

GENERAL ASSEMBLY OF NORTH CAROLINA
1989 SESSION

CHAPTER 625
SENATE BILL 489

AN ACT TO CHANGE THE MENTAL HEALTH LAW TO REFLECT THE
INCORPORATION OF DEVELOPMENTAL DISABILITIES.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 122C of the General Statutes reads as rewritten:

"Chapter 122C.

**"Mental Health, ~~Mental Retardation,~~ Developmental Disabilities,
and
Substance Abuse Act of 1985."**

Sec. 2. Article 1 of Chapter 122C of the General Statutes, as amended by Section 8 of Chapter 141, Session Laws of 1989, and as amended by Section 1 of Chapter 223, Session Laws of 1989, reads as rewritten:

"ARTICLE 1.

"General Provisions.

"§ 122C-1. Short title.

This Chapter may be cited as the Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Act of 1985.

"§ 122C-2. Policy.

The policy of the State is to assist individuals with mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse problems in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide services to eliminate, reduce, or prevent the disabling effects of mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse through a service delivery system designed to meet the needs of clients in the least restrictive available setting, if the least restrictive setting is therapeutically most appropriate, and to maximize their quality of life.

State and local governments shall develop and maintain a unified system of services centered in area programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector.

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

"§ 122C-3. Definitions.

As used in this Chapter, unless another meaning is specified or the context clearly requires otherwise, the following terms have the meanings specified:

- (1) 'Area authority' means the area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse authority.
- (2) 'Area board' means the area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse board.
- (3) 'Camp Butner reservation' means the original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State.
- (4) 'City' has the same meaning as in G.S. 153A-1(1).
- (5) 'Catchment area' means the geographic part of the State served by a specific area authority.
- (6) 'Client' means an individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.
- (7) 'Client advocate' means a person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.
- (8) 'Commission' means the Commission for Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (9) 'Confidential information' means any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. 'Confidential information' does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.
- (10) 'County of residence' of a client means the county of his domicile at the time of his admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his county in a facility or otherwise.
- (11) 'Dangerous to himself or others' means:
 - a. 'Dangerous to himself' means that within the recent past:
 1. The individual has acted in such a way as to show:
 - I. That he would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of his daily responsibilities and social relations, or to satisfy his need for nourishment, personal or

medical care, shelter, or self-protection and safety; and

- II. That there is a reasonable probability of his suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself; or
2. The individual has attempted suicide or threatened suicide and that there is a reasonable probability of suicide unless adequate treatment is given pursuant to this Chapter; or
3. The individual has mutilated himself or attempted to mutilate himself and that there is a reasonable probability of serious self-mutilation unless adequate treatment is given pursuant to this Chapter.

Previous episodes of dangerousness to self, when applicable, may be considered when determining reasonable probability of physical debilitation, suicide, or self-mutilation.

- b. 'Dangerous to others' means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct.
- (12) 'Department' means the North Carolina Department of Human Resources.
- (12a) 'Developmental disability' means a severe, chronic disability of a person which:
- a. Is attributable to a mental or physical impairment or combination of mental and physical impairments;
 - b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic head injury and is manifested after age 22;
 - c. Is likely to continue indefinitely;
 - d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive

- and expressive language, capacity for independent living, learning, mobility, self-direction and economic self-sufficiency; and
- e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services which are of a lifelong or extended duration and are individually planned and ~~coordinated~~ coordinated; or
 - f. When applied to children from birth through four years of age, may be evidenced as a developmental delay.
- (13) 'Division' means the Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services of the Department.
- (13a) 'Eligible psychologist' means a licensed practicing psychologist who has at least two years' clinical experience.
- (14) 'Facility' means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, ~~the mentally retarded,~~ the developmentally disabled, or substance abusers, and includes:
- a. An 'area facility', which is a facility that is operated by or under contract with the area authority. A facility that is providing services under contract with the area authority is an area facility for purposes of the contracted services only. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
 - b. A 'licensable facility', which is a facility that provides services for one or more minors or for two or more adults. When the services offered are provided to individuals who are mentally ill or ~~mentally retarded,~~ developmentally disabled, these services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. When the services offered are provided to individuals who are substance abusers, these services shall include all outpatient services, day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
 - c. A 'private facility', which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
 - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;

- e. A 'residential facility', which is a 24-hour facility that is not a hospital, including a group home;
- f. A 'State facility', which is a facility that is operated by the Secretary;
- g. A '24-hour facility', which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter; and
- h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the ~~mental-retarded~~, developmentally disabled, or substance abusers.

