

DHHS Directive Number II-20

Title: Delegation of Authority to the Director, Division of Mental Health, Developmental Disabilities and Substance Abuse Services
Effective Date: November 3, 2008
Revision History: January 1, 2002
Authority: G.S. 143B-10; G.S. Chapter 122C; Chapter 143, Article 6A, 7; Chapter 90, Article 5; G.S. 148-19; Session Law 2001-437.

Purpose

The purpose of this directive is to delegate, clarify and specifically confirm certain authorities of the Secretary of the North Carolina Department of Health and Human Services (NC DHHS) to the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. These authorities are delegated under the supervision of the Assistant Secretary for Health Policy and the Director shall report to the Secretary through the Assistant Secretary for Health Policy.

Delegation of Authority

As provided in G.S. 143B-10(a), the Secretary of the DHHS delegates the following functions concerning management and administration to the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, subject to state and departmental policy:

1. The functions of management, related to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, as defined in G.S. 143B-10, which include: planning, organizing, staffing, directing, coordinating, reporting and budgeting.
2. Administering and managing the division's use of social service block grant funds in accordance with DHHS Directives.
3. Monitoring and approving alcohol and drug education traffic schools (G.S. 209-179.2).

4. Publishing notice of designations, rescheduling or deletion of controlled substances to parties specified by statute (G.S. 90-88).
5. Maintaining a list of all preparations, compounds, or mixtures which are excluded, exempted, and excepted from controls under any schedule of G.S. 90, Article 5, by the U.S. Drug Enforcement Administration and/or the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services (“Commission”) and distributing changes in this list to the parties specified by statute (G.S. 90-88).
6. Overseeing the development of a statewide system of drug education schools, approving the schools, and approving budgets and contracts for the schools (G.S. 90-96.10).
7. Overseeing registration and inspections related to the manufacture, distribution, dispensing or conducting of research with any controlled substance in NC (G.S. 90-101).
8. Operating state hospitals for the mentally ill, centers for the mentally retarded and for substance abusers and special care facilities for identified special need (G.S. 122C-181(a) and G.S. 131E-67).
9. Receiving data from private or public agencies or agents for research and evaluation in mental health, developmental disabilities and substance abuse services (G.S. 122C-56).
10. Administering and enforcing provisions of the NC mental health, developmental disabilities and substance abuse laws, the rules of the Secretary and the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, and assuring that services provided are of the highest possible quality within resources. Contracted direct enrolled provider services of (local management entities (area authorities) shall be monitored to assure that rules and state statutes are met (G.S. 122C-112(a)(6), G.S. 122C-143(a) and G.S. 122C-191(a)).
11. Assisting counties and local management entities in the establishment of area mental health, developmental disabilities and substance abuse services within catchment areas designated by the Commission (G.S. 122C-122 (a) (2)).
12. Approving annual plans, local business plans and budgets of local management entities (G.S. 122C-143, G.S. 122C-147 and G.S. 122C-112(a)(5)).
13. Approving, jointly with the Secretary of Correction or his designee, requests from inmates in the custody of the Department of Correction for voluntary admission to state facilities for mental illness or substance abuse (G.S. 122C-312).
14. Serving as Compact Administrator for the Interstate Compact on Mental Health (G.S. Chapter 122C, Article 5, Part 14).

15. Determining the ability of patients in state facilities to pay; and filing liens on property of patients in state facilities under purview of the division and liens on the estates of deceased patients (G.S. 143-120, -126, -126.1, and G.S. 122C-112).
16. Monitoring the implementation of standards for the delivery of mental health, developmental disabilities and substance abuse services to inmates in the custody of the Department of Correction (G.S. 148-19(d)).
17. Designating facilities for the custody and treatment of involuntary clients and notifying Clerks of Superior Court of changes in these designations and in the designation of state facility regions (G.S. 122C-122(a)(16) and G.S. 122C-252).
18. Delaying payment and, with written notification of cause, reducing or denying payment if a local management entity does not meet applicable state statutes and the rules of the Commission or the Secretary, or when required reports are not timely filed, or when a program is not being administered in accordance with an approved plan or budget (G.S. 122C-141(b), G.S. 122C-144(d) and G.S. 122C-147(g)).
19. Approving an area as a uniform portal area (G.S. 122C-112(a)(14) and G.S. 122C-132(b)).
20. Administering and enforcing rules that are conditions of participation in federal or state financial aid (G.S. 122C-112(a)(18)).
21. Providing for the coordination of services between local management entities and state facilities in cooperation with the directors of local management entities and state facilities (G.S. 122C-111 and G.S. 122C-112(a)(11)).
22. Allocating funds annually to LME or other providers (G.S. 122C-148, G.S. 122C-149 and G.S. 122C-150); granting waivers to rules adopted by the Division Director under rule-making authority as delegated by the Secretary (G.S. 122C-122(a)(8)).
23. Making the final agency decision in contested case hearings which involve rules adopted by the Division Director under authority delegated by the Secretary unless otherwise specified by statute. However, if the initial administrative decision which is the subject matter of the appeal was made by the Director, then the Secretary will make (or will designate someone outside the division to make) the final agency decision (G.S. 122C-145).
24. Issuing declaratory rulings adopted by the Division Director under rule making authority as delegated by the Secretary. This does not include rules governed by G.S. 122C-26 (G.S. 150B-17).
25. Making determinations, providing notifications and taking other actions with regard to local management entity funding, financial failure, failure to provide service and

