees of the county. In a multicounty program,  
39 employment of county program staff shall be as agreed upon in the interlocal agreement  
40 adopted pursuant to G.S. 122C-115.1."

41 **SECTION 1.19.** G.S. 122C-181 reads as rewritten:

42 "**§ 122C-181. Secretary's jurisdiction over State facilities.**

1 (a) Except as provided in subsection (b) of this section, the Secretary shall  
2 operate the following facilities:

3 (1) For the mentally ill:

- 4 a. Cherry Hospital;
- 5 b. Dorothea Dix Hospital;
- 6 c. John Umstead Hospital; and
- 7 d. Broughton Hospital; and

8 (2) For the mentally retarded:

- 9 a. Caswell Center;
- 10 b. O'Berry Center;
- 11 c. Murdoch Center;
- 12 d. Western Carolina Center; and
- 13 e. Black Mountain Center; and

14 (3) For substance abusers:

- 15 a. Walter B. Jones Alcohol and Drug Abuse Treatment Center at  
16 Greenville;
- 17 b. Alcohol and Drug Abuse Treatment Center at ~~Butner;~~  
18 John Umstead Hospital; and
- 19 c. Julian F. Keith Alcohol and Drug Abuse Treatment Center at  
20 Black Mountain Center; and

21 (4) As special care facilities:

- 22 a. ~~Wilson~~ North Carolina Special Care Center;
- 23 b. Whitaker School; and
- 24 c. ~~Wright School;~~ and School.
- 25 d. ~~Butner Adolescent Treatment Center.~~

26 (b) The Secretary may, with the approval of the ~~Governor and~~ Governor, the  
27 Council of State, and the General Assembly, close any State facility."

28 **SECTION 1.20.(a)** G.S. 122C-112(13) is repealed.

29 **SECTION 1.20.(b)** Part 1 of Article 3 of Chapter 143B of the General  
30 Statutes is amended by adding the following new section to read:

31 "**§ 143B-139.6A. Secretary's responsibilities regarding availability of early**  
32 **intervention services.**

33 The Secretary of the Department of Health and Human Services shall ensure, in  
34 cooperation with other appropriate agencies, that all types of early intervention services  
35 specified in the "Individuals with Disabilities Education Act" (IDEA), P.L. 102-119, the  
36 federal early intervention legislation, are available to all eligible infants and toddlers  
37 and their families to the extent funded by the General Assembly.

38 The Secretary shall coordinate and facilitate the development and administration of  
39 the early intervention system for eligible infants and toddlers and shall assign among the  
40 cooperating agencies the responsibility, including financial responsibility, for services.  
41 The Secretary shall be advised by the Interagency Coordinating Council for Children  
42 from Birth to Five with Disabilities and Their Families, established by G.S. 143B-179.5,



1 and may enter into formal interagency agreements to establish the collaborative  
2 relationships with the Department of Public Instruction, other appropriate agencies, and  
3 other public and private service providers necessary to administer the system and  
4 deliver the services.

5 The Secretary shall adopt rules to implement the early intervention system, in  
6 consultation with all other appropriate agencies."

7 **SECTION 1.21.(a)** G.S. 143B-147 reads as rewritten:

8 "**§ 143B-147. Commission for Mental Health, Developmental Disabilities, and**  
9 **Substance Abuse Services – creation, powers and duties.**

10 (a) There is hereby created the Commission for Mental Health, Developmental  
11 Disabilities, and Substance Abuse Services of the Department of Health and Human  
12 Services with the power and duty to adopt, amend and repeal rules to be followed in the  
13 conduct of State and local mental health, developmental disabilities, ~~alcohol and drug~~  
14 ~~abuse~~ substance abuse programs including education, prevention, intervention,  
15 ~~treatment, rehabilitation~~ screening, assessment, referral, detoxification, treatment,  
16 rehabilitation, continuing care, emergency services, case management, and other related  
17 services. Such rules shall be designed to promote the amelioration or elimination of the  
18 ~~mental health, illness,~~ developmental disabilities, or ~~alcohol and drug abuse~~ substance  
19 abuse problems of the citizens of this State. The Commission for Mental Health,  
20 Developmental Disabilities, and Substance Abuse Services shall have the authority:

