

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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SENATE BILL 208  
PROPOSED COMMITTEE SUBSTITUTE S208-PCS35245-MG-9

Short Title: Effective Operation of 1915(b)/(c) Waiver. (Public)

Sponsors:

Referred to:

March 7, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO ENSURE EFFECTIVE STATEWIDE OPERATION OF THE 1915 (B)/(C)  
3 MEDICAID WAIVER.

4 Whereas, S.L. 2011-264, as amended by Section 13 of S.L. 2012-151, required the  
5 Department of Health and Human Services (Department) to restructure the statewide  
6 management of the delivery of services for individuals with mental illness, intellectual and  
7 developmental disabilities, and substance abuse disorders through the statewide expansion of  
8 the 1915(b)/(c) Medicaid Waiver; and

9 Whereas, a local management entity/managed care organization (LME/MCO) that is  
10 awarded a contract to operate the 1915(b)/(c) Medicaid Waiver must maintain fidelity to the  
11 Piedmont Behavioral Health (PBH) demonstration model; and

12 Whereas, LME/MCOs are acting as Medicaid vendors and the Department must  
13 ensure that they are compliant with the provisions of S.L. 2011-264, as amended by Section 13  
14 of S.L. 2012-151, as well as all applicable federal, State, and contractual requirements; Now,  
15 therefore,

16 The General Assembly of North Carolina enacts:

17 **SECTION 1.** G.S. 122C-3 is amended by adding a new subdivision to read:

18 "(20c) "Local management entity/managed care organization" or "LME/MCO"  
19 means an LME that has been approved by the Department to operate the  
20 1915(b)/(c) Medicaid Waiver."

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

23 "**§ 122C-124.2. Actions by the Secretary to ensure effective management of behavioral**  
24 **health services under the 1915(b)/(c) Medicaid Waiver.**

25 (a) For LME/MCOs with which the Department has contracted to operate the  
26 1915(b)/(c) Medicaid Waiver for less than three years, the Secretary shall certify every six  
27 months that the LME/MCO is in compliance with the requirements of subdivisions (1) through  
28 (3) of this subsection. For LME/MCOs with which the Department has contracted to operate  
29 the 1915(b)/(c) Medicaid Waiver for at least three years, the Secretary shall annually certify  
30 that the LME/MCO is in compliance with the requirements of subdivisions (1) through (3) of  
31 this subsection. The Secretary's certification shall be in writing, include the Secretary's  
32 signature, and include a clear and unequivocal statement that the Secretary has determined the  
33 LME/MCO to be in full compliance with all of the following requirements:

34 (1) The LME/MCO has made adequate provisions against the risk of insolvency  
35 with respect to capitation payments for Medicaid enrollees. The Secretary



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1 shall certify that an LME/MCO has made adequate provision against the risk  
2 of insolvency if all of the following are true:

3 a. The LME/MCO has submitted to the Department all the financial  
4 records and reports it is required to submit to the Department  
5 pursuant to the LME/MCO's contract with the Department to operate  
6 the 1915(b)/(c) Medicaid Waiver, including monthly balance sheets  
7 broken down by Medicaid and non-Medicaid funding sources.

8 b. The Secretary determines there are no consecutive three-month  
9 periods during which the LME/MCO's ratio of assets to liabilities is  
10 less than 1.0, based on a monthly review of the LME/MCO's balance  
11 sheets for each month of the three-month period. The computation of  
12 the ratio does not include the State single stream funding or other  
13 sources of funds that are not Medicaid funds.

14 c. An Intradepartmental Monitoring Team, utilizing the monitoring  
15 team's solvency measures, determines that the LME/MCO has made  
16 adequate provisions against the risk of insolvency based on a  
17 quarterly review of the financial reports submitted to the Department  
18 by the LME/MCO.

19 (2) The LME/MCO is making timely provider payments. The Secretary shall  
20 certify that an LME/MCO is making timely provider payments if there are  
21 no consecutive three-month periods during which the LME/MCO paid less  
22 than ninety percent (90%) of clean claims for covered services within the  
23 30-day period following the LME/MCO's receipt of these claims. As used in  
24 this subdivision, "clean claims" is as defined in 42 C.F.R. § 447.45: a claim  
25 that can be processed without obtaining additional information from the  
26 provider of the service or from a third party. The term includes a claim with  
27 errors originating in the LME/MCO's claims system. The term does not  
28 include a claim from a provider who is under investigation by a  
29 governmental agency for fraud or abuse, or a claim under review for medical  
30 necessity.

