

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

H/S

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BILL DRAFT 2011-SQz-32\* [v.9] (03/11)

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)

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Short Title: LME Governance.

(Public)

Sponsors: Representative Unknown./Senator Unknown.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MAKE CHANGES IN GOVERNANCE OF LOCAL MANAGEMENT  
3 ENTITIES WITH RESPECT TO THE IMPLEMENTATION OF STATEWIDE  
4 EXPANSION OF THE 1915(B)/(C) MEDICAID WAIVER, AS RECOMMENDED BY  
5 THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN  
6 SERVICES.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 122C-115(a) reads as rewritten:

9 "**§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and**  
10 **cities.**

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

21 **SECTION 2.** G.S. 122C-116 reads as rewritten:

22 "**§ 122C-116. Status of area authority; status of consolidated human services agency.**

23 (a) An area authority is a local political subdivision of the State ~~except that a single~~  
24 ~~county area authority is considered a department of the county in which it is located for the~~  
25 ~~purposes of Chapter 159 of the General Statutes.~~ State.

26 (b) A consolidated human services agency is a department of the county."

27 **SECTION 3.(a)** G.S. 122C-118.1 reads as rewritten:

28 "**§ 122C-118.1. Structure of area board.**

29 (a) ~~An area board shall have no fewer than 11 and no more than 25 members. However,~~  
30 ~~the area board for a multicounty area authority consisting of eight or more counties may have~~  
31 ~~up to 30 members. In a single county area authority, the members shall be appointed by the~~  
32 ~~board of county commissioners. Except as otherwise provided, in areas consisting of more than~~  
33 ~~one county, each board of county commissioners within the area shall appoint one~~



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1 commissioner as a member of the area board. These members shall appoint the other members.  
2 The boards of county commissioners within the multicounty area shall have the option to  
3 appoint the members of the area board in a manner other than as required under this section by  
4 adopting a resolution to that effect. The boards of county commissioners in a multicounty area  
5 authority shall indicate in the business plan each board's method of appointment of the area  
6 board members in accordance with G.S. 122C-115.2(b). These appointments shall take into  
7 account sufficient citizen participation, representation of the disability groups, and equitable  
8 representation of participating counties. Individuals appointed to the board shall include two  
9 individuals with financial expertise, an individual with expertise in management or business,  
10 and an individual representing the interests of children. A member of the board may be  
11 removed with or without cause by the initial appointing authority. Vacancies on the board shall  
12 be filled by the initial appointing authority before the end of the term of the vacated seat or  
13 within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the  
14 remainder of the unexpired term. An area board shall have no fewer than 11 and no more than  
15 21 voting members. The board of county commissioners, or the boards of county  
16 commissioners within the area, shall appoint members consistent with the requirements  
17 provided in subsection (b) of this section. If the board or boards fail to comply with the  
18 requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented  
19 category. A member of the board may be removed with or without cause by the initial  
20 appointing authority. The area board may declare vacant the office of an appointed member  
21 who does not attend three consecutive scheduled meetings without justifiable excuse. The  
22 chairman of the area board shall notify the appropriate appointing authority of any vacancy.  
23 Vacancies on the board shall be filled by the initial appointing authority before the end of the  
24 term of the vacated seat or within 90 days of the vacancy, whichever occurs first, and the  
25 appointments shall be for the remainder of the unexpired term.

26 (b) ~~Except as otherwise~~ Within the maximum membership provided in this subsection,  
27 ~~not more than fifty percent (50%) of~~ subsection (a) of this section, the members membership of  
28 the area board shall reside within the catchment area and ~~represent the following:~~ be composed  
29 as follows:

- 30 (1) ~~A physician licensed under Chapter 90 of the General Statutes to practice~~  
31 ~~medicine in North Carolina who, when possible, is certified as having~~  
32 ~~completed a residency in psychiatry.~~ At least one member who is a current  
33 county commissioner.
- 34 (2) ~~A clinical professional from the fields of mental health, developmental~~  
35 ~~disabilities, or substance abuse.~~ The chair of the local Consumer and Family  
36 Advisory Committee (CFAC) or the chair's designee.
- 37 (3) ~~At least one family member or individual from a citizens' organization~~  
38 ~~composed primarily of consumers or their family members, of the local~~  
39 ~~CFAC, as recommended by the local CFAC, representing the interests of~~  
40 ~~individuals:~~ the following:
  - 41 a. ~~With~~ Individuals with ~~mental illness; illness, or~~
  - 42 b. ~~In~~ Individuals in ~~recovery from addiction; or addiction, or~~
  - 43 c. ~~With~~ Individuals with ~~intellectual or other developmental disabilities.~~
- 44 (4) ~~At least one openly declared consumer member of the local CFAC, as~~  
45 ~~recommended by the local CFAC, representing the interests of the~~  
46 ~~following:~~ the following:
  - 47 a. ~~With~~ Individuals with ~~mental illness; illness, or~~
  - 48 b. ~~With~~ Individuals with ~~intellectual or other developmental disabilities;~~  
49 ~~or disabilities, or~~
  - 50 c. ~~In~~ Individuals in ~~recovery from addiction.~~

- (5) An individual with health care expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.
- (6) An individual with health care administration expertise consistent with the scale and nature of the managed care organization.
- (7) An individual with financial expertise consistent with the scale and nature of the managed care organization.
- (8) An individual with insurance expertise consistent with the scale and nature of the managed care organization.
- (9) An individual with social services expertise and experience in the fields of mental health, intellectual or other developmental disabilities, or substance abuse services.
- (10) An attorney with health care expertise.
- (11) A member who represents the general public and who is not employed by or affiliated with the Department of Health and Human Services, as appointed by the Secretary.
- (12) The President of the LME/MCO Provider Council or the President's designee to serve as a nonvoting member and shall only participate in Board activities that are open to the public.

~~An~~ Except as provided in subdivision (12) of this subsection, an individual that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve on the board of the LME for the period during which the contract for services is in effect. Of the members described in subdivisions (2) through (4) of this subsection, the board of county commissioners shall ensure there is at least one member representing the interest of each of the following: (i) individuals with mental illness, (ii) individuals with intellectual or other developmental disabilities, and (iii) individuals in recovery from addiction.

(c) The board of county commissioners may elect to appoint a member of the area authority board to fill concurrently no more than two categories of membership if the member has the qualifications or attributes of the two categories of membership.

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed the earlier of three years or the member's service as a county commissioner. Any member of an area board who is a county manager serves on the board at the pleasure of the initial appointing authority, for a term not to exceed the earlier of three years or the duration of the member's employment as a county manager. The terms of ~~the other~~ members on the area board shall be for three years, except that upon the initial formation of an area board in compliance with subsection (a) of this section, one-third shall be appointed for one year, one-third for two years, and all remaining members for three years. ~~Members, other than county commissioners and county managers, Members shall not be appointed for more than two~~ three consecutive terms. ~~Board members serving as of July 1, 2006, may remain on the board for one additional term. This subsection applies to all area authority board members regardless of the procedure used to appoint members under subsection (a) of this section.~~

(e) Upon request, the board shall provide information pertaining to the membership of the board that is a public record under Chapter 132 of the General Statutes."

**SECTION 3.(b)** All area boards shall meet the requirements of G.S. 122C-118.1, as amended by Section 3 of this act, no later than July 1, 2013.

**SECTION 4.(a)** G.S. 122C-119.1 reads as rewritten:

**"§ 122C-119.1. Area Authority board members' training.**

All members of the governing body for an area authority shall receive initial orientation on board members' responsibilities and annual training provided by the Department ~~in~~ and shall

1 include fiscal management, budget development, and fiscal accountability. A member's refusal  
2 to be trained shall be grounds for removal from the board."

3 **SECTION 4.(b)** The North Carolina Department of Health and Human Services, in  
4 cooperation with the School of Government and the local management entities, shall develop a  
5 standardized core curriculum for the training described in Section 4(a) of this act.

6 **SECTION 5.** G.S. 122C-170(b) reads as rewritten:

7 "Part 4A. Consumer and Family Advisory Committees.

8 "**§ 122C-170. Local Consumer and Family Advisory Committees.**

9 ...  
10 (b) Each of the disability groups shall be equally represented on the CFAC, and the  
11 CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment  
12 area. The terms of members shall be three years, and no member may serve more than ~~two~~three  
13 consecutive terms. The CFAC shall be composed exclusively of:

- 14 (1) Adult consumers of mental health, developmental disabilities, and substance  
15 abuse services.  
16 (2) Family members of consumers of mental health, developmental disabilities,  
17 and substance abuse services.

