

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE BILL 1075*
Committee Substitute Favorable 6/5/12
Senate Mental Health & Youth Services Committee Substitute Adopted 6/11/12

Short Title: LME/MCO Governance.

(Public)

Sponsors:

Referred to:

May 24, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE CHANGES IN GOVERNANCE OF LOCAL MANAGEMENT
3 ENTITIES WITH RESPECT TO THE IMPLEMENTATION OF STATEWIDE
4 EXPANSION OF THE 1915(B)/(C) MEDICAID WAIVER.

5 The General Assembly of North Carolina enacts:

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

7 "§ 122C-115. Duties of counties; appropriation and allocation of funds by counties and
8 cities.

9 (a) A county shall provide mental health, developmental disabilities, and substance
10 abuse services in accordance with rules, policies, and guidelines adopted pursuant to statewide
11 restructuring of the management responsibilities for the delivery of services for individuals
12 with mental illness, intellectual or other developmental disabilities, and substance abuse
13 disorders under a 1915(b)/(c) Medicaid Waiver through an area authority or authority, through
14 a county program established pursuant to G.S. 122C-115.1, G.S. 122C-115.1, or through a
15 behavioral health authority established pursuant to Part 2B of this Chapter. Beginning July 1,
16 2012, the catchment area of an area authority or a county program shall contain a minimum
17 population of at least 300,000. Beginning July 1, 2013, the catchment area of an area authority
18 or a county program shall contain a minimum population of at least 500,000. To the extent this
19 section conflicts with G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control."

20 SECTION 2.(a) G.S. 122C-116 reads as rewritten:

21 "§ 122C-116. Status of area authority; status of consolidated human services agency.

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

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

26 SECTION 2.(b) G.S. 122C-115.1(i) reads as rewritten:

27 "(i) Except as otherwise specifically provided, this Chapter applies to counties that
28 provide mental health, developmental disabilities, and substance abuse services through a
29 county program. As used in the applicable sections of this Article, the terms "area authority",
30 "area program", and "area facility" shall be construed to include "county program". ~~The~~
31 ~~following sections of this Article do not apply to county programs:~~

32 (1) G.S. 122C-115.3, 122C-116, 122C-117, and 122C-118.1.

33 (2) G.S. 122C-119 and G.S. 122C-119.1.

34 (3) G.S. 122C-120 and G.S. 122C-121.



- 1 (4) G.S. 122C-127.
- 2 (5) G.S. 122C-147.
- 3 (6) G.S. 122C-152 and G.S. 122C-153.
- 4 (7) G.S. 122C-156.
- 5 (8) G.S. 122C-158."

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

7 "**§ 122C-118.1. Structure of area board.**

8 (a) ~~An area board shall have no fewer than 11 and no more than 25 members. However,~~
9 ~~the area board for a multicounty area authority consisting of eight or more counties may have~~
10 ~~up to 30 members. In a single county area authority, the members shall be appointed by the~~
11 ~~board of county commissioners. Except as otherwise provided, in areas consisting of more than~~
12 ~~one county, each board of county commissioners within the area shall appoint one~~
13 ~~commissioner as a member of the area board. These members shall appoint the other members.~~
14 ~~The boards of county commissioners within the multicounty area shall have the option to~~
15 ~~appoint the members of the area board in a manner other than as required under this section by~~
16 ~~adopting a resolution to that effect. The boards of county commissioners in a multicounty area~~
17 ~~authority shall indicate in the business plan each board's method of appointment of the area~~
18 ~~board members in accordance with G.S. 122C-115.2(b). These appointments shall take into~~
19 ~~account sufficient citizen participation, representation of the disability groups, and equitable~~
20 ~~representation of participating counties. Individuals appointed to the board shall include two~~
21 ~~individuals with financial expertise, an individual with expertise in management or business,~~
22 ~~and an individual representing the interests of children. A member of the board may be~~
23 ~~removed with or without cause by the initial appointing authority. Vacancies on the board shall~~
24 ~~be filled by the initial appointing authority before the end of the term of the vacated seat or~~
25 ~~within 90 days of the vacancy, whichever occurs first, and the appointments shall be for the~~
26 ~~remainder of the unexpired term. An area board shall have no fewer than 11 and no more than~~
27 21 voting members. The board of county commissioners, or the boards of county
28 commissioners within the area, shall appoint members consistent with the requirements
29 provided in subsection (b) of this section. The process for appointing members shall ensure
30 participation from each of the constituent counties of a multicounty area authority. If the board
31 or boards fail to comply with the requirements of subsection (b) of this section, the Secretary
32 shall appoint the unrepresented category. A member of the board may be removed with or
33 without cause by the initial appointing authority. The area board may declare vacant the office
34 of an appointed member who does not attend three consecutive scheduled meetings without
35 justifiable excuse. The chair of the area board shall notify the appropriate appointing authority
36 of any vacancy. Vacancies on the board shall be filled by the initial appointing authority before
37 the end of the term of the vacated seat or within 90 days of the vacancy, whichever occurs first,
38 and the appointments shall be for the remainder of the unexpired term.

