

## **Chapter 122C.**

### **Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985.**

#### Article 1.

##### General Provisions.

###### **§ 122C-1. Short title.**

This Chapter may be cited as the Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985. (1985, c. 589, s. 2; 1989, c. 625, ss. 1, 2.)

###### **§ 122C-2. Policy.**

The policy of the State is to assist individuals with needs for mental health, developmental disabilities, and substance abuse services in ways consistent with the dignity, rights, and responsibilities of all North Carolina citizens. Within available resources it is the obligation of State and local government to provide mental health, developmental disabilities, and substance abuse services through a delivery system designed to meet the needs of clients in the least restrictive, therapeutically most appropriate setting available and to maximize their quality of life. It is further the obligation of State and local government to provide community-based services when such services are appropriate, unopposed by the affected individuals, and can be reasonably accommodated within available resources and taking into account the needs of other persons for mental health, developmental disabilities, and substance abuse services.

State and local governments shall develop and maintain a unified system of services centered in area authorities or county programs. The public service system will strive to provide a continuum of services for clients while considering the availability of services in the private sector. Within available resources, State and local government shall ensure that the following core services are available:

- (1) Screening, assessment, and referral.
- (2) Emergency services.
- (3) Service coordination.
- (4) Consultation, prevention, and education.

Within available resources, the State shall provide funding to support services to targeted populations, except that the State and counties shall provide matching funds for entitlement program services as required by law.

As used in this Chapter, the phrase "within available resources" means State funds appropriated and non-State funds and other resources appropriated, allocated or otherwise made available for mental health, developmental disabilities, and substance abuse services.

The furnishing of services to implement the policy of this section requires the cooperation and financial assistance of counties, the State, and the federal government. (1977, c. 568, s. 1; 1979, c. 358, s. 1; 1983, c. 383, s. 1; 1985, c. 589, s. 2; c. 771; 1989, c. 625, s. 2; 2001-437, s. 1.1.)

###### **§ 122C-3. Definitions.**

The following definitions apply in this Chapter:

- (1) Area authority. – The area mental health, developmental disabilities, and substance abuse authority.
- (2) Area board. – The area mental health, developmental disabilities, and substance abuse board.

- (2a) Area director. – The administrative head of the area authority program appointed pursuant to G.S. 122C-121.
- (2b) Behavioral health and intellectual/developmental disabilities tailored plan or BH IDD tailored plan. – As defined in G.S. 108D-1.
- (2c) Board of county commissioners. – Includes the participating boards of county commissioners for multicounty area authorities and multicounty programs.
- (3) Camp Butner reservation. – The original Camp Butner reservation as may be designated by the Secretary as having been acquired by the State and includes not only areas which are owned and occupied by the State but also those which may have been leased or otherwise disposed of by the State, and also includes those areas within the municipal boundaries of the Town of Butner and that portion of the extraterritorial jurisdiction of the Town of Butner consisting of lands not owned by the State of North Carolina.
- (4) Catchment area. – The geographic part of the State served by a specific area authority or county program.
- (4a) Children and families specialty plan or CAF specialty plan. – As defined in G.S. 108D-1.
- (5) City. – As defined in G.S. 153A-1(1).
- (6) Client. – An individual who is admitted to and receiving service from, or who in the past had been admitted to and received services from, a facility.
- (7) Client advocate. – A person whose role is to monitor the protection of client rights or to act as an individual advocate on behalf of a particular client in a facility.
- (8) Commission. – The Commission for Mental Health, Developmental Disabilities, and Substance Use Services, established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (8a) Commitment examiner. – A physician, an eligible psychologist, or any health professional or mental health professional who is certified under G.S. 122C-263.1 to perform the first examination for involuntary commitment described in G.S. 122C-263(c) or G.S. 122C-283(c) as required by Parts 7 and 8 of this Article.
- (9) Confidential information. – Any information, whether recorded or not, relating to an individual served by a facility that was received in connection with the performance of any function of the facility. "Confidential information" does not include statistical information from reports and records or information regarding treatment or services which is shared for training, treatment, habilitation, or monitoring purposes that does not identify clients either directly or by reference to publicly known or available information.
- (9a) Core services. – Services that are necessary for the basic foundation of any service delivery system. Core services are of two types: front-end service capacity such as screening, assessment, and emergency triage, and indirect services such as prevention, education, and consultation at a community level.
- (10) County of residence. – The county of a client's domicile at the time of his or her admission or commitment to a facility. A county of residence is not changed because an individual is temporarily out of his or her county in a facility or otherwise.

