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PROPOSED DRAFT
MENTAL HEALTH BILL 2009

Chapter 122C.

Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.

Article 1.

General Provisions.

§ 122C-1. Short title.

This Chapter may be cited as the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985. (1985, c. 589, s. 2; 1989, c. 625, ss. 1, 2.)

§ 122C-2. Policy.

The policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life. It is further the obligation of State and local government to provide community-based services when such services are appropriate, unopposed by the affected individuals, and can be reasonably accommodated within available resources and taking into account the needs of other persons for mental health, developmental disabilities, and substance abuse services.

State and local governments shall develop and maintain a unified system of services centered in area authorities or county programs. Local management entities represent the public mental health, developmental disability, and substance abuse service effort in their locality, and as such are responsible both for the provision of safety-net services and for the most effective use of public resources. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector. Within available resources, State and local government shall ensure that the following core services are available for those in need of these services:

- (1) Screening, assessment, treatment and referral.
- (2) Emergency services.
- (3) Service coordination and case management.
- (4) Consultation, prevention, and education.

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1 Within available resources, the State shall provide funding to support services to
2 targeted populations, except that the State and counties shall provide matching funds for
3 entitlement program services as required by law. Any other provision of statute or state
4 regulation notwithstanding, a local management entity may provide services.

5 As used in this Chapter, the phrase "within available resources" means State funds
6 appropriated and non-State funds and other resources appropriated, allocated or otherwise
7 made available for mental health, developmental disabilities, and substance abuse
8 services.

9 It is the policy of the state of North Carolina that the clinical needs of persons with
10 mental illness, developmental disabilities, and substance abuse are the highest priority
11 when designing and implementing programs authorized under this Act.

12 It is the policy of the state of North Carolina to ensure a stable and effective
13 workforce to provide services for persons with mental illness, developmental disabilities,
14 and substance abuse.

15 It is the policy of the state of North Carolina that it is the responsibility of the
16 Department to ensure appropriate education and training for clinical staff and trainees
17 engaged in serving persons with mental illness, developmental disabilities, and substance
18 abuse. This includes supporting training programs provided by colleges, universities,
19 community colleges and AHECs in North Carolina.

20 The furnishing of services to implement the policy of this section requires the
21 cooperation and financial assistance of counties, the State, and the federal government.
22 (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; c. 771; 1989, c.
23 625, s. 2; 2001-437, s. 1.1.)

24 § 122C-3. Definitions.

25 The following definitions apply in this Chapter:

- 26 (1) "Area authority" means the area mental health, developmental
27 disabilities, and substance abuse authority. As used in this Chapter, the
28 term "area authority" and "local management entity" may be used
29 interchangeably where applicable.
- 30 (2) "Area board" means the area mental health, developmental disabilities,
31 and substance abuse board. As used in this Chapter, the term "area
32 board" and "local management entity board" may be used
33 interchangeably where applicable..
- 34 (2a) "Area director" means the administrative head of the area authority
35 program appointed pursuant to G.S. 122C-121. As used in this Chapter,
36 the term "area director" and "local management entity director" may be
37 used interchangeably where applicable..
- 38 (2b) "Board of county commissioners" includes the participating boards of
39 county commissioners for multicounty area authorities, local
40 management entities, and multicounty programs.. . .
- 41 (9a) "Core services" are services that are necessary for the basic foundation
42 of any service delivery system. Core services are of two types: front-end
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1 service capacity such as screening, assessment, and emergency triage,
2 and indirect services such as prevention, education, and consultation at a
3 community level.

4 (9b) "Safety-net services" are essential services available to every resident of
5 North Carolina, the provision of which is the responsibility of the local
6 management entity, which may either provide the services itself or,
7 where appropriate, contract with another organization to provide the
8 services. These include (a) Screening, assessment, treatment and
9 referral, (b) Emergency services, and (3) case management. . .

10 (10a) "County program" means a mental health, developmental disabilities,
11 and substance abuse services program established, operated, and
12 governed by a county pursuant to G.S. 122C-115.1. As used in this
13 Chapter, the term "county program" and "local management entity"
14 may be used interchangeably where applicable. . .

15 (20b) "Local management entity" or "LME" means an area authority, county
16 program, or consolidated human services agency. It is a collective term
17 that refers to functional responsibilities rather than governance structure.
18 As used in this Chapter, the terms "area authority" or "county program"
19 may be used interchangeably with "local management entity" where
20 applicable.