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

- 43 (1) ~~A physician licensed under Chapter 90 of the General Statutes to practice~~
44 ~~medicine in North Carolina who, when possible, is certified as having~~
45 ~~completed a residency in psychiatry.~~ At least one member who is a current
46 county commissioner.
- 47 (2) ~~A clinical professional from the fields of mental health, developmental~~
48 ~~disabilities, or substance abuse.~~ The chair of the local Consumer and Family
49 Advisory Committee (CFAC) or the chair's designee.
- 50 (3) ~~At least one family member or individual from a citizens' organization~~
51 ~~composed primarily of consumers or their family members,~~ of the local

CFAC, as recommended by the local CFAC, representing the interests of individuals; the following:

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

~~An~~ Except as provided in subdivision (12) of this subsection, an individual that contracts with a local management entity (LME) for the delivery of mental health, developmental disabilities, and substance abuse services may not serve on the board of the LME for the period during which the contract for services is in effect. 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.

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

(d) Any member of an area board who is a county commissioner serves on the board in an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed the earlier of three years or the member's service as a county commissioner. Any member of an area board who is a county manager serves on the board at the pleasure of the initial appointing

1 authority, for a term not to exceed the earlier of three years or the duration of the member's
2 employment as a county manager. The terms of ~~the other~~ members on the area board shall be
3 for three years, except that upon the initial formation of an area board in compliance with
4 subsection (a) of this section, one-third shall be appointed for one year, one-third for two years,
5 and all remaining members for three years. ~~Members, other than county commissioners and~~
6 ~~county managers, Members~~ shall not be appointed for more than ~~two~~three consecutive terms.
7 ~~Board members serving as of July 1, 2006, may remain on the board for one additional term.~~
8 ~~This subsection applies to all area authority board members regardless of the procedure used to~~
9 ~~appoint members under subsection (a) of this section.~~

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

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

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

15 "**§ 122C-119.1. Area Authority board members' training.**

16 All members of the governing body for an area authority shall receive initial orientation on
17 board members' responsibilities and annual training provided by the Department ~~in which shall~~
18 include fiscal management, budget development, and fiscal accountability. A member's refusal
19 to be trained shall be grounds for removal from the board."

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

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

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

25 "**§ 122C-170. Local Consumer and Family Advisory Committees.**

26 ...
27 (b) Each of the disability groups shall be equally represented on the CFAC, and the
28 CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment
29 area. The terms of members shall be three years, and no member may serve more than ~~two~~three
30 consecutive terms. The CFAC shall be composed exclusively of:

- 31 (1) Adult consumers of mental health, developmental disabilities, and substance
32 abuse services.
33 (2) Family members of consumers of mental health, developmental disabilities,
34 and substance abuse services.

35"

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

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

- 43 (1) Provisions of service are not disrupted by the disengagement.
44 (2) The disengaging county is either in compliance or plans to merge with an
45 area authority that is in compliance with population requirements provided
46 in G.S. 122C-155(a).
47 (3) The timing of the disengagement is accounted for and does not conflict with
48 setting capitation rates.
49 (4) Adequate notice is provided to the affected counties, the Department of
50 Health and Human Services, and the General Assembly.

1 (5) Provisions for distribution of any real property no longer within the
2 catchment area of the area authority.

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

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

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

7 "**§ 122C-147. Financing and title of area authority property.**

8 ...
9 (c) All real property purchased for use by the area authority shall be provided by local
10 or federal funds unless otherwise allowed under subsection (b) of this section or by specific
11 capital funds appropriated by the General Assembly. The title to this real property and the
12 authority to acquire it is held by the ~~county where the property is located. The authority to hold~~
13 ~~title to real property and the authority to acquire it, including the area authority's authority to~~
14 ~~finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area~~
15 ~~authority or by the contracting governmental entity with the approval of the board or boards of~~
16 ~~commissioners of all the counties that comprise the area authority. The approval of a board of~~
17 ~~county commissioners shall be by resolution of the board and may have any necessary or~~
18 ~~proper conditions, including provisions for distribution of the proceeds in the event of~~
19 ~~disposition of the property by the area authority.~~ area authority. Real property may not be
20 acquired by means of an installment contract under G.S. 160A-20 unless the Local Government
21 Commission has approved the acquisition. No deficiency judgment may be rendered against
22 any unit of local government in any action for breach of a contractual obligation authorized by
23 this subsection, and the taxing power of a unit of local government is not and may not be
24 pledged directly or indirectly to secure any moneys due under a contract authorized by this
25 subsection.

26"

27 **SECTION 9.(a)** G.S. 122C-117 reads as rewritten:

28 "**§ 122C-117. Powers and duties of the area authority.**

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

30 ...

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

39 ...

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

42 ...

43 (c) Within 30 days of the end of each quarter of the fiscal year, the area director and
44 finance officer of the area authority shall provide the quarterly report of the area authority to
45 the county finance officer. The county finance officer shall provide the quarterly report to the
46 board of county commissioners at the next regularly scheduled meeting of the board. The clerk
47 of the board of commissioners shall notify the area director and the county finance officer if the
48 quarterly report required by this subsection has not been submitted within the required period
49 of time. This information shall be ~~presented in a format prescribed by the county. At least twice~~
50 ~~a year, this information shall be presented in person and shall be read into the minutes of the~~
51 ~~meeting at which it is presented. In addition, the area director or finance officer of the area~~

1 authority shall provide to the board of county commissioners ad hoc reports as requested by the
2 board of county commissioners, delivered to the county and, at the request of the board of
3 county commissioners, may be presented in person by the area director or the director's
4 designee.

