Article 4.

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

Part 1. Policy.

§ 122C-101. Policy.

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

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

(a) Purpose of State Plan. – The Department shall develop and implement a State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services. The purpose of the State Plan is to provide a strategic template regarding how State and local resources shall be organized and used to provide services. The State Plan shall be issued every three years beginning July 1, 2007. It shall identify specific goals to be achieved by the Department, area authorities, and county programs over a three-year period of time and benchmarks for determining whether progress is being made towards those goals. It shall also identify data that will be used to measure progress towards the specified goals. In order to increase the ability of the State, area authorities, county programs, private providers, and consumers to successfully implement the goals of the State Plan, the Department shall not adopt or implement policies that are inconsistent with the State Plan without first consulting with the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services.

(b) Content of State Plan. – The State Plan shall include the following:

(1) Vision and mission of the State Mental Health, Developmental Disabilities, and Substance Abuse Services system.

(2) Repealed by Session Laws 2006-142, s. 2(a), effective July 19, 2006.

(3) Protection of client rights and consumer involvement in planning and management of system services.

(4) Provision of services to targeted populations, including criteria for identifying targeted populations.

(5) Compliance with federal mandates in establishing service priorities in mental health, developmental disabilities, and substance abuse.

(6) Description of the core services that are available to all individuals in order to improve consumer access to mental health, developmental disabilities, and substance abuse services at the local level.

(7) Service standards for the mental health, developmental disabilities, and substance abuse services system.

(8) Implementation of the uniform portal process.

(9) Strategies and schedules for implementing the service plan, including consultation on Medicaid policy with area and county programs, qualified providers, and others as designated by the Secretary, intersystem collaboration, promotion of best practices, technical assistance, outcome-based monitoring, and evaluation.

(10) A plan for coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the Medicaid State Plan.

(11) A business plan to demonstrate efficient and effective resource management of the mental health, developmental disabilities, and substance abuse services system, including strategies for accountability for non-Medicaid and Medicaid services.

(12) Strategies and schedules for implementing a phased in plan to eliminate disparities in the allocation of State funding across county programs and area authorities by January 1, 2007, including methods to identify service gaps and to ensure equitable use of State funds to fill those gaps among all counties.

(c) Repealed by Session Laws 2013-360, s. 12A.8(c), effective July 1, 2013. (2001-437, s. 1.5; 2006-142, s. 2(a); 2011-291, s. 2.42; 2013-360, s. 12A.8(c); 2022-74, s. 9D.15(z).)

§§ 122C-103 through 122C-110. Reserved for future codification purposes.

Part 2. State, County and Area Authority.

§ 122C-111. Administration.

The Secretary shall administer and enforce the provisions of this Chapter and the rules of the Commission and shall operate State facilities. An area director shall enforce applicable State laws, rules of the Commission, and rules of the Secretary. The Secretary in cooperation with area directors and State facility directors shall provide for the coordination of public services between area authorities and State facilities. An area authority shall monitor the provision of mental health, developmental disabilities, and substance use disorder services for compliance with the law, which monitoring and management shall not supersede or duplicate the regulatory authority or functions of agencies of the Department. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2001-437, s. 1.6; 2002-164, s. 4.2; 2006-142, s. 4(b); 2023-134, s. 9G.7A(a4).)

§ 122C-112: Repealed by Session Laws 2001-437, s. 1.7(a), effective July 1, 2002.

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

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

(1) Oversee development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary.

(3) through (5) Repealed by Session Laws 2023-134, s. 9G.7A(a5), effective October 3, 2023.

(6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, third-party contractors of area authorities, and all providers of public services with State and federal policy, law, and standards. The procedures shall include the development and use of critical performance measures and report cards for each area authority.

(7) Conduct regularly scheduled monitoring and oversight of area authorities and all providers of public services. Monitoring and oversight shall be used to assess implementation of core LME functions. Monitoring shall also include the

examination of LME and provider performance on outcome measures including adherence to best practices, the assessment of consumer satisfaction, and the review of client rights complaints.

(8) Make findings and recommendations based on information and data collected pursuant to subdivision (7) of this subsection and submit these findings and recommendations to the applicable area authority board, board of county commissioners, providers of public services, and to the Local Consumer Advocacy Office.

(9) Provide ongoing and focused technical assistance to area authorities in the implementation of the LME functions and the establishment and operation of community-based programs. The Secretary shall include in the State Plan a mechanism for monitoring the Department's success in implementing this duty and the progress of area authorities in achieving these functions.

(10) Operate State facilities and adopt rules pertaining to their operation.

(11) Develop a unified system of services provided at the community level, by State facilities, and by providers enrolled or under a contract with the State and an area authority.

(12) Adopt rules governing the expenditure of all funds for mental health, developmental disabilities, and substance abuse programs and services.

(13) Adopt rules to implement the appeal procedure authorized by G.S. 122C-151.2.

(14) Implement the uniform portal process developed under rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services in accordance with G.S. 122C-114.

(15) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.

(16) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252.

(17) Promote public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse.

(18) Administer and enforce rules that are conditions of participation for federal or State financial aid.

(19) Carry out G.S. 122C-361.

(20) Monitor the fiscal and administrative practices of area authorities to ensure that the area authorities are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance use disorder services. The Secretary shall ensure maximum accountability by area authorities for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. The Secretary shall further ensure that the practices are consistent with professionally accepted accounting and management principles.

(21) Provide technical assistance, including conflict resolution, to counties as requested by the county.

(22) Develop a methodology to be used for calculating county resources to reflect cash and in-kind contributions of the county.

(23) Adopt rules establishing program evaluation and management of mental health, developmental disabilities, and substance abuse services.

(24) Adopt rules regarding the requirements of the federal government for grants-in-aid for mental health, developmental disabilities, or substance use disorder programs which may be made available to area authorities or the State. This section shall be liberally construed in order that the State and its citizens may benefit from the grants-in-aid.

(25) Repealed by Session Laws 2023-134, s. 9G.7A(a5), effective October 3, 2023.

(26) Establish a process for approving area authorities to provide services directly in accordance with G.S. 122C-141.

(27) Sponsor training opportunities in the fields of mental health, developmental disabilities, and substance use disorder.

(28) Enforce the protection of the rights of clients served by State facilities, area authorities, and providers of public services.

(29) Adopt rules for the enforcement of the protection of the rights of clients being served by State facilities, area authorities, and providers of public services.

(30) Prior to requesting approval to close a State facility under G.S. 122C-181(b):

a. Notify the Joint Legislative Commission on Governmental Operations, the Joint Legislative Oversight Committee on Health and Human Services, and members of the General Assembly who represent catchment areas affected by the closure; and

b. Present a plan for the closure to the members of the Joint Legislative Oversight Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Senate Appropriations Committee on Health and Human Services for their review, advice, and recommendations. The plan shall address specifically how patients will be cared for after closure, how support services to community-based agencies and outreach services will be continued, and the impact on remaining State facilities. In implementing the plan, the Secretary shall take into consideration the comments and recommendations of the committees to which the plan is presented under this subdivision.

(31) Ensure that the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services is coordinated with the Medicaid State Plan.

(32) Implement standard forms, quality measures, contracts, processes, and procedures to be used by all area authorities with other public and private service providers. The Secretary shall consult with LMEs, CFACs, counties, and qualified providers regarding the development of any forms, processes, and procedures required under this subdivision. Any document, process, or procedure developed under this subdivision shall place an obligation upon providers to transmit to LMEs timely client information and outcome data. The Secretary shall also adopt rules regarding what constitutes a clean claim for purposes of billing.

When implementing this subdivision, the Secretary shall balance the need for LMEs to exercise discretion in the discharge of their LME functions with the

need of qualified providers for a uniform system of doing business with public entities.

(33) Develop and implement critical performance indicators to be used to hold LMEs accountable for managing the mental health, developmental disabilities, and substance use disorder services system. The performance system indicators shall be implemented no later than July 1, 2007.

(34) Adopt a copayment schedule for behavioral health services, intellectual and developmental disabilities services, and substance use disorder services based on the Medicaid copayments for those services to be used by LMEs and by contractual provider agencies under G.S. 122C-146. The copayment schedule adopted under this subdivision shall require a copayment for services identified by the Secretary. Families whose family income is three hundred percent (300%) or greater of the federal poverty level are eligible for services with the applicable copayment.

(35) Develop and adopt rules governing a statewide data system containing waiting list information obtained annually from each LME as required under G.S. 122C-115.4(b)(8). The rules adopted shall establish standardized criteria to be used by LMEs to ensure that the waiting list data are consistent across LMEs. The Department shall use data collected from LMEs under G.S. 122C-115.4(b)(8) for statewide planning and needs projections. The creation of the statewide waiting list data system does not create an entitlement to services for individuals on the waiting list. The Department shall report annually to the Joint Legislative Oversight Committee on Health and Human Services its recommendations based on data obtained annually from each LME. The report shall indicate the services that are most needed throughout the State, plans to address unmet needs, and any cost projections for providing needed services.

(36) The Department shall ensure that developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Use Services, including CAP-MRDD are authorized on a quarterly, semiannual, or annual basis, in accordance with guidelines issued by the Department, unless a change in the individual's person-centered plan indicates a different authorization frequency.

(37) The Department shall develop new developmental disability service definitions for developmental disability services funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Use Services, including CAP-MRDD that allow for person-centered and self-directed supports.

(38) Repealed by Session Laws 2023-134, s. 9G.7A(a5), effective October 3, 2023.

(39) Develop and use a standard contract for all local management entity/managed care organizations for operation of the 1915(b)/(c) Medicaid Waiver that requires compliance by each LME/MCO with all provisions of the contract to operate the 1915(b)/(c) Medicaid Waiver and with all applicable provisions of State and federal law.

(b) The Secretary may do the following:

(1) Acquire, by purchase or otherwise in the name of the Department, equipment, supplies, and other personal property necessary to carry out the mental health, developmental disabilities, and substance abuse programs.
(2) Promote and conduct research in the fields of mental health, developmental disabilities, and substance abuse; promote best practices.
(3) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description that shall be used by the Secretary for the purpose of carrying out mental health, developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office.
(4) Accept, allocate, and spend any federal funds for mental health, developmental disabilities, and substance abuse activities that may be made available to the State by the federal government. This Chapter shall be liberally construed in order that the State and its citizens may benefit fully from these funds. Any federal funds received shall be deposited with the Department of State Treasurer and shall be appropriated by the General Assembly for the mental health, developmental disabilities, or substance abuse purposes specified.
(5) Enter into agreements authorized by G.S. 122C-346.
(6) Notwithstanding G.S. 126-18, authorize funds for contracting with a person, firm, or corporation for aid or assistance in locating, recruiting, or arranging employment of health care professionals in any facility listed in G.S. 122C-181.
(7) Contract with one or more private providers or other public service agencies to serve clients of an area authority or county program and reallocate program funds to pay for services under the contract if the Secretary finds all of the following:
    a. The area authority or county program refuses or has failed to provide the services to clients within its catchment area, or provide specialty services in another catchment area, in a manner that is at least adequate.
    b. Clients within the area authority or county program catchment area will either not be served or will suffer an unreasonable hardship if required to obtain the services from another area authority or county program.
    c. There is at least one private provider or public service agency within the area authority or county program catchment area, or within reasonable proximity to the catchment area, willing and able to provide services under contract.

    Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and to the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.
(8) Contract with one or more private providers or other public service agencies to serve clients from more than one area authority or county program and reallocate the funds of the applicable programs to pay for services under the contract if the Secretary finds either that there is no other area authority or county program available to act as the administrative entity under contract with

the provider or that the area authority or county program refuses or has failed to properly manage and administer the contract with the contract provider, and clients will either not be served or will suffer unreasonable hardship if services are not provided under the contract. Before contracting with a private provider as authorized under this subdivision, the Secretary shall provide written notification to the area authority or county program and the applicable participating boards of county commissioners of the Secretary's intent to contract and shall provide the area authority or county program and the applicable participating boards of county commissioners an opportunity to be heard.

(9) Require reports of client characteristics, staffing patterns, agency policies or activities, services, or specific financial data of the area authority, county program, and providers of public services. The reports shall not identify individual clients of the area authority or county program unless specifically required by State law or by federal law or regulation or unless valid consent for the release has been given by the client or legally responsible person. (2001-437, s. 1.7(b); 2006-142, s. 4(m); 2007-410, s. 2; 2007-504, s. 2.2; 2009-186, s. 2; 2011-291, ss. 2.43, 2.44; 2012-151, s. 7(b); 2013-85, s. 3; 2021-77, s. 3; 2022-74, s. 9D.15(z); 2023-65, s. 5.2(b); 2023-134, s. 9G.7A(a5), (c1), (c2).)

§ 122C-113. Cooperation between Secretary and other agencies.

(a) The Secretary shall cooperate with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, developmentally disabled, or substance abusers. The Secretary shall also coordinate with these agencies to provide public education to promote a better understanding of mental illness, developmental disabilities, and substance abuse.

(b) The Secretary shall promote cooperation among area facilities, State facilities, and local agencies to facilitate the provision of services to individuals who are mentally ill, developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education and the Division of Juvenile Justice of the Department of Public Safety in coordinating the responsibilities of the Department of Health and Human Services, the State Board of Education, the Division of Juvenile Justice of the Department of Public Safety, and the Department of Public Instruction for adolescent substance abuse programs. The Department of Health and Human Services, through its Division of Mental Health, Developmental Disabilities, and Substance Use Services and its Division of Child and Family Well-Being, in cooperation with the Division of Juvenile Justice of the Department of Public Safety, shall be responsible for intervention and treatment in non-school based programs. The State Board of Education and the Department of Public Instruction, in consultation with the Division of Juvenile Justice of the Department of Public Safety, shall have primary responsibility for in-school education, identification, and intervention services, including student assistance programs.

(c) The Secretary shall adopt rules to assure this coordination. (1963, c. 1166, s. 3; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1987, c. 863, s. 1; 1989, c. 625, s. 14; 1993, c. 522, s. 9; 1997-443, s. 11A.118(a); 1998-202, s. 4(s); 2000-137, s. 4(v); 2011-145, s. 19.1(l); 2017-186, s. 2(mmmmm); 2021-180, s. 19C.9(z); 2023-65, ss. 3.3, 5.2(b).)

§ 122C-114. Powers and duties of the Commission.

(a) The Commission shall have authority as provided by this Chapter, Chapters 90 and 148 of the General Statutes, and by G.S. 143B-147.

(b) The Commission shall adopt rules regarding all of the following:

(1) The development of a process for screening, triage, and referral, including a uniform portal process, for implementation by the Secretary as required under G.S. 122C-112.1(14).

(2) LME monitoring of providers of mental health, developmental disabilities, and substance abuse services.

