

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 1197*

Short Title: Area Authority Accountability.

(Public)

Sponsors: Senators Winner; Dannelly, Carpenter, Martin of Pitt, Lucas, Conder, and Martin of Guilford.

Referred to: Children and Human Resources.

May 15, 1996

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE MENTAL HEALTH STUDY COMMISSION
TO ENSURE AREA AUTHORITY FINANCIAL STABILITY AND DELIVERY
OF ADEQUATE SERVICES TO CLIENTS.

The General Assembly of North Carolina enacts:

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

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

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

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

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

1 (d) A board or boards of county commissioners that establish the area authority
2 shall allow that area authority to maintain an unrestricted fund balance of up to fifteen
3 percent (15%) for the provision of mental health, developmental disabilities, and
4 substance abuse services. The fund balance shall continue forward from year to year, in
5 accordance with the rules of the Secretary.

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

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

10 **"§ 122C-117. Powers and duties of the area authority.**

11 (a) The area authority shall:

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

15 (2) Provide services to clients in the catchment area;

16 (3) Determine the needs of the area authority's clients and coordinate with
17 the Secretary the provision of services to clients through area and State
18 facilities;

19 (4) Develop plans and budgets for the area authority subject to the approval
20 of the Secretary;

21 (4.1) Maintain an unrestricted fund balance of up to fifteen percent (15%) in
22 accordance with the rules of the Secretary, allocations from which are
23 the sole authority of the area authority;

24 (5) Assure that the services provided by the area authority meet the rules of
25 the Commission and Secretary;

26 (6) Comply with federal requirements as a condition of receipt of federal
27 grants; and

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

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

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

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

37 **"§ 122C-118. Structure of area board.**

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

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

41 (2) In a multi-county area by agreement of the boards of county
42 commissioners of all the counties in the catchment area. The agreement

1 shall be evidenced by concurrent resolutions adopted by the affected
2 boards of county commissioners.

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

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

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

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

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

17 (e) The area board shall include:

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

21 (2) At least ~~two physicians~~ one physician licensed under Chapter 90 of the
22 General Statutes to practice medicine in North Carolina ~~and who, when~~
23 ~~possible, one of these physicians should be~~ is certified as having
24 completed a residency in psychiatry;

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

27 (4) At least one individual each, either a primary consumer or an individual
28 from a citizens' organization, representing the interests of individuals
29 with:

30 a. Mental illness; and

31 b. Developmental disabilities.

32 (4.1) At least one primary consumer ~~each~~ presently and openly in recovery
33 ~~and~~ representing the interests of individuals suffering from alcoholism
34 or other drug abuse. with:

35 a. ~~Alcoholism; and~~

36 b. ~~Drug abuse.~~

37 (5) At least one family consumer each representing the interest of
38 individuals with:

39 a. Mental illness;

40 b. Developmental disabilities; and

41 c. ~~Alcoholism; and~~ Alcoholism or other drug abuse.

42 d. ~~Drug abuse.~~

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

1 (7) At least one member who has experience in finance and can understand
2 and interpret audits and other financial reports.

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

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

10 **"§ 122C-119. Organization of area board.**

11 (a) The area board shall meet at least six times per year.

12 (b) Meetings shall be called by the area board chairman or by three or more
13 members of the board after notifying the area board chairman in writing.

14 (c) Members of the area board elect the board's chairman. The term of office of
15 the area board chairman shall be one year. A county commissioner area board member
16 may serve as the area board chairman.

17 (d) The area board shall establish a finance committee that shall meet at least six
18 times per year to review the financial strength of the area program. The finance
19 committee shall have a minimum of three members, two of whom have expertise in
20 budgeting and fiscal control. If the area board so chooses, the entire area board may
21 function as the finance committee; however, its required meetings as a finance committee
22 shall be distinct from its meetings as an area board."

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

24 **"§ 122C-119.1. Area Authority board members' training.**

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

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

32 **"§ 122C-124. Area Authority funding suspended.**

33 (a) The Secretary of the Department of Human ~~Resources~~ Resources, after
34 providing written notification of its intent to the area board, may suspend funding to any
35 area authority with a revenue or expenditure budget variance of ten percent (10%) or a
36 significant deterioration in the fund balance of the authority's general fund. A significant
37 deterioration of fund balance is defined as a twenty-five percent (25%) decrease in the
38 balance from one fiscal year to the next without the prior approval of the Department.
39 Area authorities shall report any such revenue or expenditure variance or deterioration in
40 fund balance to the Department of Human Resources within 30 days of its occurrence. In
41 the event that funding is suspended, the ~~Department of Human Resources~~ Department, after
42 providing written notification of its intent to the area board and after providing the area
43 authority an opportunity to be heard, may contract with, and make payments of

1 Department funds on an interim basis directly to, a contract provider of the area authority
2 to avoid the disruption of direct services to clients.

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

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

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

18 "**§ 122C-125. Area Authority financial failure; State assumption of financial**
19 **control.**

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

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

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

40 "**§ 122C-125.1. Area Authority failure to provide services; State assumption of**
41 **service delivery.**

42 At any time that the Secretary determines that an area authority is not providing
43 minimally adequate services, in accordance with its annual service plan, to persons in

1 need in a timely manner, or fails to demonstrate reasonable efforts to do so, the Secretary,
2 after providing written notification of the Secretary's intent to the area board and
3 providing the area authority an opportunity to be heard, may assume control of the
4 particular service in question or of the area authority and appoint an administrator to
5 exercise the powers assumed. This assumption of control shall have the effect of
6 divesting the area authority of its powers in G.S. 122C-117 and all other service delivery
7 powers conferred in the area authority by law as they pertain to this service. County
8 funding of the area authority shall continue when the State has assumed control of a
9 service area or of the area authority. At no time after the State has assumed this control
10 shall a county withdraw funds previously obligated or appropriated to the area authority.

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

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

18 **"§ 122C-126. Area authority caretakers appointed.**

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

26 The Secretary may assign any of the powers and duties of the director of the area
27 authority and of the board of directors and the caretaker board to the caretaker
28 administrator as it deems necessary and appropriate to continue to provide direct services
29 to clients, including the powers as to the adoption of budgets, expenditures of money, and
30 all other financial powers conferred on the area authority by law. County funding of the
31 area authority shall continue when the State has assumed control of the financial affairs
32 of the area authority. At no time after the State has assumed this control shall a county
33 withdraw funds previously obligated or appropriated to the area authority. The caretaker
34 administrator and the caretaker board shall perform all of these powers and duties. The
35 Secretary may terminate the contract of any director when it appoints a caretaker
36 administrator. The Administrative Procedure Act shall apply to any such decision.
37 Neither party to any such contract shall be entitled to damages.

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

40 Sec. 10. G.S. 122C-154 reads as rewritten:

41 **"§ 122C-154. Personnel.**

42 Employees under the direct supervision of the area authority are employees of the
43 area authority. For the purpose of personnel administration, Chapter 126 of the General

1 Statutes applies unless otherwise provided in this Article. Subject to the policies and
2 procedures of the State Personnel Commission, the area authority shall determine, for any
3 position which is partially or wholly funded by federal dollars, State appropriations, or
4 fees, the setting of salaries within a salary plan established pursuant to G.S. 122C-156
5 and the establishment and hiring of positions."

6 Sec. 11. This act becomes effective October 1, 1996.