5"

6 **SECTION 9.(b)** G.S. 122C-115.2 is amended by adding a new subsection to read:

7 "(e) The Secretary may waive any requirements of this section that are inconsistent with
8 or incompatible with contracts entered into between the Department and the area authority for
9 the management responsibilities for the delivery of services for individuals with mental illness,
10 intellectual or other developmental disabilities, and substance abuse disorders under a
11 1915(b)/(c) Medicaid Waiver."

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

14 "**§ 122C-126.1. Confidentiality of competitive health care information.**

15 (a) For the purposes of this section, competitive health care information means
16 information relating to competitive health care activities by or on behalf of the area authority.
17 Competitive health care information shall be confidential and not a public record under Chapter
18 132 of the General Statutes; provided that any contract entered into by or on behalf of an area
19 authority shall be a public record, unless otherwise exempted by law, or the contract contains
20 competitive health care information, the determination of which shall be as provided in
21 subsection (b) of this section.

22 (b) If an area authority is requested to disclose any contract that the area authority
23 believes in good faith contains or constitutes competitive health care information, the area
24 authority may either redact the portions of the contract believed to constitute competitive health
25 care information prior to disclosure or, if the entire contract constitutes competitive health care
26 information, refuse disclosure of the contract. The person requesting disclosure of the contract
27 may institute an action pursuant to G.S. 132-9 to compel disclosure of the contract or any
28 redacted portion thereof. In any action brought under this subsection, the issue for decision by
29 the court shall be whether the contract, or portions of the contract withheld, constitutes
30 competitive health care information, and in making its determination, the court shall be guided
31 by the procedures and standards applicable to protective orders requested under Rule 26(c)(7)
32 of the Rules of Civil Procedure. Before rendering a decision, the court shall review the contract
33 in camera and hear arguments from the parties. If the court finds that the contract constitutes or
34 contains competitive health care information, the court may either deny disclosure or may make
35 such other appropriate orders as are permitted under Rule 26(c) of the Rules of Civil Procedure.

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

41 **SECTION 11.(a)** G.S. 126-5(a) reads as rewritten:

42 "**§ 126-5. Employees subject to Chapter; exemptions.**

43 (a) The provisions of this Chapter shall apply to:

44 (1) All State employees not herein exempt; and

45 (2) All employees of the following local entities:

46 a. Area mental health, developmental disabilities, and substance abuse
47 authorities, except as otherwise provided in Chapter 122C
48 of the General Statutes.

49 b. Local social services departments.

50 c. County health departments and district health departments.

d. Local emergency management agencies that receive federal grant-in-aid funds.

An employee of a consolidated county human services agency created pursuant to G.S. 153A-77(b) is not considered an employee of an entity listed in this subdivision.

(3) County employees not included under subdivision (2) of this subsection as the several boards of county commissioners may from time to time determine."

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

"§ 122C-154. Personnel.

Employees under the direct supervision of the area director are employees of the area authority. For the purpose of personnel administration, Chapter 126 of the General Statutes applies unless otherwise provided in this Article. Employees appointed by the county program director are employees of the county. In a multicounty program, employment of county program staff shall be as agreed upon in the interlocal agreement adopted pursuant to G.S. 122C-115.1. 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 Personnel Commission. Any salary that is higher than the maximum of the applicable salary range shall be supported by documentation of comparable salaries in comparable operations within the region and shall also include the specific amount the board proposes to pay the employee. The area board shall not authorize any salary adjustment that is above the normal allowable salary range without obtaining prior approval from the Director of the Office of State Personnel."

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

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

SECTION 12.(a) G.S. 122C-122 is repealed.

SECTION 12.(b) G.S. 35A-1202(4) reads as rewritten:

"§ 35A-1202. Definitions.

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

...

(4) "Disinterested public agent" ~~means:~~means

a. ~~The~~the director or assistant directors of a ~~local human services agency, or county department of social services.~~

b. ~~An adult officer, agent, or employee of a State human services agency. The~~Except as provided in G.S. 35A-1213(f), the fact that a disinterested public agent is employed by a State or local human services agency that provides financial assistance, services, or

1 treatment to a ward does not disqualify that person from being
2 appointed as guardian.

3"

4 **SECTION 12.(c)** G.S. 35A-1213 reads as rewritten:

5 **"§ 35A-1213. Qualifications of guardians.**

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

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

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

26 (d) A disinterested public agent who is appointed by the clerk to serve as guardian is
27 authorized and required to do so; provided, if at the time of the appointment or any time
28 subsequent thereto the disinterested public agent believes that his role or the role of his agency
29 in relation to the ward is such that his service as guardian would constitute a conflict of interest,
30 or if he knows of any other reason that his service as guardian may not be in the ward's best
31 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a
32 different guardian. A disinterested public agent who is appointed as guardian shall serve in that
33 capacity by virtue of his office or employment, which shall be identified in the clerk's order and
34 in the letters of appointment. When the disinterested public agent's office or employment
35 terminates, his successor in office or employment, or his immediate supervisor if there is no
36 successor, shall succeed him as guardian without further proceedings unless the clerk orders
37 otherwise.