18 ...."  
19 **SECTION 6.** Area authorities may add one or more additional counties to their  
20 existing catchment area by agreement of a majority of the existing member counties.

21 **SECTION 7.(a)** Beginning July 1, 2012, and for a period of two years thereafter,  
22 the Department of Health and Human Services shall not approve any county's request to  
23 withdraw from a multicounty area authority operating under the 1915 (b)/(c) Medicaid Waiver.  
24 Not later than January 1, 2014, the Secretary shall adopt rules to establish a process for county  
25 disengagement that shall at a minimum ensure the following:

- 26 (1) Provisions of service are not disrupted by the disengagement.  
27 (2) The disengaging county is either in compliance or plans to merge with an  
28 area authority that is in compliance with population requirements provided  
29 in G.S. 122C-155(a).  
30 (3) The timing of the disengagement is accounted for and does not conflict with  
31 setting capitation rates.  
32 (4) Adequate notice is provided to the affected counties, the Department of  
33 Health and Human Services, and the General Assembly.  
34 (5) Provisions for distribution of any real property no longer within the  
35 catchment area of the area authority.

36 **SECTION 7.(b)** G.S. 122C-112.1 is amended by adding a new subdivision to read:

37 "(38) Adopt rules establishing a procedure for single-county disengagement from  
38 an area authority operating under a 1915 (b)/(c) Medicaid Waiver."

39 **SECTION 8.** G.S. 122C-147(c) reads as rewritten:

40 "**§ 122C-147. Financing and title of area authority property.**

41 ...  
42 (c) All real property purchased for use by the area authority shall be provided by local  
43 or federal funds unless otherwise allowed under subsection (b) of this section or by specific  
44 capital funds appropriated by the General Assembly. The title to this real property and the  
45 authority to acquire it is held by the ~~county where the property is located. The authority to hold~~  
46 ~~title to real property and the authority to acquire it, including the area authority's authority to~~  
47 ~~finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area~~  
48 ~~authority or by the contracting governmental entity with the approval of the board or boards of~~  
49 ~~commissioners of all the counties that comprise the area authority. The approval of a board of~~  
50 ~~county commissioners shall be by resolution of the board and may have any necessary or~~  
51 ~~proper conditions, including provisions for distribution of the proceeds in the event of~~

~~disposition of the property by the area authority.~~ area authority. Real property may not be acquired by means of an installment contract under G.S. 160A-20 unless the Local Government Commission has approved the acquisition. No deficiency judgment may be rendered against any unit of local government in any action for breach of a contractual obligation authorized by this subsection, and the taxing power of a unit of local government is not and may not be pledged directly or indirectly to secure any moneys due under a contract authorized by this subsection.

...."

**SECTION 9.** G.S. 122C-117 reads as rewritten:

**"§ 122C-117. Powers and duties of the area authority.**

(a) The area authority shall do all of the following:

(7) ~~Appoint an area director in accordance with G.S. 122C-121(d). The appointment is subject to the approval of the board of county commissioners except that one or more boards of county commissioners may waive its authority to approve the appointment. The appointment shall be based on a selection by a search committee of the area authority board. The search committee shall include consumer board members, a county manager, and one or more county commissioners. The Secretary shall have the option to appoint one member to the search committee.~~

(17) Have the authority to borrow money with the approval of the Local Government Commission.

(c) Within 30 days of the end of each quarter of the fiscal year, the area director and finance officer of the area authority shall provide the quarterly report of the area authority to the county finance officer. The county finance officer shall provide the quarterly report to the board of county commissioners at the next regularly scheduled meeting of the board. The clerk of the board of commissioners shall notify the area director and the county finance officer if the quarterly report required by this subsection has not been submitted within the required period of time. This information shall be ~~presented in a format prescribed by the county. At least twice a year, this information shall be presented in person and shall be read into the minutes of the meeting at which it is presented. In addition, the area director or finance officer of the area authority shall provide to the board of county commissioners ad hoc reports \_as requested by the board of county commissioners.~~ delivered to the county and at the request of the board of county commissioners, may be presented in person by the area director or the director's designee.

...."

