

**2017**

**HOUSE  
HEALTH CARE REFORM**

**MINUTES**



## HOUSE COMMITTEE ON HEALTH CARE REFORM

2017-2018 SESSION

Clerks: Pan Briles, Margie Penven, Candace Slate



Rep. Dana Bumgardner  
Co-Chair



Rep. Nelson Dollar  
Co-Chair



Rep. Donny Lambeth  
Co-Chair



Rep. William Brisson  
Member



Rep. Carla Cunningham  
Member



Rep. Josh Dobson  
Member



Rep. Ed Hanes  
Member



Rep. Pat Hurley  
Member



Rep. David Lewis  
Member



Rep. Pat McElraft  
Member



Rep. Greg Murphy  
Member



Rep. Michael Wray  
Member

**HOUSE COMMITTEE ON HEALTH CARE REFORM 2017-18**

[illegible]

## ATTENDANCE

**HOUSE COMMITTEE ON HEALTH CARE REFORM**

## 2017-2018 SESSION

[illegible]





**Margie Penven (Rep. Dana Bumgardner)**

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**From:** Candace Slate (Rep. Nelson Dollar)  
**nt:** Thursday, March 23, 2017 01:55 PM  
**To:** Rep. Nelson Dollar; Rep. Donny Lambeth; Rep. Josh Dobson; Rep. Donna White  
**Cc:** Candace Slate (Rep. Nelson Dollar); Pan Briles (Rep. Donny Lambeth); Julie Ryan (Rep. Josh Dobson); Susan Mullins (Rep. Donna White)  
**Subject:** <NCGA> House Health Care Reform Committee Meeting Notice for Tuesday, March 28, 2017 at 1:00 PM  
**Attachments:** Add Meeting to Calendar\_LINC\_ics

**NORTH CAROLINA HOUSE OF REPRESENTATIVES  
COMMITTEE MEETING NOTICE  
AND  
BILL SPONSOR NOTIFICATION  
2017-2018 SESSION**

You are hereby notified that the **House Committee on Health Care Reform** will meet as follows:

**DAY & DATE:** Tuesday, March 28, 2017  
**TIME:** 1:00 PM  
**LOCATION:** 643 LOB  
**COMMENTS:** Representative Bumgardner will preside.

The following bills will be considered:

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 403	LME/MCO Claims Reporting/Mental Health Amdts.	Representative Dollar Representative Lambeth Representative Dobson Representative White





Respectfully,

Representative Dana Bumgardner, Co-Chair  
Representative Nelson Dollar, Co-Chair  
Representative Donny Lambeth, Co-Chair

I hereby certify this notice was filed by the committee assistant at the following offices at 1:52 PM on Thursday, March 23, 2017.

\_\_\_\_ Principal Clerk  
\_\_\_\_ Reading Clerk – House Chamber

Candace Slate (Committee Assistant)



**House Committee on Health Care Reform  
Tuesday, March 28, 2017, at 1:00 p.m.  
Room 643, Legislative Office Building**

**MINUTES**

The House Committee on Health Care Reform met at 1:00 p.m. on March 28, 2017, in Room 643 of the Legislative Office Building. Representatives Brisson, Bumgardner, Cunningham, Dollar, Lambeth, and Murphy attended. The visitor registration sheets are attached as Exhibit A.

Chairman Dana Bumgardner presided. A copy of the Agenda is attached as Exhibit B. See Exhibits C and D for the names of the Pages and Assistant Sergeants-at-Arms serving the committee.

The following bill was before the committee:

**HB 403, LME/MCO Claims Reporting/Mental Health Amds. (Representatives Dollar, Lambeth, Dobson, White.)** A copy of HB 403 is attached as Exhibit E. A copy of the bill jacket is attached as Exhibit F.

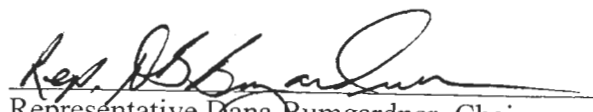
The Chairman Bumgardner asked for a motion to put a proposed committee substitute (PCS) for HB 403 before the committee for discussion. Representative Murphy so moved, and the motion carried unanimously. The chair recognized Co-Chair Dollar who came forward to explain the PCS for HB 403, A BILL TO BE ENTITLED AN ACT MODIFYING CERTAIN REQUIREMENTS PERTAINING TO LOCAL MANAGEMENT ENTITIES/MANAGED CARE ORGANIZATIONS. A copy of the PCS for HB 403 is attached as Exhibit G. A copy of the bill analysis for the PCS, which was prepared by staff attorney Jennifer Hillman, is attached as Exhibit H.

After committee discussion, Chairman Bumgardner asked if there was anyone from the public who wanted to comment.

Mr. Joe Lanier of Troutman Saunders Law Firm, representing Cardinal Innovations Healthcare Solutions, said his client respectfully disagreed with the premise of the bill.

The chair recognized Representative Lambeth who made a motion that the proposed committee substitute be given a favorable report, unfavorable as to the original bill, with a serial referral to the Committee on Appropriations. The motion carried unanimously. A copy of the committee report is attached as Exhibit I.

The meeting adjourned at 1:29 p.m.

  
Representative Dana Bumgardner, Chair  
Presiding

  
Margie Penven, Committee Clerk



Attachments:

- A. Visitors Registration
- B. Agenda
- C. Pages Serving Committee
- D. Assistant Sergeants-at-Arms Serving Committee
- E. HB 403
- F. Copy of Bill Jacket for HB 403
- G. PCS for HB 403
- H. Analysis of PCS for HB 403
- I. Committee Report



## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Corye Dunn	DRWC
NICHOLE KARIM	NAMING
David Hester	NC Center for Health
Flint Benson	SEANC
Marc Gordon	ASAC
Ami Tege	NMIRS
Linda Rascoe	DMA
Michelle Frazier	SML
Tracy [unclear]	MHC
Amanda [unclear]	[unclear]
[unclear]	"

Reggie Holley The Longman Group





# VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

DANIEL BAUM	THORNTON SANDERS
Susanna Davis	OSHR
Wendy Kelly	Focus Carolina
Peter Daniel	Convent C
Podrig gibbons	↓
John Cooper	↓
Cheryl B...	...
Bret Hager	CaroMont
TJ Brubee	NP
Costello	NCHA
Seal Srs	ND
Rashammi	REN



## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Jon Wilson	NCAHCF
Joyce Peters	CSS
Ann Rodriguez	NC Council of Comm. Programs
Mary Harper	NC Council of Comm. Programs
Josh Lauer	SML
Cheryl Perkinson	Perkinson Law
Hugh Johnson	VLP
Carla Obuse	Care4 Carolina
Ben Packman	DNHS
A.W. Mobley	Farm Rep.
Keith Heel	PSG



## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

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NAME

FIRM OR AGENCY AND ADDRESS

Perry Huff	SOB
Katy Kingsbury	BP
Leahy	CBS
Andrew	
Kyle	NEAHP
William Miller	W
Mark L...	Shirley Thompson
Phoebe Landon	MW
Rhager Jackson	Focus Carolina
John Noh	The Arc of North Carolina
Richard White	N/A





## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Alexis Hignite	N/A
Jason Vogler	DMH/DD/SAS - DHHS
Mabel McGlothlen	DMH/DD/SAS
Lisa Haire	DMH/DD/SAS
Chris McClune	BP
Matthew Burbaker	Burbaker Assoc.
Kelly Vogel	KV Strategies LLC
Deb Graft	DMA
Patricia Doyle	DMA
SANDRA Terrell	DMA - DHHS
GERBY WHEN	NM



## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

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NAME

FIRM OR AGENCY AND ADDRESS

Ryan Blackledge	Cone Health
Kara Weishaar	SA
Susan Vishneski	Local physician
Dana Simpson	SA
Jel Maynard	GM - Assoc
Payton Maynard	Jr
Rick Zechini	Williams Miller
Doug Hirsch	Blue Devils
Christine Craig	WakeMed



## VISITOR REGISTRATION SHEET

House Committee on Health Care Reform

March 28, 2017

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

David Collins	SEANC
Brian Perkins	Alliance DAC
Jennifer Mahan	ASNC
Debbie Clary	NCP
Zane Stilwell	TSG
Jay Nichols	IN+Co
JOE CAMIER	TSS



**House Committee on Health Care Reform  
Tuesday, March 28, 2017, 1:00 PM  
643 Legislative Office Building**

**AGENDA**

**Welcome and Opening Remarks**

**Introduction of Pages and Sergeants-at-Arms**

**Bills**

<b>BILL NO.</b>	<b>SHORT TITLE</b>	<b>SPONSOR</b>
HB 403	LME/MCO Claims Reporting/Mental Health Amdts.	Representative Dollar Representative Lambeth Representative Dobson Representative White

**Presentations**

**Other Business**

**Adjournment**





**House Pages  
Assignments  
Tuesday, March 28, 2017  
Session: 2:00 PM**

Committee	Room	Time	Staff	Comments	Member
Agriculture	643	12:00 PM	Christopher Tucker		Rep. Speaker Tim Moore
			Anthony Vincent		Rep. Speaker Tim Moore
Insurance	1228/1327	12:00 PM	Brenton Lanier		Rep. Brenden Jones
			Greyson Siderio		Rep. Chris Malone
Education - Universities	1228/1327	1:00 PM	Megan Hammaker		Rep. Kevin Corbin
			Sydney Todd		Rep. Speaker Tim Moore
			Benjamin Williams		Rep. Marvin Lucas
			TJ Elbert		Rep. Marvin Lucas
Health Care	643	1:00 PM	Jon Edmonston		Rep. Grier Martin
			Situna Taliau		Rep. Speaker Tim Moore
			Paul Patterson, II		Rep. Marvin Lucas
Judiciary II	421	1:00 PM	Darius Bellamy		Rep. Speaker Tim Moore
			Hunter Freeman		Rep. Speaker Tim Moore
			Naiia Pullen		Rep. Speaker Tim Moore
			Ubaldo Velasco-Lopez		Rep. Speaker Tim Moore



Committee Sergeants at ArmsNAME OF COMMITTEE House Committee on Health Care ReformDATE: 3/28/2017Room: 643House Sgt-At Arms:

1. Name: Warren Hawkins
2. Name: Doug Harris
3. Name: Malachi McCullough, Jr
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_

Senate Sgt-At Arms:

1. Name: \_\_\_\_\_
2. Name: \_\_\_\_\_
3. Name: \_\_\_\_\_
4. Name: \_\_\_\_\_
5. Name: \_\_\_\_\_



**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017**

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**HOUSE BILL 403**

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

Sponsors: Representatives Dollar, Lambeth, Dobson, and White (Primary Sponsors).

*For a complete list of sponsors, refer to the North Carolina General Assembly web site.*

Referred to: Health Care Reform, if favorable, Appropriations

March 20, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT MODIFYING CERTAIN REQUIREMENTS PERTAINING TO LOCAL  
3 MANAGEMENT ENTITIES/MANAGED CARE ORGANIZATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** The Department of Health and Human Services (DHHS) shall  
6 specify a single, nationally recognized, standardized electronic format to be used by all local  
7 management entities/managed care organizations (LME/MCOs) when submitting encounter  
8 data to DHHS. LME/MCOs must submit to DHHS encounter data, consisting of records of  
9 claims payments made to providers, for Medicaid and State-funded mental health, intellectual  
10 and developmental disabilities, and substance abuse disorder services utilizing the single,  
11 nationally recognized, standardized electronic format specified by DHHS.

12 **SECTION 1.(b)** DHHS may use encounter data submitted by LME/MCOs for all  
13 of the following purposes:

- 14 (1) Setting LME/MCO capitation rates.
- 15 (2) Measuring the quality of services managed by LME/MCOs.
- 16 (3) Assuring compliance with State and federal regulations.
- 17 (4) Conducting oversight and audit functions.
- 18 (5) Other purposes determined necessary by DHHS.

19 **SECTION 1.(c)** DHHS shall work with LME/MCOs to ensure that the process for  
20 submitting encounter claims through NCTracks is successful.

21 **SECTION 1.(d)** DHHS shall report to the Joint Legislative Oversight Committee  
22 on Health and Human Services regarding the status of subsection (a) of this section on or  
23 before February 1, 2018.

24 **SECTION 2.** G.S. 112.1(a)(39) reads as rewritten:

25 "(39) Develop and use a standard ~~contract~~ contracts for all local management  
26 entity/managed care organizations for operation of the 1915(b)/(c) Medicaid  
27 Waiver and management of State appropriations and federal block grant  
28 funds that requires compliance by each LME/MCO with all provisions of the  
29 ~~contract~~ contracts to operate the 1915(b)/(c) Medicaid Waiver and manage  
30 State appropriations and federal block grant funds and with all applicable  
31 provisions of State and federal law. Each of these standard contracts must  
32 include quality outcome measures for mental health, developmental  
33 disabilities, and substance use disorders."

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

35 **"§ 122C-3. Definitions.**



The following definitions apply in this Chapter:

- (1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.
- (2) "Area board" means the area mental health, developmental disabilities, and substance abuse ~~board~~ board that is the governing body for the area authority, local management entity, or local management entity/managed care organization.
- (2a) "Area director" means the administrative head of the area ~~authority program~~ authority, local management entity, or local management entity/managed care organization appointed pursuant to G.S. 122C-121.
- ...
- (2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area ~~authorities and multicounty programs~~ authorities.
- ...
- (5) "Catchment area" means the geographic part of the State served by a specific area ~~authority or county program~~ authority.
- ...
- (10a) ~~"County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.~~
- (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
  - a. An "area facility", which is a facility that is operated by or under contract with the area ~~authority or county program~~ authority. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area ~~authority or county program~~ authority. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
  - b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;
  - c. A "private facility", which is a facility that is either a licensable facility or a special unit of a general hospital or a part of either in which the specific service provided is not covered under the terms of a contract with an area authority;
  - d. The psychiatric service of the University of North Carolina Hospitals at Chapel Hill;
  - e. A "residential facility", which is a 24-hour facility that is not a hospital, including a group home;
  - f. A "State facility", which is a facility that is operated by the Secretary;



- 1 g. A "24-hour facility", which is a facility that provides a structured  
2 living environment and services for a period of 24 consecutive hours  
3 or more and includes hospitals that are facilities under this Chapter;  
4 and  
5 h. A Veterans Administration facility or part thereof that provides  
6 services for the care, treatment, habilitation, or rehabilitation of the  
7 mentally ill, the developmentally disabled, or substance abusers.

8 ...  
9 (20b) "Local management entity" or "LME" means an area ~~authority, county~~  
10 ~~program, or consolidated human services agency. It is a collective term that~~  
11 ~~refers to functional responsibilities rather than governance~~  
12 ~~structure.~~authority.