(10a) County program. – A mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.

(11) Dangerous to self or others.

a. Dangerous to self. – Within the relevant past, the individual has done any of the following:

1. The individual has acted in such a way as to show all of the following:

I. The individual would be unable, without care, supervision, and the continued assistance of others not otherwise available, to exercise self-control, judgment, and discretion in the conduct of the individual's daily responsibilities and social relations, or to satisfy the individual's need for nourishment, personal or medical care, shelter, or self-protection and safety.

II. There is a reasonable probability of the individual's suffering serious physical debilitation within the near future unless adequate treatment is given pursuant to this Chapter. A showing of behavior that is grossly irrational, of actions that the individual is unable to control, of behavior that is grossly inappropriate to the situation, or of other evidence of severely impaired insight and judgment shall create a prima facie inference that the individual is unable to care for himself or herself.

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

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

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

b. Dangerous to others. – Within the relevant past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that this conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Clear, cogent, and convincing evidence that an individual has committed a homicide in the relevant past is prima facie evidence of dangerousness to others.

- (11a) Day/night service. – A service provided on a regular basis, in a structured environment that is offered to the same individual for a period of three or more hours within a 24-hour period.
- (12) Department. – The North Carolina Department of Health and Human Services.
- (12a) Developmental disability. – A severe, chronic disability of a person that satisfies all of the following:
  - a. Is attributable to a mental or physical impairment or combination of mental and physical impairments.
  - b. Is manifested before the person attains age 22, unless the disability is caused by a traumatic brain injury, in which case the disability may be manifested after attaining age 22.
  - c. Is likely to continue indefinitely.
  - d. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, capacity for independent living, learning, mobility, self-direction, and economic self-sufficiency.
  - e. Reflects the person's need for a combination and sequence of special interdisciplinary, or generic care, treatment, or other services that are of a lifelong or extended duration and are individually planned and coordinated; or when applied to children from birth through age four, may be evidenced as a developmental delay.
  - f. Repealed by Session Laws 2019-76, s. 1, effective October 1, 2019, and applicable to proceedings commenced or services rendered on or after that date.
- (13) Division. – The Division of Mental Health, Developmental Disabilities, and Substance Use Services of the Department.
- (13a) Repealed by Session Laws 2000-67, s. 11.21(c), effective July 1, 2000.
- (13a1) Recodified as subdivision (13c).
- (13b) Recodified as subdivision (13d).
- (13c) Eligible infants and toddlers. – Children with or at risk for developmental delays or atypical development until all of the following have occurred:
  - a. They have reached their third birthday.
  - b. Their parents have requested to have them receive services in the preschool program for children with disabilities established under Article 9 of Chapter 115C of the General Statutes.
  - c. They have been placed in the program by the local educational agency.

In no event shall a child be considered an eligible toddler after the beginning of the school year immediately following the child's third birthday, unless the Secretary and the State Board enter into an agreement under G.S. 115C-107.1(c).

The early intervention services that may be provided for these children and their families include early identification and screening, multidisciplinary evaluations, case management services, family training, counseling and home visits, psychological services, speech pathology and audiology, and occupational and physical therapy. All evaluations performed as part of early

intervention services shall be appropriate to the individual child's age and development.