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

43 (f) An individual employed by an entity that contracts with a local management entity
44 (LME) for the delivery of mental health, developmental disabilities, and substance abuse
45 services may not serve as a guardian for a ward for whom the individual is providing such
46 services."

47 **SECTION 12.(d)** G.S. 35A-1292(a) reads as rewritten:

48 **"§ 35A-1292. Resignation.**

49 (a) Any guardian who wishes to resign ~~may apply in writing to the clerk,~~ shall file a
50 motion with the clerk setting forth the circumstances of the case. If a general guardian or
51 guardian of the estate, at the time of making the application, also exhibits his final account for

1 settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may
2 accept the resignation of the guardian and discharge him and appoint a successor ~~guardian, but~~
3 ~~the guardian.~~ The guardian so discharged and his sureties are still liable in relation to all matters
4 connected with the guardianship before the ~~discharge.~~ discharge and shall continue to ensure
5 that the ward's needs are met until the clerk officially appoints a successor. The guardian shall
6 attend the hearing to modify the guardianship, if physically able."

7 **SECTION 12.(e)** In order to achieve continuity of care and services, any successor
8 guardian shall make diligent efforts to continue existing contracts entered into under the
9 authority of G.S. 122C-122 where consistent with the best interest of the ward, as required by
10 Chapter 35A of the General Statutes.

11 **SECTION 13.(a)** Section 1(a)(3) of S.L. 2011-264 reads as rewritten:

12 "(3) Designate ~~a single entity~~ an area authority for mental health, developmental
13 disabilities, and substance abuse services to assume responsibility for all
14 aspects of Waiver management. The following operational models are
15 ~~acceptable options for Local Management Entity (LME)~~
16 ~~applicants:acceptable:~~

- 17 a. Merger model: A single larger LME is formed from the merger of
18 two or more LMEs.
19 b. Interlocal agreement among LMEs: A single LME is identified as the
20 leader for all Waiver operations, financial management, and
21 accountability for performance measures."

22 **SECTION 13.(b)** Section 1(c) of S.L. 2011-264 reads as rewritten:

23 **"SECTION 1.(c)** The Department shall require LMEs that have not been approved by the
24 Department to operate a 1915(b)/(c) Medicaid Waiver by January 1, 2013, to merge with or be
25 aligned through an interlocal agreement with an LME that has been approved by the
26 Department to operate a 1915(b)/(c) Medicaid Waiver. If any LME fails to comply with this
27 requirement, or fails to meet performance requirements of an approved contract with the
28 Department to operate a 1915(b)/(c) Medicaid Waiver, the Department shall assign
29 responsibility for management of the 1915(b)/(c) Medicaid Waiver on behalf of the
30 noncompliant LME to an LME that is successfully operating the Waiver and successfully
31 meeting performance requirements of the contract with the Department. Those LMEs approved
32 to operate the 1915(b)/(c) Medicaid Waiver under an interlocal agreement must have a single
33 LME entity designated as responsible for all aspects of Waiver operations and solely
34 responsible for meeting contract requirements."

35 **SECTION 14.(a)** Article 4 of Chapter 122C of the General Statutes is amended by
36 adding a new Part to read:

37 "Part 2B. Behavioral Health Authority.

38 **"§ 122C-29. Behavioral Health Authority creation; approval and oversight.**

39 A behavioral health authority may be created under the provisions of this Part whenever the
40 governing board of the local management entity, which has been operating as a managed care
41 organization under a 1915(b)/(c) Medicaid Waiver for at least three years, finds and adopts a
42 resolution finding that it is in the interest of the public health and welfare to create a behavioral
43 health authority in order to manage resources that may be available for mental health,
44 intellectual and other developmental disabilities, and substance abuse services. An LME's
45 organization as a behavioral health authority is subject to the approval of the Secretary, which
46 shall be based on the LME's demonstration of successful operation as a managed care
47 organization. The LME shall be subject to periodic review and may be revoked by the
48 Secretary upon a finding that the LME is no longer successfully operating as an managed care
49 organization as defined in 42 C.F.R § 438.2.