21 Article 4.

22 Organization and System for Delivery of Mental Health, Developmental Disabilities, and 23 Substance Abuse Services.

24 Part 1. Policy.

25 § 122C-101. Policy.

26 Within the public system of mental health, developmental disabilities, and substance
27 abuse services, there are area, county, and State facilities. ~~An~~ local management entity,
28 area authority or county program is the locus of coordination among public services for
29 clients of its catchment area. (1985, c. 589, s. 2; 1989, c. 625, s. 13; 1993, c. 396, s. 3;
30 2001-437, s. 1.4.) . . .

31 [§ 122C-102. State Plan for Mental Health, Developmental Disabilities, and 32 Substance Abuse Services; system performance measures.]

33 NOTE: This provision is not deleted in this draft, and remains unchanged.]

34 § 122C-115. Duties of counties; appropriation and allocation of funds by counties 35 and cities. . .

36 (c) Except as authorized in G.S. 122C-115.1, within a catchment area designated
37 in the ~~business plan~~ Plan for Clinical Services pursuant to G.S. 122C-115.2, a board of
38 county commissioners or two or more boards of county commissioners jointly shall
39 establish an area authority with the approval of the Secretary. . .

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2 **§ 122C-115.1. County governance and operation of mental health, developmental**
3 **disabilities, and substance abuse services program.. . .**

4 (2) Appointment of a program director to carry out the provisions of G.S.
5 122C-111 and duties and responsibilities delegated by the county.
6 Except when specifically waived by the Secretary, the program director
7 shall meet all the following minimum qualifications:

- 8 a. Masters degree.
9 b. Related experience.
10 c. Management experience.
11 d. Any other qualifications required under G.S. 122C-120.1.

12 (2a) Appointment of a program medical director to carry out the provisions
13 of G.S. 122C-121.1(b) and duties and responsibilities delegated by the
14 county. The program medical director shall meet all the following
15 minimum qualifications:

- 16 a. Medical Doctor degree.
17 b. Completion of an approved psychiatric residency.
18 c. Related experience.. . .

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

22 Except when specifically waived by the Secretary, the program director in a single
23 county program shall meet all the following minimum qualifications:

- 24 (1) Masters degree.
25 (2) Related experience.
26 (3) Management experience.
27 (4) Any other qualifications required under G.S. 122C-120.1.

28 (f1) In a single-county program, the program medical director shall be appointed by
29 the program director and shall carry out the provisions of G.S. 122C-121.1(b). In a
30 multicounty program, the program medical director shall be appointed in accordance with
31 the terms of the interlocal agreement and shall carry out the provisions of G.S. 122C-
32 121.1(b).

33 The program medical director shall meet all the following minimum qualifications:

- 34 (1) Medical Doctor degree.
35 (2) Completion of an approved psychiatric residency.
36 (3) Related experience.. . .

37 (i) Except as otherwise specifically provided, this Chapter applies to counties that
38 provide mental health, developmental disabilities, and substance abuse services through a
39 county program. As used in the applicable sections of this Article, the terms "local
40 management entity," "area authority", "area program", and "area facility" shall be
41 construed to include "county program" . . .

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1 **§ 122C-115.2. LME ~~business plan~~Plan for Clinical Services required; content,**
2 **process, certification.**

3 **NOTE: This provision is not deleted in this draft.**

4 (a) Every county, through an area authority or county program, shall provide for
5 the development, review, and approval of an LME ~~business plan~~Plan for Clinical
6 Services for the management and delivery of mental health, developmental disabilities,
7 and substance abuse services. An LME business planPlan for Clinical Services shall
8 provide detailed information regarding how the area authority or county program will
9 meet State standards, laws, and rules for ensuring quality mental health, developmental
10 disabilities, and substance abuse services, including outcome measures for evaluating
11 program effectiveness. The ~~business plan~~Plan for Clinical Services shall be in effect for
12 at least three State fiscal years. The Secretary shall develop a model ~~business plan~~Plan for
13 Clinical Services that illustrates compliance with this section, including specific State
14 standards and rules adopted by the Secretary. The Secretary shall provide each LME with
15 the model ~~business plan~~Plan for Clinical Services to assist the LME in developing its
16 ~~business plan~~Plan for Clinical Services.

