

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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SENATE BILL 489
House Committee Substitute Favorable 6/23/89

Short Title: Mental Health Law Change.

(Public)

Sponsors:

Referred to:

March 20, 1989

1 A BILL TO BE ENTITLED
2 AN ACT TO CHANGE THE MENTAL HEALTH LAW TO REFLECT THE
3 INCORPORATION OF DEVELOPMENTAL DISABILITIES.

4 The General Assembly of North Carolina enacts:

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

7 "CHAPTER 122C.
8 "**MENTAL HEALTH, ~~MENTAL RETARDATION,~~ DEVELOPMENTAL**
9 **DISABILITIES,**
10 **AND**
11 **SUBSTANCE ABUSE ACT OF 1985."**

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

15 "ARTICLE 1.
16 "GENERAL PROVISIONS.

17 "§ 122C-1. Short title.

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

20 "§ 122C-2. Policy.

21 The policy of the State is to assist individuals with mental illness, ~~mental retardation,~~
22 developmental disabilities, and substance abuse problems in ways consistent with the
23 dignity, rights, and responsibilities of all North Carolina citizens. Within available

1 resources it is the obligation of State and local government to provide services to
2 eliminate, reduce, or prevent the disabling effects of mental illness, ~~mental retardation,~~
3 developmental disabilities, and substance abuse through a service delivery system
4 designed to meet the needs of clients in the least restrictive available setting, if the least
5 restrictive setting is therapeutically most appropriate, and to maximize their quality of
6 life.

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

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

12 **"§ 122C-3. Definitions.**

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

- 15 (1) 'Area authority' means the area mental health, ~~mental retardation,~~
16 developmental disabilities, and substance abuse authority.
- 17 (2) 'Area board' means the area mental health, ~~mental retardation,~~
18 developmental disabilities, and substance abuse board.
- 19 (3) 'Camp Butner reservation' means the original Camp Butner reservation
20 as may be designated by the Secretary as having been acquired by the
21 State and includes not only areas which are owned and occupied by the
22 State but also those which may have been leased or otherwise disposed
23 of by the State.
- 24 (4) 'City' has the same meaning as in G.S. 153A-1(1).
- 25 (5) 'Catchment area' means the geographic part of the State served by a
26 specific area authority.
- 27 (6) 'Client' means an individual who is admitted to and receiving service
28 from, or who in the past had been admitted to and received services
29 from, a facility.
- 30 (7) 'Client advocate' means a person whose role is to monitor the
31 protection of client rights or to act as an individual advocate on behalf
32 of a particular client in a facility.
- 33 (8) 'Commission' means the Commission for Mental Health, ~~Mental~~
34 Retardation,—Developmental Disabilities, and Substance Abuse
35 Services, established under Part 4 of Article 3 of Chapter 143B of the
36 General Statutes.
- 37 (9) 'Confidential information' means any information, whether recorded or
38 not, relating to an individual served by a facility that was received in
39 connection with the performance of any function of the facility.
40 'Confidential information' does not include statistical information from
41 reports and records or information regarding treatment or services
42 which is shared for training, treatment, habilitation, or monitoring
43 purposes that does not identify clients either directly or by reference to
44 publicly known or available information.

1 (10) 'County of residence' of a client means the county of his domicile at
2 the time of his admission or commitment to a facility. A county of
3 residence is not changed because an individual is temporarily out of
4 his county in a facility or otherwise.

5 (11) 'Dangerous to himself or others' means:

6 a. 'Dangerous to himself' means that within the recent past:

7 1. The individual has acted in such a way as to show:

8 I. That he would be unable, without care,
9 supervision, and the continued assistance of
10 others not otherwise available, to exercise self-
11 control, judgment, and discretion in the conduct
12 of his daily responsibilities and social relations, or
13 to satisfy his need for nourishment, personal or
14 medical care, shelter, or self-protection and
15 safety; and

16 II. That there is a reasonable probability of his
17 suffering serious physical debilitation within the
18 near future unless adequate treatment is given
19 pursuant to this Chapter. A showing of behavior
20 that is grossly irrational, of actions that the
21 individual is unable to control, of behavior that is
22 grossly inappropriate to the situation, or of other
23 evidence of severely impaired insight and
24 judgment shall create a prima facie inference that
25 the individual is unable to care for himself; or

26 2. The individual has attempted suicide or threatened
27 suicide and that there is a reasonable probability of
28 suicide unless adequate treatment is given pursuant to
29 this Chapter; or

30 3. The individual has mutilated himself or attempted to
31 mutilate himself and that there is a reasonable
32 probability of serious self-mutilation unless adequate
33 treatment is given pursuant to this Chapter.

