

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1075*
Committee Substitute Favorable 6/5/12
Senate Mental Health & Youth Services Committee Substitute Adopted 6/11/12
Senate Rules and Operations of the Senate Committee Substitute Adopted 6/21/12

Short Title: LME/MCO Governance.

(Public)

Sponsors:

Referred to:

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN GOVERNANCE OF LOCAL MANAGEMENT
3 ENTITIES WITH RESPECT TO THE IMPLEMENTATION OF STATEWIDE
4 EXPANSION OF THE 1915(B)/(C) MEDICAID WAIVER.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 122C-115(a) reads as rewritten:

7 "§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and
8 cities.

9 (a) A county shall provide mental health, developmental disabilities, and substance
10 abuse services in accordance with rules, policies, and guidelines adopted pursuant to statewide
11 restructuring of the management responsibilities for the delivery of services for individuals
12 with mental illness, intellectual or other developmental disabilities, and substance abuse
13 disorders under a 1915(b)/(c) Medicaid Waiver through an area authority or authority, through
14 a county program established pursuant to G.S. 122C-115.1.G.S. 122C-115.1, or through a
15 behavioral health authority established pursuant to Part 2B of this Chapter. Beginning July 1,
16 2012, the catchment area of an area authority or a county program shall contain a minimum
17 population of at least 300,000. Beginning July 1, 2013, the catchment area of an area authority
18 or a county program shall contain a minimum population of at least 500,000. To the extent this
19 section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control."

20 SECTION 2.(a) G.S. 122C-116 reads as rewritten:

21 "§ 122C-116. Status of area authority; status of consolidated human services agency.

22 (a) An area authority is a local political subdivision of the State ~~except that a single~~
23 ~~county area authority is considered a department of the county in which it is located for the~~
24 ~~purposes of Chapter 159 of the General Statutes.State.~~

25 (b) A consolidated human services agency is a department of the county."

26 SECTION 2.(b) G.S. 122C-115.1(i) reads as rewritten:

27 "(i) Except as otherwise specifically provided, this Chapter applies to counties that
28 provide mental health, developmental disabilities, and substance abuse services through a
29 county program. As used in the applicable sections of this Article, the terms "area authority",
30 "area program", and "area facility" shall be construed to include "county program". ~~The~~
31 ~~following sections of this Article do not apply to county programs:~~

32 (1) ~~G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.~~

33 (2) ~~G.S. 122C-119 and G.S. 122C-119.1.~~

34 (3) ~~G.S. 122C-120 and G.S. 122C-121.~~



- 1 (4) G.S. 122C-127.
2 (5) G.S. 122C-147.
3 (6) G.S. 122C-152 and G.S. 122C-153.
4 (7) G.S. 122C-156.
5 (8) G.S. 122C-158."