13 ...  
14 (29a) ~~"Program director" means the director of a county program established~~  
15 ~~pursuant to G.S. 122C-115.1.~~

16 ...."

17 **SECTION 4.(a)** G.S. 122C-115.4(b) reads as rewritten:

18 "(b) The primary functions of an LME are designated in this subsection and shall not be  
19 conducted by any other entity unless an LME obtains the prior written approval of the  
20 Secretary to voluntarily enters-enter into a contract with that entity under subsection (c) of this  
21 section. The primary functions include all of the following:

- 22 (1) Access for all citizens to the core services and administrative functions  
23 described in G.S. 122C-2. In particular, this shall include the implementation  
24 of a 24-hour a day, seven-day a week screening, triage, and referral process  
25 and a uniform portal of entry into care.  
26 (2) Provider monitoring, technical assistance, capacity development, and quality  
27 control. If at anytime the LME has reasonable cause to believe a violation of  
28 licensure rules has occurred, the LME shall make a referral to the Division  
29 of Health Service Regulation. If at anytime the LME has reasonable cause to  
30 believe the abuse, neglect, or exploitation of a client has occurred, the LME  
31 shall make a referral to the local Department of Social Services, Child  
32 Protective Services Program, or Adult Protective Services Program.  
33 (3) Utilization management, utilization review, and determination of the  
34 appropriate level and intensity of services. An LME may participate in the  
35 development of person centered plans for any consumer and shall monitor  
36 the implementation of person centered plans. An LME shall review and  
37 approve person centered plans for consumers who receive State-funded  
38 services and shall conduct concurrent reviews of person centered plans for  
39 consumers in the LME's catchment area who receive Medicaid funded  
40 services.  
41 (4) Authorization of the utilization of State psychiatric hospitals and other State  
42 facilities. Authorization of eligibility determination requests for recipients  
43 under a CAP-MR/DD waiver.  
44 (5) Care coordination and quality management. This function involves  
45 individual client care decisions at critical treatment junctures to assure  
46 clients' care is coordinated, received when needed, likely to produce good  
47 outcomes, and is neither too little nor too much service to achieve the  
48 desired results. Care coordination is sometimes referred to as "care  
49 management." Care coordination shall be provided by clinically trained  
50 professionals with the authority and skills necessary to determine  
51 appropriate diagnosis and treatment, approve treatment and service plans,

when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:

- a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
  - b. Addressing difficult situations for clients or providers.
  - c. Consulting with providers regarding difficult or unusual care situations.
  - d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
  - e. Coordinating client transitions from one service to another.
  - f. Conducting customer service interventions.
  - g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
  - h. Interfacing with utilization reviewers and case managers.
  - i. Providing leadership on the development and use of communication protocols.
  - j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.
- (6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.
- (7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.
- (8) Each LME shall develop a waiting list of persons with intellectual or developmental disabilities that are waiting for specific services. The LME shall develop the list in accordance with rules adopted by the Secretary to ensure that waiting list data are collected consistently across LMEs. Each LME shall report this data annually to the Department. The data collected should include numbers of persons who are:
- a. Waiting for residential services.
  - b. Potentially eligible for CAP-MRDD.
  - c. In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health, Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions."

**SECTION 4.(b)** This section applies to contracts entered into on or after the effective date of this act.

**SECTION 5.** G.S. 122C-116 reads as rewritten:

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

(a) An area authority is a local political subdivision of the ~~State~~ State established by counties pursuant to G.S. 122C-115(a) and (c) for the management and delivery of services for

1 individuals with mental illness, intellectual or other developmental disabilities, and substance  
2 use disorders under a 1915(b)/(c) Medicaid Waiver. An area authority is a local management  
3 entity that must perform the local management entity functions described in G.S. 122C-115.4  
4 and monitor and manage all public resources that may be available for mental health,  
5 intellectual and developmental disabilities, and substance use disorder services, including  
6 federal block grants, federal funding for Medicaid and Health Choice, and all other public  
7 funding sources as described in Section 1(a) of S.L. 2011-264 and in compliance with  
8 G.S. 122C-111 and G.S. 112.1(a)(39). LMEs are the single entities authorized to operate and  
9 manage the 1915(b)/(c) Medicaid Waiver, which operation and management must be  
10 performed in accordance with a standard contract developed by the Secretary under the  
11 authority of G.S. 122C-112.1(a)(39) that is subject to the enforcement provisions of  
12 G.S. 122C-124.1, G.S. 122C-124.2, and all other applicable provisions of this Chapter. LMEs  
13 are the sole entities authorized to enter into the contract described in G.S. 122C-124.2(g)(2) and  
14 G.S. 112.1(a)(39) for the operation of the 1915(b)/(c) Medicaid Waiver. A local management  
15 entity that is under contract with the Department to operate the combined Medicaid Waiver  
16 program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act shall  
17 be known as a "local management entity/managed care organization" or "LME/MCO."

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

19 **SECTION 6.** G.S. 122C-117(a) reads as rewritten:

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

21 ...

22 (7) Appoint an area director in accordance with  
23 ~~G.S. 122C-121(d).~~ G.S. 122C-121. All provisions of Chapter 122C of the  
24 General Statutes that apply to the area director also apply to the  
25 administrative head of the area authority, LME, or LME/MCO, regardless if  
26 (i) the administrative head uses the title "CEO" or any other name or title  
27 assigned to him or her by the area authority, LME, or LME/MCO and (ii) a  
28 contract, memorandum of understanding, or other agreement in effect  
29 between the Department and the area authority, LME, or LME/MCO refers  
30 to the administrative head as the "CEO" or any other name or title.

31 ...."

32 **SECTION 7.(a)** G.S. 122C-118.1 reads as rewritten:

33 **"§ 122C-118.1. Structure of area board.**

34 (a) An area board shall have no fewer than 11 and no more than 21 voting members.  
35 The

36 (a1) Unless the Secretary approves an alternative board appointment process pursuant to  
37 subsection (a2) of this section, the board of county commissioners, or the boards of county  
38 commissioners within the area, shall appoint members in a manner that ensures participation  
39 from each of the constituent counties of the area authority and is consistent with the  
40 requirements provided in subsection (b) of this section. If the board or boards fail to comply  
41 with the requirements of subsection (b) of this section, the Secretary shall appoint members of  
42 the unrepresented categories.

43 ~~(a2) The process for appointing members shall ensure participation from each of the~~  
44 ~~constituent counties of a multicounty area authority. If the board or boards fail to comply with~~  
45 ~~the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented~~  
46 ~~category. The boards of county commissioners within a multicounty area with a catchment~~  
47 ~~population of at least 1,250,000 shall have the option to appoint members of the area board in a~~  
48 ~~manner or with a composition through a process other than as required by subsection (a1) of~~  
49 ~~this section by if at least three-quarters of the constituent counties each county adopting adopt a~~  
50 ~~resolution to that effect and receiving obtain written approval from the Secretary. When~~  
51 ~~seeking written approval from the Secretary to use an alternative board appointment process,~~



1 the area authority shall submit to the Secretary its proposed board appointment process and  
2 copies of county resolutions requesting approval of the proposed board appointment process. In  
3 cases in which two or more area authorities seek to merge or consolidate, if one or more of  
4 these area authorities received approval by the Secretary for an alternative board appointment  
5 process prior to the merger or consolidation, all prior approvals for an alternative board  
6 appointment process become void 30 days after the effective date of the merger or  
7 consolidation. The newly merged or consolidated area authority and the boards of county  
8 commissioners within the multicounty area may appoint members of the area board through a  
9 process other than as provided in subsection (a1) of this section if at least three-quarters of the  
10 constituent counties each adopt a resolution to that effect and obtain written approval from the  
11 Secretary in the manner prescribed by this subsection. No area board shall be exempt from, and  
12 the Secretary shall not waive, any provision of this section except as provided in subdivision  
13 (a1) of this section with respect to the board appointment process.

14 (a3) A member of the board may be removed with or without cause by the initial  
15 appointing authority. The area board may declare vacant the office of an appointed member  
16 who does not attend three consecutive scheduled meetings without justifiable excuse. The chair  
17 of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on  
18 the board shall be filled by the initial appointing authority before the end of the term of the  
19 vacated seat or within 90 days of after the vacancy, whichever occurs first, and the  
20 appointments shall be for the remainder of the unexpired term.

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

- 24 (1) At least one member who is a current county commissioner.
- 25 (2) The chair of the local Consumer and Family Advisory Committee (CFAC)
- 26 or the chair's designee.
- 27 (3) At least one family member of the local CFAC, as recommended by the
- 28 local CFAC, representing the interests of the following:
  - 29 a. Individuals with mental illness.
  - 30 b. Individuals in recovery from addiction.
  - 31 c. Individuals with intellectual or other developmental disabilities.
- 32 (4) At least one openly declared consumer member of the local CFAC, as
- 33 recommended by the local CFAC, representing the interests of the
- 34 following:
  - 35 a. Individuals with mental illness.
  - 36 b. Individuals with intellectual or other developmental disabilities.
  - 37 c. Individuals in recovery from addiction.
- 38 (5) An individual with health care expertise and experience in the fields of
- 39 mental health, intellectual or other developmental disabilities, or substance
- 40 abuse services.
- 41 (6) An individual with health care administration expertise consistent with the
- 42 scale and nature of the managed care organization.
- 43 (7) An individual with financial expertise consistent with the scale and nature of
- 44 the managed care organization.
- 45 (8) An individual with ~~insurance expertise consistent with the scale and nature~~
- 46 ~~of the managed care organization.~~ health insurance, health plan
- 47 administration, or business expertise, or any combination of expertise in
- 48 these areas.
- 49 (9) An individual with social services expertise and experience in the fields of
- 50 mental health, intellectual or other developmental disabilities, or substance
- 51 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 who shall participate only in Board activities that are open to the public.
- (13) An administrator of a hospital providing mental health, developmental disabilities, and substance abuse emergency services to serve as a nonvoting member who shall participate only in Board activities that are open to the public.

Except as provided in subdivisions (12) and (13) 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. No person registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on an area ~~authority~~ board. Of the members described in subdivisions (2) through (4) of this subsection, the boards 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.

...

(d1) Beginning on July 1, 2017, each LME/MCO annually shall notify the Secretary of all of the following:

- (1) The area board appointment process, the process for filling vacancies on the area board, and the appointing authority for each area board position.
- (2) The membership of the area board.
- (3) The county of residence of each member.
- (4) How the membership composition requirements of subsection (b) of this section are being met.
- (5) The term of office of the chair of the area board and each member.
- (6) The LME/MCO's compliance status with training requirements for its board members.
- (7) The board's policies and procedures for conducting the area director's annual performance review, including at least all of the following:
  - a. The criteria used to conduct the review.
  - b. The criteria used to award bonuses to the area director and other employees.
  - c. The process for soliciting comments from county commissioners.
  - d. The results of the area director's most recent performance evaluation.

...."

**SECTION 7.(b)** Any area board that does not meet the composition requirements of G.S. 122C-118.1(b) on the effective date of this act shall comply with these composition requirements no later than October 1, 2017.

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

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

LME/MCOs shall use funds only for purposes related to their functions and responsibilities under this Chapter, including operation of the combined Medicaid Waiver program authorized under section 1915(b) and 1915(c) of the Social Security Act, or to carry out functions and responsibilities required by State law, federal law, or contract with the Department of Health



1 and Human Services. A violation of this section constitutes noncompliance for purposes of  
2 G.S. 122C-124.2(c)."

3 **SECTION 9.** G.S. 122C-124.2(c) reads as rewritten:

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

- 9 (1) Prepare a written notice informing the LME/MCO of the provisions of  
10 subdivision (1), (2), or (3) of subsection (c) of this section or the provisions  
11 of G.S. 122C-147.3 with which the LME/MCO is deemed not to be in  
12 compliance and the reasons for the determination of noncompliance.
- 13 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- 14 (3) Not later than 10 days after the Secretary's notice of noncompliance is  
15 provided to the LME/MCO, assign the Contract of the noncompliant  
16 LME/MCO to a compliant LME/MCO.
- 17 (4) Oversee the transfer of the operations and contracts from the noncompliant  
18 LME/MCO to the compliant LME/MCO in accordance with the provisions  
19 in subsection (e) of this section."

20 **SECTION 10.(a)** G.S. 122C-121 reads as rewritten:

21 **"§ 122C-121. Area director.**

22 (a) The area director is ~~an~~ a full-time employee of the area board, shall serve full-time  
23 at the pleasure of the area board, and shall be appointed by the area board in accordance with  
24 G.S. 122C-117(7). The area director shall not be employed in any other capacity or enter into  
25 any other contract for the performance of services while serving as area director. As used in  
26 this subsection, "employee" means an individual and does not include a corporation, a  
27 partnership, a limited liability corporation, or any other business association.

28 (a1) The area board shall establish the area director's salary under Article 3 of Chapter  
29 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a  
30 salary that is in excess of the salary ranges established by the State Human Resources  
31 ~~Commission. Any salary that is higher than the maximum of the applicable salary range shall~~  
32 be Commission so long as all of the following requirements are met:

- 33 (1) The board must submit to the Director of the Office of State Human  
34 Resources and the Secretary a request to exceed the maximum of the  
35 applicable salary range. The request must be supported by documentation of  
36 comparable salaries in comparable operations within the a comparable  
37 region of North Carolina and shall also include the specific amount the board  
38 proposes to pay the director. For the purpose of this subdivision, the  
39 Secretary shall determine what constitutes comparable operations within a  
40 comparable region of North Carolina.
- 41 (2) The board must obtain prior written approval for the proposed salary from  
42 both the Director of the Office of State Human Resources and the Secretary.  
43 In no instance shall the area board, the Director of the Office of State Human  
44 Resources, or the Secretary approve a salary for an area director that is  
45 higher than the maximum of the applicable salary range if it exceeds by  
46 more than thirty percent (30%) the average salary of the area directors of the  
47 remaining LME/MCOs, as determined by the Secretary. If the Secretary  
48 determines that an area director's salary is higher than the maximum of the  
49 applicable salary range and exceeds by more than thirty percent (30%) the  
50 average salary of the area directors of the remaining LME/MCOs, that area



1 director's salary shall be reduced to achieve compliance with this subdivision  
2 within 60 days after such determination by the Secretary.

3 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the  
4 area board, the Director of the Office of State Human Resources, or the Secretary regardless of  
5 whether the State Human Resources Commission has made a determination under G.S. 126-11  
6 that all or a portion of the board's personnel system has been determined to be substantially  
7 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
8 Statutes.

