

## **DHHS Directive Number II-5**

**Title:** Delegation of Authority to the Deputy Secretary for Behavioral Health & IDD  
**Effective Date:** December 8, 2020  
**Authority:** G.S. § 143B-10

### **Purpose**

The purpose of this directive is to delegate, clarify and specifically confirm certain authorities of the Secretary of the North Carolina Department of Health and Human Services (NC DHHS) to the Deputy Secretary for Behavioral Health & Intellectual and Developmental Disabilities. The Deputy Secretary for Behavioral Health & IDD shall have responsibilities for the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, the Division of State Operated Healthcare Facilities, and the Office of the Senior Advisor for the American with Disabilities Act and Transitions to Community Living.

### **Delegation of Authority**

The powers and duties vested in the Secretary of the DHHS in G.S. § 143B-10(a), (c), and (e) are delegated to the Deputy Secretary for Behavioral Health & IDD with respect to the Division of Mental Health, Development Disabilities, and Substance Abuse Services, the Division of State Operated Healthcare Facilities, and the Office of the Senior Advisor for the American with Disabilities Act and Transitions to Community Living (together, the “BH/IDD divisions”), in accordance with the guidelines set forth below:

1. The budget documents for the department’s BH/IDD divisions which are prepared in accordance with G.S. § 143B-10(g) and §143C, and which shall include base, expansion and supplemental budgets, shall be approved by the Deputy Secretary for Behavioral Health & IDD prior to submission to the Secretary or the Secretary’s designee for final departmental review and approval.
2. The Deputy Secretary for Behavioral Health & IDD shall recommend modifications, changes or alterations to the budget as authorized by and in accordance with § 143C-6-4 and in coordination with the Division of Budget and Analysis for the department’s BH/IDD divisions as necessary to meet the departmental budget demands.
3. In consultation with the Secretary, authority is delegated to the Deputy Secretary for Behavioral Health & IDD for approval of the hiring and removal of staff within the department’s BH/IDD divisions. In the execution of a reduction in force, the determination of positions to be eliminated or reallocated, including both filled and vacant positions shall be approved by the Deputy Secretary for Behavioral Health & IDD prior to submission to the Secretary or the Secretary’s designee for final departmental review and approval.
4. When deemed an administrative emergency by the Secretary, such as a fiscal crisis, the Deputy Secretary for Behavioral Health & IDD may pursue avenues of relief among the department’s BH/IDD divisions including the adoption, amendment, or repeal of rules, contracting and any other alternative actions deemed necessary and appropriate to address the crisis, subject to submission to the Secretary or the Secretary’s designee for final departmental review and approval.

5. The Deputy Secretary for Behavioral Health & IDD may exercise the Secretary's authority under G.S. § 143B-10(a) to assign or reassign any function vested in the Deputy Secretary accordance with this Directive to any subordinate officer or employee of the BH/IDD divisions.

As provided in G.S. § 143B-10(a), the Secretary of the DHHS delegates the following functions concerning management and administration of the BH/IDD divisions to the Deputy Secretary for Behavioral Health & IDD, subject to state and departmental policy:

6. As it relates to the Division of State Operated Healthcare Facilities, the functions of management as defined in G.S. § 143B-10, which include: planning, organizing, staffing, directing, coordinating, reporting and budgeting.
7. Operating State psychiatric hospitals, developmental centers, alcohol and drug treatment centers, neuro-medical treatment centers, and residential programs for children, (G.S. §§ 122C-181(a) and 122C-112.1(a)(10)). The Deputy Secretary for Behavioral Health & IDD shall designate the Governing Body for all 122C State Operated Facilities designated in 122C-181(a), consistent with 10A NCAC 28F .0308(a) as applicable, and is also authorized to assume such other duties necessary to legally operate said facilities.
8. Receiving data from private or public agencies or agents for research and evaluation in mental health, developmental disabilities and substance abuse services (G.S. § 122C-56).
9. Approving, jointly with the Secretary of Public Safety or their designee, requests from inmates in the custody of the Department of Public Safety for voluntary admission to State facilities for mental illness or substance abuse (G.S. § 122C-312).
10. Determining the ability of patients in state facilities to pay; entering into contracts of compromise and other payment arrangements; and filing liens on property of patients in state facilities under purview of the division and liens on the estates of deceased patients (G.S. §§ 143-118, -119, -126, -126.1).
11. Designating an agency or agencies within the Department of Health and Human Services to monitor the implementation by the Division of Adult Correction and Juvenile Justice of the Department of Public Safety (DPS DAC/JJ) of the standards adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Service for the delivery of mental health and intellectual and other developmental disability services to inmates in the custody of the DPS DAC/JJ and of substance abuse standards adopted by DPS DAC/JJ. (G.S. § 148-19(d)).
12. Notifying Clerks of Superior Court of changes in the designation of state facility regions and of facilities designated under G.S. § 122C-252 (G.S. § 122C-112.1(a)(16)).
13. Administering and enforcing rules that are conditions of participation in federal or state financial aid (G.S. § 122C-112.1(a)(18)).
14. Providing for the coordination of services between local management entities and state facilities in cooperation with the directors of local management entities and state facilities (G.S. § 122C-111 and G.S. § 122C-112.1(a)(11)).

15. Issuing declaratory rulings adopted by the Deputy Secretary for Behavioral Health & IDD under rule making authority as delegated by the Secretary. This does not include rules governed by G.S. § 122C-26 (G.S. § 150B-4).
16. Conducting such hearings as may be required by G.S. § 115C-325.6, in accordance with G.S. § 115C-325.10, for teachers employed by state facilities operated pursuant to G.S. § 122C-181 (G.S. § 122C-181 and G.S. § 143B Article 3, Part 3A).
17. Assigning special police officers to any state-operated facility on a temporary basis (G.S. § 122C-183).
18. Conducting a review of a formal grievance submitted on behalf of a client at a state facility and submitting a written decision on the grievance in accordance with 10A NCAC 28B .0205 (G.S. § 122C-181).
19. Determining the final salaries and salary supplements paid to teachers, school-based administrators, and other school administrators who work in state operated healthcare facilities, consistent with G.S. §§ 115C-285 & -302.1 and any other applicable provision of state law (G.S. § 122C-181 and G.S. Chapter 143B Article 3, Part 3A).
20. Administering state facilities and institutions located on the Camp Butner reservation, including adopting rules and ordinances (in coordination with the Office of the General Counsel) necessary to enforce the provisions of G.S. Chapter 122C, Article 6, Part 1 (G.S. § 122C-403).
21. Issuing diplomas for completion of educational programs and/or academic courses of study in facilities operated pursuant to G.S. § 122C-181 (G.S. § 122C-181 and G.S. Chapter 143B Article 3, Part 3A).
22. Implementing rules related to administration and oversight of Human Rights Committees serving the state operated healthcare facilities, including appointing Committee members and removing members for good cause, approving Committee meeting schedules, and receiving reports on Committee activities (10A NCAC 28A .0202, .0204, 0206, and .0207).
23. Rulemaking authority (in coordination with the Office of the General Counsel) for the following:
  - A. Rules governing the regulation and deportment of persons in the buildings and on the grounds of institutions operated by the division and for the suppression of nuisances and disorders (G.S. § 143-116.6).
  - B. Regulations governing (a) the use of streets, alleys and driveways of institutions under the purview of the division; (b) establishing parking and parking areas on institution grounds; (c) registration (including fees) and parking of employee vehicles; and (d) infractions and civil penalties (G.S. § 143-116.7).
  - C. Rules pertaining to the operation of the state facilities (G.S. § 122C-112.1(a)(10), and G.S. § 122C-181(a)).