6 SECTION 3.(a) G.S. 122C-118.1 reads as rewritten:

7 "**§ 122C-118.1. Structure of area board.**

8 (a) ~~An area board shall have no fewer than 11 and no more than 25 members. However,~~
9 ~~the area board for a multicounty area authority consisting of eight or more counties may have~~
10 ~~up to 30 members. In a single county area authority, the members shall be appointed by the~~
11 ~~board of county commissioners. Except as otherwise provided, in areas consisting of more than~~
12 ~~one county, each board of county commissioners within the area shall appoint one~~
13 ~~commissioner as a member of the area board. These members shall appoint the other members.~~
14 ~~The boards of county commissioners within the multicounty area shall have the option to~~
15 ~~appoint the members of the area board in a manner other than as required under this section by~~
16 ~~adopting a resolution to that effect. The boards of county commissioners in a multicounty area~~
17 ~~authority shall indicate in the business plan each board's method of appointment of the area~~
18 ~~board members in accordance with G.S. 122C-115.2(b). These appointments shall take into~~
19 ~~account sufficient citizen participation, representation of the disability groups, and equitable~~
20 ~~representation of participating counties. Individuals appointed to the board shall include two~~
21 ~~individuals with financial expertise, an individual with expertise in management or business,~~
22 ~~and an individual representing the interests of children. A member of the board may be~~
23 ~~removed with or without cause by the initial appointing authority. Vacancies on the board shall~~
24 ~~be filled by the initial appointing authority before the end of the term of the vacated seat or~~
25 ~~within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the~~
26 ~~remainder of the unexpired term. An area board shall have no fewer than 11 and no more than~~
27 21 voting members. The board of county commissioners, or the boards of county
28 commissioners within the area, shall appoint members consistent with the requirements
29 provided in subsection (b) of this section. The process for appointing members shall ensure
30 participation from each of the constituent counties of a multicounty area authority. If the board
31 or boards fail to comply with the requirements of subsection (b) of this section, the Secretary
32 shall appoint the unrepresented category. A member of the board may be removed with or
33 without cause by the initial appointing authority. The area board may declare vacant the office
34 of an appointed member who does not attend three consecutive scheduled meetings without
35 justifiable excuse. The chair of the area board shall notify the appropriate appointing authority
36 of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before
37 the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first,
38 and the appointments shall be for the remainder of the unexpired term. The boards of county
39 commissioners within a multicounty area with a catchment population of at least 1,250,000
40 shall have the option to appoint members of the area board in a manner other than as required
41 by this section by each county adopting a resolution to that effect and receiving written
42 approval from the Secretary.

43 ~~(b) Except as otherwise~~ Within the maximum membership provided in this subsection,
44 ~~not more than fifty percent (50%) of~~ subsection (a) of this section, the members membership of
45 the area board shall reside within the catchment area and ~~represent the following:~~ be composed
46 as follows:

- 47 (1) ~~A physician licensed under Chapter 90 of the General Statutes to practice~~
48 ~~medicine in North Carolina who, when possible, is certified as having~~
49 ~~completed a residency in psychiatry.~~ At least one member who is a current
50 county commissioner.

- 1 (2) ~~A clinical professional from the fields of mental health, developmental~~
2 ~~disabilities, or substance abuse.~~ The chair of the local Consumer and Family
3 Advisory Committee (CFAC) or the chair's designee.
- 4 (3) ~~At least one family member or individual from a citizens' organization~~
5 ~~composed primarily of consumers or their family members,~~ of the local
6 CFAC, as recommended by the local CFAC, representing the interests of
7 ~~individuals;~~ the following:
- 8 a. ~~With~~ Individuals with mental illness; ~~illness.~~
- 9 b. ~~In~~ Individuals in recovery from addiction; ~~or addiction.~~
- 10 c. ~~With~~ Individuals with intellectual or other developmental disabilities.
- 11 (4) At least one openly declared consumer member of the local CFAC, as
12 recommended by the local CFAC, representing the interests of the
13 following:
- 14 a. ~~With~~ Individuals with mental illness; ~~illness.~~
- 15 b. ~~With~~ Individuals with intellectual or other developmental disabilities;
16 ~~or~~ disabilities.
- 17 c. ~~In~~ Individuals in recovery from addiction.
- 18 (5) An individual with health care expertise and experience in the fields of
19 mental health, intellectual or other developmental disabilities, or substance
20 abuse services.
- 21 (6) An individual with health care administration expertise consistent with the
22 scale and nature of the managed care organization.
- 23 (7) An individual with financial expertise consistent with the scale and nature of
24 the managed care organization.
- 25 (8) An individual with insurance expertise consistent with the scale and nature
26 of the managed care organization.
- 27 (9) An individual with social services expertise and experience in the fields of
28 mental health, intellectual or other developmental disabilities, or substance
29 abuse services.
- 30 (10) An attorney with health care expertise.
- 31 (11) A member who represents the general public and who is not employed by or
32 affiliated with the Department of Health and Human Services, as appointed
33 by the Secretary.
- 34 (12) The President of the LME/MCO Provider Council or the President's
35 designee to serve as a nonvoting member who shall participate only in Board
36 activities that are open to the public.
- 37 (13) An administrator of a hospital providing mental health, developmental
38 disabilities, and substance abuse emergency services to serve as a nonvoting
39 member who shall participate only in Board activities that are open to the
40 public.