(3) LME provision of technical assistance to providers of mental health, developmental disabilities, and substance abuse services.

(4) The requirements of a qualified public or private provider as that term is used in G.S. 122C-141. In adopting rules under this subsection, the Commission shall take into account the need to ensure fair competition among providers. (C.S., s. 6153; 1929, c. 265, s. 1; 1933, c. 342, s. 1; 1943, cc. 32, 164; 1945, c. 952, s. 9; 1947, c. 537, s. 5; 1957, c. 1232, s. 1; 1959, c. 348, s. 3; c. 1002, s. 3; c. 1028, ss. 1, 2, 3, 5; 1963, c. 451, s. 1; c. 1166, s. 10; 1973, c. 476, s. 133; 1977, c. 679, s. 7; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2007-504, s. 2.3; 2012-66, s. 1.)

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

(a) A county shall provide mental health, developmental disabilities, and substance use disorder services in accordance with rules, policies, and guidelines adopted pursuant to statewide restructuring of the management responsibilities for the delivery of services for individuals with mental illness, intellectual or other developmental disabilities, and substance use disorders through an area authority. The catchment area of an area authority shall contain a minimum population of at least 1,500,000 based on the 2023 population estimate from the State Demographer of the Office of Budget and Management. To the extent this section conflicts with G.S. 153A-77, the provisions of this section control.

(a1) Repealed by Session Laws 2023-134, s. 9G.7A(a6), effective October 3, 2023.

(a2) Repealed by Session Laws 2023-134, s. 9G.7A(a6), effective October 3, 2023.

(a3) Repealed by Session Laws 2023-134, s. 9G.7A(a6), effective October 3, 2023.

(b) Counties shall 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, 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.

(c1) Repealed by Session Laws 2023-134, s. 9G.7A(a6), effective October 3, 2023.

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

(e) Beginning July 1, 2021, LME/MCOs shall cease managing Medicaid services for all Medicaid recipients who are enrolled in a standard benefit plan.

(e1) Until BH IDD tailored plans become operational, all of the following shall occur:

(1) LME/MCOs shall continue to manage the Medicaid services that are covered by the LME/MCOs under the combined 1915(b) and (c) waivers for Medicaid recipients who are covered by the those waivers and who are not enrolled in a standard benefit plan.

(2) The Division of Health Benefits shall negotiate actuarially sound capitation rates directly with the LME/MCOs based on the change in composition of the population being served by the LME/MCOs.

(3) Capitation payments under contracts between the Division of Health Benefits and the LME/MCOs shall be made directly to the LME/MCO by the Division of Health Benefits.

(f) LME/MCOs operating the BH IDD tailored plans under G.S. 108D-60 may contract with the Department to continue to manage the behavioral health, intellectual and developmental disability, and traumatic brain injury services for any Medicaid recipients who are not enrolled in a BH IDD tailored plan or the CAF specialty plan. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 5, 23; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 749, s. 1; 1999-202, s. 1; 2001-437, s. 1.8; 2004-124, s. 10.26(a); 2006-66, s. 10.32(c), (d); 2007-504, s. 1.3; 2011-264, s. 2; 2012-151, ss. 1, 6; 2013-85, s. 4(a)-(c); 2013-363, s. 4.12(a); 2013-378, s. 11; 2013-410, s. 23(a); 2015-245, s. 4; 2018-48, s. 1; 2019-81, ss. 12, 14(a)(8); 2020-88, s. 12(c); 2021-62, ss. 3.4A(b), 4.8(d); 2023-65, s. 5.1(a); 2023-134, ss. 9E.22(m), 9G.7A(a6); 2024-34, s. 12.2.)

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

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

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

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

a. Masters degree.

b. Related experience.

c. Management experience.

d. Any other qualifications required under G.S. 122C-120.1.

(3) Repealed by Session Laws 2006-66, s. 10.32(e), effective July 1, 2007.

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

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

(6) Appointment of an advisory committee. The interlocal agreement shall designate a county manager to whom the advisory committee shall report. The interlocal agreement shall also designate the appointing authorities. The appointing authorities shall make appointments that take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements provided in G.S. 122C-118.1.

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

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

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

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

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

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

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

(g) In a single-county program, an advisory committee shall be appointed by the board of county commissioners and shall report to the county manager. The appointments shall take into account sufficient citizen participation, equitable representation of the disability groups, and equitable representation of participating counties. The membership shall conform to the requirements in G.S. 122C-118.1. In a multicounty program, the advisory committee shall be appointed in accordance with the terms of the interlocal agreement.

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

(i) Except as otherwise specifically provided, this Chapter applies to counties that provide mental health, developmental disabilities, and substance abuse services through a county program. As used in the applicable sections of this Article, the terms "area authority", "area program", and "area facility" shall be construed to include "county program". (2001-437, s. 1.9; 2006-66, s. 10.32(e); 2006-142, s. 4(f), (g), (i), (j); 2012-151, s. 2(b).)

§ 122C-115.2. Repealed by Session Laws 2023-134, s. 9G.7A(a7), effective October 3, 2023.

§ 122C-115.3. Repealed by Session Laws 2023-134, s. 9G.7A(a7), effective October 3, 2023.

§ 122C-115.4. Functions of local management entities.

(a) Local management entities are responsible for the management and oversight of the public system of services for people with serious mental illness, severe and persistent mental illness, intellectual and developmental disabilities, traumatic brain injuries, and severe substance use disorders at the community level. An LME shall plan, develop, implement, and monitor services within a specified geographic area to ensure expected outcomes for consumers within available resources.

(a1) Local management entities may perform services within their expertise and experience on a statewide basis or outside their specified geographic area pursuant to contracts or grants awarded to the local management entity.

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

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

(2) Provider monitoring, technical assistance, capacity development, and quality control. If at anytime the LME has reasonable cause to believe a violation of licensure rules has occurred, the LME shall make a referral to the Division of Health Service Regulation. If at anytime the LME has reasonable cause to believe the abuse, neglect, or exploitation of a client has occurred, the LME shall make a referral to the local Department of Social Services, Child Protective Services Program, or Adult Protective Services Program.

(3) Utilization management, utilization review, and determination of the appropriate level and intensity of services. An LME may participate in the development of person centered plans for any consumer and shall monitor the implementation of person centered plans. An LME shall review and approve person centered plans for consumers who receive State-funded services and shall conduct concurrent reviews of person centered plans for consumers in the LME's catchment area who receive Medicaid funded services.

(4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.

(5) Care coordination and quality management. This function involves individual client care decisions at critical treatment junctures to assure clients' care is

coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results. Care coordination is sometimes referred to as "care management." Care coordination shall be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:

a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
b. Addressing difficult situations for clients or providers.
c. Consulting with providers regarding difficult or unusual care situations.
d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
e. Coordinating client transitions from one service to another.
f. Conducting customer service interventions.
g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
h. Interfacing with utilization reviewers and case managers.
i. Providing leadership on the development and use of communication protocols.
j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.

(6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.

(7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.

(7a) Community crisis services planning in accordance with G.S. 122C-202.2.

(8) Each LME shall develop a waiting list of persons with intellectual or developmental disabilities that are waiting for specific services. The LME shall develop the list in accordance with rules adopted by the Secretary to ensure that waiting list data are collected consistently across LMEs. Each LME shall report this data annually to the Department. The data collected should include numbers of persons who are:

a. Waiting for residential services.
b. Potentially eligible for CAP-MRDD.
c. In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Use Services, including CAP-MRDD.

(9) Each LME/MCO shall receive referrals from school superintendents or designees in accordance with G.S. 115C-105.65(b)(3) related to students who

are uninsured or are covered by Medicaid and not enrolled in a prepaid health plan residing in the LME/MCO's catchment area. Within 10 calendar days after receipt of a referral, the LME/MCO shall contact the student's parent or legal guardian using the information provided on the referral and shall provide assistance with identifying appropriate existing mental health resources available to the student. The assistance shall include identifying sources of funding to assist with the cost of mental health services as well as providing referrals to appropriate mental health service providers and mental health services.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions.

(c) Subject to subsection (b) of this section, all applicable State and federal laws and rules, and contractual requirements established by the Secretary, an LME may contract with a public or private entity for the implementation of LME functions designated under subsection (b) of this section. An LME shall direct its subcontractor to remove staff from, or cancel, any such contract when directed by the Secretary to achieve compliance with State and federal law, rule, policy, or standards, and contractual requirements.

(d) Repealed by Session Laws 2023-134, s. 9G.7A(c4), effective October 3, 2023.

(e) Repealed by Session Laws 2023-134, s. 9G.7A(c4), effective October 3, 2023.

(f) The Commission shall adopt rules regarding the following matters:

(1) The definition of a high risk consumer. Until such time as the Commission adopts a rule under this subdivision, a high risk consumer means a person who has been assessed as needing emergent crisis services three or more times in the previous 12 months.

(2) The definition of a high cost consumer. Until such time as the Commission adopts a rule under this subdivision, a high cost consumer means a person whose treatment plan is expected to incur costs in the top twenty percent (20%) of expenditures for all consumers in a disability group.

(3) Repealed by Session Laws 2023-134, s. 9G.7A(c5), effective October 3, 2023.

(g) The Commission shall adopt rules to ensure that the needs of members of the active and reserve components of the Armed Forces of the United States, veterans, and their family members are met by requiring:

(1) Each LME to have at least one trained care coordination person on staff to serve as the point of contact for TRICARE, the North Carolina National Guard's Integrated Behavioral Health System, the Army Reserve Department of Psychological Health, the United States Department of Veterans Affairs, the Division of Juvenile Justice, and related organizations to ensure that members of the active and reserve components of the Armed Forces of the United States, veterans, and their family members have access to State-funded services when they are not eligible for federally funded mental health or substance abuse services.

(2) LME staff members who provide screening, triage, or referral services to receive training to enhance the services provided to members of the active or reserve components of the Armed Forces of the United States, veterans, and

their families. The training required by this subdivision shall include training on at least all of the following:

a. The number of persons who serve or who have served in the active or reserve components of the Armed Forces of the United States in the LME's catchment area.

b. The types of mental health and substance abuse disorders that these service personnel and their families may have experienced, including traumatic brain injury, posttraumatic stress disorder, depression, substance use disorders, potential suicide risks, military sexual trauma, and domestic violence.

c. Appropriate resources to which these service personnel and their families may be referred as needed. (2006-142, s. 4(d); 2007-323, ss. 10.49(l), (hh); 2007-484, ss. 18, 43.7(a)-(c); 2007-504, s. 1.2; 2008-107, s. 10.15(cc); 2009-186, s. 1; 2009-189, s. 1; 2011-145, s. 19.1(h); 2011-185, s. 6; 2011-291, s. 2.45; 2012-66, s. 2; 2012-83, s. 43; 2017-186, s. 2(nnnnn); 2018-33, s. 6; 2021-180, s. 19C.9(z); 2023-65, s. 5.2(b); 2023-78, s. 2(c); 2023-134, ss. 9E.22(n), 9G.7A(c3)-(c5).)

§ 122C-115.5. Alignment of counties with an area authority.

(a) Reserved for future codification purposes.

(b) Reserved for future codification purposes.

(c) Area authorities may add one or more additional counties to their existing catchment area, including through the merger or consolidation of area authorities, upon the adoption of a resolution to that effect by a majority of the members of the area board and the approval of the Secretary.

(d) The Secretary shall direct the dissolution of an area authority upon any of the following:

(1) The termination of a BH IDD tailored plan contract with an area authority.

(2) The Secretary's delivery of a notice of noncompliance to an area authority under G.S. 122C-124.2(c) or G.S. 122C-124.2(d).

(e) When an area authority is dissolved at the direction of the Secretary, all of the following shall occur:

(1) The Secretary shall deliver a notice of dissolution to the board of county commissioners of each of the counties in the dissolved area authority.

(2) The area authority shall be dissolved on a time line established by the Secretary. The Secretary shall allow at least seven but no more than 30 calendar days for all of the following to occur:

a. The completion by the area authority being dissolved of negotiations for a merger or consolidation with one or more compliant area authorities.

b. The submission to the Secretary of any requests for consideration with regard to the realignment with another area authority by any county in the catchment area of the area authority being dissolved.

(3) The area authority being dissolved shall cooperate with the Secretary in order to ensure the uninterrupted provision of services to Medicaid recipients and the other individuals who received services through the area authority.

(4) The Secretary shall assign any contracts, as defined in G.S. 122C-124.2(g), of the area authority being dissolved to the one or more area authorities that (i) are under contract for the operation of a BH IDD tailored plan and (ii) are receiving at least one county from the area authority being dissolved. The Secretary may consult with the area directors and chairs of the area boards of (i) the area authority being dissolved and (ii) the remaining area authorities before assigning these contracts. The Secretary shall take into consideration the factors described in subsection (f) of this section in assigning these contracts.

(5) The Secretary shall assign the State-funded services contract between the area authority being dissolved and the Division of Mental Health, Developmental Disabilities, and Substance Use Services to the area authorities receiving the counties from the area authority being dissolved.

(6) The Secretary shall effectuate and oversee the orderly transfer of all management responsibilities, operations, and contracts of the area authority being dissolved, including the responsibility of paying providers for covered services that are subsequently rendered.

(7) The Secretary shall arrange for the providers of services to be reimbursed for proper, authorized, and valid claims for services rendered that were not previously paid by the area authority being dissolved. These reimbursements shall be made from the remaining fund balance or risk reserve of the area authority being dissolved, or from other funds of the Department if necessary. In the event there are insufficient assets to satisfy the liabilities of the area authority being dissolved, it shall be the responsibility of the Secretary to satisfy the liabilities of the area authority being dissolved.

(8) Effective until the date that BH IDD tailored plans begin operating, risk reserve funds of the area authority being dissolved may be used only to pay authorized and approved provider claims. Any funds remaining in the risk reserve transferred under this subdivision shall become part of the risk reserve of the area authorities receiving the realigned counties and shall be subject to the same restrictions on the use of the risk reserve applicable to those area authorities.

(9) The Secretary may assume control, in part or in full, of the financial affairs of the area authority and appoint an administrator to exercise the powers assumed by the Secretary. This assumption of control shall have the effect of divesting the area authority of its authority as to the powers assumed, including service delivery, adoption of budgets, expenditures of money, and all other financial powers conferred on the area authority by law.

(10) County funding of the area authority shall continue and shall not be reduced as a result of the dissolution. A county shall not withdraw funds previously obligated or appropriated to the area authority.

(11) Any fund balance or risk reserve available to an area authority at the time of its dissolution that is not utilized to pay liabilities shall be transferred to one or more area authorities contracted to operate the 1915(b)/(c) Medicaid Waiver or a BH IDD tailored plan in all or a portion of the catchment area of the dissolved area authority, as directed by the Department in accordance with G.S. 122C-115.6.

