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SENATE BILL 208
Health Care Committee Substitute Adopted 3/28/13
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PROPOSED HOUSE COMMITTEE SUBSTITUTE S208-PCS15279-TJ-31

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 was required to maintain
11 fidelity to the 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 a local management entity that is under contract with the Department
20 to operate the combined Medicaid Waiver program authorized under Section
21 1915(b) and Section 1915(c) of the Social Security Act."

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

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

26 (a) For all local management entity/managed care organizations, the Secretary shall
27 certify whether the LME/MCO is in compliance or is not in compliance with all requirements
28 of subdivisions (1) through (3) of subsection (b) of this section. The Secretary's certification
29 shall be made every six months beginning August 1, 2013. In order to ensure accurate
30 evaluation of administrative, operational, actuarial and financial components, and overall
31 performance of the LME/MCO, the Secretary's certification shall be based upon an internal and
32 external assessment made by an independent External Quality Review Organization approved
33 by the Centers for Medicare and Medicaid Services in accordance with applicable federal laws
34 and regulations.



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1 (b) The Secretary's certification under subsection (a) of this section shall be in writing
2 and signed by the Secretary and shall contain a clear and unequivocal statement that the
3 Secretary has determined the local management entity/managed care organization to be in
4 compliance with all of the following requirements:

5 (1) The LME/MCO has made adequate provision against the risk of insolvency
6 with respect to capitation payments for Medicaid enrollees. "Adequate
7 provision" includes all of the following:

8 a. The LME/MCO has submitted to the Department all the financial
9 records and reports required to be submitted to the Department under
10 the Contract, including monthly balance sheets.

11 b. There are no consecutive three-month periods during which the
12 LME/MCO's ratio of current assets to current liabilities is less than
13 1.0, based on a monthly review of the LME/MCO's balance sheets
14 for each month of the three-month period, as determined by the
15 Secretary.

16 c. An intradepartmental monitoring team, as designated by the
17 Secretary and consisting of the Secretary or a designee,
18 representatives of the Division of Medical Assistance, and
19 representatives of the Division of Mental Health, Developmental
20 Disabilities, and Substance Abuse Services, utilizing the monitoring
21 team's solvency measures, determines that the LME/MCO has made
22 adequate provisions against the risk of insolvency based on a
23 quarterly review of the financial reports submitted to the Department
24 by the LME/MCO.

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

37 (3) The LME/MCO is exchanging billing, payment, and transaction information
38 with the Department and providers in a manner that complies with all
39 applicable federal standards, including all of the following:

40 a. Standards for information transactions and data elements specified in
41 42 U.S.C. § 1302d-2 of the Healthcare Insurance Portability and
42 Accountability Act (HIPAA), as from time to time amended.

43 b. Standards for health care claims or equivalent encounter information
44 transactions specified in HIPAA regulations in 45 C.F.R. § 162.1102,
45 as from time to time amended.

46 c. Implementation specifications for Electronic Data Interchange
47 standards published and maintained by the Accredited Standards
48 Committee (ASC X12) and referenced in HIPAA regulations in 45
49 C.F.R. § 162.920, as from time to time amended.

50 (c) If the Secretary does not provide a local management entity/managed care
51 organization with the certification of compliance required by this section based upon the

1 LME/MCO's failure to comply with any of the requirements specified in subdivisions (1)
2 through (3) of subsection (b) of this section, the Secretary shall do the following:

- 3 (1) Prepare a written notice informing the LME/MCO of the provisions of
4 subdivision (1), (2), or (3) of subsection (c) of this section with which the
5 LME/MCO is deemed not to be in compliance and the reasons for the
6 determination of noncompliance.
- 7 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- 8 (3) Not later than 10 days after the Secretary's notice of noncompliance is
9 provided to the LME/MCO, assign the Contract of the noncompliant
10 LME/MCO to a compliant LME/MCO.
- 11 (4) Oversee the transfer of the operations and contracts from the noncompliant
12 LME/MCO to the compliant LME/MCO in accordance with the provisions
13 in subsection (e) of this section.