~~For the purposes of Articles 2 and 3 of this Chapter only, excluding G.S. 122C-63, 'facility' also means any person at one location, whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation for individuals with developmental disabilities, developed under the authority of this Chapter.~~

- (15) 'Guardian' means a person appointed as a guardian of the person or general guardian by the court under Chapters 7A, 33, or 35A of the General Statutes.
- (16) 'Habilitation' means training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.
- (17) 'Incompetent adult' means an adult individual adjudicated incompetent.
- (18) 'Intoxicated' means the condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) 'Law-enforcement officer' means sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) 'Legally responsible person' means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian; or (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment.
- (21) 'Mental illness' means: (i) when applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of his affairs and social relations as to make it necessary or advisable for him to be under treatment, care, supervision, guidance, or control; and (ii) when applied to a minor, a mental condition, other than mental retardation alone, that so impairs the youth's capacity to exercise

- age adequate self-control or judgment in the conduct of his activities and social relationships so that he is in need of treatment.
- (22) 'Mental retardation' means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (23) 'Mentally retarded with accompanying behavior disorder' means an individual who is mentally retarded and who has a pattern of maladaptive behavior that is recognizable no later than adolescence and is characterized by gross outbursts of rage or physical aggression against other individuals or property.
- (24) 'Next of kin' means the individual designated in writing by the client or his legally responsible person upon the client's acceptance at a facility; provided that if no such designation has been made, 'next of kin' means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.
- (25) 'Operating costs' means expenditures made by an area authority in the delivery of services for mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.
- (26) Repealed by Session Laws 1987, c. 345, s. 1.
- (27) 'Outpatient treatment' as used in Part 7 of Article 5 means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.
- (28) 'Person' means any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.
- (29) 'Physician' means an individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.
- (30) 'Provider of support services' means a person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.
- (30a) 'Psychologist' means an individual licensed to practice psychology under Chapter 90. The term 'eligible psychologist' is defined in subdivision (13a).

- (31) 'Qualified professional' means any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or ~~mental retardation~~ developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, and certified counselors.
- (32) 'Responsible professional' means an individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.
- (33) 'Secretary' means the Secretary of the Department of Human Resources.
- (34) 'Single portal of entry and exit policy' means an admission and discharge policy for State and area facilities that may be adopted by an area authority and shall be approved by the Secretary before it is in force. The policy and its provisions shall be designed to promote quality client care in and among State and area facilities. Furthermore, the policy shall be designed to integrate otherwise independent facilities into a unified and coordinated system, in which system the area authority shall be responsible for assuring that the individual client can receive services from the facility that is best able to meet his needs. However, the policy may not be inconsistent with any other provisions of the General Statutes, nor may the policy include the complete exclusion of clients from admission to any specific State or area facility.
- (35) 'Single portal area' means the county or counties that comprise the catchment area of an area authority that has adopted a single portal of entry and exit policy.
- (36) 'Substance abuse' means the pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. 'Substance abuse' may include a pattern of tolerance and withdrawal.
- (37) 'Substance abuser' means an individual who engages in substance abuse.

"§ 122C-4. Use of phrase 'client or his legally responsible person.'

Except as otherwise provided by law, whenever in this Chapter the phrase 'client or his legally responsible person' is used, and the client is a minor or an incompetent adult, the duty or right involved shall be exercised not by the client, but by the legally responsible person."

Sec. 3. The title of Article 2 of Chapter 122C reads as rewritten:

"ARTICLE 2.

"Licensure of Facilities for the Mentally Ill,
the ~~Mentally Retarded,~~ Developmentally Disabled, and Substance

Abusers."

Sec. 4. G.S. 122C-21 reads as rewritten:

"§ 122C-21. Purpose.

The purpose of this Article is to provide for licensure of facilities for the mentally ill, ~~mentally retarded,~~ developmentally disabled, and substance abusers by the development, establishment, and enforcement of basic rules governing:

- (1) The provision of services to individuals who receive services from licensable facilities as defined by this Chapter, and
- (2) The construction, maintenance, and operation of these licensable facilities that in the light of existing knowledge will ensure safe and adequate treatment of these individuals."

Sec. 5. G.S. 122C-22(a) reads as rewritten:

"(a) The following are excluded from the provisions of this Article and are not required to obtain licensure under this Article:

- (1) Physicians and psychologists engaged in private office practice;
- (2) General hospitals licensed under Article 5 of Chapter 131E of the General Statutes, that operate special units for the mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers;
- (3) State and federally-operated facilities;
- (4) Domiciliary care homes licensed under Chapter 131D of the General Statutes;
- (5) Developmental child day care centers licensed under Article 7 of Chapter 110 of the General Statutes;
- (6) Persons subject to licensure under rules of the Social Services Commission;
- (7) Persons subject to rules and regulations of the Division of Vocational Rehabilitation Services; and
- (8) Facilities that provide occasional respite care for not more than two individuals at a time; provided that the primary purpose of the facility is other than as defined in G.S. 122C-3(14)."