(12) Effective until the date that BH IDD tailored plans begin operating, if the fund balance transferred from the dissolved area authority under subdivision (11) of this subsection is insufficient to constitute fifteen percent (15%) of the anticipated operational expenses arising from assumption of responsibilities from the dissolved area authority, the Secretary shall guarantee the operational reserves for the area authority assuming the responsibilities under the 1915(b)/(c) Medicaid Waiver until the assuming area authority has reestablished fifteen percent (15%) operational reserves.

(f) In considering whether to approve any merger or consolidation of area authorities, or in determining how to assign any contracts, as defined in G.S. 122C-124.2(g), of an area authority following the termination of a BH IDD tailored plan contract under subsection (d) of this section, the Secretary may consider, at a minimum, all of the following factors:

(1) For any area authority receiving a county, the readiness of that area authority to operate the BH IDD tailored plan in the expanded catchment area.
(2) For any area authority receiving a county, the area authority's operational capacity and history of performance.
(3) Whether the distribution among area authorities of the population of individuals covered under BH IDD tailored plans will promote fiscal viability of BH IDD tailored plan contracts.
(4) Assurances of network adequacy and the alignment with existing hospitals and health systems of the area authorities involved in the merger or consolidation.
(5) For any area authority involved in the merger or consolidation, the area authority's experience with prior mergers and consolidations.
(6) Any input received by a county being realigned from one area authority to another.
(7) Geographic contiguity of counties within a catchment area.
(8) For any area authority receiving a county, the number of providers that will have to enter into new contracts with that area authority.
(9) Any input received from a provider or a Consumer and Family Advisory Committee established under G.S. 122C-170 or G.S. 122C-171.

(g) The Secretary's decision to approve or disapprove a merger or consolidation of area authorities is final, and there is no right to appeal the decision to the Office of Administrative Hearings, in accordance with G.S. 150B-1(e)(21), or any other forum. (2023-134, s. 9G.7A(a1).)

§ 122C-115.6. Transfer of area authority fund balance upon county realignment.

(a) When a county realigns with another area authority under G.S. 108D-46 or G.S. 122C-115.5, regardless of whether the realignment was due to the merger of area authorities, the consolidation of area authorities, or another process, a portion of the risk reserve and other funds of the area authority from which the county is disengaging shall be transferred to the area authority with which the county is realigning. The amount of risk reserve and other funds to be transferred shall be determined by the Department in accordance with a formula or formulas developed in accordance with this section.

(b) Any formula developed by the Department under this section shall consider the stability of both the area authority from which the county is disengaging and the area authority with which the county is realigning. The formula shall support (i) the ability for each area authority to carry out its responsibilities under State law, (ii) the successful operation of the 1915(b)/(c)

waivers, (iii) the capitated arrangements authorized by G.S. 108D-60(b), and (iv) the successful operation of BH IDD tailored plans under G.S. 108D-60. The formula shall assure that the area authority from which the county is disengaging retains sufficient funds to pay any outstanding liabilities to healthcare providers, staff-related expenses, and other liabilities.

(c) The area authority from which the county is disengaging and the area authority with which the county is realigning shall provide the Department with all financial information requested by the Department that is necessary to determine the amount of funds to be transferred using the formula or formulas developed under this section, upon any of the following:

(1) The Secretary's approval of a county realignment under G.S. 108D-46 or G.S. 122C-115.5.

(2) The Secretary's delivery of a notice of dissolution to the area authority under G.S. 122C-115.5(e)(1).

(d) Prior to finalizing any formula developed under this section, the Department shall post the proposed formula on its website and provide notice of the proposed formula to all area authorities, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid, and the Fiscal Research Division. The Department shall accept public comment on the proposed formula. The Department shall post the final version of the formula on its website.

(e) The Department may amend the formula as needed to ensure the requirements of subsection (b) of this section are met. Prior to finalizing any amended formula developed under this section, the Department shall post the proposed amended formula on its website and provide notice of the proposed amended formula to all area authorities, the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid, and the Fiscal Research Division. The Department shall accept public comment on the proposed amended formula. The Department shall post the final version of the amended formula on its website.

(f) Beginning July 15, 2023, and quarterly thereafter, the Department shall report to the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid, and the Fiscal Research Division on any funds transferred as a result of county realignments during the previous quarter.

(g) The development, application, and amendment of the formula or formulas under this section shall be exempt from the rulemaking requirements and contested case provisions of Chapter 150B of the General Statutes, as provided in G.S. 150B-1(d)(34) and G.S. 150B-1(e)(27). (2023-134, s. 9G.7A(a1); 2024-1, s. 3.3(a), (b).)

§ 122C-115.7. Children and families specialty plan operation.

An area authority is authorized to operate the CAF specialty plan under a contract with the Department. For purposes of operating the CAF specialty plan only, all of the following apply:

(1) The area authority shall have a statewide catchment area.

(2) Counties are prohibited from withdrawing from or declining to participate in the statewide catchment area of the CAF specialty plan. (2023-134, s. 9E.22(o).)

§ 122C-116. Status of area authority; status of consolidated human services agency.

(a) An area authority is a local political subdivision of the State.

(b) A consolidated human services agency is a department of the county.

(c) One or more area authorities may jointly form a consortium, through an interlocal agreement, for the purpose of responding to requests for proposals issued by the Department and

contracting with the Department. The consortium shall be considered a multicounty public authority and a local political subdivision of the State and shall establish, by interlocal agreement, an alternative governance structure that reports to the area boards of each participating area authority. The boards of each participating area authority shall have the option to appoint members of the multicounty public authority board in a manner or with a composition other than as required by G.S. 122C-118.1 by each participating area board adopting a resolution to that effect and receiving written approval from the Secretary.

(d) An area authority may, individually or in concert with other eligible entities such as other area authorities, entities licensed as a prepaid health plan under G.S. 58-93-5, or other permitted bidders, respond to requests for proposals issued by the Department to cover services on a statewide basis and contract with the Department to cover these services. An area authority may, through an interlocal agreement, be designated by other area authorities as the lead applicant to respond to requests for proposals issued by the Department and to contract with the Department to cover services on a statewide basis. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 2; 1981, c. 51, ss. 3, 4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 690, s. 10; 2012-151, s. 2(a); 2023-134, s. 9E.22(p).)

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

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

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

(2) Ensure the provision of services to clients in the catchment area, including clients committed to the custody of the Division of Juvenile Justice of the Department of Public Safety.

(3) Determine the needs of the area authority's clients and coordinate with the Secretary and with the Division of Juvenile Justice of the Department of Public Safety 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. The area authority shall submit the approved budget to the board of county commissioners and the county manager and provide quarterly reports on the financial status of the program in accordance with subsection (c) of this section.

(5) Assure that the services provided by the county through the area authority meet the rules of the Commission and Secretary.

(6) Comply with federal requirements as a condition of receipt of federal grants.

(7) Appoint an area director in accordance with G.S. 122C-121(d).

(8) Repealed by Session Laws 2023-134, s. 9G.7A(a7), effective October 3, 2023.

(9) Perform public relations and community advocacy functions.

(10) Recommend to the board of county commissioners the creation of local program services.

(11) Submit to the Secretary and the board of county commissioners service delivery reports, on a quarterly basis, that assess the quality and availability of public services within the area authority's catchment area. The service delivery reports shall include the types of services delivered, number of recipients served, and services requested but not delivered due to staffing, financial, or other

constraints. In addition, at least annually, a progress report shall be submitted to the Secretary and the board of county commissioners. The progress report shall include an assessment of the progress in implementing local service plans, goals, and outcomes. All reports shall be in a format and shall contain any additional information required by the Secretary or board of county commissioners.

(12) Repealed by Session Laws 2023-134, s. 9G.7A(a7), effective October 3, 2023.

(13) Coordinate with Treatment Accountability for Safer Communities for the provision of services to criminal justice clients.

(14) Maintain a 24-hour a day, seven day a week crisis response service. Crisis response shall include telephone and face-to-face capabilities. Crisis phone response shall include triage and referral to appropriate face-to-face crisis providers and shall be initiated within one hour of notification. Crisis services do not require prior authorization but shall be delivered in compliance with appropriate policies and procedures. Crisis services shall be designed for prevention, intervention, and resolution, not merely triage and transfer, and shall be provided in the least restrictive setting possible, consistent with individual and family need and community safety.

(15) An LME that utilizes single stream funding shall, on a biannual basis, report on the allocation of service dollars and allow for public comment at a regularly scheduled LME board of directors meeting.

(16) Before an LME proposes to reduce State funding to HUD group homes and HUD apartments below the original appropriation of State funds, the LME must:

a. Receive approval of the reduction in funding from the Department, and

b. Hold a public hearing at an open LME board meeting to receive comment on the reduction in funding.

(17) Have the authority to borrow money with the approval of the Local Government Commission.

(18) Develop and adopt community crisis services plans in accordance with G.S. 122C-202.2.

(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.

(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide the quarterly report of the area authority to the county finance officer. The county finance officer shall provide the quarterly report to the board of county commissioners at the next regularly scheduled meeting of the board. The clerk of the board of commissioners shall notify the area director and the county finance officer if the quarterly report required by this subsection has not been submitted within the required period of time. This information shall be delivered to the county and, at the request of the board of county commissioners, may be presented in person by the area director or the director's designee.

(d) A multicounty area authority shall provide to each board of county commissioners of participating counties a copy of the area authority's annual audit. The audit findings shall be

presented in a format prescribed by the county and shall be read into the minutes of the meeting at which the audit findings are presented. (1971, c. 470, s. 1; 1973, c. 476, s. 133; c. 661; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 1, 3, 14, 23; 1981, c. 51, s. 3; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1987, c. 830, s. 47(d); 1989, c. 625, s. 14; 1991, c. 215, s. 1; 1995 (Reg. Sess., 1996), c. 749, s. 2; 1997-443, s. 11A.118(a); 1998-202, s. 4(t); 2000-137, s. 4(w); 2001-437, s. 1.10; 2001-487, s. 79.5; 2005-371, s. 2; 2006-142, s. 3(a); 2009-191, s. 1; 2011-145, s. 19.1(l); 2012-151, s. 9(a); 2017-186, s. 2(ooooo); 2018-33, s. 7; 2021-180, s. 19C.9(z); 2023-134, s. 9G.7A(a7).)

§ 122C-118: Repealed by Session Laws 2001-437, s. 1.11.

§ 122C-118.1. Structure of area board.

(a) An area board shall have no fewer than 11 and no more than 21 voting members. The board of county commissioners, or the boards of county commissioners within the area, shall appoint members consistent with the requirements provided in subsection (b) of this section. The process for appointing members shall ensure participation from each of the constituent counties of a multicounty area authority. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented category. The boards of county commissioners within a multicounty area with a catchment population of at least 1,250,000 shall have the option to appoint members of the area board in a manner or with a composition other than as required by this section by each county adopting a resolution to that effect and receiving written approval from the Secretary. A member of the board may be removed with or without cause by the initial appointing authority. The area board may declare vacant the office of an appointed member who does not attend three consecutive scheduled meetings without justifiable excuse. The chair of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

(b) Within the maximum membership provided in subsection (a) of this section, the membership of the area board shall reside within the catchment area and be composed as follows:

(1) At least one member who is a current county commissioner.

(2) The chair of the local Consumer and Family Advisory Committee (CFAC) or the chair's designee.

(3) At least one family member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
   a. Individuals with mental illness.
   b. Individuals in recovery from addiction.
   c. Individuals with intellectual or other developmental disabilities.

(4) At least one openly declared consumer member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
   a. Individuals with mental illness.
   b. Individuals with intellectual or other developmental disabilities.
   c. Individuals in recovery from addiction.

(5) An individual with health care expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.

(6) An individual with health care administration expertise consistent with the scale and nature of the managed care organization.
(7) An individual with financial expertise consistent with the scale and nature of the managed care organization.
(8) An individual with insurance expertise consistent with the scale and nature of the managed care organization.
(9) An individual with social services expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.
(10) An attorney with health care expertise.
(11) A member who represents the general public and who is not employed by or affiliated with the Department of Health and Human Services, as appointed by the Secretary.
(12) The President of the LME/MCO Provider Council or the President's designee to serve as a nonvoting member who shall participate only in Board activities that are open to the public.
(13) An administrator of a hospital providing mental health, developmental disabilities, and substance abuse emergency services to serve as a nonvoting member who shall participate only in Board activities that are open to the public.

Except as provided in subdivisions (12) and (13) of this subsection, an individual that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve on the board of the LME for the period during which the contract for services is in effect. No person registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on an area authority board. Of the members described in subdivisions (2) through (4) of this subsection, the boards of county commissioners shall ensure there is at least one member representing the interest of each of the following: (i) individuals with mental illness, (ii) individuals with intellectual or other developmental disabilities, and (iii) individuals in recovery from addiction.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently no more than two categories of membership if the member has the qualifications or attributes of the two categories of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed the earlier of three years or the member's service as a county commissioner. Any member of an area board who is a county manager serves on the board at the pleasure of the initial appointing authority, for a term not to exceed the earlier of three years or the duration of the member's employment as a county manager. The terms of members on the area board shall be for three years, except that upon the initial formation of an area board in compliance with subsection (a) of this section, one-third shall be appointed for one year, one-third for two years, and all remaining members for three years. Members shall not be appointed for more than three consecutive terms.

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

(f) An area authority that adds one or more counties to its existing catchment area under G.S. 122C-115(c1) shall ensure that the expanded catchment area is represented through membership on the area board, with or without adding area board members under this section, as

provided in G.S. 122C-118.1(a). (2001-437, s. 1.11(b); 2002-159, s. 40(a); 2006-142, s. 4(e); 2007-504, s. 1.4; 2010-31, s. 10.7; 2012-151, s. 3(a); 2013-85, ss. 6, 7; 2017-6, s. 3; 2018-146, ss. 3.1(a), (b), 6.1.)

§ 122C-118.2. Establishment of county commissioner advisory board.

(a) There is established a county commissioner advisory board for each catchment area, consisting of one county commissioner from each county in the catchment area, designated by the board of commissioners of each county. The county commissioner advisory board shall meet on a regular basis, and its duties shall include serving as the chief advisory board to the area authority and to the director of the area authority on matters pertaining to the delivery of services for individuals with mental illness, intellectual or other developmental disabilities, and substance abuse disorders in the catchment area. The county commissioner advisory board serves in an advisory capacity only to the area authority, and its duties do not include authority over budgeting, personnel matters, governance, or policymaking of the area authority.

(b) Each board of commissioners within the catchment area shall designate from its members the commissioner to serve on the county commissioner advisory board. Each board of commissioners may determine the manner of designation, the term of service, and the conditions under which its designee will serve on the county commissioner advisory board. (2013-85, s. 8.)

