

MENTAL HEALTH LAW

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2004 LEGISLATION AFFECTING MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES

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This bulletin discusses acts of the General Assembly affecting mental health, developmental disabilities, and substance abuse services, with particular attention given to legislation affecting publicly funded services. Although these services are administered on the state level by the Department of Health and Human Services' (DHHS) Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, most of them are delivered in the community through a service network managed by local governments or units of local government called area mental health, developmental disabilities, and substance abuse authorities (area authorities) or county mental health, developmental disabilities, and substance abuse programs (county programs).

Among the legislative enactments in 2004 that could affect area authorities and county programs is a law requiring the review of the fiscal and administrative policies that may impede the delivery of community-based services. This new law also limits the reversion of unexpended funds to the General Fund, reserving a portion of those funds for community-based service needs. Other legislation includes acts appropriating funds for mental health, developmental disabilities, and substance abuse (MH/DD/SA) services, expanding the list of health care providers who may directly enroll with the state to provide mental health services paid for by the state's Medicaid program, establishing pilot programs to add a mental health treatment component to drug treatment courts, and requiring the study of the use and effectiveness of geriatric mental health specialty teams in long-term care facilities. These and other acts are described in this bulletin.

Appropriations

General Fund Appropriations

In 2003 the General Assembly appropriated \$580,423,098 from the General Fund to the DHHS Division of MH/DD/SA Services for the second year of the 2003–2005 biennium (S.L. 2003-284). This year the legislature reduced the General Fund appropriation for 2004–2005 to

\$574,460,825, a net decrease of approximately \$5.9 million after balancing reductions and expansion funding. Annual appropriations for past years were \$577.3 million (2003–2004), \$573.3 million (2002–2003), \$581.4 million (2001–2002), \$630.4 million (2000–2001), \$614.3 million (1999–2000), \$564.3 million (1998–1999), and \$528.5 million (1997–1998).

The 2004 appropriations act, S.L. 2004-124 (H 1414), reduces funding for 2004–2005, in part, by cutting \$2 million from funding for area authority and county program services and \$500,000 from funding for the Division of MH/DD/SA Services's central office operations. Because both of these reductions are nonrecurring and will be applied to funds that reverted in each of the last two fiscal years, they are not anticipated to have an impact. The budget act also cuts funding for technical assistance, training, and service contracts through the division by \$199,273 and makes a \$2 million recurring and a \$2,550,000 nonrecurring reduction in funding to state-operated institutions by budgeting over-realized receipts. Expansion funding includes a \$300,000 increase in funding to the Autism Society, a \$750,000 increase for housing support and placements for persons with mental illness, and a \$237,000 increase in funding for the UNC TEACCH Division in the School of Medicine.

Federal Block Grant Allocations

Section 5.1 of S.L. 2004-124 allocates federal block grant funds for fiscal year 2004–2005. The Mental Health Services (MHS) Block Grant provides federal financial assistance to states to subsidize community-based services for people with mental illnesses. This year, the General Assembly allocated \$6,307,035 (up from \$5,657,798 in 2003–2004) from the MHS Block Grant for community-based services for adults with severe and persistent mental illness, including crisis stabilization and other services designed to prevent institutionalization of individuals when possible. From the same block grant the legislature appropriated \$3,921,991 (up from \$2,513,141 in 2003–2004) for community-based mental health services for children, including school-based programs, family preservation programs, group homes, specialized foster care, therapeutic homes, and special initiatives for serving children and families of children having serious emotional disturbances. The General Assembly allocated \$1.5 million of the MHS Block Grant funds to the Comprehensive Treatment Services Program for Children (CTSPC) (formerly the Child Residential Treatment Services Program), which is intended to provide residential treatment alternatives for children at

risk of institutionalization or other out-of-home placement.

The Substance Abuse Prevention and Treatment (SAPT) Block Grant provides federal funding to states for substance abuse prevention and treatment services for children and adults. From the SAPT Block Grant, the General Assembly allocated \$20,441,082 (up from \$18,901,711 in 2003–2004) for the state-operated alcohol and drug abuse treatment centers (ADATCs) and adult alcohol and drug abuse services provided by community-based programs. Other allocations include \$5,835,701 (down from \$7,740,611 in 2003–2004) for services for children and adolescents (for example, prevention, high-risk intervention, outpatient, and regional residential services) and \$8,069,524 for services for pregnant women and women with dependent children. The budget act also appropriates \$4,816,378 from the SAPT Block Grant for substance abuse services for intravenous drug abusers and others at risk of HIV disease and \$851,156 for prevention and treatment services for children affected by parental addiction.

