

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1075*
PROPOSED COMMITTEE SUBSTITUTE H1075-PCS80378-SQ-80

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, AS RECOMMENDED BY
5 THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN
6 SERVICES.

7 The General Assembly of North Carolina enacts:

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

9 "§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and
10 cities.

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

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

22 "§ 122C-116. Status of area authority; status of consolidated human services agency.

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

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

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

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

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

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



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- (3) G.S. 122C-120 and G.S. 122C-121.
- (4) G.S. 122C-127.
- (5) G.S. 122C-147.
- (6) G.S. 122C-152 and G.S. 122C-153.
- (7) G.S. 122C-156.
- (8) G.S. 122C-158."

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

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

(a) ~~An area board shall have no fewer than 11 and no more than 25 members. However, the area board for a multicounty area authority consisting of eight or more counties may have up to 30 members. In a single county area authority, the members shall be appointed by the board of county commissioners. Except as otherwise provided, in areas consisting of more than one county, each board of county commissioners within the area shall appoint one commissioner as a member of the area board. These members shall appoint the other members. The boards of county commissioners within the multicounty area shall have the option to appoint the members of the area board in a manner other than as required under this section by adopting a resolution to that effect. The boards of county commissioners in a multicounty area authority shall indicate in the business plan each board's method of appointment of the area board members in accordance with G.S. 122C-115.2(b). These appointments shall take into account sufficient citizen participation, representation of the disability groups, and equitable representation of participating counties. Individuals appointed to the board shall include two individuals with financial expertise, an individual with expertise in management or business, and an individual representing the interests of children. A member of the board may be removed with or without cause by the initial appointing authority. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.~~ An area board shall have no fewer than 11 and no more than 21 voting members. The board of county commissioners, or the boards of county commissioners within the area, shall appoint members consistent with the requirements provided in subsection (b) of this section. The process for appointing members shall ensure participation from each of the constituent counties of a multicounty area authority. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented category. A member of the board may be removed with or without cause by the initial appointing authority. The area board may declare vacant the office of an appointed member who does not attend three consecutive scheduled meetings without justifiable excuse. The chairman of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

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

- (1) ~~A physician licensed under Chapter 90 of the General Statutes to practice medicine in North Carolina who, when possible, is certified as having completed a residency in psychiatry.~~ At least one member who is a current county commissioner.
- (2) ~~A clinical professional from the fields of mental health, developmental disabilities, or substance abuse.~~ The chair of the local Consumer and Family Advisory Committee (CFAC) or the chair's designee.

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

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

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

46 (d) Any member of an area board who is a county commissioner serves on the board in
47 an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed
48 the earlier of three years or the member's service as a county commissioner. Any member of an
49 area board who is a county manager serves on the board at the pleasure of the initial appointing
50 authority, for a term not to exceed the earlier of three years or the duration of the member's
51 employment as a county manager. The terms of ~~the other~~ members on the area board shall be

1 for three years, except that upon the initial formation of an area board in compliance with
2 subsection (a) of this section, one-third shall be appointed for one year, one-third for two years,
3 and all remaining members for three years. ~~Members, other than county commissioners and~~
4 ~~county managers, Members~~ shall not be appointed for more than ~~two~~three consecutive terms.
5 ~~Board members serving as of July 1, 2006, may remain on the board for one additional term.~~
6 ~~This subsection applies to all area authority board members regardless of the procedure used to~~
7 ~~appoint members under subsection (a) of this section.~~

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

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

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

13 "**§ 122C-119.1. Area Authority board members' training.**

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

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

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

22 "Part 4A. Consumer and Family Advisory Committees.
23 **§ 122C-170. Local Consumer and Family Advisory Committees.**

24 ...

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

- 29 (1) Adult consumers of mental health, developmental disabilities, and substance
30 abuse services.
31 (2) Family members of consumers of mental health, developmental disabilities,
32 and substance abuse services.

33"

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

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

- 41 (1) Provisions of service are not disrupted by the disengagement.
42 (2) The disengaging county is either in compliance or plans to merge with an
43 area authority that is in compliance with population requirements provided
44 in G.S. 122C-155(a).
45 (3) The timing of the disengagement is accounted for and does not conflict with
46 setting capitation rates.
47 (4) Adequate notice is provided to the affected counties, the Department of
48 Health and Human Services, and the General Assembly.
49 (5) Provisions for distribution of any real property no longer within the
50 catchment area of the area authority.

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

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

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

4 "**§ 122C-147. Financing and title of area authority property.**

5 ...

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

23 "

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

25 "**§ 122C-117. Powers and duties of the area authority.**

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

27 ...