- (13d) Eligible psychologist. – A licensed psychologist who has at least two years' clinical experience. After January 1, 1995, "eligible psychologist" means a licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.
- (14) **(Effective until contingency met – see note)** Facility. – Any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of individuals with mental illnesses or intellectual or other developmental disabilities or substance abusers, and includes all of the following:
- a. An "area facility," which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility.
  - b. A "licensable facility," which is a facility for one or more minors or for two or more adults that provides services to individuals who have mental illnesses or intellectual or other developmental disabilities or are substance abusers. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities.
  - c. A "private facility," which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority.
  - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill.
  - e. A "residential facility," which is a 24-hour facility that is not a hospital, including a group home.
  - f. A "State facility", which is a facility that is operated by the Secretary.
  - g. A "24-hour facility," which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter.
  - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of individuals with mental illnesses or intellectual or other developmental disabilities or substance abusers.
- (14) **(Effective once contingency met – see note)** Facility. – Any person at one location, or in the case of an opioid treatment program facility licensed to operate an opioid treatment program medication unit, an opioid treatment

program mobile unit, or both, any person at one or more locations, whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of individuals with mental illnesses or intellectual or other developmental disabilities or substance abusers, and includes all of the following:

- a. An "area facility," which is a facility that is operated by or under contract with the area authority or county program. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area authority or county program. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility.
  - b. A "licensable facility," which is a facility for one or more minors or for two or more adults that provides services to individuals who have mental illnesses or intellectual or other developmental disabilities or are substance abusers. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities.
  - c. A "private facility," which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority.
  - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill.
  - e. A "residential facility," which is a 24-hour facility that is not a hospital, including a group home.
  - f. A "State facility", which is a facility that is operated by the Secretary.
  - g. A "24-hour facility," which is a facility that provides a structured living environment and services for a period of 24 consecutive hours or more and includes hospitals that are facilities under this Chapter.
  - h. A Veterans Administration facility or part thereof that provides services for the care, treatment, habilitation, or rehabilitation of individuals with mental illnesses or intellectual or other developmental disabilities or substance abusers.
  - i. An opioid treatment program facility licensed to operate an opioid treatment program medication unit, an opioid treatment program mobile unit, or both.
- (15) Guardian. – A person appointed as a guardian of the person or general guardian by the court under Chapters 7A or 35A or former Chapters 33 or 35 of the General Statutes.
- (16) Habilitation. – Training, care, and specialized therapies undertaken to assist a client in maintaining his current level of functioning or in achieving progress in developmental skills areas.

- (16a) Health screening. – An appropriate screening suitable for the symptoms presented and within the capability of the entity, including ancillary services routinely available to the entity, to determine whether or not an emergency medical condition exists. An emergency medical condition exists if an individual has acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in placing the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.
- (16b) Incapable. – With respect to an individual, as defined in G.S. 122C-72(4). An adult individual who is incapable is not the same as an incompetent adult unless the adult individual has been adjudicated incompetent under Chapter 35A of the General Statutes.
- (17) Incompetent adult. – An adult individual who has been adjudicated incompetent under Chapter 35A of the General Statutes.
- (17a) Intellectual disability. – A developmental disability characterized by significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before age 22.
- (18) Intoxicated. – The condition of an individual whose mental or physical functioning is presently substantially impaired as a result of the use of alcohol or other substance.
- (19) Law enforcement officer. – Sheriff, deputy sheriff, police officer, State highway patrolman, or an officer employed by a city or county under G.S. 122C-302.
- (20) "Legally responsible person" means: (i) when applied to an adult, who has been adjudicated incompetent, a guardian, subject to the limitations of G.S. 35A-1241(3); (ii) when applied to a minor, a parent, guardian, a person standing in loco parentis, or a legal custodian other than a parent who has been granted specific authority by law or in a custody order to consent for medical care, including psychiatric treatment; or (iii) when applied to an adult who has a health care power of attorney and who is incapable as defined in G.S. 122C-72(4) a health care agent named pursuant to a valid health care power of attorney unless the adult is adjudicated incompetent following the execution of the health care power of attorney and the health care agent's authority is suspended pursuant to G.S. 32A-22 and G.S. 35A-1208; provided that if an incapable adult does not have a health care agent or guardian, "legally responsible person" means one of the persons specified in subdivisions (3) through (7) of subsection (c) of G.S. 90-21.13, to be selected based on the priority indicated in said subdivisions (3) through (7).
- (20a) Local funds. – Fees from services, including client payments, Medicare and the local and federal share of Medicaid receipts, fees from agencies under contract, gifts and donations, and county and municipal funds, and any other funds not administered by the Division.
- (20b) Local management entity (LME). – An area authority.
- (20c) Local management entity/managed care organization (LME/MCO). – A local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under Section 1915(b) and