14 (d) If, at any time, in the Secretary's determination, a local management entity/managed
15 care organization is not in compliance with a requirement of the Contract other than those
16 specified in subdivisions (1) through (3) of subsection (b) of this section, then the Secretary
17 shall do all of the following:

- 18 (1) Prepare a written notice informing the LME/MCO of the provisions of the
19 Contract with which the LME/MCO is deemed not to be in compliance and
20 the reasons therefor.
- 21 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- 22 (3) Allow the noncompliant LME/MCO 30 calendar days from the date of
23 receipt of the notice to respond to the notice of noncompliance and to
24 demonstrate compliance to the satisfaction of the Secretary.
- 25 (4) Upon the expiration of the period allowed under subdivision (3) of this
26 subsection, make a final determination on the issue of compliance and
27 promptly notify the LME/MCO of the determination.
- 28 (5) Upon a final determination that an LME/MCO is noncompliant, allow no
29 more than 30 days following the date of notification of the final
30 determination of noncompliance for the noncompliant LME/MCO to
31 complete negotiations for a merger or realignment with a compliant
32 LME/MCO that is satisfactory to the Secretary.
- 33 (6) If the noncompliant LME/MCO does not successfully complete negotiations
34 with a compliant LME/MCO as described in subdivision (5) of this
35 subsection, assign the Contract of the noncompliant LME/MCO to a
36 compliant LME/MCO.
- 37 (7) Oversee the transfer of the operations and contracts from the noncompliant
38 LME/MCO to the compliant LME/MCO in accordance with the provisions
39 in subsection (e) of this section.

40 (e) If the Secretary assigns the Contract of a noncompliant local management
41 entity/managed care organization to a compliant LME/MCO under subdivision (3) of
42 subsection (c) of this section, or under subdivision (6) of subsection (d) of this section, the
43 Secretary shall oversee the orderly transfer of all management responsibilities, operations, and
44 contracts of the noncompliant LME/MCO to the compliant LME/MCO. The noncompliant
45 LME/MCO shall cooperate with the Secretary in order to ensure the uninterrupted provision of
46 services to Medicaid recipients. In making this transfer, the Secretary shall do all of the
47 following:

- 48 (1) Arrange for the providers of services to be reimbursed for proper,
49 authorized, and valid claims for services rendered that were not previously
50 paid by the noncompliant LME/MCO.

1 (2) Effectuate an orderly transfer of management responsibilities from the
2 noncompliant LME/MCO to the compliant LME/MCO, including the
3 responsibility of paying providers for covered services that are subsequently
4 rendered.

5 (3) Oversee the dissolution of the noncompliant LME/MCO, including
6 transferring all assets of the noncompliant LME/MCO, including its risk
7 reserve, to the compliant LME/MCO. Any funds remaining in the risk
8 reserve transferred under this subdivision shall become part of the compliant
9 LME/MCO's risk reserve and subject to the same restrictions on the use of
10 the risk reserve applicable to the compliant LME/MCO. All other assets
11 shall be used to satisfy the liabilities of the noncompliant LME/MCO. In the
12 event there are insufficient assets to satisfy the liabilities of the
13 noncompliant LME/MCO, it shall be the responsibility of the Secretary to
14 satisfy the liabilities of the noncompliant LME/MCO.

15 (4) Following completion of the actions specified in subdivisions (1) through (3)
16 of this subsection, direct the dissolution of the noncompliant LME/MCO and
17 deliver a notice of dissolution to the board of county commissioners of each
18 of the counties in the dissolved LME/MCO.

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

24 (g) As used in this section, the following terms mean:

25 (1) Contract. – The contract between the Department of Health and Human
26 Services and a local management entity for the operation of the 1915(b)/(c)
27 Medicaid Waiver.

28 (2) Compliant local management entity/managed care organization. – An
29 LME/MCO that has undergone an independent external assessment and been
30 determined by the Secretary to be operating successfully and to have the
31 capability of expanding."