28 (7) Appoint an area director in accordance with G.S. 122C-121(d).~~The~~
29 ~~appointment is subject to the approval of the board of county commissioners~~
30 ~~except that one or more boards of county commissioners may waive its~~
31 ~~authority to approve the appointment. The appointment shall be based on a~~
32 ~~selection by a search committee of the area authority board. The search~~
33 ~~committee shall include consumer board members, a county manager, and~~
34 ~~one or more county commissioners. The Secretary shall have the option to~~
35 ~~appoint one member to the search committee.~~

36 ...

37 (17) Have the authority to borrow money with the approval of the Local
38 Government Commission.

39 ...

40 (c) Within 30 days of the end of each quarter of the fiscal year, the area director and
41 finance officer of the area authority shall provide the quarterly report of the area authority to
42 the county finance officer. The county finance officer shall provide the quarterly report to the
43 board of county commissioners at the next regularly scheduled meeting of the board. The clerk
44 of the board of commissioners shall notify the area director and the county finance officer if the
45 quarterly report required by this subsection has not been submitted within the required period
46 of time. This information shall be ~~presented in a format prescribed by the county. At least twice~~
47 ~~a year, this information shall be presented in person and shall be read into the minutes of the~~
48 ~~meeting at which it is presented. In addition, the area director or finance officer of the area~~
49 ~~authority shall provide to the board of county commissioners ad hoc reports_ as requested by~~
50 ~~the board of county commissioners.~~ delivered to the county and, at the request of the board of

1 county commissioners, may be presented in person by the area director or the director's
2 designee.

3"

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

5 "(e) The Secretary may waive any requirements of this section that are inconsistent with
6 or incompatible with contracts entered into between the Department and the area authority for
7 the management responsibilities for the delivery of services for individuals with mental illness,
8 intellectual or other developmental disabilities, and substance abuse disorders under a
9 1915(b)/(c) Medicaid Waiver."

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

12 "**§ 122C-126.1. Confidentiality of competitive health care information.**

13 (a) For the purposes of this section, competitive health care information means
14 information relating to competitive health care activities by or on behalf of the area authority.
15 Competitive health care information shall be confidential and not a public record under Chapter
16 132 of the General Statutes; provided that any contract entered into by or on behalf of an area
17 authority shall be a public record, unless otherwise exempted by law, or the contract contains
18 competitive health care information, the determination of which shall be as provided in
19 subsection (b) of this section.

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

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

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

40 "**§ 126-5. Employees subject to Chapter; exemptions.**

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

42 (1) All State employees not herein exempt, and

43 (2) All employees of the following local entities:

44 a. Area mental health, developmental disabilities, and substance abuse
45 ~~authorities~~-authorities, except as otherwise provided in Chapter 122C
46 of the General Statutes.

47 b. Local social services departments.

48 c. County health departments and district health departments.

49 d. Local emergency management agencies that receive federal
50 grant-in-aid funds.

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

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

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

8 **"§ 122C-154. Personnel.**

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

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

22 "(a1) The area board shall establish the area director's salary under Article 3 of Chapter
23 126 of the General Statutes. ~~An area board may request an adjustment to the salary ranges~~
24 ~~under G.S. 126-9(b). The request shall include specific information supporting the need for the~~
25 ~~adjustment, including comparative salary and patient caseload data for other LMEs, and shall~~
26 ~~also include the specific amount the area board proposes to pay the director. The area board~~
27 ~~shall not request a salary adjustment that is more than ten percent (10%) above the normal~~
28 ~~allowable salary range as determined by the State Personnel Commission.~~Notwithstanding
29 G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges
30 established by the State Personnel Commission. Any salary that is higher than the maximum of
31 the applicable salary range shall be supported by documentation of comparable salaries in
32 comparable operations within the region and shall also include the specific amount the board
33 proposes to pay the director. The area board shall not authorize any salary adjustment that is
34 above the normal allowable salary range without obtaining prior approval from the Secretary."

35 **SECTION 12.(a)** G.S. 153A-76 reads as rewritten:

36 **"§ 153A-76. Board of commissioners to organize county government.**

37 The board of commissioners may create, change, abolish, and consolidate offices, positions,
38 departments, boards, commissions, and agencies of the county government, may impose ex
39 officio the duties of more than one office on a single officer, may change the composition and
40 manner of selection of boards, commissions, and agencies, and may generally organize and
41 reorganize the county government in order to promote orderly and efficient administration of
42 county affairs, subject to the following limitations:

- 43 (1) The board may not abolish an office, position, department, board,
44 commission, or agency established or required by law.
45 (2) The board may not combine offices or confer certain duties on the same
46 officer when this action is specifically forbidden by law.
47 (3) The board may not discontinue or assign elsewhere a function or duty
48 assigned by law to a particular office, position, department, board,
49 commission, or agency.