9 (a2) The area board shall not authorize any salary adjustment for an area director that is  
10 results in a salary above the normal allowable salary range without obtaining prior approval  
11 from the Director of the Office of State Human Resources unless all of the following  
12 requirements are met:

13 (1) The board must submit to the Director of the Office of State Human  
14 Resources and the Secretary a request to exceed the maximum of the  
15 applicable salary range. The request must be supported by documentation of  
16 comparable salaries in comparable operations within a comparable region of  
17 North Carolina and shall also include the specific amount of the salary  
18 adjustment the board proposes to pay the area director and the resulting  
19 salary. For the purpose of this subdivision, the Secretary shall determine  
20 what constitutes comparable operations within a comparable region of North  
21 Carolina.

22 (2) The board must obtain prior written approval for the proposed salary  
23 adjustment from both the Director of the Office of State Human Resources  
24 and the Secretary. In no instance shall the area board, the Director of the  
25 Office of State Human Resources, or the Secretary approve a salary  
26 adjustment for an area director that results in a salary that is higher than the  
27 maximum of the applicable salary range if it exceeds by more than thirty  
28 percent (30%) the average salary of the area directors of the remaining  
29 LME/MCOs, as determined by the Secretary. If the Secretary determines  
30 that an area director's salary is higher than the maximum of the applicable  
31 salary range and exceeds by more than thirty percent (30%) the average  
32 salary of the area directors of the remaining LME/MCOs, that area director's  
33 salary shall be reduced to achieve compliance with this subdivision within  
34 60 days after such determination by the Secretary.

35 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the  
36 area board, the Director of the Office of State Human Resources, or the Secretary regardless of  
37 whether the State Human Resources Commission has made a determination under G.S. 126-11  
38 that all or a portion of the board's personnel system has been determined to be substantially  
39 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
40 Statutes.

41 (a3) If the Secretary determines that the compensation of an area director, including  
42 salary, benefits, and bonuses, exceeds the limitations specified in this section, the area board  
43 shall prospectively reduce that area director's compensation, including salary, benefits, and  
44 bonuses, to achieve compliance with this section within 60 days after such determination by the  
45 Secretary. If an area board does not bring an area director's compensation, including salary,  
46 benefits, and bonuses, into compliance with this section within the 60-day period, the Secretary  
47 shall notify, in writing, the area board and the applicable participating boards of county  
48 commissioners of the area authority specifically how the area director's compensation,  
49 including salary, benefits, and bonuses, does not comply with this section and that the area  
50 board must bring the area director's compensation, including salary, benefits, and bonuses, into  
51 compliance with this section or a caretaker board of directors will be appointed as provided in



1 subsection (c) of G.S. 122C-124.1. The area board shall have 60 days from the date it receives  
2 notice under this subsection to bring the area director's compensation, including salary,  
3 benefits, and bonuses, into compliance with this section.

4 If, at the end of the 60-day notice period, the area board has not brought the area director's  
5 compensation, including salary, benefits, and bonuses, into compliance with this section, the  
6 Secretary shall appoint a caretaker board of directors as provided in subsection (c) of  
7 G.S. 122C-124.1. The Secretary may assign any or all of the powers and duties of the area  
8 director or of the area board to the caretaker board as the Secretary deems necessary and  
9 appropriate. In addition to performing all of these powers and duties, the caretaker board shall  
10 bring the area director's compensation, including salary, benefits, and bonuses, into compliance  
11 with this section. The Secretary may terminate the area director when it appoints a caretaker  
12 board. Neither party to any applicable employment contract shall be entitled to damages. After  
13 a caretaker board has been appointed, the General Assembly shall consider, at its next regular  
14 session, the future governance of the identified area authority.

15 (a2)(a4) The area board shall not provide the area director with any benefits or bonuses  
16 that are not also provided by the area board to all permanent employees of the area program,  
17 except that the area board may, in its discretion, offer severance benefits, relocation expenses,  
18 or both, to an applicant for the position of area director as an incentive for the applicant to  
19 accept an offer of employment. The area director shall be reimbursed only for allowable  
20 employment-related expenses at the same rate and in the same manner as other employees of  
21 the area program.

22 (a5) The total compensation provided or recommended to be provided by each area  
23 board to its area director, including salary, benefits, and bonuses, shall be subject to review and  
24 written approval by the Director of the Office of State Human Resources and the Secretary on  
25 at least an annual basis. An area board shall not increase compensation to an area director  
26 without prior written approval for the increase from the Director of the Office of State Human  
27 Resources and the Secretary.

28 (a6) Annually on June 30, each area board shall submit to the Secretary and the Director  
29 of the Office of State Human Resources a copy of all current employment agreements,  
30 employment contracts, and any amendments to those agreements and contracts that the area  
31 board has entered into with its area director, as well as any other documents relating to the area  
32 director's compensation, including salary, benefits, and bonuses.

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

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

- 39 (1) Appoint, supervise, and terminate area program staff.
- 40 (2) Administer area authority services.
- 41 (3) Develop the budget of the area authority for review by the area board.
- 42 (4) Provide information and advice to the board of county commissioners  
43 through the county manager.
- 44 (5) Act as liaison between the area authority and the Department.
- 45 (6) Ensure compliance by the area authority with the following operational  
46 requirements of the area authority:
  - 47 a. Maintain disability specific infrastructure and competency to address  
48 the clinical, treatment, rehabilitative, habilitative, and support needs  
49 of all disabilities covered by the 1915(b)/(c) Medicaid Waiver.
  - 50 b. Maintain administrative and clinical functions, including  
51 requirements for customer service, quality management, due process,



provider network development, information systems, financial reporting, and staffing.

c. Maintain full accountability for all aspects of Medicaid Waiver operations and for meeting all contract requirements specified by the Department. The Department shall not require LMEs to subcontract any managed care functions or nonservice activities to other entities. However, LMEs that choose to subcontract managed care functions to other entities will be limited to the following:

1. Information systems.
2. Customer service (including call center) operations.
3. Claims processing.
4. Provider, enrollment, credentialing, and monitoring.
5. Professional services.
6. Treatment Plan development.
7. Referral to services.

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

- (1) Masters degree.
- (2) Related experience.
- (3) Management experience.
- (4) Any other qualifications required under G.S. 122C-120.1.

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

(f) The area board may not terminate the area director without 30 days' prior written notice to the Secretary, unless the termination (i) results from the merger or consolidation of LME/MCOs or (ii) is directed by the Secretary."

**SECTION 10.(b)** The limitations on compensation, including salary, benefits, and bonuses specified in G.S. 122C-121, as amended by subsection (a) of this section, apply to currently employed area directors hired prior to the effective date of this act as well as to area directors hired on or after the effective date of this act. If the Secretary of the Department of Health and Human Services determines that the compensation, including salary, benefits, and bonuses, of a currently employed area director hired prior to the effective date of this act exceeds the limitations specified in G.S. 122C-121, as amended by subsection (a) of this section, the area board shall prospectively reduce that area director's compensation, including salary, benefits, and bonuses, to achieve compliance with G.S. 122C-121, as amended by subsection (a) of this section, within 60 days after such determination by the Secretary. If an area board does not comply with the directive of this subsection to reduce an area director's compensation, including salary, benefits, and bonuses, to achieve compliance with G.S. 122C-121, as amended by subsection (a) of this section, within the 60-day period prescribed by this subsection, the Secretary shall appoint a caretaker board of directors, as prescribed in subsection (a3) of G.S. 122C-121, as amended by subsection (a) of this section.

**SECTION 10.(c)** Each LME/MCO shall, within 30 day after the effective date of this act, submit to the Secretary and the Director of the Office of State Human Resources a copy of all current employment agreements, employment contracts, and any amendments to those agreements and contracts that the LME/MCO has entered into with its area director, as well as any other documents relating to the area director's compensation, including salary, benefits, and bonuses.

**SECTION 11.** G.S. 122C-141(d)(1) reads as rewritten:



"(1) The public provider must meet all the provider qualifications as defined by rules adopted by the Commission. ~~A county that satisfies its duties under G.S. 122C-115(a) through a consolidated human services agency may not be considered a qualified provider for purposes of this subdivision.~~"

SECTION 12. G.S. 122C-154 reads as rewritten:

**"§ 122C-154. Personnel.**

(a) 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.~~

(b) Notwithstanding G.S. 126-9(b), an employee of an area authority may be paid a salary that is in excess of the salary ranges established by the State Human Resources Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall~~ Commission so long as all of the following requirements are met:

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within the a comparable region of North Carolina and shall also include the specific amount the board proposes to pay the employee. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.

(2) The area board must obtain prior written approval for the proposed salary from both the Director of the Office of State Human Resources and the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes.

(c) The area board shall not authorize any salary adjustment that ~~is results in a salary above the normal allowable salary range without obtaining prior approval the Director of the Office of State Human Resources unless~~ all of the following requirements are met:

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within a comparable region of North Carolina and shall also include the specific amount of the salary adjustment the board proposes to pay the employee and the resulting salary. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.

(2) The area board must obtain prior written approval for the proposed salary adjustment from both the Director of the Office of State Human Resources and the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11



1 that all or a portion of the board's personnel system has been determined to be substantially  
2 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
3 Statutes."

4 **SECTION 13.** G.S. 126-11 reads as rewritten:

5 **"§ 126-11. Local personnel system may be established; approval and monitoring; rules**  
6 **and regulations.**

7 (a) The board of county commissioners of any county may establish and maintain a  
8 personnel system for all employees of the county subject to its jurisdiction, which system and  
9 any substantial changes to the system, shall be approved by the State Human Resources  
10 Commission as substantially equivalent to the standards established under this Chapter for  
11 employees of local departments of social services, local health departments, ~~and~~ area mental  
12 health programs, and local emergency management programs. If approved by the State Human  
13 Resources Commission, the employees covered by the county system shall be exempt from all  
14 provisions of this Chapter except Article 6.

15 (a1) With approval of each of the boards of commissioners of the county or counties  
16 which comprise the area mental health authority, the area mental health authority may establish  
17 and maintain a personnel system for all employees of the area mental health authority, which  
18 system and any substantial changes to the system, shall be equivalent to the standards  
19 established under this Chapter for employees of area mental health authorities. If approved by  
20 the State Human Resources Commission, the employees covered by the area mental health  
21 authority system shall be exempt from all provisions of this Chapter except Article 6.

22 (b) A board of county commissioners may petition the State Human Resources  
23 Commission to determine whether any portion of its total personnel system meets the  
24 requirements ~~in (a) above~~ of subsection (a) of this section. Upon such determination, county  
25 employees shall be exempt from the provisions of this Chapter relating to the approved portions  
26 of the county personnel system.

27 (b1) The board of an area mental health authority, with the approval of each of the  
28 boards of commissioners of the county or counties which comprise the area mental health  
29 authority, may petition the State Human Resources Commission to determine whether any  
30 portion of its total personnel system meets the requirements ~~in subsection (a1) above~~ of  
31 subsection (a1) of this section. Upon such determination, area mental health authority  
32 employees shall be exempt from the provisions of this Chapter relating to the approved portions  
33 of the area mental health authority personnel system except as provided in G.S. 122C-121.

34 (b2) Upon the merger or consolidation of two or more local management  
35 entities/managed care organizations, any determination made prior to the effective date of that  
36 merger or consolidation that all or a portion of any applicable area mental health authority  
37 personnel system is substantially equivalent is void. The board of the newly merged or  
38 consolidated area mental health authority, with the approval of each of the boards of  
39 commissioners of the county or counties which comprise the newly merged or consolidated  
40 area mental health authority, may petition the State Human Resources Commission to  
41 determine whether any portion of its total personnel system meets the requirements of  
42 subsection (a1) of this section. Upon such determination, area mental health authority  
43 employees shall be exempt from the provisions of this Chapter relating to the approved portions  
44 of the area mental health authority personnel system except as provided in G.S. 122C-121 and  
45 G.S. 122C-154.

46 (c) The Office of State Human Resources shall monitor at least annually county or area  
47 mental health authority personnel systems approved under this section in order to ensure  
48 compliance.

49 (d) In order to define "substantially equivalent," the State Human Resources  
50 Commission is authorized to promulgate rules and regulations to implement the federal merit  
51 system standards and these regulations at a minimum shall include: recruitment and selection of

1 employees; position classification; pay administration; training; employee relations; equal  
2 employment opportunity; and records and reports."

3 **SECTION 14.** Section 12F.2(a) of S.L. 2015-241 reads as rewritten:

4 "SECTION 12F.2.(a) For the purpose of mitigating cash flow problems that many  
5 LME/MCOs experience at the beginning of each fiscal year relative to single stream funding,  
6 the Department of Health and Human Services, Division of Mental Health, Developmental  
7 Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than  
8 one-twelfth of each LME/MCO's ~~continuation-base budget~~ allocation at the beginning of the  
9 fiscal year and subtract the amount of that distribution from the LME/MCO's total  
10 reimbursements for the fiscal year. The Department of Health and Human Services, Division of  
11 Mental Health, Developmental Disabilities, and Substance Abuse Services, shall distribute  
12 one-twelfth of each LME/MCO's single stream allocation on or before the last working day of  
13 each month beginning with the first month of the fiscal year and continuing monthly  
14 thereafter."

15 **SECTION 15.** G.S. 122C-115.1 and Part 2A of Article 4 of Chapter 122C of the  
16 General Statutes are repealed.

17 **SECTION 16.** The Revisor of Statutes shall delete every reference to  
18 G.S. 122C-115.1, G.S. 122C-127, and the phrases "county program" and "consolidated human  
19 services agency" wherever they occur in Chapter 122C of the General Statutes.

20 **SECTION 17.** Section 14 of this act becomes effective July 1, 2017. The  
21 remainder of this act is effective when it becomes law.

Public

H.B. 403

SESSION LAW

**A BILL TO BE ENTITLED**

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

*Introduced by Representative(s):* Dollar, Lambeth, Dobson, and White (Primary Sponsors).

For a complete list of cosponsors for this bill, please see the report inside the bill jacket.

*Principal Clerk's Use Only*

**Filed March 16, 2017**

**Passed 1st Reading**

**March 20, 2017**

**and Referred to Committee on  
Health Care Reform, if  
favorable, Appropriations**





GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H

D

HOUSE BILL 403  
PROPOSED COMMITTEE SUBSTITUTE H403-CSTR-1 [v.8]

03/27/2017 06:32:36 PM

Short Title: LME/MCO Claims Reporting/Mental Health Amdts.

(Public)

Sponsors:

Referred to:

March 20, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT MODIFYING CERTAIN REQUIREMENTS PERTAINING TO LOCAL  
3 MANAGEMENT ENTITIES/MANAGED CARE ORGANIZATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** The Department of Health and Human Services (DHHS) shall  
6 specify a single, nationally recognized, standardized electronic format to be used by all local  
7 management entities/managed care organizations (LME/MCOs) when submitting encounter  
8 data to DHHS. LME/MCOs must submit to DHHS encounter data, consisting of records of  
9 claims payments made to providers, for Medicaid and State-funded mental health, intellectual  
10 and developmental disabilities, and substance abuse disorder services utilizing the single,  
11 nationally recognized, standardized electronic format specified by DHHS.