From the Social Services Block Grant, which funds several DHHS divisions, S.L. 2004-124 allocates to the Division of MH/DD/SA Services \$3,234,601 for unspecified purposes and another \$5 million to assist individuals on the state's developmental disabilities services waiting list. From the same block grant the General Assembly allocated \$422,003 to the CTSPC and \$213,128 to the Division of Facility Services for mental health licensure purposes.

Mental Health Trust Fund

In 2001 the General Assembly established the Trust Fund for Mental Health, Developmental Disabilities, and Substance Abuse Services and Bridge Funding Needs as a nonreverting special trust fund in the Office of State Budget and Management. G.S. 143-15.3D provides that the fund must be used solely to meet the mental health, developmental disabilities, and substance abuse services needs of the state and must supplement, not supplant, existing state and local funding for these services. Specifically, the fund must be used only for the following:

1. To provide start-up and operating funding for community-based treatment alternatives for individuals residing in state-operated institutions

2. To facilitate compliance with the U. S. Supreme Court's *Olmstead*¹ decision
3. To expand services to reduce waiting lists
4. To provide bridge funding to maintain client services during transitional periods of facility closings and departmental restructuring
5. To construct, repair, and renovate state mental health, developmental disabilities, and substance abuse facilities

This year the General Assembly appropriated \$10 million in nonrecurring funds to the trust fund, following a \$12.5 million allocation in fiscal year 2003–2004.

Section 10.23 of S.L. 2004-124 authorizes DHHS to use up to \$500,000 from the trust fund to purchase a house or other residential facility and the land on which the house or facility is located for use by the PATH Program at the Murdoch Center.

Section 10.24 of S.L. 2004-124 also authorizes DHHS to spend up to \$3.5 million for capital improvements and expansions at the state's ADATCs.

Medicaid and North Carolina Health Choice

Medicaid Services

Section 10.19D of S.L. 2004-124 expands the list of service providers who may directly enroll with the state to provide mental health services to Medicaid recipients. Children eligible for Early and Periodic Screening for Diagnostic Treatment Services may receive mental health services from licensed psychological associates, licensed professional counselors, licensed marriage and family therapists, certified clinical addiction specialists, and certified clinical supervisors. To be eligible for Medicaid reimbursement, however, services provided by these professionals must be furnished in response to a referral from a Community Care of North Carolina primary care physician, a Medicaid-enrolled psychiatrist, an area mental health authority, or a county mental health program. The same professionals may

1. *Olmstead v. L.C.*, 527 U.S. 581, 119 S. Ct. 2176, 144 L. Ed. 2d 540 (1999). In *Olmstead*, the Court held that the unnecessary segregation of individuals with mental disabilities in institutions may constitute discrimination based on disability, in violation of the Americans with Disabilities Act. As a result of the ruling, states risk litigation if they do not develop a comprehensive plan for moving qualified persons with mental disabilities from institutions to less restrictive settings at a reasonable pace.

also provide mental health services to Medicaid-eligible adults, who may be self-referred. The act directs that DHHS may not enroll these professionals until the fiscal impact of payments to these providers has been projected, funds have been identified in the Division of MH/DD/SA Services budget to meet any projected payments exceeding Division of Medical Assistance (DMA) funding, and approval has been obtained from the Office of State Budget to transfer the funds from the Division of MH/DD/SA Services to the DMA.

In addition to the professionals listed above, the budget act permits Medicaid-eligible adults to receive Medicaid-reimbursed mental health services from licensed or certified psychologists, licensed clinical social workers, and certified clinical nurse specialists in psychiatric mental health advanced practice.

Community Alternatives Program

Section 10.9 of S.L. 2004-124 requires DHHS to ensure that budgeted expenditures for the Medicaid Community Alternatives Program (CAP) are not limited by the nonallocation of, or delays in filling, CAP slots and specifies that CAP services for disabled adults be provided, within existing county allocations and subject to availability, to any eligible person who entered a nursing facility on or before June 1, 2004.

