

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 1075\*  
Committee Substitute Favorable 6/5/12

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, AS RECOMMENDED BY  
5 THE JOINT LEGISLATIVE OVERSIGHT COMMITTEE ON HEALTH AND HUMAN  
6 SERVICES.

7 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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

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

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

36 (4) ~~G.S. 122C-127.~~



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

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

6 **"§ 122C-118.1. Structure of area board.**

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

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

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

~~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 authority, for a term not to exceed the earlier of three years or the duration of the member's employment as a county manager. The terms of ~~the other~~ members on the area board shall be for three years, except that upon the initial formation of an area board in compliance with subsection (a) of this section, one-third shall be appointed for one year, one-third for two years,

1 and all remaining members for three years. ~~Members, other than county commissioners and~~  
2 ~~county managers, Members~~ shall not be appointed for more than ~~two~~three consecutive terms.  
3 ~~Board members serving as of July 1, 2006, may remain on the board for one additional term.~~  
4 This subsection applies to all area authority board members regardless of the procedure used to  
5 appoint members under subsection (a) of this section.

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

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

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

11 "**§ 122C-119.1. Area Authority board members' training.**

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

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

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

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

21 "**§ 122C-170. Local Consumer and Family Advisory Committees.**

22 ...  
23 (b) Each of the disability groups shall be equally represented on the CFAC, and the  
24 CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment  
25 area. The terms of members shall be three years, and no member may serve more than ~~two~~three  
26 consecutive terms. The CFAC shall be composed exclusively of:

- 27 (1) Adult consumers of mental health, developmental disabilities, and substance  
28 abuse services.  
29 (2) Family members of consumers of mental health, developmental disabilities,  
30 and substance abuse services.

31 ...."

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

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

- 39 (1) Provisions of service are not disrupted by the disengagement.  
40 (2) The disengaging county is either in compliance or plans to merge with an  
41 area authority that is in compliance with population requirements provided  
42 in G.S. 122C-155(a).  
43 (3) The timing of the disengagement is accounted for and does not conflict with  
44 setting capitation rates.  
45 (4) Adequate notice is provided to the affected counties, the Department of  
46 Health and Human Services, and the General Assembly.  
47 (5) Provisions for distribution of any real property no longer within the  
48 catchment area of the area authority.

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

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

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

2   "**§ 122C-147. Financing and title of area authority property.**

3    ...

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

21    ...."

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

23   "**§ 122C-117. Powers and duties of the area authority.**

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

25    ...

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

34    ...

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

37    ...

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

51    ...."

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

2           "(e) The Secretary may waive any requirements of this section that are inconsistent with  
3 or incompatible with contracts entered into between the Department and the area authority for  
4 the management responsibilities for the delivery of services for individuals with mental illness,  
5 intellectual or other developmental disabilities, and substance abuse disorders under a  
6 1915(b)/(c) Medicaid Waiver."

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

9 **"§ 122C-126.1. Confidentiality of competitive health care information.**

10          (a) For the purposes of this section, competitive health care information means  
11 information relating to competitive health care activities by or on behalf of the area authority.  
12 Competitive health care information shall be confidential and not a public record under Chapter  
13 132 of the General Statutes; provided that any contract entered into by or on behalf of an area  
14 authority shall be a public record, unless otherwise exempted by law, or the contract contains  
15 competitive health care information, the determination of which shall be as provided in  
16 subsection (b) of this section.

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

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

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

37 **"§ 126-5. Employees subject to Chapter; exemptions.**

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

- 39           (1) All State employees not herein exempt, and  
40           (2) All employees of the following local entities:

- 41           a. Area mental health, developmental disabilities, and substance abuse  
42           ~~authorities.~~ authorities, except as otherwise provided in Chapter 122C  
43           of the General Statutes.  
44           b. Local social services departments.  
45           c. County health departments and district health departments.  
46           d. Local emergency management agencies that receive federal  
47           grant-in-aid funds.

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

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

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

5 **"§ 122C-154. Personnel.**

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

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

19 "(a1) The area board shall establish the area director's salary under Article 3 of Chapter  
20 126 of the General Statutes. ~~An area board may request an adjustment to the salary ranges~~  
21 ~~under G.S. 126-9(b). The request shall include specific information supporting the need for the~~  
22 ~~adjustment, including comparative salary and patient caseload data for other LMEs, and shall~~  
23 ~~also include the specific amount the area board proposes to pay the director. The area board~~  
24 ~~shall not request a salary adjustment that is more than ten percent (10%) above the normal~~  
25 ~~allowable salary range as determined by the State Personnel Commission.~~Notwithstanding  
26 G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges  
27 established by the State Personnel Commission. Any salary that is higher than the maximum of  
28 the applicable salary range shall be supported by documentation of comparable salaries in  
29 comparable operations within the region and shall also include the specific amount the board  
30 proposes to pay the director. The area board shall not authorize any salary adjustment that is  
31 above the normal allowable salary range without obtaining prior approval from the Secretary."