Sec. 6. G.S. 122C-23(a) reads as rewritten:

"(a) No person shall establish, maintain, or operate a licensable facility for the mentally ill, ~~mentally retarded~~ developmentally disabled, or substance abusers without a current license issued by the Secretary."

Sec. 7. G.S. 122C-51 reads as rewritten:

"§ 122C-51. Declaration of policy on clients' rights.

It is the policy of the State to assure basic human rights to each client of a facility. These rights include the right to dignity, privacy, humane care, and freedom from mental and physical abuse, neglect, and exploitation. Each facility shall assure to each client the right to live as normally as possible while receiving care and treatment.

It is further the policy of this State that each client who is admitted to and is receiving services from a facility has the right to treatment, including access to medical care and habilitation, regardless of age or degree of mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse. Each client has the right to an

individualized written treatment or habilitation plan setting forth a program to maximize the development or restoration of his capabilities."

Sec. 8. G.S.122C-55(c) reads as rewritten:

"(c) A facility may furnish confidential information in its possession to the Department of Correction when requested by that department regarding any client of that facility when the inmate has been determined by the Department of Correction to be in need of treatment for mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse. The Department of Correction may furnish to a facility confidential information in its possession about treatment for mental illness, ~~mental retardation,~~ developmental disabilities, or substance abuse that the Department of Correction has provided to any present or former inmate if the inmate is presently seeking treatment from the requesting facility or if the inmate has been involuntarily committed to the requesting facility for inpatient or outpatient treatment. Under the circumstances described in this subsection, the consent of the client or inmate shall not be required in order for this information to be furnished and the information shall be furnished despite objection by the client or inmate. Confidential information disclosed pursuant to this subsection is restricted from further disclosure."

Sec. 9. G.S. 122C-56(b) reads as rewritten:

"(b) The Secretary may have access to confidential information from private or public agencies or agents for purposes of research and evaluation in the areas of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse. No confidential information shall be further disclosed."

Sec. 10. G.S. 122C-62 reads as rewritten:

"§ 122C-62. Additional rights in 24-hour facilities.

(a) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-61, each adult client who is receiving treatment or habilitation in a 24-hour facility keeps the right to:

- (1) Send and receive sealed mail and have access to writing material, postage, and staff assistance when necessary;
- (2) Contact and consult with, at his own expense and at no cost to the facility, legal counsel, private physicians, and private mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse professionals of his choice; and
- (3) Contact and consult with a client advocate if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each adult client may exercise these rights at all reasonable times.

(b) Except as provided in subsections (e) and (h) of this section, each adult client who is receiving treatment or habilitation in a 24-hour facility at all times keeps the right to:

- (1) Make and receive confidential telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;

- (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over therapies;
- (3) Communicate and meet under appropriate supervision with individuals of his own choice upon the consent of the individuals;
- (4) Make visits outside the custody of the facility unless:
 - a. Commitment proceedings were initiated as the result of the client's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found not guilty by reason of insanity or incapable of proceeding;
 - b. The client was voluntarily admitted or committed to the facility while under order of commitment to a correctional facility of the Department of Correction; or
 - c. The client is being held to determine capacity to proceed pursuant to G.S. 15A-1002;

A court order may expressly authorize visits otherwise prohibited by the existence of the conditions prescribed by this subdivision;
- (5) Be out of doors daily and have access to facilities and equipment for physical exercise several times a week;
- (6) Except as prohibited by law, keep and use personal clothing and possessions;
- (7) Participate in religious worship;
- (8) Keep and spend a reasonable sum of his own money;
- (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes; and
- (10) Have access to individual storage space for his private use.

(c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to have access to proper adult supervision and guidance. In recognition of the minor's status as a developing individual, the minor shall be provided opportunities to enable him to mature physically, emotionally, intellectually, socially, and vocationally. In view of the physical, emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide appropriate structure, supervision and control consistent with the rights given to the minor pursuant to this Article. The facility shall also, where practical, make reasonable efforts to ensure that each minor client receives treatment apart and separate from adult clients unless the treatment needs of the minor client dictate otherwise.

Each minor client who is receiving treatment or habilitation from a 24-hour facility has the right to:

- (1) Communicate and consult with his parents or guardian or the agency or individual having legal custody of him;
- (2) Contact and consult with, at his own expense or that of his legally responsible person and at no cost to the facility, legal counsel, private

physicians, private mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse professionals, of his or his legally responsible person's choice; and

(3) Contact and consult with a client advocate, if there is a client advocate.

The rights specified in this subsection may not be restricted by the facility and each minor client may exercise these rights at all reasonable times.

