

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1993

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SENATE BILL 599

Short Title: 'Pioneer' Mental Health Plan.

(Public)

Sponsors: Senators Walker; and Forrester.

Referred to: Children and Human Resources.

March 29, 1993

A BILL TO BE ENTITLED

AN ACT RECOMMENDED BY THE MENTAL HEALTH STUDY COMMISSION
TO INCORPORATE INTO THE GENERAL STATUTES THE FUNDING
POLICIES AND PROCEDURES ADOPTED BY THE GENERAL ASSEMBLY
AS THE "PIONEER FUNDING SYSTEM" AND IMPLEMENTED THROUGH A
PHASE-IN SCHEDULE IN THE FORTY-ONE AREA MENTAL HEALTH,
DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE
AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. (a) G.S. 122C-3 is amended by inserting the following new subdivision to read:

"(20a) 'Local funds' means 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."

(b) G.S. 122C-3 is further amended by inserting a new subdivision to read:

"(26a) 'Other recipient' means 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."

(c) G.S. 122C-3 is further amended by inserting another new subdivision to read:

"(35a) 'State resources' means State and federal funds and other receipts administered by the Division."

1 Sec. 2. G.S. 122C-143 is repealed.

2 Sec. 3. Part 4 of Article 4 of Chapter 122C of the General Statutes is
3 amended by adding the following new sections to read:

4 **"§ 122C-143.1. Policy guidance.**

5 (a) The General Assembly shall, as it considers necessary, endorse as policy
6 guidance long-range plans for the broad age/disability categories of persons to be served
7 and the services to be provided by area authorities.

8 (b) The Secretary shall develop a payment policy that designates, within broad
9 age/disability categories, the priority populations, based on their disability level and the
10 types of service to be supported by State resources. The Secretary shall review the
11 Department's payment policy annually to assure that payments are made consistent with
12 the State's long-range plans.

13 (c) The Secretary shall ensure that the payment policy provides incentives
14 designated to target resources consistent with legislative policy and with the State's
15 long-range plans and to promote equal accessibility to services for individuals
16 regardless of their catchment area.

17 (d) Upon request of the Secretary, each area authority shall develop, revise, or
18 amend its local long-range plans to be consistent with the policy guidance set forth in
19 the State's long-range plans. Local service implementation plans shall be subject to the
20 approval of the Secretary.

21 (e) The Secretary shall ensure that the Department's requests for expansion funds
22 for area authorities are consistent with the State's long-range plans and include
23 consideration of needs identified by the area authorities and their local plans.

24 **"§ 122C-143.2. Annual Memorandum of Agreement.**

25 (a) In accordance with procedures specified by the Secretary, the area authority
26 shall complete cost finding, rate setting, and annual age/disability service planning as
27 preparation for a Memorandum of Agreement between the area authority and the
28 Department.

29 (b) In a format established by the Secretary, the Memorandum of Agreement
30 shall include age/disability service plans that delineate the services that are to be
31 purchased by the State. Payment for services purchased shall be made at reimbursement
32 rates established in G.S. 122C-147.2.

33 (c) The Memorandum of Agreement shall include the area authority activities
34 that will be supported by grants allocated in accordance with G.S. 147.1(c)(2).

35 (d) The Memorandum of Agreement shall provide flexibility for the area
36 authority to earn State resources within the payment policy for each age/disability fund
37 established by G.S. 122C-143.1(b).

38 (e) The Memorandum of Agreement may delineate other special conditions or
39 expectations."

40 Sec. 4. G.S. 122C-144 is repealed.

41 Sec. 5. Chapter 122C of the General Statutes is amended by inserting a new
42 section to read:

43 **"§ 122C-144.1. Budget format and reports.**

1 (a) The area authority shall maintain its budget in accordance with the
2 requirements of Article 3 of Subchapter III of Chapter 159 of the General Statutes, the
3 Local Government Budget and Fiscal Control Act.

4 (b) The Secretary may require periodic reports of receipts and expenditures for
5 all area authority services provided directly or under contract according to a format
6 prescribed by the Secretary.

7 (c) In accordance with G.S. 159-34, the area authority shall have an audit
8 completed and submit it to the Local Government Commission.

9 (d) The Secretary may require reports of client characteristics, staffing patterns,
10 agency policies or activities, services, or specific financial data of the area authority, but
11 the reports shall not identify individual clients of the area authority unless specifically
12 required by State statute or federal statute or regulation, or unless valid consent for the
13 release has been given by the client or legally responsible person."

14 Sec. 6. (a) The catch line of G.S. 122C-147 reads as rewritten:

15 "**§ 122C-147. Allocation of funds to area authorities. Financing and title of area**
16 **authority property.**"

17 (b) G.S. 122C-147(a) is repealed.

18 Sec. 7. Part 4 of Article 4 of Chapter 122C of the General Statutes is
19 amended by inserting the following new sections to read:

20 "**§ 122C-147.1. Appropriations and allocations.**"

21 (a) Except as provided in subsection (b) of this section, funds shall be
22 appropriated by the General Assembly in broad age/disability categories. The Secretary
23 shall allocate and account for funds in broad age/disability categories so that the area
24 authority may, with flexibility, earn funds in response to local needs that are identified
25 within the payment policy developed in accordance with G.S. 122C-143.1(b).

