

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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

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

(Public)

Sponsors:

Referred to:

March 20, 2017

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

4 The General Assembly of North Carolina enacts:

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

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

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

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

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

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

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

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

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



* H 4 0 3 - P C S 4 0 3 0 1 - T R - 1 *

"§ 122C-3. Definitions.

The following definitions apply in this Chapter:

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

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

17 ...

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

22 ...

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

25"

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

27 "(b) The primary functions of an LME are designated in this subsection and shall not be

28 conducted by any other entity unless an LME obtains the prior written approval of the
 29 Secretary to voluntarily enters-enter into a contract with that entity under subsection (c) of this

30 section. The primary functions include all of the following:

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

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

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

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

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

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

9 "**§ 122C-116. Status of area authority; ~~status of consolidated human services~~**
 10 **agency authority.**

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

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

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

33 "**§ 122C-117. Powers and duties of the area authority.**

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

35 ...

36 (7) Appoint an area director in accordance with
 37 ~~G.S. 122C-121(d).~~ G.S. 122C-121.

38 ...

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

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

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

47 ...

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

50 (1) Information systems.

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

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

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

8 "

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

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

13 "**§ 122C-118.1. Structure of area board.**

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

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

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

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

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

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

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

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

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

20"

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

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

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

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

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

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

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

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

51 **"§ 122C-121. Area director.**

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

7 (a1) The area board shall establish the area director's salary under Article 3 of Chapter
8 126 of the General Statutes. Notwithstanding G.S. 126-9(b), an area director may be paid a
9 salary that is in excess of the salary ranges established by the State Human Resources
10 Commission. ~~Any salary that is higher than the maximum of the applicable salary range shall~~
11 ~~be~~ Commission so long as all of the following requirements are met:

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

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

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

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

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

1 (2) The area board must obtain prior written approval for the proposed salary
2 adjustment from both the Director of the Office of State Human Resources
3 and the Secretary. In no instance shall the area board, the Director of the
4 Office of State Human Resources, or the Secretary approve a salary
5 adjustment for an area director that results in a salary that is higher than the
6 maximum of the applicable salary range if it exceeds by more than thirty
7 percent (30%) the average salary of the area directors of the remaining
8 LME/MCOs, as determined by the Secretary. If the Secretary determines
9 that an area director's salary is higher than the maximum of the applicable
10 salary range and exceeds by more than thirty percent (30%) the average
11 salary of the area directors of the remaining LME/MCOs, that area director's
12 salary shall be reduced to achieve compliance with this subdivision within
13 60 days after such determination by the Secretary.

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

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

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

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

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

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

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

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

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

20 (1) Appoint, supervise, and terminate area program staff.

21 (2) Administer area authority services.

22 (3) Develop the budget of the area authority for review by the area board.

23 (4) Provide information and advice to the board of county commissioners
24 through the county manager.

25 (5) Act as liaison between the area authority and the Department.

26 (6) Ensure compliance by the area authority with the powers and duties of the
27 area authority established under G.S. 122C-117.

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

30 (1) Masters degree.

31 (2) Related experience.

32 (3) Management experience.

33 (4) Any other qualifications required under G.S. 122C-120.1.

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

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

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

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

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

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

13 **"§ 122C-154. Personnel.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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