1 (4) The board may not change the composition or manner of selection of a local
2 board of education, ~~the board of health, the board of social services,~~the
3 board of elections, or the board of alcoholic beverage control.

4 (5) A board may not consolidate an area mental health, developmental
5 disabilities, and substance abuse services board into a consolidated human
6 services board. The board may not abolish an area mental health,
7 developmental disabilities, and substance abuse board, except as provided in
8 Chapter 122C of the General Statutes. This subdivision shall not apply to
9 any board that has exercised the powers and duties of an area mental health,
10 developmental disabilities, and substance abuse services board as of January
11 1, 2012."

12 **SECTION 12.(b)** G.S. 153A-77 reads as rewritten:

13 **"§ 153A-77. Authority of boards of commissioners in certain counties over commissions,**
14 **boards, agencies, etc.**

15 (a) In the exercise of its jurisdiction over commissions, boards and agencies, the board
16 of county commissioners may assume direct control of any activities theretofore conducted by
17 or through any commission, board or agency by the adoption of a resolution assuming and
18 conferring upon the board of county commissioners all powers, responsibilities and duties of
19 any such commission, board or agency. This ~~subsection~~section shall apply to the board of
20 health, the social services board, area mental health, developmental disabilities, and substance
21 abuse area board ~~and~~or any other commission, board or agency appointed by the board of
22 county commissioners or acting under and pursuant to authority of the board of county
23 commissioners of said county except as provided in G.S. 153A-76. A board of county
24 commissioners exercising the power and authority under this subsection may, notwithstanding
25 G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil
26 penalties. If a public health rule adopted by a board of county commissioners imposes a civil
27 penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be
28 applicable to that public health rule unless the rule states that a violation of the rule is a
29 misdemeanor. The board of county commissioners may exercise the power and authority herein
30 conferred only after a public hearing held by said board pursuant to 30 days' notice of said
31 public hearing given in a newspaper having general circulation in said county.

32 The board of county commissioners may also appoint advisory boards, committees,
33 councils and agencies composed of qualified and interested county residents to study, interpret
34 and develop community support and cooperation in activities conducted by or under the
35 authority of the board of county commissioners of said county.

36 (b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board
37 of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

38 (1) Consolidate ~~the provision~~certain provisions of human services in the county
39 under the direct control of a human services director appointed and
40 supervised by the county manager in accordance with subsection (e) of this
41 section;

42 (2) Create a consolidated human services board having the powers conferred by
43 subsection (c) of this section;

44 (3) Create a consolidated county human services agency having the authority to
45 carry out the functions of any combination of commissions, boards, or
46 agencies appointed by the board of county commissioners or acting under
47 and pursuant to authority of the board of county commissioners, including
48 the local health department, the county department of social services, and
49 the area mental health, developmental disabilities, and substance abuse
50 services authority; and

1 (4) Assign other county human services functions to be performed by the
2 consolidated human services agency under the direction of the human
3 services director, with policy-making authority granted to the consolidated
4 human services board as determined by the board of county commissioners.

5 (c) A consolidated human services board appointed by the board of county
6 commissioners shall serve as the policy-making, rule-making, and administrative board of the
7 consolidated human services agency. The consolidated human services board shall be
8 composed of no more than 25 members. The composition of the board shall reasonably reflect
9 the population makeup of the county and shall include:

10 (1) Eight persons who are consumers of human services, public advocates, or
11 family members of clients of the consolidated human services agency,
12 including: one person with mental illness, one person with a developmental
13 disability, one person in recovery from substance abuse, one family member
14 of a person with mental illness, one family member of a person with a
15 developmental disability, one family member of a person with a substance
16 abuse problem, and two consumers of other human services.

17 (1a) Notwithstanding subdivision (1) of this subsection, a consolidated human
18 services board not exercising powers and duties of an area mental health,
19 developmental disabilities, and substance abuse services board shall include
20 four persons who are consumers of human services.

21 (2) Eight persons who are professionals, each with qualifications in one of these
22 categories: one psychologist, one pharmacist, one engineer, one dentist, one
23 optometrist, one veterinarian, one social worker, and one registered nurse.

24 (3) Two physicians licensed to practice medicine in this State, one of whom
25 shall be a psychiatrist.

26 (4) One member of the board of county commissioners.

27 (5) Other persons, including members of the general public representing various
28 occupations.

