

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 371
Health Care Committee Substitute Adopted 4/21/15
House Committee Substitute Favorable 9/24/15
Proposed Conference Committee Substitute S371-PCCS45548-TR-6

Short Title: LME/MCO Claims Reporting/Mental Health Amends. (Public)

Sponsors:

Referred to:

March 24, 2015

A BILL TO BE ENTITLED

AN ACT TO MODIFY CERTAIN REQUIREMENTS PERTAINING TO LOCAL
MANAGEMENT ENTITIES/MANAGED CARE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

SECTION 1. The encounter data submission requirements for local management
entities/managed care organizations (LME/MCOs) shall be as follows:

- (1) LME/MCOs shall submit to the Department of Health and Human Services (DHHS) encounter data, consisting of records of claims payments made to providers, for Medicaid and State-funded mental health, intellectual and developmental disabilities, and substance abuse disorder services using a single nationally recognized, standardized electronic format for encounter submissions, which shall be specified to the LME/MCOs in advance to assure compliance with the format of encounter data submitted to the DHHS.
- (2) DHHS may use encounter data for purposes including, but not limited to, setting LME/MCO capitation rates, measuring the quality of services managed by LME/MCOs, assuring compliance with State and federal regulations, and for oversight and audit functions.
- (3) DHHS shall work with LME/MCOs to ensure that the process for submitting encounter claims through NCTracks is successful.
- (4) DHHS shall report to the Joint Legislative Oversight Committee on Health and Human Services regarding the status of this section on or before February 1, 2017.

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

"§ 122C-124.3. Authorization to direct mergers and acquisitions.

(a) Notwithstanding any other provision of law, the Secretary of the Department of Health and Human Services is authorized to direct the merger of LME/MCOs and to direct the acquisition of an LME/MCO by another LME/MCO. The Secretary is authorized to set time lines and dates for the orderly completion of these mergers and acquisitions. In directing mergers and acquisitions, the Secretary shall consider, at a minimum, the following factors related to each LME/MCO:

- (1) Solvency.
- (2) Compliance with legal and contractual requirements.



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- 1 (3) Compliance with the governance requirements in G.S. 122C-118.1, including
2 board composition and appointment requirements.
3 (4) History of fraud, waste, or abuse.
4 (5) Prior experience with successful LME/MCO mergers or acquisitions that
5 occurred while operating the Medicaid waivers authorized under section
6 1915(b) and 1915(c) of the Social Security Act.
7 (6) Geographical size.
8 (7) Population served.
9 (8) Penetration rate.
10 (9) Management stability.
11 (10) Documented innovative reinvestments strategies for the timely reinvestment of
12 fund balances.
13 (11) Strong financial performance, including management of claims and other
14 performance criteria, as determined by the Secretary.
15 (b) Failure of an LME/MCO to comply with the Secretary's directions under this section
16 constitutes noncompliance for purposes of G.S. 122C-124.2(c) and constitutes cause for the
17 Secretary to terminate all contracts between the Department and the LME/MCO."

18 **SECTION 3.** Part 4 of Article 4 of Chapter 122C of the General Statutes is amended
19 by adding a new section to read:

20 **"§ 122C-147.3. LME/MCO use of funds.**

21 LME/MCOs shall use funds only for purposes related to their functions and responsibilities
22 under this Chapter, including operation of the combined Medicaid Waiver program authorized
23 under section 1915(b) and 1915(c) of the Social Security Act, or to carry out functions and
24 responsibilities required by State law, federal law, or contract with the Department of Health and
25 Human Services. A violation of this section constitutes noncompliance for purposes of
26 G.S. 122C-124.2(c)."