Section 1915(c) of the Social Security Act or to operate a capitated PHP contract under Article 4 of Chapter 108D of the General Statutes.

- (21) Mental illness. – The following:
  - a. When applied to an adult, an illness which so lessens the capacity of the individual to use self-control, judgment, and discretion in the conduct of the individual's affairs and social relations as to make it necessary or advisable for the individual to be under treatment, care, supervision, guidance, or control.
  - b. When applied to a minor, a mental condition, other than an intellectual disability alone, that so impairs the minor's capacity to exercise age adequate self-control or judgment in the conduct of the minor's activities and social relationships so that the minor is in need of treatment.
- (22), (23) Repealed by Session Laws 2019-76, s. 1, effective October 1, 2019, and applicable to proceedings commenced or services rendered on or after that date.
- (23a) Minimally adequate services. – A level of service required for compliance with all applicable State and federal laws, rules, regulations, and policies and with generally accepted professional standards and principles.
- (23b) **(Effective once contingency met – see note)** Mobile unit. – A motor vehicle that operates with more than three wheels in contact with the ground that may lawfully be used on the public streets, roads, or highways and from which opioid treatment program mobile unit services are provided at one or more locations.
- (24) Next of kin. – The individual designated in writing by the client or the client's legally responsible person upon the client's acceptance at a facility. If no such designation has been made, "next of kin" means the client's spouse or nearest blood relation in accordance with G.S. 104A-1.
- (25) Operating costs. – Expenditures made by an area authority in the delivery of services for mental health, developmental disabilities, and substance abuse as provided in this Chapter and includes the employment of legal counsel on a temporary basis to represent the interests of the area authority.
- (25a) **(Effective once contingency met – see note)** Opioid treatment program. – A facility with a current and valid registration under 21 U.S.C. § 823(g)(1) that meets all of the following criteria:
  - a. Is engaged in dispensing and administering treatment medication approved by the Food and Drug Administration for the treatment of individuals with opioid use disorders.
  - b. Has been licensed as an opioid treatment program facility by the Division of Health Service Regulation.
- (25b) **(Effective once contingency met – see note)** Opioid treatment program medication unit. – A unit established as part of an opioid treatment program facility that meets all of the following criteria:
  - a. Operates at a geographically separate location from the opioid treatment program facility.
  - b. Is a site at which treatment medication approved by the Food and Drug Administration for the treatment of opioid use disorder is dispensed or administered and samples are collected for drug testing or analysis.