17 (b) ~~Business plans~~Plan for Clinical Services shall include the following:

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

20 a. Planning. – Local services plans that identify service gaps and
21 methods for filling the gaps, ensure the availability of an array of
22 services based on consumer needs, provision of core services,
23 equitable service delivery among member counties, and
24 prescribing the efficient and effective use of all funds for targeted
25 services. Local planning shall be an open process involving key
26 stakeholders.

27 b. Provision of clinical services~~Provider network development~~. –
28 Ensuring provision of safety-net clinical services, including
29 whether these are to be provided by the LME or, when
30 appropriate, by another organization. This includes the LME
31 providing case management services. ~~available, qualified~~
32 ~~providers to deliver services based on the business plan.~~
33 ~~Development of new providers and monitoring provider~~
34 ~~performance and service outcomes. Provider network~~
35 ~~development shall address consumer choice and fair competition.~~
36 ~~For the purposes of this section, a "qualified provider" means a~~
37 ~~provider who meets the provider qualifications as defined by~~
38 ~~rules adopted by the Secretary.~~

39 b 1 Clinical leadership. Ensuring that service provision and
40 assessment of quality and appropriateness of services provided
41 within the LME locality is the responsibility of a full-time
42 qualified psychiatrist.

Underline = new language, ~~Strikethrough~~ = deleted language

- 1 c. Service management. – Implementation of screening and
 2 assessment uniform portal process. Service management shall
 3 include appropriate level and intensity of services, management
 4 of State hospitals/facilities bed days, utilization management,
 5 case management, and quality management. ~~If services are~~
 6 ~~provided directly by the area authority or county program, then~~
 7 ~~the plan shall indicate how consumer choice and fair competition~~
 8 ~~in the marketplace is ensured.~~
- 9 d. Financial management and accountability. – Carrying out
 10 business functions in an efficient and effective manner,
 11 cost-sharing, and managing resources dedicated to the public
 12 system.
- 13 e. Service monitoring and oversight. – Ensuring that services
 14 provided to consumers and families are subject to quality
 15 improvement processes, meet State outcome standards ~~and,~~
 16 ensure quality performance by providers in the network, and that
 17 appropriate data are available for LME and state decision-
 18 making. The Plan for Clinical Services shall describe how the
 19 use of evidence-based treatment practices shall be expanded in
 20 the LME locality.
- 21 f. Evaluation. – Self-evaluation based on statewide outcome
 22 standards and participation in independent evaluation studies.
- 23 g. Collaboration. – Collaborating with other local service systems in
 24 ensuring access and coordination of services at the local level.
 25 Collaborating with other area authorities and county programs
 26 and the State in planning and ensuring the delivery of services.
- 27 h. Access. – Ensuring access to core and targeted services.
- 28 (2) Description of how the following will be addressed:
- 29 a. Reasonable administrative costs based on uniform State criteria
 30 for calculating administrative costs and costs or savings
 31 anticipated from consolidation.
- 32 b. Proposed reinvestment of savings toward direct services.
- 33 c. Compliance with the catchment area consolidation plan adopted
 34 by the Secretary.
- 35 d. Based on rules adopted by the Secretary, method for calculating
 36 county resources to reflect cash and in-kind contributions of the
 37 county.
- 38 e. Financial and services accountability and oversight in accordance
 39 with State and federal law.
- 40 f. The composition, appointments, selection process, and the
 41 process for notifying each board of county commissioners of all
 42 appointments made to the area authority board.
- 43 g. The population base of the catchment area to be served.

Underline = new language, ~~Strikethrough~~ = deleted language

- 1 h. Use of local funds for the alteration, improvement, and
2 rehabilitation of real property as authorized by and in accordance
3 with G.S. 122C-147.
- 4 i. The resources available and needed within the catchment area to
5 prevent out-of-community placements and shall include input
6 from the community public agencies.
- 7 (3) Other matters determined by the Secretary to be necessary to effectively
8 and efficiently ensure the provision of mental health, developmental
9 disabilities, and substance abuse services through an area authority or
10 county program.