29 The board of county commissioners may elect to appoint a member of the consolidated
30 human services board to fill concurrently more than one category of membership if the member
31 has the qualifications or attributes of more than one category of membership.

32 All members of the consolidated human services board shall be residents of the county. The
33 members of the board shall serve four-year terms. No member may serve more than two
34 consecutive four-year terms. The county commissioner member shall serve only as long as the
35 member is a county commissioner.

36 The initial board shall be appointed by the board of county commissioners upon the
37 recommendation of a nominating committee comprised of members of the preconsolidation
38 board of health, social services board, and area mental health, developmental disabilities, and
39 substance abuse services board. In order to establish a uniform staggered term structure for the
40 board, a member may be appointed for less than a four-year term. After the subsequent
41 establishment of the board, its board shall be appointed by the board of county commissioners
42 from nominees presented by the human services board. Vacancies shall be filled for any
43 unexpired portion of a term.

44 A chairperson shall be elected annually by the members of the consolidated human services
45 board. A majority of the members shall constitute a quorum. A member may be removed from
46 office by the county board of commissioners for (i) commission of a felony or other crime
47 involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii)
48 violation of a written policy adopted by the county board of commissioners; (iv) habitual
49 failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi)
50 failure to maintain qualifications for appointment required under this subsection. A board

1 member may be removed only after the member has been given written notice of the basis for
2 removal and has had the opportunity to respond.

3 A member may receive a per diem in an amount established by the county board of
4 commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy
5 set by the county board of commissioners. The board shall meet at least quarterly. The
6 chairperson or three of the members may call a special meeting.

7 (d) The consolidated human services board shall have authority to:

- 8 (1) Set fees for departmental services based upon recommendations of the
9 human services director. Fees set under this subdivision are subject to the
10 same restrictions on amount and scope that would apply if the fees were set
11 by a county board of health, a county board of social services, or a mental
12 health, developmental disabilities, and substance abuse area authority.
- 13 (2) Assure compliance with laws related to State and federal programs.
- 14 (3) Recommend creation of local human services programs.
- 15 (4) Adopt local health regulations and participate in enforcement appeals of
16 local regulations.
- 17 (5) Perform regulatory health functions required by State law.
- 18 (6) Act as coordinator or agent of the State to the extent required by State or
19 federal law.
- 20 (7) Plan and recommend a consolidated human services budget.
- 21 (8) Conduct audits and reviews of human services programs, including quality
22 assurance activities, as required by State and federal law or as may otherwise
23 be necessary periodically.
- 24 (9) Advise local officials through the county manager.
- 25 (10) Perform public relations and advocacy functions.
- 26 (11) Protect the public health to the extent required by law.
- 27 (12) Perform comprehensive mental health services ~~planning~~planning if the
28 county is exercising the powers and duties of an area mental health,
29 developmental disabilities, and substance abuse services board under the
30 consolidated human services board.
- 31 (13) Develop dispute resolution procedures for human services contractors and
32 clients and public advocates, subject to applicable State and federal dispute
33 resolution procedures for human services programs, when applicable.

34 Except as otherwise provided, the consolidated human services board shall have the powers
35 and duties conferred by law upon a board of health, a social services board, and an area mental
36 health, developmental disabilities, and substance abuse services board.

37 Local employees who serve as staff of a consolidated county human services agency are
38 subject to county personnel policies and ordinances only and are not subject to the provisions
39 of the State Personnel Act. Act, unless the county board of commissioners elects to subject the
40 local employees to the provisions of that Act. All consolidated county human services agencies
41 shall comply with all applicable federal laws, rules, and regulations requiring the establishment
42 of merit personnel systems.

43 (e) The human services director of a consolidated county human services agency shall
44 be appointed and dismissed by the county manager with the advice and consent of the
45 consolidated human services board. The human services director shall report directly to the
46 county manager. The human services director shall:

- 47 (1) Appoint staff of the consolidated human services agency with the county
48 manager's approval.
- 49 (2) Administer State human services programs.
- 50 (3) Administer human services programs of the local board of county
51 commissioners.

- 1 (4) Act as secretary and staff to the consolidated human services board under the
2 direction of the county manager.
- 3 (5) Plan the budget of the consolidated human services agency.
- 4 (6) Advise the board of county commissioners through the county manager.
- 5 (7) Perform regulatory functions of investigation and enforcement of State and
6 local health regulations, as required by State law.
- 7 (8) Act as an agent of and liaison to the State, to the extent required by law.

8 Except as otherwise provided by law, the human services director or the director's designee
9 shall have the same powers and duties as a social services director, a local health director,
10 ~~and~~ or a director of an area mental health, developmental disabilities, and substance abuse
11 services authority.