32 **SECTION 3.** G.S. 122C-112.1(a) is amended by adding a new subdivision to read:

33 "(39) Develop and use a standard contract for all local management
34 entity/managed care organizations for operation of the 1915(b)/(c) Medicaid
35 Waiver that requires compliance by each LME/MCO with all provisions of
36 the contract to operate the 1915(b)/(c) Medicaid Waiver and with all
37 applicable provisions of State and federal law."

38 **SECTION 4.** G.S. 122C-115(a) reads as rewritten:

39 "(a) A county shall provide mental health, developmental disabilities, and substance
40 abuse services in accordance with rules, policies, and guidelines adopted pursuant to statewide
41 restructuring of the management responsibilities for the delivery of services for individuals
42 with mental illness, intellectual or other developmental disabilities, and substance abuse
43 disorders under a 1915(b)/(c) Medicaid Waiver through an area ~~authority or through a county~~
44 ~~program established pursuant to G.S. 122C-115.1.~~ authority. Beginning July 1, 2012, the
45 catchment area of an area authority ~~or a county program~~ shall contain a minimum population of
46 at least 300,000. Beginning July 1, 2013, the catchment area of an area authority ~~or a county~~
47 ~~program~~ shall contain a minimum population of at least 500,000. To the extent this section
48 conflicts with G.S. 153A-77(a), the provisions of ~~G.S. 153A-77(a)~~ this section control."

49 ...

50 (a3) A county that wishes to disengage from a local management entity/managed care
51 organization and realign with another multicounty area authority operating under the

1 1915(b)/(c) Medicaid Waiver may do so with the approval of the Secretary. The Secretary shall
2 adopt rules to establish a process for county disengagement that shall ensure, at a minimum, the
3 following:

- 4 (1) Provision of services is not disrupted by the disengagement.
- 5 (2) The disengaging county either is in compliance or plans to merge with an
6 area authority that is in compliance with population requirements provided
7 in G.S. 122C-115(a) of this section.
- 8 (3) The timing of the disengagement is accounted for and does not conflict with
9 setting capitation rates.
- 10 (4) Adequate notice is provided to the affected counties, the Department of
11 Health and Human Services, and the General Assembly.
- 12 (5) Provision for distribution of any real property no longer within the
13 catchment area of the area authority.

14 ...

15 (c1) Area authorities may add one or more additional counties to their existing catchment
16 area by agreement of a majority of the existing member counties upon the adoption of a
17 resolution to that effect by a majority of the members of the area board."

18 **SECTION 5.(a)** G.S. 122C-115.3(a), (c), (d), (f), and (g) are repealed.

19 **SECTION 5.(b)** G.S. 122C-115.3(b) reads as rewritten:

20 "(b) ~~Notwithstanding the provisions of subsection (a) of this section, no~~ No county shall
21 withdraw from an area authority nor shall an area authority be dissolved without first
22 demonstrating that continuity of services will be assured and without prior approval of the
23 Secretary."

24 **SECTION 5.(c)** G.S. 122C-115.3(e) reads as rewritten:

25 "(e) ~~Any fund balance available to an area authority at the time of its dissolution shall be~~
26 ~~distributed to those counties comprising the area authority on the same pro rata basis that the~~
27 ~~counties appropriated and contributed funds to the area authority's budget during the current~~
28 ~~fiscal year. Distribution to the counties shall be determined on the basis of an audit of the~~
29 ~~financial record of the area authority. The area authority board shall select a certified public~~
30 ~~accountant or an accountant who is subsequently certified by the Local Government~~
31 ~~Commission to conduct the audit. The audit shall be performed in accordance with~~
32 ~~G.S. 159-34. The same method of distribution of funds described in this subsection shall apply~~
33 ~~when one or more counties of an area authority withdraw from the area authority that is not~~
34 ~~utilized to pay liabilities pursuant to subsection (g) of this section shall be transferred to the~~
35 area authority contracted to operate the 1915(b)/(c) Medicaid Waiver in the catchment area of
36 the dissolved area authority."