(d) Except as provided in subsections (e) and (h) of this section, each minor client who is receiving treatment or habilitation in a 24-hour facility has the right to:

- (1) Make and receive telephone calls. All long distance calls shall be paid for by the client at the time of making the call or made collect to the receiving party;
- (2) Send and receive mail and have access to writing materials, postage, and staff assistance when necessary;
- (3) Under appropriate supervision, receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two hours of which shall be after 6:00 p.m.; however visiting shall not take precedence over school or therapies;
- (4) Receive special education and vocational training in accordance with federal and State law;
- (5) Be out of doors daily and participate in play, recreation, and physical exercise on a regular basis in accordance with his needs;
- (6) Except as prohibited by law, keep and use personal clothing and possessions under appropriate supervision;
- (7) Participate in religious worship;
- (8) Have access to individual storage space for the safekeeping of personal belongings;
- (9) Have access to and spend a reasonable sum of his own money; and
- (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of the General Statutes.

(e) No right enumerated in subsections (b) or (d) of this section may be limited or restricted except by the qualified professional responsible for the formulation of the client's treatment or habilitation plan. A written statement shall be placed in the client's record that indicates the detailed reason for the restriction. The restriction shall be reasonable and related to the client's treatment or habilitation needs. A restriction is effective for a period not to exceed 30 days. An evaluation of each restriction shall be conducted by the qualified professional at least every seven days, at which time the restriction may be removed. Each evaluation of a restriction shall be documented in the client's record. Restrictions on rights may be renewed only by a written statement entered by the qualified professional in the client's record that states the reason for the renewal of the restriction. In the case of an adult client who has not been adjudicated incompetent, in each instance of an initial restriction or renewal of a restriction of rights, an individual designated by the client shall, upon the consent of the client, be notified of the restriction and of the reason for it. In the case of a minor client or an incompetent adult client, the legally responsible person shall be notified of each instance of an initial

restriction or renewal of a restriction of rights and of the reason for it. Notification of the designated individual or legally responsible person shall be documented in writing in the client's record.

(f) The Commission may adopt rules to implement subsection (e) of this section.

(g) With regard to clients being held to determine capacity to proceed pursuant to G.S. 15A-1002 or clients in a facility for substance abuse, and notwithstanding the prior provisions of this section, the Commission may adopt rules restricting the rights set forth under (b) (2) and (d) (3) of this section if restrictions are necessary and reasonable in order to protect the health, safety, and welfare of the client involved or other clients.

(h) The rights stated in subdivisions (b) (2), (b) (4), (b) (5), (b) (10), (d) (3), (d) (5) and (d) (8) may be modified in a general hospital by that hospital to be the same as for other patients in that hospital; provided that any restriction of a specific client's rights shall be done in accordance with the provisions of subsection (e) of this section."

Sec. 11. G.S. 122C-65(a) reads as rewritten:

"(a) For the protection of clients receiving treatment or habilitation in a 24-hour facility, it is unlawful for any individual who is not a ~~mentally retarded~~ developmentally disabled client in a facility:

- (1) To assist, advise, or solicit, or to offer to assist, advise, or solicit a client of a facility to leave without authority;
- (2) To transport or to offer to transport a client of a facility to or from any place without the facility's authority;
- (3) To receive or to offer to receive a minor client of a facility into any place, structure, building, or conveyance for the purpose of engaging in any act that would constitute a sex offense, or to solicit a minor client of a facility to engage in any act that would constitute a sex offense;
- (4) To hide an individual who has left a facility without authority; or
- (5) To engage in, or offer to engage in an act with a client of a facility that would constitute a sex offense."

Sec. 12. The title of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"ARTICLE 4.

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

Sec. 13. G.S. 122C-101 reads as rewritten:

"§ 122C-101. Policy.

Within the public system of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services, there are both area and State facilities. An area authority is the locus of coordination among public services for clients of its catchment area. To assure the most appropriate and efficient care of clients within the publicly supported service system, area authorities are encouraged to develop and secure approval for a single portal of entry and exit policy for their catchment areas."

Sec. 14. Part 2 of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"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 administer the programs of the area authority and enforce the rules of the area board, 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 services between area authorities and State facilities.

"§ 122C-112. Powers and duties of the Secretary.