26 (b) When the General Assembly determines that it is necessary to appropriate
27 funds for a more specific purpose than the broad age/disability category, the Secretary
28 shall determine whether expenditure accounting, special reporting within earning from a
29 broad fund, the Memorandum of Agreement, or some other mechanism allows the best
30 accounting for the funds.

31 (c) Funds that have been appropriated by the General Assembly for a more
32 specific purpose than specified in subsection (a) of this section shall be converted to a
33 broad age/disability category at the beginning of the second biennium following the
34 appropriation, unless otherwise acted upon by the General Assembly.

35 (d) The Secretary shall allocate funds to area programs:

36 (1) To be earned in a purchase of service basis, at negotiated
37 reimbursement rates, for services that are included in the payment
38 policy and delivered to mentally ill, developmentally disabled, and
39 substance abuse clients and for services that are included in the
40 payment policy to other recipients; or

41 (2) To be paid under a grant on the basis of agreed-upon expenditures,
42 when the Secretary determines that it would be impractical to pay on a
43 purchase of service basis.

44 (e) After the close of a fiscal year, final payments of funds shall be made:

- 1 (1) Under the purchase of service basis, on the earnings of the area
2 authority for the delivery to individuals within each age/disability
3 group, of any services that are consistent with the payment policy
4 established in G.S. 122C-143.1(b), up to the final allocation amount;
5 or
6 (2) When awarded on an expenditure basis, on allowable actual
7 expenditures, up to the final allocation amount.

8 Under rules adopted by the Secretary, final payments shall be adjusted on the basis
9 of the audit required in G.S. 122C-144.1(d).

10 **"§ 122C-147.2. Purchase of services and reimbursement rates.**

11 When funds are used to purchase services, the following provisions apply:

- 12 (1) Reimbursement rates for specific types of service shall be negotiated
13 between the Secretary and the area authority. The negotiation shall
14 begin with the rate determined by the standardized cost-finding and
15 rate-setting procedure that is required by G.S. 122C-143.2(a) or by
16 another method approved by the Secretary.
17 (2) The reimbursement rate used for the payment of services shall
18 incorporate operating and administrative costs, including costs for
19 property in accordance with G.S. 122C-147."

20 Sec. 8. G.S. 122C-148, 122C-149, and 122C-150 are repealed.

21 Sec. 9. G.S. 122C-151 reads as rewritten:

22 **"§ 122C-151. Responsibilities of those receiving appropriations.**

23 (a) All resources allocated to and received by any area authority and used for
24 programs of mental health, developmental disabilities, substance abuse or other related
25 fields-services are subject to the conditions specified in this Article and to the rules of
26 the Commission and the Secretary. Secretary and to the conditions of the Memorandum
27 of Agreement specified in G.S. 122C-143.2.

28 (b) If an area authority fails to complete actions necessary for the development of
29 a Memorandum of Agreement, fails to file required reports within the time limit set by
30 the Secretary, or fails to comply with any other requirements specified in this Article,
31 the Secretary may:

- 32 (1) Delay payments; and
33 (2) With written notification of cause and subject to an appeal as provided
34 by G.S. 122C-151.2, reduce or deny payment of funds. Restoration of
35 funds upon compliance is within the discretion of the Secretary."

36 Sec. 10. G.S. 122C-145 is renumbered as G.S. 122C-151.2.

37 Sec. 11. Effective July 1, 1994, G.S. 122C-151.1 is repealed.

38 Sec. 12. Effective January 1, 1994, Part 4 of Article 4 of Chapter 122C of the
39 General Statutes is amended by adding the following new sections to read:

40 **"§ 122C-151.3. Dispute with area authorities.**

41 An area authority shall establish written procedures for resolving disputes over
42 decisions of an area authority that may be appealed to the Area Authority Appeals Panel
43 under G.S. 122C-151.4. The procedures shall be informal and shall provide an
44 opportunity for those who dispute the decision to present their position.

1 **"§ 122C-151.4. Appeal to Area Authority Appeals Panel.**

2 (a) Definitions. – The following definitions apply in this section:

3 (1) 'Contract' means a contract with an area authority to provide services,
4 other than personal services, to clients and other recipients of services.

5 (2) 'Contractor' means a person who has a contract or who had a contract
6 during the current fiscal year.

7 (3) 'Former contractor' means a person who had a contract during the
8 previous fiscal year.

9 (b) Appeals Panel. – The Area Authority Appeals Panel is established. The Panel
10 shall consist of three members appointed by the Secretary. The Secretary shall
11 determine the qualifications of the Panel members. Panel members serve at the pleasure
12 of the Secretary.