50 **"§ 122C-29.1. Functions of a behavioral health authority.**

1 A behavioral health authority shall perform all the functions necessary to carry out the
2 purposes of this Part, including, but not limited to, the following:

- 3 (1) Establish accountability for the development and management of a local
4 system that ensures easy access to care, the availability and delivery of
5 necessary services, and continuity of care for individuals in need of mental
6 health, intellectual and developmental disabilities, and substance abuse
7 services.
- 8 (2) Operate the 1915(b)/(c) Medicaid Waiver, a proven system for the
9 management of mental health, intellectual and developmental disabilities,
10 and substance abuse services.
- 11 (3) Manage resources that are or become available for mental health, intellectual
12 and developmental disabilities, and substance abuse services.
- 13 (4) Use managed care strategies, including care coordination and utilization
14 management, to reduce the trend of escalating costs in the State Medicaid
15 program while ensuring medically necessary care and deploy a system for
16 the allocation of resources based on the reliable assessment of intensity of
17 need. These strategies shall efficiently direct individuals to appropriate
18 services and shall ensure that they receive no more and no less than the
19 amount of services determined to be medically necessary and at the
20 appropriate funding level.
- 21 (5) Maintain a local presence in order to respond to the unique needs and
22 priorities of localities.
- 23 (6) Ensure communication with consumers, families, providers, and
24 stakeholders regarding disability-specific and general Waiver operations by
25 implementing a process for feedback and exchange of information and ideas.
- 26 (7) Establish and maintain systems for ongoing communication and
27 coordination regarding the care of individuals with mental illness,
28 intellectual and developmental disabilities, and substance abuse disorders
29 with other organized systems, such as local departments of social services,
30 Community Care of North Carolina, hospitals, school systems, the Division
31 of Juvenile Justice of the Department of Public Safety, and other community
32 agencies.
- 33 (8) Maintain disability-specific infrastructure and competency to address the
34 clinical, treatment, rehabilitative, habilitative, and support needs of all
35 disabilities covered by the 1915(b)/(c) Medicaid Waiver.
- 36 (9) Conduct administrative and clinical functions, including requirements for
37 customer service, quality management, due process, provider network
38 development, information technology systems, financial reporting, and
39 staffing.
- 40 (10) Maintain full accountability of all aspects of Waiver operations and for
41 meeting all contract requirements specified by the Department of Health and
42 Human Services.
- 43 (11) Authorize the utilization of State psychiatric hospitals and other State
44 facilities.
- 45 (12) Authorize eligibility determination requests for the 1915(b)/(c) Medicaid
46 Waiver.

47 **"§ 122C-29.2. Directors of a behavioral health authority.**

48 (a) Upon approval by the Secretary to organize under this part, the area board of the
49 LME shall become the board of directors of the behavioral health authority. Directors shall
50 serve out the term for which they were appointed to the area board. Thereafter, when a director
51 resigns, is removed from office, completes a term of office, or when there is an increase in the

1 number of directors, the election of directors to the Board shall be in accordance with bylaws
2 set forth for such purpose and may be amended as necessary or convenient to carry out the
3 functions, powers, duties, and responsibilities of the behavioral health authority.

4 (b) At a minimum, the bylaws of the behavioral health authority shall set the number,
5 composition, term, and method of appointment of the board of directors. Membership of the
6 board of directors shall take into account representation of the counties or geographic areas in
7 which the behavioral health authority operates the 1915(b)/(c) Medicaid Waiver and manages
8 resources for mental health, intellectual and developmental disabilities, and substance abuse
9 services and should be comprised of a mix of individuals with the necessary expertise to govern
10 managed care organizations. When possible, the directors should include a physician licensed
11 under Chapter 90 of the General Statutes to practice medicine in North Carolina, and who is
12 board certified in psychiatry; a clinical professional from the fields of mental health,
13 developmental disabilities, or substance abuse; an individual with financial expertise, including
14 previous fiscal oversight experience with large organizations; and at least one family member
15 or individual from a citizens' organization representing the interests of individuals with mental
16 illness, intellectual and developmental disabilities, or substance abuse. An individual that
17 contracts with a behavioral health authority for the delivery of behavioral health care services
18 shall not serve on the board of directors during the period for which the contract for services is
19 in effect.

20 (c) The Board of Directors shall be responsible for ensuring the behavioral health
21 authority maintains a local presence and is responsive to the unique needs and priorities of
22 localities.

23 **"§ 122C-29.3. Powers of the behavioral health authority.**

24 (a) A behavioral health authority shall have all powers necessary or convenient to carry
25 out the purposes of this Part, including the following powers, which are in addition to those
26 powers granted elsewhere in this Part:

- 27 (1) To engage in comprehensive planning, implementing, and monitoring of
28 community-based mental health, intellectual and developmental disabilities,
29 and substance abuse services, including for individuals committed to the
30 custody of the Department of Social Services and the Division of Juvenile
31 Justice of the Department of Public Safety.
- 32 (2) To comply with federal requirements for Medicaid, Medicare, block grants,
33 and other federally funded health care programs.
- 34 (3) To perform public relations and community advocacy functions.
- 35 (4) To maintain a 24-hour-a-day, seven-day-a-week crisis response service.
36 Crisis response shall include telephone and face-to-face capabilities. Crisis
37 phone response shall include triage and referral to appropriate face-to-face
38 crisis providers. Crisis services do not require prior authorization, but shall
39 be delivered in compliance with appropriate policies and procedures. Crisis
40 services shall be designed for prevention, intervention, and resolution, not
41 merely triage and transfer, and shall be provided in the least restrictive
42 setting possible, consistent with individual and family need and community
43 safety.
- 44 (5) To accept donations or money, personal property, or real estate for the
45 benefit of the behavioral health authority and to take title to the same from
46 any person, firm, corporation, or society.
- 47 (6) To purchase, lease, obtain options upon, or otherwise acquire any real or
48 personal property or any interest therein from any person, firm, corporation,
49 city, county, government, or society.