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

37 b. 'Dangerous to others' means that within the recent past, the
38 individual has inflicted or attempted to inflict or threatened to
39 inflict serious bodily harm on another, or has acted in such a
40 way as to create a substantial risk of serious bodily harm to
41 another, or has engaged in extreme destruction of property; and
42 that there is a reasonable probability that this conduct will be
43 repeated. Previous episodes of dangerousness to others, when

- 1 applicable, may be considered when determining reasonable
2 probability of future dangerous conduct.
- 3 (12) 'Department' means the North Carolina Department of Human
4 Resources.
- 5 (12a) 'Developmental disability' means a severe, chronic disability of a
6 person which:
- 7 a. Is attributable to a mental or physical impairment or
8 combination of mental and physical impairments;
- 9 b. Is manifested before the person attains age 22, unless the
10 disability is caused by a traumatic head injury and is manifested
11 after age 22;
- 12 c. Is likely to continue indefinitely;
- 13 d. Results in substantial functional limitations in three or more of
14 the following areas of major life activity: self-care, receptive
15 and expressive language, capacity for independent living,
16 learning, mobility, self-direction and economic self-sufficiency;
17 and
- 18 e. Reflects the person's need for a combination and sequence of
19 special interdisciplinary, or generic care, treatment, or other
20 services which are of a lifelong or extended duration and are
21 individually planned and ~~coordinated~~-coordinated; or
- 22 f. When applied to children from birth through four years of age,
23 may be evidenced as a developmental delay.
- 24 (13) 'Division' means the Division of Mental Health, ~~Mental Retardation~~
25 Developmental Disabilities, and Substance Abuse Services of the
26 Department.
- 27 (13a) 'Eligible psychologist' means a licensed practicing psychologist
28 who has at least two years' clinical experience.
- 29 (14) 'Facility' means any person at one location whose primary purpose
30 is to provide services for the care, treatment, habilitation, or
31 rehabilitation of the mentally ill, ~~the mentally retarded,~~ the
32 developmentally disabled, or substance abusers, and includes:
- 33 a. An 'area facility', which is a facility that is operated by or under
34 contract with the area authority. A facility that is providing
35 services under contract with the area authority is an area facility
36 for purposes of the contracted services only. Area facilities may
37 also be licensable facilities in accordance with Article 2 of this
38 Chapter. A State facility is not an area facility;
- 39 b. A 'licensable facility', which is a facility that provides services
40 for one or more minors or for two or more adults. When the
41 services offered are provided to individuals who are mentally ill
42 or ~~mentally retarded,~~ developmentally disabled, these services
43 shall be day services offered to the same individual for a period
44 of three hours or more during a 24-hour period, or residential

1 services provided for 24 consecutive hours or more. When the
 2 services offered are provided to individuals who are substance
 3 abusers, these services shall include all outpatient services, day
 4 services offered to the same individual for a period of three
 5 hours or more during a 24-hour period, or residential services
 6 provided for 24 consecutive hours or more. Facilities for
 7 individuals who are substance abusers include chemical
 8 dependency facilities;

- 9 c. A 'private facility', which is a facility that is either a licensable
 10 facility or a special unit of a general hospital or a part of either
 11 in which the specific service provided is not covered under the
 12 terms of a contract with an area authority;
- 13 d. The psychiatric service of the University of North Carolina
 14 Hospitals at Chapel Hill;
- 15 e. A 'residential facility', which is a 24-hour facility that is not a
 16 hospital, including a group home;
- 17 f. A 'State facility', which is a facility that is operated by the
 18 Secretary;
- 19 g. A '24-hour facility', which is a facility that provides a
 20 structured living environment and services for a period of 24
 21 consecutive hours or more and includes hospitals that are
 22 facilities under this Chapter; and
- 23 h. A Veterans Administration facility or part thereof that provides
 24 services for the care, treatment, habilitation, or rehabilitation of
 25 the mentally ill, the ~~mentally retarded~~, developmentally disabled,
 26 or substance abusers.

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

- 32 (15) 'Guardian' means a person appointed as a guardian of the person or
 33 general guardian by the court under Chapters 7A, 33, or 35 A of the
 34 General Statutes.
- 35 (16) 'Habilitation' means training, care, and specialized therapies
 36 undertaken to assist a client in maintaining his current level of
 37 functioning or in achieving progress in developmental skills areas.
- 38 (17) 'Incompetent adult' means an adult individual adjudicated
 39 incompetent.
- 40 (18) 'Intoxicated' means the condition of an individual whose mental or
 41 physical functioning is presently substantially impaired as a result
 42 of the use of alcohol or other substance.

- 1 (19) 'Law-enforcement officer' means sheriff, deputy sheriff, police
2 officer, State highway patrolman, or an officer employed by a city
3 or county under G.S. 122C-302.
- 4 (20) 'Legally responsible person' means: (i) when applied to an adult,
5 who has been adjudicated incompetent, a guardian; or (ii) when
6 applied to a minor, a parent, guardian, a person standing in loco
7 parentis, or a legal custodian other than a parent who has been
8 granted specific authority by law or in a custody order to consent
9 for medical care, including psychiatric treatment.
- 10 (21) 'Mental illness' means: (i) when applied to an adult, an illness
11 which so lessens the capacity of the individual to use self-control,
12 judgment, and discretion in the conduct of his affairs and social
13 relations as to make it necessary or advisable for him to be under
14 treatment, care, supervision, guidance, or control; and (ii) when
15 applied to a minor, a mental condition, other than mental
16 retardation alone, that so impairs the youth's capacity to exercise
17 age adequate self-control or judgment in the conduct of his
18 activities and social relationships so that he is in need of treatment.
- 19 (22) 'Mental retardation' means significantly subaverage general
20 intellectual functioning existing concurrently with deficits in
21 adaptive behavior and manifested before age 22.
- 22 (23) 'Mentally retarded with accompanying behavior disorder' means an
23 individual who is mentally retarded and who has a pattern of
24 maladaptive behavior that is recognizable no later than adolescence
25 and is characterized by gross outbursts of rage or physical
26 aggression against other individuals or property.
- 27 (24) 'Next of kin' means the individual designated in writing by the
28 client or his legally responsible person upon the client's acceptance
29 at a facility; provided that if no such designation has been made,
30 'next of kin' means the client's spouse or nearest blood relation in
31 accordance with G.S. 104A-1.
- 32 (25) 'Operating costs' means expenditures made by an area authority in
33 the delivery of services for mental health, ~~mental retardation,~~
34 developmental disabilities, and substance abuse as provided in this
35 Chapter and includes the employment of legal counsel on a
36 temporary basis to represent the interests of the area authority.
- 37 (26) Repealed by Session Laws 1987, c. 345, s. 1.
- 38 (27) 'Outpatient treatment' as used in Part 7 of Article 5 means
39 treatment in an outpatient setting and may include medication,
40 individual or group therapy, day or partial day programming
41 activities, services and training including educational and
42 vocational activities, supervision of living arrangements, and any
43 other services prescribed either to alleviate the individual's illness
44 or disability, to maintain semi-independent functioning, or to