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

33 **"§ 153A-76. Board of commissioners to organize county government.**

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

- 40 (1) The board may not abolish an office, position, department, board,  
41 commission, or agency established or required by law.  
42 (2) The board may not combine offices or confer certain duties on the same  
43 officer when this action is specifically forbidden by law.  
44 (3) The board may not discontinue or assign elsewhere a function or duty  
45 assigned by law to a particular office, position, department, board,  
46 commission, or agency.  
47 (4) The board may not change the composition or manner of selection of a local  
48 board of education, ~~the board of health, the board of social services,~~the  
49 board of elections, or the board of alcoholic beverage control.  
50 (5) A board may not consolidate an area mental health, developmental  
51 disabilities, and substance abuse services board into a consolidated human

1 services board. The board may not abolish an area mental health,  
2 developmental disabilities, and substance abuse board, except as provided in  
3 Chapter 122C of the General Statutes. This subdivision shall not apply to  
4 any board that has exercised the powers and duties of an area mental health,  
5 developmental disabilities, and substance abuse services board as of January  
6 1, 2012."

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

8 "**§ 153A-77. Authority of boards of commissioners in certain counties over commissions,**  
9 **boards, agencies, etc.**

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

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

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

- 33 (1) Consolidate ~~the provision~~certain provisions of human services in the county  
34 under the direct control of a human services director appointed and  
35 supervised by the county manager in accordance with subsection (e) of this  
36 section;
- 37 (2) Create a consolidated human services board having the powers conferred by  
38 subsection (c) of this section;
- 39 (3) Create a consolidated county human services agency having the authority to  
40 carry out the functions of any combination of commissions, boards, or  
41 agencies appointed by the board of county commissioners or acting under  
42 and pursuant to authority of the board of county commissioners, including  
43 the local health department, the county department of social services, and  
44 or the area mental health, developmental disabilities, and substance abuse  
45 services authority; and
- 46 (4) Assign other county human services functions to be performed by the  
47 consolidated human services agency under the direction of the human  
48 services director, with policy-making authority granted to the consolidated  
49 human services board as determined by the board of county commissioners.

50 (c) A consolidated human services board appointed by the board of county  
51 commissioners shall serve as the policy-making, rule-making, and administrative board of the



1 consolidated human services agency. The consolidated human services board shall be  
2 composed of no more than 25 members. The composition of the board shall reasonably reflect  
3 the population makeup of the county and shall include:

- 4 (1) Eight persons who are consumers of human services, public advocates, or  
5 family members of clients of the consolidated human services agency,  
6 including: one person with mental illness, one person with a developmental  
7 disability, one person in recovery from substance abuse, one family member  
8 of a person with mental illness, one family member of a person with a  
9 developmental disability, one family member of a person with a substance  
10 abuse problem, and two consumers of other human services.
- 11 (1a) Notwithstanding subdivision (1) of this subsection, a consolidated human  
12 services board not exercising powers and duties of an area mental health,  
13 developmental disabilities, and substance abuse services board shall include  
14 four persons who are consumers of human services.
- 15 (2) Eight persons who are professionals, each with qualifications in one of these  
16 categories: one psychologist, one pharmacist, one engineer, one dentist, one  
17 optometrist, one veterinarian, one social worker, and one registered nurse.
- 18 (3) Two physicians licensed to practice medicine in this State, one of whom  
19 shall be a psychiatrist.
- 20 (4) One member of the board of county commissioners.
- 21 (5) Other persons, including members of the general public representing various  
22 occupations.

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

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

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

38 A chairperson shall be elected annually by the members of the consolidated human services  
39 board. A majority of the members shall constitute a quorum. A member may be removed from  
40 office by the county board of commissioners for (i) commission of a felony or other crime  
41 involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii)  
42 violation of a written policy adopted by the county board of commissioners; (iv) habitual  
43 failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi)  
44 failure to maintain qualifications for appointment required under this subsection. A board  
45 member may be removed only after the member has been given written notice of the basis for  
46 removal and has had the opportunity to respond.

