



HOUSE BILL 259: 2023 Appropriations Act, Sec. 9G.7A: Agency Requested Changes / Behavioral Health

2023-2024 General Assembly

Committee:		Date:	December 14, 2023
Introduced by:		Prepared by:	Jennifer Hillman Staff Attorney
Analysis of:	Sec. 9G.7A of S.L. 2023-134		

OVERVIEW: Section 9G.7A of S.L. 2023-134 makes updates to various statutes governing the Department of Health and Human Services' (DHHS's) oversight of local management entity/managed care organizations (LME/MCOs), as follows:

- **Requires the Secretary of DHHS (Secretary) to reduce the number of LME/MCOs from 6 to either 5 or 4 within 90 days after the budget becomes law, to achieve compliance with an increased minimum population threshold for LME/MCOs. The Secretary is authorized to achieve this reduction by the dissolution, merger, or consolidation of existing LME/MCOs. (Section 9G.7A(a20))**
- **Reorganizes and amends numerous laws pertaining to dissolutions of LME/MCOs and other mergers and consolidations of LME/MCOs. (Sections 9G.7A(a1)-(a19)) Under the amended statutes, this section of the act does the following:**
 - **Requires that, when a Tailored Plan contract with that LME/MCO is terminated, the Secretary must dissolve the LME/MCO and reassign the LME/MCO's Tailored Plan contract and State-funded services contract.**
 - **Requires that, when assigning an LME/MCO contract that has been terminated and when approving an LME/MCO merger or consolidation, the Secretary must consider specified factors including readiness, historical performance, statewide distribution of covered lives, network adequacy, county input, and geographical contiguity of counties.**
 - **Updates the statutory solvency standards for LME/MCOs by replacing the statutory formula with a requirement that LME/MCO contracts contain contractual solvency standards based on industry-standard financial accounting measures and require corrective action plans for noncompliant LME/MCOs.**
- **Limits the time period when counties can request the Secretary's approval of a realignment with another LME/MCO to the six-month period prior to each rebidding of the Tailored Plan contracts and create a statutory process for counties to formally raise performance concerns about their LME/MCO. DHHS must evaluate concerns raised through the formal process and, if the concern is valid, must take appropriate action under the terms of DHHS's contract with the LME/MCO, including imposing sanctions or terminating the contract. (Sections 9G.7A(b1)-(b4))**
- **Requires LME/MCOs to cancel subcontracts, or direct the removal of staff from subcontracts, when directed by DHHS to achieve compliance with contractual or legal requirements. (Sections 9G.7A(c1)-(c6))**

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- *Enables the Secretary to discharge, without being subject to appeal at the Office of Administrative Hearings, key personnel of an LME/MCO for failure to substantially comply with the role description for the key personnel in the LME/MCO's contract with DHHS. (Sections 9G.7A(d1)-(d4))*

This section of the act became effective October 3, 2023.

BILL ANALYSIS: Section 9G.7A of S.L. 2023-134 makes updates to various statutes governing oversight by DHHS of LME/MCOs with regard to the following:

- Mergers, consolidations, and dissolutions of LME/MCOs and the alignment of counties with the LME/MCOs.
- Subcontracts of LME/MCOs.
- Employees of LME/MCOs.

With regard to mergers, consolidations, and dissolutions of LME/MCOs, and the alignment of counties with the LME/MCOs, Section 9G.7A does the following:

- Sections **9G.7A(a6) and (a20)** require a reduction in the number of LME/MCOs. In order to achieve the reduction in LME/MCOs, these subsections do the following:
 - Increase the minimum population threshold for an LME/MCO from 500,000 to 1,500,000 residents living within its catchment area. (**Section 9G.7A(a6)/G.S. 122C-115**)
 - Require the Secretary to reduce the number of LME/MCOs from 6 to either 5 or 4 within 90 days after the budget becomes law, to achieve compliance with the increased minimum population threshold for LME/MCOs established in the section. (**Section 9G.7A(a20)(1), (6)**)
 - Authorize the Secretary to direct the dissolution, merger, or consolidation of existing LME/MCOs to achieve the required reduction. (**Section 9G.7A(a20)(2)**)
 - Require the Secretary to redefine the regions of operation of the behavioral health and intellectual/developmental disabilities tailored plans (Tailored Plans) to match the realignment of counties resulting from the reduction in the number of LME/MCOs. (**Section 9G.7A(a20)(3)**)
 - Establish that there is no right to appeal the Secretary's decision to direct the dissolution, merger, or consolidation of LME/MCOs to meet this requirement to reduce the number of LME/MCOs. (**Section 9G.7A(a20)(7)**)
- Sections **9G.7A(a1) through (a19)** reorganize and amend numerous laws pertaining to dissolutions of LME/MCOs and other mergers and consolidations of LME/MCOs. Authorities of the Secretary of DHHS to dissolve an LME/MCO that previously appeared in G.S. 122C-115, G.S. 122C-115.3, G.S. 122C-124.2, G.S. 122C-125, and Section 3.5A of S.L. 2021-62 are reorganized into new G.S. 122C-115.5 and G.S. 122C-115.6. These subsections make the following changes to existing statutes:
 - Make permanent the previously temporary language stating that the Secretary must dissolve an LME/MCO upon termination of its Tailored Plan contract. (**G.S. 122C-115.5(d)**)
 - Allow the Secretary the authority to establish the timeline for a Secretary-directed dissolution of an LME/MCO. (**G.S. 122C-115.5(e)(2)**)