- 1 prevent further deterioration that may reasonably be predicted to
2 result in the need for inpatient commitment to a 24-hour facility.
- 3 (28) 'Person' means any individual, firm, partnership, corporation,
4 company, association, joint stock association, agency, or area
5 authority.
- 6 (29) 'Physician' means an individual licensed to practice medicine in
7 North Carolina under Chapter 90 of the General Statutes or a
8 licensed medical doctor employed by the Veterans Administration.
- 9 (30) 'Provider of support services' means a person that provides to a
10 facility support services such as data processing, dosage
11 preparation, laboratory analyses, or legal, medical, accounting, or
12 other professional services, including human services.
- 13 (30a) 'Psychologist' means an individual licensed to practice
14 psychology under Chapter 90. The term 'eligible psychologist' is
15 defined in subdivision (13a).
- 16 (31) 'Qualified professional' means any individual with appropriate training
17 or experience as specified by the General Statutes or by rule of the
18 Commission in the fields of mental health or ~~mental-retardation~~
19 developmental disabilities or substance abuse treatment or habilitation,
20 including physicians, psychologists, psychological associates,
21 educators, social workers, registered nurses, and certified counselors.
- 22 (32) 'Responsible professional' means an individual within a facility who is
23 designated by the facility director to be responsible for the care,
24 treatment, habilitation, or rehabilitation of a specific client and who is
25 eligible to provide care, treatment, habilitation, or rehabilitation
26 relative to the client's disability.
- 27 (33) 'Secretary' means the Secretary of the Department of Human
28 Resources.
- 29 (34) 'Single portal of entry and exit policy' means an admission and
30 discharge policy for State and area facilities that may be adopted by an
31 area authority and shall be approved by the Secretary before it is in
32 force. The policy and its provisions shall be designed to promote
33 quality client care in and among State and area facilities. Furthermore,
34 the policy shall be designed to integrate otherwise independent
35 facilities into a unified and coordinated system, in which system the
36 area authority shall be responsible for assuring that the individual
37 client can receive services from the facility that is best able to meet his
38 needs. However, the policy may not be inconsistent with any other
39 provisions of the General Statutes, nor may the policy include the
40 complete exclusion of clients from admission to any specific State or
41 area facility.
- 42 (35) 'Single portal area' means the county or counties that comprise the
43 catchment area of an area authority that has adopted a single portal of
44 entry and exit policy.

1 (36) 'Substance abuse' means the pathological use or abuse of alcohol or
2 other drugs in a way or to a degree that produces an impairment in
3 personal, social, or occupational functioning. 'Substance abuse' may
4 include a pattern of tolerance and withdrawal.

5 (37) 'Substance abuser' means an individual who engages in substance
6 abuse.

7 **"§ 122C-4. Use of phrase 'client or his legally responsible person.'**

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

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

13 **"ARTICLE 2.**

14 **"LICENSURE OF FACILITIES FOR THE MENTALLY ILL,**
15 **THE MENTALLY RETARDED, DEVELOPMENTALLY DISABLED, AND**
16 **SUBSTANCE**
17 **ABUSERS."**

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

19 **"§ 122C-21. Purpose.**

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

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

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

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

- 31 (1) Physicians and psychologists engaged in private office practice;
32 (2) General hospitals licensed under Article 5 of Chapter 131E of the
33 General Statutes, that operate special units for the mentally ill, ~~mentally~~
34 ~~retarded, developmentally disabled,~~ or substance abusers;
35 (3) State and federally-operated facilities;
36 (4) Domiciliary care homes licensed under Chapter 131D of the General
37 Statutes;
38 (5) Developmental child day care centers licensed under Article 7 of
39 Chapter 110 of the General Statutes;
40 (6) Persons subject to licensure under rules of the Social Services
41 Commission;
42 (7) Persons subject to rules and regulations of the Division of Vocational
43 Rehabilitation Services; and

1 (8) Facilities that provide occasional respite care for not more than two
2 individuals at a time; provided that the primary purpose of the facility
3 is other than as defined in G.S. 122C-3(14)."

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

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

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

9 **"§ 122C-51. Declaration of policy on clients' rights.**

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

14 It is further the policy of this State that each client who is admitted to and is
15 receiving services from a facility has the right to treatment, including access to medical
16 care and habilitation, regardless of age or degree of mental illness, ~~mental retardation~~,
17 developmental disabilities, or substance abuse. Each client has the right to an
18 individualized written treatment or habilitation plan setting forth a program to maximize
19 the development or restoration of his capabilities."