21 (1) To adopt rules regarding the

- 22 a. Admission, including the designation of regions, treatment, and  
23 professional care of individuals admitted to a facility operated  
24 under the authority of G.S. 122C-181(a), that is now or may be  
25 established;
- 26 b. Operation of education, prevention, intervention, treatment,  
27 rehabilitation and other related services as provided by area  
28 mental health, developmental disabilities, and substance abuse  
29 ~~authorities~~ authorities, county programs, and all providers of  
30 public services under Part 4 of Article 4 of Chapter 122C of the  
31 General Statutes;
- 32 c. Hearings and appeals of area mental health, developmental  
33 disabilities, and substance abuse authorities as provided for in  
34 Part 4 of Article 4 of Chapter 122C of the General Statutes; and
- 35 ~~Requirements of the federal government for grants in aid for~~  
36 ~~mental health, developmental disabilities, alcohol or drug abuse~~  
37 ~~programs which may be made available to local programs or the~~  
38 ~~State. This section is to be liberally construed in order that the~~  
39 ~~State and its citizens may benefit from such grants in aid; and~~
- 40 e. ~~Implementation of single uniform portal process and policies of~~  
41 ~~entry and exit policies established pursuant to Chapter 122C of~~  
42 ~~the General Statutes.~~

- 1                   f.     Standards of public services for mental health, developmental  
2                             disabilities, and substance abuse services.
- 3           (2)    To adopt rules for the licensing of facilities for the mentally ill,  
4                   developmentally disabled, and substance abusers, under Article 2 of  
5                   Chapter 122C of the General Statutes.
- 6           (3)    To advise the Secretary of the Department of Health and Human  
7                   Services regarding the need for, provision and coordination of  
8                   education, prevention, intervention, treatment, rehabilitation and other  
9                   related services in the areas of:
- 10                   a.     Mental illness and mental health,  
11                   b.     Developmental disabilities,  
12                   c.     ~~Alcohol abuse,~~ and Substance abuse.  
13                   d.     ~~Drug abuse;~~
- 14           (4)    To review and advise the Secretary of the Department of Health and  
15                   Human Services regarding all State plans required by federal or State  
16                   law and to recommend to the Secretary any changes it thinks necessary  
17                   in those plans; provided, however, for the purposes of meeting State  
18                   plan requirements under federal or State law, the Department of Health  
19                   and Human Services is designated as the single State agency  
20                   responsible for administration of plans involving mental health,  
21                   developmental disabilities, ~~alcohol abuse, and drug abuse services;~~ and  
22                   substance abuse services.
- 23           (5)    To adopt rules relating to the registration and control of the  
24                   manufacture, distribution, security, and dispensing of controlled  
25                   substances as provided by ~~G.S. 90-100;~~ G.S. 90-100.
- 26           (6)    To adopt rules to establish the professional requirements for staff of  
27                   licensed facilities for the mentally ill, developmentally disabled, and  
28                   substance abusers. Such rules may require that one or more, but not all  
29                   staff of a facility be either licensed or certified. If a facility has only  
30                   one professional staff, such rules may require that that individual be  
31                   licensed or certified. Such rules may include the recognition of  
32                   professional certification boards for those professions not licensed or  
33                   certified under other provisions of the General Statutes provided that  
34                   the professional certification board evaluates applicants on a basis  
35                   which protects the public health, safety or ~~welfare;~~ welfare.
- 36           (7)    Except where rule making authority is assigned under that Article to  
37                   the Secretary of the Department of Health and Human Services, to  
38                   adopt rules to implement Article 3 of Chapter 122C of the General  
39                   ~~Statutes;~~ Statutes.
- 40           (8)    To adopt rules specifying procedures for waiver of rules adopted by  
41                   the Commission.