41 ~~An~~ Except as provided in subdivision (12) of this subsection, an individual that contracts
42 with a local management entity (LME) for the delivery of mental health, developmental
43 disabilities, and substance abuse services may not serve on the board of the LME for the period
44 during which the contract for services is in effect. No person registered as a lobbyist under
45 Chapter 120C of the General Statutes shall be appointed to or serve on an area authority board.
46 Of the members described in subdivisions (2) through (4) of this subsection, the boards of
47 county commissioners shall ensure there is at least one member representing the interest of
48 each of the following: (i) individuals with mental illness, (ii) individuals with intellectual or
49 other developmental disabilities, and (iii) individuals in recovery from addiction.

1 (c) The board of county commissioners may elect to appoint a member of the area
2 authority board to fill concurrently no more than two categories of membership if the member
3 has the qualifications or attributes of the two categories of membership.

4 (d) Any member of an area board who is a county commissioner serves on the board in
5 an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed
6 the earlier of three years or the member's service as a county commissioner. Any member of an
7 area board who is a county manager serves on the board at the pleasure of the initial appointing
8 authority, for a term not to exceed the earlier of three years or the duration of the member's
9 employment as a county manager. The terms of ~~the other~~ members on the area board shall be
10 for three years, except that upon the initial formation of an area board in compliance with
11 subsection (a) of this section, one-third shall be appointed for one year, one-third for two years,
12 and all remaining members for three years. ~~Members, other than county commissioners and~~
13 ~~county managers, Members~~ shall not be appointed for more than ~~two~~three consecutive terms.
14 ~~Board members serving as of July 1, 2006, may remain on the board for one additional term.~~
15 ~~This subsection applies to all area authority board members regardless of the procedure used to~~
16 ~~appoint members under subsection (a) of this section.~~

17 (e) Upon request, the board shall provide information pertaining to the membership of
18 the board that is a public record under Chapter 132 of the General Statutes."

19 **SECTION 3.(b)** All area boards shall meet the requirements of G.S. 122C-118.1,
20 as amended by subsection (a) of this section, no later than July 1, 2013.

21 **SECTION 4.(a)** G.S. 122C-119.1 reads as rewritten:

22 **"§ 122C-119.1. Area Authority board members' training.**

23 All members of the governing body for an area authority shall receive initial orientation on
24 board members' responsibilities and annual training provided by the Department ~~in~~which shall
25 include fiscal management, budget development, and fiscal accountability. A member's refusal
26 to be trained shall be grounds for removal from the board."

27 **SECTION 4.(b)** The North Carolina Department of Health and Human Services, in
28 cooperation with the School of Government and the local management entities, shall develop a
29 standardized core curriculum for the training described in subsection (a) of this section.

30 **SECTION 5.** G.S. 122C-170(b) reads as rewritten:

31 "Part 4A. Consumer and Family Advisory Committees.

32 **"§ 122C-170. Local Consumer and Family Advisory Committees.**

33 ...

34 (b) Each of the disability groups shall be equally represented on the CFAC, and the
35 CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment
36 area. The terms of members shall be three years, and no member may serve more than ~~two~~three
37 consecutive terms. The CFAC shall be composed exclusively of:

- 38 (1) Adult consumers of mental health, developmental disabilities, and substance
39 abuse services.
- 40 (2) Family members of consumers of mental health, developmental disabilities,
41 and substance abuse services.

42"

43 **SECTION 6.** Area authorities may add one or more additional counties to their
44 existing catchment area by agreement of a majority of the existing member counties.

45 **SECTION 7.(a)** Beginning July 1, 2012, and for a period of two years thereafter,
46 the Department of Health and Human Services shall not approve any county's request to
47 withdraw from a multicounty area authority operating under the 1915(b)/(c) Medicaid Waiver.
48 Not later than January 1, 2014, the Secretary shall adopt rules to establish a process for county
49 disengagement that shall at a minimum ensure the following:

- 50 (1) Provisions of service are not disrupted by the disengagement.