- D. Rules establishing procedures for waiver of rules adopted under the Secretary's authority under Chapter 122C, except as provided in G.S. § 122C-26(4) (G.S. § 122C-112.1(a)(15)).
  - E. Rules to assure coordination of services for the mentally ill, developmentally disabled, and substance abusers among area facilities, State facilities, local agencies and other state agencies (G.S. § 122C-113).
  - F. Rules governing declaratory rulings involving rules under the Secretary's authority except as provided in G.S. § 122C-26 (G.S. § 150B-4).
  - G. Rules for a review process to monitor area facilities and State facilities for compliance with the required quality assurance activities as well as other rules of the Commission and the Secretary. The rules may provide that the Secretary has the authority to determine whether applicable standards of practice have been met. Rules to ensure that unauthorized disclosure of confidential or privileged information obtained during reviews does not occur (G.S. §§ 122C-191 and -192(c)).
  - H. Rules regarding designation of State facilities for the mentally ill for the voluntary admission of adults who are not admissible as clients otherwise, for research purposes (G.S. § 122C-210.2(a)).
  - I. Rules for the enforcement of the protection of the rights of clients being served by State facilities, area authorities, county programs, and providers of public services (G.S. § 122C-112.1(a)(29)).
24. The functions of management, related to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, as defined in G.S. § 143B-10, which include: planning, organizing, staffing, directing, coordinating, reporting and budgeting.
25. Overseeing the development and implementation of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services (G.S. § 122C-112.1(a)(1)). Strategically developing and implementing NC DHHS policy and implementing state-wide public policy established pursuant to North Carolina General Statutes that promotes comprehensive health and shapes prevention methods, interventions, and systems of care in service of individuals living with mental illness, intellectual or developmental disabilities, traumatic brain injuries, and substance use disorders. The Deputy Secretary for BH/IDD works in close concert with other Deputy Secretaries and Divisions in the execution of this policy-making responsibility and oversight.
26. In consideration of their organizational oversight responsibilities, the Deputy Secretary for BH/IDD will serve as the single state authority point of contact who oversees the substance abuse block grant and funding for substance abuse programs and the state mental health authority contact who oversees mental health block grant and mental health programs in NC. (45 CFR Part 96).
27. Accepting, allocating, spending, and managing the BH/IDD divisions' use of federal funds for mental health, developmental disabilities and substance abuse services that may be made available to the State by the federal government as appropriated by the General Assembly and in accordance with DHHS Directives. (G.S. § 112.1(b)(4)).

28. Authorizing, conducting compliance reviews of, and overseeing private facilities located in North Carolina that provide substance abuse services needed by a person to obtain a certificate of completion required under G.S. § 20-17.6 as a condition for the restoration of a driver's license, including alcohol and drug education traffic schools (G.S. § 122C-142.1).
29. Maintaining a list of all preparations, compounds, or mixtures which are excluded, exempted, and excepted from controls under any schedule of G.S. § 90, Article 5, by the U.S. Drug Enforcement Administration and/or the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services ("Commission") and distributing changes in this list to the parties specified by statute (G.S. § 90-88).
30. Overseeing and administering the development and implementation of a statewide system of drug education schools, approving the schools, and conducting compliance reviews of the schools (G.S. § 90-96.01).
31. Overseeing registration and inspections related to the manufacture, distribution, dispensing or conducting of research with controlled substances in North Carolina (G.S. §§ 90-101, -102 and -102.1).
32. Administering and enforcing provisions of the NC mental health, developmental disabilities and substance abuse laws, the rules of the Secretary and the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services, and working with area programs to assure that services provided are of the highest possible quality within resources. Contracted direct enrolled provider services of local management entities (area authorities) shall be monitored to assure that rules and state statutes are met (G.S. §§ 122C-111, -112.1(a)(2) & (6) and -191(a)).
33. Providing ongoing and focused technical assistance to area authorities and county programs in the implementation of the LME functions and the establishment and operation of community-based programs (G.S. § 122C-112.1(a)(9)).
34. Establishing a process and criteria for the submission, review, and approval or disapproval of LME business plans submitted by area authorities and county programs for the management of mental health, developmental disabilities, and substance abuse services (G.S. §§ 122C-112.1(a)(3), -115.2, and -147).
35. Reviewing LME business plans and, upon approval of the plan, certifying the submitting area authority or county program to manage the delivery of mental health, developmental disabilities, and substance abuse services in the applicable catchment area (G.S. §§ 122C-112.1(a)(5) and -147).
36. Establishing comprehensive, cohesive oversight and monitoring procedures and processes to ensure continuous compliance by area authorities, county programs, and all providers of public services with State and federal policy, law, and standards (G.S. § 122C-112.1(a)(6)).
37. Monitoring the fiscal and administrative practices of area authorities and county programs to ensure that the programs are accountable to the State for the management and use of federal and State funds allocated for mental health, developmental disabilities, and substance abuse services, and ensure accountability by area authorities and county programs for rate-setting methodologies, reimbursement procedures, billing procedures, provider contracting