1 (b) All rules hereby adopted shall be consistent with the laws of this State and not  
2 inconsistent with the management responsibilities of the Secretary of the Department of  
3 Health and Human Services provided by this Chapter and the Executive Organization  
4 Act of 1973.

5 (c) All rules and regulations pertaining to the delivery of services and licensing  
6 of facilities heretofore adopted by the Commission for Mental Health and Mental  
7 Retardation Services, controlled substances rules and regulations adopted by the North  
8 Carolina Drug Commission, and all rules and regulations adopted by the Commission  
9 for Mental Health, Mental Retardation and Substance Abuse Services shall remain in  
10 full force and effect unless and until repealed or superseded by action of the  
11 Commission for Mental Health, Developmental Disabilities, and Substance Abuse  
12 Services.

13 (d) All rules adopted by the Commission for Mental Health, Developmental  
14 Disabilities, and Substance Abuse Services shall be enforced by the Department of  
15 Health and Human Services."

16 **SECTION 1.21.(b)** G.S. 143B-148 reads as rewritten:

17 "**§ 143B-148. Commission for Mental Health, Developmental Disabilities, and**  
18 **Substance Abuse Services – members; selection; quorum; compensation.**

19 (a) The Commission for Mental Health, Developmental Disabilities, and  
20 Substance Abuse Services of the Department of Health and Human Services shall  
21 consist of 26 members:

22 (1) Four of whom shall be appointed by the General Assembly, two upon  
23 the recommendation of the Speaker of the House of Representatives,  
24 and two upon the recommendation of the President Pro Tempore of the  
25 Senate in accordance with G.S. 120-121. These members shall be  
26 individuals who are concerned about the needs of individuals for  
27 mental health, developmental disabilities, and substance abuse  
28 services. ~~have concern for the problems of mental illness,~~  
29 ~~developmental disabilities, alcohol and drug abuse.~~ Members shall  
30 serve for two-year terms beginning July 1 of odd-numbered years. A  
31 member shall serve not more than three consecutive two-year terms.  
32 Vacancies in appointments made by the General Assembly shall be  
33 filled in accordance with G.S. 120-122;

34 (2) Twenty-two of whom shall be appointed by the Governor, one from  
35 each congressional district in the State in accordance with G.S.  
36 147-12(3)b, and 10 at-large members.

37 a. Of these 22 members, three shall have a special interest in  
38 mental health, three shall have a special interest in mental  
39 retardation, three shall have a special interest in developmental  
40 disabilities other than mental retardation, three shall have a  
41 special interest in alcohol abuse and alcoholism and three shall  
42 have a special interest in drug abuse. Each group of three shall

1 be made up of one member who is a consumer representative;  
2 one other who is a representative of a local or State citizen  
3 organization or association; and one other who is a professional  
4 in the field.

5 b. The remaining seven members shall be appointed from the  
6 general public, other citizen groups, area mental health,  
7 developmental disabilities, and substance abuse authorities, or  
8 from other related agencies.

9 c. Of these 22 appointments, at least one shall be a licensed  
10 physician and at least one other shall be a licensed attorney.

11 d. The Governor shall appoint members to the Commission in  
12 accordance with the foregoing provisions. The terms of all  
13 Commission members appointed by the Governor shall be four  
14 years. The initial term of the person representing the 12th  
15 Congressional District shall begin January 3, 1993, and expire  
16 June 30, 1996. All Commission members shall serve their  
17 designated terms and until their successors are duly appointed  
18 and qualified. All Commission members may succeed  
19 themselves.

20 (3) All appointments shall be made pursuant to current federal rules and  
21 regulations, when not inconsistent with State law, which prescribe the  
22 selection process and demographic characteristics as a necessary  
23 condition to the receipt of federal aid.

24 (b) Except as otherwise provided in this section, the provisions of G.S. 143B-13  
25 through 143B-20 relating to appointment, qualifications, terms and removal of members  
26 shall apply to all members of the Commission for Mental Health, Developmental  
27 Disabilities, and Substance Abuse Services.