12 **SECTION 1.(b)** DHHS may use encounter data submitted by LME/MCOs for all  
13 of the following purposes:

- 14 (1) Setting LME/MCO capitation rates.
- 15 (2) Measuring the quality of services managed by LME/MCOs.
- 16 (3) Assuring compliance with State and federal regulations.
- 17 (4) Conducting oversight and audit functions.
- 18 (5) Other purposes determined necessary by DHHS.

19 **SECTION 1.(c)** DHHS shall work with LME/MCOs to ensure that the process for  
20 submitting encounter claims through NCTracks is successful.

21 **SECTION 1.(d)** DHHS shall report to the Joint Legislative Oversight Committee  
22 on Health and Human Services regarding the status of subsection (a) of this section on or  
23 before February 1, 2018.

24 **SECTION 2.(a)** G.S. 122C-112.1(a)(39) reads as rewritten:

25 "(39) Develop and use ~~a standard contract~~ contracts for all local management  
26 entity/managed care organizations for operation of the 1915(b)/(c) Medicaid  
27 Waiver and management of State appropriations and federal block grant  
28 funds that requires compliance by each LME/MCO with all provisions of the  
29 ~~contract~~ contracts to operate the 1915(b)/(c) Medicaid Waiver and manage  
30 State appropriations and federal block grant funds and with all applicable  
31 provisions of State and federal law. Each of these standard contracts must  
32 include quality outcome measures for mental health, developmental  
33 disabilities, and substance use disorders."

34 **SECTION 2.(b)** This section applies to contracts entered into on or after the  
35 effective date of this act.

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



**"§ 122C-3. Definitions.**

The following definitions apply in this Chapter:

- (1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.
- (2) "Area board" means the area mental health, developmental disabilities, and substance abuse ~~board~~ board that is the governing body for the area authority, local management entity, or local management entity/managed care organization.
- (2a) "Area director" means the administrative head of the area ~~authority~~ program authority, local management entity, or local management entity/managed care organization appointed pursuant to G.S. 122C-121. All provisions of Chapter 122C of the General Statutes that apply to the area director also apply to the administrative head of the area authority, LME, or LME/MCO, regardless of whether (i) the administrative head uses the title "CEO" or any other name or title assigned to him or her by the area authority, LME, or LME/MCO and (ii) a contract, memorandum of understanding, or other agreement in effect between the Department and the area authority, LME, or LME/MCO refers to the administrative head as the "CEO" or any other name or title.
- ...
- (2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area ~~authorities and multicounty programs~~ authorities.
- ...
- (5) "Catchment area" means the geographic part of the State served by a specific area ~~authority or county program authority.~~
- ...
- (10a) ~~"County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.~~
- (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
  - a. An "area facility", which is a facility that is operated by or under contract with the area ~~authority or county program authority.~~ For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area ~~authority or county program authority.~~ Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
  - b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;



- 1 c. A "private facility", which is a facility that is either a licensable  
2 facility or a special unit of a general hospital or a part of either in  
3 which the specific service provided is not covered under the terms of  
4 a contract with an area authority;  
5 d. The psychiatric service of the University of North Carolina Hospitals  
6 at Chapel Hill;  
7 e. A "residential facility", which is a 24-hour facility that is not a  
8 hospital, including a group home;  
9 f. A "State facility", which is a facility that is operated by the Secretary;  
10 g. A "24-hour facility", which is a facility that provides a structured  
11 living environment and services for a period of 24 consecutive hours  
12 or more and includes hospitals that are facilities under this Chapter;  
13 and  
14 h. A Veterans Administration facility or part thereof that provides  
15 services for the care, treatment, habilitation, or rehabilitation of the  
16 mentally ill, the developmentally disabled, or substance abusers.

17 ...  
18 (20b) "Local management entity" or "LME" means an area ~~authority, county~~  
19 ~~program, or consolidated human services agency. It is a collective term that~~  
20 ~~refers to functional responsibilities rather than governance~~  
21 ~~structure.~~ authority.

22 ...  
23 (29a) ~~"Program director" means the director of a county program established~~  
24 ~~pursuant to G.S. 122C-115.1.~~

25 ...."

26 **SECTION 4.(a)** G.S. 122C-115.4(b) reads as rewritten:

27 "(b) The primary functions of an LME are designated in this subsection and shall not be  
28 conducted by any other entity unless an LME obtains the prior written approval of the  
29 Secretary to voluntarily enter ~~enter~~ into a contract with that entity under subsection (c) of this  
30 section. The primary functions include all of the following:

- 31 (1) Access for all citizens to the core services and administrative functions  
32 described in G.S. 122C-2. In particular, this shall include the implementation  
33 of a 24-hour a day, seven-day a week screening, triage, and referral process  
34 and a uniform portal of entry into care.  
35 (2) Provider monitoring, technical assistance, capacity development, and quality  
36 control. If at anytime the LME has reasonable cause to believe a violation of  
37 licensure rules has occurred, the LME shall make a referral to the Division  
38 of Health Service Regulation. If at anytime the LME has reasonable cause to  
39 believe the abuse, neglect, or exploitation of a client has occurred, the LME  
40 shall make a referral to the local Department of Social Services, Child  
41 Protective Services Program, or Adult Protective Services Program.  
42 (3) Utilization management, utilization review, and determination of the  
43 appropriate level and intensity of services. An LME may participate in the  
44 development of person centered plans for any consumer and shall monitor  
45 the implementation of person centered plans. An LME shall review and  
46 approve person centered plans for consumers who receive State-funded  
47 services and shall conduct concurrent reviews of person centered plans for  
48 consumers in the LME's catchment area who receive Medicaid funded  
49 services.

- 1 (4) Authorization of the utilization of State psychiatric hospitals and other State  
2 facilities. Authorization of eligibility determination requests for recipients  
3 under a CAP-MR/DD waiver.
- 4 (5) Care coordination and quality management. This function involves  
5 individual client care decisions at critical treatment junctures to assure  
6 clients' care is coordinated, received when needed, likely to produce good  
7 outcomes, and is neither too little nor too much service to achieve the  
8 desired results. Care coordination is sometimes referred to as "care  
9 management." Care coordination shall be provided by clinically trained  
10 professionals with the authority and skills necessary to determine  
11 appropriate diagnosis and treatment, approve treatment and service plans,  
12 when necessary to link clients to higher levels of care quickly and  
13 efficiently, to facilitate the resolution of disagreements between providers  
14 and clinicians, and to consult with providers, clinicians, case managers, and  
15 utilization reviewers. Care coordination activities for high-risk/high-cost  
16 consumers or consumers at a critical treatment juncture include the  
17 following:
- 18 a. Assisting with the development of a single care plan for individual  
19 clients, including participating in child and family teams around the  
20 development of plans for children and adolescents.
  - 21 b. Addressing difficult situations for clients or providers.
  - 22 c. Consulting with providers regarding difficult or unusual care  
23 situations.
  - 24 d. Ensuring that consumers are linked to primary care providers to  
25 address the consumer's physical health needs.
  - 26 e. Coordinating client transitions from one service to another.
  - 27 f. Conducting customer service interventions.
  - 28 g. Assuring clients are given additional, fewer, or different services as  
29 client needs increase, lessen, or change.
  - 30 h. Interfacing with utilization reviewers and case managers.
  - 31 i. Providing leadership on the development and use of communication  
32 protocols.
  - 33 j. Participating in the development of discharge plans for consumers  
34 being discharged from a State facility or other inpatient setting who  
35 have not been previously served in the community.
- 36 (6) Community collaboration and consumer affairs including a process to  
37 protect consumer rights, an appeals process, and support of an effective  
38 consumer and family advisory committee.
- 39 (7) Financial management and accountability for the use of State and local funds  
40 and information management for the delivery of publicly funded services.
- 41 (8) Each LME shall develop a waiting list of persons with intellectual or  
42 developmental disabilities that are waiting for specific services. The LME  
43 shall develop the list in accordance with rules adopted by the Secretary to  
44 ensure that waiting list data are collected consistently across LMEs. Each  
45 LME shall report this data annually to the Department. The data collected  
46 should include numbers of persons who are:
- 47 a. Waiting for residential services.
  - 48 b. Potentially eligible for CAP-MRDD.
  - 49 c. In need of other services and supports funded from State  
50 appropriations to or allocations from the Division of Mental Health,

Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions."

**SECTION 4.(b)** This section applies to contracts entered into on or after the effective date of this act.

**SECTION 5.** G.S. 122C-116 reads as rewritten:

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

(a) An area authority is a local political subdivision of the ~~State~~. State established by counties pursuant to G.S. 122C-115(a) and (c) for the management and delivery of services for individuals with mental illness, intellectual or other developmental disabilities, and substance use disorders under a 1915(b)/(c) Medicaid Waiver. An area authority is a local management entity that must perform the local management entity functions described in G.S. 122C-115.4 and monitor and manage all public resources that may be available for mental health, intellectual and developmental disabilities, and substance use disorder services, including federal block grants, federal funding for Medicaid and NC Health Choice, and all other public funding sources as described in Section 1(a) of S.L. 2011-264 and in compliance with G.S. 122C-111 and G.S. 122C-112.1(a)(39). LMEs are the single entities authorized to operate and manage the 1915(b)/(c) Medicaid Waiver, which operation and management must be performed in accordance with a standard contract developed by the Secretary under the authority of G.S. 122C-112.1(a)(39) that is subject to the enforcement provisions of G.S. 122C-124.1, G.S. 122C-124.2, and all other applicable provisions of this Chapter. LMEs are the sole entities authorized to enter into the contract described in G.S. 122C-124.2(g)(2) and G.S. 122C-112.1(a)(39) for the operation of the 1915(b)/(c) Medicaid Waiver. A local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under Section 1915(b) and Section 1915(c) of the Social Security Act shall be known as a "local management entity/managed care organization" or "LME/MCO."

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

**SECTION 6.(a)** 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).~~  
G.S. 122C-121.

...

(18) Maintain disability-specific infrastructure and competency to address the clinical, treatment, rehabilitative, habilitative, and support needs of all disabilities covered by the 1915(b)/(c) Medicaid Waiver.

(19) Maintain administrative and clinical functions, including requirements for customer service, quality management, due process, provider network development, information systems, financial reporting, and staffing.

(20) Maintain full accountability for all aspects of Medicaid Waiver operations and for meeting all contract requirements specified by the Department.

...

(a2) An area authority may, but shall not be required to, subcontract to other entities, upon the prior written approval of the Secretary, only the following managed care functions:

(1) Information systems.

(2) Customer service (including call center) operations.



- (3) Claims processing.
- (4) Provider, enrollment, credentialing, and monitoring.
- (5) Professional services.
- (6) Treatment Plan development.
- (7) Referral to services.

An area authority shall not subcontract to other entities any other managed care functions or nonservice activities.

...."

**SECTION 6.(b)** Subsection (a2) of G.S. 122C-117, added by this section, applies to area authority subcontracts to other entities entered into on or after the date this act becomes law.

**SECTION 7.(a)** G.S. 122C-118.1 reads as rewritten:

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

(a) An area board shall have no fewer than 11 and no more than 21 voting members.  
The

(a1) Unless the Secretary approves an alternative board appointment process pursuant to subsection (a2) of this section, the board of county commissioners, or the boards of county commissioners within the area, shall appoint members in a manner that ensures participation from each of the constituent counties of the area authority and is consistent with the requirements provided in subsection (b) of this section. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint members of the unrepresented categories.

~~(a2) The process for appointing members shall ensure participation from each of the constituent counties of a multicounty area authority. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented category. The boards of county commissioners within a multicounty area with a catchment population of at least 1,250,000 shall have the option to appoint members of the area board in a manner or with a composition through a process other than as required by subsection (a1) of this section by if at least three-quarters of the constituent counties each county adopting adopt a resolution to that effect and receiving obtain written approval from the Secretary. When seeking written approval from the Secretary to use an alternative board appointment process, the area authority shall submit to the Secretary its proposed board appointment process and copies of county resolutions requesting approval of the proposed board appointment process. In cases in which two or more area authorities seek to merge or consolidate, if one or more of these area authorities received approval by the Secretary for an alternative board appointment process prior to the merger or consolidation, all prior approvals for an alternative board appointment process become void 30 days after the effective date of the merger or consolidation. The newly merged or consolidated area authority and the boards of county commissioners within the multicounty area may appoint members of the area board through a process other than as provided in subsection (a1) of this section if at least three-quarters of the constituent counties each adopt a resolution to that effect and obtain written approval from the Secretary in the manner prescribed by this subsection. No area board shall be exempt from, and the Secretary shall not waive, any provision of this section except as provided in subdivision (a1) of this section with respect to the board appointment process.~~

(a3) A member of the board may be removed with or without cause by the initial appointing authority. The area board may declare vacant the office of an appointed member who does not attend three consecutive scheduled meetings without justifiable excuse. The chair of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of after the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.

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

- (1) At least one member who is a current county commissioner.
- (2) The chair of the local Consumer and Family Advisory Committee (CFAC) or the chair's designee.
- (3) At least one family member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
  - a. Individuals with mental illness.
  - b. Individuals in recovery from addiction.
  - c. Individuals with intellectual or other developmental disabilities.
- (4) At least one openly declared consumer member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
  - a. Individuals with mental illness.
  - b. Individuals with intellectual or other developmental disabilities.
  - c. 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.~~ health insurance, health plan administration, or business expertise, or any combination of expertise in these areas.
- (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 who shall participate only in Board activities that are open to the public.
- (13) An administrator of a hospital providing mental health, developmental disabilities, and substance abuse emergency services to serve as a nonvoting member who shall participate only in Board activities that are open to the public.

Except as provided in subdivisions (12) and (13) 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. No person registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on an area ~~authority~~ board. Of the members described in subdivisions (2) through (4) of this subsection, the boards 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.



1 ...  
2 (d1) Beginning on July 1, 2017, each LME/MCO annually shall notify the Secretary of  
3 all of the following:

- 4 (1) The area board appointment process, the process for filling vacancies on the  
5 area board, and the appointing authority for each area board position.
- 6 (2) The membership of the area board.
- 7 (3) The county of residence of each member.
- 8 (4) How the membership composition requirements of subsection (b) of this  
9 section are being met.
- 10 (5) The term of office of the chair of the area board and each member.
- 11 (6) The LME/MCO's compliance status with training requirements for its board  
12 members.
- 13 (7) The board's policies and procedures for conducting the area director's annual  
14 performance review, including at least all of the following:
  - 15 a. The criteria used to conduct the review.
  - 16 b. The criteria used to award bonuses to the area director and other  
17 employees.
  - 18 c. The process for soliciting comments from county commissioners.
  - 19 d. The results of the area director's most recent performance evaluation.