**SECTION 10.** Part 2 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

**"§ 122C-126.1. Confidentiality of competitive health care information.**

(a) For the purposes of this section, competitive health care information means information relating to competitive health care activities by or on behalf of the area authority. Competitive health care information shall be confidential and not a public record under Chapter 132 of the General Statutes; provided that any contract entered into by or on behalf of an area authority shall be a public record unless otherwise exempted by law or the contract contains competitive health care information, the determination of which shall be as provided in subsection (b) of this section.

(b) If an area authority is requested to disclose any contract that the area authority believes in good faith contains or constitutes competitive health care information, the area authority may either redact the portions of the contract believed to constitute competitive health

care information prior to disclosure or, if the entire contract constitutes competitive health care information, refuse disclosure of the contract. The person requesting disclosure of the contract may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any redacted portion thereof. In any action brought under this subsection, the issue for decision by the court shall be whether the contract, or portions of the contract withheld, constitutes competitive health care information, and in making its determination, the court shall be guided by the procedures and standards applicable to protective orders requested under Rule 26(c)(7) of the Rules of Civil Procedure. Before rendering a decision, the court shall review the contract in camera and hear arguments from the parties. If the court finds that the contract constitutes or contains competitive health care information, the court may either deny disclosure or may make such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

(c) Nothing in this section shall be deemed to prevent the Attorney General, the State Auditor, or an elected public body, in closed session, which has responsibility for the area authority, from having access to this confidential information. The disclosure to any public entity does not affect the confidentiality of the information. Members of the public entity shall have a duty not to further disclose the confidential information."

**SECTION 11.(a)** G.S.122C-154 reads as rewritten:

**"§ 122C-154. Personnel.**

Employees under the direct supervision of the area director are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. Employees appointed by the county program director are employees of the county. In a multicounty program, employment of county program staff shall be as agreed upon in the interlocal agreement adopted pursuant to G.S. 122C-115.1. Pursuant to G.S. 126-9(b), an area board may request a salary for an employee that is in excess of the salary ranges established by the State Personnel Commission. The request shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the employee. The area board shall not request a salary adjustment that is above the normal allowable salary range as determined by the State Personnel Commission without obtaining prior approval from the Secretary."

**SECTION 11.(b)** G.S. 122C-121(a1) reads as rewritten:

"(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. ~~An~~Pursuant to G.S. 126-9(b), an area board may request ~~an adjustment to the salary ranges under G.S. 126-9(b).~~ a salary for a director that is in excess of the salary ranges determined by the State Personnel Commission. The request shall ~~include specific information supporting the need for the adjustment, including comparative salary and patient caseload data for other LMEs, and be supported by documentation of comparable salaries in comparable operations within the region and~~ shall also include the specific amount the area board proposes to pay the director. The area board shall not request a salary adjustment that is ~~more than ten percent (10%)~~ above the normal allowable salary range as determined by the State Personnel Commission ~~without obtaining prior approval from the Secretary.~~"

**SECTION 12.(a)** G.S. 153A-76 reads as rewritten:

**"§ 153A-76. Board of commissioners to organize county government.**

The board of commissioners may create, change, abolish, and consolidate offices, positions, departments, boards, commissions, and agencies of the county government, may impose ex officio the duties of more than one office on a single officer, may change the composition and manner of selection of boards, commissions, and agencies, and may generally organize and reorganize the county government in order to promote orderly and efficient administration of county affairs, subject to the following limitations:

- (1) The board may not abolish an office, position, department, board, commission, or agency established or required by law.

- (2) The board may not combine offices or confer certain duties on the same officer when this action is specifically forbidden by law.
- (3) The board may not discontinue or assign elsewhere a function or duty assigned by law to a particular office, position, department, board, commission, or agency.
- (4) The board may not change the composition or manner of selection of a local board of education, ~~the board of health, the board of social services,~~ the board of elections, or the board of alcoholic beverage control.
- (5) The board may not consolidate an area mental health, developmental disabilities, and substance abuse board into a consolidated human services board. The board may not abolish an area mental health, developmental disabilities, and substance abuse board except as provided in Chapter 122C of the General Statutes."