1 (2) The disengaging county is either in compliance or plans to merge with an
2 area authority that is in compliance with population requirements provided
3 in G.S. 122C-155(a).

4 (3) The timing of the disengagement is accounted for and does not conflict with
5 setting capitation rates.

6 (4) Adequate notice is provided to the affected counties, the Department of
7 Health and Human Services, and the General Assembly.

8 (5) Provisions for distribution of any real property no longer within the
9 catchment area of the area authority.

10 **SECTION 7.(b)** G.S. 122C-112.1 is amended by adding a new subdivision to read:

11 "(38) Adopt rules establishing a procedure for single-county disengagement from
12 an area authority operating under a 1915(b)/(c) Medicaid Waiver."

13 **SECTION 8.** G.S. 122C-147(c) reads as rewritten:

14 **"§ 122C-147. Financing and title of area authority property.**

15 ...
16 (c) All real property purchased for use by the area authority shall be provided by local
17 or federal funds unless otherwise allowed under subsection (b) of this section or by specific
18 capital funds appropriated by the General Assembly. The title to this real property and the
19 authority to acquire it is held by the ~~county where the property is located. The authority to hold~~
20 ~~title to real property and the authority to acquire it, including the area authority's authority to~~
21 ~~finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area~~
22 ~~authority or by the contracting governmental entity with the approval of the board or boards of~~
23 ~~commissioners of all the counties that comprise the area authority. The approval of a board of~~
24 ~~county commissioners shall be by resolution of the board and may have any necessary or~~
25 ~~proper conditions, including provisions for distribution of the proceeds in the event of~~
26 ~~disposition of the property by the area authority.~~ area authority. Real property may not be
27 acquired by means of an installment contract under G.S. 160A-20 unless the Local Government
28 Commission has approved the acquisition. No deficiency judgment may be rendered against
29 any unit of local government in any action for breach of a contractual obligation authorized by
30 this subsection, and the taxing power of a unit of local government is not and may not be
31 pledged directly or indirectly to secure any moneys due under a contract authorized by this
32 subsection.

33"

34 **SECTION 9.(a)** G.S. 122C-117 reads as rewritten:

35 **"§ 122C-117. Powers and duties of the area authority.**

36 (a) The area authority shall do all of the following:

37 ...
38 (7) Appoint an area director in accordance with G.S. 122C-121(d).~~The~~
39 ~~appointment is subject to the approval of the board of county commissioners~~
40 ~~except that one or more boards of county commissioners may waive its~~
41 ~~authority to approve the appointment. The appointment shall be based on a~~
42 ~~selection by a search committee of the area authority board. The search~~
43 ~~committee shall include consumer board members, a county manager, and~~
44 ~~one or more county commissioners. The Secretary shall have the option to~~
45 ~~appoint one member to the search committee.~~

46 ...
47 (17) Have the authority to borrow money with the approval of the Local
48 Government Commission.

49 ...
50 (c) Within 30 days of the end of each quarter of the fiscal year, the area director and
51 finance officer of the area authority shall provide the quarterly report of the area authority to

1 the county finance officer. The county finance officer shall provide the quarterly report to the
2 board of county commissioners at the next regularly scheduled meeting of the board. The clerk
3 of the board of commissioners shall notify the area director and the county finance officer if the
4 quarterly report required by this subsection has not been submitted within the required period
5 of time. This information shall be ~~presented in a format prescribed by the county. At least twice~~
6 ~~a year, this information shall be presented in person and shall be read into the minutes of the~~
7 ~~meeting at which it is presented. In addition, the area director or finance officer of the area~~
8 ~~authority shall provide to the board of county commissioners ad hoc reports as requested by the~~
9 ~~board of county commissioners, delivered to the county and, at the request of the board of~~
10 ~~county commissioners, may be presented in person by the area director or the director's~~
11 ~~designee.~~

12"

13 **SECTION 9.(b)** G.S. 122C-115.2 is amended by adding a new subsection to read:

14 "(e) The Secretary may waive any requirements of this section that are inconsistent with
15 or incompatible with contracts entered into between the Department and the area authority for
16 the management responsibilities for the delivery of services for individuals with mental illness,
17 intellectual or other developmental disabilities, and substance abuse disorders under a
18 1915(b)/(c) Medicaid Waiver."