procedures, record keeping, documentation, and other matters pertaining to financial management and fiscal accountability. (G.S. § 122C-112.1(a)(20)).

38. Serving as Compact Administrator for the Interstate Compact on Mental Health (G.S. § 122C-362).
39. Monitoring the implementation by the Department of Public Safety of standards for the delivery of mental health, developmental disabilities and substance abuse services to inmates in the custody of the Department of Public Safety (G.S. § 148-19(d)).
40. Delaying payment and, with written notification of cause, reducing or denying payment if a local management entity does not meet applicable state statutes and the rules of the Commission or the Secretary, or when required reports are not timely filed, or when a program is not being administered in accordance with an approved plan or budget (G.S. §§ 122C-141(b), -147(g) and -151(b)).
41. Implementing the uniform portal process (G.S. § 122C-112.1(a)(14)).
42. Allocating funds to LMEs or providers (G.S. §§ 122C-112.1(b)(4), (7) & (8) and -147.1).
43. Making determinations, providing notifications and taking other actions with regard to local management entity funding, financial failure, failure to provide service and caretaker appointment pursuant to authority provided to the Secretary by G.S. §§ 122C-124.1, -124.2, -125, and -125.2.
44. Publishing reports and findings of data collected via monitoring, submission of plans and other quality improvement activities (G.S. § 122C-112.1(a)(8)).
45. Providing assistance and training to local management entities, county programs and providers in community-based mental health, developmental disability and substance abuse programs (G.S. § 122C-112.1(a)(9), (21)).
46. Establishing a process and approving local management entities or county programs to provide services directly in accordance to G.S. §§ 122C-141; 122C-112.1(a)(26).
47. Assuring coordination of the State Plan for Mental Health, Developmental Disabilities, and Substance Abuse Services with the North Carolina Medicaid State Plan and NC Health Choice (G.S. § 122C-112.1(a)(31)).
48. Developing, maintaining, and overseeing a statewide behavioral health crisis services system. (G.S. § 122C-112.1(a)(11); G.S. § 143B-137.1; N.C. Sess. Laws 2018-33, Sec. 44).
49. Designating facilities for the custody and treatment of involuntary clients in accordance with rules of the Secretary that assure the protection of clients and the general public. (G.S. § 122C-252).
50. Individually certifying health, mental health, and substance abuse professionals other than physicians and eligible psychologists, whose scope of practice includes diagnosing and documenting psychiatric or substance use disorders and conducting mental status examinations to determine capacity to give informed

consent to treatment, to perform the first commitment examinations required by G.S. §§ 122C-261 through G.S. 122C-263 and G.S. §§ 122C-281 through G.S. 122C-283 (G.S. § 122C-263.1(a)).