27 **SECTION 4.** G.S. 122C-124.2(c) reads as rewritten:

28 "(c) If the Secretary does not provide a local management entity/managed care organization
29 with the certification of compliance required by this section based upon the LME/MCO's failure to
30 comply with any of the requirements specified in subdivisions (1) through (3) of subsection (b) of
31 this section, or if the Secretary determines that an LME/MCO has failed to comply with
32 G.S. 122C-124.3 or G.S. 122C-147.3, the Secretary shall do the following:

- 33 (1) Prepare a written notice informing the LME/MCO of the provisions of
34 subdivision (1), (2), or (3) of subsection (c) of this section with which the
35 LME/MCO is deemed not to be in compliance and the reasons for the
36 determination of noncompliance.
37 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
38 (3) Not later than 10 days after the Secretary's notice of noncompliance is provided
39 to the LME/MCO, assign the Contract of the noncompliant LME/MCO to a
40 compliant LME/MCO.
41 (4) Oversee the transfer of the operations and contracts from the noncompliant
42 LME/MCO to the compliant LME/MCO in accordance with the provisions in
43 subsection (e) of this section."

44 **SECTION 5.(a)** G.S. 122C-118.1 reads as rewritten:

45 **"§ 122C-118.1. Structure of area board.**

46 (a) An area board shall have no fewer than 11 and no more than 21 voting members. The
47 board of county commissioners, or the boards of county commissioners within the area, shall
48 appoint members consistent with the requirements provided in subsection (b) of this section. If the
49 board or boards fail to comply with the requirements of subsection (b) of this section, the
50 Secretary shall appoint the unrepresented category.

1 (a1) The process for appointing members shall ensure participation from each of the
2 constituent counties of a multicounty area authority. ~~If the board or boards fail to comply with the~~
3 ~~requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented~~
4 ~~category.~~ The boards of county commissioners within a multicounty area with a catchment
5 population of at least 1,250,000 shall have the option to appoint members of the area board ~~in a~~
6 ~~manner or with a composition through a process other than as required by this section by at least~~
7 three-quarters of the constituent counties each county adopting a resolution to that effect and
8 receiving written approval from the Secretary. No area board shall be exempt from the
9 membership composition requirements in subsection (b) of this section.

10 (a2) A member of the board may be removed with or without cause by the ~~initial~~ appointing
11 authority. The area board may declare vacant the office of an appointed member who does not
12 attend three consecutive scheduled meetings without justifiable excuse. The chair of the area board
13 shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be
14 filled by the ~~initial~~ appointing authority before the end of the term of the vacated seat or within 90
15 days of the vacancy, whichever occurs first, and the appointments shall be for the remainder of the
16 unexpired term.

17 (b) Within the maximum membership provided in subsection (a) of this section, the
18 membership of the area board shall reside within the catchment area and be composed as follows:

- 19 (1) At least one member who is a current county commissioner.
- 20 (2) The chair of the local Consumer and Family Advisory Committee (CFAC) or
21 the chair's designee.
- 22 (3) At least one family member of the local CFAC, as recommended by the local
23 CFAC, representing the interests of the following:
 - 24 a. Individuals with mental illness.
 - 25 b. Individuals in recovery from addiction.
 - 26 c. Individuals with intellectual or other developmental disabilities.
- 27 (4) At least one openly declared consumer member of the local CFAC, as
28 recommended by the local CFAC, representing the interests of the following:
 - 29 a. Individuals with mental illness.
 - 30 b. Individuals with intellectual or other developmental disabilities.
 - 31 c. Individuals in recovery from addiction.
- 32 (5) An individual with health care expertise and experience in the fields of mental
33 health, intellectual or other developmental disabilities, or substance abuse
34 services.
- 35 (6) An individual with health care administration expertise consistent with the scale
36 and nature of the managed care organization.
- 37 (7) An individual with financial expertise consistent with the scale and nature of
38 the managed care organization.
- 39 (8) An individual with insurance expertise consistent with the scale and nature of
40 the managed care organization.
- 41 (9) An individual with social services expertise and experience in the fields of
42 mental health, intellectual or other developmental disabilities, or substance
43 abuse services.
- 44 (10) An attorney with health care expertise.
- 45 (11) A member who represents the general public and who is not employed by or
46 affiliated with the Department of Health and Human Services, as appointed by
47 the Secretary.
- 48 (12) The President of the LME/MCO Provider Council or the President's designee to
49 serve as a nonvoting member who shall participate only in Board activities that
50 are open to the public.