- 1 (7) To sell, exchange, transfer, assign, or pledge any real or personal property or
2 any interest therein to any person, firm, corporation, city, county,
3 government, or society.
4 (8) To own, hold, clear, and improve property.
5 (9) To appoint a chief executive officer and to fix his or her compensation.
6 (10) To delegate to its agents or employees any powers or duties as it may deem
7 appropriate.
8 (11) To employ its own counsel and legal staff.
9 (12) To adopt, amend, and repeal bylaws for the conduct of its business.
10 (13) To enter into contracts for necessary supplies, equipment, or services for the
11 operation of its business.
12 (14) To appoint committees or subcommittees as it shall deem advisable, to fix
13 their duties and responsibilities, and to do all things necessary in connection
14 with the management, supervision, control, and operation of the behavioral
15 health authority's business.
16 (15) To enter into any contracts or other arrangements with any municipality,
17 other public agency of this or any other state or of the United States, or with
18 any individual, private organization, corporation, or nonprofit association for
19 the provision of behavioral health or other services.
20 (16) To act as an agent for the federal, State, or local government in connection
21 with the management of behavioral health services.
22 (17) To insure the property or the operations of the behavioral health authority
23 against risks as the behavioral health authority may deem advisable.
24 (18) To invest any funds held in reserves or sinking funds, or any funds not
25 required for immediate disbursement, in property or securities in which
26 trustees, guardians, executors, administrators, and others acting in a
27 fiduciary capacity may legally invest funds under their control.
28 (19) To sue and be sued.
29 (20) To have a seal and to alter it at pleasure.
30 (21) To have perpetual succession.
31 (22) To make and execute contracts and other instruments necessary or
32 convenient to the exercise of the powers of the behavioral health authority,
33 including providing services to governmental or private entities, including
34 Employee Assistance Programs.
35 (23) To provide teaching and instruction programs and schools for psychiatrists,
36 psychologists, psychiatric nurses, technicians and students, interns, and other
37 behavioral health care professionals.
38 (24) To agree to limitations upon the exercise of any powers conferred upon the
39 behavioral health authority by this Part in connection with any loan by a
40 government.

41 (b) A behavioral health authority may exercise any or all of the powers conferred upon
42 it by this Part, either generally or directly, or through designated agents, including any
43 corporation or corporations which are or shall be formed under the laws of this State.

44 (c) No provisions with respect to the acquisition, operation, or disposition of property
45 by other public bodies shall be applicable to a behavioral health authority unless otherwise
46 specified by the General Assembly.

47 **"§ 122C-29.4. Limited liability.**

48 (a) A person serving as a director, trustee, or officer of a behavioral health authority
49 shall be immune individually from civil liability for monetary damages, except to the extent
50 covered by insurance, for any act or failure to act arising out of this service in any of the
51 following circumstances:

1 (1) Was not acting within the scope of official duties.

2 (2) Was not acting in good faith.

3 (3) Committed gross negligence or willful or wanton misconduct that resulted in
4 the damage or injury.

5 (4) Derived an improper personal financial benefit from the transaction.

6 (b) The immunity in subsection (a) of this section is personal to the directors, trustees,
7 and officers and does not immunize a behavioral health authority for liability for the acts or
8 omissions of the directors, trustees, or officers.

9 (c) In addition to the immunity granted in subsection (a) of this section, a behavioral
10 health authority may waive its governmental immunity from liability for damages caused by
11 the negligence or tort of any agent, employee, or director of the behavioral health authority
12 when acting within the scope of the authority or within the course of the duties or employment
13 of that person. Governmental immunity is waived by the act of obtaining this insurance, but it
14 is waived only to the extent that the behavioral health authority is indemnified by insurance for
15 the negligence or tort.

16 (d) A behavioral health authority may incur liability pursuant to this section only with
17 respect to a claim arising after the behavioral health authority has procured liability insurance
18 pursuant to this section and during the time when the insurance is in force.

19 (e) No part of the pleadings that relate to or allege facts as to a defendant's insurance
20 against liability may be read or mentioned in the presence of the trial jury in any action brought
21 pursuant to this section. These issues shall be heard and determined by the judge, and the jury
22 shall be absent during any motions, arguments, testimony, or announcement of findings of fact
23 or conclusions of law with respect to insurance.

24 (f) Upon request by any agent, employee, or director or former agent, employee, or
25 director, a behavioral health authority may provide for the defense of any civil or criminal
26 action or proceeding brought against the agent, employee, or director, either in that agent's,
27 employee's, or director's official or individual capacity, or both, on account of any act done or
28 omission made, or any act allegedly done or omission allegedly made, in the scope and course
29 of duty as an agent, employee, or director. The defense may be provided by employing counsel
30 or by purchasing insurance that requires the insurer to provide the defense. Nothing in this
31 section requires a behavioral health authority to provide for the defense of any action or
32 proceeding of any nature.