19 **SECTION 10.** Part 2 of Article 4 of Chapter 122C of the General Statutes is
20 amended by adding a new section to read:

21 "**§ 122C-126.1. Confidentiality of competitive health care information.**

22 (a) For the purposes of this section, competitive health care information means
23 information relating to competitive health care activities by or on behalf of the area authority.
24 Competitive health care information shall be confidential and not a public record under Chapter
25 132 of the General Statutes; provided that any contract entered into by or on behalf of an area
26 authority shall be a public record, unless otherwise exempted by law, or the contract contains
27 competitive health care information, the determination of which shall be as provided in
28 subsection (b) of this section.

29 (b) If an area authority is requested to disclose any contract that the area authority
30 believes in good faith contains or constitutes competitive health care information, the area
31 authority may either redact the portions of the contract believed to constitute competitive health
32 care information prior to disclosure or, if the entire contract constitutes competitive health care
33 information, refuse disclosure of the contract. The person requesting disclosure of the contract
34 may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any
35 redacted portion thereof. In any action brought under this subsection, the issue for decision by
36 the court shall be whether the contract, or portions of the contract withheld, constitutes
37 competitive health care information, and in making its determination, the court shall be guided
38 by the procedures and standards applicable to protective orders requested under Rule 26(c)(7)
39 of the Rules of Civil Procedure. Before rendering a decision, the court shall review the contract
40 in camera and hear arguments from the parties. If the court finds that the contract constitutes or
41 contains competitive health care information, the court may either deny disclosure or may make
42 such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

43 (c) Nothing in this section shall be deemed to prevent the Attorney General, the State
44 Auditor, or an elected public body, in closed session, which has responsibility for the area
45 authority, from having access to this confidential information. The disclosure to any public
46 entity does not affect the confidentiality of the information. Members of the public entity shall
47 have a duty not to further disclose the confidential information."

48 **SECTION 11.(a)** G.S. 126-5(a) reads as rewritten:

49 "**§ 126-5. Employees subject to Chapter; exemptions.**

50 (a) The provisions of this Chapter shall apply to:

51 (1) All State employees not herein exempt; and

- (2) All employees of the following local entities:
- a. Area mental health, developmental disabilities, and substance abuse ~~authorities-authorities, except as otherwise provided in Chapter 122C~~ of the General Statutes.
 - b. Local social services departments.
 - c. County health departments and district health departments.
 - d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

- (3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine."

SECTION 11.(b) G.S. 122C-154 reads as rewritten:

"§ 122C-154. Personnel.

Employees under the direct supervision of the area director are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. Employees appointed by the county program director are employees of the county. In a multicounty program, employment of county program staff shall be as agreed upon in the interlocal agreement adopted pursuant to G.S. 122C-115.1. Notwithstanding G.S. 126-9(b), an employee of an area authority may be paid a salary that is in excess of the salary ranges established by the State Personnel Commission. Any salary that is higher than the maximum of the applicable salary range shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the employee. The area board shall not authorize any salary adjustment that is above the normal allowable salary range without obtaining prior approval from the Director of the Office of State Personnel."

SECTION 11.(c) G.S. 122C-121(a1) reads as rewritten:

"(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. ~~An area board may request an adjustment to the salary ranges under G.S. 126-9(b). The request shall include specific information supporting the need for the adjustment, including comparative salary and patient caseload data for other LMEs, and shall also include the specific amount the area board proposes to pay the director. The area board shall not request a salary adjustment that is more than ten percent (10%) above the normal allowable salary range as determined by the State Personnel Commission.~~Notwithstanding G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges established by the State Personnel Commission. Any salary that is higher than the maximum of the applicable salary range shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the director. The area board shall not authorize any salary adjustment that is above the normal allowable salary range without obtaining prior approval from the Director of the Office of State Personnel."

SECTION 12.(a) G.S. 122C-122 is repealed.

