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SENATE DRS15143-MG-108 (03/15)

Short Title: LME/MCO Enrollee Grievances & Appeals. (Public)

Sponsors: Senator Hise (Primary Sponsor).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH GRIEVANCE AND APPEAL PROCEDURES FOR MEDICAID
3 ENROLLEES OF LOCAL MANAGEMENT ENTITIES THAT HAVE BEEN
4 APPROVED BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES TO
5 OPERATE AS A MANAGED CARE ORGANIZATION UNDER THE 1915(B)/(C)
6 MEDICAID WAIVER.

7 The General Assembly of North Carolina enacts:

8 SECTION 1. The General Statutes are amended by adding a Chapter to read:

9 **"Chapter 108D.**

10 **"Enrollee Grievances and Appeals of LME/MCO Managed Care Actions.**

11 **"Article 1.**

12 **"General Provisions.**

13 **"§ 108D-1. Definitions.**

14 The following definitions apply in this Chapter, unless the context clearly requires
15 otherwise:

- 16 (1) Applicant. – A provider of MH/IDD/SA who is seeking to participate in the
17 closed network of one or more LME/MCOs.
- 18 (2) Closed network. – The network of providers who have contracted with an
19 LME/MCO to furnish MH/IDD/SA services to enrollees.
- 20 (3) Contested case hearing. – The hearing or hearings conducted at OAH
21 pursuant to G.S. 108D-8 to resolve a dispute between an enrollee and an
22 LME/MCO about a managed care action.
- 23 (4) Department. – The North Carolina Department of Health and Human
24 Services.
- 25 (5) Emergency medical condition. – As defined in 42 C.F.R. § 438.114.
- 26 (6) Emergency services. – As defined in 42 C.F.R. § 438.114.
- 27 (7) Enrollee. – A Medicaid beneficiary who is currently enrolled in an MCO or
28 PIHP operated by an LME/MCO.
- 29 (8) Local Management Entity or LME. – As defined in G.S. 122C-3(20b).
- 30 (9) Local Management Entity/Managed Care Organization or LME/MCO. – An
31 LME that has been approved by the Department to operate an MCO or PIHP
32 in accordance with 42 C.F.R. Part 438.
- 33 (10) Managed care action. – An action, as defined in 42 C.F.R. § 438.400(b).
- 34 (11) Managed Care Organization or MCO. – As defined in 42 C.F.R. § 438.2.
- 35 (12) MH/IDD/SA. – Those mental health, intellectual or developmental
36 disabilities, and substance abuse services covered under a contract in effect



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1 between the Department and an LME to operate an MCO or PIHP under the
2 1915(b)/(c) Medicaid Waivers approved by the federal Centers for Medicare
3 and Medicaid Services (CMS).

4 (13) Network provider. – An appropriately credentialed provider of MH/IDD/SA
5 services who has entered into a contract for participation in the closed
6 network of one or more LME/MCOs. The term also includes a provider of
7 emergency services.

8 (14) Notice of managed care action. – The notice required by 42 C.F.R. §
9 438.404.

10 (15) Notice of resolution. – The notice described in 42 C.F.R. § 438.408(e).

11 (16) OAH. – The North Carolina Office of Administrative Hearings.

12 (17) Prepaid Inpatient Health Plan or PIHP. – As defined in 42 C.F.R. § 438.2.

13 (18) Provider. – As defined in G.S. 108C-2(10).

14 (19) Provider of emergency services. – A provider that is qualified to furnish
15 emergency services to evaluate or stabilize an enrollee's emergency medical
16 condition.

17 **§ 108D-2. Scope; applicability of this Chapter.**

18 This Chapter applies to every LME/MCO and to every applicant, enrollee, provider of
19 emergency services, and network provider of an LME/MCO.

20 **§ 108D-3. Conflicts; severability.**

21 (a) To the extent that this Chapter conflicts with the Social Security Act or 42 C.F.R.
22 Part 438, federal law prevails to the extent of the conflict.