33 **"§ 122C-29.5. Applicability of the Local Government Budget and Fiscal Control Act.**

34 (a) The Local Government Budget and Fiscal Control Act applies to behavioral health
35 authorities, except that the provisions of Parts 1, 2, and 3 of Article 3 of the Act do not apply to
36 behavioral health authorities, which shall instead be subject to the provisions of this section.

37 (b) A behavioral health authority shall appoint or designate a finance officer, who shall
38 have the following powers and duties:

39 (1) Prepare the annual budget for presentation to the governing board of the
40 behavioral health authority and shall administer the budget as approved by
41 the board.

42 (2) Keep the accounts of the behavioral health authority in accordance with
43 generally accepted principles of accounting.

44 (3) Prepare and file a statement of the financial condition of the behavioral
45 health authority as revealed by its accounts upon the request of the
46 behavioral health authority's governing board or the governing board of any
47 county, city, or other unit of local government that has issued on behalf of
48 the behavioral health authority and has outstanding its general obligation or
49 revenue bonds or makes current appropriations to the behavioral health
50 authority.

1 (4) Receive and deposit all moneys accruing to the behavioral health authority,
2 or supervise the receipt and deposit of money by other duly authorized
3 officers or employees of the behavioral health authority.

4 (5) Supervise the investment of idle funds of the behavioral health authority.

5 (6) Maintain all records concerning the bonded debt of the behavioral health
6 authority, if any; determine the amount of money that will be required for
7 debt service during each fiscal year; and maintain all sinking funds, but shall
8 not be responsible for records concerning the bonded debt of any county,
9 city, or other unit of local government incurred on behalf of the behavioral
10 health authority.

11 (c) The Local Government Commission has authority to issue rules and regulations
12 governing procedures for the receipt, deposit, investment, transfer, and disbursement of money
13 and other assets by behavioral health authorities; may inquire into and investigate the internal
14 control procedures of a behavioral health authority; and may require any modifications in
15 internal control procedures which, in the opinion of the Commission, are necessary or desirable
16 to prevent embezzlements, mishandling of funds, or continued operating deficits.

17 (d) The accounting system of a behavioral health authority shall be so designed that the
18 true financial condition of the behavioral health authority can be determined therefrom at any
19 time. As soon as possible after the close of each fiscal year, the accounts shall be audited by a
20 certified public accountant or by an accountant certified by the Local Government Commission
21 as qualified to audit local government accounts. The auditor shall be selected by and shall
22 report directly to the behavioral health authority's governing board. The audit contract or
23 agreement shall be in writing, shall include all its terms and conditions, and shall be submitted
24 to the secretary of the Local Government Commission for approval as to form, terms, and
25 conditions. The terms and conditions of the audit shall include the scope of the audit and the
26 requirement that upon completion of the examination the auditor shall prepare a written report
27 embodying financial statements and the auditor's opinion and comments relating thereto. The
28 finance officer shall file a copy of the audit with the secretary of the Local Government
29 Commission and with the finance officer of any county, city, or other unit of local government
30 that has issued on behalf of the behavioral health authority and has outstanding its general
31 obligation or revenue bonds or makes current appropriations to the behavioral health authority
32 (other than appropriations for the cost of behavioral health care or programs).

33 (e) A behavioral health authority may deposit or invest at interest all or part of its cash
34 balance pursuant to G.S. 159-30 and may deposit any funds held in reserves or sinking funds,
35 or any funds not required for immediate disbursement, with the State Treasurer for investment
36 pursuant to G.S. 147-69.2.

37 (f) A behavioral health authority is subject to G.S. 159-31 with regard to selection of an
38 official depository and security of deposits.

39 (g) A behavioral health authority is subject to G.S. 159-32 with regard to daily deposits.

40 (h) A behavioral health authority may accept electronic payments pursuant to
41 G.S. 159-32.1.

42 (i) A behavioral health authority is subject to G.S. 159-33 with regard to semiannual
43 reports to the Local Government Commission on the status of deposits and investments.

44 (j) A behavioral health authority having outstanding general obligation or revenue
45 bonds is subject to G.S. 159-35, 159-36, 159-37, and 159-38.

46 **"§ 122C-29.6. Revenue bonds and purchase money security interests.**

47 (a) A behavioral health authority shall have the power to issue revenue bonds under the
48 Local Government Revenue Bond Act, Article 5 of Chapter 159 of the General Statutes, or the
49 bond and revenue anticipation provisions of Article 9 of Chapter 159 of the General Statutes
50 for the purpose of acquiring, constructing, reconstructing, improving, enlarging, bettering,
51 equipping, extending, or operating behavioral health facilities.

1 **(b)** A behavioral health authority shall have the power to borrow for the purposes above
2 enumerated upon its notes or other evidences of indebtedness, subject to the approval of the
3 Local Government Commission. Such approval shall be required regardless of the amount of
4 any such borrowing.

5 **(c)** A behavioral health authority shall have the power and authority to purchase real or
6 personal property under installment contracts, purchase money mortgages or deeds of trust, or
7 other instruments, which create in the property purchased a security interest to secure payment
8 of the purchase price and interest thereon. No deficiency judgment may be rendered against a
9 behavioral health authority for breach of an obligation authorized by this section.