§ 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. The member of the area board who is the county finance officer or individual with financial expertise shall serve as an ex officio member. All other finance officers of participating counties in a multicounty area authority may serve as ex officio members. 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. (1971, c. 470, s. 1; 1973, c. 455; c. 476, s. 133; c. 1355; 1975, c. 400, ss. 1-4; 1977, c. 568, s. 1; 1979, c. 358, ss. 6, 23; c. 455; 1981, c. 52; 1983, c. 6; 1985, c. 589, s. 2; 1995 (Reg. Sess., 1996), c. 749, s. 4; 2001-437, s. 1.11(c).)

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

All members of the governing body for an area authority shall receive initial orientation on board members' responsibilities and annual training provided by the Department which shall include fiscal management, budget development, and fiscal accountability. A member's refusal to be trained shall be grounds for removal from the board. (1995, c. 507, s. 23.3; 1995 (Reg. Sess., 1996), c. 749, s. 5; 2012-151, s. 4(a).)

§ 122C-120. Compensation of area board members.

(a) Area board members may receive as compensation for their services per diem and a subsistence allowance for each day during which they are engaged in the official business of the area board. The amount of the per diem and subsistence allowances shall be established by the area board. The amount of per diem allowance shall not exceed fifty dollars ($50.00). Reimbursement of subsistence expenses shall be at the rates allowed to State officers and employees under G.S. 138-6(a)(3).

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board. (1979, c. 358, s. 28; 1985, c. 589, s. 2; 2000-67, s. 11.18.)

§ 122C-120.1. Repealed by Session Laws 2023-134, s. 9G.7A(d4), effective October 3, 2023.

§ 122C-121. Area director.

(a) The area director is an employee of the area board, shall serve at the pleasure of the board, and shall be appointed in accordance with G.S. 122C-117(a)(7). As used in this subsection, "employee" means an individual and does not include a corporation, a partnership, a limited liability corporation, or any other business association.

(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges established by the State Human Resources Commission. Any salary that is higher than the maximum of the applicable salary range shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the director. The area board shall not authorize any salary adjustment that is above the normal allowable salary range without obtaining prior approval from the Director of the Office of State Human Resources.

(a2) The area board shall not provide the director with any benefits that are not also provided by the area board to all permanent employees of the area authority, except that the area board may, in its discretion, offer severance benefits, relocation expenses, or both, to an applicant for the position of director as an incentive for the applicant to accept an offer of employment. The director shall be reimbursed only for allowable employment-related expenses at the same rate and in the same manner as other employees of the area authority.

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

(c) The area director is the administrative head of the area authority. In addition to the duties under G.S. 122C-111, the area director shall:

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

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

(1) Holds a master's, or higher, degree in business, healthcare administration, public health, finance, law, medicine, or a related field deemed acceptable by the area board.
(2) Has related experience.
(3) Has management experience.
(4) Meets any other qualifications required by any contracts, as defined in G.S. 122C-124.2(g). (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.12; 2006-142, s. 4(k); 2007-323, s. 6.20(a); 2012-151, s. 11(c); 2013-339, s. 1; 2013-382, s. 9.1(c); 2023-134, s. 9G.7A(d3).)

§ 122C-121.1. Area authority key personnel.

(a) As used in this section, key personnel means the key personnel designated by the Department in a contract, as defined in G.S. 122C-124.2(g), with the area authority.

(b) The Secretary may discharge an employee of an area authority who is in a position designated as key personnel if the employee has failed to substantially comply with the requirements of the applicable key personnel role description contained in the area authority's contract, as defined in G.S. 122C-124.2(g), with the Department.

(c) The Secretary's decision to discharge an employee of an area authority under subsection (b) of this section is not subject to appeal to the Office of Administrative Hearings, in accordance with G.S. 150B-1(e)(28). (2023-134, s. 9G.7A(d1).)

§ 122C-122: Repealed by Session Laws 2012-151, s. 12(a), effective July 12, 2012.

§ 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10), G.S. 122C-117(a)(1), G.S. 122C-127, and G.S. 122C-131, other agencies of the Department, other State agencies, and other local agencies shall continue responsibility for services they provide for persons with developmental disabilities. (1987, c. 830, s. 47(e); 1989, c. 625, s. 14; 1995 (Reg. Sess., 1996), c. 690, s. 11.)

§ 122C-123.1. Area authority reimbursement to State for disallowed expenditures.

Any funds or part thereof of an area authority that are transferred by the area authority to any entity including a firm, partnership, corporation, company, association, joint stock association, agency, or nonprofit private foundation shall be subject to reimbursement by the area authority to the State when expenditures of the area authority are disallowed pursuant to a State or federal audit. (1999-237, s. 11.41.)

§ 122C-124: Repealed by Session Laws 2001-437, s. 1.13(a).

§ 122C-124.1. Repealed by Session Laws 2023-134, s. 9G.7A(a7), effective October 3, 2023.

§ 122C-124.2. Actions by the Secretary to ensure effective management of behavioral health services under the 1915(b)/(c) Medicaid Waiver.

(a) For all local management entity/managed care organizations, the Secretary shall certify whether the LME/MCO is in compliance or is not in compliance with all requirements of

subdivisions (1) through (3) of subsection (b) of this section. The Secretary's certification shall be made every six months beginning August 1, 2013. In order to ensure accurate evaluation of administrative, operational, actuarial and financial components, and overall performance of the LME/MCO, the Secretary's certification shall be based upon an internal and external assessment made by an independent external review agency in accordance with applicable federal and State laws and regulations. Beginning on February 1, 2014, and for all subsequent assessments for certification, the independent review will be made by an External Quality Review Organization approved by the Centers for Medicare and Medicaid Services and in accordance with applicable federal and State laws and regulations.

(b) The Secretary's certification under subsection (a) of this section shall be in writing and signed by the Secretary and shall contain a clear and unequivocal statement that the Secretary has determined the local management entity/managed care organization to be in compliance with all of the following requirements:

(1) The LME/MCO has made adequate provision against the risk of insolvency and, in accordance with G.S. 122C-125.3, is either (i) not required to be under a corrective action plan or (ii) in compliance with a corrective action plan.

(2) The LME/MCO is making timely provider payments. The Secretary shall certify that an LME/MCO is making timely provider payments if there are no consecutive three-month periods during which the LME/MCO paid less than ninety percent (90%) of clean claims for covered services within the 30-day period following the LME/MCO's receipt of these claims during that three-month period. As used in this subdivision, a "clean claim" is a claim that can be processed without obtaining additional information from the provider of the service or from a third party. The term includes a claim with errors originating in the LME/MCO's claims system. The term does not include a claim from a provider who is under investigation by a governmental agency for fraud or abuse or a claim under review for medical necessity.

(3) The LME/MCO is exchanging billing, payment, and transaction information with the Department and providers in a manner that complies with all applicable federal standards, including all of the following:

a. Standards for information transactions and data elements specified in 42 U.S.C. § 1302d-2 of the Healthcare Insurance Portability and Accountability Act (HIPAA), as from time to time amended.

b. Standards for health care claims or equivalent encounter information transactions specified in HIPAA regulations in 45 C.F.R. § 162.1102, as from time to time amended.

c. Implementation specifications for Electronic Data Interchange standards published and maintained by the Accredited Standards Committee (ASC X12) and referenced in HIPAA regulations in 45 C.F.R. § 162.920, as from time to time amended.

(c) If the Secretary does not provide a local management entity/managed care organization with the certification of compliance required by this section based upon the LME/MCO's failure to comply with any of the requirements specified in subdivisions (1) through (3) of subsection (b) of this section, the Secretary shall direct the dissolution of the LME/MCO in accordance with G.S. 122C-115.5 after the Department fulfills any contractual obligations regarding the noncompliance.

(d) If, at any time, in the Secretary's determination, a local management entity/managed care organization is not in compliance with a requirement of the Contract other than those specified in subdivisions (1) through (3) of subsection (b) of this section, then the Secretary shall direct the dissolution of the LME/MCO in accordance with G.S. 122C-115.5 after the Department fulfills any contractual obligations regarding the noncompliance.

(e) Repealed by Session Laws 2023-134, s. 9G.7A(a8), effective October 3, 2023.

(f) The Secretary shall provide a copy of each written, signed certification of compliance or noncompliance completed in accordance with this section to the Senate Appropriations Committee on Health and Human Services, the House Appropriations Subcommittee on Health and Human Services, the Legislative Oversight Committee on Health and Human Services, and the Fiscal Research Division.

(g) As used in this section, the following terms mean:

(1) Compliant local management entity/managed care organization. – An LME/MCO that has undergone an independent external assessment and been determined by the Secretary to be operating successfully and to have the capability of expanding.

(2) Contract. – A contract between the Department of Health and Human Services and a local management entity for the operation of the 1915(b)/(c) Medicaid Waiver or a BH IDD tailored plan. (2013-85, s. 2; 2018-5, s. 11F.10(d); 2023-134, s. 9G.7A(a8).)

§ 122C-124.3. Actions by the Secretary in response to county concerns.

(a) A county that has concerns about the performance of the area authority with which it is aligned shall provide written notice of its concerns to the Secretary, the area director of the area authority, the chair of the area board, and the chairs of the Joint Legislative Oversight Committee on Health and Human Services.

(b) Upon the Secretary's receipt of a notice from a county under subsection (a) of this section, the Department shall evaluate the performance concerns to determine their validity. If the performance concerns are valid, then all of the following shall occur:

(1) The Secretary shall direct the area authority to promptly address and resolve the performance concerns raised by the county.

(2) If the concerns involve the area authority's performance under a contract, as defined in G.S. 122C-124.2(g), then (i) the Secretary shall take all actions necessary to ensure that the area authority complies with the terms of the contract and (ii) if the area authority does not come into compliance with the terms of the contract within the time frame contemplated in the contract, then the Secretary shall follow the processes specified in the contract and under 42 C.F.R. Part 438, Subpart I, which may include intermediate sanctions or termination of the contract. (2023-134, s. 9G.7A(b1).)

§ 122C-125. Repealed by Session Laws 2023-134, s. 9G.7A(a9), effective October 3, 2023.

§ 122C-125.1: Repealed by Session Laws 2001-437, s. 1.13.

§ 122C-125.2. Repealed by Session Laws 2023-134, s. 9G.7A(a10), effective October 3, 2023.

§ 122C-125.3. LME/MCO solvency; corrective action plan.

(a) In its contracts with LME/MCOs, the Department shall establish solvency standards based on industry-standard financial accounting measures such as the current ratio of assets to liabilities, defensive interval ratio of current assets to average monthly expenditure, capital reserves, and profit and loss. The contracts shall require the development of a corrective action plan when an LME/MCO does not meet the solvency standards specified in the contract.

(b) Each LME/MCO shall provide the Department with monthly financial reports containing the data needed to calculate the financial accounting measures and assess the LME/MCO's adherence to the solvency standards established in the contract.

(c) On a quarterly basis, beginning on April 1, 2024, the Department shall publish to its website a dashboard reporting all of the following information for each LME/MCO for the previous quarter:

(1) Each solvency standard applicable to the LME/MCO under its contracts with the Department, including any applicable minimum or maximum threshold.

(2) The financial position of the LME/MCO relative to each solvency standard applicable to the LME/MCO under its contracts with the Department.

(3) Whether the LME/MCO is under any corrective action plan related to the solvency standards applicable to the LME/MCO under its contracts with the Department, and whether the LME/MCO is in compliance with any such corrective action plan.

(d) The Department shall notify the Joint Legislative Oversight Committee on Health and Human Services, the Joint Legislative Oversight Committee on Medicaid, and the Fiscal Research Division when the information required under subsection (c) of this section has been published to the Department's website. (2023-134, s. 9G.7A(a11).)

§ 122C-125.4: Reserved for future codification purposes.

§ 122C-125.5: Reserved for future codification purposes.

§ 122C-126: Repealed by Session Laws 2001-437, s. 1.13.

§ 122C-126.1. Confidentiality of competitive health care information.

(a) For the purposes of this section, competitive health care information means information relating to competitive health care activities by or on behalf of the area authority. Competitive health care information shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of an area authority shall be a public record, unless otherwise exempted by law, or the contract contains competitive health care information, the determination of which shall be as provided in subsection (b) of this section.

(b) If an area authority is requested to disclose any contract that the area authority believes in good faith contains or constitutes competitive health care information, the area authority may either redact the portions of the contract believed to constitute competitive health care information prior to disclosure or, if the entire contract constitutes competitive health care information, refuse disclosure of the contract. The person requesting disclosure of the contract may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any redacted portion thereof. In any action brought under this subsection, the issue for decision by the court shall be whether the contract, or portions of the contract withheld, constitutes competitive health care information, and

in making its determination, the court shall be guided by the procedures and standards applicable to protective orders requested under Rule 26(c)(7) of the Rules of Civil Procedure. Before rendering a decision, the court shall review the contract in camera and hear arguments from the parties. If the court finds that the contract constitutes or contains competitive health care information, the court may either deny disclosure or may make such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

(c) Nothing in this section shall be deemed to prevent the Attorney General, the State Auditor, or an elected public body, in closed session, which has responsibility for the area authority, from having access to this confidential information. The disclosure to any public entity does not affect the confidentiality of the information. Members of the public entity shall have a duty not to further disclose the confidential information. (2012-151, s. 10.)

Part 2A. Consolidated Human Services.

§ 122C-127. Consolidated human services board; human services director.

(a) Except as otherwise provided by this section and subject to any limitations that may be imposed by the board of county commissioners under G.S. 153A-77, a consolidated human services agency shall have the responsibility and authority set forth in G.S. 122C-117(a) to carry out the programs established in this Chapter in conformity with the rules and regulations of the Department and under the supervision of the Secretary in the same manner as an area authority. In addition to the powers conferred by G.S. 153A-77(d), a consolidated human services board shall have all the powers and duties of the governing unit of an area authority as provided by G.S. 122C-117(b), except that the consolidated human services board may not:

(1) Appoint the human services director.
(2) Transmit or present the budget for social services programs.
(3) Enter into contracts, including contracts to provide services to governmental or private entities, unless specifically authorized to do so by the board of county commissioners in accordance with county contracting policies and procedures.

(b) In addition to the powers conferred by G.S. 153A-77(e), a human services director shall have all the powers and duties of an area director as provided by G.S. 122C-121, except that the human services director may:

(1) Serve as the executive officer of the consolidated human services board only to the extent and in the manner authorized by the county manager.
(2) Appoint staff of the consolidated human services agency only upon the approval of the county manager.

The human services director is not an employee of the area board, but serves as an employee of the county under the direct supervision of the county manager. (1995 (Reg. Sess., 1996), c. 690, s. 12.)

§ 122C-128. Reserved for future codification purposes.