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

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

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

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

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

41 **"§ 122C-62. Additional rights in 24-hour facilities.**

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

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

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

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

- 13 (1) Make and receive confidential telephone calls. All long distance calls
14 shall be paid for by the client at the time of making the call or made
15 collect to the receiving party;
16 (2) Receive visitors between the hours of 8:00 a.m. and 9:00 p.m. for a
17 period of at least six hours daily, two hours of which shall be after 6:00
18 p.m.; however visiting shall not take precedence over therapies;
19 (3) Communicate and meet under appropriate supervision with individuals
20 of his own choice upon the consent of the individuals;
21 (4) Make visits outside the custody of the facility unless:
22 a. Commitment proceedings were initiated as the result of the
23 client's being charged with a violent crime, including a crime
24 involving an assault with a deadly weapon, and the respondent
25 was found not guilty by reason of insanity or incapable of
26 proceeding;
27 b. The client was voluntarily admitted or committed to the facility
28 while under order of commitment to a correctional facility of
29 the Department of Correction; or
30 c. The client is being held to determine capacity to proceed
31 pursuant to G.S. 15A-1002;

32 A court order may expressly authorize visits otherwise prohibited by
33 the existence of the conditions prescribed by this subdivision;

- 34 (5) Be out of doors daily and have access to facilities and equipment for
35 physical exercise several times a week;
36 (6) Except as prohibited by law, keep and use personal clothing and
37 possessions;
38 (7) Participate in religious worship;
39 (8) Keep and spend a reasonable sum of his own money;
40 (9) Retain a driver's license, unless otherwise prohibited by Chapter 20 of
41 the General Statutes; and
42 (10) Have access to individual storage space for his private use.

43 (c) In addition to the rights enumerated in G.S. 122C-51 through G.S. 122C-57
44 and G.S. 122C-59 through G.S. 122C-61, each minor client who is receiving treatment

1 or habilitation in a 24-hour facility has the right to have access to proper adult
2 supervision and guidance. In recognition of the minor's status as a developing
3 individual, the minor shall be provided opportunities to enable him to mature physically,
4 emotionally, intellectually, socially, and vocationally. In view of the physical,
5 emotional, and intellectual immaturity of the minor, the 24-hour facility shall provide
6 appropriate structure, supervision and control consistent with the rights given to the
7 minor pursuant to this Article. The facility shall also, where practical, make reasonable
8 efforts to ensure that each minor client receives treatment apart and separate from adult
9 clients unless the treatment needs of the minor client dictate otherwise.

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

- 12 (1) Communicate and consult with his parents or guardian or the agency
13 or individual having legal custody of him;
- 14 (2) Contact and consult with, at his own expense or that of his legally
15 responsible person and at no cost to the facility, legal counsel, private
16 physicians, private mental health, ~~mental retardation,~~ developmental
17 disabilities, or substance abuse professionals, of his or his legally
18 responsible person's choice; and
- 19 (3) Contact and consult with a client advocate, if there is a client advocate.

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

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

- 24 (1) Make and receive telephone calls. All long distance calls shall be paid
25 for by the client at the time of making the call or made collect to the
26 receiving party;
- 27 (2) Send and receive mail and have access to writing materials, postage,
28 and staff assistance when necessary;
- 29 (3) Under appropriate supervision, receive visitors between the hours of
30 8:00 a.m. and 9:00 p.m. for a period of at least six hours daily, two
31 hours of which shall be after 6:00 p.m.; however visiting shall not take
32 precedence over school or therapies;
- 33 (4) Receive special education and vocational training in accordance with
34 federal and State law;
- 35 (5) Be out of doors daily and participate in play, recreation, and physical
36 exercise on a regular basis in accordance with his needs;
- 37 (6) Except as prohibited by law, keep and use personal clothing and
38 possessions under appropriate supervision;
- 39 (7) Participate in religious worship;
- 40 (8) Have access to individual storage space for the safekeeping of personal
41 belongings;
- 42 (9) Have access to and spend a reasonable sum of his own money; and
- 43 (10) Retain a driver's license, unless otherwise prohibited by Chapter 20 of
44 the General Statutes.