20 ...."

21 **SECTION 7.(b)** Any area board that does not meet the composition requirements  
22 of G.S. 122C-118.1(b) on the effective date of this act shall comply with these composition  
23 requirements no later than October 1, 2017.

24 **SECTION 8.(a)** Part 4 of Article 4 of Chapter 122C of the General Statutes is  
25 amended by adding a new section to read:

26 **"§ 122C-147.3. LME/MCO use of funds.**

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

33 **SECTION 8.(b)** G.S. 122C-124.2(c) reads as rewritten:

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

- 39 (1) Prepare a written notice informing the LME/MCO of the provisions of  
40 subdivision (1), (2), or (3) of subsection (c) of this section or the provisions  
41 of G.S. 122C-147.3 with which the LME/MCO is deemed not to be in  
42 compliance and the reasons for the determination of noncompliance.
- 43 (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- 44 (3) Not later than 10 days after the Secretary's notice of noncompliance is  
45 provided to the LME/MCO, assign the Contract of the noncompliant  
46 LME/MCO to a compliant LME/MCO.
- 47 (4) Oversee the transfer of the operations and contracts from the noncompliant  
48 LME/MCO to the compliant LME/MCO in accordance with the provisions  
49 in subsection (e) of this section."

50 **SECTION 9.(a)** G.S. 122C-121 reads as rewritten:

51 **"§ 122C-121. Area director.**



(a) The area director is ~~an~~ a full-time employee of the area board, shall serve full-time at the pleasure of the area board, and shall be appointed by the area board in accordance with G.S. 122C-117(7). The area director shall not be employed in any other capacity or enter into any other contract for the performance of services while serving as area director. As used in this subsection, "employee" means an individual and does not include a corporation, a partnership, a limited liability corporation, or any other business association.

(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges established by the State Human Resources Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall be Commission so long as all of the following requirements are met:~~

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within the a comparable region of North Carolina and shall also include the specific amount the board proposes to pay the director. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.

(2) The area board must obtain prior written approval for the proposed salary from both the Director of the Office of State Human Resources and the Secretary. In no instance shall the area board, the Director of the Office of State Human Resources, or the Secretary approve a salary for an area director that is higher than the maximum of the applicable salary range if it exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, as determined by the Secretary. If the Secretary determines that an area director's salary is higher than the maximum of the applicable salary range and exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, that area director's salary shall be reduced to achieve compliance with this subdivision within 60 days after such determination by the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes.

(a2) The area board shall not authorize any salary adjustment for an area director that is results in a salary above the normal allowable salary range ~~without obtaining prior approval from the Director of the Office of State Human Resources range, or pay any salary above the normal allowable salary range, unless all of the following requirements are met:~~

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within a comparable region of North Carolina and shall also include the specific amount of the salary adjustment the board proposes to pay the area director and the resulting salary. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.



(2) The area board must obtain prior written approval for the proposed salary adjustment from both the Director of the Office of State Human Resources and the Secretary. In no instance shall the area board, the Director of the Office of State Human Resources, or the Secretary approve a salary adjustment for an area director that results in a salary that is higher than the maximum of the applicable salary range if it exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, as determined by the Secretary. If the Secretary determines that an area director's salary is higher than the maximum of the applicable salary range and exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, that area director's salary shall be reduced to achieve compliance with this subdivision within 60 days after such determination by the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes.

(a3) If the Secretary determines that the compensation of an area director, including salary, benefits, and bonuses, exceeds the limitations specified in this section, the area board shall prospectively reduce that area director's compensation, including salary, benefits, and bonuses, to achieve compliance with this section and notify the Secretary within 60 days after such determination by the Secretary. If an area board does not bring an area director's compensation, including salary, benefits, and bonuses, into compliance with this section within the 60-day period, the Secretary shall notify, in writing, the area board and the applicable participating boards of county commissioners of the area authority specifically how the Secretary determined that the area director's compensation, including salary, benefits, and bonuses, does not comply with this section and that the area board must bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section or a caretaker board of directors will be appointed as provided in subsection (c) of G.S. 122C-124.1. The area board shall have 60 days from the date it receives notice under this subsection to bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section.

If, at the end of the 60-day notice period, the area board has not brought the area director's compensation, including salary, benefits, and bonuses, into compliance with this section, the Secretary shall appoint a caretaker board of directors as provided in subsection (c) of G.S. 122C-124.1. The Secretary may assign any or all of the powers and duties of the area director or of the area board to the caretaker board as the Secretary deems necessary and appropriate. In addition to performing all of these powers and duties, the caretaker board shall bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section. The Secretary may terminate the area director's employment when it appoints a caretaker board. Neither party to any applicable employment contract shall be entitled to damages. After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority.

~~(a2)~~(a4) The area board shall not provide the area director with any benefits or bonuses that are not also provided by the area board to all permanent employees of the area program, except that the area board may, in its discretion, offer severance benefits, relocation expenses, or both, to an applicant for the position of area director as an incentive for the applicant to accept an offer of employment. The area director shall be reimbursed only for allowable



1 employment-related expenses at the same rate and in the same manner as other employees of  
2 the area program.

3 (a5) The total compensation provided or recommended to be provided by each area  
4 board to its area director, including salary, benefits, and bonuses, shall be reviewed for written  
5 approval by the Director of the Office of State Human Resources and the Secretary on at least  
6 an annual basis to determine compliance with the requirements of this section. An area board  
7 shall not increase compensation to an area director without prior written approval for the  
8 increase from the Director of the Office of State Human Resources and the Secretary.

9 (a6) Annually on June 30, each area board shall submit to the Secretary and the Director  
10 of the Office of State Human Resources a copy of all current employment agreements,  
11 employment contracts, and any amendments to those agreements and contracts that the area  
12 board has entered into with its area director, as well as any other documents relating to the area  
13 director's compensation, including salary, benefits, and bonuses.

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

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

- 20 (1) Appoint, supervise, and terminate area program staff.
- 21 (2) Administer area authority services.
- 22 (3) Develop the budget of the area authority for review by the area board.
- 23 (4) Provide information and advice to the board of county commissioners  
24 through the county manager.
- 25 (5) Act as liaison between the area authority and the Department.
- 26 (6) Ensure compliance by the area authority with the powers and duties of the  
27 area authority established under G.S. 122C-117.

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

- 30 (1) Masters degree.
- 31 (2) Related experience.
- 32 (3) Management experience.
- 33 (4) Any other qualifications required under G.S. 122C-120.1.

34 (e) The appointment of the area director shall be based upon the recommendation of at  
35 least two candidates by a search committee of the area board. The search committee shall  
36 include a consumer board member, a county commissioner, and an appointee of the Secretary.  
37 The Secretary may waive this requirement when appointment of the area director results from  
38 the merger or consolidation of LME/MCOs.

39 (f) The area board may not terminate the employment of an area director without 30  
40 days' prior written notice to the Secretary, unless the termination (i) results from the merger or  
41 consolidation of LME/MCOs or (ii) is directed by the Secretary."

42 **SECTION 9.(b)** The limitations on compensation, including salary, benefits, and  
43 bonuses specified in G.S. 122C-121, as amended by subsection (a) of this section, apply to  
44 currently employed area directors hired prior to the effective date of this act as well as to area  
45 directors hired on or after the effective date of this act. If the Secretary of the Department of  
46 Health and Human Services determines that the compensation, including salary, benefits, and  
47 bonuses, of a currently employed area director hired prior to the effective date of this act  
48 exceeds the limitations specified in G.S. 122C-121, as amended by subsection (a) of this  
49 section, the area board shall prospectively reduce that area director's compensation, including  
50 salary, benefits, and bonuses, to achieve compliance with G.S. 122C-121, as amended by  
51 subsection (a) of this section, within 60 days after such determination by the Secretary. If an



1 area board does not comply with the directive of this subsection to reduce an area director's  
2 compensation, including salary, benefits, and bonuses, to achieve compliance with  
3 G.S. 122C-121, as amended by subsection (a) of this section, within the 60-day period  
4 prescribed by this subsection, the Secretary shall appoint a caretaker board of directors, as  
5 prescribed in subsection (a3) of G.S. 122C-121, as amended by subsection (a) of this section.

6 **SECTION 9.(c)** Each LME/MCO shall, within 30 day after the effective date of  
7 this act, submit to the Secretary and the Director of the Office of State Human Resources a  
8 copy of all current employment agreements, employment contracts, and any amendments to  
9 those agreements and contracts that the LME/MCO has entered into with its area director, as  
10 well as any other documents relating to the area director's compensation, including salary,  
11 benefits, and bonuses.

12 **SECTION 10.** G.S. 122C-154 reads as rewritten:

13 **"§ 122C-154. Personnel.**

14 (a) Employees under the direct supervision of the area director are employees of the  
15 area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes  
16 applies unless otherwise provided in this Article. ~~Employees appointed by the county program~~  
17 ~~director are employees of the county. In a multicounty program, employment of county~~  
18 ~~program staff shall be as agreed upon in the interlocal agreement adopted pursuant to~~  
19 ~~G.S. 122C-115.1.~~

20 (b) Notwithstanding G.S. 126-9(b), an employee of an area authority may be paid a  
21 salary that is in excess of the salary ranges established by the State Human Resources  
22 Commission. ~~Any salary that is higher than the maximum of the applicable salary range~~  
23 ~~shall~~ Commission so long as all of the following requirements are met:

24 (1) The area board must submit to the Director of the Office of State Human  
25 Resources and the Secretary a request to exceed the maximum of the  
26 applicable salary range. The request must be supported by documentation of  
27 comparable salaries in comparable operations within the a comparable  
28 region of North Carolina and shall also include the specific amount the board  
29 proposes to pay the employee. For the purpose of this subdivision, the  
30 Secretary shall determine what constitutes comparable operations within a  
31 comparable region of North Carolina.

32 (2) The area board must obtain prior written approval for the proposed salary  
33 from both the Director of the Office of State Human Resources and the  
34 Secretary.

35 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the  
36 area board, the Director of the Office of State Human Resources, or the Secretary regardless of  
37 whether the State Human Resources Commission has made a determination under G.S. 126-11  
38 that all or a portion of the board's personnel system has been determined to be substantially  
39 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
40 Statutes.

41 (c) The area board shall not authorize any salary adjustment that ~~is results in a salary~~  
42 ~~above the normal allowable salary range without obtaining prior approval the Director of the~~  
43 ~~Office of State Human Resources unless all of the following requirements are met:~~

44 (1) The area board must submit to the Director of the Office of State Human  
45 Resources and the Secretary a request to exceed the maximum of the  
46 applicable salary range. The request must be supported by documentation of  
47 comparable salaries in comparable operations within a comparable region of  
48 North Carolina and shall also include the specific amount of the salary  
49 adjustment the board proposes to pay the employee and the resulting salary.  
50 For the purpose of this subdivision, the Secretary shall determine what



1 constitutes comparable operations within a comparable region of North  
2 Carolina.

3 (2) The area board must obtain prior written approval for the proposed salary  
4 adjustment from both the Director of the Office of State Human Resources  
5 and the Secretary.

6 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the  
7 area board, the Director of the Office of State Human Resources, or the Secretary regardless of  
8 whether the State Human Resources Commission has made a determination under G.S. 126-11  
9 that all or a portion of the board's personnel system has been determined to be substantially  
10 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
11 Statutes."

12 SECTION 11. G.S. 126-11 reads as rewritten:

13 **"§ 126-11. Local personnel system may be established; approval and monitoring; rules**  
14 **and regulations.**

15 (a) The board of county commissioners of any county may establish and maintain a  
16 personnel system for all employees of the county subject to its jurisdiction, which system and  
17 any substantial changes to the system, shall be approved by the State Human Resources  
18 Commission as substantially equivalent to the standards established under this Chapter for  
19 employees of local departments of social services, local health departments, ~~and~~ area mental  
20 health programs, and local emergency management programs. If approved by the State Human  
21 Resources Commission, the employees covered by the county system shall be exempt from all  
22 provisions of this Chapter except Article 6.

23 (a1) With approval of each of the boards of commissioners of the county or counties  
24 which comprise the area mental health authority, the area mental health authority may establish  
25 and maintain a personnel system for all employees of the area mental health authority, which  
26 system and any substantial changes to the system, shall be equivalent to the standards  
27 established under this Chapter for employees of area mental health authorities. If approved by  
28 the State Human Resources Commission, the employees covered by the area mental health  
29 authority system shall be exempt from all provisions of this Chapter except Article 6.

30 (b) A board of county commissioners may petition the State Human Resources  
31 Commission to determine whether any portion of its total personnel system meets the  
32 requirements ~~in (a) above~~ of subsection (a) of this section. Upon such determination, county  
33 employees shall be exempt from the provisions of this Chapter relating to the approved portions  
34 of the county personnel system.

35 (b1) The board of an area mental health authority, with the approval of each of the  
36 boards of commissioners of the county or counties which comprise the area mental health  
37 authority, may petition the State Human Resources Commission to determine whether any  
38 portion of its total personnel system meets the requirements ~~in subsection (a1) above~~ of  
39 subsection (a1) of this section. Upon such determination, area mental health authority  
40 employees shall be exempt from the provisions of this Chapter relating to the approved portions  
41 of the area mental health authority personnel system except as provided in G.S. 122C-121.

42 (b2) Upon the merger or consolidation of two or more local management  
43 entities/managed care organizations, any determination made prior to the effective date of that  
44 merger or consolidation that all or a portion of any applicable area mental health authority  
45 personnel system is substantially equivalent is void. The board of the newly merged or  
46 consolidated area mental health authority, with the approval of the boards of commissioners of  
47 three-quarters of the counties which comprise the newly merged or consolidated area mental  
48 health authority, may petition the State Human Resources Commission to determine whether  
49 any portion of its total personnel system meets the requirements of subsection (a1) of this  
50 section. Upon such determination, area mental health authority employees shall be exempt from

1 the provisions of this Chapter relating to the approved portions of the area mental health  
2 authority personnel system except as provided in G.S. 122C-121 and G.S. 122C-154.

3 (c) The Office of State Human Resources shall monitor at least annually county or area  
4 mental health authority personnel systems approved under this section in order to ensure  
5 compliance.

6 (d) In order to define "substantially equivalent," the State Human Resources  
7 Commission is authorized to promulgate rules and regulations to implement the federal merit  
8 system standards and these regulations at a minimum shall include: recruitment and selection of  
9 employees; position classification; pay administration; training; employee relations; equal  
10 employment opportunity; and records and reports."