11 (c) The county program or area authority proposing the ~~business plan~~Plan for
12 Clinical Services shall submit the proposed plan as approved by the board of county
13 commissioners to the Secretary for review and certification. The Secretary shall review
14 the ~~business plan~~Plan for Clinical Services within 30 days of receipt of the plan. If the
15 ~~business plan~~Plan for Clinical Services meets all of the requirements of State law and
16 standards adopted by the Secretary, then the Secretary shall certify the area authority or
17 county program as a single-county area authority, a single-county program, a multicounty
18 area authority, or a multicounty program. A ~~business plan~~Plan for Clinical Services that
19 demonstrates substantial compliance with the model ~~business plan~~Plan for Clinical
20 Services developed by the Secretary shall be deemed as meeting the requirements of
21 State law and standards adopted by the Secretary. Implementation of the certified plan
22 shall begin within 30 days of certification. If the Secretary determines that changes to the
23 plan are necessary, then the Secretary shall so notify the submitting county program or
24 area authority and the applicable participating boards of county commissioners and shall
25 indicate in the notification the changes that need to be made in order for the proposed
26 program to be certified. If the Secretary determines that a ~~business plan~~Plan for Clinical
27 Services needs substantial changes in order to be certifiable, the Secretary shall provide
28 the LME submitting the plan with detailed information on each area of the plan that is in
29 need of change, the particular State law or standard adopted by the Secretary that has not
30 been met, and instructions or assistance on what changes need to be made in order for the
31 plan to be certifiable. The submitting county program or area authority shall have 30 days
32 from receipt of the Secretary's notice to make the requested changes and resubmit the
33 amended plan to the Secretary for review. The Secretary shall provide whatever
34 assistance is necessary to resolve outstanding issues. Amendments to the ~~business~~
35 Plan for Clinical Services shall be subject to the approval of the participating boards
36 of county commissioners.

37 (d) Annually, in accordance with procedures established by the Secretary, each
38 area authority and county program submitting a ~~business plan~~Plan for Clinical Services
39 shall enter into a memorandum of agreement with the Secretary for the purpose of
40 ensuring that State funds are used in accordance with priorities expressed in the ~~business~~
41 Plan for Clinical Services. (2001-437, s. 1.9; 2002-164, s. 4.3; 2006-142, s. 4(c);
42 2007-504, s. 2.1.). . .
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1 **§ 122C-115.4. Functions of local management entities.. . .**

2 (b) The primary functions of an LME are designated in this subsection and shall
3 not be conducted by any other entity unless an LME voluntarily enters into a contract
4 with that entity under subsection (c) of this section. The primary functions include all of
5 the following:

6 (1) Ensuring that safety net clinical services are available to all persons in
7 the LME locality, whether provided by the LME or, where appropriate,
8 under contract with another organization.

9 (1a) Access for all citizens to the core services and administrative functions
10 described in G.S. 122C-2. In particular, this shall include the
11 implementation of a 24-hour a day, seven-day a week screening, triage,
12 and referral process and a uniform portal of entry into care.. . .
13

14 **§ 122C-117. Powers and duties of the area authority.**

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

16 (1) Engage in comprehensive planning, budgeting, implementing, provision
17 of and monitoring of community-based mental health, developmental
18 disabilities, and substance abuse services.

19 (2) Ensure the provision of services to clients in the catchment area,
20 including safety net services, as provided for elsewhere in this Act,
21 including clients committed to the custody of the Department of
22 Juvenile Justice and Delinquency Prevention.. . .

23 (8) Develop and submit to the board of county commissioners for approval
24 the ~~business plan~~ Plan for Clinical Services required under G.S.
25 122C-115.2. A multicounty area authority shall submit the ~~business~~
26 ~~plan~~ Plan for Clinical Services to each participating board of county
27 commissioners for its approval. The boards of county commissioners of
28 a multicounty area authority shall jointly submit one approved ~~business~~
29 ~~plan~~ Plan for Clinical Services to the Secretary for approval and
30 certification.. . .

31 (12) Comply with this Article and rules adopted by the Secretary for the
32 development and submission of and compliance with the area authority
33 ~~business plan~~ Plan for Clinical Services.. . .

34 (14) **[Note: this provision is not deleted in this version]** Maintain a
35 24-hour a day, seven day a week crisis response service. Crisis response
36 shall include telephone and face-to-face capabilities. Crisis phone
37 response shall include triage and referral to appropriate face-to-face
38 crisis providers and shall be initiated within one hour of notification.
39 Crisis services do not require prior authorization but shall be delivered
40 in compliance with appropriate policies and procedures. Crisis services
41 shall be designed for prevention, intervention, and resolution, not
42 merely triage and transfer, and shall be provided in the least restrictive

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1 setting possible, consistent with individual and family need and
2 community safety. . . .