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

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

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

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

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

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

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

- 1 (9) Notify the clerks of superior court of changes in the designation of
2 State facility regions and of facilities designated under G.S. 122C-252;
- 3 (10) Promote public awareness and understanding of mental health, mental
4 illness, ~~mental retardation,~~ developmental disabilities, and substance
5 abuse;
- 6 (11) Administer and enforce rules that are conditions of participation in
7 federal or State financial aid; and
- 8 (12) Carry out G.S. 122C-361.
- 9 (b) The Secretary may:
- 10 (1) Acquire by purchase or otherwise in the name of the Department
11 equipment, supplies, and other personal property necessary to carry out
12 the mental health, ~~mental retardation,~~ developmental disabilities, and
13 substance abuse programs;
- 14 (2) Sponsor training opportunities in the fields of mental health, ~~mental~~
15 ~~retardation,~~ developmental disabilities, and substance abuse;
- 16 (3) Promote and conduct research in the fields of mental health, ~~mental~~
17 ~~retardation,~~ developmental disabilities, and substance abuse;
- 18 (4) Provide technical assistance for the development and improvement of
19 prevention services;
- 20 (5) Receive donations of money, securities, equipment, supplies, or any
21 other personal property of any kind or description which shall be used
22 by the Secretary for the purpose of carrying out mental health, ~~mental~~
23 ~~retardation,~~ developmental disabilities, and substance abuse programs.
24 Any donations shall be reported to the Office of State Budget and
25 Management as determined by that office;
- 26 (6) Accept, allocate, and spend any federal funds for mental health, ~~mental~~
27 ~~retardation,~~ developmental disabilities, and substance abuse activities
28 that may be made available to the State by the federal government.
29 This Chapter shall be liberally construed in order that the State and its
30 citizens may benefit fully from these funds. Any federal funds
31 received shall be deposited with the State Treasurer and shall be
32 appropriated by the General Assembly for the mental health, ~~mental~~
33 ~~retardation,~~ developmental disabilities, or substance abuse purposes
34 specified;
- 35 (7) Enter agreements authorized by G.S. 122C-346.
- 36 (8) Accept, allocate, and spend funds from the United States Department
37 of Defense to operate mental health demonstration projects for families
38 of the uniformed services. Demonstration projects shall be operated
39 through an area authority. The operation of these demonstration
40 projects may be accomplished through subcontracts with one or more
41 private sector providers.

42 **"§ 122C-113. Cooperation between Secretary and other agencies.**

- 43 (a) The Secretary shall cooperate with other State agencies to coordinate services
44 for the treatment and habilitation of individuals who are mentally ill, ~~mentally retarded,~~

1 developmentally disabled, or substance abusers. The Secretary shall also coordinate
2 with these agencies to provide public education to promote a better understanding of
3 mental illness, ~~mental retardation,~~ developmental disabilities, and substance abuse.

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

7 (b1) The Secretary shall cooperate with the State Board of Education in
8 coordinating the responsibilities of the Department of Human Resources and of the
9 Department of Public Education for adolescent substance abuse programs. The
10 Department of Human Resources, through its Division of Mental Health, ~~Mental~~
11 ~~Retardation,~~ Developmental Disabilities, and Substance Abuse Services, shall be
12 responsible for intervention and treatment in non-school based programs. The
13 Department of Public Education shall have primary responsibility for in-school
14 education, identification, and intervention services, including student assistance
15 programs.

16 (c) The Secretary shall adopt rules to assure this coordination.

17 **"§ 122C-114. Powers and duties of the Commission.**

18 The Commission shall have authority as provided by this Chapter, Chapters 90 and
19 148 of the General Statutes, and by G.S. 143B-147.

20 **"§ 122C-115. Powers and duties of counties and cities.**

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

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

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

33 **"§ 122C-116. Status of area authority.**

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

37 **"§ 122C-117. Powers and duties of the area authority.**

38 (a) The area authority shall:

- 39 (1) Engage in comprehensive planning, budgeting, implementing, and
40 monitoring of community-based mental health, ~~mental retardation,~~
41 ~~developmental disability,~~ disabilities, and substance abuse services;
- 42 (2) Provide services to clients in the catchment area;

- 1 (3) Determine the needs of the area authority's clients and coordinate with
2 the Secretary the provision of services to clients through area and State
3 facilities;
- 4 (4) Develop plans and budgets for the area authority subject to the
5 approval of the Secretary;
- 6 (5) Assure that the services provided by the area authority meet the rules
7 of the Commission and Secretary;
- 8 (6) Comply with federal requirements as a condition of receipt of federal
9 grants; and
- 10 (7) Appoint an area director.

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

14 **"§ 122C-118. Structure of area board.**

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

- 17 (1) In a single-county area, by the board of county commissioners;
- 18 (2) In a multi-county area by agreement of the boards of county
19 commissioners of all the counties in the catchment area. The
20 agreement shall be evidenced by concurrent resolutions adopted by the
21 affected boards of county commissioners.

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

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

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

32 (e) The area board shall include:

- 33 (1) At least one county commissioner from each county in the area except
34 that in a single-county area authority the board of commissioners may
35 instead appoint any resident of the county;
- 36 (2) At least two physicians licensed under Chapter 90 of the General
37 Statutes to practice medicine in North Carolina;
- 38 (3) At least one professional representative from the fields either of
39 psychology, social work, nursing, or religion;
- 40 (4) At least one individual each representing the interests of or from
41 citizens' organizations representing the interests of individuals with;
 - 42 a. Mental illness;
 - 43 b. ~~Mental retardation~~ Developmental disabilities;
 - 44 c. Alcoholism; and

1 d. Drug abuse;

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

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

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

11 **"§ 122C-119. Organization of area board.**

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

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

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

18 **"§ 122C-120. Compensation of area board members.**

19 (a) Area board members may receive as compensation for their services per diem
20 and a subsistence allowance for each day during which they are engaged in the official
21 business of the area board. The amount of the per diem and subsistence allowances shall
22 be established by the area board and the amounts shall not exceed those authorized by
23 G.S. 138-5 for State boards.

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

26 **"§ 122C-121. Area director.**

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

32 **"§ 122C-122. Public guardians.**

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

41 **"§ 122C-123. Other agency responsibility.**

42 Notwithstanding the provisions of G.S. 122C-112(a)(10), ~~and~~, G.S. 122C-117(a)(1),
43 and G.S. 122C-131, other agencies of the Department, other State agencies, and other

1 local agencies shall continue responsibility for services they provide for persons with
2 developmental disabilities."