- c. Is a site where intake or initial psychosocial and appropriate medical assessments may be conducted with a full physical examination to be completed or provided within 14 days of admission and the site provides appropriate privacy and adequate space for quality patient care, where treatment with medication approved by the Food and Drug Administration may be initiated after an appropriate medical assessment has been performed, and where other opioid treatment program services, such as counseling, may be provided directly, or when permissible, through the use of telehealth services and the site provides appropriate privacy and adequate space for quality patient care.
- (25c) **(Effective once contingency met – see note)** Opioid treatment program mobile unit. – A mobile unit established as a mobile component of an opioid treatment program facility that meets all of the following criteria:
- a. Operates at one or more geographically separate, predetermined locations from the opioid treatment program facility.
  - b. Is a site at which treatment medication approved by the Food and Drug Administration for treatment of opioid use disorder is dispensed or administered and samples are collected for drug testing or analysis.
  - c. Is a site where intake or initial psychosocial and appropriate medical assessments may be conducted with a full physical examination to be completed or provided within 14 days of admission and the site provides appropriate privacy and adequate space for quality patient care, where treatment with medication approved by the Food and Drug Administration may be initiated after an appropriate medical assessment has been performed, and where other opioid treatment program services, such as counseling, may be provided directly or, when permissible, through the use of telehealth services and the site provides appropriate privacy and adequate space for quality patient care.
- (26) Repealed by Session Laws 1987, c. 345, s. 1.
- (26a) Other recipient. – An individual who is not admitted to a facility but who receives a service other than care, treatment, or rehabilitation services. The services that the "other recipient" may receive include consultative, preventative, educational, and assessment services.
- (27) Outpatient treatment. – As used in Part 7 of Article 5 of this Chapter, means treatment in an outpatient setting and may include medication, individual or group therapy, day or partial day programming activities, services and training including educational and vocational activities, supervision of living arrangements, and any other services prescribed either to alleviate the individual's illness or disability, to maintain semi-independent functioning, or to prevent further deterioration that may reasonably be predicted to result in the need for inpatient commitment to a 24-hour facility.
- (27a) Outpatient treatment physician or center. – As used in Part 7 of Article 5 of this Chapter, a physician or center that provides treatment services directly to the outpatient commitment respondent. An LME/MCO that contracts with an outpatient treatment physician or center to provide outpatient treatment services to a respondent is not an outpatient treatment physician or center. Each

LME/MCO is responsible for contracting with qualified providers of services in accordance with G.S. 122C-141, 122C-142(a), and 122C-115.4(b)(2) to ensure the availability of qualified providers of outpatient commitment services to clients of LME/MCOs who are respondents to outpatient commitment proceedings and meet the criteria for outpatient commitment. A contracted provider with an LME/MCO shall not be designated as an outpatient treatment physician or center on an outpatient commitment order unless the respondent enrolled with an LME/MCO or is eligible for services through an LME/MCO, or the respondent otherwise qualifies for the provision of services offered by the provider.

- (28) Person. – Any individual, firm, partnership, corporation, company, association, joint stock association, agency, or area authority.
- (29) Physician. – An individual licensed to practice medicine in North Carolina under Chapter 90 of the General Statutes or a licensed medical doctor employed by the Veterans Administration.
- (29a) Repealed by Session Laws 2018-33, s. 1, effective October 1, 2019.
- (29b) Prepaid health plan. – As defined in G.S. 108D-1.
- (30) Provider of support services. – A person that provides to a facility support services such as data processing, dosage preparation, laboratory analyses, or legal, medical, accounting, or other professional services, including human services.
- (30a) Psychologist. – An individual licensed to practice psychology under Chapter 90 of the General Statutes. The term "eligible psychologist" is defined in subdivision (13d) of this section.
- (30b) Public services. – Publicly funded mental health, developmental disabilities, and substance abuse services, whether provided by public or private providers.
- (31) Qualified professional. – Any individual with appropriate training or experience as specified by the General Statutes or by rule of the Commission in the fields of mental health or developmental disabilities or substance abuse treatment or habilitation, including physicians, psychologists, psychological associates, educators, social workers, registered nurses, certified fee-based practicing pastoral counselors, and certified counselors.
- (32) Responsible professional. – An individual within a facility who is designated by the facility director to be responsible for the care, treatment, habilitation, or rehabilitation of a specific client and who is eligible to provide care, treatment, habilitation, or rehabilitation relative to the client's disability.
- (32a) Secretary. – The Secretary of the Department of Health and Human Services.
- (32b) Security recordings. – Any films, videos, or electronic or other media recordings of a common area in a State facility that are produced for the purpose of maintaining or enhancing the health and safety of clients, residents, staff, or visitors of that State facility. The term does not include recordings of a client's clinical sessions or any other recordings that are part of a client's confidential records or information.
- (33) Renumbered as subdivision (32a).
- (33a) Severe and persistent mental illness. –A mental disorder suffered by persons of 18 years of age or older that leads these persons to exhibit emotional or