Intermediate Care Facilities for Persons with Mental Retardation

Section 10.8 of S.L. 2004-124 directs DHHS to implement a Medicaid assessment program for state-operated ICF/MR facilities (intermediate care facilities for persons with mental retardation) and ICF/MR facilities licensed under G.S. Chapter 122C. The assessment must be imposed effective October 1, 2004, and funds realized from the assessment must be used only to draw down federal Medicaid matching funds and to implement a rate increase for private ICF/MR facilities. Further, funds realized from the assessment must not be used to supplant state funds appropriated for private facilities and must be used to reduce state funds appropriated for public ICF/MR services.

State Funding for North Carolina Health Choice

S.L. 2004-124 increases state funding for the state's Health Choice program for uninsured children by \$6.6 million.

Studies

County and state Medicaid funding. S.L. 2004-161 (S 1152) authorizes the Legislative Research Commission to study the feasibility of eliminating county financial participation in the Medicaid program. The commission may consider alternative funding methods to ensure that the impact on state funds is revenue neutral when calculated on a statewide basis and also may consider retaining the county contribution toward administrative costs. Any recommendations to the General Assembly must include a fiscal analysis of the estimated impact on state revenue and Medicaid expenses.

Institutional bias. S.L. 2004-124 requires DHHS to contract with an independent entity to study whether the state's Medicaid program has a bias favoring support for individuals in institutional settings over support for individuals living at home and, if a bias is found, to recommend ways to alleviate it. The department must report the results of the study to the North Carolina Study Commission on Aging by January 2005.

Area Authorities and County Programs

County Program Transition from Area Authority

G.S. 122C-115(a) requires counties to provide mental health, developmental disabilities, and substance abuse services through an "area authority" or through a "county program," as those terms are defined in that chapter. A *county program* is a single-county program (a department of the county) or a multicounty program formed pursuant to an interlocal agreement in accordance with Article 20 of G.S. Chapter 160A.

Section 10.26 of S.L. 2004-124 amends G.S. 122C-115(a) to provide that if a county that is a member of an area authority decides to provide services through a county program instead, it may, with the agreement of the other counties comprising the area authority and with the approval of the Secretary of DHHS, simultaneously participate in the area authority

and the county program until the end of the subsequent fiscal year. Because this amendment sunsets July 1, 2005, the provision is effective only during the 2004–2005 fiscal year.

Fiscal and Administrative Policy Review

Section 10.22A of S.L. 2004-124 requires the DHHS Division of MH/DD/SA Services, in cooperation with area authorities and county programs, to identify and eliminate administrative and fiscal barriers created by state and local policies to the delivery of area authority and county program services, including services delivered to multiply diagnosed adults and services provided through the CTSPC. The special provision further directs DHHS to implement changes in policies and procedures to

1. create a system for allocating state and federal funds to area authorities and county programs based on projected needs rather than on historical allocation practices and spending patterns,
2. provide services to adults and children defined in the State Plan as priority or targeted populations,
3. provide services to children not deemed eligible for the CTSPC but who would otherwise need medically necessary treatment services to prevent out-of-home placement, and
4. provide community-based services to adults who should be moved to less restrictive settings in accordance with *Olmstead v. L.C.* but who remain or are being placed in state-operated institutions.

Nonreversion of Local Program Funds

Section 10.22A of S.L. 2004-124 also directs area authorities and county programs to use all funds appropriated and necessary to meet service needs. If excess funds are available after doing so, the act requires that one-half of these funds not revert to the General Fund but be transferred to the Mental Health Trust Fund, with the exception that one-half of unexpended and unencumbered funds appropriated to the CTSPC are not to revert to the General Fund but must be carried forward and used solely for services for children and adolescents.

Substance Abuse Services for Persons Convicted of Driving While Impaired

A person whose driver's license is revoked as a result of a conviction of driving while impaired must obtain a certificate of completion before having his or her license restored by the Division of Motor Vehicles. To obtain a certificate of completion, the person must have a substance abuse assessment and, depending on the results of the assessment, must complete either an alcohol and drug education traffic (ADET) school or a substance abuse treatment program. S.L. 2004-197 (H 1356) amends G.S. 122C-142.1 to specify the persons authorized to conduct substance abuse assessments. Effective October 1, 2005, these assessments may be conducted by the following:

1. A certified substance abuse counselor, as defined by the Commission for MH/DD/SA Services
2. A certified clinical addiction specialist, as defined by the commission
3. A substance abuse counselor intern who is supervised by a certified clinical supervisor, as defined by the commission, and who meets the minimum qualifications established by the commission for individuals performing substance abuse assessments
4. A person licensed by the North Carolina Psychology Board
5. A physician certified by the American Society of Addiction Medicine

Substance abuse counselor interns will be considered qualified to do the assessment only until October 1, 2008, at which time they will be deleted from the statutory list of qualified professionals.