23 (b) To the extent that this Chapter conflicts with any other provision of State law that is
24 contrary to the principles of managed care that will ensure successful containment of costs for
25 behavioral health care services, this Chapter prevails and applies.

26 (c) If any section, term, or provision of this Chapter is adjudged invalid for any reason,
27 these judgments shall not affect, impair, or invalidate any other section, term, or provision of
28 this Chapter, but the remaining sections, terms, and provisions shall be and remain in full force
29 and effect.

30 **§ 108D-4. LME/MCO grievance and appeal procedures, generally.**

31 (a) Each LME/MCO shall establish and maintain internal grievance and appeal
32 procedures that (i) comply with the Social Security Act and 42 C.F.R. Part 438, Subpart F, and
33 (ii) afford enrollees, and network providers authorized in writing to act on behalf of enrollees,
34 constitutional rights to due process and a fair hearing.

35 (b) Enrollees, or network providers authorized in writing to act on behalf of enrollees,
36 may file requests for grievances and LME/MCO level appeals orally or in writing. However,
37 unless the enrollee or network provider requests an expedited appeal, the oral filing must be
38 followed by a written, signed grievance or appeal.

39 (c) An LME/MCO shall not attempt to influence, limit, or interfere with an enrollee's
40 right or decision to file a grievance, request for an LME/MCO level appeal, or a contested case
41 hearing. However, nothing in this Chapter shall be construed to prevent an LME/MCO from
42 doing any of the following:

43 (1) Offering an enrollee alternative services.

44 (2) Engaging in clinical or educational discussions with enrollees or network
45 providers.

46 (3) Engaging in informal attempts to resolve enrollee concerns prior to the
47 issuance of a notice of grievance disposition or notice of resolution.

48 (d) An LME/MCO shall not take punitive action against a network provider for any of
49 the following:

50 (1) Filing a grievance on behalf of an enrollee or supporting an enrollee's
51 grievance.

- 1 (2) Requesting an LME/MCO level appeal on behalf of an enrollee or
2 supporting an enrollee's request for an LME/MCO level appeal.
3 (3) Requesting an expedited LME/MCO level appeal on behalf of an enrollee or
4 supporting an enrollee's request for an LME/MCO level expedited appeal.
5 (4) Requesting a contested case hearing on behalf of an enrollee or supporting
6 an enrollee's request for a contested case hearing.

7 **"§ 108D-5. LME/MCO grievances.**

8 (a) Filing of Grievance. – An enrollee, or a network provider authorized in writing to
9 act on behalf of an enrollee, has the right to file a grievance with an LME/MCO at any time to
10 express dissatisfaction about any matter other than a managed care action. Upon receipt of a
11 grievance, an LME/MCO shall acknowledge receipt of the grievance in writing by United
12 States mail.

13 (b) Notice of Grievance Disposition. – The LME/MCO shall resolve the grievance as
14 expeditiously as the enrollee's health condition requires, but no later than 90 days after receipt
15 of the grievance. The LME/MCO shall provide the enrollee and all other affected parties with
16 written notice of the grievance disposition by United States mail within this 90-day period.

17 (c) Right to Request LME/MCO Level Appeal. – An enrollee, or a network provider
18 authorized in writing to act on behalf of an enrollee, may file a request for an LME/MCO level
19 appeal of a grievance disposition pursuant to G.S. 108D-6 as long as the enrollee or network
20 provider has exhausted the grievance procedure described in this section.

21 (d) Notice of Right to Request LME/MCO Level Appeal. – In the same mailing as the
22 grievance disposition, the LME/MCO shall also notify the enrollee of the right to file a request
23 for an LME/MCO level appeal of the grievance disposition pursuant to G.S. 108D-6.

24 **"§ 108D-6. Standard LME/MCO level appeals.**

25 (a) Notice of Managed Care Action. – An LME/MCO shall provide an enrollee with
26 written notice of a managed care action by United States mail in a manner consistent with 42
27 C.F.R. Part 438, Subpart F.