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

12 **"SECTION 12F.2.(a)** For the purpose of mitigating cash flow problems that many  
13 LME/MCOs experience at the beginning of each fiscal year relative to single stream funding,  
14 the Department of Health and Human Services, Division of Mental Health, Developmental  
15 Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than  
16 one-twelfth of each LME/MCO's ~~continuation~~-base budget allocation at the beginning of the  
17 fiscal year and subtract the amount of that distribution from the LME/MCO's total  
18 reimbursements for the fiscal year. For each month of the fiscal year after July, the  
19 DMH/DD/SAS, shall distribute, on the first Tuesday of the month, one-eleventh of the amount  
20 of each LME/MCO's single stream allocation that remains after subtracting the amount of the  
21 distribution that was made to the LME/MCO in July of the fiscal year."

22 **SECTION 13.** G.S. 122C-141(d)(1) reads as rewritten:

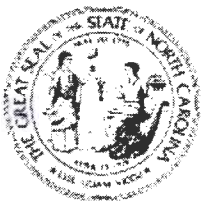
23 "(1) The public provider must meet all the provider qualifications as defined by  
24 rules adopted by the Commission. ~~A county that satisfies its duties under~~  
25 ~~G.S. 122C-115(a) through a consolidated human services agency may not be~~  
26 ~~considered a qualified provider for purposes of this subdivision."~~

27 **SECTION 14.** G.S. 122C-115.1 and Part 2A of Article 4 of Chapter 122C of the  
28 General Statutes are repealed.

29 **SECTION 15.** The Revisor of Statutes shall delete every reference to  
30 G.S. 122C-115.1, G.S. 122C-127, and the phrases "county program" and "consolidated human  
31 services agency" wherever they occur in Chapter 122C of the General Statutes.

32 **SECTION 16.** Section 12 of this act becomes effective July 1, 2017. The  
33 remainder of this act is effective when it becomes law.





# HOUSE BILL 403: LME/MCO Claims Reporting/Mental Health Amdts.

2017-2018 General Assembly

<b>Committee:</b>	House Health Care Reform. If favorable, re-	<b>Date:</b>	March 28, 2017
	refer to Appropriations		
<b>Introduced by:</b>	Reps. Dollar, Lambeth, Dobson, White	<b>Prepared by:</b>	Jennifer Hillman
<b>Analysis of:</b>	PCS to First Edition		Staff Attorney
	H403-CSTR-1		

**OVERVIEW:** *The PCS to House Bill 403 modifies certain requirements pertaining to local management entities/managed care organizations (LME/MCOs), which manage the provision of publicly-funded behavioral health services throughout the State.*

**CURRENT LAW:** S.L. 2011-264 (HB 916), as amended by Section 13, S.L. 2012-151 (SB 191), directed the Department of Health and Human Services (DHHS) to proceed with statewide restructuring of management responsibilities for the delivery of services to individuals with mental illness, intellectual and developmental disabilities, and substance abuse disorders, through the statewide expansion of the Section 1915(b)(c) Medicaid Waiver and the operation of the waiver by regional LME/MCOs. As directed in the law, statewide expansion was completed by July 2013. LME/MCO operations are governed by Chapter 122C of the General Statutes.

**BILL ANALYSIS:** HB 403 amends several sections of Chapter 122C, The Mental Health, Developmental Disabilities, and Substance Abuse Act of 1985, and other provisions of law pertaining to LME/MCOs. The PCS adds a requirement that LME/MCO subcontracts of managed care functions be approved by the Secretary of DHHS and reduces the number of counties needed to approve a petition to the State Human Resources Commission for a determination that the LME/MCO's personnel system is substantially equivalent to standards established for other local governmental entities. The bill would have required all counties in the LME/MCO to approve the petition, while the PCS would require only three-quarters of the counties' approval. In addition, the PCS makes technical and clarifying changes.

**Section 1** requires DHHS to specify a standardized electronic format that all LME/MCOs must use to submit data to DHHS regarding claims billed for Medicaid and State-funded services and to work with LME/MCOs to ensure the success of the process for submitting this data. This section lists permissible uses of the data by DHHS and requires DHHS to report on the status of this requirement by February 1, 2018.

**Section 2** amends the statute pertaining to the powers and duties of the Secretary of DHHS relevant to the mental health, developmental disabilities, and substance abuse services system to require DHHS to use one contract with each LME/MCO that covers the management of State-only funding and federal block grant funding, in addition to Medicaid funding, and includes quality outcome measures for covered services. This section applies to contracts entered into on or after the bill becomes law.

**Section 3** amends various definitions pertaining to the State's mental health, developmental disabilities, and substance abuse services system, including amending the definition of "area director" to clarify that the term refers to the administrative head of the LME/MCO, regardless of the title that individual uses. This section amends other definitions for clarity and to remove obsolete references.

Karen Cochrane-Brown  
Director



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Legislative Analysis  
Division  
919-733-2578

# House PCS 403

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**Section 4** amends the statute establishing the primary functions of an LME to require the prior written approval of the Secretary of DHHS before the LME enters into contracts for certain primary functions. This section applies to contracts entered into on or after the date the bill becomes law.

**Section 5** amends the statute pertaining to the status of an area authority to add cross references to other applicable laws governing area authorities and to remove obsolete references.

**Section 6** amends the statute pertaining to the powers and duties of an area authority to codify certain powers and duties that were enacted in uncodified language in S.L. 2011-264. Among those powers is the authority to subcontract with other entities for certain managed care functions, and this section would require approval by the Secretary of DHHS of subcontracts entered into on or after the date the bill becomes law.

**Section 7** amends the statute that provides for the establishment of the board of an area authority, to make the following changes:

- Would require all area boards to comply with statutory membership composition requirements no later than October 1, 2017,
- Would alter the scope of the membership composition category requiring expertise in managed care insurance to instead require expertise in health insurance, health plan administration, or business expertise, or a combination of these areas.
- Would allow area authorities to seek approval from the Secretary of DHHS to appoint board members through a process other than the one required by the statute by submitting an adopted resolution from three-quarters of the counties in the area authority. This approval becomes void upon the merger or consolidation of the area authority. Merged or consolidated area authorities may use the same procedure for seeking approval to appoint board members through a process other than the one required by the statute.
- Would require each LME/MCO to report annually to DHHS on the status of the area board and the board's compliance with certain requirements, including the appointment process and membership composition.

**Section 8** adds a new section to Chapter 122C, which governs LME/MCOs, specifying that LME/MCOs can only use funds for purposes related to their functions and responsibilities under this Chapter, including operating the Medicaid waivers and carrying out other functions and responsibilities required by State or federal law or required by contract with DHHS. If an LME/MCO violates this statute, the Secretary of DHHS must transfer the operations of the LME/MCO to another compliant LME/MCO.

**Sections 9 and 10** amend the statutes pertaining to an area board's employment of an area director and other employees, to make the following changes:

- Would require the area director to be a full-time employee of the area board who cannot hold any other employment.
- Would clarify that an area director and other employees of the area authority may only be paid a salary above the range established by the State Human Resources Commission if the area board submits a request to both the Director of the Office of State Human Resources (OSHR) and the Secretary of DHHS and receives written approval for the salary or salary adjustment. Written approval must be based on documentation of comparable salaries in "comparable operations within a comparable region of North Carolina," as that term is defined by the Secretary of DHHS.

# House PCS 403

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- Would specify that an area director cannot be paid a salary above the range, if the salary exceeds by more than 30% the average salary of the area directors of the other area authorities.
- Would specify that the area director's total compensation, including salary, benefits, and bonuses, cannot be increased without the written approval of the Director of OSHR and the Secretary of DHHS, and would require annual review of each area director's total compensation for written approval.
- Would require that if the Secretary of DHHS determines that an area director's total compensation or salary exceeds the limitations in the statute, then the area board must bring the area director's total compensation or salary into compliance with the statute within 60 days after the Secretary's determination. If the area board does not bring the area director's total compensation or salary into compliance within that timeframe, then the Secretary must give notice to the area board related to the determination of noncompliance and allow the board another 60 days to bring the area director's total compensation or salary into compliance. If the area board does not comply within that timeframe, the Secretary must appoint a caretaker board for the area authority according to procedures in G.S. 122C-124.1, and the Secretary may terminate the employment of the area director.
- Would require the area board to annually submit to the Secretary of DHHS and the Director of OSHR all employment agreements and all documents relating to the area director's total compensation, and would require that these documents be submitted within 30 days after the bill becomes law.
- Would require the area director to ensure the area authority's compliance with its statutory powers and duties.
- Would require the appointment of an area director to be based on the recommendation of at least two candidates from a search committee of the area board, to include a consumer board member, a county commissioner, and an appointee of the Secretary of DHHS.
- Would require the area board to give an area director 30 days' notice prior to termination of employment, except after the merger or consolidation of the LME/MCO with another LME/MCO or if directed by the Secretary of DHHS.

**Section 11** amends the statute governing the establishment of local personnel systems to specify that a determination by the State Human Resources Commission that an LME/MCO's personnel system is substantially equivalent to standards established for certain other local governmental entities becomes void upon the merger or consolidation of two or more LME/MCOs. A newly merged or consolidated LME/MCO would be allowed to petition the State Human Resources Commission for a determination of substantial equivalency with the approval of three-quarters of the counties in the LME/MCO.

**Section 12** amends a provision in the 2015 Budget Act governing the timing of when DHHS makes single stream funding payments to the LME/MCOs to establish a timeframe within which DHHS must make monthly distributions of this funding to LME/MCOs, beginning July 1, 2017.

**Sections 13, 14, and 15** remove obsolete references from Chapter 122C.

**EFFECTIVE DATE:** Section 13 would become effective July 1, 2017. The remainder of the bill would be effective when it becomes law.

**BACKGROUND:** Originally, 11 LME/MCOs were formed, and those have consolidated to the 7 LME/MCOs that currently exist in the State, which include Vaya Health, Partners Behavioral Health,

# House PCS 403

*Page 4*

Cardinal Innovations Healthcare Solutions, Sandhills Center, Alliance Behavioral Health, Eastpointe, and Trillium Health Resources.

LME/MCOs originated from area authorities, county programs, and consolidated human services agencies, which later became local management entities (LMEs). Today, all LME/MCOs are structured as area authorities, and county programs and consolidated human services agencies no longer operate. The terms "area authority," "LME," and "LME/MCO" all refer to the same entities.

The LME/MCOs manage funding from 4 primary sources: State-only (single stream) funding, State and federal Medicaid funds, federal block grant funds, and county funds.



**NORTH CAROLINA GENERAL ASSEMBLY  
HOUSE OF REPRESENTATIVES**

**HEALTH CARE REFORM COMMITTEE REPORT**

**Representative Dana Bumgardner, Co-Chair**

**Representative Nelson Dollar, Co-Chair**

**Representative Donny Lambeth, Co-Chair**

**FAVORABLE COM SUB , UNFAVORABLE ORIGINAL BILL AND RE-REFERRED**

**HB 403**

**LME/MCO Claims Reporting/Mental Health Amdts.**

**Draft Number: H403-PCS40301-TR-1**

**Serial Referral: APPROPRIATIONS**

**Recommended Referral: None**

**Long Title Amended: No**

**Floor Manager: Dollar**

**TOTAL REPORTED: 1**



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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE BILL 403  
~~PROPOSED~~ COMMITTEE SUBSTITUTE H403-PCS40301-TR-1

Short Title: LME/MCO Claims Reporting/Mental Health Amdts.

(Public)

Sponsors:

Referred to:

March 20, 2017

1 A BILL TO BE ENTITLED  
2 AN ACT MODIFYING CERTAIN REQUIREMENTS PERTAINING TO LOCAL  
3 MANAGEMENT ENTITIES/MANAGED CARE ORGANIZATIONS.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.(a)** The Department of Health and Human Services (DHHS) shall  
6 specify a single, nationally recognized, standardized electronic format to be used by all local  
7 management entities/managed care organizations (LME/MCOs) when submitting encounter  
8 data to DHHS. LME/MCOs must submit to DHHS encounter data, consisting of records of  
9 claims payments made to providers, for Medicaid and State-funded mental health, intellectual  
10 and developmental disabilities, and substance abuse disorder services utilizing the single,  
11 nationally recognized, standardized electronic format specified by DHHS.

12 **SECTION 1.(b)** DHHS may use encounter data submitted by LME/MCOs for all  
13 of the following purposes:

- 14 (1) Setting LME/MCO capitation rates.  
15 (2) Measuring the quality of services managed by LME/MCOs.  
16 (3) Assuring compliance with State and federal regulations.  
17 (4) Conducting oversight and audit functions.  
18 (5) Other purposes determined necessary by DHHS.

19 **SECTION 1.(c)** DHHS shall work with LME/MCOs to ensure that the process for  
20 submitting encounter claims through NCTracks is successful.

21 **SECTION 1.(d)** DHHS shall report to the Joint Legislative Oversight Committee  
22 on Health and Human Services regarding the status of subsection (a) of this section on or  
23 before February 1, 2018.

24 **SECTION 2.(a)** G.S. 122C-112.1(a)(39) reads as rewritten:

25 "(39) Develop and use ~~a standard contract~~ contracts for all local management  
26 entity/managed care organizations for operation of the 1915(b)/(c) Medicaid  
27 Waiver and management of State appropriations and federal block grant  
28 funds that requires compliance by each LME/MCO with all provisions of the  
29 contract ~~contracts~~ to operate the 1915(b)/(c) Medicaid Waiver and manage  
30 State appropriations and federal block grant funds and with all applicable  
31 provisions of State and federal law. Each of these standard contracts must  
32 include quality outcome measures for mental health, developmental  
33 disabilities, and substance use disorders."

34 **SECTION 2.(b)** This section applies to contracts entered into on or after the  
35 effective date of this act.