10 **(d)** A behavioral health authority may contract pursuant to this section in an amount
11 less than five million dollars (\$5,000,000) in any single transaction without the approval of the
12 Local Government Commission; provided, however, that the approval of the Local
13 Government Commission shall be required for any single contract pursuant to this section if the
14 aggregate dollar amount of all such contracts outstanding after any such single transaction
15 would exceed ten percent (10%) of the total operating revenues, as hereinafter defined, of the
16 behavioral health authority for its most recently completed fiscal year as set forth in the audited
17 financial statements of such behavioral health authority for such fiscal year.

18 **(e)** Approval of the Local Government Commission under this section shall be obtained
19 in accordance with such rules and regulations as the Local Government Commission may
20 prescribe and shall be evidenced by the Secretary of the Commission's certificate on the
21 contract or note or other evidence of indebtedness. In determining whether to approve any such
22 contract or borrowing, the Local Government Commission shall consider whether the
23 behavioral health authority can demonstrate the financial responsibility and capability of the
24 behavioral health authority to fulfill its obligations with respect to such contract or borrowing.
25 Any contract or borrowing subject to this subsection requiring the approval of the Local
26 Government Commission that does not bear the Secretary of the Commission's certificate
27 thereon shall be void, and it shall be unlawful for any officer, employee, or agent of a
28 behavioral health authority to make any payments of money thereunder. An order of the Local
29 Government Commission approving any such contract or borrowing shall not be regarded as an
30 approval of the legality of the contract or borrowing in any respect.

31 **(f)** For purposes of this section, the "total operating revenues" of a behavioral health
32 authority for a fiscal year means revenue, less provisions for contractual adjustments, plus other
33 operating revenues, all as determined in accordance with generally accepted accounting
34 principles.

35 **"§ 122C-29.7. Local Consumer and Family Advisory Committees.**

36 A behavioral health authority shall establish Local Consumer and Family Advisory
37 Committees in accordance with G.S. 122C-170.

38 **"§ 122C-29.8. Client rights and human rights committees.**

39 A behavioral health authority shall adopt the State's policy on client rights as contained in
40 G.S. 122C-51 and establish client rights and human rights committees responsible for
41 protecting the rights of clients in accordance with G.S. 122C-64.

42 **"§ 122C-29.9. Involuntary commitments.**

43 A behavioral health authority shall have the same duties and responsibilities for involuntary
44 commitments as area authorities created pursuant to G.S. 122C-115(c).

45 **"§ 122C-29.10. Grievance system.**

46 **(a)** A behavioral health authority shall establish Medicaid grievance procedures as
47 required by the federal Medicaid managed care rules and as approved by the Secretary. Such
48 grievance procedures shall provide a process by which consumers and providers may challenge
49 the Medicaid denial of coverage of, or payment for, mental health, intellectual and
50 developmental disabilities, or substance abuse services.

1 (b) A behavioral health authority shall comply with the provisions contained in
2 G.S. 122C-151.4 for consumer and provider appeals.

3 **"§ 122C-29.11. Public guardians.**

4 A behavioral health authority does not qualify as a disinterested public agent and may not
5 serve as the guardian for an individual adjudicated incompetent under the provisions of
6 Subchapter I of Chapter 35A of the General Statutes. A behavioral health authority may not
7 contract with a third party to serve as a guardian for an individual that is, or would be, eligible
8 to have behavioral health care managed by the behavioral health authority.

9 **"§ 122C-29.12. Confidentiality of competitive health care information.**

10 (a) A behavioral health authority is subject to all consumer confidentiality requirements
11 and State public records laws, except that the disclosure of competitive health care information
12 shall be pursuant to the provisions of this section.

13 (b) For purposes of this section, competitive health care information means information
14 relating to competitive health care activities by or on behalf of a behavioral health authority.
15 Competitive health care information shall be confidential and not a public record under Chapter
16 132 of the General Statutes.

17 (c) If a behavioral health authority is requested to disclose any material which the
18 behavioral health authority believes in good faith contains or constitutes competitive health
19 care information, the behavioral health authority may either redact the portions believed to
20 constitute competitive health care information prior to disclosure or refuse to disclose the
21 material in its entirety. The person requesting disclosure may institute an action pursuant to
22 G.S. 132-9 to compel disclosure of the contract or any redacted portion thereof. In any action
23 brought under this subsection, the issue for decisions by the court shall be whether the material
24 constitutes competitive health care information, and in making its determination, the court shall
25 be guided by the procedures and standards applicable to protective orders requested under Rule
26 26(c)(7) of the Rules of Civil Procedure.

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

32 **"§ 122C-29.13. Part controlling.**

33 Insofar as the provisions of this Part are inconsistent with the provisions of any other law,
34 the provisions of this Part shall be controlling. Except as provided for in this Part, the
35 provisions of Chapter 122C of the General Statutes do not apply to behavioral health authorities
36 created under this Part."

37 **SECTION 14.(b)** G.S. 122C-3(20b) reads as rewritten:

38 "(20b) "Local management entity" or "LME" means an area authority, county
39 program, behavioral health authority, or consolidated human services
40 agency. It is a collective term that refers to functional responsibilities rather
41 than governance structure."

42 **SECTION 15.** This act is effective when it becomes law.