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

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

- 1 (1) Set fees for departmental services based upon recommendations of the  
2 human services director. Fees set under this subdivision are subject to the  
3 same restrictions on amount and scope that would apply if the fees were set  
4 by a county board of health, a county board of social services, or a mental  
5 health, developmental disabilities, and substance abuse area authority.
  - 6 (2) Assure compliance with laws related to State and federal programs.
  - 7 (3) Recommend creation of local human services programs.
  - 8 (4) Adopt local health regulations and participate in enforcement appeals of  
9 local regulations.
  - 10 (5) Perform regulatory health functions required by State law.
  - 11 (6) Act as coordinator or agent of the State to the extent required by State or  
12 federal law.
  - 13 (7) Plan and recommend a consolidated human services budget.
  - 14 (8) Conduct audits and reviews of human services programs, including quality  
15 assurance activities, as required by State and federal law or as may otherwise  
16 be necessary periodically.
  - 17 (9) Advise local officials through the county manager.
  - 18 (10) Perform public relations and advocacy functions.
  - 19 (11) Protect the public health to the extent required by law.
  - 20 (12) Perform comprehensive mental health services ~~planning~~planning if the  
21 county is exercising the powers and duties of an area mental health,  
22 developmental disabilities, and substance abuse services board under the  
23 consolidated human services board.
  - 24 (13) Develop dispute resolution procedures for human services contractors and  
25 clients and public advocates, subject to applicable State and federal dispute  
26 resolution procedures for human services programs, when applicable.
- 27 Except as otherwise provided, the consolidated human services board shall have the powers  
28 and duties conferred by law upon a board of health, a social services board, and an area mental  
29 health, developmental disabilities, and substance abuse services board.
- 30 Local employees who serve as staff of a consolidated county human services agency are  
31 subject to county personnel policies and ordinances only and are not subject to the provisions  
32 of the State Personnel ~~Act~~Act, unless the county board of commissioners elects to subject the  
33 local employees to the provisions of that Act. All consolidated county human services agencies  
34 shall comply with all applicable federal laws, rules, and regulations requiring the establishment  
35 of merit personnel systems.
- 36 (e) The human services director of a consolidated county human services agency shall  
37 be appointed and dismissed by the county manager with the advice and consent of the  
38 consolidated human services board. The human services director shall report directly to the  
39 county manager. The human services director shall:
- 40 (1) Appoint staff of the consolidated human services agency with the county  
41 manager's approval.
  - 42 (2) Administer State human services programs.
  - 43 (3) Administer human services programs of the local board of county  
44 commissioners.
  - 45 (4) Act as secretary and staff to the consolidated human services board under the  
46 direction of the county manager.
  - 47 (5) Plan the budget of the consolidated human services agency.
  - 48 (6) Advise the board of county commissioners through the county manager.
  - 49 (7) Perform regulatory functions of investigation and enforcement of State and  
50 local health regulations, as required by State law.
  - 51 (8) Act as an agent of and liaison to the State, to the extent required by law.

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

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

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

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

8 "**§ 35A-1202. Definitions.**

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

11 ...

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

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

15 b. ~~An adult officer, agent, or employee of a State human services~~  
16 ~~agency. The~~Except as provided in G.S. 35A-1213(f), the fact that a  
17 disinterested public agent is ~~employed by a State or local human~~  
18 ~~services agency that~~ provides financial assistance, services, or  
19 treatment to a ward does not disqualify that person from being  
20 appointed as guardian.

21 ...."

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

23 "**§ 35A-1213. Qualifications of guardians.**

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

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

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

44 (d) A disinterested public agent who is appointed by the clerk to serve as guardian is  
45 authorized and required to do so; provided, if at the time of the appointment or any time  
46 subsequent thereto the disinterested public agent believes that his role or the role of his agency  
47 in relation to the ward is such that his service as guardian would constitute a conflict of interest,  
48 or if he knows of any other reason that his service as guardian may not be in the ward's best  
49 interest, he shall bring such matter to the attention of the clerk and seek the appointment of a  
50 different guardian. A disinterested public agent who is appointed as guardian shall serve in that  
51 capacity by virtue of his office or employment, which shall be identified in the clerk's order and

1 in the letters of appointment. When the disinterested public agent's office or employment  
2 terminates, his successor in office or employment, or his immediate supervisor if there is no  
3 successor, shall succeed him as guardian without further proceedings unless the clerk orders  
4 otherwise.

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

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

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

14 "**§ 35A-1292. Resignation.**

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

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

28 **SECTION 14.(a)** Section 1(a)(3) of S.L. 2011-264 reads as rewritten:

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

- 34 a. Merger model: A single larger LME is formed from the merger of  
35 two or more LMEs.  
36 b. Interlocal agreement among LMEs: A single LME is identified as the  
37 leader for all Waiver operations, financial management, and  
38 accountability for performance measures."

39 **SECTION 14.(b)** Section 1(c) of S.L. 2011-264 reads as rewritten:

40 "**SECTION 1.(c)** The Department shall require LMEs that have not been approved by the  
41 Department to operate a 1915(b)/(c) Medicaid Waiver by January 1, 2013, to merge with or be  
42 aligned through an interlocal agreement with an LME that has been approved by the  
43 Department to operate a 1915(b)/(c) Medicaid Waiver. If any LME fails to comply with this  
44 requirement, or fails to meet performance requirements of an approved contract with the  
45 Department to operate a 1915(b)/(c) Medicaid Waiver, the Department shall assign  
46 responsibility for management of the 1915(b)/(c) Medicaid Waiver on behalf of the  
47 noncompliant LME to an LME that is successfully operating the Waiver and successfully  
48 meeting performance requirements of the contract with the Department. Those LMEs  
49 approved to operate the 1915(b)/(c) Medicaid Waiver under an interlocal agreement must have  
50 a single LME entity designated as responsible for all aspects of Waiver operations and solely  
51 responsible for meeting contract requirements."

1

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