

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION

CHAPTER 749
HOUSE BILL 1237

AN ACT TO ENSURE AREA AUTHORITY FINANCIAL STABILITY AND
DELIVERY OF ADEQUATE SERVICES TO CLIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-115 reads as rewritten:

"§ 122C-115. Powers and duties of counties and cities.

(a) Except as provided in G.S. 153A-77, a county shall provide mental health, developmental disabilities, and substance abuse services through an area authority.

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

(c) Within a catchment area designated by the Commission, a board of county commissioners or two or more boards of county commissioners jointly shall establish an area authority with the approval of the Secretary.

(d) Counties shall not reduce county appropriations and expenditures for area authorities because of the availability of State-allocated funds, fees, capitation amounts, or fund balance to the area authority."

Sec. 2. G.S. 122C-117 reads as rewritten:

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

(a) The area authority shall:

- (1) Engage in comprehensive planning, budgeting, implementing, and monitoring of community-based mental health, developmental disabilities, and substance abuse services;
- (2) Provide services to clients in the catchment area;
- (3) Determine the needs of the area authority's clients and coordinate with the Secretary the provision of services to clients through area and State facilities;
- (4) Develop plans and budgets for the area authority subject to the approval of the Secretary;
- (5) Assure that the services provided by the area authority meet the rules of the Commission and Secretary;
- (6) Comply with federal requirements as a condition of receipt of federal grants; and

- (7) Appoint an area ~~director~~ director, chosen through a search committee on which the Secretary of the Department of Human Resources or the Secretary's designee serves as a nonvoting member.

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

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

Sec. 3. G.S. 122C-118 reads as rewritten:

"§ 122C-118. Structure of area board.

(a) An area board shall have no less than 15 members and no more than 25 members. The size of the area board may be changed from time to time as follows:

- (1) In a single-county area, by the board of county commissioners;
- (2) In a multi-county area by agreement of the boards of county commissioners of all the counties in the catchment area. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) In a single county area, the board of county commissioners shall appoint the members of the area board who may be removed with or without cause.

(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 board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

(c1) The group of county commissioners authorized to make appointments to the area board shall declare vacant the office of a member of the area board who does not attend three scheduled meetings without justifiable excuse within a 12-month period.

(d) The group of county commissioners authorized to make appointments to the area board shall appoint new members to the area board to fill vacancies occurring on the board before the end of the appointed term of office. These appointments are for the rest of the unexpired term of office.

(d1) Whenever a vacancy occurs on the board, it shall be filled within 120 days.

(e) The area board shall include:

- (1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;
- (2) At least ~~two physicians~~ one physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina ~~and who, when possible, one of these physicians should be~~ is certified as having completed a residency in psychiatry;
- (3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;
- (4) At least one individual each, either a primary consumer or an individual from a citizens' organization, representing the interests of individuals with:

- a. Mental illness; and
 - b. Developmental disabilities.
- (4.1) At least one primary consumer ~~each~~ presently and openly in recovery ~~and~~ representing the interests of individuals suffering from alcoholism or other drug abuse. ~~with:~~
- a. ~~Alcoholism;~~ and
 - b. ~~Drug abuse.~~
- (5) At least one family consumer each representing the interest of individuals with:
- a. Mental illness;
 - b. Developmental disabilities; and
 - c. ~~Alcoholism;~~ and Alcoholism or other drug abuse.
 - d. ~~Drug abuse.~~
- (6) At least one attorney licensed to practice in North Carolina.
- (7) At least one member who has experience in finance and can understand and interpret audits and other financial reports.

(f) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity. The terms of county commissioners on an area board are concurrent with their terms as county commissioners. The terms of the other members on the area board shall be for four years, except that upon the initial formation of an area 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."

Sec. 4. G.S. 122C-119 reads as rewritten:

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

- (a) The area board shall meet at least six times per year.
- (b) 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.
- (c) Members of the area board elect the board's chairman. The term of office of the area board chairman shall be one year. A county commissioner area board member may serve as the area board chairman.
- (d) The area board shall establish a finance committee that shall meet at least six times per year to review the financial strength of the area program. The finance committee shall have a minimum of three members, two of whom have expertise in budgeting and fiscal control. If the area board so chooses, the entire area board may function as the finance committee; however, its required meetings as a finance committee shall be distinct from its meetings as an area board."

Sec. 5. G.S. 122C-119.1 reads as rewritten:

"§ 122C-119.1. Area Authority board members' training.