28 (c) Commission members shall receive per diem, travel and subsistence  
29 allowances in accordance with G.S. 138-5 and G.S. 138-6, as appropriate.

30 (d) A majority of the Commission shall constitute a quorum for the transaction of  
31 business.

32 (e) All clerical and other services required by the Commission shall be supplied  
33 by the Secretary of the Department of Health and Human Services."  
34

## 35 PART 2. QUALITY OF CARE OMBUDSMAN PROGRAM

36  
37 SECTION 2. Effective July 1, 2002, Chapter 122C of the General Statutes is  
38 amended by adding the following new Article to read:

### 39 "Article 1A.

#### 40 "MH/DD/SA Quality of Care Ombudsman Program.

#### 41 "§ 122C-10. MH/DD/SA Quality of Care Ombudsman Program.

1 The General Assembly finds that many consumers of mental health, developmental  
2 disabilities, and substance abuse services are uncertain about their rights and  
3 responsibilities and how to access the public service system to obtain appropriate care  
4 and treatment. The General Assembly recognizes the importance of ensuring that  
5 consumers have information about the availability of services and access to resources to  
6 obtain timely quality care. There is established the MH/DD/SA Quality of Care  
7 Ombudsman Program. The purpose of this Program is to provide consumers, their  
8 families, and providers with the information and assistance needed to locate appropriate  
9 services, resolve complaints, or address common concerns and promote community  
10 involvement. It is further the intent of the General Assembly that the Department,  
11 within available resources and pursuant to its duties under this Chapter, ensure that the  
12 performance of the mental health care system in this State is closely monitored, reviews  
13 are conducted, findings and recommendations and reports are made, and that local and  
14 systemic problems are identified and corrected when necessary to promote the rights  
15 and interests of all consumers of mental health, developmental disabilities, and  
16 substance abuse services.

17 **"§ 122C-11. MH/DD/SA Quality of Care Ombudsman Program/definitions.**

18 Unless the context clearly requires otherwise, as used in this Article:

- 19 (1) 'MH/DD/SA' means mental health, developmental disabilities, and  
20 substance abuse.
- 21 (2) 'State Ombudsman' means the individual charged with the duties and  
22 functions of the State MH/DD/SA Quality of Care Ombudsman  
23 Program established under this Article.
- 24 (3) 'State Ombudsman Program' means the State MH/DD/SA Quality of  
25 Care Ombudsman Program.
- 26 (4) 'Local Ombudsman' means an individual employed and certified by the  
27 State Ombudsman to perform the duties and functions of the  
28 MH/DD/SA Quality of Care Local Ombudsman Program in  
29 accordance with this Article.
- 30 (5) 'Local Ombudsman Program' means a local MH/DD/SA Quality of  
31 Care Local Ombudsman Program.
- 32 (6) 'Consumer' means an individual who is a client or a potential client of  
33 public services from a State or area facility.

34 **"§ 122C-12. State MH/DD/SA Quality of Care Ombudsman Program.**

35 The Secretary shall establish a State MH/DD/SA Quality of Care Ombudsman  
36 Program office in the Office of the Secretary of Health and Human Services. The  
37 Secretary shall appoint a State Ombudsman. In selecting the State Ombudsman, the  
38 Secretary shall consider candidates recommended by citizens' organizations  
39 representing the interest of individuals with needs for mental health, developmental  
40 disabilities, and substance abuse services. The State Ombudsman may hire individuals  
41 to assist in executing the State Ombudsman Program and to act on the State  
42 Ombudsman's behalf. The State Ombudsman shall have expertise and experience in

1 MH/DD/SA, including expertise and experience in advocacy. The Attorney General  
2 shall provide legal staff and advice to the State Ombudsman.