1 (13) An administrator of a hospital providing mental health, developmental
2 disabilities, and substance abuse emergency services to serve as a nonvoting
3 member who shall participate only in Board activities that are open to the
4 public.

5 Except as provided in subdivisions (12) and (13) of this subsection, an individual that contracts
6 with a local management entity (LME) for the delivery of mental health, developmental
7 disabilities, and substance abuse services may not serve on the board of the LME for the period
8 during which the contract for services is in effect. No person registered as a lobbyist under
9 Chapter 120C of the General Statutes shall be appointed to or serve on an area authority board. Of
10 the members described in subdivisions (2) through (4) of this subsection, the boards of county
11 commissioners shall ensure there is at least one member representing the interest of each of the
12 following: (i) individuals with mental illness, (ii) individuals with intellectual or other
13 developmental disabilities, and (iii) individuals in recovery from addiction.

14 ...
15 (d1) Beginning on July 1, 2017, each LME/MCO annually shall notify the Secretary of the
16 Department of Health and Human Services of the membership of the area board, the county of
17 residence of each member, how the membership composition requirements in subsection (b) of
18 this section are being met, the term of office of each member, and the LME/MCO's compliance
19 with training requirements for its board members.

20"
21 **SECTION 5.(b)** All area boards shall comply with the requirements of
22 G.S. 122C-118.1(a1), as enacted by subsection (a) of this section, no later than February 1, 2017.

23 **SECTION 6.** G.S. 122C-121 reads as rewritten:

24 "**§ 122C-121. Area director.**

25 (a) The area director is an employee of the area board, shall serve at the pleasure of the
26 board, and shall be appointed in accordance with G.S. 122C-117(7). As used in this subsection,
27 "employee" means an individual and does not include a corporation, a partnership, a limited
28 liability corporation, or any other business association.

29 (a1) The area board shall establish the area director's salary under Article 3 of Chapter 126
30 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a salary that
31 is in excess of the salary ranges established by the State Human Resources Commission. Any
32 salary that is higher than the maximum of the applicable salary range shall be supported by
33 documentation of comparable salaries in comparable operations within the region and shall also
34 include the specific amount the board proposes to pay the director. The area board shall not
35 authorize any salary adjustment that is above the normal allowable salary range without obtaining
36 prior approval from the Director of the Office of State Human Resources. ~~Resources~~ Resources and the
37 Secretary of the Department of Health and Human Services. In no instance shall the salary of an
38 area director that is higher than the maximum of the applicable salary range exceed by more than
39 forty percent (40%) the average salary of the area directors of the remaining LME/MCOs, as
40 determined by the Secretary. Any area director's salary that is higher than the maximum of the
41 applicable salary range and exceeds by more than forty percent (40%) the average salary of the
42 area directors of the remaining LME/MCOs shall be reduced to achieve compliance with this
43 subsection within 60 days after a determination by the Secretary.

44 (a2) The area board shall not provide the director with any benefits that are not also
45 provided by the area board to all permanent employees of the area program, except that the area
46 board may, in its discretion, offer severance benefits, relocation expenses, or both, to an applicant
47 for the position of director as an incentive for the applicant to accept an offer of employment. The
48 director shall be reimbursed only for allowable employment-related expenses at the same rate and
49 in the same manner as other employees of the area program.

50 (a3) The total compensation provided or recommended to be provided by each area board to
51 its area director, including salary, benefits, and bonuses, shall be subject to review and approval by

1 the Department of Health and Human Services and the Office of State Human Resources at least
2 annually. An area board shall not increase compensation to an area director prior to receiving
3 approval by the Secretary of the Department of Health and Human Services and the Director of the
4 Office of State Human Resources.