SECTION 12.(b) G.S. 35A-1202(4) reads as rewritten:

"§ 35A-1202. Definitions.

When used in the Subchapter, unless a contrary intent is indicated or the context requires otherwise:

- ...
- (4) "Disinterested public agent" ~~means:~~means

- 1 a. ~~The~~the director or assistant directors of a ~~local human services~~
2 agency, ~~or county department of social services.~~
3 b. ~~An adult officer, agent, or employee of a State human services~~
4 agency. ~~The~~Except as provided in G.S. 35A-1213(f), the fact that a
5 disinterested public agent is ~~employed by a State or local human~~
6 services agency that provides financial assistance, services, or
7 treatment to a ward does not disqualify that person from being
8 appointed as guardian.

9 "

10 **SECTION 12.(c)** G.S. 35A-1213 reads as rewritten:

11 "**§ 35A-1213. Qualifications of guardians.**

12 (a) The clerk may appoint as guardian an adult individual, a corporation, or a
13 disinterested public agent. The applicant may submit to the clerk the name or names of
14 potential guardians, and the clerk may consider the recommendations of the next of kin or other
15 persons.

16 (b) A nonresident of the State of North Carolina, to be appointed as general guardian,
17 guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in
18 writing his willingness to submit to the jurisdiction of the North Carolina courts in matters
19 relating to the guardianship and must appoint a resident agent to accept service of process for
20 the guardian in all actions or proceedings with respect to the guardianship. Such appointment
21 must be approved by and filed with the clerk, and any agent so appointed must notify the clerk
22 of any change in the agent's address or legal residence. The clerk shall require a nonresident
23 guardian of the estate or a nonresident general guardian to post a bond or other security for the
24 faithful performance of the guardian's duties. The clerk may require a nonresident guardian of
25 the person to post a bond or other security for the faithful performance of the guardian's duties.

26 (c) A corporation may be appointed as guardian only if it is authorized by its charter to
27 serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements
28 outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written
29 copy of its charter to the clerk of superior court. A corporation contracting with a public agency
30 to serve as guardian is required to attend guardianship training and provide verification of
31 attendance to the contracting agency.

32 (d) A disinterested public agent who is appointed by the clerk to serve as guardian is
33 authorized and required to do so; provided, if at the time of the appointment or any time
34 subsequent thereto the disinterested public agent believes that his role or the role of his agency
35 in relation to the ward is such that his service as guardian would constitute a conflict of interest,
36 or if he knows of any other reason that his service as guardian may not be in the ward's best
37 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a
38 different guardian. A disinterested public agent who is appointed as guardian shall serve in that
39 capacity by virtue of his office or employment, which shall be identified in the clerk's order and
40 in the letters of appointment. When the disinterested public agent's office or employment
41 terminates, his successor in office or employment, or his immediate supervisor if there is no
42 successor, shall succeed him as guardian without further proceedings unless the clerk orders
43 otherwise.

44 (e) Notwithstanding any other provision of this section, an employee of a treatment
45 facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an
46 inpatient in or resident of the facility in which the employee works; provided, this subsection
47 shall not apply to or affect the validity of any appointment of a guardian that occurred before
48 October 1, 1987.

49 (f) An individual employed by an entity that contracts with a local management entity
50 (LME) for the delivery of mental health, developmental disabilities, and substance abuse

1 services may not serve as a guardian for a ward for whom the individual is providing such
2 services."

3 **SECTION 12.(d)** G.S. 35A-1292(a) reads as rewritten:

4 **"§ 35A-1292. Resignation.**

5 (a) Any guardian who wishes to resign ~~may apply in writing to the clerk,~~shall file a
6 motion with the clerk setting forth the circumstances of the case. If a general guardian or
7 guardian of the estate, at the time of making the application, also exhibits his final account for
8 settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may
9 accept the resignation of the guardian and discharge him and appoint a successor ~~guardian, but~~
10 ~~the guardian.~~ The guardian so discharged and his sureties are still liable in relation to all matters
11 connected with the guardianship before the discharge-discharge and shall continue to ensure
12 that the ward's needs are met until the clerk officially appoints a successor. The guardian shall
13 attend the hearing to modify the guardianship, if physically able."