51. Developing, overseeing and managing standardized training for certified first commitment examiners; maintaining a list of certified first commitment examiners on the Department's website; and annually submitting a list of certified first commitment examiners to the Chief District Court Judge of each judicial district in North Carolina (G.S. § 122C-263.1(a)(6) and (7a) and (b)).
52. Overseeing and managing the allocation and disbursement of funds for educational services provided at qualified private psychiatric residential treatment facilities (PRTFs) serving individuals under age 21 (G.S. § 122C-451).
53. Maintaining, managing and overseeing the North Carolina Controlled Substances Reporting System (CSRS), the state reporting system of prescriptions for all Schedule II through V controlled substances established and maintained by the Department, and implementing legal and regulatory requirements pertaining to use of and access to the CSRS, including without limitation, the North Carolina Controlled Substances Reporting System Act. G.S. § 90-113.70 et seq., and rules adopted by the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services (G.S. § 90-113.73).
54. Promoting public awareness and understanding of mental health, mental illness, developmental disabilities, and substance abuse (G.S. § 122C-112.1(17)).
55. Cooperating with other State agencies to coordinate services for the treatment and habilitation of individuals who are mentally ill, developmentally disabled, or have substance use disorders; and coordinating with these agencies to provide public education to promote a better understanding of mental illness, developmental disabilities, and substance abuse (G.S. § 122C-113).
56. Rulemaking authority (in coordination with the Office of the General Counsel) for the following:
  - A. Rules governing the expenditure of all mental health, developmental disability and substance abuse public funds (G.S. §§ 122C-112.1(a)(12) and -147).
  - B. Rules governing allocation and spending of state-appropriated area authority funds (G.S. §§ 122C-147(g) and -147.1).
  - C. Rules governing direct expenditures for services (G.S. §§ 122C-147, -147.2, and -151).
  - D. Rules pertaining to the content and format of business plans of a local management entity (G.S. § 122C-112.1(a)(4) and G.S. § 122C-147).
  - E. Rules governing budget reports, audit reports and reports of activities and services of the local management entity (G.S. § 122C-144.1).
  - F. Rules governing the distribution and use of funds for drug education schools and alcohol and drug education traffic schools (G.S. § 90-96.01).

- G. Rules governing petitions for rules and rulemaking hearings for rules coming under the authority of the Deputy Secretary as delegated by the Secretary (G.S. § 143B-10 and G.S. § 150B-20).
  - H. Budgetary rules to implement continuity of care for individuals with developmental disabilities (G.S. § 122C-63(h)).
  - I. Rules governing appeals involving rules under the Secretary's authority (G.S. § 122C-151.2), in conjunction with the Mental Health Commission. Rules for the reimbursement of the department when department funds have been used in the acquisition of residential program facilities and such program is terminated (G.S. § 122C-147(b)(2)).
  - J. Rules regarding designation of 24 hour facilities for custody and treatment of involuntary clients that assure the protection of the client and the general public (G.S. § 122C-252).
  - K. Acting jointly with like officers of other party states, rules to carry out terms of the Interstate Compact (G.S. § 122C-361, Article X (b) and G.S. § 122C-362).
  - L. Rules for the process of county disengagement from a local management entity/manager care organization (G.S. § 122C-115(a3)).
57. The management functions of a commission, as defined in G.S. § 143B-14(d), which include planning, organizing, staffing, directing, coordinating, reporting and budgeting for those commissions, are assigned to the Division of Mental Health, Developmental Disabilities and Substance Abuse Services. In particular, the Deputy Secretary shall provide staffing for the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services to facilitate its rulemaking and advisory and other actions as specified in the General Statutes.
58. As it relates to the Office of the Senior Advisor for the American with Disabilities Act, the functions of management as defined in G.S. § 143B-10, which include: planning, organizing, staffing, directing, coordinating, reporting and budgeting.
59. Overseeing the management and administration of the North Carolina Supportive Housing Program (G.S. Chapter 122C, Article 1B, Part 1).

This delegation of authority shall not deprive the Secretary from performing, in lieu of the Deputy Secretary for Behavioral Health & IDD, any of the acts set forth above. This delegation of authority may be amended or withdrawn by the Secretary at any time and without notice. This delegation of authority shall not apply to any actions which by law, state policy or NC Governor's Executive Order, may only be executed by the Secretary.

APPROVED



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