§ 122C-129. Reserved for future codification purposes.

§ 122C-130. Reserved for future codification purposes.

Part 3. Service Delivery System.

§ 122C-131. Composition of system.

Mental health, developmental disabilities, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities. (1985, c. 589, s. 2; 1989, c. 625, s. 15.)

§ 122C-132: Repealed by Session Laws 2001-437, s. 1.14.

§ 122C-132.1: Repealed by Session Laws 2001-437, s. 1.14.

§§ 122C-133 through 122C-140. Reserved for future codification purposes.

Part 4. Area Facilities.

§ 122C-141. Provision of services.

(a) An area authority 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. Unless an area authority 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 in accordance with this section. 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.

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

(c) The area authority may contract with a health maintenance organization, certified and operating in accordance with the provisions of Article 67 of Chapter 58 of the General Statutes for the area authority to provide mental health, developmental disabilities, or substance use disorder services to enrollees in a health care plan provided by the health maintenance organization. The terms of the contract must meet the requirements of all applicable State statutes and rules of the Commission and Secretary governing both the provision of services by an area authority and the general and fiscal operation of an area authority and the reimbursement rate for services rendered shall be based on the usual and customary charges paid by the health maintenance organization to similar providers. Any provision in conflict with a State statute or rule of the Commission or the Secretary shall be void; however, the presence of any void provision in that contract does not render void any other provision in that contract which is not in conflict with a State statute or rule of the Commission or the Secretary. Subject to approval by the Secretary and pending the timely reimbursement of the contractual charges, the area authority may expend funds for costs which may be incurred by the area authority as a result of providing the additional services under a contractual agreement with a health maintenance organization.

(d) If two or more counties enter into an interlocal agreement under Article 20 of Chapter 160A of the General Statutes to be a public provider of mental health, developmental disabilities, or substance abuse services ("public provider"), before an LME may enter into a contract with the public provider, all of the following must apply:

(1) The public provider must meet all the provider qualifications as defined by rules adopted by the Commission. A county that satisfies its duties under G.S. 122C-115(a) through a consolidated human services agency may not be considered a qualified provider for purposes of this subdivision.

(2) The LME must adopt a conflict of interest policy that applies to all provider contracts.

(3) The interlocal agreement must provide that any liabilities of the public provider shall be paid from its unobligated surplus funds and that if those funds are not sufficient to satisfy the indebtedness, the remaining indebtedness shall be apportioned to the participating counties.

(e) When enforcing rules adopted by the Commission, the Secretary shall ensure that there is fair competition among providers. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 839; 1989, c. 625, s. 16; 2001-437, s. 1.15; 2006-142, s. 4(l); 2007-504, s. 2.4(a); 2023-134, s. 9G.7A(a12).)

§ 122C-142. Contract for services.

(a) When the area authority contracts with persons for the provision of services, it shall use the standard contract adopted by the Secretary and shall assure that these contracted services meet the requirements of applicable State statutes and the rules of the Commission and the Secretary. However, an area authority may amend the contract to comply with any court-imposed duty or responsibility. An area authority that is operating under a Medicaid waiver may amend the contract subject to the approval of the Secretary. Terms of the standard contract shall require the area authority to monitor the contract to assure that rules and State statutes are met. It shall also place an obligation upon the entity providing services to provide to the area authority timely data regarding the clients being served, the services provided, and the client outcomes. The Secretary may also monitor contracted services to assure that rules and State statutes are met.

(b) When the area authority contracts for services, it may provide funds to purchase liability insurance, to provide legal representation, and to pay any claim with respect to liability for acts, omissions, or decisions by members of the boards or employees of the persons with whom the area authority contracts. These acts, omissions, and decisions shall be ones that arise out of the performance of the contract and may not result from actual fraud, corruption, or actual malice on the part of the board members or employees. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 18; 1981, c. 51, s. 3; c. 539, ss. 3, 4; 1985, c. 589, s. 2; 2006-142, s. 1; 2006-259, s. 23; 2013-85, s. 9.)

§ 122C-142.1. Substance abuse services for those convicted of driving while impaired or driving while less than 21 years old after consuming alcohol or drugs.

(a) Services. – An area authority shall provide, directly or by contract, the substance abuse services needed by a person to obtain a certificate of completion required under G.S. 20-17.6 as a condition for the restoration of a drivers license. A person may obtain the required services from an area facility, from a private facility authorized by the Department to provide this service, or, with the approval of the Department, from an agency that is located in another state.

(a1) Authorization of a Private Facility Provider. – The Department shall authorize a private facility located in this State to provide substance abuse services needed by a person to obtain a certificate of completion if the private facility complies with all of the requirements of this subsection:

(1) Notifies both the designated area facility for the catchment area in which it is located and the Department of its intent to provide the services.

(2) Agrees to comply with the laws and rules concerning these services that apply to area facilities.

(3) Pays the Department the applicable fee for authorizing and monitoring the services of the facility. The initial fee is payable at the time the facility notifies the Department of its intent to provide the services and by July 1 of each year thereafter. Collected fees shall be used by the Division for program monitoring and quality assurance. The applicable fee is based upon the number of assessments completed during the prior fiscal year as set forth below:

Number of Assessments	Fee Amount
0-24	$250.00
25-99	$500.00
100 or more	$750.00.

(b) Assessments. – To conduct a substance abuse assessment, a facility shall give a client a standardized test approved by the Department to determine chemical dependency and shall conduct a clinical interview with the client. Based on the assessment, the facility shall recommend that the client either attend an alcohol and drug education traffic (ADET) school or obtain treatment. A recommendation shall be reviewed and signed by a certified alcoholism, drug abuse, or substance abuse counselor, as defined by the Commission, a Certified Substance Abuse Counselor, or by a physician certified by the American Society of Addiction Medicine (ASAM). The signature on the recommendation shall be the personal signature of the individual authorized to review the recommendation and not the signature of his or her agent. The signature shall reflect that the authorized individual has personally reviewed the recommendation and, with full knowledge of the contents of the recommendation, approved of the recommended treatment.

(b1) Persons Authorized to Conduct Assessments. – The following individuals are authorized to conduct a substance abuse assessment under subsection (b) of this section:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.

(2) A Licensed Clinical Addiction Specialist (LCAS), as defined by the Commission.

(3) Repealed by Session Laws 2004-197, s. 2, effective October 1, 2008, and applicable to substance abuse assessments conducted on or after that date.

(4) A person licensed by the North Carolina Medical Board or the North Carolina Psychology Board.

(5) A physician certified by the American Society of Addiction Medicine (ASAM).

(c) School or Treatment. – Attendance at an ADET school is required if none of the following applies and completion of a treatment program is required if any of the following applies:

(1) The person took a chemical test at the time of the offense that caused the person's license to be revoked and the test revealed that the person had an alcohol concentration at any relevant time after driving of at least 0.15.

(2) The person has a prior conviction of an offense involving impaired driving.

(3) The substance abuse assessment identifies a substance abuse disability.

(d) Standards. – An ADET school shall offer the curriculum established by the Commission and shall comply with the rules adopted by the Commission. A substance abuse treatment program offered to a person who needs the program to obtain a certificate of completion shall comply with the rules adopted by the Commission.

(d1) Persons Authorized to Provide Instruction. – Beginning January 1, 2009, individuals who provide ADET school instruction as a Department-authorized ADETS instructor must have at least one of the following qualifications:

(1) A Certified Substance Abuse Counselor (CSAC), as defined by the Commission.
(2) A Licensed Clinical Addictions Specialist (LCAS), as defined by the Commission.
(3) A Certified Substance Abuse Prevention Consultant (CSAPC), as defined by the Commission.

(e) Certificate of Completion. – Any facility that issues a certificate of completion shall forward the original certificate of completion to the Department. The Department shall review the certificate of completion for accuracy and completeness. If the Department finds the certificate of completion to be accurate and complete, the Department shall forward it to the Division of Motor Vehicles of the Department of Transportation. If the Department finds the certificate of completion is not accurate or complete, the Department shall return the certificate of completion to the area facility for appropriate action.

(f) Fees. – A person who has a substance abuse assessment conducted for the purpose of obtaining a certificate of completion shall pay to the assessing agency a fee of one hundred dollars ($100). A person shall pay to a school a fee of one hundred sixty dollars ($160.00). A person shall pay to a treatment facility a fee of seventy-five dollars ($75.00). If the defendant is treated by an area mental health facility, G.S. 122C-146 applies after receipt of the seventy-five dollar ($75.00) fee.

A facility that provides to a person who is required to obtain a certificate of completion a substance abuse assessment, an ADET school, or a substance abuse treatment program may require the person to pay a fee required by this subsection before it issues a certificate of completion. As stated in G.S. 122C-146, however, an area facility may not deny a service to a person because the person is unable to pay.

A facility shall remit to the Department ten percent (10%) of each fee paid to the facility under this subsection by a person who attends an ADET school conducted by the facility. The Department may use amounts remitted to it under this subsection only to support, evaluate, and administer ADET schools.

(f1) Multiple Assessments. – If a person has more than one offense for which a certificate of completion is required under G.S. 20-17.6, the person shall pay the assessment fee required under subsection (f) of this section for each certificate of completion required. However, the facility shall conduct only one substance abuse assessment and recommend only one ADET school or treatment program for all certificates of completion required at that time, and the person shall pay the fee required under subsection (f) of this section for only one school or treatment program.

If any of the criteria in subdivisions (c)(1), (c)(2), or (c)(3) of this section are present in any of the offenses for which the person needs a certificate of completion, completion of a treatment program shall be required pursuant to subsection (c) of this section.

The provisions of this subsection do not apply to subsequent assessments performed after a certificate of completion has already been issued for a previous assessment.

(g) Out-of-State Services. – A person may obtain a substance abuse service needed to obtain a certificate of completion from a provider located in another state if the service offered by that provider is substantially similar to the service offered by a provider located in this State. A

person who obtains a service from a provider located in another state is responsible for paying any fees imposed by the provider.

(h) Rules. – The Commission may adopt rules to implement this section. In developing rules for determining when a person needs to be placed in a substance abuse treatment program, the Commission shall consider diagnostic criteria such as those contained in the most recent revision of the Diagnostic and Statistical Manual or used by the American Society of Addiction Medicine (ASAM).

(i) Report. – The Department shall submit an annual report on substance abuse assessments to the Joint Legislative Commission on Governmental Operations. The report is due by February 1. Each facility that provides services needed by a person to obtain a certificate of completion shall file an annual report with the Department by October 1 that contains the information the Department needs to compile the report the Department is required to submit under this section.

The report submitted to the Joint Legislative Commission on Governmental Operations shall include all of the following information and any other information requested by that Commission:

(1) The number of persons required to obtain a certificate of completion during the previous fiscal year as a condition of restoring the person's drivers license under G.S. 20-17.6.

(2) The number of substance abuse assessments conducted during the previous fiscal year for the purpose of obtaining a certificate of completion.

(3) Of the number of assessments reported under subdivision (2) of this subsection, the number recommending attendance at an ADET school, the number recommending treatment, and, for those recommending treatment, the level of treatment recommended.

(4) Of the number of persons recommended for an ADET school or treatment under subdivision (3) of this subsection, the number who completed the school or treatment.

(5) The number of substance abuse assessments conducted by each facility and, of these assessments, the number that recommended attendance at an ADET school and the number that recommended treatment.

(6) The fees paid to a facility for providing services for persons to obtain a certificate of completion and the facility's costs in providing those services.

(j) Repealed by Session Laws 2013-360, s. 12A.8(a), effective July 1, 2013. (1995, c. 496, ss. 10, 13; 2001-370, s. 9; 2003-396, ss. 1, 3, 4; 2004-197, ss. 1, 2, 3; 2005-312, ss. 1, 2, 4; 2008-130, ss. 7, 8; 2013-360, s. 12A.8(a).)

§ 122C-142.2. Presentation at a hospital for mental health treatment.

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

(1) Assessment. – A comprehensive clinical assessment, psychiatric evaluation, or a substantially equivalent assessment.

(2) Director. – The director of the department of social services in the county in which the juvenile resides or is found, or the director's representative as authorized in G.S. 108A-14.

(b) If a juvenile in the custody of a department of social services presents to a hospital emergency department for mental health treatment, the director shall contact the appropriate LME/MCO or prepaid health plan within 24 hours of the determination that the juvenile should not

remain at the hospital and no appropriate placement is immediately available, to request an assessment.

(c) Consistent with the care coordination responsibilities under G.S. 122C-115.4(b)(5), the LME/MCO or prepaid health plan must, when applicable or required by their contract with the Department, arrange for an assessment performed by either the juvenile's clinical home provider; the hospital, if able and willing; or other qualified licensed clinician within five business days following notification from the director.

(d) Based on the findings and recommendations of the assessment, all of the following must occur:

(1) If the comprehensive clinical assessment recommends a traditional foster home or a Level I group home, the director shall identify and provide the placement within five business days. The county department of social services shall be responsible for transporting the juvenile to the identified placement within five business days.

(2) If the assessment recommends a level of care requiring prior authorization by the LME/MCO or prepaid health plan, the LME/MCO or prepaid health plan shall authorize an appropriate level of care and identify appropriate providers within five business days and assign a care coordinator for the duration that the LME/MCO or prepaid health plan provides services to the juvenile. Once an appropriate level of care has been authorized and providers identified, the director shall place the juvenile in the appropriate placement within five business days. The county department of social services shall be responsible for transporting the juvenile to the identified placement.

(e) The county department of social services shall provide ongoing case management, virtually or in person, to address the juvenile's educational and social needs during the juvenile's stay in the hospital. The hospital shall cooperate with the county department of social services to provide access to the juvenile during the juvenile's stay in the hospital.

(f) If, on completion of the assessment, the director under subdivision (d)(1) of this section or LME/MCO or prepaid health plan under subdivision (d)(2) of this section is unable to identify an appropriate available placement or provider for the juvenile, or if the assessment recommendations differ, the director shall immediately notify the Department of Health and Human Services' Rapid Response Team. The director, pursuant to G.S. 7B-302(a1)(1), is authorized to disclose confidential information to the Rapid Response Team to ensure the juvenile is protected from abuse or neglect and for the provision of protective services to the juvenile. All confidential information disclosed to the Rapid Response Team shall remain confidential, shall not be further redisclosed unless authorized by State or federal law or regulations, and shall not be considered a public record. Notification to the Rapid Response Team does not relieve the director, LME/MCO, prepaid health plan, or any other entity from carrying out their responsibilities to the juvenile.

(g) The Rapid Response Team shall be comprised of representatives of the Department of Health and Human Services from the Division of Social Services; the Division of Mental Health, Developmental Disabilities, and Substance Use Services; the Division of Child and Family Well-Being; and the Division of Health Benefits. Upon receipt of a notification from a director, the Rapid Response Team shall evaluate the information provided and coordinate a response to address the immediate needs of the juvenile, which may include any of the following:

(1) Identifying an appropriate level of care for the juvenile.