14 **SECTION 12.(e)** In order to achieve continuity of care and services, any successor
15 guardian shall make diligent efforts to continue existing contracts entered into under the
16 authority of G.S. 122C-122 where consistent with the best interest of the ward, as required by
17 Chapter 35A of the General Statutes.

18 **SECTION 13.(a)** Section 1(a)(3) of S.L. 2011-264 reads as rewritten:

19 "(3) ~~Designate a single entity~~an area authority for mental health, developmental
20 disabilities, and substance abuse services to assume responsibility for all
21 aspects of Waiver management. The following operational models are
22 ~~acceptable options for Local Management Entity (LME)~~
23 ~~applicants:acceptable:~~

- 24 a. Merger model: A single larger LME is formed from the merger of
25 two or more LMEs.
26 b. Interlocal agreement among LMEs: A single LME is identified as the
27 leader for all Waiver operations, financial management, and
28 accountability for performance measures."

29 **SECTION 13.(b)** Section 1(c) of S.L. 2011-264 reads as rewritten:

30 **"SECTION 1.(c)** The Department shall require LMEs that have not been approved by the
31 Department to operate a 1915(b)/(c) Medicaid Waiver by January 1, 2013, to merge with or be
32 aligned through an interlocal agreement with an LME that has been approved by the
33 Department to operate a 1915(b)/(c) Medicaid Waiver. If any LME fails to comply with this
34 requirement, or fails to meet performance requirements of an approved contract with the
35 Department to operate a 1915(b)/(c) Medicaid Waiver, the Department shall assign
36 responsibility for management of the 1915(b)/(c) Medicaid Waiver on behalf of the
37 noncompliant LME to an LME that is successfully operating the Waiver and successfully
38 meeting performance requirements of the contract with the Department. Those LMEs approved
39 to operate the 1915(b)/(c) Medicaid Waiver under an interlocal agreement must have a single
40 LME entity designated as responsible for all aspects of Waiver operations and solely
41 responsible for meeting contract requirements."

42 **SECTION 14.** G.S. 108A-70.9A reads as rewritten:

43 **"§ 108A-70.9A. Appeals by Medicaid recipients.**

44 (a) Definitions. – The following definitions apply in this Part, unless the context clearly
45 requires otherwise.

46 (1) Adverse determination. – A determination by the Department to deny,
47 terminate, suspend, or reduce a Medicaid service or an authorization for a
48 Medicaid service.

49 (1a) Department. – The North Carolina Department of Health and Human
50 Services and shall include any entity operating a Prepaid Inpatient Health
51 Plan (PIHP) or other Managed Care Organization (MCO), as those terms are

1 defined in 42 C.F.R. Part 438, pursuant to an agreement or contract with the
2 Department. Such PIHP or MCO shall participate in mediation as set forth in
3 G.S. 108A-70.9B(c) and shall be solely responsible for defending its
4 decisions at OAH. Notwithstanding any provision of State law or rules to the
5 contrary, this section shall govern the appeals of enrollees arising from any
6 Local Management Entity's (LME's), as defined by G.S. 122C-3(20b),
7 adverse determination where the LME operates a PIHP or MCO pursuant to
8 an agreement or contract with the Department.

9 (2) OAH. – The Office of Administrative Hearings.

10 (3) Recipient. – A recipient and the recipient's parent, guardian, or legal
11 representative, unless otherwise specified.

12 (b) General Rule. – Notwithstanding any provision of State law or rules to the contrary,
13 this section shall govern the process used by a Medicaid recipient to appeal an adverse
14 determination made by the Department. Any enrollee grievance and appeal process created by a
15 PIHP or MCO pursuant to 42 C.F.R. Part 438, Subpart F, shall supplement appeal rights
16 provided to recipients pursuant to this section. The process described in G.S. 122C-151.3 and
17 G.S. 122C-151.4 shall not apply to Medicaid recipients contesting an adverse determination of
18 an LME operating a PIHP or MCO.