3 **"§ 122C-13. State Ombudsman duties.**

4 The State Ombudsman shall:

- 5 (1) Establish Local Quality Care of Ombudsman Programs described in  
6 G.S. 122C-14 and appoint the Local Ombudsmen.
- 7 (2) Establish certification criteria and minimum training requirements for  
8 Local Ombudsmen.
- 9 (3) Certify Local Ombudsmen. The certification requirements shall  
10 include completion of the minimum training requirements established  
11 by the State Ombudsman.
- 12 (4) Provide training and technical assistance to Local Ombudsmen.
- 13 (5) Establish procedures for processing and resolving quality of care  
14 complaints both at the State and local levels.
- 15 (6) Establish procedures for coordinating quality of care complaints with  
16 local human rights committees and the State protection and advocacy  
17 agency.
- 18 (7) Establish procedures for appropriate access by the State and Local  
19 Ombudsmen to State, area authority, and county program facilities and  
20 records to ensure MH/DD/SA quality of care. The procedures shall  
21 include, but not be limited to, interviews of owners, consumers, and  
22 employees of State, area authority, and county program facilities, and  
23 on-site monitoring of conditions and services. The procedures shall  
24 ensure the confidentiality of these records and that the identity of any  
25 complainant or consumer will not be disclosed except as otherwise  
26 provided by law.
- 27 (8) Provide information to the public about available MH/DD/SA services,  
28 complaint procedures, and dispute resolution processes.
- 29 (9) Analyze and monitor the development and implementation of federal,  
30 State, and local laws, regulations, and policies relating to consumers  
31 and recommend changes as considered necessary to the Secretary.
- 32 (10) Analyze and monitor data relating to complaints or concerns about  
33 access and quality of care issues to identify significant local or  
34 systemic problems, as well as opportunities for improvement, and  
35 advise and assist the Secretary in developing policies, plans, and  
36 programs for ensuring that the quality of services provided to  
37 consumers is of a uniformly high standard.
- 38 (11) Submit a report annually to the Secretary, the Joint Legislative  
39 Oversight Committee on Mental Health, Developmental Disabilities,  
40 and Substance Abuse Services, and the Joint Legislative Health Care  
41 Oversight Committee containing data and findings regarding the types  
42 of problems experienced and complaints reported by or on behalf of

1 providers, consumers, and employees of providers, as well as  
2 recommendations to resolve identified quality of care issues and to  
3 improve the administration of MH/DD/SA facilities and the delivery of  
4 MH/DD/SA services throughout the State.

5 **"§ 122C-14. Local Ombudsman; duties.**

6 (a) The State Ombudsman shall establish a Local MH/DD/SA Quality of Care  
7 Ombudsman Program in locations in the State to be designated by the Secretary. In  
8 determining where to locate the Local Ombudsman Programs, the Secretary shall ensure  
9 reasonable consumer accessibility to the Local Ombudsmen. Local Ombudsmen shall  
10 administer the Local Ombudsman Programs. The State Ombudsman shall appoint a  
11 Local Ombudsman for each of the Local Ombudsman Programs. The State Ombudsman  
12 shall supervise the Local Ombudsmen.

13 (b) Pursuant to policies and procedures established by the State Ombudsman, the  
14 Local Ombudsman shall:

- 15 (1) Assist consumers and their families with information, referral, and  
16 assistance in obtaining appropriate services.
- 17 (2) Assist consumers and their families in understanding their rights and  
18 remedies available to them from the public service system.
- 19 (3) Serve as a liaison between consumers and their families and facility  
20 personnel and administration.
- 21 (4) Promote the development of consumer and citizen involvement in  
22 addressing issues relating to MH/DD/SA.
- 23 (5) Visit the State, area authority, or county program facilities to review  
24 and evaluate the quality of care provided to consumers and submit  
25 findings to the State Ombudsman.
- 26 (6) Work with providers and consumers and their families or advocates to  
27 resolve issues of common concern.
- 28 (7) Participate in regular Local Ombudsman training established by the  
29 State Ombudsman.
- 30 (8) Report regularly to area authorities and county programs, county and  
31 area authority boards, and boards of county commissioners about the  
32 Local Ombudsman's activities, including the findings made pursuant to  
33 subdivision (5) of this subsection.
- 34 (9) Provide training and technical assistance to counties, area authority  
35 boards, and providers concerning responding to consumers, evaluating  
36 quality of care, and determining availability of services and access to  
37 resources.
- 38 (10) Coordinate activities with local human rights committees based on  
39 procedures developed by the State Ombudsman.
- 40 (11) Provide information to the public on MH/DD/SA issues.
- 41 (12) Perform any other related duties as directed by the State Ombudsman.