- (a) The Secretary shall:
- (1) Enforce the provisions of this Chapter and the rules of the Commission and the Secretary;
 - (2) Assist counties and area authorities in the establishment and operation of community-based programs within catchment areas specified in rules adopted by the Commission;
 - (3) Operate State facilities and adopt rules pertaining to their operation;
 - (4) Promote a unified system of services for the citizens of this State by coordinating services provided in State facilities and area facilities;
 - (5) Approve the plans and budgets of an area authority and adopt rules pertaining to the content and format of these plans and budgets;
 - (6) Adopt rules governing the expenditure of all area authority funds;
 - (7) Adopt rules for the establishment of single portal designation and approve an area as a single portal area;
 - (8) Except as provided in G.S. 122C-26(4), adopt rules establishing procedures for waiver of rules adopted by the Secretary under this Chapter.
 - (9) Notify the clerks of superior court of changes in the designation of State facility regions and of facilities designated under G.S. 122C-252;
 - (10) Promote public awareness and understanding of mental health, mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse;
 - (11) Administer and enforce rules that are conditions of participation in federal or State financial aid; and
 - (12) Carry out G.S. 122C-361.
- (b) The Secretary may:
- (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, ~~mental retardation,~~ developmental disabilities, and substance abuse programs;
 - (2) Sponsor training opportunities in the fields of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse;

- (3) Promote and conduct research in the fields of mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse;
- (4) Provide technical assistance for the development and improvement of prevention services;
- (5) Receive donations of money, securities, equipment, supplies, or any other personal property of any kind or description which shall be used by the Secretary for the purpose of carrying out mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse programs. Any donations shall be reported to the Office of State Budget and Management as determined by that office;
- (6) Accept, allocate, and spend any federal funds for mental health, ~~mental retardation,~~ 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 State Treasurer and shall be appropriated by the General Assembly for the mental health, ~~mental retardation,~~ developmental disabilities, or substance abuse purposes specified;
- (7) Enter agreements authorized by G.S. 122C-346.
- (8) Accept, allocate, and spend funds from the United States Department of Defense to operate mental health demonstration projects for families of the uniformed services. Demonstration projects shall be operated through an area authority. The operation of these demonstration projects may be accomplished through subcontracts with one or more private sector providers.

"§ 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, ~~mentally retarded,~~ 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, ~~mental retardation,~~ 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, ~~mentally retarded,~~ developmentally disabled, or substance abusers.

(b1) The Secretary shall cooperate with the State Board of Education in coordinating the responsibilities of the Department of Human Resources and of the Department of Public Education for adolescent substance abuse programs. The Department of Human Resources, through its Division of Mental Health, ~~Mental Retardation,~~ Developmental Disabilities, and Substance Abuse Services, shall be responsible for intervention and treatment in non-school based programs. The Department of Public Education 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.

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

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

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

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

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

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

"§ 122C-116. Status of area authority.

An area authority is a local political subdivision of the State except that a single county area authority is considered a department of the county in which it is located for the purposes of Chapter 159 of the General Statutes.

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

(a) The area authority shall:

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

(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.

"§ 122C-118. Structure of area board.

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

- (1) In a single-county area, by the board of county commissioners;

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

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

(c) In areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. A member may be removed, with or without cause, by the group authorized to make the initial appointment.

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

(e) The area board shall include:

(1) At least one county commissioner from each county in the area except that in a single-county area authority the board of commissioners may instead appoint any resident of the county;

(2) At least two physicians licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina;

(3) At least one professional representative from the fields either of psychology, social work, nursing, or religion;

(4) At least one individual each representing the interests of or from citizens' organizations representing the interests of individuals with;

a. Mental illness;

b. Mental retardation;

c. Alcoholism; and

d. Drug abuse;

(5) At least one representative from local hospitals or area planning organizations; and

(6) At least one attorney licensed to practice in North Carolina.

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

"§ 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.

"§ 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 and the amounts shall not exceed those authorized by G.S. 138-5 for State boards.

(b) Area board members may be reimbursed for all necessary travel expenses and registration fees in amounts fixed by the board.

"§ 122C-121. Area director.

The area director is an employee of the area board and shall serve at the pleasure of the area board. The director is responsible for the staff appointments, for implementation of the policies and programs of the board in compliance with rules of the Commission and the Secretary, and for the supervision of all service programs and staff.

"§ 122C-122. Public guardians.

The officers and employees of the Division, or any successor agency, and the area director or any officer or employee of an area authority designated by the area board, or any officer or employee of any area facility designated by the area board, may, if they are a disinterested public agent as defined by G.S. 35A-1202(4), serve as guardians for adults adjudicated incompetent under the provisions of Subchapter I of Chapter 35A of the General Statutes, and they shall so act if ordered to serve in that capacity by the clerk of superior court having jurisdiction of a proceeding brought under that Subchapter. Bond shall be required or purchased as provided by G.S. 35A-1239.

"§ 122C-123. Other agency responsibility.

Notwithstanding the provisions of G.S. 122C-112(a)(10), ~~and, G.S. 122C-117(a)(1), 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."

Sec. 15. Part 3 of Article 4 of Chapter 122C of the General Statutes reads as rewritten:

"Part 3. Service Delivery System.