28 (b) Request for Appeal. – An enrollee, or a network provider authorized in writing to
29 act on behalf of the enrollee, has the right to file a request for an LME/MCO level appeal of a
30 grievance disposition or a notice of managed care action no later than 30 days after the mailing
31 date of the grievance disposition or notice of managed care action. Upon receipt of a request for
32 an LME/MCO level appeal, an LME/MCO shall acknowledge receipt of the request for appeal
33 in writing by United States mail.

34 (c) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits
35 during the pendency of an LME/MCO level appeal to the same extent required under 42 C.F.R.
36 § 438.420.

37 (d) Notice of Resolution. – The LME/MCO shall resolve the appeal as expeditiously as
38 the enrollee's health condition requires, but no later than 45 days after receiving the request for
39 appeal. The LME/MCO shall provide the enrollee and all other affected parties with a written
40 notice of resolution by United States mail within this 45-day period.

41 (e) Right to Request Contested Case Hearing. – An enrollee, or a network provider
42 authorized in writing to act on behalf of an enrollee, may file a request for a contested case
43 hearing pursuant to G.S. 108D-8 as long as the enrollee or network provider has exhausted the
44 grievance procedures described in G.S. 108D-5, if applicable, and the appeal procedures
45 described in G.S. 108D-6 or G.S. 108D-7.

46 (f) Request Form for Contested Case Hearing. – In the same mailing as the notice of
47 resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a
48 contested case hearing that meets the requirements of G.S. 108D-8(e).

49 **"§ 108D-7. Expedited LME/MCO level appeals.**

50 (a) Request for Expedited Appeal. – When the time limits for completing a standard
51 appeal could seriously jeopardize the enrollee's life or health or ability to attain, maintain, or

1 regain maximum function, an enrollee, or a network provider authorized in writing to act on
2 behalf of an enrollee, has the right to file a request for an expedited appeal of a managed care
3 action no later than 30 days after the mailing date of the notice of managed care action. For
4 expedited appeal requests made by enrollees, the LME/MCO shall determine if the enrollee
5 qualifies for an expedited appeal. For expedited appeal requests made by network providers on
6 behalf of enrollees, the LME/MCO shall presume an expedited appeal is necessary.

7 (b) Notice of Denial for Expedited Appeal. – If the LME/MCO denies a request for an
8 expedited LME/MCO level appeal, the LME/MCO shall make reasonable efforts to give the
9 enrollee and all other affected parties oral notice of the denial and follow up with written notice
10 of denial by United States mail by no later than two calendar days after receiving the request
11 for an expedited appeal. In addition, the LME/MCO shall resolve the appeal within the time
12 limits established for standard LME/MCO level appeals in G.S. 108D-6.

13 (c) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits
14 during the pendency of an expedited LME/MCO level appeal to the extent required under 42
15 C.F.R. § 438.420.

16 (d) Notice of Resolution. – If the LME/MCO grants a request for an expedited
17 LME/MCO level appeal, the LME/MCO shall resolve the appeal as expeditiously as the
18 enrollee's health condition requires and no later than three working days after receiving the
19 request for an expedited appeal. The LME/MCO shall provide the enrollee and all other
20 affected parties with a written notice of resolution by United States mail within this three-day
21 period.

22 (e) Right to Request Contested Case Hearing. – An enrollee, or a network provider
23 authorized in writing to act on behalf of an enrollee, may file a request for a contested case
24 hearing pursuant to G.S. 108D-8 as long as the enrollee or network provider has exhausted the
25 grievance procedures described in G.S. 108D-5, if applicable, and the appeal procedures
26 described in G.S. 108D-6 or G.S. 108D-7.

27 (f) Request Form for Contested Case Hearing. – In the same mailing as the notice of
28 resolution, the LME/MCO shall also provide the enrollee with an appeal request form for a
29 contested case hearing that meets the requirements of G.S. 108D-8(e).