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4 **§ 122C-118.1. Structure of area board.**

5 (a) . . . The boards of county commissioners in a multicounty area authority shall
6 indicate in the ~~business plan~~ Plan for Clinical Services each board's method of
7 appointment of the area board members in accordance with G.S. 122C-115.2(b). . . .

8
9 **§ 122C-121. Area director. . . .**

10 (c) The area director is the administrative head of the area program. In addition to
11 the duties under G.S. 122C-111, and except as provided for under G.S. 122C-121.1, the
12 area director shall:

- 13 (1) Appoint, supervise, and terminate area program staff.
- 14 (2) Administer area authority services.
- 15 (3) Develop the budget of the area authority for review by the area board.
- 16 (4) Provide information and advice to the board of county commissioners
17 through the county manager.
- 18 (5) Act as liaison between the area authority and the Department.

19 (d) Except when specifically waived by the Secretary, the area director shall meet
20 all the following minimum qualifications:

- 21 (1) Masters degree.
- 22 (2) Related experience.
- 23 (3) Management experience.
- 24 (4) Any other qualifications required under G.S. 122C-120.1. (1971, c. 470,
25 s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s.
26 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.12; 2006-142, s.
27 4(k); 2007-323, s. 6.20(a).)

28
29 **§ 122C-121.1. Area medical director.**

30 (a) The area medical director is a licensed psychiatrist.

31 (b) The area medical director is the clinical head of the area program. The area
32 medical director shall:

- 33 (1) Appoint, supervise, and terminate area program clinical staff.
- 34 (2) Administer area authority clinical services.
- 35 (3) Provide clinical information and advice to the board of county
36 commissioners through the county manager.
- 37 (4) Act as liaison between the area authority and the clinical staff of the
38 Department.
- 39 (5) Be responsible for the clinical content of the Plan for Clinical Services.

40 (c) The area medical director shall meet all the following minimum qualifications:

- 41 (1) Medical Doctor degree.
- 42 (2) Completion of an approved psychiatric residency.
- 43 (3) Related experience. . . .

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Part 4. Area Facilities.

§ 122C-141. Provision of services.

(a) The area authority or county program is authorized to provide services directly and, when clinical appropriate, may ~~shall~~ contract with other qualified public or private providers, agencies, institutions, or resources for the provision of services, ~~and, subject to the approval of the Secretary, is authorized to provide services directly.~~ The area authority or county program shall indicate in its local ~~business plan~~ Plan for Clinical Services how services will be provided and how the provision of services will address issues of access, availability of qualified public or private providers, and ~~consumer choice, and fair competition.~~ The Secretary shall take into account these issues when reviewing the local ~~business plan~~ Plan for Clinical Services and considering approval of the direct provision of services. Unless an area authority or county program requests a shorter time, any approval granted by the Secretary shall be for not less than one year. ~~The Secretary shall develop criteria for the approval of direct service provision by area authorities and county programs in accordance with this section and as evidenced by compliance with the local business plan.~~ For the purposes of this section, a qualified public or private provider is a provider that meets the provider qualifications as defined by rules adopted by the Secretary. . . .

(e) ~~When enforcing rules adopted by the Commission, the Secretary shall ensure that there is fair competition among providers. . . .~~

Part 4A. Consumer and Family Advisory Committees.

§ 122C-170. Local Consumer and Family Advisory Committees. . . .

(c) The CFAC shall undertake all of the following:

- (1) Review, comment on, and monitor the implementation of the local ~~business plan~~ Plan for Clinical Services. . . .

(d) The director of the area authority or county program shall provide sufficient staff to assist the CFAC in implementing its duties under subsection (c) of this section. The assistance shall include data for the identification of service gaps and underserved populations, training to review and comment on ~~business plan~~ Plan for Clinical Services and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws. (2006-142, s. 5). . .

§ 122C-263. Duties of law-enforcement officer; first examination by physician or eligible psychologist. . . .

NEW PARAGRAPH (h): TELEPSYCHIATRY

Underline = new language, ~~Strikethrough~~ = deleted language

- 1 (g) A first examination by a physician or eligible psychologist conducted by
2 telepsychiatry that otherwise complies with the requirements of this Chapter shall be as
3 valid as a face-to-face examination. Documentation transmitted by fax or other secure
4 electronic means shall be valid for these purposes.
5