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SENATE DRS85246-SQz-32B* (03/11)

Short Title: LME Governance.

(Public)

Sponsors: Senator Pate.

Referred to:

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

7 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

46 "**§ 122C-119.1. Area Authority board members' training.**

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

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

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

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

6 **"§ 122C-170. Local Consumer and Family Advisory Committees.**

7 ...
8 (b) Each of the disability groups shall be equally represented on the CFAC, and the
9 CFAC shall reflect as closely as possible the racial and ethnic composition of the catchment
10 area. The terms of members shall be three years, and no member may serve more than ~~two~~three
11 consecutive terms. The CFAC shall be composed exclusively of:

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

16 "

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

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

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

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

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

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

38 **"§ 122C-147. Financing and title of area authority property.**

39 ...
40 (c) All real property purchased for use by the area authority shall be provided by local
41 or federal funds unless otherwise allowed under subsection (b) of this section or by specific
42 capital funds appropriated by the General Assembly. The title to this real property and the
43 authority to acquire it is held by the ~~county where the property is located. The authority to hold~~
44 ~~title to real property and the authority to acquire it, including the area authority's authority to~~
45 ~~finance its acquisition by an installment contract under G.S. 160A-20, may be held by the area~~
46 ~~authority or by the contracting governmental entity with the approval of the board or boards of~~
47 ~~commissioners of all the counties that comprise the area authority. The approval of a board of~~
48 ~~county commissioners shall be by resolution of the board and may have any necessary or~~
49 ~~proper conditions, including provisions for distribution of the proceeds in the event of~~
50 ~~disposition of the property by the area authority.~~ area authority. Real property may not be
51 acquired by means of an installment contract under G.S. 160A-20 unless the Local Government

1 Commission has approved the acquisition. No deficiency judgment may be rendered against
2 any unit of local government in any action for breach of a contractual obligation authorized by
3 this subsection, and the taxing power of a unit of local government is not and may not be
4 pledged directly or indirectly to secure any moneys due under a contract authorized by this
5 subsection.

6"

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

8 "**§ 122C-117. Powers and duties of the area authority.**

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

10 ...

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

19 ...

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

22 ...

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

36"

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

38 "(e) The Secretary may waive any requirements of this section that are inconsistent with
39 or incompatible with contracts entered into between the Department and the area authority for
40 the management responsibilities for the delivery of services for individuals with mental illness,
41 intellectual or other developmental disabilities, and substance abuse disorders under a
42 1915(b)/(c) Medicaid Waiver."

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

45 "**§ 122C-126.1. Confidentiality of competitive health care information.**

46 (a) For the purposes of this section, competitive health care information means
47 information relating to competitive health care activities by or on behalf of the area authority.
48 Competitive health care information shall be confidential and not a public record under Chapter
49 132 of the General Statutes; provided that any contract entered into by or on behalf of an area
50 authority shall be a public record, unless otherwise exempted by law, or the contract contains

1 competitive health care information, the determination of which shall be as provided in
2 subsection (b) of this section.

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

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

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

23 **"§ 126-5. Employees subject to Chapter; exemptions.**

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

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

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

27 a. Area mental health, developmental disabilities, and substance abuse
28 ~~authorities~~ authorities except as otherwise provided in Chapter 122C
29 of the General Statutes.

30 b. Local social services departments.

31 c. County health departments and district health departments.

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

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

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

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

41 **"§ 122C-154. Personnel.**

42 Employees under the direct supervision of the area director are employees of the area
43 authority. For the purpose of personnel administration, Chapter 126 of the General Statutes
44 applies unless otherwise provided in this Article. Employees appointed by the county program
45 director are employees of the county. In a multicounty program, employment of county
46 program staff shall be as agreed upon in the interlocal agreement adopted pursuant to
47 G.S. 122C-115.1. Notwithstanding G.S. 126-9(b), an employee of an area authority may be
48 paid a salary that is in excess of the salary ranges established by the State Personnel
49 Commission. Any salary that is higher than the maximum of the applicable salary range shall
50 be supported by documentation of comparable salaries in comparable operations within the
51 region and shall also include the specific amount the board proposes to pay the employee. The

1 area board shall not authorize any salary adjustment that is above the normal allowable salary
2 range without obtaining prior approval from the Secretary."