The act raises from \$50 to \$100 the required fee for substance abuse assessments conducted under G.S. 122C-142.1. It also requires the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the certification requirements for persons conducting ADET schools and the adequacy of the fees paid by clients to treatment facilities or schools for treatment or education.

Involuntary Commitment Custody and Transportation Order

Under North Carolina's law and procedure for court-ordered treatment of mental illness, magistrates and clerks of court, in a number of situations, are author-

ized to issue a custody and transportation order to a law-enforcement officer that authorizes the officer to take a named individual into custody and transport him or her to a physician or psychologist for examination. Upon completion of the examination, the physician or psychologist makes a recommendation regarding court-ordered treatment, and the individual may be transported to a psychiatric hospital pending a court hearing. In some circumstances the question arises whether a custody order issued by a magistrate in one county may be executed by a law-enforcement agency in another county. For example, an individual named in an order may travel from the county in which the order was issued to an adjacent county before the sheriff's department in the county in which the order originated can execute it. Some legal experts believe the magistrate's order is valid in other counties and should simply be presented to the law-enforcement agency of the county in which the respondent can be found.

Nevertheless, following a 2004 incident in which a respondent remained at large and eventually suffered injury while the magistrates and law-enforcement agencies of one county tried to determine whether they could execute an order issued in another county, the General Assembly decided to clarify the matter. S.L. 2004-23 (H 1366) amends Sections 261(e), 281(e), 265(a), 273(a)(2), and 290(b) of G.S. Chapter 122C to clarify that such a custody order is valid throughout the state, not just in the county in which it was issued.

Quality Assurance and Peer Review

G.S. 122C-191(e)(2) provides that, for purposes of peer review functions, the proceedings of an area authority or county program quality assurance committee, the records and materials it produces, and the materials it considers are confidential and not to be considered public records within the meaning of North Carolina's public records statute. S.L. 2004-149 (H 669) amends G.S. 122C-191(e)(2) to clarify that documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they are presented or considered during committee proceedings. The act makes the same change to G.S. 122C-30, which applies to the peer review functions of hospitals licensed under G.S. Chapter 122C. G.S. 122C-30, which heretofore has referred only to peer review committees, is amended to apply also to quality assurance committees.

G.S. 122C-191(e)(3) provides that confidential peer review information may be released to a professional standards review organization that contracts with a North Carolina or federal agency to perform any

accreditation or certification function. S.L. 2004-149 amends this statute to clarify that the reference to professional standards review organizations includes the Joint Commission on Accreditation of Healthcare Organizations.

S.L. 2004-149 adds G.S. 131D-21.2 to G.S. Chapter 131D, applicable to adult care homes, to extend qualified immunity from civil liability to members of the facility's quality assurance, medical, or peer review committees. The immunity extends only to statements and actions falling within the scope of the members' quality assurance activities. G.S. 131D-21.2 also protects the confidentiality of the materials these committees produce or consider by shielding the materials from discovery or introduction into evidence in any civil action against the facility and exempting them from the definition of public records in North Carolina's public records law. The law qualifies these protections by providing that information otherwise available is not shielded from discovery simply because it was considered by a quality assurance, medical, or peer review committee, nor do public records become confidential simply by virtue of being considered by the committee.

Mental Health Treatment Courts

Section 10.27 of S.L. 2004-124 requires the Administrative Office of the Courts (AOC) to establish pilot programs that add a mental health treatment component to the existing drug treatment courts in judicial districts 15B, 26, and 28. The pilot programs are intended to facilitate cooperation between the public mental health system, mental health service providers, and the judicial system so that the public mental health system can provide treatment to repeat adult offenders in need of mental health or substance abuse services and who fall within the population targeted for services by the State Plan for MH/DD/SA services. The act requires the AOC and the Division of MH/DD/SA Services to plan the treatment services, court procedures, and administration of the pilot programs. For 2004-2005 the General Assembly appropriated from the Mental Health Trust Fund \$36,161 to the Judicial Department for administrative costs associated with the pilot programs and \$137,940 to the Division of MH/DD/SA Services for treatment services for repeat adult offenders who fall within the State Plan's target population. The AOC must report on the implementation of the pilot programs to the Senate and House Appropriations Committees, the Senate and House Appropriations Subcommittees on Justice and Public

Safety, and the Senate and House Appropriations Subcommittees on Health and Human Services by March 1, 2005.