"§ 122C-131. Composition of system.

Mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services of the public system in this State shall be delivered through area authorities and State facilities.

"§ 122C-132. Single portal of entry and exit designation.

(a) The public system should provide for a single portal of entry and exit policy. In order to accomplish this objective, an area authority desiring designation as a single portal area shall present to the Secretary a single portal of entry and exit plan approved by the area board. The decision as to whether to choose to submit a plan is in the discretion of the area authority after weighing the policy goal stated in this subsection and in G.S. 122C-101.

(b) In order for a single portal area to be designated, the single portal of entry and exit plan shall be subject to approval by the Secretary. Once an area is designated

by the Secretary as a single portal area, any changes to the plan shall be subject to approval by the Secretary. However, an approved plan and designation as a single portal area shall remain in force pending approval of any changes.

- (c) The plan shall include but not be limited to:
 - (1) A specific listing of facilities to be covered by the single portal of entry and exit plan;
 - (2) Procedures for review of individuals to be admitted to or discharged from State and area facilities;
 - (3) Procedures for shared responsibility when individuals are admitted directly to a State facility;
 - (4) Evidence of incorporation of these plans within the contracts between the area authority and the State facilities as required by G.S. 122C-143(c) and with other public and private agencies as required in G.S. 122C-141;
 - (5) Evidence of cooperative arrangements with local law enforcement, local courts, and the local medical society; and
 - (6) Procedures for review of citizen complaints.

(d) Residents of a county in a designated single portal area shall be admitted to or discharged from State and area facilities through the area authority as described in the area's single portal of entry and exit policy."

Sec. 16. G.S. 122C-141(c) reads as rewritten:

"(c) The area authority may contract with a health maintenance organization, certified and operating in accordance with the provisions of Chapter 57B of the General Statutes for the area authority, to provide mental health, ~~mental-retardation,~~ developmental disabilities, or substance abuse 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."

Sec. 17. G.S. 122C-147 reads as rewritten:

"§ 122C-147. Allocation of funds to area authorities.

(a) All State and federal funds appropriated within the Department's budget for area mental health, ~~mental-retardation,~~ developmental disabilities, and substance abuse services shall be allocated to area authorities in accordance with the annual plan and budget adopted by the area authority and approved by the Secretary. An area authority

may receive and allocate non-State resources for capital purchases, capital improvements, and equipment acquisitions if the expenditures are made in the support of the annual plan. The final share of State and federal funds shall be allocated on the basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent State and federal funds shall be remitted to the Department within 60 days after the date that a certified audit is rendered as required by the Local Government Commission. If an audit is not submitted to the State within five days of the due date for the audit as approved by the Local Government Commission, Department funds for the area authority may be withheld by the Secretary until the audit is submitted.

(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 24-hour and day facility or (ii) in contracting with a private, nonprofit corporation that operates 24-hour and day facilities for the mentally ill, ~~mentally retarded,~~ developmentally disabled, or substance abusers and according to the terms of the contract between the area authority and the private, nonprofit corporation, 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.
- (2) Upon cessation of the use of the 24-hour and day 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 24-hour and day 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. The title to this real property and the authority to acquire it is held by the county where the property is located. The authority to hold title to real property and the authority to acquire it may be held by the area authority with the consent of the board or boards of commissioners of all the counties which comprise the area authority. The consent to this variation 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 by the area authority.

(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, including by lease-purchase agreement. 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 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 under contract with the area authority and used or to be used as a 24-hour and day facility. Prior to the use of county appropriated funds for this purpose, the area authority must obtain consent of the board or boards of commissioners of all the counties which 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."

Sec. 18. G.S. 122C-149 reads as rewritten:

"§ 122C-149. Allocation of matching funds to area authorities.

(a) State-appropriated matching funds shall be distributed subject to rules of the Secretary which set a formula based on the relative fiscal capacity of the county to fund mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse services. The rules shall be reviewed biennially by the Secretary. Area authority funds used for matching State funds shall include fees from services including Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds. Except as specifically provided, area financial participation to match State allocations may not include State or federal funds.

(b) Area authorities may not use funds received under G.S. 20- 179.2(f) or G.S. 90-96.01(a)(4) to match funds under this section."

Sec. 19. G.S. 122C-151 reads as rewritten:

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

All resources allocated to and received by any area authority and used for programs of mental health, ~~mental retardation,~~ developmental disabilities, substance abuse or other related fields are subject to the conditions specified in this Article and to the rules of the Commission and the Secretary."

Sec. 20. G.S. 122C-202 reads as rewritten:

"§ 122C-202. Applicability of Article.