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



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**"§ 122C-3. Definitions.**

The following definitions apply in this Chapter:

- (1) "Area authority" means the area mental health, developmental disabilities, and substance abuse authority.
- (2) "Area board" means the area mental health, developmental disabilities, and substance abuse ~~board~~ board that is the governing body for the area authority, local management entity, or local management entity/managed care organization.
- (2a) "Area director" means the administrative head of the area ~~authority program~~ authority, local management entity, or local management entity/managed care organization appointed pursuant to G.S. 122C-121. All provisions of Chapter 122C of the General Statutes that apply to the area director also apply to the administrative head of the area authority, LME, or LME/MCO, regardless of whether (i) the administrative head uses the title "CEO" or any other name or title assigned to him or her by the area authority, LME, or LME/MCO and (ii) a contract, memorandum of understanding, or other agreement in effect between the Department and the area authority, LME, or LME/MCO refers to the administrative head as the "CEO" or any other name or title.
- (2b) "Board of county commissioners" includes the participating boards of county commissioners for multicounty area ~~authorities and multicounty programs~~ authorities.
- ...
- (5) "Catchment area" means the geographic part of the State served by a specific area ~~authority or county program~~ authority.
- ...
- (10a) ~~"County program" means a mental health, developmental disabilities, and substance abuse services program established, operated, and governed by a county pursuant to G.S. 122C-115.1.~~
- ...
- (14) "Facility" means any person at one location whose primary purpose is to provide services for the care, treatment, habilitation, or rehabilitation of the mentally ill, the developmentally disabled, or substance abusers, and includes:
  - a. An "area facility", which is a facility that is operated by or under contract with the area ~~authority or county program~~ authority. For the purposes of this subparagraph, a contract is a contract, memorandum of understanding, or other written agreement whereby the facility agrees to provide services to one or more clients of the area ~~authority or county program~~ authority. Area facilities may also be licensable facilities in accordance with Article 2 of this Chapter. A State facility is not an area facility;
  - b. A "licensable facility", which is a facility that provides services to individuals who are mentally ill, developmentally disabled, or substance abusers for one or more minors or for two or more adults. These services shall be day services offered to the same individual for a period of three hours or more during a 24-hour period, or residential services provided for 24 consecutive hours or more. Facilities for individuals who are substance abusers include chemical dependency facilities;



- 1 c. A "private facility", which is a facility that is either a licensable  
2 facility or a special unit of a general hospital or a part of either in  
3 which the specific service provided is not covered under the terms of  
4 a contract with an area authority;  
5 d. The psychiatric service of the University of North Carolina Hospitals  
6 at Chapel Hill;  
7 e. A "residential facility", which is a 24-hour facility that is not a  
8 hospital, including a group home;  
9 f. A "State facility", which is a facility that is operated by the Secretary;  
10 g. A "24-hour facility", which is a facility that provides a structured  
11 living environment and services for a period of 24 consecutive hours  
12 or more and includes hospitals that are facilities under this Chapter;  
13 and  
14 h. A Veterans Administration facility or part thereof that provides  
15 services for the care, treatment, habilitation, or rehabilitation of the  
16 mentally ill, the developmentally disabled, or substance abusers.  
17 ...  
18 (20b) "Local management entity" or "LME" means an area ~~authority, county~~  
19 ~~program, or consolidated human services agency. It is a collective term that~~  
20 ~~refers to functional responsibilities rather than governance~~  
21 ~~structure.~~ authority.

- 22 ...  
23 (29a) ~~"Program director" means the director of a county program established~~  
24 ~~pursuant to G.S. 122C-115.1.~~

25 ...."

26 **SECTION 4.(a)** G.S. 122C-115.4(b) reads as rewritten:

27 "(b) The primary functions of an LME are designated in this subsection and shall not be  
28 conducted by any other entity unless an LME obtains the prior written approval of the  
29 Secretary to voluntarily enters enter into a contract with that entity under subsection (c) of this  
30 section. The primary functions include all of the following:

- 31 (1) Access for all citizens to the core services and administrative functions  
32 described in G.S. 122C-2. In particular, this shall include the implementation  
33 of a 24-hour a day, seven-day a week screening, triage, and referral process  
34 and a uniform portal of entry into care.  
35 (2) Provider monitoring, technical assistance, capacity development, and quality  
36 control. If at anytime the LME has reasonable cause to believe a violation of  
37 licensure rules has occurred, the LME shall make a referral to the Division  
38 of Health Service Regulation. If at anytime the LME has reasonable cause to  
39 believe the abuse, neglect, or exploitation of a client has occurred, the LME  
40 shall make a referral to the local Department of Social Services, Child  
41 Protective Services Program, or Adult Protective Services Program.  
42 (3) Utilization management, utilization review, and determination of the  
43 appropriate level and intensity of services. An LME may participate in the  
44 development of person centered plans for any consumer and shall monitor  
45 the implementation of person centered plans. An LME shall review and  
46 approve person centered plans for consumers who receive State-funded  
47 services and shall conduct concurrent reviews of person centered plans for  
48 consumers in the LME's catchment area who receive Medicaid funded  
49 services.

- (4) Authorization of the utilization of State psychiatric hospitals and other State facilities. Authorization of eligibility determination requests for recipients under a CAP-MR/DD waiver.
- (5) Care coordination and quality management. This function involves individual client care decisions at critical treatment junctures to assure clients' care is coordinated, received when needed, likely to produce good outcomes, and is neither too little nor too much service to achieve the desired results. Care coordination is sometimes referred to as "care management." Care coordination shall be provided by clinically trained professionals with the authority and skills necessary to determine appropriate diagnosis and treatment, approve treatment and service plans, when necessary to link clients to higher levels of care quickly and efficiently, to facilitate the resolution of disagreements between providers and clinicians, and to consult with providers, clinicians, case managers, and utilization reviewers. Care coordination activities for high-risk/high-cost consumers or consumers at a critical treatment juncture include the following:
  - a. Assisting with the development of a single care plan for individual clients, including participating in child and family teams around the development of plans for children and adolescents.
  - b. Addressing difficult situations for clients or providers.
  - c. Consulting with providers regarding difficult or unusual care situations.
  - d. Ensuring that consumers are linked to primary care providers to address the consumer's physical health needs.
  - e. Coordinating client transitions from one service to another.
  - f. Conducting customer service interventions.
  - g. Assuring clients are given additional, fewer, or different services as client needs increase, lessen, or change.
  - h. Interfacing with utilization reviewers and case managers.
  - i. Providing leadership on the development and use of communication protocols.
  - j. Participating in the development of discharge plans for consumers being discharged from a State facility or other inpatient setting who have not been previously served in the community.
- (6) Community collaboration and consumer affairs including a process to protect consumer rights, an appeals process, and support of an effective consumer and family advisory committee.
- (7) Financial management and accountability for the use of State and local funds and information management for the delivery of publicly funded services.
- (8) Each LME shall develop a waiting list of persons with intellectual or developmental disabilities that are waiting for specific services. The LME shall develop the list in accordance with rules adopted by the Secretary to ensure that waiting list data are collected consistently across LMEs. Each LME shall report this data annually to the Department. The data collected should include numbers of persons who are:
  - a. Waiting for residential services.
  - b. Potentially eligible for CAP-MRDD.
  - c. In need of other services and supports funded from State appropriations to or allocations from the Division of Mental Health,



Developmental Disabilities, and Substance Abuse Services, including CAP-MRDD.

Subject to all applicable State and federal laws and rules established by the Secretary and the Commission, nothing in this subsection shall be construed to preempt or supersede the regulatory or licensing authority of other State or local departments or divisions."

**SECTION 4.(b)** This section applies to contracts entered into on or after the effective date of this act.

**SECTION 5.** G.S. 122C-116 reads as rewritten:

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

(a) An area authority is a local political subdivision of the ~~State~~ State established by counties pursuant to G.S. 122C-115(a) and (c) for the management and delivery of services for individuals with mental illness, intellectual or other developmental disabilities, and substance use disorders under a 1915(b)/(c) Medicaid Waiver. An area authority is a local management entity that must perform the local management entity functions described in G.S. 122C-115.4 and monitor and manage all public resources that may be available for mental health, intellectual and developmental disabilities, and substance use disorder services, including federal block grants, federal funding for Medicaid and NC Health Choice, and all other public funding sources as described in Section 1(a) of S.L. 2011-264 and in compliance with G.S. 122C-111 and G.S. 122C-112.1(a)(39). LMEs are the single entities authorized to operate and manage the 1915(b)/(c) Medicaid Waiver, which operation and management must be performed in accordance with a standard contract developed by the Secretary under the authority of G.S. 122C-112.1(a)(39) that is subject to the enforcement provisions of G.S. 122C-124.1, G.S. 122C-124.2, and all other applicable provisions of this Chapter. LMEs are the sole entities authorized to enter into the contract described in G.S. 122C-124.2(g)(2) and G.S. 122C-112.1(a)(39) for the operation of the 1915(b)/(c) Medicaid Waiver. A local management entity that is under contract with the Department to operate the combined Medicaid Waiver program authorized under section 1915(b) and section 1915(c) of the Social Security Act shall be known as a "local management entity/managed care organization" or "LME/MCO."

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

**SECTION 6.(a)** 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)~~ G.S. 122C-121.

...

(18) Maintain disability-specific infrastructure and competency to address the clinical, treatment, rehabilitative, habilitative, and support needs of all disabilities covered by the 1915(b)/(c) Medicaid Waiver.

(19) Maintain administrative and clinical functions, including requirements for customer service, quality management, due process, provider network development, information systems, financial reporting, and staffing.

(20) Maintain full accountability for all aspects of Medicaid Waiver operations and for meeting all contract requirements specified by the Department.

...

(a2) An area authority may, but shall not be required to, subcontract to other entities, upon the prior written approval of the Secretary, only the following managed care functions:

(1) Information systems.

(2) Customer service (including call center) operations.



- (3) Claims processing.
- (4) Provider, enrollment, credentialing, and monitoring.
- (5) Professional services.
- (6) Treatment Plan development.
- (7) Referral to services.

An area authority shall not subcontract to other entities any other managed care functions or nonservice activities.

...."

**SECTION 6.(b)** G.S. 122C-117(a2), as enacted by subsection (a) of this section, applies to area authority subcontracts to other entities entered into on or after the date this act becomes law.

**SECTION 7.(a)** G.S. 122C-118.1 reads as rewritten:

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

(a) An area board shall have no fewer than 11 and no more than 21 voting members.  
The

(a1) Unless the Secretary approves an alternative board appointment process pursuant to subsection (a2) of this section, the board of county commissioners, or the boards of county commissioners within the area, shall appoint members in a manner that ensures participation from each of the constituent counties of the area authority and is consistent with the requirements provided in subsection (b) of this section. The process for appointing members shall ensure participation from each of the constituent counties of a multicounty area authority. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint the unrepresented category. If the board or boards fail to comply with the requirements of subsection (b) of this section, the Secretary shall appoint members of the unrepresented categories.

(a2) The boards of county commissioners within a multicounty area with a catchment population of at least 1,250,000 shall have the option to appoint members of the area board in a manner or with a composition through a process other than as required by subsection (a1) of this section by if at least three-quarters of the constituent counties each county adopting adopt a resolution to that effect and receiving obtain written approval from the Secretary. When seeking written approval from the Secretary to use an alternative board appointment process, the area authority shall submit to the Secretary its proposed board appointment process and copies of county resolutions requesting approval of the proposed board appointment process. In cases in which two or more area authorities seek to merge or consolidate, if one or more of these area authorities received approval by the Secretary for an alternative board appointment process prior to the merger or consolidation, all prior approvals for an alternative board appointment process become void 30 days after the effective date of the merger or consolidation. The newly merged or consolidated area authority and the boards of county commissioners within the multicounty area may appoint members of the area board through a process other than as provided in subsection (a1) of this section if at least three-quarters of the constituent counties each adopt a resolution to that effect and obtain written approval from the Secretary in the manner prescribed by this subsection. No area board shall be exempt from, and the Secretary shall not waive, any provision of this section except as provided in subsection (a1) of this section with respect to the board appointment process.

(a3) A member of the board may be removed with or without cause by the initial appointing authority. The area board may declare vacant the office of an appointed member who does not attend three consecutive scheduled meetings without justifiable excuse. The chair of the area board shall notify the appropriate appointing authority of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before the end of the term of the vacated seat or within 90 days of after the vacancy, whichever occurs first, and the appointments shall be for the remainder of the unexpired term.



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

- (1) At least one member who is a current county commissioner.
- (2) The chair of the local Consumer and Family Advisory Committee (CFAC) or the chair's designee.
- (3) At least one family member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
  - a. Individuals with mental illness.
  - b. Individuals in recovery from addiction.
  - c. Individuals with intellectual or other developmental disabilities.
- (4) At least one openly declared consumer member of the local CFAC, as recommended by the local CFAC, representing the interests of the following:
  - a. Individuals with mental illness.
  - b. Individuals with intellectual or other developmental disabilities.
  - c. 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.~~ health insurance, health plan administration, or business expertise, or any combination of expertise in these areas.
- (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 who shall participate only in Board activities that are open to the public.
- (13) An administrator of a hospital providing mental health, developmental disabilities, and substance abuse emergency services to serve as a nonvoting member who shall participate only in Board activities that are open to the public.

Except as provided in subdivisions (12) and (13) 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. No person registered as a lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on an area ~~authority~~ board. Of the members described in subdivisions (2) through (4) of this subsection, the boards 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.

...  
(d1) Beginning on July 1, 2017, each LME/MCO annually shall notify the Secretary of all of the following:

- (1) The area board appointment process, the process for filling vacancies on the area board, and the appointing authority for each area board position.
- (2) The membership of the area board.
- (3) The county of residence of each member.
- (4) How the membership composition requirements of subsection (b) of this section are being met.
- (5) The term of office of the chair of the area board and each member.
- (6) The LME/MCO's compliance status with training requirements for its board members.
- (7) The board's policies and procedures for conducting the area director's annual performance review, including at least all of the following:
  - a. The criteria used to conduct the review.
  - b. The criteria used to award bonuses to the area director and other employees.
  - c. The process for soliciting comments from county commissioners.
  - d. The results of the area director's most recent performance evaluation.

...."

SECTION 7.(b) Any area board that does not meet the composition requirements of G.S. 122C-118.1(b) on the effective date of this act shall comply with these composition requirements no later than October 1, 2017.

SECTION 8.(a) Part 4 of Article 4 of Chapter 122C of the General Statutes is amended by adding a new section to read:

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

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

SECTION 8.(b) G.S. 122C-124.2(c) reads as rewritten:

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

- (1) Prepare a written notice informing the LME/MCO of the provisions of subdivision (1), (2), or (3) of subsection (c) of this section or the provisions of G.S. 122C-147.3 with which the LME/MCO is deemed not to be in compliance and the reasons for the determination of noncompliance.
- (2) Cause the notice of the noncompliance to be delivered to the LME/MCO.
- (3) Not later than 10 days after the Secretary's notice of noncompliance is provided to the LME/MCO, assign the Contract of the noncompliant LME/MCO to a compliant LME/MCO.
- (4) Oversee the transfer of the operations and contracts from the noncompliant LME/MCO to the compliant LME/MCO in accordance with the provisions in subsection (e) of this section."

SECTION 9.(a) G.S. 122C-121 reads as rewritten:

**"§ 122C-121. Area director.**



(a) The area director is ~~an~~ a full-time employee of the area board, shall serve full time at the pleasure of the area board, and shall be appointed by the area board in accordance with G.S. 122C-117(7). The area director shall not be employed in any other capacity or enter into any other contract for the performance of services while serving as area director. As used in this subsection, "employee" means an individual and does not include a corporation, a partnership, a limited liability corporation, or any other business association.