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- Ensure an LME/MCO must be given at least 7 and up to 30 days to negotiate a merger or consolidation when the Secretary directs the dissolution of an LME/MCO. (**G.S. 122C-115.5(e)(2)**)
- Direct the Secretary to dissolve an LME/MCO if a Tailored Plan contract with that LME/MCO is terminated. The Secretary must assign the LME/MCO's contract to one or more LME/MCOs receiving at least one county. (**G.S. 122C-115.5(e)(4)**)
- Direct that when a contract with an LME/MCO for operation of a Tailored Plan is terminated, the Tailored Plan contract and the State-funded services contract must be assigned to one or more LME/MCOs with a Tailored Plan contract. (**G.S. 122C-115.5(e)(5)**)
- Prohibit counties from withdrawing funding for mental health, developmental disabilities, and substance abuse services upon dissolution of an LME/MCO. (**G.S. 122C-115.5(e)(10)**)
- Codify the previously temporary law that directs the transfer of fund balance from an LME/MCO when a county realigns with a different LME/MCO and clarifies that the law applies when an LME/MCO is dissolved. (**G.S. 122C-115.6**)
- Allow Tailored Plan enrollees of an LME/MCO to be temporarily enrolled in service delivery options other than a Tailored Plan during the dissolution of the LME/MCO. Enrollees with an LME/MCO can also be moved to another service delivery system any time the enrollee cannot access covered services from providers experienced in addressing the enrollee's health care needs. (**G.S. 108D-60**)
- Update the statutory solvency standards for LME/MCOs by replacing the statutory formula with a requirement that DHHS establish solvency standards in the LME/MCO contracts. The contractual solvency standards must be based on industry-standard financial accounting measures and the contracts must require corrective action plans for noncompliant LME/MCOs. DHHS must report quarterly on each LME/MCO's compliance with the contractual solvency standards by publishing data on DHHS's website and notifying the General Assembly. (**G.S. 122C-125.3**)
- Specify factors for the Secretary to consider when approving an LME/MCO merger or consolidation and when assigning an LME/MCO contract that has been terminated. The factors include readiness, historical performance, statewide distribution of covered lives, network adequacy, county input, and geographical contiguity of counties, among other factors. (**G.S. 122C-115.5(f)**)
- Establish that there is no right to appeal the Secretary's decision to approve or disapprove a proposed LME/MCO merger or consolidation. (**G.S. 122C-115.5(g)**)
- Sections 9G.7A(b1) through (b4) amend the circumstances when an individual county can request a realignment from one LME/MCO to another and establish new processes for counties to seek resolution of concerns or issues with LME/MCOs and other prepaid health plans (PHPs), as follows:
 - Limit the time period when counties can request a realignment to the six-month period prior to each rebidding of the Tailored Plan contracts. Any realignment must be approved or disapproved by the Secretary within 30 days upon the consideration of specified factors. (**G.S. 108D-46(b)**) This statute replaces previous authority under G.S. 122C-115(a3) allowing counties to request realignment at any time.

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- Create a statutory process for counties to formally raise performance concerns about their LME/MCO to the Secretary, the LME/MCO and the Chairs of the Joint Legislative Oversight Committee on Health and Human Services. Upon receipt of notice from a county of a performance concern, DHHS must evaluate the concern and, if the concern is valid, must direct the LME/MCO to resolve the concern and must take any other appropriate action under the terms of DHHS's contract with the LME/MCO, including imposing sanctions or terminating the contract. (**G.S. 122C-124.3**)
- Require DHHS to consult with counties annually regarding the performance of LME/MCOs and other PHPs in operating Tailored Plans or Standard Plans. Section (**G.S. 108D-46(d)**)
- Direct DHHS to create a dedicated issue-resolution channel for county leadership when beneficiaries enrolled in any Medicaid PHP are having issues. DHHS must use the issues and resolutions raised through this channel to drive systemic improvement. (**Section 9G.7A(b4)**)
- Establish that there is no right to appeal the Secretary's decision to approve or disapprove county realignment requests. (**G.S. 108D-46(b)(7)**)

With regard to LME/MCO subcontracts, **Sections 9G.7A(c1) through (c6)** require LME/MCOs to cancel subcontracts, or direct the removal of staff from subcontracts, when directed by DHHS to achieve compliance with contractual or legal requirements. (**G.S. 122C-115.4(c)**)

With regard to LME/MCO employees, **Sections 9G.7A(d1) through (d4)** enable the Secretary to discharge, without being subject to appeal at the Office of Administrative Hearings, key personnel of an LME/MCO for failure to substantially comply with the role description for the key personnel in the LME/MCO's contract with DHHS. (**G.S. 122C-121.1**) DHHS can also establish minimum qualifications for the LME/MCO area directors in DHHS's contracts with LME/MCOs that are in addition to the minimum qualifications established in statute.

Section 9G.7A also makes technical and conforming changes throughout to bring the statutes up to date.

EFFECTIVE DATE: This section of the act became effective October 3, 2023.