behavioral functioning that is so impaired as to interfere substantially with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. This disorder is a severe and persistent mental disability, resulting in a long-term limitation of functional capacities for the primary activities of daily living, such as interpersonal relations, homemaking, self-care, employment, and recreation.

- (34) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.
- (35) Repealed by Session Laws 2001-437, s. 1.2(c), effective July 1, 2002.
- (35a) Renumbered as subdivision (35e).
- (35b) Specialty services. – Services that are provided to consumers from low-incidence populations.
- (35c) Repealed by Session Laws 2023-65, s. 5.1(c), effective June 29, 2023.
- (35d) Standard benefit plan. – As defined in G.S. 108D-1.
- (35e) State Plan. – The State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services.
- (35f) State resources. – State and federal funds and other receipts administered by the Division.
- (36) Substance abuse. – The pathological use or abuse of alcohol or other drugs in a way or to a degree that produces an impairment in personal, social, or occupational functioning. "Substance abuse" may include a pattern of tolerance and withdrawal.
- (37) Substance abuser. – An individual who engages in substance abuse.
- (38) Targeted population. – Those individuals who are given service priority under the State Plan.
- (38a) Traumatic brain injury. – An injury to the brain caused by an external physical force resulting in total or partial functional disability, psychosocial impairment, or both, and meets all of the following criteria:
  - a. Involves an open or closed head injury.
  - b. Resulted from a single event, or resulted from a series of events which may include multiple concussions.
  - c. Occurs with or without a loss of consciousness at the time of injury.
  - d. Results in impairments in one or more areas of the following functions: cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual, and motor abilities; psychosocial behavior; physical functions; information processing; and speech.
  - e. Does not include brain injuries that are congenital or degenerative.
- (39) Uniform portal process. – A standardized process and procedures used to ensure consumer access to, and exit from, public services in accordance with the State Plan. (1899, c. 1, s. 28; Rev., s. 4574; C.S., s. 6189; 1945, c. 952, s. 18; 1947, c. 537, s. 12; 1949, c. 71, s. 3; 1955, c. 887, s. 1; 1957, c. 1232, s. 13; 1959, c. 1028, s. 4; 1963, c. 1166, ss. 2, 10; c. 1184, s. 1; 1965, c. 933; 1973, c. 475, s. 2; c. 476, s. 133; c. 726, s. 1; c. 1408, ss. 1, 3; 1977, c. 400, ss. 2, 12; c. 568, s. 1; c. 679, s. 7; 1977, 2nd Sess., c. 1134, s. 2; 1979, c. 164, ss. 3, 4; c. 171, s. 2; c. 358, ss. 2, 26; c. 915, s. 1; c. 751, s. 28; 1981, c. 51, ss. 2-4; c. 539, s. 1; 1983, c. 280; c. 383, s. 2; c. 638, s. 2; c. 718, s. 1; c. 864, s. 4; 1983 (Reg. Sess., 1984), c. 1110, s. 4;