5 (b) The area board shall evaluate annually the area director for performance based on
6 criteria established by the Secretary and the area board. In conducting the evaluation, the area
7 board shall consider comments from the board of county commissioners.

8 (c) The area director is the administrative head of the area program. In addition to the
9 duties under G.S. 122C-111, the area director shall:

10 (1) Appoint, supervise, and terminate area program staff.

11 (2) Administer area authority services.

12 (3) Develop the budget of the area authority for review by the area board.

13 (4) Provide information and advice to the board of county commissioners through
14 the county manager.

15 (5) Act as liaison between the area authority and the Department.

16 (d) Except when specifically waived by the Secretary, the area director shall meet all the
17 following minimum qualifications:

18 (1) Masters degree.

19 (2) Related experience.

20 (3) Management experience.

21 (4) Any other qualifications required under G.S. 122C-120.1.

22 (e) The appointment of the area director shall be based on the recommendation of at least
23 two candidates by a search committee of the area authority board. The search committee shall
24 include a consumer board member, a county commissioner, and an appointee of the Secretary. The
25 Secretary may waive this requirement when appointment of the area director results from the
26 merger or consolidation of LME/MCOs.

27 (f) Except as a result of the merger or consolidation of LME/MCOs, the area director may
28 not be terminated by the area authority board without 30 days prior written notice to the Secretary
29 of the Department of Health and Human Services."

30 **SECTION 7.** G.S. 122C-154 reads as rewritten:

31 **"§ 122C-154. Personnel.**

32 Employees under the direct supervision of the area director are employees of the area
33 authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies
34 unless otherwise provided in this Article. Employees appointed by the county program director are
35 employees of the county. In a multicounty program, employment of county program staff shall be
36 as agreed upon in the interlocal agreement adopted pursuant to G.S. 122C-115.1. Notwithstanding
37 G.S. 126-9(b), an employee of an area authority may be paid a salary that is in excess of the salary
38 ranges established by the State Human Resources Commission. Any salary that is higher than the
39 maximum of the applicable salary range shall be supported by documentation of comparable
40 salaries in comparable operations within the region and shall also include the specific amount the
41 board proposes to pay the employee. The area board shall not authorize any salary adjustment ~~that~~
42 ~~is above the normal allowable salary range without obtaining prior approval for any employee that~~
43 ~~is above the normal allowable salary without submitting the documentation of comparable salaries~~
44 ~~in comparable operations within the region used as justification for the request to the Director of~~
45 ~~the Office of State Human Resources and obtaining prior written approval for the salary~~
46 ~~adjustment from the Director of the Office of State Human Resources-Resources and the Secretary~~
47 ~~of the Department of Health and Human Services."~~

48 **SECTION 8.** Section 12F.2(a) of S.L. 2015-241 reads as rewritten:

49 **"SECTION 12F.2.(a)** For the purpose of mitigating cash flow problems that many
50 LME/MCOs experience at the beginning of each fiscal year relative to single stream funding, the
51 Department of Health and Human Services, Division of Mental Health, Developmental

1 Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than
2 one-twelfth of each LME/MCO's ~~continuation-base budget~~ allocation at the beginning of the fiscal
3 year and subtract the amount of that distribution from the LME/MCO's total reimbursements for
4 the fiscal year. The Department of Health and Human Services, Division of Mental Health,
5 Developmental Disabilities, and Substance Abuse Services, shall distribute one-twelfth of each
6 LME/MCO's single-stream allocation on or before the last working day of each month beginning
7 with the first month of the fiscal year and continuing monthly thereafter."

8 **SECTION 9.** Section 8 of this act becomes effective July 1, 2016. The remainder of
9 this act is act is effective when it becomes law. G.S. 122C-124.3, as enacted by Section 2 of this
10 act, expires on June 30, 2018.