

NORTH CAROLINA GENERAL ASSEMBLY
1977 SESSION

CHAPTER 568
HOUSE BILL 467

AN ACT TO REWRITE PORTIONS OF CHAPTER 122 OF THE GENERAL STATUTES OF NORTH CAROLINA DEALING WITH AREA MENTAL HEALTH PROGRAMS AND TO REPEAL ARTICLES 2A, 2C, and 2E of G.S. CHAPTER 122 WHICH DEAL WITH CURRENT LOCAL MENTAL HEALTH AND AREA MENTAL HEALTH PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to Chapter 122 of the General Statutes of North Carolina to read as follows:

"ARTICLE 2F.

"Area Mental Health Programs.

"PART 1.

"Policy Statement; Definitions.

"§ 122-35.35. **Declaration of policy.** — Providing community mental health services of the highest possible quality within available resources is an obligation of government in North Carolina to its citizens. The furnishing of such services requires the cooperation and financial assistance of county, State and federal governments.

In order to maximize mental health services and to maximize utilization of federal funds, area mental health authorities are urged to comply to the maximum extent possible with federal governmental regulations required as a condition of receipt of federal grants.

In order to provide comprehensive mental health services to all citizens at a reasonable cost, the area mental health authority shall make every reasonable effort to collect appropriate reimbursement for its cost in providing such services based upon the ability of the person to pay except where prohibited by policy or law; however, no one shall be refused mental health services because of an inability to pay.

To insure accountability where such services are rendered, the governing board of the area mental health program shall be selected by the county commissioners in the area where such services are to be administered.

"§ 122-35.36. **Definitions.** — For the purposes of this Article, the following definitions shall apply:

- (1) Area mental health authority. The governing unit authorized by the Commission for Mental Health Services and delegated the authority to serve as the comprehensive planning, budgeting, implementing, and monitoring group for community-based mental health, mental retardation, and substance abuse programs. An area mental health authority is a local political subdivision of the State except that a single-county area mental health authority shall be considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.
- (2) Area mental health board. A group of persons appointed by the county commissioners pursuant to the provisions of this Article to serve as the governing body of the area mental health authority.

- (3) Area mental health facility. A mental health facility, public or private, established to serve the needs of a designated catchment area in mental health, mental retardation, or substance abuse.
- (4) Catchment area. A population base sufficient to secure federal funding under existing federal legislation as it applies to mental health services.
- (5) Commission for Mental Health Services. A citizen board designated by State statute to set minimum standards for the operation of State and area mental health, mental retardation, and substance abuse programs.
- (6) Department of Human Resources. The unit of State government authorized to implement, administer, and monitor community-based programs in cooperation with local governmental authorities; such unit is hereinafter referred to as department.
- (7) Medical doctor. A person licensed to practice medicine in North Carolina, including a doctor of medicine specializing in the field of psychiatry.
- (8) Mental health programs. Sets of activities designed to meet the service needs of citizens. Mental health program or mental health programs refers to programs of general mental health, mental illness, mental retardation, substance abuse, and related fields.
- (9) Minimum standards. Specifications of the required basic level of activity and required basic levels of human and technical resources necessary for the implementation and operation of mental health programs. Minimum standards are set by the Commission for Mental Health Services in all areas of mental health not otherwise specified in State statutes and such standards shall be administered by the Department of Human Resources.
- (10) Operating costs. Expenditures made by an area mental health authority in the delivery of community mental health services in the areas of general mental health, mental illness, mental retardation, and substance abuse. Such operating costs shall include the employment of legal counsel on a temporary basis to represent the interest of the area mental health authority.
- (11) Qualified professional. Any person with appropriate training or experience in the professional fields of mental health care, mental illness, mental retardation, or substance abuse, including but not limited to medical doctors, psychiatrists, psychologists, social workers, and registered nurses.
- (12) Substance abuse. Self-abusive use of substances, including, but not limited to, alcoholism and drug abuse.

"PART 2.

"Authorization of Area Mental Health Services.

"§ 122-35.37. **Mental health services.** — The Department of Human Resources is directed to establish community-based programs of mental health services within catchment areas specified by the Commission for Mental Health Services. The provision of services shall be a joint undertaking of the department and the area mental health authority. The mental health services programs shall be developed by coordinating resources, personnel, and facilities of the area mental health authorities and of the Department of Human Resources, pursuant to this Article. Mental health services shall include, but not be limited to, programs for:

- (1) general mental health, mental disorder, and mental health education;
- (2) mental retardation; and
- (3) substance abuse.

Such mental health service programs shall include, but need not be limited to, treatment and preventive services.