**SECTION 12.(b)** G.S. 153A-77 reads as rewritten:

**"§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.**

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This ~~subsection~~section shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board ~~and~~or any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county except as provided in G.S. 153A-76. A board of county commissioners exercising the power and authority under this subsection may, notwithstanding G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil penalties. If a public health rule adopted by a board of county commissioners imposes a civil penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be applicable to that public health rule unless the rule states that a violation of the rule is a misdemeanor. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

- (1) Consolidate ~~the provision~~certain provisions of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;
- (2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;
- (3) Create a consolidated county human services agency having the authority to carry out the functions of any combination of commissions, boards or agencies appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners including the local health department, the county department of social services, ~~and~~or

the area mental health, developmental disabilities, and substance abuse services authority; and

- (4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

- (1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery from substance abuse, one family member of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

(1a) Notwithstanding subdivision (1) of this subsection, a consolidated human service board not exercising powers and duties of an area mental health, developmental disabilities, and substance abuse services board shall include four persons who are consumers of human services.

- (2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.

- (3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.

- (4) One member of the board of county commissioners.

- (5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi)



1 failure to maintain qualifications for appointment required under this subsection. A board  
2 member may be removed only after the member has been given written notice of the basis for  
3 removal and has had the opportunity to respond.

4 A member may receive a per diem in an amount established by the county board of  
5 commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy  
6 set by the county board of commissioners. The board shall meet at least quarterly. The  
7 chairperson or three of the members may call a special meeting.

8 (d) The consolidated human services board shall have authority to:

- 9 (1) Set fees for departmental services based upon recommendations of the  
10 human services director. Fees set under this subdivision are subject to the  
11 same restrictions on amount and scope that would apply if the fees were set  
12 by a county board of health, a county board of social services, or a mental  
13 health, developmental disabilities, and substance abuse area authority.
- 14 (2) Assure compliance with laws related to State and federal programs.
- 15 (3) Recommend creation of local human services programs.
- 16 (4) Adopt local health regulations and participate in enforcement appeals of  
17 local regulations.
- 18 (5) Perform regulatory health functions required by State law.
- 19 (6) Act as coordinator or agent of the State to the extent required by State or  
20 federal law.
- 21 (7) Plan and recommend a consolidated human services budget.
- 22 (8) Conduct audits and reviews of human services programs, including quality  
23 assurance activities, as required by State and federal law or as may otherwise  
24 be necessary periodically.
- 25 (9) Advise local officials through the county manager.
- 26 (10) Perform public relations and advocacy functions.
- 27 (11) Protect the public health to the extent required by law.
- 28 (12) Perform comprehensive mental health services ~~planning~~ planning if the  
29 county is exercising the powers and duties of an area mental health,  
30 developmental disabilities, and substance abuse services board under the  
31 consolidated human services board.
- 32 (13) Develop dispute resolution procedures for human services contractors and  
33 clients and public advocates, subject to applicable State and federal dispute  
34 resolution procedures for human services programs, when applicable.

35 Except as otherwise provided, the consolidated human services board shall have the powers  
36 and duties conferred by law upon a board of health, a social services board, and an area mental  
37 health, developmental disabilities, and substance abuse services board.

38 Local employees who serve as staff of a consolidated county human services agency are  
39 subject to county personnel policies and ordinances only and are not subject to the provisions  
40 of the State Personnel ~~Act~~, Act, unless the county board of commissioners elects to subject the  
41 local employees to the provisions of that Act. All consolidated county human services agencies  
42 shall comply with all applicable federal laws, rules, and regulations requiring the establishment  
43 of merit personnel systems.

44 (e) The human services director of a consolidated county human services agency shall  
45 be appointed and dismissed by the county manager with the advice and consent of the  
46 consolidated human services board. The human services director shall report directly to the  
47 county manager. The human services director shall:

- 48 (1) Appoint staff of the consolidated human services agency with the county  
49 manager's approval.
- 50 (2) Administer State human services programs.

- (3) Administer human services programs of the local board of county commissioners.
- (4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.
- (5) Plan the budget of the consolidated human services agency.
- (6) Advise the board of county commissioners through the county manager.
- (7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.
- (8) Act as an agent of and liaison to the State, to the extent required by law.

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, ~~and~~ or a director of an area mental health, developmental disabilities, and substance abuse services authority.

(f) ~~This section applies to counties with a population in excess of 425,000.~~

**SECTION 13.(a)** G.S. 122C-122 is repealed.

**SECTION 13.(b)** G.S. 35A-1202(4) reads as rewritten:

**"§ 35A-1202. Definitions.**

When used in the Subchapter, unless a contrary intent is indicated or the context requires otherwise:

...