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

5 **"PART 3. SERVICE DELIVERY SYSTEM.**

6 **"§ 122C-131. Composition of system.**

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

10 **"§ 122C-132. Single portal of entry and exit designation.**

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

17 (b) In order for a single portal area to be designated, the single portal of entry
18 and exit plan shall be subject to approval by the Secretary. Once an area is designated
19 by the Secretary as a single portal area, any changes to the plan shall be subject to
20 approval by the Secretary. However, an approved plan and designation as a single portal
21 area shall remain in force pending approval of any changes.

22 (c) The plan shall include but not be limited to:

- 23 (1) A specific listing of facilities to be covered by the single portal of
24 entry and exit plan;
25 (2) Procedures for review of individuals to be admitted to or discharged
26 from State and area facilities;
27 (3) Procedures for shared responsibility when individuals are admitted
28 directly to a State facility;
29 (4) Evidence of incorporation of these plans within the contracts between
30 the area authority and the State facilities as required by G.S. 122C-
31 143(c) and with other public and private agencies as required in G.S.
32 122C-141;
33 (5) Evidence of cooperative arrangements with local law enforcement,
34 local courts, and the local medical society; and
35 (6) Procedures for review of citizen complaints.

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

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

40 "(c) The area authority may contract with a health maintenance organization,
41 certified and operating in accordance with the provisions of Chapter 57B of the General
42 Statutes for the area authority, to provide mental health, ~~mental retardation,~~
43 developmental disabilities, or substance abuse services to enrollees in a health care plan
44 provided by the health maintenance organization. The terms of the contract must meet

1 the requirements of all applicable State statutes and rules of the Commission and
2 Secretary governing both the provision of services by an area authority and the general
3 and fiscal operation of an area authority and the reimbursement rate for services
4 rendered shall be based on the usual and customary charges paid by the health
5 maintenance organization to similar providers. Any provision in conflict with a State
6 statute or rule of the Commission or the Secretary shall be void; however, the presence
7 of any void provision in that contract does not render void any other provision in that
8 contract which is not in conflict with a State statute or rule of the Commission or the
9 Secretary. Subject to approval by the Secretary and pending the timely reimbursement
10 of the contractual charges, the area authority may expend funds for costs which may be
11 incurred by the area authority as a result of providing the additional services under a
12 contractual agreement with a health maintenance organization.”

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

14 **"§ 122C-147. Allocation of funds to area authorities.**

15 (a) All State and federal funds appropriated within the Department's budget for
16 area mental health, ~~mental retardation,~~ developmental disabilities, and substance abuse
17 services shall be allocated to area authorities in accordance with the annual plan and
18 budget adopted by the area authority and approved by the Secretary. An area authority
19 may receive and allocate non-State resources for capital purchases, capital
20 improvements, and equipment acquisitions if the expenditures are made in the support
21 of the annual plan. The final share of State and federal funds shall be allocated on the
22 basis of actual expenditures and reported in a way prescribed by the Secretary. Unspent
23 State and federal funds shall be remitted to the Department within 60 days after the date
24 that a certified audit is rendered as required by the Local Government Commission. If
25 an audit is not submitted to the State within five days of the due date for the audit as
26 approved by the Local Government Commission, Department funds for the area
27 authority may be withheld by the Secretary until the audit is submitted.

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

31 (1) The Secretary may specify that designated State funds may be used by
32 area authorities (i) for the purchase, alteration, improvement, or
33 rehabilitation of real estate to be used as a 24-hour and day facility or
34 (ii) in contracting with a private, nonprofit corporation that operates
35 24-hour and day facilities for the mentally ill, ~~mentally retarded,~~
36 developmentally disabled, or substance abusers and according to the
37 terms of the contract between the area authority and the private,
38 nonprofit corporation, for the purchase, alteration, improvement,
39 rehabilitation of real estate or, to make a lump sum down payment or
40 periodic payments on a real property mortgage in the name of the
41 private, nonprofit corporation.

42 (2) Upon cessation of the use of the 24-hour and day facility by the area
43 authority, if operated by the area authority, or upon termination,
44 default, or nonrenewal of the contract if operated by a contractual

1 agency, the Department shall be reimbursed in accordance with rules
2 adopted by the Secretary for the Department's participation in the
3 purchase of the 24-hour and day facility.

4 (c) All real property purchased for use by the area authority shall be provided by
5 local or federal funds unless otherwise allowed under subsection (b) of this section. The
6 title to this real property and the authority to acquire it is held by the county where the
7 property is located. The authority to hold title to real property and the authority to
8 acquire it may be held by the area authority with the consent of the board or boards of
9 commissioners of all the counties which comprise the area authority. The consent to this
10 variation shall be by resolution of the affected board or boards of county commissioners
11 and may have any necessary or proper conditions, including provisions for distribution
12 of the proceeds in the event of disposition of the property by the area authority.

13 (d) The area authority may lease real property.

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

16 (f) The area authority may acquire or lease personal property, including by lease-
17 purchase agreement. Title to personal property may be held by the area authority.

18 (g) All area authority funds shall be spent in accordance with the rules of the
19 Secretary. Failure to comply with the rules is grounds for the Secretary to stop
20 participation in the funding of the particular program. The Secretary may withdraw
21 funds from a specific program of services not being administered in accordance with an
22 approved plan and budget after written notice and subject to an appeal as provided by
23 G.S. 122C-145 and Chapter 150B of the General Statutes.

