

§207. Additional powers of the commissioner

In addition to other powers granted in this Title, the commissioner has the powers set out in this section. [PL 2007, c. 539, Pt. N, §46 (NEW).]

1. General powers. The commissioner may perform any legal act relating to the care, custody, treatment, relief and improvement of the residents of state institutions or may purchase residential services when the department does not provide the appropriate institutional services for the client. [PL 2007, c. 539, Pt. N, §46 (NEW).]

2. Appointments of deputy commissioner and other employees. The commissioner's powers to appoint any deputy commissioner and other employees are as set out in this subsection.

A. The commissioner may appoint, subject to the Civil Service Law and except as otherwise provided, any employees who may be necessary. [PL 2007, c. 539, Pt. N, §46 (NEW).]

B. The commissioner may appoint and set the salaries for one or more deputy commissioners to assist in carrying out the responsibilities of the department. Each appointment must be for an indeterminate term and until a successor is appointed and qualified or at the pleasure of the commissioner. [PL 2007, c. 539, Pt. N, §46 (NEW).]

C. The commissioner, with the approval of the Governor, may employ and set the salaries up to the maximum adjusted pay grade for clinical director positions. Clinical director positions are excluded from the definition of state employee under Title 26, section 979-A, subsection 6 and are not subject to the Civil Service Law. Employees in that classification hired after July 1, 1989 serve at the pleasure of the commissioner and must, as a condition of continued employment, maintain clinical privileges to practice medicine as determined by the respective medical staff and the superintendent of the facility. [PL 2007, c. 539, Pt. N, §46 (NEW).]

D. Employees in the classification of clinical director may elect to retain current bargaining unit and civil service status. Employees so grandfathered retain salary and benefit entitlements provided for in current pay schedules and collective bargaining agreements. [PL 2007, c. 539, Pt. N, §46 (NEW).]

[PL 2007, c. 539, Pt. N, §46 (NEW).]

3. Delegation. The commissioner's delegation powers are as set out in this subsection.

A. The commissioner may delegate powers and duties given under this Title to any deputy commissioner and chief administrative officers of state institutions. [PL 2007, c. 539, Pt. N, §46 (NEW).]

B. The commissioner may empower any deputy commissioner and chief administrative officers of state institutions to delegate further powers and duties delegated to them by the commissioner. [PL 2007, c. 539, Pt. N, §46 (NEW).]
[PL 2007, c. 539, Pt. N, §46 (NEW).]

4. Funding sources. In carrying out this Title, the commissioner may apply for and accept from any other agency of government, person, group or corporation any funds that may be available. [PL 2007, c. 539, Pt. N, §46 (NEW).]

5. Appearance of designated employees in Probate Court. The commissioner may designate employees of the department to represent the department in Probate Court only in:

A. Matters relating to the performance of duties in uncontested guardianship, conservatorship or termination of guardianship or conservatorship proceedings; and [PL 2007, c. 539, Pt. N, §46 (NEW).]

B. Requests for emergency guardianships arising from the need for emergency medical treatment or placement in adult foster homes, boarding homes or nursing homes or for orders necessary to apply for or preserve an estate in emergency situations. [PL 2007, c. 539, Pt. N, §46 (NEW).]
[PL 2007, c. 539, Pt. N, §46 (NEW).]

6. Physicians. Department employees in the classifications of physician I, II and III are unclassified state employees, as defined by Title 26, section 979-A, subsection 6, and are members of bargaining units, subject to Title 26, chapter 9-B. An employee in any of these classifications must, as a condition of continued employment, maintain necessary clinical privileges to practice medicine in that employee's position as determined by the respective medical staff and the superintendent of the facility. Any termination of employment due to a loss of clinical privileges to practice medicine under this subsection is not subject to the grievance procedure under any collective bargaining agreement. [PL 2007, c. 539, Pt. N, §46 (NEW).]

7. Contracts with health care servicing entities. The commissioner may enter into contracts with health care servicing entities for the financing, management and oversight of the delivery of mental health, adult developmental and substance use disorder services to clients pursuant to a state or federally sponsored health program in which the department participates or that the department administers. For the purposes of this subsection, "health care servicing entity" means a partnership, association, corporation, limited liability company or other legal entity that enters into a contract with the State to provide or arrange for the provision of a defined set of health care services; to assume responsibility for some aspects of quality assurance, utilization review, provider credentialing and provider relations or other related network management functions; and to assume financial risk for provision of such services to clients through capitation reimbursement or other risk-sharing arrangements. "Health care servicing entity" does not include insurers or health maintenance organizations. In contracting with health care servicing entities, the commissioner:

A. Shall include in all contracts with the health care servicing entities standards, developed in consultation with the Superintendent of Insurance, to be met by the contracting entity in the areas of financial solvency, quality assurance, utilization review, network sufficiency, access to services, network performance, complaint and grievance procedures and records maintenance; [PL 2007, c. 539, Pt. N, §46 (NEW).]

B. Prior to contracting with any health care servicing entity, must have in place a memorandum of understanding with the Superintendent of Insurance for the provision of technical assistance, which must provide for the sharing of information between the department and the superintendent and the analysis of that information by the superintendent as it relates to the fiscal integrity of the contracting entity; [PL 2007, c. 539, Pt. N, §46 (NEW).]

C. May require periodic reporting by the health care servicing entity as to activities and operations of the entity, including the entity's activities undertaken pursuant to commercial contracts with licensed insurers and health maintenance organizations; [PL 2007, c. 539, Pt. N, §46 (NEW).]

D. May share with the Superintendent of Insurance all documents filed by the health care servicing entity, including documents subject to confidential treatment if the information is treated with the same degree of confidentiality as is required of the department; and [PL 2007, c. 539, Pt. N, §46 (NEW).]

E. May make all necessary rules for the administration of contracts with health care servicing entities. All rules adopted pursuant to this paragraph are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A. [PL 2007, c. 539, Pt. N, §46 (NEW).]
[PL 2017, c. 407, Pt. A, §92 (AMD).]

8. Ad hoc committee compensation. The commissioner is authorized to provide compensation to persons who are consumers or family members of consumers of departmental services who are members of ad hoc committees. The compensation may not exceed \$25 per day and payment of

expenses. Total compensation expenses of the department under this subsection in any fiscal year may not exceed \$7,500.

[PL 2007, c. 539, Pt. N, §46 (NEW).]

9. Operation of a facility. The commissioner may contract with a privately operated corporation for the operation of a facility to replace the Elizabeth Levinson Center effective October 1, 2008.

[PL 2007, c. 539, Pt. N, §46 (NEW).]

10. Adjudicatory subpoena power. In an adjudicatory proceeding conducted by the department, the commissioner may issue subpoenas to require the attendance and testimony of witnesses and the production of evidence or discovery relating to an issue of fact in the proceeding and may designate employees of the department to issue such subpoenas. Subpoenas must be issued in accordance with Title 5, section 9060.

[PL 2013, c. 202, §1 (NEW).]

SECTION HISTORY

PL 2007, c. 539, Pt. N, §46 (NEW). PL 2011, c. 542, Pt. A, §52 (AMD). PL 2013, c. 202, §1 (AMD). PL 2017, c. 407, Pt. A, §92 (AMD).

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