- (4) "Disinterested public agent" ~~means:~~means
  - a. ~~The~~the director or assistant directors of a ~~local human services agency, or county department of social services.~~
  - b. ~~An adult officer, agent, or employee of a State human services agency. The~~Except as provided in G.S. 35A-1213(f), the fact that a disinterested public agent is employed by a State or local human services agency that provides financial assistance, services, or treatment to a ward does not disqualify that person from being appointed as guardian.

...."

**SECTION 13.(c)** G.S. 35A-1213 reads as rewritten:

**"§ 35A-1213. Qualifications of guardians.**

(a) The clerk may appoint as guardian an adult individual, a corporation, or a disinterested public agent. The applicant may submit to the clerk the name or names of potential guardians, and the clerk may consider the recommendations of the next of kin or other persons.

(b) A nonresident of the State of North Carolina, to be appointed as general guardian, guardian of the person, or guardian of the estate of a North Carolina resident, must indicate in writing his willingness to submit to the jurisdiction of the North Carolina courts in matters relating to the guardianship and must appoint a resident agent to accept service of process for the guardian in all actions or proceedings with respect to the guardianship. Such appointment must be approved by and filed with the clerk, and any agent so appointed must notify the clerk of any change in the agent's address or legal residence. The clerk shall require a nonresident guardian of the estate or a nonresident general guardian to post a bond or other security for the faithful performance of the guardian's duties. The clerk may require a nonresident guardian of the person to post a bond or other security for the faithful performance of the guardian's duties.

(c) A corporation may be appointed as guardian only if it is authorized by its charter to serve as a guardian or in similar fiduciary capacities. A corporation shall meet the requirements outlined in Chapters 55 and 55D of the General Statutes. A corporation will provide a written copy of its charter to the clerk of superior court. A corporation contracting with a public agency

1 to serve as guardian is required to attend guardianship training and provide verification of  
2 attendance to the contracting agency.

3 (d) A disinterested public agent who is appointed by the clerk to serve as guardian is  
4 authorized and required to do so; provided, if at the time of the appointment or any time  
5 subsequent thereto the disinterested public agent believes that his role or the role of his agency  
6 in relation to the ward is such that his service as guardian would constitute a conflict of interest,  
7 or if he knows of any other reason that his service as guardian may not be in the ward's best  
8 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a  
9 different guardian. A disinterested public agent who is appointed as guardian shall serve in that  
10 capacity by virtue of his office or employment, which shall be identified in the clerk's order and  
11 in the letters of appointment. When the disinterested public agent's office or employment  
12 terminates, his successor in office or employment, or his immediate supervisor if there is no  
13 successor, shall succeed him as guardian without further proceedings unless the clerk orders  
14 otherwise.

15 (e) Notwithstanding any other provision of this section, an employee of a treatment  
16 facility, as defined in G.S. 35A-1101(16), may not serve as guardian for a ward who is an  
17 inpatient in or resident of the facility in which the employee works; provided, this subsection  
18 shall not apply to or affect the validity of any appointment of a guardian that occurred before  
19 October 1, 1987.

20 (f) An individual that contracts with a local management entity (LME) for the delivery  
21 of mental health, developmental disabilities, and substance abuse services may not serve as a  
22 guardian for a ward for whom the individual is providing such services."

23 **SECTION 13.(d)** G.S. 35A-1292(a) reads as rewritten:

24 "**§ 35A-1292. Resignation.**

25 (a) Any guardian who wishes to resign ~~may apply in writing to the clerk,~~ shall file a  
26 motion with the clerk, setting forth the circumstances of the case. If a general guardian or  
27 guardian of the estate, at the time of making the application, also exhibits his final account for  
28 settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may  
29 accept the resignation of the guardian and discharge him and appoint a successor ~~guardian, but~~  
30 ~~the guardian.~~ The guardian so discharged and his sureties are still liable in relation to all matters  
31 connected with the guardianship before the discharge. discharge and shall continue to ensure  
32 that the ward's needs are met until the clerk officially appoints a successor. The guardian shall  
33 attend the hearing to modify the guardianship, if physically able."

34 **SECTION 13.(e)** In order to achieve continuity of care and services, any successor  
35 guardian shall make diligent efforts to continue existing contracts entered into under the  
36 authority of G.S. 122C-122 where consistent with the best interest of the ward as required by  
37 Chapter 35A of the General Statutes.

38 **SECTION 14.** This act is effective when it becomes law.