30 **"§ 108D-8. Contested case hearings on disputed managed care actions.**

31 (a) Jurisdiction of OAH. – The Office of Administrative Hearings does not have
32 jurisdiction over a dispute concerning a grievance or managed care action, except as expressly
33 set forth in this Chapter.

34 (b) Exclusive Administrative Remedy. – Notwithstanding any provision of State law or
35 rules to the contrary, this section is the exclusive method for an enrollee to contest a notice of
36 resolution issued by an LME/MCO. G.S. 108A-70.9A, 108A-70.9B, and 108A-70.9C do not
37 apply to enrollees contesting a grievance or managed care action.

38 (c) Request for Contested Case Hearing. – A request for an administrative hearing to
39 appeal a notice of resolution issued by an LME/MCO is a contested case subject to the
40 provisions of Article 3 of Chapter 150B of the General Statutes. An enrollee, or a network
41 provider authorized in writing to act on behalf of an enrollee, has the right to file a request for
42 appeal to contest a notice of resolution as long as the enrollee or network provider has
43 exhausted the grievance procedures described in G.S. 108D-5, if applicable, and the appeal
44 procedures described in G.S. 108D-6 or G.S. 108D-7.

45 (d) Filing Procedure. – An enrollee, or a network provider authorized in writing to act
46 on behalf of an enrollee, may appeal a notice of resolution by filing an appeal request form that
47 meets the requirements of subsection (e) of this section at OAH and sending a copy of the filing
48 to the affected LME/MCO by no later than 30 days after the mailing date of the notice of
49 resolution. A request for appeal is deemed filed when a completed and signed appeal request
50 form has been both submitted into the care and custody of the chief hearings clerk of OAH and
51 accepted by the chief hearings clerk. Upon receipt of a timely filed appeal request form,

1 information contained in the notice of resolution is no longer confidential, and the LME/MCO
2 shall immediately forward a copy of the notice of resolution to OAH electronically. OAH may
3 dispose of these records after one year.

4 (e) Appeal Request Form. – In the same mailing as the notice of resolution, the
5 LME/MCO shall also provide the enrollee with an appeal request form for a contested case
6 hearing which shall be no more than one side of one page. The form shall include at least all of
7 the following:

8 (1) A statement that in order to request an appeal, the enrollee must file the form
9 by mail or fax at the address or fax number listed on the form by no later
10 than 30 days after the mailing date of the notice of resolution.

11 (2) The enrollee's name, address, telephone number, and Medicaid identification
12 number.

13 (3) A preprinted statement that indicates that the enrollee would like to appeal a
14 grievance disposition or a specific managed care action identified in the
15 notice of resolution.

16 (4) A statement informing the enrollee of the right to be represented at the
17 contested case hearing by a lawyer, a relative, a friend, or other
18 spokesperson.

19 (5) A space for the enrollee's signature and date.

20 (f) Continuation of Benefits. – An LME/MCO shall continue the enrollee's benefits
21 during the pendency of an appeal to the same extent required under 42 C.F.R. § 438.420.
22 Notwithstanding any other provision of State law, the administrative law judge does not have
23 the power to order and shall not order an LME/MCO to continue benefits in excess of what is
24 required by 42 C.F.R. § 438.420.

25 (g) Simple Procedures. – Notwithstanding any other provision of Article 3 of Chapter
26 150B of the General Statutes, the chief administrative law judge of OAH may limit and
27 simplify the administrative hearing procedures that apply to contested case hearings conducted
28 pursuant to this section in order to complete these cases as expeditiously as possible. Any
29 simplified hearing procedures approved by the chief administrative law judge pursuant to this
30 subsection must comply with all of the following requirements:

31 (1) OAH shall schedule and hear cases by no later than 55 days after receipt of a
32 request for a contested case hearing.