"§ 122-35.38. **Designation of Department of Human Resources as the State Mental Health Authority.** — The Department of Human Resources is hereby designated as the State Mental

Health Authority for purposes of administering federal funds allotted to North Carolina and State funds allotted to the department pertaining to mental health activities. The Department of Human Resources is further designated as the State agency authorized to administer minimum standards and requirements for mental health services as conditions for participation in federal-State financial aid, and is authorized to promote and develop community mental health services in accordance with the provisions of this Chapter. The Department of Human Resources shall be responsible for administering minimum standards for area mental health programs.

Nothing in this Chapter shall be construed to prohibit the operation of mental health service programs by the Department of Human Resources at any of the institutions under the control of the Department of Human Resources, or the operation of mental health service programs at the North Carolina Memorial Hospital in Chapel Hill, or at any other hospital or facility acceptable to the Department of Human Resources.

"§ 122-35.39. Designation of local governmental units to specify responsible area mental health authority. — (a) An area mental health authority, with approval of the Department of Human Resources and the Commission for Mental Health Services shall be established by: (1) the board of county commissioners or (2) jointly by two or more boards of county commissioners.

(b) The unit shall be known as an area mental health authority. County commissioners shall appoint the members of an area mental health board who shall thereafter serve at the pleasure of the county commissioners by whom such appointments were made. The area mental health board thus appointed shall be the area mental health authority for the purposes of this Article.

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area mental health board. These members shall appoint the other members.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area mental health board to fill vacancies occurring on the board prior to the expiration of the appointed term of office. Such appointments shall be for the remainder of the unexpired term of office.

"§ 122-35.40. Structure of area mental health board. — (a) The area mental health board shall meet at least six times per year and shall consist of 15 members. However, the number of board members may be increased up to 25 for the purpose of meeting requirements set by federal authorities as a condition to receiving federal aid. Meetings shall be called by the area board chairman or by three or more members of the board after notifying the area board chairman in writing.

(b) The area mental health board shall include:

- (1) at least one county commissioner from each county in the area;
- (2) at least two persons duly licensed to practice medicine in North Carolina;
- (3) at least one representative from the professional field of psychology, or social work, or nursing, or religion;
- (4) at least three representatives from local citizen organizations to include one each from those active in areas of substance abuse, mental health, and mental retardation;
- (5) at least one representative from local hospitals or area planning organizations;
- (6) at least one attorney practicing in North Carolina.

(c) Any member of an area mental health board who is a county commissioner shall be deemed to be serving on the board in an ex officio capacity to his public office. The terms of such members shall be concurrent with their respective terms as public officials. The terms of the other members on the area board shall be for four years, except that upon the initial

formation of an area mental health board, one-fourth shall be appointed for one year, one-fourth for two years, one-fourth for three years, and all remaining members for four years. However, nothing contained herein shall prevent the county commissioners from replacing board members at any time pursuant to G.S. 122-35.39.

(d) Members of the Area Mental Health Board are authorized to elect its chairman. The term of office of the area board chairman shall be one year. Nothing in this subsection shall be construed to prohibit a county commissioner area board member from serving as the board chairman.

"§ 122-35.41. Designation of the Commission for Mental Health Services. — Standards for services not covered under the provision of this Article may be prescribed by the Commission for Mental Health Services. All community-based mental health, mental retardation, and substance abuse programs must meet or exceed minimum standards and no other standards shall apply unless specifically established in State or federal statutes or regulations. Failure to comply with the established standards shall be grounds for the Department of Human Resources to cease participating in the funding of the particular community-based program. An area mental health authority may appeal for exceptions to the minimum standards to the Commission for Mental Health Services based upon catchment area needs. Such appeal shall be made pursuant to the procedures set forth in G.S. 122-35.52.

"PART 3.

"Responsibilities of Area Mental Health Authorities.

"§ 122-35.42. Appropriate local funds. — County and municipal authorities are authorized to appropriate funds for the support of mental health programs which serve the catchment area regardless of whether the service programs are physically located within the boundaries of a single county or whether any facility housing a service program is owned and operated by the local governmental units. Counties are authorized to make appropriations for the purposes of this Article and to fund them by levy of property taxes pursuant to G.S. 153A-149(c)(22) and by the allocation of other revenues whose use is not restricted by law.

"§ 122-35.43. Submit application for service program; annual plan. — (a) Subject to the standards of the Commission for Mental Health Services, the area mental health authorities shall review and evaluate the area needs and programs in general mental health, mental illness, mental retardation, substance abuse, and related fields, and shall develop with the Department of Human Resources an annual plan for the use, control, and development of State, regional, and area facilities and resources in order to provide a comprehensive program of mental health services for the area residents.