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

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

39 (j) Notwithstanding subsection (c) of this section the area authority, with the
40 approval of the Secretary, may use local funds for the alteration, improvement, and
41 rehabilitation of real property owned by a nonprofit corporation under contract with the
42 area authority and used or to be used as a 24-hour and day facility. Prior to the use of
43 county appropriated funds for this purpose, the area authority must obtain consent of the
44 board or boards of commissioners of all the counties which comprise the area authority.

1 The consent shall be by resolution of the affected board or boards of county
2 commissioners and may have any necessary or proper conditions, including provisions
3 for distribution of the proceeds in the event of disposition of the property.”

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

5 **"§ 122C-149. Allocation of matching funds to area authorities.**

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

14 (b) Area authorities may not use funds received under G.S. 20- 179.2(f) or G.S.
15 90-96.01(a)(4) to match funds under this section."

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

17 **"§ 122C-151. Responsibilities of those receiving appropriations.**

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

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

23 **"§ 122C-202. Applicability of Article.**

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

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

30 **"§ 122C-203. Admission or commitment and incompetency proceedings to have no
31 effect on one another.**

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

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

40 **"PART 5. VOLUNTARY ADMISSIONS AND DISCHARGES,
41 MINORS AND ADULTS, FACILITIES FOR
42 INDIVIDUALS WITH ~~MENTAL RETARDATION~~ DEVELOPMENTAL
43 DISABILITIES.**

44 **"§ 122C-241. Admissions.**

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

5 (i1) A minor with ~~mental retardation~~developmental disabilities may be
6 admitted upon application by both the father and the mother if they are
7 living together and, if not, by the parent or parents having custody or
8 by the legally responsible person.

9 (ii2) An adult with ~~mental retardation~~developmental disabilities who has
10 been adjudicated incompetent under Chapters 33 or 35 of the General
11 Statutes may be admitted upon application by his guardian.

12 (iii3) An adult with ~~mental retardation~~developmental disabilities who has not
13 been adjudicated incompetent under Chapters 33 or 35 of the General
14 Statutes may be admitted upon his own application.

15 (b) Prior to admission to a 24-hour facility, the individual shall be examined and
16 evaluated by a physician or psychologist to determine whether the individual is ~~mentally~~
17 ~~retarded~~developmentally disabled. In addition, the individual shall be examined and
18 evaluated by a qualified ~~mental retardation~~developmental disabilities professional no
19 sooner than 31 days prior to admission or within 72 hours after admission to determine
20 whether the individual is in need of care, habilitation, rehabilitation, training or
21 treatment by the facility. If the evaluating professional determines that the individual
22 will not benefit from an admission, the individual shall not be admitted as a client.

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

31 **"§ 122C-242. Discharges.**

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

36 (b) Any adult who has not been declared incompetent and who is admitted to a
37 24-hour facility shall be discharged upon his own request, unless the director of the
38 facility has reason to believe that the adult is endangering himself by the discharge. In
39 this case the individual may be held for a period not to exceed five days while the
40 director petitions for the adjudication of incompetency of the individual and the
41 appointment of an interim guardian under Chapters 33 or 35 of the General Statutes.

42 (c) Any individual admitted to a 24-hour facility may be discharged when in the
43 judgment of the director of the facility the individual is no longer in need of care,
44 treatment, habilitation or rehabilitation by the facility or the individual will no longer

1 benefit from the service available. In the case of an area or State facility rules adopted
2 by the Commission or by the Secretary in accordance with G.S. 122C-63 shall be
3 followed.

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

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

9 **"PART 4. COMMISSION FOR MENTAL HEALTH, ~~MENTAL RETARDATION~~**
10 **DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES.**

11 **"§ 143B-147. Commission for Mental Health, ~~Mental Retardation~~ Developmental**
12 **Disabilities, and Substance Abuse Services – creation, powers and duties.**

13 (a) There is hereby created the Commission for Mental Health, ~~Mental Retardation~~
14 ~~Developmental Disabilities,~~ and Substance Abuse Services of the Department of Human
15 Resources with the power and duty to adopt, amend and repeal rules to be followed in
16 the conduct of State and local mental health, ~~mental retardation,~~ developmental
17 disabilities, alcohol and drug abuse programs including education, prevention,
18 intervention, treatment, rehabilitation and other related services. Such rules shall be
19 designed to promote the amelioration or elimination of the mental health, ~~mental~~
20 ~~retardation,~~ developmental disabilities, or alcohol and drug abuse problems of the
21 citizens of this State. The Commission for Mental Health, ~~Mental Retardation~~
22 Developmental Disabilities, and Substance Abuse Services shall have the authority:

23 (1) To adopt rules regarding the

- 24 a. Admission, including the designation of regions, treatment, and
25 professional care of individuals admitted to a facility operated
26 under the authority of G.S. 122C- 181(a), that is now or may be
27 established;
- 28 b. Operation of education, prevention, intervention, treatment,
29 rehabilitation and other related services as provided by area
30 mental health, ~~mental retardation~~ developmental disabilities, and
31 substance abuse authorities under Part 4 of Article 4 of Chapter
32 122C of the General Statutes;
- 33 c. Hearings and appeals of area mental health, ~~mental retardation~~
34 developmental disabilities, and substance abuse authorities as
35 provided for in Part 4 of Article 4 of Chapter 122C of the
36 General Statutes;
- 37 d. Requirements of the federal government for grants-in-aid for
38 mental health, ~~mental retardation,~~ developmental disabilities,
39 alcohol or drug abuse programs which may be made available
40 to local programs or the State. This section is to be liberally
41 construed in order that the State and its citizens may benefit
42 from such grants-in-aid;