(2) Identifying appropriate providers or other placement for the juvenile.
(3) Making a referral to qualified services providers.
(4) Developing an action plan to ensure the needs of the juvenile are met.
(5) Developing a plan to ensure that relevant parties carry out any responsibilities to the juvenile. (2021-132, s. 5(a); 2023-65, ss. 3.4, 5.2(b).)

§ 122C-143: Repealed by Session Laws 1993, c. 321, s. 220(d).

§ 122C-143.1. Policy guidance.

(a) The General Assembly shall, as it considers necessary, endorse as policy guidance long-range plans for the broad age/disability categories of persons to be served and the services to be provided by area authorities.

(b) The Secretary shall develop a payment policy that designates, within broad age/disability categories, the priority populations, based on their disability level and the types of service to be supported by State resources. The Secretary shall review the Department's payment policy annually to assure that payments are made consistent with the State's long-range plans.

(c) The Secretary shall ensure that the payment policy provides incentives designated to target resources consistent with legislative policy and with the State's long-range plans and to promote equal accessibility to services for individuals regardless of their catchment area.

(d) Upon request of the Secretary, each area authority shall develop, revise, or amend its local long-range plans to be consistent with the policy guidance set forth in the State's long-range plans. Local service implementation plans shall be subject to the approval of the Secretary.

(e) The Secretary shall ensure that the Department's requests for expansion funds for area authorities are consistent with the State's long-range plans and include consideration of needs identified by the area authorities and their local plans. (1993, c. 321, s. 220(e).)

§ 122C-143.2: Repealed by Session Laws 2001-437, s. 1.16, effective July 1, 2002.

§ 122C-144: Repealed by Session Laws 1993, c. 321, s. 220(f).

§ 122C-144.1. Budget format and reports.

(a) The area authority shall maintain its budget in accordance with the requirements of Article 3 of Subchapter III of Chapter 159 of the General Statutes, the Local Government Budget and Fiscal Control Act.

(b) The Secretary may require periodic reports of receipts and expenditures for all area authority services provided directly or under contract according to a format prescribed by the Secretary.

(c) In accordance with G.S. 159-34, the area authority shall have an audit completed and submit it to the Local Government Commission.

(d) The Secretary may require reports of client characteristics, staffing patterns, agency policies or activities, services, or specific financial data of the area authority, but the reports shall not identify individual clients of the area authority unless specifically required by State statute or federal statute or regulation, or unless valid consent for the release has been given by the client or legally responsible person. (1993, c. 321, s. 220(g).)

§ 122C-145: Renumbered as G.S. 122C-151.2 by Session Laws 1993, c. 321, s. 220.

§ 122C-146. Uniform co-payment schedule.

(a) The LME and its contractual provider agencies shall implement the co-payment schedule based on family income adopted by the Secretary under G.S. 122C-112.1(a)(34). The LME is responsible for determining the applicability of the co-payment to individuals authorized by the LME to receive services. An LME that provides services and its contractual provider agencies shall also make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals or entities able to pay, including insurance and third-party payments. However, no individual may be refused services because of an inability to pay.

(b) Individuals may not be charged for free services, as required in "The Amendments to the Education of the Handicapped Act", P.L. 99-457, provided to eligible infants and toddlers and their families. This exemption from charges does not exempt insurers or other third-party payors from being charged for payment for these services, if the person who is legally responsible for any eligible infant or toddler is first advised that the person may or may not grant permission for the insurer or other payor to be billed for the free services.

(c) All funds collected from co-payments for LME operated services shall be used to provide services to individuals in targeted populations.

The collection of co-payments by an LME that provides services may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue. All funds collected from co-payments by contractual provider agencies shall be used to provide services to individuals in targeted populations. (1977, c. 568, s. 1; 1979, c. 358, s. 16; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1003, s. 4; 1991, c. 215, s. 2; 1993, c. 487, s. 3; c. 553, s. 36; 2007-410, s. 1.)

§ 122C-147. Financing and title of area authority property.

(a) Repealed by Session Laws 1993, c. 321, s. 220(i).

(b) Unless otherwise specified by the Secretary, State appropriations to area authorities shall be used exclusively for the operating costs of the area authority; provided however:

(1) The Secretary may specify that designated State funds may be used by area authorities (i) for the purchase, alteration, improvement, or rehabilitation of real estate to be used as a facility or (ii) in contracting with a private, nonprofit corporation or with another governmental entity that operates facilities for the mentally ill, developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation or with the governmental entity, for the purchase, alteration, improvement, rehabilitation of real estate or, to make a lump sum down payment or periodic payments on a real property mortgage in the name of the private, nonprofit corporation or governmental entity.

(2) Upon cessation of the use of the facility by the area authority, if operated by the area authority, or upon termination, default, or nonrenewal of the contract if operated by a contractual agency, the Department shall be reimbursed in accordance with rules adopted by the Secretary for the Department's participation in the purchase of the facility.

(c) All real property purchased for use by the area authority shall be provided by local or federal funds unless otherwise allowed under subsection (b) of this section or by specific capital

funds appropriated by the General Assembly. The title to this real property and the authority to acquire it is held by the area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

(d) The area authority may lease real property.

(e) Equipment necessary for the operation of the area authority may be obtained with local, State, federal, or donated funds, or a combination of these.

(f) The area authority may acquire or lease personal property. An acquisition may be accomplished by an installment contract under G.S. 160A-20 or by a lease-purchase agreement. An area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the board or boards of commissioners of all the counties that comprise the area authority. The approval of a board of county commissioners shall be by resolution of the board and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property by the area authority. The area authority may not acquire personal property by means of an installment contract under G.S. 160A-20 without the approval of the Local Government Commission, when required by that statute. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and shall not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection. Title to personal property may be held by the area authority.

(g) All area authority funds shall be spent in accordance with the rules of the Secretary. Failure to comply with the rules is grounds for the Secretary to stop participation in the funding of the particular program. The Secretary 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 as provided by G.S. 122C-145 and Chapter 150B of the General Statutes.

(h) Notwithstanding subsection (b) of this section and in addition to the purposes listed in that subsection, the funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property owned or to be owned by a nonprofit corporation or by another governmental entity and used or to be used as a facility.

(i) Notwithstanding subsection (c) of this section and in addition to the purposes listed in that subsection, funds allocated by the Secretary for services for members of the class identified in Willie M., et al. vs. Hunt, et al. (C-C-79-294, Western District) may be used for the purchase, alteration, improvement, or rehabilitation of real property used by an area authority as long as the title to the real property is vested in the county where the property is located or is vested in another governmental entity. If the property ceases to be used in accordance with the annual plan, the unamortized part of funds spent under this subsection for the purchase, alteration, improvement, or rehabilitation of real property shall be returned to the Department, in accordance with the rules of the Secretary.

(j) Notwithstanding subsection (c) of this section the area authority, with the approval of the Secretary, may use local funds for the alteration, improvement, and rehabilitation of real property owned by a nonprofit corporation or by another governmental entity under contract with

the area authority and used or to be used as a facility. Prior to the use of county appropriated funds for this purpose, the area authority shall obtain consent of the board or boards of commissioners of all the counties that comprise the area authority. The consent shall be by resolution of the affected board or boards of county commissioners and may have any necessary or proper conditions, including provisions for distribution of the proceeds in the event of disposition of the property. (1973, c. 476, s. 133; c. 613; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 29; 1981, c. 51, s. 3; 1983, c. 5; c. 25; c. 402; 1985, c. 589, s. 2; 1987, c. 720, s. 3; c. 784; 1989, c. 625, s. 17; 1993, c. 321, s. 220(h), (i); 1993 (Reg. Sess., 1994), c. 592, s. 1; 1995, c. 305, s. 1; 2012-151, s. 8.)

§ 122C-147.1. Appropriations and allocations.

(a) Except as provided in subsection (b) of this section, funds shall be appropriated by the General Assembly in broad age/disability categories. The Secretary shall allocate and account for funds in broad age/disability categories so that the area authority may, with flexibility, earn funds in response to local needs that are identified within the payment policy developed in accordance with G.S. 122C-143.1(b).

(b) When the General Assembly determines that it is necessary to appropriate funds for a more specific purpose than the broad age/disability category, the Secretary shall determine whether expenditure accounting, special reporting within earning from a broad fund, the Memorandum of Agreement, or some other mechanism allows the best accounting for the funds.

(b1) Notwithstanding subsection (b) of this section, funds appropriated by the General Assembly for crisis services shall not be allocated in broad disability or age/disability categories. Subsection (c) of this section shall not apply to funds appropriated by the General Assembly for crisis services.

(c) Funds that have been appropriated by the General Assembly for a more specific purpose than specified in subsection (a) of this section shall be converted to a broad age/disability category at the beginning of the second biennium following the appropriation, unless otherwise acted upon by the General Assembly.

(d) The Secretary shall allocate funds to area programs:

(1) To be earned in a purchase of service basis, at negotiated reimbursement rates, for services that are included in the payment policy and delivered to mentally ill, developmentally disabled, and substance abuse clients and for services that are included in the payment policy to other recipients; or

(2) To be paid under a grant on the basis of agreed-upon expenditures, when the Secretary determines that it would be impractical to pay on a purchase of service basis.

(d1) Notwithstanding subsections (b) and (d) of this section, each area program shall determine whether to earn the funds for crisis services and funds for services to substance abuse clients in a purchase-for-service basis, under a grant, or some combination of the two. Area programs shall account for funds expended on a grant basis according to procedures required by the Secretary and in a manner that is similar to funds expended in a purchase-for-service basis.

(e) After the close of a fiscal year, final payments of funds shall be made:

(1) Under the purchase of service basis, on the earnings of the area authority for the delivery to individuals within each age/disability group, of any services that are consistent with the payment policy established in G.S. 122C-143.1(b), up to the final allocation amount; or

(2) When awarded on an expenditure basis, on allowable actual expenditures, up to the final allocation amount.

Under rules adopted by the Secretary, final payments shall be adjusted on the basis of the audit required in G.S. 122C-144.1(d). (1993, c. 321, s. 220(j); 2007-323, ss. 10.49(b), (q).)

§ 122C-147.2. Purchase of services and reimbursement rates.

(a) When funds are used to purchase services, the following provisions apply:

(1) Reimbursement rates for specific types of service shall be negotiated between the Secretary and the area authority. The negotiation shall begin with the rate determined by a standardized cost-finding and rate-setting procedure approved by the Secretary.

(2) The reimbursement rate used for the payment of services shall incorporate operating and administrative costs, including costs for property in accordance with G.S. 122C-147.

(b) To ensure uniformity in rates charged to area programs and funded with State-allocated resources, the Division of Mental Health, Developmental Disabilities, and Substance Use Services of the Department of Health and Human Services may require a private agency that provides services under contract with an area program or county program, except for hospital services that have an established Medicaid rate, to complete an agency-wide uniform cost finding in accordance with subsection (a) of this section. The resulting cost shall be the maximum included for the private agency in the contracting area program's unit cost finding. If a private agency fails to timely and accurately complete the required agency-wide uniform cost finding in a manner acceptable to the Department's controller's office, the Department may suspend all Department funding and payment to the private agency until such time as an acceptable cost finding has been completed by the private agency and approved by the Department's controller's office. (1993, c. 321, s. 220(j); 2005-276, s. 10.30; 2023-65, s. 5.2(b).)

§§ 122C-148 through 122C-150: Repealed by Session Laws 1993, c. 321, s. 220(k).

§ 122C-151. Responsibilities of those receiving appropriations.

(a) All resources allocated to and received by any area authority and used for programs of mental health, developmental disabilities, substance abuse or other related services are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary and to the conditions of the Memorandum of Agreement specified in G.S. 122C-143.2.

(b) If an area authority fails to complete actions necessary for the development of a Memorandum of Agreement, fails to file required reports within the time limit set by the Secretary, or fails to comply with any other requirements specified in this Article, the Secretary may:

(1) Delay payments; and

(2) With written notification of cause and subject to an appeal as provided by G.S. 122C-151.2, reduce or deny payment of funds. Restoration of funds upon compliance is within the discretion of the Secretary. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 25; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 1989, c. 625, s. 19; 1993, c. 321, s. 220(l).)

§ 122C-151.1: Repealed by Session Laws 1993, c. 321, s. 220(n), as amended by Session Laws 1993 (Regular Session, 1994), c. 591, s. 7.)

§ 122C-151.2. Appeal by area authorities and county programs.

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

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

(c) Appeals shall be conducted according to rules adopted by the Commission and Secretary and in accordance with Chapter 150B of the General Statutes. (1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, ss. 7, 19; 1981, c. 51, s. 3; c. 614, s. 7; 1985, c. 589, s. 2; 1987, c. 720, s. 3; 1993, c. 321, s. 220(m); 2001-437, s. 1.17(a).)

§ 122C-151.3. Dispute with area authorities or county programs.

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

(b) This section does not apply to LME/MCOs, enrollees, applicants, providers of emergency services, or network providers subject to Chapter 108D of the General Statutes. (1993, c. 321, s. 220(o); 2001-437, s. 1.17(b); 2013-397, s. 2.)

§ 122C-151.4. Appeal to State MH/DD/SA Appeals Panel.

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

(1) Repealed by Session Laws 2021-88, s. 16(d), effective July 22, 2021.

(1a) Client. – An individual who is admitted to or receiving public services from an area facility. The term includes the client's personal representative or designee.

(1b) Contract. – A contract with an area authority or county program to provide services, other than personal services, to clients and other recipients of services.

(2) Contractor. – A person that has a contract or that had a contract during the current fiscal year.

(3) Former contractor. – A person that had a contract during the previous fiscal year.

(4) Panel. – The State MH/DD/SA Appeals Panel established under this section.

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

(c) Persons That May Appeal. – The following persons may appeal to the Panel after having exhausted the appeals process at the appropriate area authority or county program:

(1) A contractor or a former contractor that claims that an area authority or county program is not acting or has not acted within applicable State law or rules in denying the contractor's application for endorsement or in imposing a particular requirement on the contractor on fulfillment of the contract.

(2) A contractor or a former contractor that claims that a requirement of the contract substantially compromises the ability of the contractor to fulfill the contract.

(3) A contractor or former contractor that claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type

of services provided or formerly provided by the contractor or former contractor.

(4) A client or a person who was a client in the previous fiscal year, who claims that an area authority or county program has acted arbitrarily and capriciously in reducing funding for the type of services provided or formerly provided to the client directly by the area authority or county program.