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

4 "(a1) The area board shall establish the area director's salary under Article 3 of Chapter
5 126 of the General Statutes. ~~An area board may request an adjustment to the salary ranges~~
6 ~~under G.S. 126-9(b). The request shall include specific information supporting the need for the~~
7 ~~adjustment, including comparative salary and patient caseload data for other LMEs, and shall~~
8 ~~also include the specific amount the area board proposes to pay the director. The area board~~
9 ~~shall not request a salary adjustment that is more than ten percent (10%) above the normal~~
10 ~~allowable salary range as determined by the State Personnel Commission."~~Notwithstanding
11 G.S. 126-9(b), an area director may be paid a salary that is in excess of the salary ranges
12 established by the State Personnel Commission. Any salary that is higher than the maximum of
13 the applicable salary range shall be supported by documentation of comparable salaries in
14 comparable operations within the region and shall also include the specific amount the board
15 proposes to pay the director. The area board shall not authorize any salary adjustment that is
16 above the normal allowable salary range without obtaining prior approval from the Secretary."

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

18 "**§ 153A-76. Board of commissioners to organize county government.**

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

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

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

41 "**§ 153A-77. Authority of boards of commissioners in certain counties over commissions,**
42 **boards, agencies, etc.**

43 (a) In the exercise of its jurisdiction over commissions, boards and agencies, the board
44 of county commissioners may assume direct control of any activities theretofore conducted by
45 or through any commission, board or agency by the adoption of a resolution assuming and
46 conferring upon the board of county commissioners all powers, responsibilities and duties of
47 any such commission, board or agency. This ~~subsection~~section shall apply to the board of
48 health, the social services board, area mental health, developmental disabilities, and substance
49 abuse area board ~~and~~or any other commission, board or agency appointed by the board of
50 county commissioners or acting under and pursuant to authority of the board of county
51 commissioners of said county except as provided in G.S. 153A-76. A board of county

1 commissioners exercising the power and authority under this subsection may, notwithstanding
2 G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil
3 penalties. If a public health rule adopted by a board of county commissioners imposes a civil
4 penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be
5 applicable to that public health rule unless the rule states that a violation of the rule is a
6 misdemeanor. The board of county commissioners may exercise the power and authority herein
7 conferred only after a public hearing held by said board pursuant to 30 days' notice of said
8 public hearing given in a newspaper having general circulation in said county.

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

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

- 15 (1) Consolidate ~~the provision~~ certain provisions of human services in the county
16 under the direct control of a human services director appointed and
17 supervised by the county manager in accordance with subsection (e) of this
18 section;
- 19 (2) Create a consolidated human services board having the powers conferred by
20 subsection (c) of this section;
- 21 (3) Create a consolidated county human services agency having the authority to
22 carry out the functions of any combination of commissions, boards, or
23 agencies appointed by the board of county commissioners or acting under
24 and pursuant to authority of the board of county commissioners, including
25 the local health department, the county department of social services, and/or
26 the area mental health, developmental disabilities, and substance abuse
27 services authority; and
- 28 (4) Assign other county human services functions to be performed by the
29 consolidated human services agency under the direction of the human
30 services director, with policy-making authority granted to the consolidated
31 human services board as determined by the board of county commissioners.