12 (f) This section applies to counties with a population in excess of 425,000."

13 **SECTION 13.(a)** G.S. 122C-122 is repealed.

14 **SECTION 13.(b)** G.S. 35A-1202(4) reads as rewritten:

15 **"§ 35A-1202. Definitions.**

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

18 ...

19 (4) "Disinterested public agent" ~~means:~~means

20 a. ~~The~~the director or assistant directors of a ~~local human services~~
21 ~~agency, or~~county department of social services.

22 b. ~~An adult officer, agent, or employee of a State human services~~
23 ~~agency. The~~Except as provided in G.S. 35A-1213(f), the fact that a
24 disinterested public agent is ~~employed by a State or local human~~
25 ~~services agency that~~ provides financial assistance, services, or
26 treatment to a ward does not disqualify that person from being
27 appointed as guardian.

28"

29 **SECTION 13.(c)** G.S. 35A-1213 reads as rewritten:

30 **"§ 35A-1213. Qualifications of guardians.**

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

35 (b) A nonresident of the State of North Carolina, to be appointed as general guardian,
36 guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in
37 writing his willingness to submit to the jurisdiction of the North Carolina courts in matters
38 relating to the guardianship and must appoint a resident agent to accept service of process for
39 the guardian in all actions or proceedings with respect to the guardianship. Such appointment
40 must be approved by and filed with the clerk, and any agent so appointed must notify the clerk
41 of any change in the agent's address or legal residence. The clerk shall require a nonresident
42 guardian of the estate or a nonresident general guardian to post a bond or other security for the
43 faithful performance of the guardian's duties. The clerk may require a nonresident guardian of
44 the person to post a bond or other security for the faithful performance of the guardian's duties.

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

1 (d) A disinterested public agent who is appointed by the clerk to serve as guardian is
2 authorized and required to do so; provided, if at the time of the appointment or any time
3 subsequent thereto the disinterested public agent believes that his role or the role of his agency
4 in relation to the ward is such that his service as guardian would constitute a conflict of interest,
5 or if he knows of any other reason that his service as guardian may not be in the ward's best
6 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a
7 different guardian. A disinterested public agent who is appointed as guardian shall serve in that
8 capacity by virtue of his office or employment, which shall be identified in the clerk's order and
9 in the letters of appointment. When the disinterested public agent's office or employment
10 terminates, his successor in office or employment, or his immediate supervisor if there is no
11 successor, shall succeed him as guardian without further proceedings unless the clerk orders
12 otherwise.

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

18 (f) An individual that contracts with a local management entity (LME) for the delivery
19 of mental health, developmental disabilities, and substance abuse services may not serve as a
20 guardian for a ward for whom the individual is providing such services."

21 **SECTION 13.(d)** G.S. 35A-1292(a) reads as rewritten:
22 "**§ 35A-1292. Resignation.**

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

32 **SECTION 13.(e)** In order to achieve continuity of care and services, any successor
33 guardian shall make diligent efforts to continue existing contracts entered into under the
34 authority of G.S. 122C-122 where consistent with the best interest of the ward as required by
35 Chapter 35A of the General Statutes.

36 **SECTION 14.(a)** Section 1(a)(3) of S.L. 2011-264 reads as rewritten:

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

- 42 a. Merger model: A single larger LME is formed from the merger of
43 two or more LMEs.
- 44 b. Interlocal agreement among LMEs: A single LME is identified as the
45 leader for all Waiver operations, financial management, and
46 accountability for performance measures."

47 **SECTION 14.(b)** Section 1(c) of S.L. 2011-264 reads as rewritten:

48 "**SECTION 1.(c)** The Department shall require LMEs that have not been approved by the
49 Department to operate a 1915(b)/(c) Medicaid Waiver by January 1, 2013, to merge with or be
50 aligned through an interlocal agreement with an LME that has been approved by the
51 Department to operate a 1915(b)/(c) Medicaid Waiver. If any LME fails to comply with this

1 requirement, or fails to meet performance requirements of an approved contract with the
2 Department to operate a 1915(b)/(c) Medicaid Waiver, the Department shall assign
3 responsibility for management of the 1915(b)/(c) Medicaid Waiver on behalf of the
4 noncompliant LME to an LME that is successfully operating the Waiver and successfully
5 meeting performance requirements of the contract with the Department. Those LMEs
6 approved to operate the 1915(b)/(c) Medicaid Waiver under an interlocal agreement must have
7 a single LME entity designated as responsible for all aspects of Waiver operations and solely
8 responsible for meeting contract requirements."

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