19 (c) Notice. – Except as otherwise provided by federal law or regulation, at least 10 days
20 before the effective date of an adverse determination, the Department shall notify the recipient,
21 and the provider, if applicable, in writing of the adverse determination and of the recipient's
22 right to appeal the adverse determination. The Department shall not be required to notify a
23 recipient's parent, guardian, or legal representative unless the recipient's parent, guardian, or
24 legal representative has requested in writing to receive the notice. The notice shall be mailed on
25 the date indicated on the notice as the date of the determination. The notice shall include:

26 (1) An identification of the recipient whose services are being affected by the
27 adverse determination, including the recipient's full name and Medicaid
28 identification number.

29 (2) An explanation of what service is being denied, terminated, suspended, or
30 reduced and the reason for the determination.

31 (3) The specific regulation, statute, or medical policy that supports or requires
32 the adverse determination.

33 (4) The effective date of the adverse determination.

34 (5) An explanation of the recipient's right to appeal the Department's adverse
35 determination in an evidentiary hearing before an administrative law judge.

36 (6) An explanation of how the recipient can request a hearing and a statement
37 that the recipient may represent himself or herself or use legal counsel, a
38 relative, or other spokesperson.

39 (7) As in accordance with the provisions of 42 C.F.R. 431.230 or 42 C.F.R.
40 438.420, a statement that the recipient will continue to receive Medicaid
41 services at the level provided on the day immediately preceding the
42 Department's adverse determination or the amount requested by the
43 recipient, whichever is less, if the recipient requests a hearing before the
44 effective date of the adverse determination. The services shall continue until
45 the hearing is completed and a final decision is rendered.

46 (8) The name and telephone number of a contact person at the Department to
47 respond in a timely fashion to the recipient's questions.

48 (9) The telephone number by which the recipient may contact a Legal Aid/Legal
49 Services office.

50 (10) The appeal request form described in subsection (e) of this section that the
51 recipient may use to request a hearing.

1 (d) Appeals. – Except as provided by this section and G.S. 108A-70.9B, a request for a
2 hearing to appeal an adverse determination of the Department under this section is a contested
3 case subject to the provisions of Article 3 of Chapter 150B of the General Statutes. The
4 recipient shall request a hearing within 30 days of the mailing of the notice required by
5 subsection (c) of this section by sending an appeal request form to ~~OAH and the~~
6 ~~Department.~~OAH. Where a request for hearing concerns the reduction, modification, or
7 termination of Medicaid services, including the failure to act upon a timely request for
8 reauthorization with reasonable promptness, upon the receipt of a timely appeal, the
9 Department shall reinstate the services to the level or manner prior to action by the Department
10 as permitted by federal law or regulation. The Department shall immediately forward a copy of
11 the notice to OAH electronically. The information contained in the notice is confidential unless
12 the recipient appeals. OAH may dispose of the records after one year. The Department may not
13 influence, limit, or interfere with the recipient's decision to request a hearing.

14 (e) Appeal Request Form. – Along with the notice required by subsection (c) of this
15 section, the Department shall also provide the recipient with an appeal request form which shall
16 be no more than one side of one page. The form shall include the following:

- 17 (1) A statement that in order to request an appeal, the recipient must send the
18 form by mail or fax to the address or fax number listed on the form within 30
19 days of mailing of the notice.
- 20 (2) The recipient's name, address, telephone number, and Medicaid
21 identification number.
- 22 (3) A preprinted statement that indicates that the recipient would like to appeal
23 the specific adverse determination of which the recipient was notified in the
24 notice.
- 25 (4) A statement informing the recipient that he or she may choose to be
26 represented by a lawyer, a relative, a friend, or other spokesperson.
- 27 (5) A space for the recipient's signature and date.

28 (f) Final Decision. – After a hearing before an administrative law judge, the judge shall
29 return the decision to the Department in accordance with G.S. 150B-37. The Department shall
30 notify the recipient of the final decision and of the right to judicial review of the decision
31 pursuant to Article 4 of Chapter 150B of the General Statutes."

32 **SECTION 15.** This act is effective when it becomes law.