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

- 37 (1) Eight persons who are consumers of human services, public advocates, or
38 family members of clients of the consolidated human services agency,
39 including: one person with mental illness, one person with a developmental
40 disability, one person in recovery from substance abuse, one family member
41 of a person with mental illness, one family member of a person with a
42 developmental disability, one family member of a person with a substance
43 abuse problem, and two consumers of other human services.
- 44 (1a) Notwithstanding subdivision (1) of this subsection, a consolidated human
45 service board not exercising powers and duties of an area mental health,
46 developmental disabilities, and substance abuse services board shall include
47 four persons who are consumers of human services.
- 48 (2) Eight persons who are professionals, each with qualifications in one of these
49 categories: one psychologist, one pharmacist, one engineer, one dentist, one
50 optometrist, one veterinarian, one social worker, and one registered nurse.

- 1 (3) Two physicians licensed to practice medicine in this State, one of whom
- 2 shall be a psychiatrist.
- 3 (4) One member of the board of county commissioners.
- 4 (5) Other persons, including members of the general public representing various
- 5 occupations.

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

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

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

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

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

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

- 35 (1) Set fees for departmental services based upon recommendations of the
- 36 human services director. Fees set under this subdivision are subject to the
- 37 same restrictions on amount and scope that would apply if the fees were set
- 38 by a county board of health, a county board of social services, or a mental
- 39 health, developmental disabilities, and substance abuse area authority.
- 40 (2) Assure compliance with laws related to State and federal programs.
- 41 (3) Recommend creation of local human services programs.
- 42 (4) Adopt local health regulations and participate in enforcement appeals of
- 43 local regulations.
- 44 (5) Perform regulatory health functions required by State law.
- 45 (6) Act as coordinator or agent of the State to the extent required by State or
- 46 federal law.
- 47 (7) Plan and recommend a consolidated human services budget.
- 48 (8) Conduct audits and reviews of human services programs, including quality
- 49 assurance activities, as required by State and federal law or as may otherwise
- 50 be necessary periodically.
- 51 (9) Advise local officials through the county manager.

- 1 (10) Perform public relations and advocacy functions.
 2 (11) Protect the public health to the extent required by law.
 3 (12) Perform comprehensive mental health services ~~planning~~planning if the
 4 county is exercising the powers and duties of an area mental health,
 5 developmental disabilities, and substance abuse services board under the
 6 consolidated human services board.
 7 (13) Develop dispute resolution procedures for human services contractors and
 8 clients and public advocates, subject to applicable State and federal dispute
 9 resolution procedures for human services programs, when applicable.

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

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

19 (e) The human services director of a consolidated county human services agency shall
 20 be appointed and dismissed by the county manager with the advice and consent of the
 21 consolidated human services board. The human services director shall report directly to the
 22 county manager. The human services director shall:

- 23 (1) Appoint staff of the consolidated human services agency with the county
 24 manager's approval.
 25 (2) Administer State human services programs.
 26 (3) Administer human services programs of the local board of county
 27 commissioners.
 28 (4) Act as secretary and staff to the consolidated human services board under the
 29 direction of the county manager.
 30 (5) Plan the budget of the consolidated human services agency.
 31 (6) Advise the board of county commissioners through the county manager.
 32 (7) Perform regulatory functions of investigation and enforcement of State and
 33 local health regulations, as required by State law.
 34 (8) Act as an agent of and liaison to the State, to the extent required by law.

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

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

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

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

42 **"§ 35A-1202. Definitions.**

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

- 45 ...
 46 (4) "Disinterested public agent" ~~means~~means
 47 a. ~~The~~the director or assistant directors of a ~~local human services~~
 48 ~~agency, or county department of social services.~~
 49 b. ~~An adult officer, agent, or employee of a State human services~~
 50 ~~agency. The~~Except as provided in G.S. 35A-1213(f), the fact that a
 51 ~~disinterested public agent is employed by a State or local human~~

1 ~~services agency that~~ provides financial assistance, services, or
2 treatment to a ward does not disqualify that person from being
3 appointed as guardian.

4 "

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

6 "**§ 35A-1213. Qualifications of guardians.**

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

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

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

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

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

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

47 **SECTION 13.(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 13.(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 14.** This act is effective when it becomes law.