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

(d) Hearing. – All members of the Panel shall hear an appeal to the Panel. An appeal shall be filed with the Panel within the time required by the Secretary and shall be heard by the Panel within the time required by the Secretary. A hearing shall be conducted at the place determined in accordance with the rules adopted by the Secretary. A hearing before the Panel shall be informal; no sworn testimony shall be taken and the rules of evidence do not apply. The person that appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an area authority during an appeal to the Panel.

(e) Decision. – The Panel shall make a written decision on each appeal to the Panel within the time set by the Secretary. A decision may direct a contractor, an area authority, or a county program to take an action or to refrain from taking an action, but it shall not require a party to the appeal to pay any amount except payment due under the contract. In making a decision, the Panel shall determine the course of action that best protects or benefits the clients of the area authority or county program. If a party to an appeal fails to comply with a decision of the Panel and the Secretary determines that the failure deprives clients of the area authority or county program of a type of needed service, the Secretary may use funds previously allocated to the area authority or county program to provide the service.

(f) Chapter 150B Appeal. – A person that is dissatisfied with a decision of the Panel may commence a contested case under Article 3 of Chapter 150B of the General Statutes. Notwithstanding G.S. 150B-2(1b), an area authority or county program is considered an agency for purposes of the limited appeal authorized by this section. If the need to first appeal to the Panel is waived by the Secretary, a contractor may appeal directly to the Office of Administrative Hearings after having exhausted the appeals process at the appropriate area authority or county program.

(g) Limitation of Applicability. – This section does not apply to LME/MCOs, enrollees, applicants, providers of emergency services, or network providers subject to Chapter 108D of the General Statutes. (1993, c. 321, s. 220(o); 2001-437, s. 1.17(c); 2008-107, s. 10.15A(h); 2011-398, s. 40; 2012-66, s. 3; 2013-397, s. 3; 2021-88, s. 16(d).)

§ 122C-152. Liability insurance and waiver of immunity as to torts of agents, employees, and board members.

(a) An area authority, by securing liability insurance as provided in this section, may waive its governmental immunity from liability for damage by reason of death or injury to person or property caused by the negligence or tort of any agent, employee, or board member of the area authority when acting within the scope of his authority or within the course of his duties or employment. Governmental immunity is waived by the act of obtaining this insurance, but it is

waived by only to the extent that the area authority is indemnified by insurance for the negligence or tort.

(b) Any contract of insurance purchased pursuant to this section shall be issued by a company or corporation licensed and authorized to execute insurance contracts in this State and shall by its terms adequately insure the area authority against any and all liability for any damages by reason of death or injury to a person or property proximately caused by the negligent acts or torts of the agents, employees, and board members of the area authority when acting within the course of their duties or employment. The area board shall determine the extent of the liability and what agents, employees by class, and board members are covered by any insurance purchased pursuant to this subsection. Any company or corporation that enters into a contract of insurance as described in this section with the authority, by this act waives any defense based upon the governmental immunity of the area authority.

(c) Any persons sustaining damages, or, in the case of death, his personal representative, may sue an area authority insured under this section for the recovery of damages in any court of competent jurisdiction in this State, but only in a county located within the geographic limits of the authority. It is no defense to any action that the negligence or tort complained of was in pursuance of a governmental or discretionary function of the area authority if, and to the extent that, the authority has insurance coverage as provided by this section.

(d) Except as expressly provided by subsection (c) of this section, nothing in this section deprives any area authority of any defense whatsoever to any action for damages or to restrict, limit, or otherwise affect any defense which the area authority may have at common law or by virtue of any statute. Nothing in this section relieves any person sustaining damages nor any personal representative of any decedent from any duty to give notice of a claim to the area authority or to commence any civil action for the recovery of damages within the applicable period of time prescribed or limited by statute.

(e) The area authority may incur liability pursuant to this section only with respect to a claim arising after the authority has procured liability insurance pursuant to this section and during the time when the insurance is in force.

(f) No part of the pleadings that relate to or allege facts as to a defendant's insurance against liability may be read or mentioned in the presence of the trial jury in any action brought pursuant to this section. This liability does not attach unless the plaintiff waives the right to have all issues of law or fact relating to insurance in the action determined by a jury. These issues shall be heard and determined by the judge, and the jury shall be absent during any motions, arguments, testimony, or announcement of findings of fact or conclusions of law with respect to insurance. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

§ 122C-153. Defense of agents, employees, and board members.

(a) Upon request made by or in behalf of any agent, employee, or board member or former agent, employee, or board member of the area authority, any area authority may provide for the defense of any civil or criminal action or proceeding brought against him either in his official or in his individual capacity, or both, on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member. The defense may be provided by the local board by employing counsel or by purchasing insurance that requires that the insurer provide the defense. Nothing in this section requires any area authority to provide for the defense of any action or proceeding of any nature.

(b) An area authority may budget funds for the purpose of paying all or part of the claim made or any civil judgment entered against any of its agents, employees, or board members or former agents, employees, or board members when a claim is made or judgment is rendered as damages on account of any act done or omission made, or any act allegedly done or omission allegedly made, in the scope and course of his duty as an agent, employee, or board member of the area authority. Nothing in this section shall authorize any area authority to budget funds for the purpose of paying any claim made or civil judgment against any of its agents, employees, or board members, or former agents, employees, or board members, if the authority finds that the agent, employee, or board member acted or failed to act because of actual fraud, corruption, or actual malice on his part. Any authority may budget for and purchase insurance coverage for payment of claims or judgments pursuant to this section. Nothing in this section requires any authority to pay any claim or judgment referred to, and the purchase of insurance coverage for payment of the claim or judgment may not be considered an assumption of any liability not covered by the insurance contract and may not be deemed an assumption of liability or payment of any claim or judgment in excess of the limits of coverage in the insurance contract.

(c) Subsection (b) of this section does not authorize an authority to pay all or part of a claim made or civil judgment entered or to provide a defense to a criminal charge unless (i) notice of the claim or litigation is given to the area authority before the time that the claim is settled or civil judgment is entered; and (ii) the area authority has adopted, and made available for public inspection, uniform standards under which claims made, civil judgments entered, or criminal charges against agents, employees, or board members or former agents, employees, or board members shall be defended or paid.

(d) The board or boards of county commissioners that establish the area authority and the Secretary may allocate funds not otherwise restricted by law, in addition to the funds allocated for the operation of the program, for the purpose of paying legal defense, judgments, and settlements under this section. (1981, c. 539, s. 2; 1985, c. 589, s. 2.)

§ 122C-154. Personnel.

Employees under the direct supervision of the area director are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. Notwithstanding G.S. 126-9(b), an employee of an area authority may be paid a salary that is in excess of the salary ranges established by the State Human Resources Commission. Any salary that is higher than the maximum of the applicable salary range shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the employee. The area board shall not authorize any salary adjustment that is above the normal allowable salary range without obtaining prior approval from the Director of the Office of State Human Resources. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2; 2001-437, s. 1.18; 2012-151, s. 11(b); 2013-382, s. 9.1(c); 2023-134, s. 9G.7A(a13).)

§ 122C-155. Supervision of services.

Unless otherwise specified, client services are the responsibility of a qualified professional. Direct medical and psychiatric services shall be provided by a qualified psychiatrist or a physician with adequate training and experience acceptable to the Secretary. (1971, c. 470, s. 1; 1973, c. 476, s. 133; 1977, c. 568, s. 1; c. 679, s. 7; 1979, c. 358, s. 14; 1981, c. 51, s. 3; 1985, c. 589, s. 2.)

§ 122C-156. Salary plan for employees of the area authority.

(a) The area authority shall establish a salary plan which shall set the salaries for employees of the area authority. The salary plan shall be in compliance with Chapter 126 of the General Statutes. In a multi-county area, the salary plan shall not exceed the highest paying salary plan of any county in that area. In a single-county area, the 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 authority and the board or boards of county commissioners, as the case may be, jointly agree to exceed these limitations.

(b) An area authority may purchase life insurance or health insurance or both for the benefit of all or any class of authority officers or employees as a part of its compensation. An area authority may provide other fringe benefits for authority officers and employees.

(c) An area authority that is providing health insurance under subsection (b) of this section may provide health insurance for all or any class of former officers and employees of the area authority who are receiving benefits under Article 3 of Chapter 128 of the General Statutes. Health insurance may be paid entirely by the area authority, partly by the area authority and former officer or employee, or entirely by the former officer or employee, at the option of the area board. (1977, c. 568, s. 1; 1979, c. 358, ss. 15, 23; 1985, c. 589, s. 2.)

§ 122C-157. Establishment of a professional reimbursement policy.

The area authority shall adopt and enforce a professional reimbursement policy. This policy shall (i) require that fees for the provision of services received directly under the supervision of the area authority shall be paid to the area authority, (ii) prohibit employees of the area authority from providing services on a private basis which require the use of the resources and facilities of the area authority, and (iii) provide that employees may not accept dual compensation and dual employment unless they have the written permission of the area authority. (1977, c. 568, s. 1; 1979, c. 358, s. 17; 1985, c. 589, s. 2.)

§ 122C-158. Privacy of personnel records.

(a) Notwithstanding the provisions of G.S. 132-6 or any other State statute concerning access to public records, personnel files of employees or applicants for employment maintained by an area authority are subject to inspection and may be disclosed only as provided by this section. For purposes of this section, an employee's personnel file consists of any information in any form gathered by the area authority with respect to that employee, including his application, selection or nonselection, performance, promotions, demotions, transfers, suspensions and other disciplinary actions, evaluation forms, leave, salary, and termination of employment. As used in this section, "employee" includes former employees of the area authority.

(b) The following information with respect to each employee is a matter of public record:

(1) Name.

(2) Age.

(3) Date of original employment or appointment to the area authority.

(4) The terms of any contract by which the employee is employed whether written or oral, past and current, to the extent that the agency has the written contract or a record of the oral contract in its possession.

(5) Current position.

(6) Title.

(7) Current salary.
(8) Date and amount of each increase or decrease in salary with that area authority.
(9) Date and type each promotion, demotion, transfer, suspension, separation, or other change in position classification with that area authority.
(10) Date and general description of the reasons for each promotion with that area authority.
(11) Date and type of each dismissal, suspension, or demotion for disciplinary reasons taken by the area authority. If the disciplinary action was a dismissal, a copy of the written notice of the final decision of the area authority setting forth the specific acts or omissions that are the basis of the dismissal.
(12) The office to which the employee is currently assigned.

(b1) For the purposes of this subsection, the term "salary" includes pay, benefits, incentives, bonuses, and deferred and all other forms of compensation paid by the employing entity.

(b2) The area authority shall determine in what form and by whom this information will be maintained. Any person may have access to this information for the purpose of inspection, examination, and copying during regular business hours, subject only to rules for the safekeeping of public records as the area authority may have adopted. Any person denied access to this information may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, and the court shall have jurisdiction to issue these orders.

(c) All information contained in an employee's personnel file, other than the information made public by subsection (b) of this section, is confidential and is open to inspection only in the following instances:

(1) The employee or an authorized agent may examine portions of his personnel file except (i) letters of reference solicited before employment, and (ii) information concerning a medical disability, mental or physical, that a prudent physician would not divulge to a patient.
(2) A licensed physician designated in writing by the employee may examine the employee's medical record.
(3) An area authority employee having supervisory authority over the employee may examine all material in the employee's personnel file.
(4) By order of a court of competent jurisdiction, any person may examine the part of an employee's personnel file that is ordered by the court.
(5) An official of an agency of the State or federal government, or any political subdivision of the State, may inspect any part of a personnel file pursuant to G.S. 122C-25(b) or G.S. 122C-192(a) or when the inspection is considered by the official having custody of the records to be inspected to be necessary and essential to the pursuance of a proper function of the inspecting agency. No information may be divulged for the purpose of assisting in a criminal prosecution of the employee or for the purpose of assisting in an investigation of the employee's tax liability. However, the official having custody of the records may release the name, address, and telephone number from a personnel file for the purpose of assisting in a criminal investigation.
(6) An employee may sign a written release, to be placed with the employee's personnel file, that permits the person with custody of the file to provide, either in person, by telephone or by mail, information specified in the release to

prospective employers, educational institutions, or other persons specified in the release.

(7) The area authority may tell any person of the employment or nonemployment, promotion, demotion, suspension, or other disciplinary action, reinstatement, transfer, or termination of an employee and the reasons for that personnel action. Before releasing the information, the area authority shall determine in writing that the release is essential to maintaining public confidence in the administration of services or to maintaining the level and quality of services. This written determination shall be retained as a record for public inspection and shall become part of the employee's personnel file.

(d) Even if considered part of an employee's personnel file, the following information need not be disclosed to an employee nor to any other person:

(1) Testing or examination material used solely to determine individual qualifications for appointment, employment, or promotion in the area authority service, when disclosure would compromise the objectivity or the fairness of the testing or examination process.

(2) Investigative reports or memoranda and other information concerning the investigation of possible criminal action of an employee, until the investigation is completed and no criminal action taken, or until the criminal action is concluded.

(3) Information that might identify an undercover law-enforcement officer or a law-enforcement informer.

(4) Notes, preliminary drafts, and internal communications concerning an employee. In the event these materials are used for any official personnel decision, then the employee or an authorized agent has a right to inspect these materials.

(e) The area authority may permit access, subject to limitations it may impose, to selected personnel files by a professional representative of a training, research, or academic institution if that representative certifies that he will not release information identifying the employees whose files are opened and that the information will be used solely for statistical, research, or teaching purposes. This certification shall be retained by the area authority as long as each personnel file so examined is retained.

(f) The area authority that maintains personnel files containing information other than the information mentioned in subsection (b) of this section shall establish procedures whereby an employee who objects to material in the employee's file on grounds that it is inaccurate or misleading may seek to have the material removed from the file or may place in the file a statement relating to the material.

(g) Permitting access, other than that authorized by this section, to a personnel file of an employee of an area authority is a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars ($500.00).

(h) Anyone who, knowing that he is not authorized to do so, examines, removes, or copies information in a personnel file of an employee of an area authority is guilty of a Class 3 misdemeanor and is punishable only by a fine, not to exceed five hundred dollars ($500.00). (1983, c. 281; 1985, c. 589, s. 2; 1993, c. 539, ss. 924, 925; 1994, Ex. Sess., c. 24, s. 14(c); 2007-508, s. 3; 2010-169, s. 18(d).)

§§ 122C-159 through 122C-169. Reserved for future codification purposes.

Part 4A. Consumer and Family Advisory Committees.

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

(a) Area authorities shall establish committees made up of consumers and family members to be known as Consumer and Family Advisory Committees (CFACS). A local CFAC shall be a self-governing and a self-directed organization that advises the area authority in its catchment area on the planning and management of the local public mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services system.

