

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE BILL 191  
Judiciary I Committee Substitute Adopted 3/21/11  
House Committee Substitute Favorable 6/26/12

Short Title: LME Governance.

(Public)

Sponsors:

Referred to:

March 3, 2011

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 through a county  
14 program established pursuant to G.S. 122C-115.1. Beginning July 1, 2012, the catchment area  
15 of an area authority or a county program shall contain a minimum population of at least  
16 300,000. Beginning July 1, 2013, the catchment area of an area authority or a county program  
17 shall contain a minimum population of at least 500,000. To the extent this section conflicts with  
18 G.S. 153A-77(a), the provisions of G.S. 153A-77(a) control."

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

20 "§ 122C-116. Status of area authority; status of consolidated human services agency.

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

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

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

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

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

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

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

34 (4) G.S. 122C-127.

35 (5) G.S. 122C-147.



1           (6) G.S. 122C-152 and G.S. 122C-153.

2           (7) G.S. 122C-156.

3           (8) G.S. 122C-158."

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

5   "**§ 122C-118.1. Structure of area board.**

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

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

41           (1) ~~A physician licensed under Chapter 90 of the General Statutes to practice~~  
42 ~~medicine in North Carolina who, when possible, is certified as having~~  
43 ~~completed a residency in psychiatry.~~ At least one member who is a current  
44 county commissioner.

45           (2) ~~A clinical professional from the fields of mental health, developmental~~  
46 ~~disabilities, or substance abuse.~~ The chair of the local Consumer and Family  
47 Advisory Committee (CFAC) or the chair's designee.

48           (3) ~~At least one family member or individual from a citizens' organization~~  
49 ~~composed primarily of consumers or their family members,~~ of the local  
50 CFAC, as recommended by the local CFAC, representing the interests of  
51 individuals: the following:

- 1 a. ~~With~~Individuals with mental ~~illness;~~illness.  
2 b. ~~In~~Individuals in recovery from ~~addiction;~~ or addiction.  
3 c. ~~With~~Individuals with intellectual or other developmental disabilities.  
4 (4) At least one openly declared consumer member of the local CFAC, as  
5 recommended by the local CFAC, representing the interests of the  
6 following:  
7 a. ~~With~~Individuals with mental ~~illness;~~illness.  
8 b. ~~With~~Individuals with intellectual or other developmental ~~disabilities;~~  
9 ~~or~~disabilities.  
10 c. ~~In~~Individuals in recovery from addiction.  
11 (5) An individual with health care expertise and experience in the fields of  
12 mental health, intellectual or other developmental disabilities, or substance  
13 abuse services.  
14 (6) An individual with health care administration expertise consistent with the  
15 scale and nature of the managed care organization.  
16 (7) An individual with financial expertise consistent with the scale and nature of  
17 the managed care organization.  
18 (8) An individual with insurance expertise consistent with the scale and nature  
19 of the managed care organization.  
20 (9) An individual with social services expertise and experience in the fields of  
21 mental health, intellectual or other developmental disabilities, or substance  
22 abuse services.  
23 (10) An attorney with health care expertise.  
24 (11) A member who represents the general public and who is not employed by or  
25 affiliated with the Department of Health and Human Services, as appointed  
26 by the Secretary.  
27 (12) The President of the LME/MCO Provider Council or the President's  
28 designee to serve as a nonvoting member who shall participate only in Board  
29 activities that are open to the public.  
30 (13) An administrator of a hospital providing mental health, developmental  
31 disabilities, and substance abuse emergency services to serve as a nonvoting  
32 member who shall participate only in Board activities that are open to the  
33 public.

34 ~~An~~Except as provided in subdivisions (12) and (13) of this subsection, an individual that  
35 contracts with a local management entity (LME) for the delivery of mental health,  
36 developmental disabilities, and substance abuse services may not serve on the board of the  
37 LME for the period during which the contract for services is in effect. No person registered as a  
38 lobbyist under Chapter 120C of the General Statutes shall be appointed to or serve on an area  
39 authority board. Of the members described in subdivisions (2) through (4) of this subsection,  
40 the boards of county commissioners shall ensure there is at least one member representing the  
41 interest of each of the following: (i) individuals with mental illness, (ii) individuals with  
42 intellectual or other developmental disabilities, and (iii) individuals in recovery from addiction.

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

46 (d) Any member of an area board who is a county commissioner serves on the board in  
47 an ex officio capacity at the pleasure of the initial appointing authority, for a term not to exceed  
48 the earlier of three years or the member's service as a county commissioner. Any member of an  
49 area board who is a county manager serves on the board at the pleasure of the initial appointing  
50 authority, for a term not to exceed the earlier of three years or the duration of the member's  
51 employment as a county manager. ~~The terms of the other~~ members on the area board shall be

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

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

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

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

13 "**§ 122C-119.1. Area Authority board members' training.**

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

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

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

22 "Part 4A. Consumer and Family Advisory Committees.  
23 **§ 122C-170. Local Consumer and Family Advisory Committees.**

24 ...

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

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

33 ...."

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

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

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

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

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

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

4       "**§ 122C-147. Financing and title of area authority property.**

5       ...

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

23      ...."

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

25       "**§ 122C-117. Powers and duties of the area authority.**

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

27       ...

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

36       ...

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

39       ...

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

1 county commissioners, may be presented in person by the area director or the director's  
2 designee.

3 ...."

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

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

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

12 "**§ 122C-126.1. Confidentiality of competitive health care information.**

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

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

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

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

40 "**§ 126-5. Employees subject to Chapter; exemptions.**

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

42 (1) All State employees not herein exempt, and

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

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

47 b. Local social services departments.

48 c. County health departments and district health departments.

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

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

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

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

8 **"§ 122C-154. Personnel.**

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

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

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

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

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

38 **"§ 35A-1202. Definitions.**

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

41 ...

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

51 ...."

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

2   "**§ 35A-1213. Qualifications of guardians.**

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

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

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

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

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

40       (f) An individual who contracts with or is employed by an entity that contracts with a  
41 local management entity (LME) for the delivery of mental health, developmental disabilities,  
42 and substance abuse services may not serve as a guardian for a ward for whom the individual or  
43 entity is providing these services, unless the individual is a parent of that ward."

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

45   "**§ 35A-1292. Resignation.**

46       (a) Any guardian who wishes to resign ~~may apply in writing to the clerk, shall file a~~  
47 motion with the clerk setting forth the circumstances of the case. If a general guardian or  
48 guardian of the estate, at the time of making the application, also exhibits his final account for  
49 settlement, and if the clerk is satisfied that the guardian has fully accounted, the clerk may  
50 accept the resignation of the guardian and discharge him and appoint a successor ~~guardian, but~~  
51 the guardian. The guardian so discharged and his sureties are still liable in relation to all matters



1 connected with the guardianship before the ~~discharge-discharge~~ and shall continue to ensure  
2 that the ward's needs are met until the clerk officially appoints a successor. The guardian shall  
3 attend the hearing to modify the guardianship, if physically able."

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

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

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

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

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

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

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