31 (3) The LME/MCO is exchanging billing, payment, and transaction information  
32 with the Department and providers in a manner that complies with all  
33 applicable federal standards including, but not limited to, all of the  
34 following:

35 a. Standards for information transactions and data elements specified in  
36 42 U.S.C. § 1302d-2 of the Healthcare Insurance Portability and  
37 Accountability Act (HIPAA), as from time to time amended.

38 b. Standards for health care claims or equivalent encounter information  
39 transaction specified in HIPAA regulations in 45 C.F.R. § 162.1102,  
40 as from time to time amended.

41 c. Implementation specifications for Electronic Data Interchange  
42 standards published and maintained by the Accredited Standards  
43 Committee (ASC X12) and referenced in HIPAA regulations in 45  
44 C.F.R. § 162.920.

45 (b) If the Secretary is unable to provide an LME/MCO with the certification of  
46 compliance required by this section on the date the certification is due because the LME/MCO  
47 has failed to comply with any of the requirements specified in subdivisions (1) through (3) of  
48 subsection (a) of this section, then not later than 30 days after the Secretary's certification of  
49 compliance was due for the LME/MCO, the Secretary and the LME/MCO shall complete  
50 negotiations for the assignment of all the noncompliant LME/MCO's contracts with the  
51 Department to a compliant LME/MCO. Upon assigning a contract pursuant to this subsection,

1 the Secretary shall effectuate an orderly transfer of management responsibilities from the  
2 noncompliant LME/MCO to the compliant LME/MCO, including the responsibility of paying  
3 providers for covered services, in order to ensure the uninterrupted provision of medically  
4 necessary services to Medicaid recipients. Nothing in this subsection shall be construed to  
5 make the Department liable for any debts of the noncompliant LME/MCO.

6 (c) If, in the Secretary's determination, an LME/MCO is not in compliance with a  
7 requirement other than those specified in subdivisions (1) through (3) of subsection (a) of this  
8 section, then not later than 30 days after the Secretary's determination, the Secretary and the  
9 LME/MCO shall complete negotiations for the assignment of all the noncompliant  
10 LME/MCO's contracts with the Department to a compliant LME/MCO. Upon assigning a  
11 contract pursuant to this subsection, the Secretary shall effectuate an orderly transfer of  
12 management responsibilities from the noncompliant LME/MCO to the compliant LME/MCO,  
13 including the responsibility of paying providers for covered services, in order to ensure the  
14 uninterrupted provision of medically necessary services to Medicaid recipients. Nothing in this  
15 subsection shall be construed to make the Department liable for any debts of the noncompliant  
16 LME/MCO.

17 (d) The Secretary shall provide a copy of each written, signed certification of  
18 compliance completed in accordance with this section to the Senate Appropriations Committee  
19 on Health and Human Services, the House Appropriations Subcommittee on Health and Human  
20 Services, the Legislative Oversight Committee on Health and Human Services, and the Fiscal  
21 Research Division."

22 **SECTION 3.** By no later than August 1, 2013, the Secretary of Health and Human  
23 Services shall complete an initial certification of compliance, in accordance with  
24 G.S. 122C-124.2(a), for each LME/MCO that has been approved by the Department to operate  
25 the 1915(b)/(c) Medicaid Waiver and provide a copy of the certification to the Senate  
26 Appropriations Committee on Health and Human Services, the House Appropriations  
27 Subcommittee on Health and Human Services, the Legislative Oversight Committee on Health  
28 and Human Services, and the Fiscal Research Division.

29 **SECTION 4.** Notwithstanding any provision of law to the contrary, all  
30 requirements specified in S.L. 2011-264, as amended by Section 13 of S.L. 2012-151, remain  
31 in effect until repealed in whole or in part by an act of the General Assembly.

32 **SECTION 5.** This act is effective when it becomes law.