Criminal Records Checks

Section 10.19D of S.L. 2004-124 amends state laws governing the criminal history record checks of applicants for employment with area authorities and long-term care facilities. The act requires the state Department of Justice to forward the results of national criminal history checks on such persons to the DHHS Division of Facility Services, which will provide the results of the criminal history check to the area authority or long-term care facility within five business days.

With respect to criminal records checks of persons seeking employment with an area authority or adult care home, S.L. 2004-124 amends G.S. 131D-40 and G.S. 122C-80 to include within the definition of *relevant offense* any conviction or pending indictment for a crime under county, state, or federal law that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons.

Section 10.1 of S.L. 2004-124 requires DHHS, beginning January 1, 2005, to centralize all department activities relating to the coordination and processing of criminal records checks required by law and to report on the centralization to the Senate Appropriations Committee on Health and Human Services, the House of Representatives Appropriations Subcommittee on Health and Human Services, and the Fiscal Research Division by January 1, 2005.

Guardianship

Section 31 of S.L. 2004-203 (H 281) amends G.S. 35A-1213(b) to remove the restriction that a general guardian or guardian of the estate must be a North Carolina resident and amends other provisions of G.S. Chapter 35A to grant the clerk of superior court greater authority to remove a guardian. S.L. 2004-161 creates the Legislative Commission on State Guardianship Laws to study guardianship laws and their relationship to powers of attorney, the right to natural death, and other laws.

Long-Term Care Facilities

Mental Health Specialty Teams

S.L. 2004-144 (S 1148) requires DHHS to develop and implement standardized criteria for mental health specialty teams that provide services to mentally ill residents of long-term care facilities. Standardized criteria must address the teams' purpose, residents' eligibility for services, screening processes, referral processes, training manuals, and documents such as service orders, authorizations, and other forms.

S.L. 2004-144 also directs DHHS to study the use and effectiveness of geriatric mental health specialty teams in long-term care facilities. As part of the study, DHHS must consider whether to broaden the scope of these teams to include the provision of services to non-geriatric residents with mental illness or create two separate teams, a geriatric mental health specialty team that provides services to geriatric mentally ill residents and a long-term care mental health specialty team that provides services to nongeriatric mentally ill residents. The act also requires DHHS to track expenditures related to the care of mentally ill residents of long-term care facilities, the types of services provided by specialty teams, and the use of clinicians with and without specialty training in mental health or geriatric mental health. DHHS must report its findings and actions to the North Carolina Study Commission on Aging and the Joint Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services by October 30, 2005.

Studies

S.L. 2004-124 requires DHHS to study issues concerning the care of mentally ill residents of long-term care facilities and to report its findings to the North Carolina Study Commission on Aging by October 1, 2005. The study must address, among other things, admission criteria to long-term care facilities for persons with mental illness, the identification of individuals with mental health treatment needs, the quality of care for mentally ill individuals in adult care homes and nursing homes, and specific problems associated with mixing aging and mentally ill populations in long-term care facilities. DHHS must report its findings and recommendations to the North Carolina Study Commission on Aging by October 1, 2005.

S.L. 2004-161 authorizes the North Carolina Study Commission on Aging to study issues related to mentally ill residents of long-term care facilities.

Studies

Financing of MH/DD/SA Services

S.L. 2004-161 directs DHHS to study the financing of mental health, developmental disabilities, and substance abuse services and report its findings and recommendations to the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services; the House of Representatives; the Senate; and the Fiscal Research Division by July 1, 2005. As part of the undertaking, DHHS must

1. examine all sources of funds used in the delivery of services throughout the department;
2. examine alternative financing mechanisms for funding services; and
3. recommend feasible alternative financing mechanisms.

Joint Legislative Oversight Committee on MH/DD/SA Services

S.L. 2004-161 authorizes the Legislative Oversight Committee on Mental Health, Developmental Disabilities, and Substance Abuse Services to study the incidence of mental illness and substance abuse problems among inmates in North Carolina's prison and juvenile justice system. The bill also requires the oversight committee to review the extent to which children who need services from multiple state and local agencies are receiving them in an effective and timely manner. The study must examine the long-term impact that any failure to provide cost-effective and timely services has on children, families, and state and local resources. The oversight committee must make detailed recommendations for changes necessary to address any identified problems. The oversight committee must convene a task force to review children's services and may, if necessary, hire a consultant to assist the task force.

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