This Article applies to all facilities unless expressly provided otherwise. Specific provisions that are delineated by the disability of the client, whether mentally ill, mentally retarded, developmentally disabled, or substance abuser, also apply to all facilities for that client's disability. Provisions that refer to a specific facility or type of facility apply only to the designated facility or facilities."

Sec. 21. G.S. 122C-203 reads as rewritten:

"§ 122C-203. Admission or commitment and incompetency proceedings to have no effect on one another.

The admission or commitment to a facility of an alleged mentally ill individual, an alleged substance abuser, or an alleged mentally retarded or developmentally disabled individual under the provisions of this Article shall in no way affect incompetency proceedings as set forth in Chapters 33 or 35A of the General Statutes and incompetency proceedings under those Chapters shall have no effect upon admission or commitment proceedings under this Article."

Sec. 22. Part 5 of Article 5 of Chapter 122C of the General Statutes reads as rewritten:

"Part 5. Voluntary Admissions and Discharges,
Minors and Adults, Facilities for

Individuals with ~~Mental Retardation~~ Developmental Disabilities.

"§ 122C-241. Admissions.

(a) Except as provided in subsection (c) of this section an individual with ~~mental retardation~~ developmental disabilities may be admitted to a facility for the ~~mentally retarded~~ developmentally disabled in order that he receive care, habilitation, rehabilitation, training, or treatment. Application for admission is made as follows:

- (i1) A minor with ~~mental retardation~~ developmental disabilities may be admitted upon application by both the father and the mother if they are living together and, if not, by the parent or parents having custody or by the legally responsible person.
- (ii2) An adult with ~~mental retardation~~ developmental disabilities who has been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon application by his guardian.
- (iii3) An adult with ~~mental retardation~~ developmental disabilities who has not been adjudicated incompetent under Chapters 33 or 35 of the General Statutes may be admitted upon his own application.

(b) Prior to admission to a 24-hour facility, the individual shall be examined and evaluated by a physician or psychologist to determine whether the individual is ~~mentally retarded~~ developmentally disabled. In addition, the individual shall be examined and evaluated by a qualified ~~mental retardation~~ developmental disabilities professional no

sooner than 31 days prior to admission or within 72 hours after admission to determine whether the individual is in need of care, habilitation, rehabilitation, training or treatment by the facility. If the evaluating professional determines that the individual will not benefit from an admission, the individual shall not be admitted as a client.

(c) An admission to an area or State 24-hour facility of an individual from a single portal area shall follow the procedures as prescribed in the area plan. When an individual from a single portal area presents himself or is presented for admission to a State facility for the mentally retarded directly and is in need of an emergency admission, he may be accepted for admission. The State facility shall notify the area authority within 24 hours of the admission and further planning of treatment for the individual is the joint responsibility of the area authority and the State facility as prescribed in the area plan.

"§ 122C-242. Discharges.

(a) Except as provided in subsections (b) through (d) of this section, discharges from facilities for individuals with ~~mental retardation~~ developmental disabilities are made upon request of the individual authorized in G.S. 122C-241(a) to make application for admission or by the director of the facility.

(b) Any adult who has not been declared incompetent and who is admitted to a 24-hour facility shall be discharged upon his own request, unless the director of the facility has reason to believe that the adult is endangering himself by the discharge. In this case the individual may be held for a period not to exceed five days while the director petitions for the adjudication of incompetency of the individual and the appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

(c) Any individual admitted to a 24-hour facility may be discharged when in the judgment of the director of the facility the individual is no longer in need of care, treatment, habilitation or rehabilitation by the facility or the individual will no longer benefit from the service available. In the case of an area or State facility rules adopted by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be followed.

(d) When the individual to be discharged from an area or State 24- hour facility is a resident of a single portal area, the discharge shall follow the procedures described in the area plan."

Sec. 23. Part 4 of Article 3 of Chapter 143B of the General Statutes is rewritten to read:

"Part 4. Commission for Mental Health, ~~Mental Retardation~~
Developmental Disabilities, and Substance Abuse Services.

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

(a) There is hereby created the Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, ~~mental retardation~~, developmental disabilities, alcohol and drug abuse programs including education, prevention, intervention, treatment, rehabilitation and other related services. Such rules

shall be designed to promote the amelioration or elimination of the mental health, ~~mental retardation,~~ developmental disabilities, or alcohol and drug abuse problems of the citizens of this State. The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall have the authority:

