

**§ 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) Establish a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services.
  - (4) Adopt rules specifying the content and format of LME business plans.
  - (5) Review LME business plans and, upon approval of the plan, certify the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area.
  - (6) Establish comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, 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 and county program.
  - (7) Conduct regularly scheduled monitoring and oversight of area authority, county programs, and all providers of public services. Monitoring and oversight shall be used to assess compliance with the LME business plan and 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, county program director, 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 and county programs in the implementation of the LME functions and the establishment and operation of community-based programs. The technical assistance required under this subdivision includes, but is not limited to, the technical assistance required under G.S. 122C-115.4(d)(2). 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 and county programs 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 or county program.
  - (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 and county programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services. The Secretary shall ensure maximum accountability by area authorities and county programs 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 in the development and implementation of area authority and county program business plans and other matters, 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 abuse programs which may be made available to area authorities or county programs 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) Adopt rules for determining minimally adequate services for purposes of G.S. 122C-124.1 and G.S. 122C-125.
- (26) Establish a process for approving area authorities and county programs 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 abuse.
- (28) Enforce the protection of the rights of clients served by State facilities, area authorities, county programs, 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, county programs, 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 and county programs 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 abuse 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) Adopt rules establishing a procedure for single-county disengagement from an area authority operating under a 1915(b)/(c) Medicaid Waiver.
  - (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).)