1 **"§ 122C-15. State/Local Ombudsman; authority to enter; communication with**  
2 **residents, clients, patients; review of records.**

3 (a) For purposes of this section, G.S. 122C-16 and G.S. 122C-17, 'Ombudsman'  
4 means either the State Ombudsman or any Local Ombudsman.

5 (b) In performing the Ombudsman's duties, an Ombudsman shall have access at  
6 all times to any State or area facility and shall have reasonable access to any consumer  
7 or to an employee of a State or area facility. Entry and access to any consumer or to an  
8 employee shall be conducted in a manner that will not significantly disrupt the provision  
9 of services. If a facility requires visitor registration, then the Ombudsman shall register.

10 (c) In performing the Ombudsman's duties, an Ombudsman may communicate  
11 privately and confidentially with a consumer. A consumer shall not be compelled to  
12 communicate with an Ombudsman. When initiating communication, an Ombudsman  
13 shall inform the consumer of the Ombudsman's purpose and that a consumer may refuse  
14 to communicate with the Ombudsman. An Ombudsman also may communicate  
15 privately and confidentially with State and area facility employees in performing the  
16 Ombudsman's duties.

17 (d) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to  
18 confidentiality of communications involving a consumer, in the course of performing  
19 the Ombudsman's duties, the Ombudsman may access any information, whether  
20 recorded or not, concerning the admission, discharge, medication, treatment, medical  
21 condition, or history of any consumer to the extent permitted by federal law and  
22 regulations. Notwithstanding any State law pertaining to the privacy of personnel  
23 records, in the course of the Ombudsman's duties, the Ombudsman shall have access to  
24 personnel records of employees of State, area authority, or county program facilities.

25 **"§ 122C-16. State/Local Ombudsman; resolution of complaints.**

26 (a) Following receipt of a complaint, an Ombudsman shall attempt to resolve the  
27 complaint using, whenever possible, informal mediation, conciliation, and persuasion.

28 (b) If a complaint concerns a particular consumer, the consumer may participate  
29 in determining what course of action the Ombudsman should take on the consumer's  
30 behalf. If the consumer has an opinion concerning a course of action, the Ombudsman  
31 shall consider the consumer's opinion.

32 (c) Following receipt of a complaint, an Ombudsman shall contact the service  
33 provider to allow the service provider the opportunity to respond, provide additional  
34 information, or initiate action to resolve the complaint.

35 (d) Complaints or conditions adversely affecting consumers that cannot be  
36 resolved in the manner described in subsection (a) of this section shall be referred by the  
37 Ombudsman to the appropriate licensing agency under Article 2 of this Chapter.

38 **"§ 122C-17. State/Local Ombudsman; confidentiality.**

39 (a) Except as required by law, an Ombudsman shall not disclose the following:

- 40 (1) Any confidential or privileged information obtained pursuant to G.S.  
41 122C-15 unless the affected individual authorizes disclosure in  
42 writing; or



1           (2) The name of anyone who has furnished information to an Ombudsman  
2           unless the individual authorizes disclosure in writing.

3           (b) Violation of this section is a Class 3 misdemeanor, punishable only by a fine  
4 not to exceed five hundred dollars (\$500.00).

5           (c) All confidential or privileged information obtained under this section and the  
6 names of persons providing information to an Ombudsman are exempt from disclosure  
7 pursuant to Chapter 132 of the General Statutes. Access to substance abuse records and  
8 redisclosure of protected information shall be in compliance with federal confidentiality  
9 laws protecting medical records.