1985, c. 589, s. 2; c. 695, s. 1; c. 777, s. 2; 1985 (Reg. Sess., 1986), c. 863, s. 7; 1987, c. 345, s. 1; c. 830, ss. 47(a), (b); 1989, c. 141, s. 8; c. 223; c. 486, s. 2; c. 625, s. 2; 1989 (Reg. Sess., 1990), c. 823, s. 11; c. 1003, s. 2; c. 1024, s. 26(a); 1993, c. 321, s. 220(a)-(c); c. 375, s. 6; c. 396, ss. 1, 2; 1995, c. 249, s. 1; c. 406, s. 5; 1997-443, s. 11A.118(a); 1997-456, s. 27; 1998-198, s. 3; 1998-202, s. 4(r); 1999-186, s. 1; 2000-67, s. 11.21(c); 2001-437, ss. 1.2(b), 1.2(c); 2001-437, s. 1.2(a); 2003-313, s. 1; 2006-69, s. 3(n); 2006-142, ss. 4(a), 7; 2007-269, s. 3.1; 2007-502, s. 15(a); 2008-107, s. 10.15(dd); 2013-85, s. 1; 2018-33, s. 1; 2019-76, s. 1; 2019-81, s. 9; 2019-240, ss. 20(a), 22, 26(a); 2021-77, s. 1; 2023-65, ss. 5.1(c), 5.2(b), 10.1; 2023-134, ss. 9E.22(I), 9G.7A(a2).)

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

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

(b) Except as otherwise provided by law, whenever in this Chapter the phrase "client or the legally responsible person" is used, and the client is an incapable adult, the duty or right involved shall be exercised by a health care agent named pursuant to a valid health care power of attorney, if one exists, or by the client as expressed in a valid advance instruction for mental health treatment, if one exists. If no health care power of attorney or advance instruction for mental health treatment exists, the legally responsible person for an incapable adult who has not been adjudicated incompetent under Chapter 35A of the General Statutes shall be one of the persons listed in subdivisions (3) through (7) of subsection (c) of G.S. 90-21.13, to be selected based on the priority order indicated in said subdivisions (3) through (7). (1985, c. 589, s. 2; 2018-33, s. 2; 2019-240, s. 26(b).)

**§ 122C-5. Report on restraint and seclusion.**

The Secretary shall report annually on October 1 to the Joint Legislative Oversight Committee on Health and Human Services on the following for the immediately preceding fiscal year:

- (1) The level of compliance of each facility with applicable State and federal laws, rules, and regulations governing the use of restraints and seclusion. The information shall indicate areas of highest and lowest levels of compliance.
- (2) The total number of facilities that reported deaths under G.S. 122C-31, the number of deaths reported by each facility, the number of deaths investigated pursuant to G.S. 122C-31, and the number found by the investigation to be related to the use of restraint or seclusion. (2000-129, s. 3(b); 2003-58, s. 1; 2011-291, s. 2.40.)

**§ 122C-6. Smoking prohibited; penalty.**

(a) Smoking is prohibited inside facilities licensed under this Chapter. As used in this section, "smoking" means the use or possession of any lighted cigar, cigarette, pipe, or other lighted smoking product. As used in this section, "inside" means a fully enclosed area.

(b) The person who owns, manages, operates, or otherwise controls a facility subject to this section shall:

- (1) Conspicuously post signs clearly stating that smoking is prohibited inside the facility. The signs may include the international "No Smoking" symbol, which

consists of a pictorial representation of a burning cigarette enclosed in a red circle with a red bar across it.

- (2) Direct any person who is smoking inside the facility to extinguish the lighted smoking product.
- (3) Provide written notice to individuals upon admittance that smoking is prohibited inside the facility and obtain the signature of the individual or the individual's representative acknowledging receipt of the notice.

(c) The Department may impose an administrative penalty not to exceed two hundred dollars (\$200.00) for each violation on any person who owns, manages, operates, or otherwise controls a facility licensed under this Chapter and fails to comply with subsection (b) of this section. A violation of this section constitutes a civil offense only and is not a crime.

(d) This section does not apply to State psychiatric hospitals. (2007-459, s. 3.)

**§ 122C-7. Reserved for future codification purposes.**

**§ 122C-8. Reserved for future codification purposes.**

**§ 122C-9. Reserved for future codification purposes.**