(b) The annual plan of work shall include an inventory of existing services, services to be provided during the next fiscal year, and projected services during the following year, including, but not limited to, service plans for the mentally ill, mentally retarded, and substance abuser. The annual plan shall indicate the expenditure of all State, local, and federal funds for each service according to the source of the fund. The annual plan of each area authority shall include a plan for contracting with the State mental hospital, center for the mentally retarded, and alcoholic rehabilitation center where such facilities are available. Before State funds are provided to area mental health authorities, such annual plans and subsequent changes shall be subject to approval by the Department of Human Resources.

"§ 122-35.44. Report to the department and county commissioners. — (a) On a periodic basis, specified by the Department of Human Resources, each area mental health authority shall provide the Department of Human Resources and county commissioners with:

- (1) A budget report which indicates receipt and expenditure for the total area mental health program according to a reporting format prescribed by the department. This format shall conform as nearly as practical to the recommended budget format of the Local Government Commission under the provisions of the Local Government Fiscal Control Act.

- (2) An audit report prepared by an independent certified public accounting firm, which such audit report may be made by the county independent certified public accountant as a part of the county's normal annual audit, if satisfactory to the department.

(b) The Department of Human Resources can require reports of activities and services of the area mental health authority but such reports shall not identify names of individual clients of the local mental health programs unless specifically required by State statute or federal rules and regulations. A copy of all reports required by the Department of Human Resources shall be sent to the county commissioners.

(c) Beginning on July 1, 1977, and at least biannually thereafter, reports required of the area mental health authority by the department shall be reviewed by the Department of Human Resources and only those reports deemed necessary by the department shall thereafter be required.

(d) The department may delay payments and with written notification of cause may reduce or deny payment of funds if an area mental health authority fails to file required reports within the time limit set by the department.

"§ 122-35.45. Personnel. — (a) Technical and professional standards. Subject to the standards of the Commission for Mental Health Services, the area mental health authority shall establish technical and professional standards which must be approved by the Department of Human Resources. Such standards shall not nullify compliance with provisions of the classification plan and State Competitive Service policies.

(b) Area mental health authority employees. Employees under the direct supervision of the area mental health authority are employees of the area mental health authority and for the purpose of personnel administration, Chapter 126 of the General Statutes shall apply unless otherwise provided in this Article.

(c) Appointment of area mental health director. The area board shall appoint, with the approval of the Department of Human Resources, an area mental health director. The area mental health director shall be the employee of the area board and shall serve at the pleasure of the area board. The director shall be responsible for the appointment of staff, for implementation of the policies and programs of the board, compliance with standards of the Commission for Mental Health Services, and for the supervision of all staff and service programs.

(d) Supervision of services. Unless otherwise specified, services shall be the responsibility of a qualified professional with approved training and experience acceptable to the Department of Human Resources as prescribed by regulations of the Commission for Mental Health Services. Direct medical and psychiatric services shall be provided by a duly qualified psychiatrist or an individual duly licensed by the State of North Carolina as a medical doctor with adequate training and experience acceptable to the Department of Human Resources.

"§ 122-35.46. Salary plans for area mental health employees. — A salary plan for area mental health employees shall be set by the area mental health authority. Such salary plan shall be established in conformity with G.S. Chapter 126. In a multiple-county area, such salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, such salary plan shall not exceed the county's salary plan. The salary plan limitations set forth in this section may be exceeded only if the area mental health authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

"§ 122-35.47. Require fee for service. — The area mental health authority shall make every reasonable effort to collect appropriate reimbursement for its costs in providing mental health services to persons able to pay for service, including insurance or third-party payments. However, no one shall be refused mental health services because of an inability to pay. The area mental health authority will prepare a schedule of fees for its services designed to cover

the reasonable costs of providing such services. All funds collected from fees shall be utilized for the fiscal operation or capital improvement for the area mental health service program and shall not reduce or replace the budgeted commitment of local tax revenue.

"§ 122-35.48. Limitation of professional reimbursement. — Area mental health authorities will adopt and enforce a policy (i) under which fees for the provision of services directly under the supervision of the area authority will be paid to the area mental health authority; (ii) under which employees of the area authority are prohibited from providing such services on a private basis which requires the use of the resources and facilities of the area authority; and (iii) under which employees may accept dual compensation and dual employment with a written permission of the area mental health authority.

"§ 122-35.49. Contract for services. — The area mental health authority may contract with other public or private agencies, institutions, or resources for the provision of services, but it shall be the responsibility of the area mental health authority to insure that such contracted services meet the rules and regulations as set by the Commission for Mental Health Services. Terms of the contract shall require the area mental health authority to monitor the contract to assure that minimum standards are met.

"§ 122-35.50. Appeal by area mental health authority. — The area mental health authority may appeal to the Commission for Mental Health Services any departmental action regarding rules and regulations which affects its program or plan for services.