10 **"§ 122C-18. State/Local Ombudsman; retaliation prohibited.**

11 No one shall discriminate or retaliate against any person, provider, or facility  
12 because the person, provider, or facility in good faith complained or provided  
13 information to an Ombudsman.

14 **"§ 122C-19. State/Local Ombudsman; immunity from liability.**

15           (a) The State and Local Ombudsman shall be immune from liability for the good  
16 faith performance of official Ombudsman duties.

17           (b) A State or area facility, its employees, and any other individual interviewed  
18 by an Ombudsman are immune from liability for damages resulting from disclosure of  
19 any information or documents to an Ombudsman pursuant to this Article.

20 **"§ 122C-20. State/Local Ombudsman; penalty for willful interference.**

21 Willful interference with the State or a Local Ombudsman in the performance of the  
22 Ombudsman's official duties is a Class 1 misdemeanor."

23  
24 **PART 3. PHASED-IN IMPLEMENTATION**

25  
26           **SECTION 3.(a)** The Department of Health and Human Services shall do the  
27 following to prepare for the certification of area authorities and county programs to  
28 administer and deliver mental health, developmental disabilities, and substance abuse  
29 services.

30           (1) Develop the State Plan for Mental Health, Developmental Disabilities,  
31 and Substance Abuse Services in accordance with G.S. 122C-102. Not  
32 later than December 1, 2001, the Department shall submit the State  
33 Plan to the Joint Legislative Oversight Committee on Mental Health,  
34 Developmental Disabilities, and Substance Abuse Services for its  
35 review.

36           (2) Review all rules currently in effect and adopted by the Secretary, the  
37 Commission for Mental Health, Developmental Disabilities, and  
38 Substance Abuse Services and identify areas of duplication,  
39 vagueness, or ambiguity in content or in application. In conducting this  
40 review, the Department shall solicit input from current area authorities  
41 and providers on perceived problems with rules. The review may also  
42 include review of rules pertaining to mental health, developmental

- 1 disabilities, and substance abuse services that are in effect and adopted  
2 by agencies other than the Secretary and the Commission.
- 3 (3) Review the oversight and monitoring functions currently implemented  
4 by the Department to determine the effectiveness of the activities in  
5 achieving the intended results. Improve the oversight and monitoring  
6 functions and activities, if necessary.
- 7 (4) Develop service standards, outcomes, and financing formula for core  
8 and targeted services to prepare for their administration, financing, and  
9 delivery by area authorities and county programs.
- 10 (5) Develop format and required content for business plans submitted by  
11 boards of county commissioners and for contractual agreements  
12 between the Department and area authorities of county commissioners  
13 for county programs. Develop a method for Departmental evaluation  
14 of local business plans. Contractual agreements for the provision of  
15 services shall provide for:
- 16 a. Terms of a minimum of three years.  
17 b. Annual review and renewal.  
18 c. Specific conditions under which the Department will provide  
19 technical assistance, impose sanctions, or terminate  
20 participation.  
21 d. Terms of the business plan.  
22 e. Award of start-up funds for consolidation of area or county  
23 programs.
- 24 (6) Report on Department's readiness to implement system reform.
- 25 (7) Establish criteria and operational procedures for the Quality of Care  
26 Ombudsman Program and make a report to the Joint Legislative  
27 Oversight Committee on Mental Health, Developmental Disabilities,  
28 and Substance Abuse Services on or before March 1, 2002.
- 29 (8) Develop a catchment area consolidation plan. The Secretary shall  
30 anticipate receiving letters of intent from boards of county  
31 commissioners on or before July 1, 2002, indicating the intent of a  
32 county or counties to provide services through an existing area  
33 authority or through a county program established pursuant to G.S.  
34 122C-115.1. The Secretary shall develop the consolidation plan based  
35 on the letters of intent, the State Plan, geographic and population  
36 targeted thresholds, and capacity to implement the business plan. The  
37 consolidation plan shall provide for consolidation target of no more  
38 than 20 area authorities and county programs. The Secretary, in  
39 consultation with county commissioners and area authorities, shall  
40 complete the consolidation plan by September 1, 2004, and shall  
41 submit it no later than January 1, 2005, to the Joint Legislative  
42 Oversight Committee on Mental Health, Developmental Disabilities,

1 and Substance Abuse Services, the Governor, and each board of  
2 county commissioners. The total number of area authorities and county  
3 programs shall be reduced to no more than 20 by January 1, 2007.