- 1 (2) To adopt rules for the licensing of facilities for the mentally ill,
2 ~~mentally retarded~~ developmentally disabled, and substance abusers,
3 under Article 2 of Chapter 122C of the General Statutes.
- 4 (3) To advise the Secretary of the Department of Human Resources
5 regarding the need for, provision and coordination of education,
6 prevention, intervention, treatment, rehabilitation and other related
7 services in the areas of:
8 a. Mental illness and mental health,
9 b. ~~Mental retardation~~, Developmental disabilities,
10 c. Alcohol abuse, and
11 d. Drug abuse;
- 12 (4) To review and advise the Secretary of the Department of Human
13 Resources regarding all State plans required by federal or State law
14 and to recommend to the Secretary any changes it thinks necessary in
15 those plans; provided, however, for the purposes of meeting State plan
16 requirements under federal or State law, the Department of Human
17 Resources is designated as the single State agency responsible for
18 administration of plans involving mental health, ~~mental retardation~~,
19 developmental disabilities, alcohol abuse, and drug abuse services;
- 20 (5) To adopt rules relating to the registration and control of the
21 manufacture, distribution, and dispensing of controlled substances as
22 provided by G.S. 90-100;
- 23 (6) To adopt rules to establish the professional requirements for staff of
24 licensed facilities for the mentally ill, ~~mentally retarded~~
25 developmentally disabled, and substance abusers. Such rules may
26 require that one or more, but not all staff of a facility be either licensed
27 or certified. If a facility has only one professional staff, such rules may
28 require that that individual be licensed or certified. Such rules may
29 include the recognition of professional certification boards for those
30 professions not licensed or certified under other provisions of the
31 General Statutes provided that the professional certification board
32 evaluates applicants on a basis which protects the public health, safety
33 or welfare;
- 34 (7) Except where rule making authority is assigned under that Article to
35 the Secretary of the Department of Human Resources, to adopt rules to
36 implement Article 3 of Chapter 122C of the General Statutes;
- 37 (8) To adopt rules specifying procedures for waiver of rules adopted by
38 the Commission.
- 39 (b) All rules hereby adopted shall be consistent with the laws of this State and not
40 inconsistent with the management responsibilities of the Secretary of the Department of
41 Human Resources provided by this Chapter and the Executive Organization Act of
42 1973.
- 43 (c) All rules and regulations pertaining to the delivery of services and licensing
44 of facilities heretofore adopted by the Commission for Mental Health and Mental

1 ~~Retardation Services and Services,~~ controlled substances rules and regulations adopted
2 by the North Carolina Drug ~~Commission~~ Commission, and all rules and regulations
3 adopted by the Commission for Mental Health, Mental Retardation and Substance
4 Abuse Services shall remain in full force and effect unless and until repealed or
5 superseded by action of the Commission for Mental Health, ~~Mental Retardation~~
6 Developmental Disabilities, and Substance Abuse Services.

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

10 **"§ 143B-148. Commission for Mental Health, ~~Mental Retardation~~ Developmental**
11 **Disabilities, and Substance Abuse Services – members; selection;**
12 **quorum; compensation.**

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

16 (1) Four of whom shall be appointed by the General Assembly, two upon
17 the recommendation of the Speaker of the House of Representatives,
18 and two upon the recommendation of the President of the Senate in
19 accordance with G.S. 120-121. These members shall have concern for
20 the problems of mental illness, ~~mental retardation,~~ developmental
21 disabilities, alcohol and drug abuse. ~~The initial members appointed to the~~
22 ~~Commission by the General Assembly shall serve for terms expiring June~~
23 ~~30, 1983. Thereafter, their successors shall~~ Members shall serve for two-
24 year terms beginning July 1 of odd-numbered years. Vacancies in
25 appointments made by the General Assembly shall be filled in
26 accordance with G.S. 120-122;

27 (2) Twenty-one of whom shall be appointed by the Governor, one from
28 each congressional district in the State in accordance with G.S. 147-
29 12(3)b, and 10 at-large members.

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

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

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

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

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

18 (b) Except as otherwise provided in this section, the provisions of G.S. 143B-13
19 through 143B-20 relating to appointment, qualifications, terms and removal of members
20 shall apply to all members of the Commission for Mental Health, ~~Mental Retardation~~
21 Developmental Disabilities, and Substance Abuse Services.

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

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

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

28 "**§ 143B-149. Commission for Mental Health, ~~Mental Retardation~~ Developmental**
29 **Disabilities, and Substance Abuse Services – officers.**

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

36 "**§ 143B-150. Commission for Mental Health, ~~Mental Retardation~~ Developmental**
37 **Disabilities, and Substance Abuse Services – regular and special**
38 **meetings.**

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

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

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

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

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

7 Sec. 26. This act shall become effective January 1, 1990, except that G.S.
8 122C-118, as amended by Section 14 of this act, shall become effective July 1, 1989.