"§ 122-35.51. Licensing required. — An area mental health facility operated under the provisions of Chapter 122 of the General Statutes shall obtain a license permitting such operation. Subject to standards governing the operation and licensing of these facilities set by the Commission for Mental Health Services, the Department of Human Resources shall be responsible for issuing licenses.

"§ 122-35.52. Appeal from the denial or revocation of a license. — An area mental health facility whose license is revoked or whose license application is denied by the department shall first be given 60 days' written notice specifying the grounds for such revocation or denial. The area mental health authority is entitled, by written request to the commission within the 60-day period of notification, to a hearing before the Commission for Mental Health Services. The hearing shall be held within 20 days of the written request and shall be open to the public. The decision of the commission shall be made within 10 days after such hearing. Any area mental health facility whose license is revoked shall be allowed to continue to operate until the appeal provided by this section is concluded.

"PART 4.

"Appropriation for Mental Health Service Programs.

"§ 122-35.53. Allocation of all funds to area mental health authorities. — All State appropriations shall be allocated to area mental health authorities in accordance with the annual plan and budget adopted by the area mental health authority and approved by the Department of Human Resources. However, the area mental health authorities are empowered to receive and allocate non-state resources for the purpose of capital improvements and equipment acquisition as long as such expenditures are made in support of the annual plan of work. The final share of State funds will be allocated on the basis of actual expenses and reported in a manner prescribed by the department. Unexpended State appropriations will be remitted to the Department of Human Resources within 120 days after the close of the fiscal year.

Unless specified by the Department of Human Resources, State appropriations to area mental health authorities shall be used exclusively for the operating costs of the programs. All real property shall be provided by local or federal funds. Equipment necessary for the operation of such programs shall be provided by local, State, federal, or donated funds or any combination thereof. Title to such real property and the authority to acquire or mortgage same shall be held by the county where such property is located; however, the authority to lease real property shall be held by the area mental health authority. Title to personal property and the

authority to acquire, lease, or mortgage same shall be held by the area mental health authority. All community mental health, mental retardation, and substance abuse funds shall be expended in accordance with rules and regulations of the Department of Human Resources and in accordance with the minimum standards set by the Commission for Mental Health Services. Failure to comply with rules, regulations, and minimum standards may be grounds for the Department of Human Resources to cease participation in the funding of the particular mental health program. The department may withdraw funds from a specific program of services not being administered in accordance with an approved plan and budget after written notice and subject to an appeal in accordance with G.S. 122-35.52.

"§ 122-35.54. Allocation of funds to area mental health authorities. — Subject to the provisions of this Article allocations shall be made annually by the Department of Human Resources to area mental health authorities for the provision of community-based service programs. Such allocations shall be made in the form of a base grant computed on the basis of five hundred dollars (\$500.00) per 1,000 population within the catchment area. Additional allocations may be made to the area mental health authorities on the conditions and formula basis as provided in this Part.

"§ 122-35.55. Allocation of State matching funds to area mental health authorities. — State-appropriated matching funds shall be distributed subject to an adopted regulation of the department which sets a formula based upon the counties' relative fiscal capacity to fund mental health services. Such regulations shall be reviewed biannually by the department. Area mental health funds used for matching State funds shall include, but not be limited to, fees from services, fees from agencies under contract, gifts and donations, and county and municipal funds. For the purpose of this section, area financial participation used to match State allocations shall not include State or federal funds.

"§ 122-35.56. Direct grants for services. — In addition to the matching grants provided elsewhere in this act, the department shall make direct grants to area mental health authorities from special State and federal funds appropriated for special programs. Such grants shall be for the treatment of persons by community facilities rather than in regional institutions and shall be administered as provided by G.S. 122-35.53 and G.S. 122-35.55.

"§ 122-35.57. Responsibilities of those receiving State and federally administered appropriations. — All resources allocated to and received by any area mental health authority and used for programs of mental health, mental retardation, substance abuse or other related mental health fields are subject to the conditions specified in all Parts of this Article and to the standards of the Commission for Mental Health Services."

Sec. 2. Sub-subdivisions c. and d. of subdivision (2) of G.S. 143B-147, as it appears in 1974 Replacement Volume 3C of the General Statutes, are rewritten to read as follows:

- "c. for the establishment and operation of area mental health authorities provided by Article 2F of Chapter 122 of the General Statutes; and
- d. for the inspection and licensing of private hospitals for the mentally disordered as provided by G.S. 122-72."

Sec. 3. Sub-subdivision e. of subdivision (2) of G.S. 143B-147 is repealed.

Sec. 4. Articles 2A, 2C, and 2E of Chapter 122 of the General Statutes are repealed.

Sec. 5. This act shall become effective July 1, 1977.

In the General Assembly read three times and ratified, this the 15th day of June, 1977.