- (1) To adopt rules regarding the
 - a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to a facility operated under the authority of G.S. 122C- 181(a), that is now or may be established;
 - b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, ~~mental retardation~~ developmental disabilities, and substance abuse authorities under Part 4 of Article 4 of Chapter 122C of the General Statutes;
 - c. Hearings and appeals of area mental health, ~~mental retardation~~ developmental disabilities, and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C of the General Statutes;
 - d. Requirements of the federal government for grants-in-aid for mental health, ~~mental retardation,~~ developmental disabilities, alcohol or drug abuse programs which may be made available to local programs or the State. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
- (2) To adopt rules for the licensing of facilities for the mentally ill, ~~mentally retarded~~ developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes.
- (3) To advise the Secretary of the Department of Human Resources regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
 - a. Mental illness and mental health,
 - b. ~~Mental retardation,~~ Developmental disabilities,
 - c. Alcohol abuse, and
 - d. Drug abuse;
- (4) To review and advise the Secretary of the Department of Human Resources regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Human Resources is designated as the single State agency responsible for administration of plans involving mental health, ~~mental retardation,~~ developmental disabilities, alcohol abuse, and drug abuse services;

- (5) To adopt rules relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances as provided by G.S. 90-100;
- (6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, ~~mentally-retarded~~ developmentally disabled, and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare;
- (7) Except where rule making authority is assigned under that Article to the Secretary of the Department of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes;
- (8) To adopt rules specifying procedures for waiver of rules adopted by the Commission.

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

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

(d) All rules adopted by the Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services shall be enforced by the Department of Human Resources.

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

(a) The Commission for Mental Health, ~~Mental Retardation-Developmental Disabilities~~, and Substance Abuse Services of the Department of Human Resources shall consist of 25 members:

- (1) Four of whom shall be appointed by the General Assembly, two upon the recommendation of the Speaker of the House of Representatives, and two upon the recommendation of the President of the Senate in accordance with G.S. 120-121. These members shall have concern for

the problems of mental illness, ~~mental retardation, developmental disabilities,~~ alcohol and drug abuse. ~~The initial members appointed to the Commission by the General Assembly shall serve for terms expiring June 30, 1983. Thereafter, their successors shall~~ Members shall serve for two-year terms beginning July 1 of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122;

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

a. Of these 21 members, three shall have a special interest in mental health, three shall have a special interest in mental retardation, three shall have a special interest in developmental disabilities other than mental retardation, three shall have a special interest in alcohol abuse and alcoholism and three shall have a special interest in drug abuse. Each group of three shall be made up of one member who is a consumer representative; one other who is a representative of a local or State citizen organization or association; and one other who is a professional in the field.

b. The remaining ~~nine~~ six members shall be appointed from the general public, other citizen groups, area mental health, ~~mental retardation, developmental disabilities,~~ and substance abuse authorities, or from other related agencies.

c. Of these 21 appointments, at least one shall be a licensed physician and at least one other shall be a licensed attorney.

d. The Governor shall appoint members to the Commission in accordance with the foregoing provisions. ~~At the initial formation of the Commission for Mental Health, Mental Retardation and Substance Abuse Services, the Governor shall designate seven of his appointees to serve for two years, seven to serve for three years and seven to serve for four years, all to commence on July 1, 1981. Thereafter the~~ The terms of all Commission members appointed by the Governor shall be four years. All Commission members shall serve their designated terms and until their successors are duly appointed and qualified. All Commission members may succeed themselves.

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

(b) Except as otherwise provided in this section, the provisions of G.S. 143B-13 through 143B-20 relating to appointment, qualifications, terms and removal of members

shall apply to all members of the Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services.

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

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

(e) All clerical and other services required by the Commission shall be supplied by the Secretary of the Department of Human Resources.

"§ 143B-149. Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services – officers.

The Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services shall have a chairman and a vice-chairman. The chairman shall be designated by the Governor from among the members and shall serve as chairman at his pleasure. The vice-chairman shall be elected by and from the members of the Commission and shall serve for a term of two years or until the expiration of his regularly appointed term.

"§ 143B-150. Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services – regular and special meetings.

The Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the chairman or upon the written request of at least eight members."

Sec. 24. G.S.120-123(22) reads as rewritten:

"(22) The Commission for Mental Health, ~~Mental Retardation Developmental Disabilities~~, and Substance Abuse Services, as established by G.S. ~~143B-148-143B-147~~."

Sec. 25. G.S. 153A-149(c)(22) reads as rewritten:

"(22) Mental Health.–To provide for the county's share of the cost of maintaining and administering services offered by or through the area mental health, ~~mental retardation developmental disabilities~~, and substance abuse authority."

Sec. 25.1(a) G.S. 122C-118(e)(4)b as rewritten by Chapter 536, Session Laws of 1989 is rewritten to read:

"b. Developmental disabilities."

(b) G.S. 122C-118(e)(5)b, as rewritten by Chapter 536, Session Laws of 1989, is rewritten to read:

"b. Developmental disabilities;"

Sec. 26. This act shall become effective January 1, 1990 except that Section 25.1 is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of July, 1989.