33 (2) OAH shall conduct all contested case hearings telephonically or by video
34 technology with all parties, unless the enrollee requests that the hearing be
35 conducted in person before the administrative law judge. An in-person
36 hearing shall be conducted in Wake County unless the enrollee's
37 impairments limit travel. For enrollees with impairments that limit travel, an
38 in-person hearing shall be conducted in the enrollee's county of residence.
39 OAH shall provide written notice to the enrollee of the use of telephonic
40 hearings, hearings by video conference, and in-person hearings before the
41 administrative law judge, as well as written instructions on how to request a
42 hearing in the enrollee's county of residence.

43 (3) The administrative law judge assigned to hear the case shall consider and
44 rule on all prehearing motions prior to the scheduled date for a hearing on
45 the merits.

46 (4) Neither an enrollee nor an LME/MCO is required to be represented by an
47 attorney at a contested case hearing. For cases in which the enrollee is not
48 represented by an attorney, the administrative law judge assigned to hear the
49 case shall make reasonable efforts to assure a fair hearing and to maintain a
50 complete record of the hearing.

- 1 (5) The administrative law judge may allow brief extensions of the time limits
2 imposed in this section only for good cause shown and to ensure that the
3 record is complete. The administrative law judge shall only grant a
4 continuance of a hearing in accordance with rules adopted by OAH for good
5 cause shown and shall not grant a continuance on the day of a hearing,
6 except for good cause shown. If an enrollee fails to make an appearance at a
7 hearing that has been properly noticed by OAH by United States mail, OAH
8 shall immediately dismiss the case, unless the enrollee moves to show good
9 cause by no later than three business days after the date of dismissal. As
10 used in this section, "good cause shown" includes delays resulting from
11 untimely receipt of documentation needed to render a decision and other
12 unavoidable and unforeseen circumstances.
- 13 (6) OAH shall include information on at least all of the following in its notice of
14 hearing to an enrollee:
- 15 a. The enrollee's right to examine at a reasonable time before and
16 during the hearing the contents of the enrollee's case file and any
17 documents to be used by the LME/MCO in the hearing before the
18 administrative law judge.
- 19 b. The enrollee's right to an interpreter during the hearing process.
- 20 c. The circumstances in which a medical assessment may be obtained at
21 the Department's expense and made part of the record, including all
22 of the following:
- 23 1. A hearing involving medical issues such as a diagnosis, an
24 examining physician's report, or a decision by a medical
25 review team.
- 26 2. A hearing in which the administrative law judge considers it
27 necessary to have a medical assessment other than the
28 medical assessment performed by an individual involved in
29 any previous level of review or decision making.
- 30 (h) Burden of Proof. – The enrollee has the burden of proof on all issues submitted to
31 OAH for a contested case hearing pursuant to this section and has the burden of going forward.
32 The administrative law judge shall not make any ruling on the preponderance of evidence until
33 the close of all evidence in the case.
- 34 (i) New Evidence. – The enrollee shall be permitted to submit evidence regardless of
35 whether it was obtained before or after the LME/MCO's managed care action and regardless of
36 whether the LME/MCO had an opportunity to consider the evidence in resolving the
37 LME/MCO level appeal. Upon the receipt of new evidence and at the request of the
38 LME/MCO, the administrative law judge shall continue the hearing for a minimum of 15 days
39 and a maximum of 30 days in order to allow the LME/MCO to review the evidence. Upon
40 reviewing the evidence, if the LME/MCO decides to reverse the managed care action taken
41 against the enrollee, it shall immediately inform the administrative law judge of its decision.
- 42 (j) Issue for Hearing. – For each managed care action, the administrative law judge
43 shall determine whether the LME/MCO substantially prejudiced the rights of the enrollee and
44 whether the LME/MCO, based upon evidence at the hearing:
- 45 (1) Exceeded its authority or jurisdiction.
- 46 (2) Acted erroneously.
- 47 (3) Failed to use proper procedure.
- 48 (4) Acted arbitrarily or capriciously.
- 49 (5) Failed to act as required by law or rule.
- 50 (k) To the extent that anything in this Part, Chapter 150B of the General Statutes, or any
51 rules or policies adopted pursuant to these Chapters is inconsistent with the Social Security Act

1 or 42 C.F.R. Subpart F, Part 438, federal law prevails and applies to the extent of the conflict.
2 All rules, rights, and procedures for contested case hearings concerning managed care actions
3 shall be construed so as to be consistent with federal law and shall provide the enrollee with no
4 lesser and no greater rights than those provided under federal law.