All members of the governing body for an area authority's board of directors ~~authority~~ shall receive initial orientation on board members' responsibilities and training provided by the ~~Division of Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources~~ in fiscal management, budget development, and fiscal accountability. A member's refusal to be trained ~~may~~ shall be grounds for removal from the board."

Sec. 6. G.S. 122C-124 reads as rewritten:

"§ 122C-124. Area Authority funding suspended.

(a) The Secretary of the Department of Human Resources—Resources, after providing written notification of its intent to the area board, may suspend funding to any area authority with a revenue or expenditure budget variance of ten percent (10%) or a significant deterioration in the fund balance of the authority's general fund. A significant deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the balance from one fiscal year to the next without the prior approval of the Department. Area authorities shall report any such revenue or expenditure variance or deterioration in fund balance to the Department of Human Resources within 30 days of its occurrence. In the event that funding is suspended, the Department of Human Resources—Department, after providing written notification of its intent to the area board and after providing the area authority an opportunity to be heard, may contract with, and make payments of Department funds on an interim basis directly to, a contract provider of the area authority to avoid the disruption of direct services to clients.

(b) If the Secretary determines that an area authority is not providing minimally adequate services, in accordance with its annual service plan, to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may withhold funding for the particular service or services in question from the area authority and insure the provision of these services through contracts with public or private agencies or by direct operation by the Department.

(c) Upon suspension of funding, the Department shall, in conjunction with the area authority, develop and implement a corrective plan of action and provide notification to the area authority's board of directors of the plan. The Department shall also keep the county board of commissioners and the area authority's board of directors informed of any ongoing concerns or problems with the area authority's ~~finances.~~ finances or delivery of services."

Sec. 7. G.S. 122C-125 reads as rewritten:

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

At any time that the Secretary of the Department of Human Resources determines that an area authority is in imminent danger of failing financially and of failing to provide direct services to clients, the Secretary—Secretary, after providing written notification of the Secretary's intent to the area board and after providing the area authority an opportunity to be heard, may assume control of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred in the area authority by law. County funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The Secretary shall

adopt rules to define imminent danger of failing financially and of failing to provide direct services to clients.

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

Sec. 8. Part 2 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"§ 122C-125.1. Area Authority failure to provide services; State assumption of service delivery.

At any time that the Secretary determines that an area authority is not providing minimally adequate services, in accordance with its annual service plan, to persons in need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary, after providing written notification of the Secretary's intent to the area board and providing the area authority an opportunity to be heard, may assume control of the particular service in question or of the area authority and appoint an administrator to exercise the powers assumed. This assumption of control shall have the effect of divesting the area authority of its powers in G.S. 122C-117 and all other service delivery powers conferred in the area authority by law as they pertain to this service. County funding of the area authority shall continue when the State has assumed control of a service area or of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority.

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

Sec. 9. G.S. 122C-126 reads as rewritten:

"§ 122C-126. Area authority caretakers appointed.

In the event that an area authority fails to comply with the corrective plan of action required pursuant to G.S. 122C-124 when funding is ~~suspended or suspended~~, pursuant to G.S. 122C-125 when the State assumes financial control of the area authority, ~~or pursuant to G.S. 122C-125.1 when the State assumes control of service delivery, the Secretary of the Department of Human Resources~~ Secretary, after providing written notification of the Secretary's intent to the area board, shall appoint a caretaker administrator, a caretaker board of directors, or both.

The Secretary may assign any of the powers and duties of the director of the area authority and of the board of directors and the caretaker board to the caretaker administrator as it deems necessary and appropriate to continue to provide direct services to clients, including the powers as to the adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority by law. County

funding of the area authority shall continue when the State has assumed control of the financial affairs of the area authority. At no time after the State has assumed this control shall a county withdraw funds previously obligated or appropriated to the area authority. The caretaker administrator and the caretaker board shall perform all of these powers and duties. The Secretary may terminate the contract of any director when it appoints a caretaker administrator. The Administrative Procedure Act shall apply to any such decision. Neither party to any such contract shall be entitled to damages.

After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority."

Sec. 10. Reductions in fiscal year 1995-96 appropriations as a result of reductions in the Social Services Block Grant federal funds shall be absorbed by the Department of Human Resources.

Sec. 11. This section and Section 10 of this act become effective July 1, 1996. The remainder of this act becomes effective October 1, 1996.

In the General Assembly read three times and ratified this the 21st day of June, 1996.

Dennis A. Wicker
President of the Senate

Harold J. Brubaker
Speaker of the House of Representatives