Each CFAC shall adopt bylaws to govern the selection and appointment of its members, their terms of service, the number of members, and other procedural matters. At the request of either the CFAC or the governing board of the area authority, the CFAC and the governing board shall execute an agreement that identifies the roles and responsibilities of each party, channels of communication between the parties, and a process for resolving disputes between the parties.

(b) Each of the disability groups shall be equally represented on the CFAC, and the CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment area. The terms of members shall be three years, and no member may serve more than three consecutive terms. The CFAC shall be composed exclusively of:

(1) Adult consumers of mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services.

(2) Family members of consumers of mental health, intellectual and development disabilities, substance use disorder, and traumatic brain injury services.

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

(1) Review, comment on, and monitor the implementation of the contract deliverables between area authorities and the Department of Health and Human Services.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the area authority budget.

(5) Develop a collaborative and working relationship with the area authorities member advisory committees to obtain input related to service delivery and system change issues.

(6) Submit to the State Consumer and Family Advisory Committee findings and recommendations regarding ways to improve the delivery of mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services, including Statewide issues.

(d) The director of the area authority 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 contract deliverables and budgets, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws. (2006-142, s. 5; 2012-151, s. 5; 2021-77, s. 8.1.)

§ 122C-171. State Consumer and Family Advisory Committee.

(a) There is established the State Consumer and Family Advisory Committee (State CFAC). The State CFAC shall be a self-governing and self-directed organization that advises the Department and the General Assembly on the planning and management of the State's public mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services system.

(b) The State CFAC shall be composed of 21 members. The members shall be composed exclusively of adult consumers of mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services and family members of consumers of mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services. The terms of members shall be three years, and no member may serve more than two consecutive terms. Vacancies shall be filled by the appointing authority. The members shall be appointed as follows:

(1) Nine members appointed by the Secretary. The Secretary's appointments shall reflect each of the disability groups. The terms shall be staggered so that terms of three of the appointees expire each year.

(2) Four members appointed by the President Pro Tempore of the Senate as follows:
   a. One member from the eastern region of the State.
   b. One member from the central region of the State.
   c. Two members from the western region of the State.

   The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(3) Four members appointed by the Speaker of the House of Representatives as follows:
   a. One member from the eastern region of the State.
   b. Two members from the central region of the State.
   c. One member from the western region of the State.

   The terms of the appointees shall be staggered so that the term of one appointee expires every year.

(4) Repealed by Session Laws 2021-77, s. 4(a), effective July 2, 2021, and applicable only to appointments to the Consumer and Family Advisory Committee made on or after that date.

(5) Four members appointed by the North Carolina Association of County Commissioners as follows:
   a. Two members from the eastern region of the State.
   b. One member from the central region of the State.
   c. One member from the western region of the State.

   The terms of the appointees shall be staggered so that the term of one appointee expires every year.

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

(1) Review, comment on, and monitor the implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.

(2) Identify service gaps and underserved populations.

(3) Make recommendations regarding the service array and monitor the development of additional services.

(4) Review and comment on the State budget for mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services.
(5) Review and comment on contract deliverables and the process and outcomes of prepaid health plans in meeting these contract deliverables.
(6) Receive the findings and recommendations by local CFACs regarding ways to improve the delivery of mental health, intellectual and developmental disabilities, substance use disorder, and traumatic brain injury services, including Statewide issues.
(7) Develop a collaborative and working relationship with the prepaid health plan member advisory committees to obtain input related to service delivery and system change issues.

(d) The Secretary shall provide sufficient staff to assist the State 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 the State Plan and departmental budget, procedures to allow participation in quality monitoring, and technical advice on rules of procedure and applicable laws.

(e) State CFAC members shall receive the per diem and allowances prescribed by G.S. 138-5 for State boards and commissions. (2006-142, s. 5; 2009-50, s. 1; 2021-77, s. 4(a).)

§§ 122C-172 through 122C-180. Reserved for future codification purposes.

Part 5. State Facilities.

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

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

(1) Psychiatric Hospitals:
  a. Cherry Hospital.
  a1. Central Regional Hospital.
  b., c. Repealed by Session Laws 2007-177, s. 2. See Editor's note.
  d. Broughton Hospital.
(2) Developmental Centers:
  a. Caswell Developmental Center.
  b. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
  b1. J. Iverson Riddle Developmental Center.
  c. Murdoch Developmental Center.
  d. through e. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
(3) Alcohol and Drug Treatment Centers:
  a. Walter B. Jones Alcohol and Drug Abuse Treatment Center.
  b. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.
  c. Julian F. Keith Alcohol and Drug Abuse Treatment Center.
  d. Repealed by Session Laws 2023-3, s. 2, effective March 10, 2023.
(4) Neuro-Medical Treatment Centers:
  a. through c. Repealed by Session Laws 2007-177, s. 1, effective July 5, 2007.

d. Black Mountain Neuro-Medical Treatment Center.
e. O'Berry Neuro-Medical Treatment Center.
f. Longleaf Neuro-Medical Treatment Center.

(5) Residential Programs for Children:
a. Whitaker School.
b. Wright School.

(b) Subject to the requirements of subsection (c) of this section, the Secretary may, with the approval of the Governor and Council of State, close any State facility.

(c) Closure of a State facility under subsection (b) of this section becomes effective on the earlier of the 31st legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 10 days after the date the closure is approved, unless a different effective date applies under this subsection. If a bill that specifically disapproves the State facility closure is introduced in either house of the General Assembly before the thirty-first legislative day of that session, the closure becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the State facility closure. If the Secretary specifies a later effective date for closure than the date that would otherwise apply under this subsection, the later date applies. Closure of a State facility does not become effective if the closure is specifically disapproved by a bill enacted into law before it becomes effective. Notwithstanding any rule of either house of the General Assembly, any member of the General Assembly may introduce a bill during the first 30 legislative days of any regular session to disapprove closure of a facility that has been approved by the Governor and Council of State as provided in subsection (b) of this section. Nothing in this subsection shall be construed to impair the Secretary's power or duty otherwise imposed by law to close a State facility temporarily for the protection of health and safety. (Code, ss. 2227, 2240; 1899, c. 1, s. 1; Rev., s. 4542; C.S., s. 6151; 1945, c. 952, s. 8; 1947, c. 537, s. 2; 1949, c. 1206, s. 1; 1955, c. 887, s. 1; 1959, c. 348, s. 1; c. 1002, s. 1; c. 1008; c. 1028, ss. 1-4; 1961, c. 513; c. 1173, ss. 1, 2, 4; 1963, c. 1166, ss. 2, 10, 12; c. 1184, s. 6; 1967, c. 151; 1969, c. 982; 1973, c. 476, ss. 128, 133, 138; 1975, c. 19, s. 41; 1977, c. 679, s. 7; 1981, c. 51, s. 3; c. 77; c. 412, s. 4; 1983, c. 383, s. 9; 1985, c. 589, s. 2; 1989, c. 145, s. 1; 1991, c. 689, s. 136; 2001-437, s. 1.19; 2001-487, s. 80(a); 2007-177, ss. 1, 2; 2023-3, s. 2.)

§ 122C-182. Authority to contract with area authorities.

To establish a coordinated system of services for its clients, a State facility shall contract with an area authority. Contracted services shall meet the rules of the Commission and the Secretary. (1985, c. 589, s. 2.)

§ 122C-183. Appointment of employees as police officers who may arrest without warrant.

The director of each State facility may appoint as special police officers the number of employees of their respective facilities they consider necessary. Within the grounds of the State facility the employees appointed as special police officers have all the powers of police officers of cities. The Secretary, or the Secretary's designee, may assign these special police officers to other State-operated facilities on a temporary basis to carry out the powers allowed under this section and as otherwise provided by laws relating to the specific joint security force to which they are assigned. Upon this temporary assignment, the special police officer will take the oath in G.S. 122C-184 for that specific facility. Following the oath, the police officer has the right to arrest without warrant individuals committing violations of the State law or the ordinances or rules of that

facility in their presence and to bring the offenders before a magistrate who shall proceed as in other criminal cases. (1899, c. 1, s. 55; 1901, c. 627; Rev., s. 4569; C.S., s. 6181; 1921, c. 207; 1957, c. 1232, s. 12; 1959, c. 1002, s. 12; 1973, c. 108, s. 73; c. 673, s. 12.1; 1981, c. 635, s. 5; 1985, c. 589, s. 2; 2019-240, s. 19(a).)

§ 122C-184. Oath of special police officers.

Before exercising the duties of a special police officer, the employees appointed under G.S. 122C-183 shall take an oath or affirmation of office before an officer empowered to administer oaths. The oath or affirmation shall be filed with the records of the Department. The oath or affirmation of office is:

> State of North Carolina: _____County.
>
> I, _____, do solemnly swear (or affirm) that I will well and truly execute the duties of office of special police officer in and for the State facility called_____, according to the best of my skill and ability and according to law; and that I will use my best endeavors to enforce all the ordinances of said facility, and to suppress nuisances, and to suppress and prevent disorderly conduct within these grounds. So help me, God.
>
> Sworn and subscribed before me, this _____ day of_____, A.D. _____.

(1899, c. 1, s. 56; 1901, c. 627; Rev., s. 4570; C.S., s. 6182; 1963, c. 1166, s. 11; 1973, c. 108, s. 74; c. 476, s. 133; 1985, c. 589, s. 2.)

§ 122C-185. Application of funds belonging to State facilities.

(a) All moneys and proceeds of property donated to any State facility shall be deposited into the State treasury and accounted for in the appropriate fund as determined by the Secretary and approved by the Office of State Budget and Management. All moneys and proceeds of property donated in which there are special directions for their application and the interest earned on these funds shall be spent as the donor has directed and except as required for deposit with the State treasury, shall not be subject to the provisions of the State Budget Act except for capital improvements projects which shall be authorized and executed in accordance with G.S. 143C-8-8 and G.S. 143C-8-9.

(b) Proceeds from the transfer or sale of surplus, obsolete, or unused equipment of State facilities shall be deposited and accounted for in accordance with G.S. 143-49(4).

(c) The net proceeds from the sale, lease, rental, or other disposition of real estate owned by a State facility shall be deposited and accounted for in accordance with G.S. 146-30.

(d) All proceeds from the operation of vending facilities as defined in G.S. 111-42(d) and operated by State facilities shall be deposited and accounted for in accordance with the State Budget Act, Chapter 143C of the General Statutes.

(e) All other revenues and other receipts collected by a State facility shall be deposited to the credit of the State treasury in accordance with G.S. 147-77. (1899, c. 1, s. 34; Rev., s. 4552; C.S., s. 6167; 1963, c. 1166, s. 13; 1973, c. 476, s. 133; 1985, c. 589, s. 2; 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2006-203, s. 68.)

§ 122C-186. General Assembly visitors of State facilities.

The members of the General Assembly are ex officio visitors of all State facilities, provided that the common law right of visitation of a State facility is abrogated to the extent that it does not include the right to access to confidential information. This right of access is only as granted by statute. (1963, c. 1184, s. 1; 1973, c. 476, s. 133; 1985, c. 589, s. 2.)

§§ 122C-187 through 122C-190. Reserved for future codification purposes.

Part 6. Quality Assurance.

§ 122C-191. Quality of services.

(a) The assurance that services provided are of the highest possible quality within available resources is an obligation of the area authority and the Secretary.

(b) Each area authority and State facility shall comply with the rules of the Commission regarding quality assurance activities, including: program evaluation; utilization and peer review; and staff qualifications, privileging, supervision, education, and training. These rules may not nullify compliance otherwise required by Chapter 126 of the General Statutes.

(c) Each area authority and State facility shall develop internal processes to monitor and evaluate the level of quality obtained by all its programs and services including the activities prescribed in the rules of the Commission.

(d) The Secretary shall develop rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. The rules may provide that the Secretary has the authority to determine whether applicable standards of practice have been met.

(e) For purposes of peer review functions only:

(1) A member of a duly appointed quality assurance committee who acts without malice or fraud shall not be subject to liability for damages in any civil action on account of any act, statement, or proceeding undertaken, made, or performed within the scope of the functions of the committee.

(2) The proceedings of a quality assurance committee, the records and materials it produces, and the material it considers shall be confidential and not considered public records within the meaning of G.S. 132-1, " 'Public records' defined," and shall not be subject to discovery or introduction into evidence in any civil action against a facility or a provider of professional health services that results from matters which are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall be required to testify in any civil action as to any evidence or other matters produced or presented during the proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. However, information, documents or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the committee, and nothing herein shall prevent a provider of professional health services from using such otherwise available information, documents or records in connection with an administrative hearing or civil suit relating to the medical staff membership, clinical privileges or employment of the provider. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the committee. A member of the committee or a person who testifies before the committee may be subpoenaed and be required to testify in a civil action as to events of which the person has knowledge independent of the peer review process, but cannot be asked about

the person's testimony before the committee for impeachment or other purposes or about any opinions formed as a result of the committee hearings.

(3) Peer review information that is confidential and is not subject to discovery or use in civil actions under this section may be released to a professional standards review organization that contracts with an agency of this State or the federal government to perform any accreditation or certification function, including the Joint Commission on Accreditation of Healthcare Organizations. Information released under this subdivision shall be limited to that which is reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released under this subdivision retains its confidentiality and is not subject to discovery or use in any civil actions as provided under this subsection, and the standards review organization shall keep the information confidential subject to this section. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; 1989 (Reg. Sess., 1990), c. 1053, s. 1; 1998-212, s. 12.35C(d); 1999-222, s. 1; 2004-149, s. 2.7.)

§ 122C-192. Review and protection of information.

(a) Notwithstanding G.S. 8-53, G.S. 8-53.3, or any other law relating to confidentiality of communications involving a patient or client, as needed to ensure quality assurance activities, the Secretary may review any writing or other record concerning the admission, discharge, medication, treatment, medical condition, or history of a client of an area authority or State facility. The Secretary may also review the personnel records of employees of an area authority or State facility.

(b) An area authority, State facility, its employees, and any other individual interviewed in the course of an inspection are immune from liability for damages resulting from disclosure of any information to the Secretary.

Except as required by law, it is unlawful for the Secretary or his representative to disclose:

(1) Any confidential or privileged information obtained under this section unless the client or his legally responsible person authorizes disclosure in writing; or

(2) The name of anyone who has furnished information concerning an area authority or State facility without that individual's consent.

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

(c) The Secretary shall adopt rules to ensure that unauthorized disclosure does not occur.

(d) All confidential or privileged information obtained under this section and the names of individuals providing such information are not public records under Chapter 132 of the General Statutes. (1985, c. 589, s. 2; 1993, c. 539, s. 926; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 122C-193. Reserved for future codification purposes.

Part 7. Contested Case Hearings for Eligible Assaultive and Violent Children.

§§ 122C-194 through 122C-200: Repealed by Session Laws 2000-67, s. 11.21(e).