13 (c) Who Can Appeal. – The following persons may appeal to the Area Authority
14 Appeals Panel after having exhausted the appeals process at the appropriate area
15 authority:

16 (1) A contractor or a former contractor who claims that an area authority
17 is not acting or has not acted within applicable State law or rules in
18 imposing a particular requirement on the contractor on fulfillment of
19 the contract;

20 (2) A contractor or a former contractor who claims that a requirement of
21 the contract substantially compromises the ability of the contractor to
22 fulfill the contract;

23 (3) A contractor or former contractor who claims that an area authority has
24 acted arbitrarily and capriciously in reducing funding for the type of
25 services provided or formerly provided by the contractor or former
26 contractor;

27 (4) A client or a person who was a client in the previous fiscal year, who
28 claims that an area authority has acted arbitrarily and capriciously in
29 reducing funding for the type of services provided or formerly
30 provided to the client directly by the area authority; and

31 (5) A person who claims that an area authority did not comply with a State
32 law or a rule adopted by the Secretary or the Commission in
33 developing the plans and budgets of the area authority and that the area
34 authority's failure to comply has adversely affected the ability of the
35 person to participate in the development of the plans and budgets.

36 (d) Hearing. – All members of the Area Authority Appeals Panel shall hear an
37 appeal to the Panel. An appeal shall be filed with the Panel within the time required by
38 the Secretary and shall be heard by the Panel within the time required by the Secretary.
39 A hearing shall be conducted at the place determined in accordance with the rules
40 adopted by the Secretary. A hearing before the Panel shall be informal; no sworn
41 testimony shall be taken and the rules of evidence do not apply. The person who
42 appeals to the Panel has the burden of proof. The Panel shall not stay a decision of an
43 area authority during an appeal to the Panel.

1 (e) Decision. - The Area Authority Appeals Panel shall make a written decision
2 on each appeal to the Panel within the time set by the Secretary. A decision may direct
3 a contractor or an area authority to take an action or to refrain from taking an action, but
4 it shall not require a party to appeal to pay any amount except payment due under the
5 contract. In making a decision, the Panel shall determine the course of action that best
6 protects or benefits the clients of the area authority. If a party to an appeal fails to
7 comply with a decision of the Panel and the Secretary determines that the failure
8 deprives clients of the area authority of a type of needed service, the Secretary may use
9 funds previously allocated to the area authority to provide the service.

10 (f) 150B Appeal. - A person who is dissatisfied with a decision of the Panel may
11 commence a contested case under Article 3 of Chapter 150B of the General Statutes.
12 Notwithstanding G.S. 150B-2(1), an area authority is considered an agency for purposes
13 of the limited appeal authorized by this section. The Secretary shall make a final
14 decision in the contested case."

15 Sec. 13. G.S. 122C-112(a) reads as rewritten:

16 "(a) The Secretary shall:

- 17 (1) Enforce the provisions of this Chapter and the rules of the Commission
18 and the Secretary;
- 19 (2) Assist counties and area authorities in the establishment and operation
20 of community-based programs within catchment areas specified in
21 rules adopted by the Commission;
- 22 (3) Operate State facilities and adopt rules pertaining to their operation;
- 23 (4) Promote a unified system of services for the citizens of this State by
24 coordinating services provided in State facilities and area facilities;
- 25 (5) Approve the plans and budgets of an area authority and adopt rules
26 pertaining to the content and format of these plans and budgets;
- 27 (6) Adopt rules governing the expenditure of all area authority funds;
- 28 (6a) Adopt rules to implement the appeal procedure authorized by G.S.
29 122C-151.2;
- 30 (7) Adopt rules for the establishment of single portal designation and
31 approve an area as a single portal area;
- 32 (8) Except as provided in G.S. 122C-26(4), adopt rules establishing
33 procedures for waiver of rules adopted by the Secretary under this
34 Chapter;
- 35 (9) Notify the clerks of superior court of changes in the designation of
36 State facility regions and of facilities designated under G.S. 122C-252;
- 37 (10) Promote public awareness and understanding of mental health, mental
38 illness, developmental disabilities, and substance abuse;
- 39 (11) Administer and enforce rules that are conditions of participation in
40 federal or State financial aid;
- 41 (12) Carry out G.S. 122C-361; and
- 42 (13) Coordinate and facilitate the development and administration of the
43 early intervention system for eligible infants and toddlers and shall
44 assign among the cooperating agencies the responsibility, including

1 financial responsibility, for services. The Secretary shall be advised
2 by the Interagency Coordinating Council for Handicapped Children
3 from Birth to Five Years of Age, established by G.S. 143B-179.5, and
4 may enter into formal interagency agreements to establish the
5 collaborative relationships with the Department of Environment,
6 Health, and Natural Resources, the Department of Public Instruction,
7 other appropriate agencies, and other public and private service
8 providers necessary to administer the system and deliver the services.

9 The Secretary shall adopt rules to implement the early intervention
10 system, in cooperation with all other appropriate agencies."

11 Sec. 14. Section 11 of this act becomes effective July 1, 1994. Section 12 of
12 this act becomes effective January 1, 1994. All other sections of this act become
13 effective July 1, 1993.