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

38 "(a) An area board shall have no fewer than 11 and no more than 21 voting members.
39 The board of county commissioners, or the boards of county commissioners within the area,
40 shall appoint members consistent with the requirements provided in subsection (b) of this
41 section. The process for appointing members shall ensure participation from each of the
42 constituent counties of a multicounty area authority. If the board or boards fail to comply with
43 the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented
44 category. The boards of county commissioners within a multicounty area with a catchment
45 population of at least 1,250,000 shall have the option to appoint members of the area board in a
46 manner or with a composition other than as required by this section by each county
47 ~~unanimously~~ adopting a resolution to that effect and receiving written approval from the
48 ~~Secretary by January 1, 2013.~~ Secretary. A member of the board may be removed with or
49 without cause by the initial appointing authority. The area board may declare vacant the office
50 of an appointed member who does not attend three consecutive scheduled meetings without
51 justifiable excuse. The chair of the area board shall notify the appropriate appointing authority

1 of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before
2 the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first,
3 and the appointments shall be for the remainder of the unexpired term."

4 **SECTION 7.** G.S. 122C-118.1 is amended by adding the following new subsection
5 to read:

6 "(f) An area authority that adds one or more counties to its existing catchment area
7 under G.S. 122C-115(c1) shall ensure that the expanded catchment area is represented through
8 membership on the area board, with or without adding area board members under this section,
9 as provided in G.S. 122C-118.1(a)."

10 **SECTION 8.** Article 4 of Chapter 122C of the General Statutes is amended by
11 adding a new section to read:

12 "**§ 122C-118.2. Establishment of county commissioner advisory board.**

13 (a) There is established a county commissioner advisory board for each catchment area,
14 consisting of one county commissioner from each county in the catchment area, designated by
15 the board of commissioners of each county. The county commissioner advisory board shall
16 meet on a regular basis, and its duties shall include serving as the chief advisory board to the
17 area authority and to the director of the area authority on matters pertaining to the delivery of
18 services for individuals with mental illness, intellectual or other developmental disabilities, and
19 substance abuse disorders in the catchment area. The county commissioner advisory board
20 serves in an advisory capacity only to the area authority, and its duties do not include authority
21 over budgeting, personnel matters, governance, or policymaking of the area authority.

22 (b) Each board of commissioners within the catchment area shall designate from its
23 members the commissioner to serve on the county commissioner advisory board. Each board of
24 commissioners may determine the manner of designation, the term of service, and the
25 conditions under which its designee will serve on the county commissioner advisory board."

26 **SECTION 9.** G.S. 122C-142(a) is rewritten to read:

27 "(a) When the area authority contracts with persons for the provision of services, it shall
28 use the standard contract adopted by the Secretary and shall assure that these contracted
29 services meet the requirements of applicable State statutes and the rules of the Commission and
30 the Secretary. However, an area authority ~~or county program~~ may amend the contract to
31 comply with any court-imposed duty or responsibility. An area authority ~~or county program~~
32 that is operating under a Medicaid waiver may amend the contract subject to the approval of the
33 Secretary. Terms of the standard contract shall require the area authority to monitor the contract
34 to assure that rules and State statutes are met. It shall also place an obligation upon the entity
35 providing services to provide to the area authority timely data regarding the clients being
36 served, the services provided, and the client outcomes. The Secretary may also monitor
37 contracted services to assure that rules and State statutes are met."

38 **SECTION 10.** G.S. 150B-1(e) is amended by adding a new subdivision to read:

39 "(21) The Department of Health and Human Services for actions taken under
40 G.S. 122C-124.2."

41 **SECTION 11.** By no later than August 1, 2013, the Secretary of the Department of
42 Health and Human Services shall complete an initial certification of compliance, in accordance
43 with G.S. 122C-124.2(a), for each local management entity/managed care organization that has
44 been approved by the Department to operate the 1915(b)/(c) Medicaid Waiver and provide a
45 copy of the certification to the Senate Appropriations Committee on Health and Human
46 Services, the House Appropriations Subcommittee on Health and Human Services, the
47 Legislative Oversight Committee on Health and Human Services, and the Fiscal Research
48 Division.

49 **SECTION 12.** This act is effective when it becomes law.