(a1) The area board shall establish the area director's salary under Article 3 of Chapter 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges established by the State Human Resources Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall be Commission so long as all of the following requirements are met:~~

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within ~~the~~ a comparable region of North Carolina and shall also include the specific amount the board proposes to pay the director. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.

(2) The area board must obtain prior written approval for the proposed salary from both the Director of the Office of State Human Resources and the Secretary. In no instance shall the area board, the Director of the Office of State Human Resources, or the Secretary approve a salary for an area director that is higher than the maximum of the applicable salary range if it exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, as determined by the Secretary. If the Secretary determines that an area director's salary is higher than the maximum of the applicable salary range and exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, that area director's salary shall be reduced to achieve compliance with this subdivision within 60 days after such determination by the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes.

(a2) The area board shall not authorize any salary adjustment for an area director that is results in a salary above the normal allowable salary range ~~without obtaining prior approval from the Director of the Office of State Human Resources range~~, or pay any salary above the normal allowable salary range, unless all of the following requirements are met:

(1) The area board must submit to the Director of the Office of State Human Resources and the Secretary a request to exceed the maximum of the applicable salary range. The request must be supported by documentation of comparable salaries in comparable operations within a comparable region of North Carolina and shall also include the specific amount of the salary adjustment the board proposes to pay the area director and the resulting salary. For the purpose of this subdivision, the Secretary shall determine what constitutes comparable operations within a comparable region of North Carolina.



(2) The area board must obtain prior written approval for the proposed salary adjustment from both the Director of the Office of State Human Resources and the Secretary. In no instance shall the area board, the Director of the Office of State Human Resources, or the Secretary approve a salary adjustment for an area director that results in a salary that is higher than the maximum of the applicable salary range if it exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, as determined by the Secretary. If the Secretary determines that an area director's salary is higher than the maximum of the applicable salary range and exceeds by more than thirty percent (30%) the average salary of the area directors of the remaining LME/MCOs, that area director's salary shall be reduced to achieve compliance with this subdivision within 60 days after such determination by the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes.

(a3) If the Secretary determines that the compensation of an area director, including salary, benefits, and bonuses, exceeds the limitations specified in this section, the area board shall prospectively reduce that area director's compensation, including salary, benefits, and bonuses, to achieve compliance with this section and notify the Secretary within 60 days after such determination by the Secretary. If an area board does not bring an area director's compensation, including salary, benefits, and bonuses, into compliance with this section within the 60-day period, the Secretary shall notify, in writing, the area board and the applicable participating boards of county commissioners of the area authority specifically how the Secretary determined that the area director's compensation, including salary, benefits, and bonuses, does not comply with this section, and that the area board must bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section or a caretaker board of directors will be appointed as provided in G.S. 122C-124.1(c). The area board shall have 60 days from the date it receives notice under this subsection to bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section.

If, at the end of the 60-day notice period, the area board has not brought the area director's compensation, including salary, benefits, and bonuses, into compliance with this section, the Secretary shall appoint a caretaker board of directors as provided in G.S. 122C-124.1(c). The Secretary may assign any or all of the powers and duties of the area director or of the area board to the caretaker board as the Secretary deems necessary and appropriate. In addition to performing all of these powers and duties, the caretaker board shall bring the area director's compensation, including salary, benefits, and bonuses, into compliance with this section. The Secretary may terminate the area director's employment when it appoints a caretaker board. Neither party to any applicable employment contract shall be entitled to damages. After a caretaker board has been appointed, the General Assembly shall consider, at its next regular session, the future governance of the identified area authority.

(a2)(a4) The area board shall not provide the area director with any benefits or bonuses that are not also provided by the area board to all permanent employees of the area program, except that the area board may, in its discretion, offer severance benefits, relocation expenses, or both, to an applicant for the position of area director as an incentive for the applicant to accept an offer of employment. The area director shall be reimbursed only for allowable



1 employment-related expenses at the same rate and in the same manner as other employees of  
2 the area program.

3 (a5) The total compensation provided or recommended to be provided by each area  
4 board to its area director, including salary, benefits, and bonuses, shall be reviewed for written  
5 approval by the Director of the Office of State Human Resources and the Secretary on at least  
6 an annual basis to determine compliance with the requirements of this section. An area board  
7 shall not increase compensation to an area director without prior written approval for the  
8 increase from the Director of the Office of State Human Resources and the Secretary.

9 (a6) Annually on June 30, each area board shall submit to the Secretary and the Director  
10 of the Office of State Human Resources a copy of all current employment agreements,  
11 employment contracts, and any amendments to those agreements and contracts that the area  
12 board has entered into with its area director, as well as any other documents relating to the area  
13 director's compensation, including salary, benefits, and bonuses.

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

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

- 20 (1) Appoint, supervise, and terminate area program staff.
- 21 (2) Administer area authority services.
- 22 (3) Develop the budget of the area authority for review by the area board.
- 23 (4) Provide information and advice to the board of county commissioners
- 24 through the county manager.
- 25 (5) Act as liaison between the area authority and the Department.
- 26 (6) Ensure compliance by the area authority with the powers and duties of the  
27 area authority established under G.S. 122C-117.

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

- 30 (1) Masters degree.
- 31 (2) Related experience.
- 32 (3) Management experience.
- 33 (4) Any other qualifications required under G.S. 122C-120.1.

34 (e) The appointment of the area director shall be based upon the recommendation of at  
35 least two candidates by a search committee of the area board. The search committee shall  
36 include a consumer board member, a county commissioner, and an appointee of the Secretary.  
37 The Secretary may waive this requirement when appointment of the area director results from  
38 the merger or consolidation of LME/MCOs.

39 (f) The area board may not terminate the employment of an area director without 30  
40 days' prior written notice to the Secretary, unless the termination (i) results from the merger or  
41 consolidation of LME/MCOs or (ii) is directed by the Secretary."

42 **SECTION 9.(b)** The limitations on compensation, including salary, benefits, and  
43 bonuses specified in G.S. 122C-121, as amended by subsection (a) of this section, apply to  
44 currently employed area directors hired prior to the effective date of this act as well as to area  
45 directors hired on or after the effective date of this act. If the Secretary of the Department of  
46 Health and Human Services determines that the compensation, including salary, benefits, and  
47 bonuses, of a currently employed area director hired prior to the effective date of this act  
48 exceeds the limitations specified in G.S. 122C-121, as amended by subsection (a) of this  
49 section, the area board shall prospectively reduce that area director's compensation, including  
50 salary, benefits, and bonuses, to achieve compliance with G.S. 122C-121, as amended by  
51 subsection (a) of this section, within 60 days after such determination by the Secretary. If an



1 area board does not comply with the directive of this subsection to reduce an area director's  
2 compensation, including salary, benefits, and bonuses, to achieve compliance with  
3 G.S. 122C-121, as amended by subsection (a) of this section, within the 60-day period  
4 prescribed by this subsection, the Secretary shall appoint a caretaker board of directors, as  
5 prescribed in G.S. 122C-121(a3), as amended by subsection (a) of this section.

6 **SECTION 9.(c)** Each LME/MCO shall, within 30 day after the effective date of  
7 this act, submit to the Secretary and the Director of the Office of State Human Resources a  
8 copy of all current employment agreements, employment contracts, and any amendments to  
9 those agreements and contracts that the LME/MCO has entered into with its area director, as  
10 well as any other documents relating to the area director's compensation, including salary,  
11 benefits, and bonuses.

12 **SECTION 10.** G.S. 122C-154 reads as rewritten:

13 **"§ 122C-154. Personnel.**

14 (a) Employees under the direct supervision of the area director are employees of the  
15 area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes  
16 applies unless otherwise provided in this Article. ~~Employees appointed by the county program~~  
17 ~~director are employees of the county. In a multicounty program, employment of county~~  
18 ~~program staff shall be as agreed upon in the interlocal agreement adopted pursuant to~~  
19 ~~G.S. 122C-115.1.~~

20 (b) Notwithstanding G.S. 126-9(b), an employee of an area authority may be paid a  
21 salary that is in excess of the salary ranges established by the State Human Resources  
22 Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall~~  
23 ~~Commission so long as all of the following requirements are met:~~

- 24 (1) The area board must submit to the Director of the Office of State Human  
25 Resources and the Secretary a request to exceed the maximum of the  
26 applicable salary range. The request must be supported by documentation of  
27 comparable salaries in comparable operations within the a comparable  
28 region of North Carolina and shall also include the specific amount the board  
29 proposes to pay the employee. For the purpose of this subdivision, the  
30 Secretary shall determine what constitutes comparable operations within a  
31 comparable region of North Carolina.
- 32 (2) The area board must obtain prior written approval for the proposed salary  
33 from both the Director of the Office of State Human Resources and the  
34 Secretary.

35 The requirements of subdivisions (1) and (2) of this subsection may not be waived by the  
36 area board, the Director of the Office of State Human Resources, or the Secretary regardless of  
37 whether the State Human Resources Commission has made a determination under G.S. 126-11  
38 that all or a portion of the board's personnel system has been determined to be substantially  
39 equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General  
40 Statutes.

41 (c) The area board shall not authorize any salary adjustment that ~~is results in a salary~~  
42 ~~above the normal allowable salary range without obtaining prior approval the Director of the~~  
43 ~~Office of State Human Resources unless all of the following requirements are met:~~

- 44 (1) The area board must submit to the Director of the Office of State Human  
45 Resources and the Secretary a request to exceed the maximum of the  
46 applicable salary range. The request must be supported by documentation of  
47 comparable salaries in comparable operations within a comparable region of  
48 North Carolina and shall also include the specific amount of the salary  
49 adjustment the board proposes to pay the employee and the resulting salary.  
50 For the purpose of this subdivision, the Secretary shall determine what



constitutes comparable operations within a comparable region of North Carolina.

- (2) The area board must obtain prior written approval for the proposed salary adjustment from both the Director of the Office of State Human Resources and the Secretary.

The requirements of subdivisions (1) and (2) of this subsection may not be waived by the area board, the Director of the Office of State Human Resources, or the Secretary regardless of whether the State Human Resources Commission has made a determination under G.S. 126-11 that all or a portion of the board's personnel system has been determined to be substantially equivalent to, and therefore exempt from, the provisions of Chapter 126 of the General Statutes."

SECTION 11. G.S. 126-11 reads as rewritten:

"§ 126-11. **Local personnel system may be established; approval and monitoring; rules and regulations.**

(a) The board of county commissioners of any county may establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system and any substantial changes to the system, shall be approved by the State Human Resources Commission as substantially equivalent to the standards established under this Chapter for employees of local departments of social services, local health departments, and area mental health programs, and local emergency management programs. If approved by the State Human Resources Commission, the employees covered by the county system shall be exempt from all provisions of this Chapter except Article 6.

(a1) With approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, the area mental health authority may establish and maintain a personnel system for all employees of the area mental health authority, which system and any substantial changes to the system, shall be equivalent to the standards established under this Chapter for employees of area mental health authorities. If approved by the State Human Resources Commission, the employees covered by the area mental health authority system shall be exempt from all provisions of this Chapter except Article 6.

(b) A board of county commissioners may petition the State Human Resources Commission to determine whether any portion of its total personnel system meets the requirements ~~in (a) above~~ of subsection (a) of this section. Upon such determination, county employees shall be exempt from the provisions of this Chapter relating to the approved portions of the county personnel system.

(b1) The board of an area mental health authority, with the approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, may petition the State Human Resources Commission to determine whether any portion of its total personnel system meets the requirements ~~in subsection (a1) above~~ of subsection (a1) of this section. Upon such determination, area mental health authority employees shall be exempt from the provisions of this Chapter relating to the approved portions of the area mental health authority personnel system except as provided in G.S. 122C-121.

(b2) Upon the merger or consolidation of two or more local management entities/managed care organizations, any determination made prior to the effective date of that merger or consolidation that all or a portion of any applicable area mental health authority personnel system is substantially equivalent is void. The board of the newly merged or consolidated area mental health authority, with the approval of the boards of commissioners of three-quarters of the counties which comprise the newly merged or consolidated area mental health authority, may petition the State Human Resources Commission to determine whether any portion of its total personnel system meets the requirements of subsection (a1) of this section. Upon such determination, area mental health authority employees shall be exempt from

1 the provisions of this Chapter relating to the approved portions of the area mental health  
2 authority personnel system except as provided in G.S. 122C-121 and G.S. 122C-154.

3 (c) The Office of State Human Resources shall monitor at least annually county or area  
4 mental health authority personnel systems approved under this section in order to ensure  
5 compliance.

6 (d) In order to define "substantially equivalent," the State Human Resources  
7 Commission is authorized to promulgate rules and regulations to implement the federal merit  
8 system standards and these regulations at a minimum shall include: recruitment and selection of  
9 employees; position classification; pay administration; training; employee relations; equal  
10 employment opportunity; and records and reports."

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

12 "SECTION 12F.2.(a) For the purpose of mitigating cash flow problems that many  
13 LME/MCOs experience at the beginning of each fiscal year relative to single stream funding,  
14 the Department of Health and Human Services, Division of Mental Health, Developmental  
15 Disabilities, and Substance Abuse Services (DMH/DD/SAS), shall distribute not less than  
16 one-twelfth of each LME/MCO's ~~continuation~~-base budget allocation at the beginning of the  
17 fiscal year and subtract the amount of that distribution from the LME/MCO's total  
18 reimbursements for the fiscal year. For each month of the fiscal year after July, the  
19 DMH/DD/SAS shall distribute, on the first Tuesday of the month, one-eleventh of the amount  
20 of each LME/MCO's single-stream allocation that remains after subtracting the amount of the  
21 distribution that was made to the LME/MCO in July of the fiscal year."

22 **SECTION 13.** G.S. 122C-141(d)(1) reads as rewritten:

23 "(1) The public provider must meet all the provider qualifications as defined by  
24 rules adopted by the Commission. ~~A county that satisfies its duties under~~  
25 ~~G.S. 122C-115(a) through a consolidated human services agency may not be~~  
26 ~~considered a qualified provider for purposes of this subdivision."~~

27 **SECTION 14.** G.S. 122C-115.1 and Part 2A of Article 4 of Chapter 122C of the  
28 General Statutes are repealed.

29 **SECTION 15.** The Revisor of Statutes shall delete every reference to  
30 G.S. 122C-115.1, G.S. 122C-127, and the phrases "county program" and "consolidated human  
31 services agency" wherever they occur in Chapter 122C of the General Statutes.

32 **SECTION 16.** Section 12 of this act becomes effective July 1, 2017. The  
33 remainder of this act is effective when it becomes law.