5 **"§ 108D-9. Notice of final decision and right to seek judicial review.**

6 The administrative law judge assigned to conduct a contested case hearing pursuant to
7 G.S. 108D-8 shall hear and decide the case without unnecessary delay. The judge shall prepare
8 a written decision that includes findings of fact and conclusions of law and send it to the parties
9 in accordance with G.S. 150B-37. The written decision shall notify the parties of the final
10 decision and of the right of the enrollee and the LME/MCO to seek judicial review of the
11 decision pursuant to Article 4 of Chapter 150B of the General Statutes."

12 **SECTION 2.** G.S. 122C-3 is amended by adding a new subdivision to read:

13 "(20c) "Local management entity-managed care organization" or "LME/MCO"
14 means an LME that has been approved by the Department to operate a
15 managed care organization or prepaid inpatient health plan in accordance
16 with 42 C.F.R. Part 438."

17 **SECTION 3.** G.S. 122C-151.3 reads as rewritten:

18 **"§ 122C-151.3. Dispute with area authorities or county programs.**

19 (a) An area authority or county program shall establish written procedures for resolving
20 disputes over decisions of an area authority or county program that may be appealed to the
21 State MH/DD/SA Appeals Panel under G.S. 122C-151.4. The procedures shall be informal and
22 shall provide an opportunity for those who dispute the decision to present their position.

23 (b) This section does not apply to a grievance or appeal of a managed care action by a
24 Medicaid beneficiary currently enrolled in a managed care organization or a prepaid inpatient
25 health plan operated by an LME/MCO who is subject to Chapter 108D of the General Statutes."

26 **SECTION 4.** G.S. 122C-151.4(g) reads as rewritten:

27 (g) ~~This section does not apply to providers of community support services who appeal~~
28 ~~directly to the Department of Health and Human Services under the Department's community~~
29 ~~support provider appeal process.~~ a grievance or appeal of a managed care action by a Medicaid
30 beneficiary currently enrolled in a managed care organization or a prepaid inpatient health plan
31 operated by an LME/MCO that is subject to Chapter 108D of the General Statutes."

32 **SECTION 5.** G.S. 84-2.1 reads as rewritten:

33 **"§ 84-2.1. "Practice law" defined.**

34 The phrase "practice law" as used in this Chapter is defined to be performing any legal
35 service for any other person, firm or corporation, with or without compensation, specifically
36 including the preparation or aiding in the preparation of deeds, mortgages, wills, trust
37 instruments, inventories, accounts or reports of guardians, trustees, administrators or executors,
38 or preparing or aiding in the preparation of any petitions or orders in any probate or court
39 proceeding; abstracting or passing upon titles, the preparation and filing of petitions for use in
40 any court, including administrative tribunals and other judicial or quasi-judicial bodies, or
41 assisting by advice, counsel, or otherwise in any legal work; and to advise or give opinion upon
42 the legal rights of any person, firm or corporation: Provided, that the above reference to
43 particular acts which are specifically included within the definition of the phrase "practice law"
44 shall not be construed to limit the foregoing general definition of the term, but shall be
45 construed to include the foregoing particular acts, as well as all other acts within the general
46 definition. The phrase "practice law" does not encompass ~~the~~ any of the following:

47 (1) The writing of memoranda of understanding or other mediation summaries
48 by mediators at community mediation centers authorized by G.S. 7A-38.5 or
49 by mediators of personnel matters for The University of North Carolina or a
50 constituent institution.

- 1 (2) The representation of an LME/MCO by an employee or a contractor of the
2 LME/MCO in a contested case hearing under G.S. 108D-8."
3 **SECTION 6.** This act becomes effective July 1, 2013.