- 4 (9) Develop a readiness plan to conduct readiness reviews and certify all  
5 county programs and area authorities based on readiness by July 1,  
6 2004. Each area authority and county program shall submit its  
7 approved business plan to the Secretary pursuant to G.S. 122C-115.2  
8 by January 1, 2003. The Secretary shall review the business plans as  
9 provided in G.S. 122C-115.2(c), conduct readiness reviews, and  
10 provide necessary assistance to resolve outstanding issues. The  
11 Secretary shall complete certification of one-third of the area  
12 authorities and county programs by July 1, 2003; two-thirds of the area  
13 authorities and county programs by January 1, 2004; and shall  
14 complete certification of all area authorities and county programs by  
15 July 1, 2004.

16 The activities required under subdivisions (1) through (6) of this section shall be  
17 completed by December 1, 2001. On or before October 1, 2001, and quarterly  
18 thereafter, the Department shall submit a progress report on each of the activities  
19 required under this section. By December 1, 2001, the Department shall submit a report  
20 on each of the activities required under subdivisions (1) through (6) of this section. The  
21 Department shall make its reports to the Joint Legislative Oversight Committee on  
22 Mental Health, Developmental Disabilities, and Substance Abuse Services.

23 **SECTION 3.(b)** Rules adopted by the Secretary of Health and Human  
24 Services and the Commission for Mental Health, Developmental Disabilities, and  
25 Substance Abuse Services shall be adopted in accordance with Chapter 150B of the  
26 General Statutes.

27 **SECTION 3.(c)** The Secretary shall study consolidating the Quality of Care  
28 Ombudsman as provided in Section 2 of this act with other State ombudsman programs  
29 in the Department of Health and Human Services. The study shall include:

- 30 (1) An analysis of the budgetary implications of consolidation;  
31 (2) Strategies for local inter-agency collaboration and coordination of  
32 ombudsman and consumer assistance services; and  
33 (3) The possible effects of the consolidation on quality of care, service  
34 delivery, and consumer assistance for each affected consumer  
35 population.

36 The Secretary shall report the findings and recommendations, including  
37 enabling legislation, to the Joint Legislative Oversight Committee on MH/DD/SAS on  
38 or before March 1, 2002.

39 **SECTION 3.(d)** The Joint Legislative Oversight Committee on Mental  
40 Health, Developmental Disabilities, and Substance Abuse Services shall conduct an in-  
41 depth review of the current methods of and disparities in the allocation of State funding  
42 to area authorities and county programs for mental health, developmental disabilities,

1 and substance abuse services and shall recommend necessary changes in allocation  
2 formulae, methods, and procedures that will ensure equitable allocation and use of State  
3 funds to provide these services throughout the State. Not later than March 1, 2002, the  
4 Committee shall report its findings and recommendations, including fiscal information  
5 on the cost to address funding allocation disparities, to the General Assembly, the  
6 House of Representatives Appropriations Subcommittee on Health and Human  
7 Services, the Senate Appropriations Committee on Health and Human Services, and the  
8 Fiscal Research Division.

9

10 **PART 4. EFFECTIVE DATE**

11

12 **SECTION 4.** Sections 1.1 through 1.21(b) of this act become effective July  
13 1, 2002. Section 2 of this act becomes effective July 1, 2002, only if funds are  
14 appropriated by the 2001 General Assembly, Regular Session 2002, for that purpose.  
15 The remainder of this act is effective when it becomes law.