

## **Potential Barriers – Meeting Four (4) with Draft Recommendations**

- **Powers of the LME/MCO**

1. The current authority provided to the LME/MCOs may not allow flexibility needed to take on new business lines or adjust to inevitable changes in health care funding. LME-MCOs are directed under the session law to manage all public resources that are or may become available, which will include insurance exchanges, new Medicaid and Medicare programs. LME-MCOs need the power to manage and invest funds, to borrow money, to create appropriate operating entities, and to enter into necessary contracts to do so. They currently do not have this under 122C.

**Recommendation: The statutes should be modified to allow the LME-MCOs, under the direction of their Governing Boards to have the financial and legal authority to manage these resources as long as these are consistent with the purpose of the statute and approved by the Governing Board.**

2. Currently Directors and Officers of the LME hold full liability when acting within the scope of their official duties. This may prevent highly qualified persons from being willing to serve as members of the Board or as Officers of the MCO. Because 122C does not currently contemplate or adequately allow for MCO operations, Director liability is a particular concern.

**Recommendation: Current statutes provide all protections necessary for Board and LME/MCO Director.**

3. Some current annual budgeting and borrowing requirements may be restrictive in the operation of the large health care organization that the LMEs will become. LME-MCOs currently have no ability to incur debt for business expenses such as those to finance waiver expansion. LMEs are currently attempting to finance the expansion of the waiver out of operating funds and fund balances.

**Recommendation: Modify statutes to allow LME/MCOs to be able to operate and finance like other similar businesses with the approval of the Governing Board. Oversight of such activities for public entities is conducted by the LGC and this oversight should be included in statute as well as oversight by DHHS.**

- **Personnel**

1. **State personnel rules restrict salary scales and may severely limit the LME/MCOs capability to attract and retain the highly skilled staff needed to operate the waiver. Positions needed to successfully operate the waiver are often not included in State Personnel Plan.**

**Recommendation: Allow LME/MCOs to receive limited exemption from the State Personnel Rules. Any salary request for a position that is not found in the State Personnel Plan or that is currently found in the State Personnel Plan and which salary request is in excess of the highest level in that Plan must be supported by documentation of comparable salaries in comparable operations in that region of the state and approved by the Secretary of HHS.**

2. **Appointment of an LME/MCO Director. Currently, the appointment of the area director is dependent on a consensus of the county commissioners.**

**Recommendation: Appointment made exclusively by LME/MCO Governing Board**

- **Ownership of Real Property and Intellectual Property**

1. **County approval is now required for any LME/MCO to hold the title to real property. LME/MCOs need the flexibility to be able to purchase, invest in and own property necessary for the successful operation of the waiver and to the best benefit of all participating counties.**

**Recommendation: MCO/LME can purchase, hold title, improve and finance real property with the approval of the Governing Board and the Local Government Commission (LGC) and with the oversight of the DHHS.**

2. **Currently, LME property reverts to the county in the event that the county withdraws from the LME and the interlocal agreement is dissolved. This may happen regardless of whether the LME or the county purchased the property. There is no provision to require**

counties to reimburse the LME/MCO if property is seized by the county.

**Recommendation:** Title to real property should be held by the LME/MCO. If an LME/MCO dissolves, the property should go to the successor organization or to the state so that investments can continue to benefit the MH-DD-SAS system in that area.

3. There are currently no exemptions for LME/MCOs to public records laws as there are for hospitals, universities and some other agencies. Transparency is essential but the LME/MCOs may need to be allowed to protect competitive healthcare information.

**Recommendation:** Revise statutory requirements such that LME/MCOs may have limited exemptions as do public hospitals and universities to protect intellectual property and other competitive health care information.

- **Business and Reporting Requirements**

1. LMEs must currently develop a Local Business Plan – not consistent with requirements for operation of the Waiver.

**Recommendation:** Eliminate this requirement

2. LMEs must prepare and deliver to the counties Quarterly Service Reports.

**Recommendation:** Eliminate this requirement (see # 3)

3. LMEs must prepare and deliver Biannual Reports to each Board of County Commissioners in their catchment areas.

**Recommendation:** Prepare and distribute annual financial and service reports to county commissioners. Director or Staff from LME/MCO may present this information to county commissioner board members as requested by these boards.

4. Current statute requires basis of accounting to be “modified accrual” with LGC authority to change the required basis of accounting and features that local government accounting system must contain. MCO waiver requirements direct a full accrual accounting process.

**Recommendation: Eliminate “modified accrual” as a requirement and replace with “full accrual”. Continue requirement for LGC to receive audit reports.**

5. Current statute allows LGC to override the Finance Officer in payment of a bill the FO has declined to pay.

**Recommendation: Eliminate this language**

6. Guardianship: LMEs have provided and contracted for guardianship services in the past. Recent court decision has declared this a conflict to interest and calls for a prohibition of provision of and contracting for guardianship services by the LME/MCO. LMEs currently serve as public guardians and also contract with private guardianship agencies to provide guardianship service.

**Recommendation: Transition all public guardianship to local Departments of Social Services (DSS) to provide or contract for guardianship services for individuals with mental health, developmental disabilities, and substance abuse issues previously supported by the public MH/DD/SA system. To address potential conflict of interest, contract provisions must prohibit any provider of service to serve as the guardian for individuals for whom they provide service.**