- caretaker appointment pursuant to authority provided to the Secretary by G.S. 122C-124, 122C-125, 122C-125.1, and 122C-126.
26. Overseeing the development of a statewide system of care management for offenders with substance abuse, mental health problems and developmental disabilities (122C-2(1)-(4), 122C-102(4)(5)).
 27. Publishing reports and findings of data collected via monitoring, submission of plan and other quality improvement activities (G.S. 122C-112.1(a)(8)).
 28. Providing assistance and training to local management entities, county programs and providers in community-based mental health, developmental disability and substance abuse programs (G.S. 122c-112.1(a)(9), (21)).
 29. Establishing a process and approving local management entities or county programs to provide services directly in accordance to G.S. 122c-141; 122c-112.1(a)(26).
 30. Assuring coordination of State Medicaid Plan and Health Choice (G.S. 122c-112.1(a)(3)).
 31. Rulemaking authority (in coordination with the Office of the General Counsel) for the following:
 - A. Rules governing the expenditure of all mental health, developmental disability and substance abuse public funds (G.S. 122C-122(6) and G.S. 122C-147 and (G.S. 122c-112(a)(12)).
 - B. Rules governing the allocation of state-appropriated matching funds (G.S. 122C-149).
 - C. Rules governing direct grants for services (G.S. 122C-147 and G.S. 122C-150).
 - D. Rules pertaining to the content and format of plans and budgets of a local management entity (G.S. 122C-122(4), G.S. 122C-132, G.S. 143, and G.S. 122C-147).
 - E. Rules governing budget reports, audit reports and reports of activities and services of the local management entity (G.S. 122C-144).
 - F. Rules governing the distribution and use of funds for drug education schools and alcohol and drug education traffic schools (G.S. 90-96.01 and G.S. 20-179.2).
 - G. Rules for a review process to monitor local management entities, private providers, area facilities and state facilities for compliance with the required quality assurance activities, as well as other rules of the Commission and Secretary (G.S. 122C-122(a)(23), (25); G.S. 122C-191 and G.S. 143B-137).
 - H. Rules governing department of persons in the buildings and on the grounds of institutions operated by the division for the suppression of nuisances and disorders (G.S. 143-116.6).
 - I. Rules and ordinances necessary to enforce the provision of Part 1 of Article 6 of Chapter 122C of the NC G.S. and to carry out its purpose and intent for the administration of state facilities and institutions located on the Camp Butner reservation (G.S. 122C-403).

- J. Rules governing petitions for rules and rulemaking hearings for rules coming under the authority of the division director as delegated by the Secretary (G.S. 143B-10, G.S. 150B-16).
 - K. Regulations governing (a) the use of streets, alleys and driveways of institutions under the purview of the division; (b) establishing parking and parking areas on institution grounds; (c) registration (including fees) and parking of employee vehicles; and (d) infractions and civil penalties (G.S. 143-116.7).
 - L. Budgetary rules to implement continuity of care for individuals with mental retardation (G.S. 122C-63(h)).
 - M. Rules pertaining to the operation of the state facilities (G.S. 122C-112(a)(3), G.S. 122C-181(a) and G.S. 131E-67).
 - N. Rules for the establishment of uniform single portal designation (G.S. 122C-112(a)(14)).
 - O. Rules establishing procedures for waiver of rules adopted under the Secretary's authority under Chapter 122C, except as provided in G.S. 122C-26(4), G.S. 122C-112(a)(8).
 - P. Rules to assure coordination of services for the mentally ill, mentally retarded and substance abusers among area facilities, state facilities, local agencies and other state agencies (G.S. 122C-113).
 - Q. Rules governing appeals involving rules under the Secretary's authority (G.S. 122C-145(c) and G.S. 150B-11).
 - R. Rules governing declaratory rulings involving rules under the Secretary's authority except as provided in G.S. 122C-26 (G.S. 150B-17).
 - S. Rules for the reimbursement of the department when department funds have been used in the acquisition of residential program facilities and such program is terminated (G.S. 122C-147(b)(2)).
 - T. Rules to ensure that unauthorized disclosure of confidential or privileged information obtained during reviews does not occur (G.S. 122C-192(c)).
 - U. Rules regarding designation of 24 hour facilities for custody and treatment of involuntary clients that assure the protection of the client and the general public (G.S. 122C-252).
 - V. Acting jointly with like officers of other party states, rules to carry out terms of the Interstate Compact (G.S. 122C-361, Article X (b) and G.S. 122C-362).
 - W. Rules listing all forms that are required by the division (G.S. 150B-11).
 - X. Rules regarding designation of state facilities for the mentally ill for the voluntary admission of adults who are not admissible as clients otherwise, for research purposes (G.S. 122C-210.2(a)).
 - Y. Rules regarding the implementation of the assessment procedures for defendants sentenced for driving while impaired (G.S. 20-179(m)).
 - Z. Rules specifying content and format of business plans (G.S. 122c-112.9(a)(4)).
 - AA. Rules for the enforcement, protection of clients being served by state facilities, local management entities and public providers (G.S. 122c-112.1(a)(29)).
32. The management functions of a commission, as defined in G.S. 143B-14(d), which include planning, organizing, staffing, directing, coordinating, reporting and budgeting for those commissions, are assigned to the division. In particular, the director shall

provide staffing for the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services to facilitate its rulemaking and advisory and other actions as specified in the G.S.

33. The Director shall be responsible for coordinating the division's monitoring functions with other divisions and local partners to ensure compliance with state and federal requirements.
34. The Director shall be responsible for ensuring that the division is familiar with and adheres to the department's policy and procedures manual.

This delegation of authority shall not deprive the Secretary from performing, in lieu of the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, any of the acts set forth above. This delegation of authority may be amended or withdrawn by the Secretary at any time and without notice. This delegation of authority shall not apply to any actions which by law, state policy or NC Governor's Executive Order, may only be executed by the Secretary.

APPROVED

Dempsey Benton, Secretary
Department of Health and Human Services